

TASMANIA

PROFESSIONAL STANDARDS BILL 2005

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Objects of Act
4. Interpretation
5. Application of Act
6. Relationship of Act to other laws
7. Act binds Crown

PART 2 – LIMITATION OF LIABILITY

Division 1 – Making, amendment and revocation of schemes

8. Preparation and approval of schemes
9. Public notification of schemes
10. Making of comments and submissions concerning schemes
11. Consideration of comments, submissions and other matters
12. Public hearings
13. Submission of schemes to Minister
14. Gazettal, tabling and disallowance of schemes
15. Commencement of schemes
16. Challenges to schemes
17. Review of schemes

18. Amendment of schemes

19. Revocation of schemes

Division 2 – Contents of schemes

20. Persons to whom scheme applies

21. Officers or partners of persons to whom scheme applies

22. Employees of persons to whom scheme applies

23. Other persons to whom scheme applies

24. Limitation of liability by insurance arrangements

25. Limitation of liability by reference to amount of business assets

26. Limitation of liability by multiple of charges

27. Specification of different limits of liability

28. Combination of provisions under sections 24, 25 and 26

29. Liability that cannot be limited by scheme

30. Insurance to be of requisite standard

Division 3 – Effect of schemes

31. Limit of occupational liability by schemes

32. Limitation of amount of damages

33. Effect of scheme on other parties to proceedings

34. Proceedings to which scheme applies

35. Duration of scheme

36. Notification of limitation of liability

PART 3 – COMPULSORY INSURANCE

37. Occupational association may compel its members to insure

38. Monitoring claims

PART 4 – PROFESSIONAL STANDARDS AND RISK MANAGEMENT

39. Risk management strategies

40. Reporting

41. Compliance audits

PART 5 – COMPLAINTS AND DISCIPLINARY MATTERS

42. Occupational Associations (Complaints and Discipline) Code

PART 6 – THE PROFESSIONAL STANDARDS COUNCIL

Division 1 – Establishment of Council

- 43. Establishment of Council

Division 2 – Membership and procedure of Council

- 44. Membership of Council
- 45. Provisions relating to members of Council
- 46. Provisions relating to procedure of Council

Division 3 – Functions of Council

- 47. Functions of Council

Division 4 – Miscellaneous

- 48. Requirement to provide information
- 49. Referral of complaints
- 50. Committees of Council
- 51. Engagement of consultants
- 52. Accountability of Council
- 53. Council is not Crown

PART 7 – MISCELLANEOUS

- 54. Characterisation of Act
- 55. No contracting out of Act
- 56. No limitation on other insurance
- 57. Regulations
- 58. Administration of Act

SCHEDULE 1 – MODEL CODE

SCHEDULE 2 – PROVISIONS RELATING TO MEMBERS OF COUNCIL

SCHEDULE 3 – PROVISIONS RELATING TO PROCEDURE OF COUNCIL

PROFESSIONAL STANDARDS BILL 2005

(Brought in by the Minister for Justice and Industrial Relations, the Honourable Judith Louise Jackson)

A BILL FOR

An Act to provide for the limitation of liability of members of occupational associations in certain circumstances, to facilitate improvement in the standards of services provided by members of occupational associations and to provide for related matters

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Professional Standards Act 2005*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Objects of Act

The objects of this Act are as follows:

- (a) to enable the creation of schemes to limit the civil liability of professionals and others;
- (b) to facilitate the improvement of occupational standards of professionals and others;
- (c) to protect the consumers of the services provided by professionals and others;
- (d) to establish the Professional Standards Council to supervise the preparation and approval of schemes and to assist in the improvement of occupational standards and protection of consumers.

4. Interpretation

In this Act, unless the contrary intention appears –

“business assets” means the property of a person that is used in the performance of the person’s occupation and that is able to be taken in proceedings to enforce a judgment of a court;

“Council” means the Professional Standards Council established by this Act;

“court” includes a tribunal and an arbitrator;

“damages” means damages awarded in respect of a claim or counter-claim or by way of set-off, and includes –

- (a) interest payable in respect of an amount awarded as damages; and

- (b) legal costs and expenses ordered to be paid in connection with an award of damages (other than legal costs and expenses incurred in enforcing a judgment or incurred on an appeal made by a defendant);

“exercise” of a function includes, where the function is a duty, the performance of the duty;

“function” includes a power, authority and duty;

“judgment” includes –

- (a) a judgment given by consent; and
- (b) an award of an arbitrator;

“occupational association” means a body corporate –

- (a) which represents the interests of persons who are members of the same occupational group or related occupational groups; and
- (b) the membership of which is limited principally to members of that occupational group or those occupational groups;

“occupational group” includes a professional group and a trade group;

“occupational liability” means civil liability arising (in tort, contract or otherwise) directly or vicariously from anything

done or omitted to be done by a member of an occupational association acting in the performance of his or her occupation;

“partner” means a person who has entered into a partnership, within the meaning of the *Partnership Act 1891*, with another person;

“scheme” means a scheme for limiting the occupational liability of members of an occupational association;

“subordinate legislation” has the same meaning as in the *Subordinate Legislation Act 1992*.

5. Application of Act

- (1) This Act does not apply to liability for damages arising from any of the following:
 - (a) the death of, or personal injury to, a person;
 - (b) any negligence or other fault of a legal practitioner in acting for a client in a personal injury claim;
 - (c) a breach of trust;
 - (d) fraud or dishonesty;
 - (e) an intentional tort.
- (2) This Act does not apply to liability which may be the subject of proceedings under Division 2 of Part XI of the *Land Titles Act 1980*.

- (3) This Act does not apply to any cause of action arising under, or with respect to, a contract, or contractual relations, entered into before the commencement of this Act (whether or not the action lies in contract) unless the parties, after the commencement of this Act, vary the relevant contract so as to make express provision for the application of this Act.

6. Relationship of Act to other laws

- (1) If a provision made by or under Part 3, 4 or 5 or Schedule 1 is inconsistent with a provision made by or under any other Act, that other provision prevails and the provision made by or under this Act is (to the extent of the inconsistency) of no force or effect.
- (2) Except as provided by subsection (1), this Act has effect despite any law to the contrary.

7. Act binds Crown

- (1) This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.
- (2) Nothing in this Act makes the Crown in any of its capacities liable to be prosecuted for an offence.

PART 2 – LIMITATION OF LIABILITY

Division 1 – Making, amendment and revocation of schemes

8. Preparation and approval of schemes

- (1) An occupational association may prepare a scheme.
- (2) The Council may, on the application of an occupational association, approve a scheme prepared under this section.

9. Public notification of schemes

Before deciding whether to approve a scheme, the Council must publish a notice in a daily newspaper circulating throughout Tasmania –

- (a) explaining the nature and significance of the scheme; and
- (b) advising where a copy of the scheme may be obtained or inspected; and
- (c) inviting comments and submissions within a specified time, but not less than 28 days after publication of the notice.

10. Making of comments and submissions concerning schemes

- (1) Any person may make a comment or submission to the Council concerning a scheme of which notice has been published under section 9.

- (2) A comment or submission must be made within the period specified for that purpose in the notice or within such further time as the Council may allow.

11. Consideration of comments, submissions and other matters

Before deciding whether to approve a scheme, the Council must consider the following:

- (a) all comments and submissions made to it in accordance with section 10;
- (b) the position of persons who may be affected by limiting the occupational liability of members of the occupational association concerned;
- (c) the nature and level of claims relating to occupational liability made against members of the occupational association concerned;
- (d) the risk management strategies of the occupational association concerned;
- (e) the means by which those strategies are intended to be implemented;
- (f) the cost and availability of insurance against occupational liability for members of the occupational association concerned;
- (g) the standards (referred to in section 30) determined by the occupational

association concerned in relation to insurance policies;

- (h) the provisions contained in the proposed scheme or under statute for the making and determination of complaints and the imposition and enforcement of disciplinary measures against members of the occupational association concerned.

12. Public hearings

- (1) The Council may conduct a public hearing concerning a scheme if the Council thinks it appropriate.
- (2) A public hearing may be conducted in such manner as the Council determines.

13. Submission of schemes to Minister

- (1) The Council may submit a scheme approved by it to the Minister.
- (2) At the same time as the Council submits a scheme to the Minister, the Council is to provide the Minister with a summary of the Council's reasons for approving the scheme.
- (3) Paragraph (e) of item 2 of Schedule 1 to the *Subordinate Legislation Act 1992* applies to a proposed scheme submitted to the Minister as if –
 - (a) the proposed scheme were proposed subordinate legislation; and

- (b) the reference in that paragraph to any other subordinate legislation included a reference to any other existing or proposed scheme.

14. Gazettal, tabling and disallowance of schemes

- (1) The Minister, after carrying out any consultation required under section 13(3), may authorise the publication in the *Gazette* of a scheme submitted to the Minister by the Council.
- (2) Section 47(3)(c), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* applies to a scheme submitted to the Minister by the Council as if the scheme were regulations and notice of the making of the regulations had been published in the *Gazette* when the scheme was published in the *Gazette*.
- (3) Section 7(4) and section 8 of the *Subordinate Legislation Committee Act 1969* apply to a scheme published in the *Gazette* under subsection (1) as if –
 - (a) the scheme were a regulation; and
 - (b) notice of the making of the regulation had been published in the *Gazette* when the scheme was published in the *Gazette*; and
 - (c) section 8(1)(ab) of that Act included a reference to compliance with the provisions of this Act.
- (4) The Minister does not incur any liability for or in respect of a scheme in consequence of its

authorisation, commencement, continued
operation, amendment or revocation.

15. Commencement of schemes

- (1) A scheme published in the *Gazette* with the authorisation of the Minister commences –
 - (a) on such day 2 months or more after the date of its publication as may be specified in the scheme; or
 - (b) if no such day is specified, 2 months after the date of its publication.
- (2) This section is subject to any order of the Supreme Court under section 16(2).

16. Challenges to schemes

- (1) A person who is, or is reasonably likely to be, affected by a scheme published as referred to in section 14 may, at any time before the scheme commences, apply to the Supreme Court for an order that the scheme is void for want of compliance with this Act.
- (2) The Court may, on or at any time after the making of the application, order that the commencement of the scheme be stayed until further order of the Court.
- (3) The Court, in relation to an application, may –
 - (a) make an order that a scheme is void for want of compliance with this Act; or

- (b) decline to make such an order; or
- (c) give directions as to the things that are required to be done in order that a scheme, the commencement of which is stayed under this section, may commence; or
- (d) make any other order it thinks fit.

17. Review of schemes

- (1) The Minister may direct the Council to review the operation of a scheme and the Council must comply with any such direction.
- (2) The Council may on its own initiative at any time review the operation of a scheme.
- (3) A review may, but need not, be conducted in order to decide whether a scheme should be amended or revoked or whether a new scheme should be made.
- (4) Without limiting subsection (2), the Council may review the operation of a scheme that relates to the members of an occupational association if the association proposes under section 30 an alteration in the standards applying in relation to an insurance policy or kind of insurance policy that would, in the opinion of the Council, result in less stringent standards.
- (5) The Council may recover the cost of any review of a scheme under this section from the occupational association to whose members the scheme relates as a debt due to it from that occupational association.

18. Amendment of schemes

- (1) An occupational association may prepare an amendment to a scheme that relates to its members.
- (2) The Council may, on the application of an occupational association, approve an amendment to a scheme that relates to the members of the association.
- (3) The Minister may direct an occupational association to prepare an amendment to a scheme if the Minister considers that the scheme no longer meets the objects of this Act.
- (4) If the Minister directs an occupational association to prepare an amendment to a scheme under subsection (3), the association must do so within a reasonable time.
- (5) If the Minister considers that the occupational association has not prepared an amendment to a scheme within a reasonable time, the Minister may revoke the scheme.
- (6) If an amendment to a scheme is prepared by an occupational association as a result of a direction from the Minister, the occupational association must submit the amendment to the Council for approval and the Council, if it is satisfied that the amendment complies with this Act and the Minister's direction, must approve the amendment.
- (7) The provisions of sections 8, 9, 10, 11, 12, 13, 14, 15 and 16 apply, with any necessary modifications, to the amendment of a scheme as well as to the making of a scheme.

19. Revocation of schemes

- (1) An occupational association may prepare the revocation of a scheme that relates to its members.
- (2) The Council may, on the application of an occupational association, approve the revocation of a scheme that relates to the members of the association.
- (3) The Council may, on its own initiative, at any time while a scheme remains in force, prepare and approve the revocation of the scheme if satisfied that the scheme no longer meets the objects of this Act.

Division 2 – Contents of schemes**20. Persons to whom scheme applies**

- (1) A scheme may provide that it applies to –
 - (a) all persons within an occupational association; or
 - (b) a specified class or specified classes of persons within an occupational association; or
 - (c) specified occupational associations within a specified industry.
- (2) A scheme may provide that the occupational association concerned may, on application by a person, exempt the person from the scheme.

- (3) If a person is exempted from a scheme, the person is exempted from the whole of the scheme.
- (4) A scheme ceases to apply to a person exempted from the scheme as referred to in subsection (2) –
 - (a) on and from the date on which the exemption is granted; or
 - (b) on and from a later date specified in the exemption.
- (5) Subsection (2) does not apply to a person to whom a scheme applies by virtue of section 21, 22 or 23.

21. Officers or partners of persons to whom scheme applies

- (1) If a scheme applies to a body corporate, the scheme also applies to each officer of the body corporate.
- (2) If a scheme applies to a person, the scheme also applies to each partner of the person.
- (3) In this section –
 - “officer”** –
 - (a) in relation to a body corporate that is a corporation within the meaning of the Corporations Act, has the same meaning as in section 9 of that Act; and

- (b) in relation to a body corporate that is not a corporation within the meaning of that Act, means any person (by whatever name called) who is concerned in or takes part in the management of the body corporate.

22. Employees of persons to whom scheme applies

If a scheme applies to a person, the scheme also applies to each employee of the person.

23. Other persons to whom scheme applies

If persons are prescribed by the regulations for the purposes of section 32(4) as being associated with persons to whom a scheme applies, the scheme also applies to the prescribed persons.

24. Limitation of liability by insurance arrangements

A scheme may provide that, if a person to whom the scheme applies and against whom a proceeding relating to occupational liability is brought is able to satisfy the court that the person has the benefit of an insurance policy –

- (a) that insures the person against that occupational liability; and
- (b) under which the amount payable in respect of the occupational liability relating to the cause of action (including any amount payable by the person by

way of excess under or in relation to the policy) is not less than the amount of the monetary ceiling specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates at the time at which the act or omission giving rise to the cause of action occurred –

the person is not liable in damages in relation to that cause of action above the amount of the monetary ceiling so specified.

25. Limitation of liability by reference to amount of business assets

A scheme may provide that, if a person to whom the scheme applies and against whom a proceeding relating to occupational liability is brought is able to satisfy the court –

- (a) that the person has business assets the net current market value of which is not less than the amount of the monetary ceiling specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates at the time at which the act or omission giving rise to the cause of action occurred; or
- (b) that –
 - (i) the person has business assets and the benefit of an insurance policy that insures the person against that occupational liability; and

- (ii) the net current market value of the business assets and the amount payable under the insurance policy in respect of the occupational liability relating to the cause of action (including any amount payable by the person by way of excess under or in relation to the policy), if combined, would total an amount that is not less than the amount of the monetary ceiling specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates at the time at which the act or omission giving rise to the cause of action occurred –

the person is not liable in damages in relation to that cause of action above the amount of the monetary ceiling so specified.

26. Limitation of liability by multiple of charges

- (1) A scheme may provide that, if a person to whom the scheme applies and against whom a proceeding relating to occupational liability is brought is able to satisfy the court –
 - (a) that the person has the benefit of an insurance policy –
 - (i) that insures the person against that occupational liability; and
 - (ii) under which the amount payable in respect of the occupational

liability relating to the cause of action (including any amount payable by the person by way of excess under or in relation to the policy) is not less than an amount (the “**limitation amount**”), being a reasonable charge for the services provided by the person, or which the person failed to provide, and to which the cause of action relates, multiplied by the multiple specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates at the time at which the act or omission giving rise to the cause of action occurred; or

- (b) that the person has business assets the net current market value of which is not less than the limitation amount; or
- (c) that –
 - (i) the person has business assets and the benefit of an insurance policy that insures the person against that occupational liability; and
 - (ii) the net current market value of the assets and the amount payable under the insurance policy in respect of the occupational liability relating to the cause of action (including any amount payable by the person by way of excess under or in relation to the policy), if combined, would total

an amount that is not less than the limitation amount –

the person is not liable in damages in relation to that cause of action above the limitation amount or, if the scheme specifies a minimum cap determined by the Council for the purposes of the scheme that is higher than the limitation amount, above the amount of the minimum cap so specified.

- (2) In determining the amount of a reasonable charge for the purposes of a provision made under subsection (1), a court is to have regard to any amount actually charged and to –
 - (a) the amount that would ordinarily be charged in accordance with a scale of charges accepted by the occupational association of which the person is a member; or
 - (b) if there is no such scale, the amount that a competent person of the same qualifications and experience as the person would be likely to charge in the same circumstances.
- (3) This section does not limit an amount of damages to which a person is liable if the amount is less than the amount specified for the purpose in the scheme in relation to the class of person and the kind of work concerned.

27. Specification of different limits of liability

A scheme –

- (a) may specify the same maximum amount of liability in relation to all cases to which the scheme applies or different maximum amounts of liability for different cases or classes of case, or for the same case or class of case for different purposes; and
- (b) may confer a discretionary authority on an occupational association, on application by a person to whom the scheme applies, to specify in relation to the person a higher maximum amount of liability than would otherwise apply under the scheme in relation to the person either in all cases or a specified class of case; and
- (c) must provide that an occupational association, on application in a particular case by a person to whom the scheme applies, is to approve a higher maximum liability nominated by that person than would otherwise apply under the scheme.

28. Combination of provisions under sections 24, 25 and 26

If, in a scheme, provisions of the kind referred to in section 26 and provisions of the kind referred to in section 24 or 25 (or both) apply to a person at the same time in respect of the same kind of work, the scheme must provide that the damages which may be awarded against the person are to be determined in accordance with section 26 but must not exceed the amount of the monetary ceiling specified in relation to the class of person

and the kind of work in the provisions of the kind referred to in section 24 or 25.

29. Liability that cannot be limited by scheme

A scheme can only affect the liability for damages arising from a single cause of action to the extent to which the liability results in damages exceeding such amount (but not less than \$500 000) as is specified in the scheme.

30. Insurance to be of requisite standard

- (1) For the purposes of a scheme, an insurance policy must be a policy, or a policy of a kind, which complies with standards determined by the occupational association whose members may be insured under such a policy, or a policy of such a kind.
- (2) While a scheme remains in force relating to its members, if an occupational association proposes to alter the standards previously determined by it in relation to an insurance policy or a kind of insurance policy, it must do so by way of an amendment to the scheme in accordance with the provisions of section 18.

Division 3 – Effect of schemes

31. Limit of occupational liability by schemes

- (1) To the extent provided by this Act and the provisions of the scheme, a scheme limits the occupational liability, in respect of a cause of

action founded on an act or omission occurring during the period when the scheme is in force, of any person to whom the scheme applied at the time when the act or omission occurred.

- (2) A scheme does not limit the liability of a person (the “**professional**”) to another person (the “**client**”) if, at no stage before the time of the relevant act or omission, did the professional –
 - (a) give, or cause to be given, to the client a document that carried a statement of a kind referred to in section 36(1); or
 - (b) otherwise inform the client, whether orally or in writing, that the professional’s liability was limited in accordance with this Part.
- (3) Subsection (2) does not affect any limitation of the liability of a professional to a person other than the client.
- (4) The applicable limitation of liability is the limitation specified by the scheme as in force at the time of the relevant act or omission.
- (5) A limitation of liability that, in accordance with this section, applies in respect of an act or omission continues to apply to every cause of action founded on it, irrespective of when the cause of action arises or proceedings are brought in respect of it, and even if the scheme has been amended or has, in accordance with section 35, ceased to be in force.
- (6) A person to whom a scheme applies cannot choose not to be subject to the scheme, except in

accordance with provisions included in the scheme under section 20(2).

32. Limitation of amount of damages

- (1) A limitation imposed by a scheme in force under this Act of an amount of damages is a limitation of the amount of damages that may be awarded for a single claim and is not a limitation of the amount of damages that may be awarded for all claims arising out of a single event.
- (2) Separate claims by two or more persons who have a joint interest in a cause of action founded on the same act or omission are to be treated as a single claim for the purposes of this Act.
- (3) Two or more claims of the same type by the same person arising out of a single event against persons to whom a scheme in force under this Act applies and who are associated persons are to be treated as a single claim for the purposes of this Act.
- (4) Persons are associated if they are –
 - (a) officers of the same body corporate (within the meaning of section 21); or
 - (b) partners, employees of the same employer or in the relationship of employer and employee; or
 - (c) persons who are prescribed by the regulations for the purposes of this subsection.

33. Effect of scheme on other parties to proceedings

A scheme does not limit the liability of a person who is a party to proceedings if the scheme does not apply to the person.

34. Proceedings to which scheme applies

Subject to section 5(3), a scheme in force under this Act applies to proceedings relating to an act or omission that occurred after the commencement of that scheme.

35. Duration of scheme

- (1) A scheme remains in force for such period (not exceeding 5 years) from its commencement as is set out in the scheme unless, before the end of the period so determined –
 - (a) it is revoked; or
 - (b) its operation is extended by notice under this section; or
 - (c) its operation ceases because of the operation of another Act.
- (2) The Minister may, by notice published in the *Gazette* on or before the day when the original period ends, extend the period for which a scheme is in force.
- (3) Only one extension may be effected under subsection (2) in respect of any particular scheme, and the maximum period of such an extension is 12 months.

36. Notification of limitation of liability

- (1) If the occupational liability of a person is limited in accordance with this Part, the person must ensure that all documents (other than business cards) given, or caused to be given, by the person to a client or prospective client that promote or advertise the person or the person's occupation, including official correspondence ordinarily used by the person in the performance of the person's occupation and similar documents, carry a statement indicating that the person's liability is so limited.

Penalty: Fine not exceeding 50 penalty units.

- (2) The regulations may prescribe a form of statement for the purposes of this section.
- (3) A person does not commit an offence against subsection (1) if the statement carried on the person's documents is in the prescribed form.
- (4) If the occupational liability of a person is limited in accordance with this Part, the person must ensure that a copy of the scheme concerned is given, or caused to be given, to any client or prospective client who requests a copy.

Penalty: Fine not exceeding 50 penalty units.

PART 3 – COMPULSORY INSURANCE

37. Occupational association may compel its members to insure

- (1) An occupational association may require its members to hold insurance against occupational liability and, if it does so, the requirement must be stated in the scheme.
- (2) Such a requirement may be imposed as a condition of membership or otherwise.
- (3) The occupational association may set the standards with which the insurance must comply.
- (4) The occupational association may specify different standards of insurance for different classes of members.

38. Monitoring claims

- (1) An occupational association may establish a claims committee for monitoring and analysing claims made against its members for occupational liability or 2 or more occupational associations may establish a common committee for that purpose.
- (2) It is not necessary for all the committee members to be members of the occupational association or associations concerned.
- (3) An occupational association may, through such a committee or otherwise, issue practice advice to

its members with a view to minimising claims for occupational liability.

- (4) A committee may request an insurer to give it any information or a copy of any document that the committee considers will assist it in carrying out its functions.

PART 4 – PROFESSIONAL STANDARDS AND RISK MANAGEMENT

39. Risk management strategies

- (1) If, under section 8, an occupational association seeks the approval of the Council to a scheme, it must furnish the Council with –
 - (a) a detailed list of the occupational standards and risk management strategies intended to be implemented in respect of its members; and
 - (b) the means by which those strategies are intended to be implemented.
- (2) The means of implementation may be imposed as a condition of membership of the occupational association or otherwise.
- (3) The strategies are to apply in addition to other statutory requirements and must not be inconsistent with them.

40. Reporting

- (1) An occupational association must provide information to the Council concerning its occupational standards and risk management strategies if requested to do so by the Council.
- (2) An occupational association must provide an annual report to the Council and, if requested by the Minister, to the Minister as to the implementation and monitoring of its risk management strategies, the effect of those

strategies and any changes made or proposed to be made to them.

- (3) An occupational association's annual report must include details of any findings made, or conclusions drawn, by a committee established by it (whether solely or jointly with another association or 2 or more other associations) under section 38.
- (4) The occupational association's annual report is to be incorporated into the Council's annual report in such form as the Council determines.

41. Compliance audits

- (1) An audit (a “**compliance audit**”) of the compliance of members, or of specified members or a specified class or classes of members, of an occupational association with the association's occupational standards and risk management strategies –
 - (a) may be conducted at any time by the Council or the association; and
 - (b) must be conducted by the association if requested to do so by the Council.
- (2) If a compliance audit is conducted by the Council –
 - (a) the occupational association must give, and ensure that its members give, the Council any information or a copy of any document that the Council reasonably requests in connection with the conduct of the audit; and

- (b) the Council must provide a copy of a report of the audit to the association and, if requested by the Minister, to the Minister; and
 - (c) the Council may recover the costs of the compliance audit from the occupational association.
- (3) If a compliance audit is conducted by the occupational association, it must provide a copy of a report of the audit to the Council and, if requested by the Minister, to the Minister.

PART 5 – COMPLAINTS AND DISCIPLINARY MATTERS

42. Occupational Associations (Complaints and Discipline) Code

- (1) A scheme may adopt the provisions of the Model Code set out in Schedule 1 with such additions, omissions or other modifications (if any) as may be approved by the Council.
- (2) To the extent to which the provisions of the Model Code are covered by statutory provisions, a scheme is not required to adopt those provisions in the Code.
- (3) The modifications may include provisions relating to the making and determination of complaints and the imposition and enforcement of disciplinary measures against members of an occupational association, including (but not limited to) the following:
 - (a) the establishment of committees for the purpose of implementing the Model Code or any of its provisions;
 - (b) the procedure at meetings of any such committee;
 - (c) whether any such committee may administer an oath;
 - (d) the application or exclusion of the rules of, and practice relating to, evidence;
 - (e) the grounds on which a complaint may be made;

- (f) the verification of complaints by statutory declaration;
- (g) the suspension of members from membership or from practice;
- (h) the imposition of fines;
- (i) the making of appeals;
- (j) the exchanging of information with other occupational associations (within or outside Tasmania).

**PART 6 – THE PROFESSIONAL STANDARDS
COUNCIL**

Division 1 – Establishment of Council

43. Establishment of Council

- (1) The Professional Standards Council is established by this Act.
- (2) The Council –
 - (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) may acquire, hold and dispose of real and personal property; and
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) All courts must take judicial notice of the common seal of the Council affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (4) The common seal of the Council must be kept in such custody as the Council directs and must not be used except as authorised by the Council.

Division 2 – Membership and procedure of Council**44. Membership of Council**

- (1) The Council is to consist of 11 persons appointed by the Minister who have such experience, skills and qualifications as the Minister considers appropriate to enable them to make a contribution to the work of the Council.
- (2) An act or decision of the Council is not invalid merely because of –
 - (a) a defect or irregularity in, or in connection with, the appointment of a member; or
 - (b) a vacancy in the membership of the Council, including a vacancy arising from the failure to appoint an original member.

45. Provisions relating to members of Council

Schedule 2 has effect with respect to the members of the Council.

46. Provisions relating to procedure of Council

Schedule 3 has effect with respect to the procedure of the Council.

Division 3 – Functions of Council**47. Functions of Council**

(1) The Council has the following functions:

- (a) to give advice to the Minister concerning –
 - (i) the publication in the *Gazette* of a scheme, or of an amendment to a scheme, submitted by it to the Minister, or of notice of the revocation of such a scheme; and
 - (ii) the operation of this Act; and
 - (iii) any other matter relating to the occupational liability of members of occupational associations;
- (b) to give advice to occupational associations concerning policies of insurance for the purposes of Part 2;
- (c) to encourage and assist in the improvement of occupational standards of members of occupational associations;
- (d) to encourage and assist in the development of self-regulation of occupational associations, including the giving of advice and assistance concerning the following:
 - (i) codes of ethics;
 - (ii) codes of practice;
 - (iii) quality management;

- (iv) risk management;
 - (v) resolution of complaints by clients;
 - (vi) voluntary mediation services;
 - (vii) membership requirements;
 - (viii) discipline of members;
 - (ix) continuing occupational education;
 - (e) to monitor the occupational standards of members of occupational groups;
 - (f) to monitor the compliance by an occupational association with its risk management strategies;
 - (g) to publish advice and information concerning the matters referred to in this section;
 - (h) to conduct forums on issues of interest to members of occupational groups;
 - (i) to collect, analyse and provide the Minister with information on issues and policies concerning the occupational standards of occupational groups;
 - (j) to institute proceedings in its own name for the prosecution of an offence against this Act or the regulations that comes to its notice or for injunctive or other relief in respect of such offences.
- (2) Subject to subsection (3), the Council may do all things necessary or convenient to be done in

connection with the performance of its functions and, in particular, may charge fees to an occupational association for approving schemes and generally for any services provided by the Council.

- (3) The Council is not empowered to give advice concerning occupational standards contained in any other Act or statutory rule.
- (4) Any advice given to the Minister by the Council may be given either at the request of the Minister or without any such request.
- (5) The Council has such other functions as are conferred or imposed on it by or under this or any other Act.
- (6) The Council is taken to have locus standi for the purpose of pursuing any injunctive or other relief in accordance with subsection (1)(j), and is not to be required to give any undertaking as to damages in connection with the grant of any interlocutory relief.

Division 4 – Miscellaneous

48. Requirement to provide information

The Council may, by notice in writing, require an occupational association –

- (a) whose members are subject to a scheme in force under this Act; or
- (b) which seeks the approval of the Council to a scheme under section 8, or to an

amendment to or revocation of a scheme –

to provide information to it which it may reasonably require in order to exercise its functions.

49. Referral of complaints

- (1) An occupational association may refer to the Council any complaint or other evidence received by it that a member or former member of the association has committed an offence against section 36 or an offence against the regulations.
- (2) An occupational association must provide information to the Council on –
 - (a) any complaint or other evidence covered by subsection (1) that it did not refer to the Council; and
 - (b) particulars of any action taken by it in respect of any such complaint or other evidence and of the outcome of that action.
- (3) Nothing that is done in good faith under this section by or on behalf of an association subjects the association, any member of the association's executive body or any person acting under the direction of the association or its executive body to any action, liability, claim or demand.

50. Committees of Council

- (1) The Council may, with the approval of the Minister, establish committees to assist it in the exercise of its functions.
- (2) It does not matter that any or all of the members of a committee are not members of the Council.
- (3) The procedure for calling committee meetings and for the conduct of business at those meetings is to be as determined by the Council or (subject to any determination of the Council) by the committee.

51. Engagement of consultants

The Council, or a committee established under section 50, may engage as consultants to it persons with suitable qualifications and experience either in an honorary capacity or for remuneration.

52. Accountability of Council

- (1) The Council must exercise its functions subject to –
 - (a) the general direction and control of the Minister; and
 - (b) any specific written directions given to it by the Minister.
- (2) Without limiting subsection (1)(b), a direction under that subsection may require the Council to give the Minister, or provide the Minister with

access to, information in its possession about a matter or class of matter specified in the direction.

- (3) If the Council is given a written direction under subsection (1)(b) –
- (a) the Minister may cause the direction to be published in the *Gazette*; and
 - (b) the direction must be included in the report by the relevant Head of Agency under section 27 of the *Financial Management and Audit Act 1990*.

53. Council is not Crown

Nothing in this Act has the effect of –

- (a) making the Council the servant or agent of the Crown for the purposes of this or any other Act; or
- (b) conferring on the Council any status, privilege or immunity of the Crown.

PART 7 – MISCELLANEOUS**54. Characterisation of Act**

The provisions of this Act are to be regarded as part of the substantive law of the State.

55. No contracting out of Act

Subject to section 27(b) and (c), this Act applies in relation to a person to whom a scheme in force under this Act applies despite any contract to the contrary made on or after the date on which the person became a person to whom the scheme applies.

56. No limitation on other insurance

Nothing in this Act limits the insurance arrangements a person may make apart from those made for the purposes of this Act.

57. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (3) The regulations may authorise any matter to be from time to time determined, applied or

regulated by any person or body specified in the regulations.

58. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

SCHEDULE 1 – MODEL CODE

Section 42

1. Citation

This Code may be cited as the Occupational Associations (Complaints and Discipline) Code.

2. Definitions

In this Code –

“Council” means the Professional Standards Council established by the *Professional Standards Act 2004*.

3. What actions may be the subject of a complaint?

- (1) A complaint may be made that a member of the occupational association has acted (or has failed to act) in such a way as to justify the taking of disciplinary action against the member under this Code.
- (2) A complaint may be made and dealt with even though the person about whom it is made has ceased to be a member.

4. Who may make a complaint?

Any person may make a complaint (including the occupational association and the Council).

5. How is a complaint made?

- (1) A complaint may be made to the occupational association.
- (2) The complaint must be in writing and contain the particulars of the allegations on which it is founded.
- (3) The occupational association must notify the Council of each complaint made to it (other than a complaint made by the Council).

6. What happens after a complaint is made?

- (1) The occupational association must consider a complaint as soon as practicable after the complaint is made to it or notified to it by the Council.
- (2) The occupational association may then do any one or more of the following:
 - (a) it may require the complainant to provide further particulars of the complaint;
 - (b) it may carry out an investigation into the complaint;
 - (c) it may attempt to resolve the complaint by conciliation;
 - (d) it may decline to entertain the complaint (because, for example, the complaint is frivolous, vexatious, misconceived or lacking in substance);
 - (e) it may conduct a hearing into the complaint.

- (3) The occupational association is bound by the rules of natural justice in the conduct of a hearing into the complaint.

7. What action may be taken after a hearing into a complaint?

- (1) After an occupational association has conducted a hearing into a complaint against a person, it may, if it finds the complaint substantiated, do any one or more of the following:
 - (a) caution or reprimand the person;
 - (b) impose conditions relating to the carrying out of the person's occupation;
 - (c) require the person to complete specified courses of training or instruction;
 - (d) require the person to report concerning the carrying out of his or her occupation at the times, in the manner and to the persons specified by the occupational association;
 - (e) order the person to obtain advice concerning the carrying out of his or her occupation from such persons as are specified by the occupational association;
 - (f) expel the person from membership of the occupational association.
- (2) If the occupational association does not find the complaint substantiated, it must dismiss the complaint.

- (3) The occupational association is not entitled to make an award of compensation.

8. Notices of decisions

- (1) Within 30 days after a decision is made by an occupational association concerning a complaint, the complainant and the person against whom the complaint is made must be given a written statement of the decision.
- (2) The statement must include the reasons for the decision.

9. What rights of representation do parties to a complaint have?

The complainant and the person against whom the complaint is made are not entitled to legal representation during attempts to resolve the complaint by conciliation, but are entitled to legal representation during a hearing into the complaint.

10. How may the functions of the occupational association under this Code be exercised?

A function of an occupational association under this Code may, in accordance with a resolution of the association, be exercised by the executive body of the association or by a person or persons appointed by that resolution for the purpose.

11. Immunity

- (1) A member of the executive body of an occupational association or a person acting in accordance with a resolution of an occupational association is not personally liable for anything done or omitted to be done in good faith –
 - (a) for the purpose of implementing this Code; or
 - (b) in the reasonable belief that the act or omission was for the purpose of implementing this Code.
- (2) Any liability resulting from an act or omission that, but for subclause (1), would attach to a person attaches instead to the occupational association.

SCHEDULE 2 – PROVISIONS RELATING TO MEMBERS OF COUNCIL

Section 45

1. Chairperson and Deputy Chairperson of Council

- (1) The Minister is to appoint 2 of the members of the Council (in and by their respective instruments of appointment or in and by other instruments executed by the Minister) as Chairperson and Deputy Chairperson of the Council, respectively.
- (2) The Minister may remove a member from the office of Chairperson or Deputy Chairperson of the Council at any time.
- (3) A person holding office as Chairperson or Deputy Chairperson of the Council vacates that office if the person –
 - (a) is removed from that office by the Minister; or
 - (b) resigns that office by instrument in writing addressed to the Minister; or
 - (c) ceases to be a member.

2. Deputies of members

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy –

- (a) is, if available, to act in the place of the member; and
 - (b) while so acting, has all the functions of the member and is taken to be a member.
- (3) The deputy of a member who is Chairperson or Deputy Chairperson of the Council does not (because of this clause) have the member's functions as Chairperson or Deputy Chairperson.

3. Term of office

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for reappointment.

4. Vacancy in office of member

- (1) The office of a member becomes vacant if the member –
 - (a) resigns the office by instrument in writing addressed to the Minister; or
 - (b) is removed from office by the Minister under this clause; or
 - (c) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post unless –
 - (i) the member is so absent on leave granted by the Council; or

- (ii) before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings; or
 - (d) becomes an insolvent under administration within the meaning of the Corporations Act; or
 - (e) becomes a represented person within the meaning of the *Guardianship and Administration Act 1995*; or
 - (f) is convicted in Tasmania of an offence that is punishable by imprisonment for life or for a term of 12 months or more, or is convicted elsewhere than in Tasmania of an offence that, if committed in Tasmania, would be an offence so punishable.
- (2) The Minister may remove a member from office for incompetence or misbehaviour.

5. Filling of vacancy in office of member

If the office of a member becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy for the remainder of the member's term of office.

6. Effect of certain other Acts

- (1) The *State Service Act 2000* does not apply to a member in respect of the office of member.

- (2) A provision made by or under any Act –
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
 - (b) prohibiting the person from engaging in employment outside the duties of that office –

does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as such a member.

7. Immunity

- (1) A member, a deputy of a member or any person acting under the direction of the Council or of a member or a deputy of a member is not personally liable for anything done or omitted to be done in good faith –
- (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a function under this Act.
- (2) Any liability resulting from an act or omission that, but for subclause (1), would attach to a person attaches instead to the Council.

SCHEDULE 3 – PROVISIONS RELATING TO PROCEDURE OF COUNCIL

Section 46

1. General procedure

The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Council.

2. Quorum

The quorum for a meeting of the Council is a majority of its members for the time being.

3. Presiding member

- (1) The Chairperson of the Council or, in the absence of the Chairperson, the Deputy Chairperson of the Council or, in the absence of both, another member elected to chair the meeting by the members present is to preside at a meeting of the Council.
- (2) The person presiding at any meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

4. Voting

A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

5. First meeting

The Chairperson of the Council is to call the first meeting of the Council in such manner as he or she thinks fit.