



Queensland

# **Professional Standards Act 2004**

**Act No. 23 of 2004**



# Queensland



## PROFESSIONAL STANDARDS ACT 2004

### TABLE OF PROVISIONS

Section		Page
<b>PART 1—PRELIMINARY</b>		
<i>Division 1—Introduction</i>		
1	Short title . . . . .	8
2	Commencement . . . . .	8
3	Notes in text . . . . .	8
<i>Division 2—Objects of Act</i>		
4	Objects of Act . . . . .	8
<i>Division 3—Application of Act</i>		
5	Act binds all persons . . . . .	9
6	Application . . . . .	9
<i>Division 4—Interpretation</i>		
7	Definitions . . . . .	9
<b>PART 2—LIMITATION OF LIABILITY</b>		
<i>Division 1—Making, amending and revoking schemes</i>		
8	Preparation and approval of schemes . . . . .	10
9	Public notice of schemes . . . . .	10
10	Making of comments on schemes . . . . .	10
11	Public hearings . . . . .	10
12	Consideration of comments and other matters . . . . .	11
13	Submission of schemes to Minister . . . . .	11
14	Schemes are subject to disallowance . . . . .	11
15	Commencement of schemes . . . . .	12
16	Challenges to schemes . . . . .	12
17	Review of schemes . . . . .	13

---

18	Amendment and revocation of schemes . . . . .	13
	<b><i>Division 2—Contents of scheme</i></b>	
19	Persons to whom scheme applies . . . . .	13
20	Officers or partners of persons to whom a scheme applies . . . . .	14
21	Employees of persons to whom a scheme applies . . . . .	14
22	Limitation of liability by insurance arrangements . . . . .	14
23	Limitation of liability by reference to amount of business assets . . . . .	15
24	Limitation of liability by multiple of charges . . . . .	15
25	Different limits of liability for different persons and different work . . . . .	17
26	Combination of provisions under ss 22, 23 and 24 . . . . .	17
27	Liability that can not be limited by a scheme . . . . .	17
28	Insurance to be of requisite standard . . . . .	18
	<b><i>Division 3—Effect of schemes</i></b>	
29	Limit of occupational liability by schemes . . . . .	18
30	Limitation of amount of damages . . . . .	19
31	Effect of scheme on other parties to proceedings . . . . .	20
32	Proceedings to which a scheme applies . . . . .	20
33	Duration of scheme . . . . .	20
34	Notification of limitation of liability . . . . .	20
	<b>PART 3—COMPULSORY INSURANCE</b>	
35	Occupational association may compel its members to insure . . . . .	21
36	Monitoring claims . . . . .	22
	<b>PART 4—RISK MANAGEMENT</b>	
37	Risk management strategies . . . . .	22
38	Reporting . . . . .	23
39	Compliance audits . . . . .	23
	<b>PART 5—COMPLAINTS AND DISCIPLINARY MATTERS</b>	
40	Model complaints and discipline code . . . . .	24
	<b>PART 6—PROFESSIONAL STANDARDS COUNCIL</b>	
	<b><i>Division 1—Establishment and functions</i></b>	
41	Establishment of council . . . . .	24
42	Legal status of council . . . . .	25

---

43	Functions of council . . . . .	25
44	Council's powers . . . . .	26
	<i>Division 2—Membership of council</i>	
45	Membership of council . . . . .	27
46	Chairperson and deputy chairperson of council . . . . .	27
47	Term of appointment to council . . . . .	28
48	Conditions of appointment to council . . . . .	28
49	Disqualifications for appointment to council . . . . .	28
50	Vacancy in office of member . . . . .	29
	<i>Division 3—Council meetings and procedure</i>	
51	Times and places of council meetings . . . . .	29
52	Presiding at council meetings . . . . .	29
53	Voting at council meetings . . . . .	30
54	Quorum for council meeting . . . . .	30
55	Conduct of council meetings . . . . .	30
56	Council minutes . . . . .	30
	<i>Division 4—Signing documents</i>	
57	The council's seal . . . . .	31
58	Judicial notice of certain signatures . . . . .	31
59	Authentication of documents . . . . .	31
	<i>Division 5—Other provisions</i>	
60	Requirement to provide information . . . . .	31
61	Referral of complaints . . . . .	32
62	Establishing committees . . . . .	32
63	Chief executive to help council . . . . .	33
64	Report on council's operations . . . . .	33
65	Accountability of the council . . . . .	33
	<b>PART 7—GENERAL</b>	
66	Characterisation of Act . . . . .	34
67	No contracting out . . . . .	34
68	No limitation on other insurance . . . . .	34
69	Summary proceedings for offences . . . . .	34

---

70	Protection from liability . . . . .	34
71	Regulation-making power . . . . .	35
72	Review of Act . . . . .	35
	<b>PART 8—AMENDMENT OF CIVIL LIABILITY ACT 2003</b>	
73	Act amended . . . . .	36
74	Amendment of s 4 (Application of Act) . . . . .	36
75	Amendment of s 7 (Provisions relating to operation of Act) . . . . .	36
76	Replacement of ch 2, pt 2 . . . . .	36
	<b>PART 2—PROPORTIONATE LIABILITY</b>	
28	Application of pt 2 . . . . .	37
29	Definitions for pt 2 . . . . .	37
30	Who is a concurrent wrongdoer . . . . .	38
31	Proportionate liability for apportionable claims . . . . .	38
32	Onus of parties to identify all relevant parties . . . . .	39
32A	Contribution not recoverable from concurrent wrongdoer . . . . .	40
32B	Subsequent actions . . . . .	40
32C	Joining non-party concurrent wrongdoer in the action . . . . .	41
32D	What if a concurrent wrongdoer is fraudulent . . . . .	41
32E	What if a concurrent wrongdoer intends to cause loss or damage . . . . .	41
32F	What if a concurrent wrongdoer is proved to have engaged in misleading or deceptive conduct under the Fair Trading Act . . . . .	41
32G	Liability for contributory negligence not affected . . . . .	41
32H	Concurrent wrongdoer may seek contribution from person not a party to the original proceeding . . . . .	42
32I	Part not to affect other liability . . . . .	42
33	Court may give directions . . . . .	42
77	Amendment of s 61 (Assessment by court of injury scale) . . . . .	42
78	Amendment of s 67 (Offer of structured settlement—legal costs) . . . . .	43
79	Amendment of sch 2 (Dictionary) . . . . .	43
	<b>SCHEDULE 1</b> . . . . .	44
	<b>MODEL CODE</b>	
1	Definition . . . . .	44
2	What actions may be the subject of a complaint . . . . .	44

3	Who may make a complaint .....	44
4	How is a complaint made .....	44
5	What happens after a complaint is made. ....	45
6	What action may be taken after a hearing into a complaint .....	45
7	Notice of decision .....	46
8	What rights of representation do parties to a complaint have .....	46
	<b>SCHEDULE 2</b> .....	47
	<b>DICTIONARY</b>	







Queensland

## **Professional Standards Act 2004**

### **Act No. 23 of 2004**

---

**An Act to provide for the limitation of liability of members of occupational associations in particular circumstances and to help in improving the standards of services provided by the members, and for other purposes**

**[Assented to 13 September 2004]**

The Parliament of Queensland enacts—

## **PART 1—PRELIMINARY**

### *Division 1—Introduction*

#### **1 Short title**

This Act may be cited as the *Professional Standards Act 2004*.

#### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

#### **3 Notes in text**

A note in the text of this Act is part of the Act.

### *Division 2—Objects of Act*

#### **4 Objects of Act**

The main objects of this Act include the following—

- (a) to enable the creation of schemes to limit the civil liability of professionals and others;
- (b) to help in improving the occupational standards of professionals and others;
- (c) to protect the consumers of services provided by professionals and others;
- (d) to establish the council to supervise the preparation and application of schemes and to help in improving occupational standards and protecting consumers.

### ***Division 3—Application of Act***

#### **5 Act binds all persons**

(1) This Act binds all persons including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.

(2) However, nothing in this Act makes the State, the Commonwealth or another State liable to be prosecuted for an offence.

#### **6 Application**

(1) This Act does not apply to liability for damages because of any of the following—

- (a) the death of, or personal injury to, a person;
- (b) any negligence or other fault of a lawyer in acting for a client in a personal injury claim;
- (c) a breach of trust;
- (d) fraud or dishonesty.

(2) This Act does not apply to liability that may be the subject of proceedings under the *Land Title Act 1994*, part 9, division 2, subdivision C.<sup>1</sup>

(3) This Act does not apply to any cause of action arising under, or in relation 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.

### ***Division 4—Interpretation***

#### **7 Definitions**

The dictionary in schedule 2 defines particular words used in this Act.

---

<sup>1</sup> *Land Title Act 1994*, part 9 (Registration of instruments and its effect), division 2 (Consequences of registration), subdivision C (Compensation for loss of title)

## **PART 2—LIMITATION OF LIABILITY**

### ***Division 1—Making, amending and revoking 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, prepare a scheme.
- (3) The council may, on the application of an occupational association, approve a scheme prepared under this section.

#### **9 Public notice of schemes**

- (1) The council must, before approving a scheme, publish a notice in a daily newspaper circulating throughout the State.
- (2) The notice must—
  - (a) explain the nature and significance of the scheme; and
  - (b) state where a copy of the scheme may be obtained or inspected; and
  - (c) invite comments and submissions within a stated time, at least 21 days, after publication of the notice.

#### **10 Making of comments on schemes**

- (1) A person may make a comment to the council about a scheme for which a notice is published under section 9.
- (2) The comment must be written and made within the time stated in the notice or within the further time the council allows.

#### **11 Public hearings**

- (1) The council may conduct a public hearing for the purpose of taking oral or written comments on a scheme if the council considers it appropriate.
- (2) The hearing may be conducted in the way the council decides.

## **12 Consideration of comments and other matters**

(1) The council must, before approving a scheme, consider the following—

- (a) all comments made to it under section 10 or 11;
- (b) the position of persons who may be affected by limiting the occupational liability of members of the occupational association;
- (c) the nature and level of claims for occupational liability made against members of the occupational association;
- (d) the risk management strategies of the occupational association;
- (e) the way the risk management strategies are to be performed and audited;
- (f) the measures available to the occupational association under the scheme to discipline its members;
- (g) the cost and availability of insurance against occupational liability for members of the occupational association;
- (h) the insurance standards for the scheme;
- (i) any matter prescribed under a regulation.

(2) However, the council must not consider any matter prescribed under a regulation for this subsection when considering whether to approve a scheme.

## **13 Submission of schemes to Minister**

If the council approves a scheme, it must advise the Minister and give a copy of the scheme, as approved, to the Minister.

## **14 Schemes are subject to disallowance**

(1) The Minister must notify the council's approval of the scheme by gazette notice.

(2) The gazette notice is subordinate legislation.

(3) A copy of the approved scheme must be attached to the gazette notice when the gazette notice is tabled in the Legislative Assembly, but the scheme is not subordinate legislation.

(4) However, if the gazette notice is disallowed under, or is not tabled as required under, the *Statutory Instruments Act 1992*, section 51<sup>2</sup> of that Act applies to the scheme as if it were subordinate legislation.

## 15 Commencement of schemes

(1) If the council approves a scheme, the scheme commences—

- (a) on the day stated in the scheme after the gazette notice mentioned in section 14 is notified in the gazette; or
- (b) if no day is stated, 2 months after the day the gazette notice is notified in the gazette.

(2) A scheme can not commence before the gazette notice is notified in the gazette.

(3) This section is subject to an 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, the approval of which has been notified in the gazette by gazette notice under section 14, may apply to the Supreme Court for an order that the scheme is void because it contravenes this Act.

(2) The court may, on the making of the application or at any time before the scheme commences—

- (a) if the scheme has commenced—order that the scheme is of no effect until the court makes an order under subsection (3); or
- (b) if the scheme has not commenced—order that the commencement of the scheme is stayed until the court makes an order under subsection (3).

(3) The court may—

- (a) make an order that the scheme is void because it contravenes this Act; or
- (b) refuse to make the order; or

---

2 *Statutory Instruments Act 1992*, section 51 (Limited saving of operation of subordinate legislation that ceases to have effect)

- (c) give directions about the things that are required to be done so that a scheme, the commencement of which is stayed under subsection (2), may commence; or
- (d) make any other order the court considers appropriate.

## **17 Review of schemes**

(1) The Minister may, by signed notice to the council, require the council to review the operation of a scheme.

(2) The council must comply with the direction.

(3) The council may, on its own initiative, review the operation of a scheme, or a proposal to change a scheme, at any time, including after the scheme ceases to have effect.

(4) A review of a scheme may, but need not, be conducted to decide if—

- (a) the scheme should be amended or revoked; or
- (b) a new scheme should be made.

## **18 Amendment and revocation of schemes**

(1) An occupational association may prepare an amendment to, or a revocation of, a scheme for its members.

(2) The council may, on the application of an occupational association, prepare or approve an amendment to, or a revocation of, a scheme for the members of the association.

(3) The council may, on its own initiative at any time while the scheme remains in force, prepare an amendment to, or a revocation of, the scheme.

(4) Sections 8 to 16 apply, with necessary changes, to the amendment or revocation of a scheme.

### *Division 2—Contents of scheme*

## **19 Persons to whom scheme applies**

(1) A scheme may provide that it applies to—

- (a) all persons in an occupational association; or

(b) a stated class or classes of persons in an occupational association.

(2) A scheme may provide that the occupational association to which the scheme applies may, on receipt of a written application from a person, exempt the person from the scheme.<sup>3</sup>

(3) If an occupational association exempts a person from a scheme, the scheme ceases to apply to the person from—

(a) the day the exemption is granted; or

(b) if a later day is stated in the exemption, that day.

(4) Subsection (2) does not apply to a person to whom a scheme applies under section 20 or 21.

## **20 Officers or partners of persons to whom a 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) However, if an officer of a body corporate or a partner of a person is entitled to be a member of the same occupational association as the body corporate or person but is not a member, the scheme does not apply to the officer or partner.

## **21 Employees of persons to whom a scheme applies**

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

(2) However, if an employee of a person is entitled to be a member of the same occupational association as the person but is not a member, the scheme does not apply to the employee.

## **22 Limitation of liability by insurance arrangements**

A scheme may provide that if a person to whom the scheme applies and against whom a cause of action relating to occupational liability is brought

---

<sup>3</sup> See also section 67 (No contracting out).



is able to satisfy the court the person has the benefit of an insurance policy—

- (a) insuring the person against the occupational liability; and
- (b) under which the amount payable in relation to the occupational liability relating to the cause of action is at least the amount of the monetary ceiling specified in the scheme in relation to the person at the relevant time;

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

### **23 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 cause of action 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 at least the amount of the monetary ceiling specified in the scheme in relation to the person at the relevant time; or
- (b) that—
  - (i) the person has business assets and the benefit of an insurance policy insuring the person against the occupational liability; and
  - (ii) the net current market value of the assets and the amount payable under the insurance policy in relation to the occupational liability relating to the cause of action, if combined, would total an amount that is at least the amount of the monetary ceiling specified in the scheme in relation to the person at the relevant time;

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

### **24 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 cause of action relating to occupational liability is brought is able to satisfy the court—

- (a) that the person has the benefit of an insurance policy—

- (i) insuring the person against the occupational liability; and
  - (ii) under which the amount payable in relation to the occupational liability relating to the cause of action is at least an amount (“**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 person at the relevant time; 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 insuring the person against the occupational liability; and
  - (ii) the net current market value of the assets and the amount payable under the insurance policy in relation to the occupational liability relating to the cause of action, if combined, would total an amount that is at least the limitation amount;

the person is not liable in damages in relation to the cause of action above the limitation amount.

(2) In deciding the amount of a reasonable charge for subsection (1)(a)(ii), the court is to have regard to any amount actually charged and to—

- (a) the amount that would ordinarily be charged under a scale of charges accepted by the occupational association of which the person is a member; or
- (b) if there is no scale of a kind mentioned in paragraph (a), 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 person.

**25 Different limits of liability for different persons and different work**

(1) A scheme may specify—

- (a) the same maximum amount of liability for all cases to which the scheme applies; or
- (b) different maximum amounts of liability for different cases or classes of case or for the same case or class of case for different purposes.

(2) A scheme may also 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 in any specified case or class of case.

(3) A scheme may also specify a multiple, monetary ceiling or minimum cap by way of a formula that is to be applied to calculate the multiple, ceiling or cap.

**26 Combination of provisions under ss 22, 23 and 24**

(1) Subsection (2) applies if, in a scheme, provisions of the kind mentioned in section 24 and provisions of the kind mentioned in section 22 or 23 apply to a person at the same time for the same occupation.

(2) The scheme must provide that the damages that may be awarded against the person are to be worked out under section 24 but must not be over the amount of the damages for which the person may be liable under section 22 or 23.

**27 Liability that can not be limited by a scheme**

(1) A scheme only affects the liability for damages arising from a single cause of action to the extent the liability results in damages over an amount, of at least \$500 000, decided for the purposes of the scheme by the council and stated in the scheme.

(2) In making a decision mentioned in subsection (1), the council must have regard to—

- (a) the number and amounts of claims made against persons in the occupational association concerned; and

(b) the need to adequately protect consumers.

(3) The decision—

- (a) takes effect when the scheme, or an amendment providing for its specification in the scheme, takes effect; and
- (b) applies only to a cause of action that arises after the decision takes effect.

## 28 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, that complies with standards (“**insurance standards**”) decided by the occupational association whose members may be insured under the policy, or a policy of the kind.

(2) While a scheme remains in force relating to its members, if an occupational association proposes to change the standards previously decided by it in relation to an insurance policy or a kind of insurance policy, it must notify the council of the proposed change.

*Note—*

The Council may review the scheme, or the proposal to change the scheme, under section 17(3)<sup>4</sup> if it considers it appropriate to do so.

### *Division 3—Effect of schemes*

## 29 Limit of occupational liability by schemes

(1) A scheme, to the extent provided by this Act and the scheme, limits the occupational liability, in relation to a cause of action founded on an act or omission that happens when the scheme is in force, of any person to whom the scheme applies when the act or omission happens.

(2) A scheme does not limit the liability of a person (“**professional**”) to another person (“**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 mentioned in section 34(1); or

---

4 Section 17 (Review of schemes)

- (b) otherwise inform the client, whether orally or in writing, that the professional's liability was limited under this part.

*Note—*

A professional may also be prosecuted under section 34 for a contravention of section 34(1).

(3) Subsection (2) does not affect any limitation of the liability of a professional to a person other than the client.

(4) The limitation of liability that applies is the limitation stated by the scheme as in force when the act or omission happens.

(5) A limitation of liability that, under this section, applies for an act or omission continues to apply to every cause of action founded on it, irrespective of—

- (a) when the cause arises or proceedings are started for it; or
- (b) any amendment of the scheme; or
- (c) whether the scheme has ceased to be in force.

(6) A person to whom a scheme applies can not choose not to be subject to the scheme unless the occupational association concerned exempts the person from the scheme.

### **30 Limitation of amount of damages**

(1) A limitation under 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) Claims by a number of persons who have a joint interest in a cause of action are to be treated as a single claim for this Act despite the fact that they may also have several interests.

(3) Two or more claims 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 this Act.

(4) In this section—

**“associated persons”** means persons who are—

- (a) officers of the same body corporate or in the relationship of body corporate and officer of the body corporate; or

- (b) partners, or employees of the same employer or in the relationship of employer and employee.

### **31 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.

### **32 Proceedings to which a scheme applies**

A scheme in force under this Act applies to proceedings relating to an act or omission that happened after the commencement of the scheme.

### **33 Duration of scheme**

(1) A scheme is in force for the period, not longer than 5 years from its commencement, decided by the council unless before the period ends—

- (a) the scheme is revoked; or
- (b) the period is extended under subsection (2).

(2) The council may, by gazette notice published on or before the day a scheme ends, extend the period of the scheme.

(3) A scheme may be extended once only for a maximum period not longer than 1 year.

### **34 Notification of limitation of liability**

(1) A person whose occupational liability is limited under this part must not give a business document to a client or prospective client of the person unless the business document includes a statement to that effect.

Maximum penalty—65 penalty units.

(2) A regulation may prescribe—

- (a) a statement for subsection (1); or
- (b) other particulars about the minimum type size of the statement and how it must be displayed on a business document.

(3) If a regulation prescribes a statement for subsection (1), the person does not contravene subsection (1) if the person includes the prescribed

statement on the person's business documents and the statement is in accordance with any prescribed particulars.

(4) If the occupational liability of a person is limited under 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.

Maximum penalty—65 penalty units.

(5) In this section—

**“business document”** means a document promoting or advertising a person or the person's occupation and includes business correspondence and other similar documents the person ordinarily uses in performing the person's occupation, but does not include a business card.

## PART 3—COMPULSORY INSURANCE

### 35 Occupational association may compel its members to insure

(1) An occupational association may require its members to hold insurance against occupational liability.

(2) Without limiting subsection (1), an occupational association may require different classes of its members to hold different standards of insurance against occupational liability.

(3) An occupational association may make the requirement as a condition of membership of the association or in another way the association decides.

(4) An occupational association may set standards with which the insurance must comply.

*Examples—*

1. The amount of the insurance.
2. The type of insurance provider.
3. The levels of excess payable.
4. The policy exemptions that are acceptable.

### 36 Monitoring claims

(1) An occupational association may establish a committee (“**monitoring committee**”) for monitoring and analysing claims made against its members for occupational liability.

(2) Two or more occupational associations may establish a common monitoring committee.

(3) The monitoring committee may include members who are not members of the occupational association or associations concerned.

*Example—*

Insurers’ representatives may be appointed as committee members.

(4) An occupational association may, through its monitoring committee or in any other way the association decides, issue practice advice to its members to minimise claims for occupational liability.

## PART 4—RISK MANAGEMENT

### 37 Risk management strategies

(1) If an occupational association applies for the council’s approval to a scheme under section 8,<sup>5</sup> the occupational association must give to the council written particulars of—

- (a) the risk management strategies to be carried out for its members; and
- (b) the way the risk management strategies are to be carried out.

(2) The occupational association may impose the way the risk management strategies are to be carried out—

- (a) as a condition of membership of the occupational association; or
- (b) in another way the occupational association decides.

(3) A requirement to comply with a risk management strategy is in addition to any statutory requirement to manage risk but if there is an

---

<sup>5</sup> Section 8 (Preparation and approval of schemes)



inconsistency between a strategy and a statutory requirement, the strategy is void to the extent of the inconsistency.

### **38 Reporting**

(1) An occupational association must provide information to the council about its risk management strategies if requested to do so by the council.

(2) An occupational association must provide an annual report to the council about 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 36.

(4) The occupational association's annual report must be incorporated into the council's annual report in the form the council decides.

### **39 Compliance audits**

(1) An audit ("**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 risk management strategies—

- (a) may be conducted at any time by the council or the association;  
or
- (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.

(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.

## **PART 5—COMPLAINTS AND DISCIPLINARY MATTERS**

### **40 Model complaints and discipline code**

(1) A scheme may adopt the model complaints and discipline code (“**model code**”) in schedule 1 with the modifications, if any, the council approves.

(2) The modifications may include provisions about the making and deciding of complaints and the imposition and enforcement of disciplinary measures on and against members of an occupational association.

(3) Without limiting subsection (2), the modifications may provide for the following—

- (a) the establishment of a committee to carry out the model code or any of its provisions;
- (b) the procedure at meetings of the committee;
- (c) the application or exclusion of the rules of and practice about evidence;
- (d) the grounds for making a complaint;
- (e) the suspension of members from membership or from practice;
- (f) the imposition of fines;
- (g) the making of appeals;
- (h) the exchanging of information with other occupational associations in another State.

## **PART 6—PROFESSIONAL STANDARDS COUNCIL**

### *Division 1—Establishment and functions*

### **41 Establishment of council**

The Professional Standards Council is established.

**42 Legal status of council**

(1) The council—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

(2) The council does not represent the State.

**43 Functions of council**

(1) The functions of the council are—

- (a) to advise the Minister about the following—
  - (i) the publication in the gazette of—
    - (A) notice of a scheme or an amendment of a scheme submitted by the council to the Minister; or
    - (B) notice of the revocation of a scheme;
  - (ii) the operation of this Act;
  - (iii) anything else about the occupational liability of members of occupational associations; and
- (b) to advise occupational associations about insurance policies for part 2;<sup>6</sup> and
- (c) to encourage and help in the improvement of occupational standards of members of occupational associations; and
- (d) to encourage and help in the development of self-regulation of occupational associations, including the giving of advice and help about the following—
  - (i) codes of ethics;
  - (ii) codes of practice;
  - (iii) quality management;
  - (iv) risk management;
  - (v) resolution of complaints by clients;

---

6 Part 2 (Limitation of liability)

- (vi) voluntary mediation services;
- (vii) membership requirements;
- (viii) discipline of members;
- (ix) continuing occupational education; and
- (e) to monitor the occupational standards of persons to whom this Act applies; and
- (f) to monitor the compliance by an occupational association with its risk management strategies; and
- (g) to publish advice and information about the matters mentioned in this section; and
- (h) to conduct forums, approved by the Minister, on issues of interest to members of occupational groups; and
- (i) to collect, analyse and provide the Minister with information on issues and policies about the standards of occupational groups; and
- (j) to start proceedings in its own name for the prosecution of an offence against this Act or for injunctive or other relief for the offences.

(2) The council has the other functions conferred or imposed on it under this or another Act.

(3) The council may not give advice about occupational standards contained in another Act.

(4) The council may give advice to the Minister whether or not the Minister asks for it.

(5) The council—

- (a) is taken to have the right to be heard for the purpose of pursuing any injunctive or other relief under subsection (1)(j); and
- (b) must not to be required to give an undertaking for damages for the grant of interlocutory relief.

#### **44 Council's powers**

(1) The council has all the powers of an individual, and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of, and deal with property; and
- (c) appoint agents and attorneys; and
- (d) engage consultants; and
- (e) charge, and fix terms, for goods, services and information supplied by it; and
- (f) do anything else necessary or convenient to be done for, or in connection with, its functions.

(2) Without limiting subsection (1), the council has the powers given to it under this or another Act.

### *Division 2—Membership of council*

#### **45 Membership of council**

(1) The council consists of 11 members appointed by signed notice by the Minister.

(2) Without limiting section 49, a person is not qualified for appointment as a member of the council unless the Minister considers the person has appropriate experience, skills and qualifications to enable the person to make a contribution to the council's work.

#### **46 Chairperson and deputy chairperson of council**

(1) The Minister must, by signed notice, appoint a member to be the chairperson, and another member to be the deputy chairperson, of the council.

(2) A member may be appointed as the chairperson or deputy chairperson at the same time as the person is appointed as a member and by the same notice appointing the person as member.

(3) The chairperson or deputy chairperson holds office as chairperson or deputy chairperson—

- (a) for the term decided by the Minister; or
- (b) if the person's term of office as a member ends before the person's term of office as chairperson or deputy chairperson

ends—until the day the person’s term of office as member ends;  
or

- (c) if the person’s term of office as member and the person’s term of office as chairperson or deputy chairperson end on the same day—until the day the person’s offices end.

(4) A vacancy occurs in the office of chairperson or deputy chairperson if the person holding the office—

- (a) is removed from office by signed notice given to the person by the Minister; or
- (b) resigns the office by signed notice of resignation given to the Minister.

(5) However, a person removed from, or resigning from, the office of chairperson or deputy chairperson may continue as a member of the council.

#### **47 Term of appointment to council**

(1) A council member is appointed for the term, not longer than 3 years, stated in the member’s instrument of appointment.

(2) Subsection (1) does not prevent a person from being reappointed as a member of the council.

(3) A council member may resign by signed notice of resignation given to the Minister.

#### **48 Conditions of appointment to council**

(1) A council member is to be paid the remuneration and allowances decided by the Minister.

(2) A council member holds office on—

- (a) the conditions stated in this Act; and
- (b) the other conditions decided by the Minister.

#### **49 Disqualifications for appointment to council**

A person is not qualified to be, or continue as, a council member if the person—

- (a) is an insolvent under administration; or
- (b) is incapable of performing the duties of a member because of a physical or mental incapacity; or
- (c) is convicted of an offence in Queensland that is punishable by imprisonment for 1 year or more or is convicted in another State of an offence that, if committed in Queensland, would be an offence so punishable.

### **50 Vacancy in office of member**

The office of a member becomes vacant if the member—

- (a) resigns office by signed notice of resignation given to the Minister; or
- (b) is absent without the council's permission from 3 consecutive council meetings of which proper notice has been given; or
- (c) is no longer qualified to be a member; or
- (d) is removed from office by signed notice from the Minister.

### ***Division 3—Council meetings and procedure***

### **51 Times and places of council meetings**

- (1) Council meetings are to be held at the times and places it decides.
- (2) However, the chairperson may call a council meeting at any time.
- (3) The Minister may also call a council meeting at any time and has the right to be heard at the meeting.
- (4) The council must meet at least once a year.

### **52 Presiding at council meetings**

- (1) The chairperson is to preside at all council meetings at which the chairperson is present.
- (2) If the chairperson is absent, the deputy chairperson, if present, is to preside.

(3) If the chairperson and the deputy chairperson are absent, the member chosen by the members present is to preside.

### **53 Voting at council meetings**

(1) At council meetings, all questions are to be decided by a majority of votes of the members present.

(2) However, at least the number of members needed to form a quorum for a council meeting must vote before a question can be decided.

(3) The chairperson or member presiding at a meeting is to have a vote, and if the votes are equal, a second or casting vote.

### **54 Quorum for council meeting**

A quorum for a council meeting is 6 members.

### **55 Conduct of council meetings**

(1) The council may conduct its meetings as it considers appropriate.

(2) The council may hold meetings, or allow members to take part in its meetings, by using any technology that reasonably allows members to hear and take part in discussions as they happen.

*Example of use of technology—*

Teleconferencing.

(3) A member who participates in a council meeting under a permission under subsection (2) is taken to be present at the meeting.

(4) A resolution is validly made by the council, even though it is not passed at a council meeting, if—

- (a) a majority of the council members give written agreement to the resolution; and
- (b) notice of the resolution is given under procedures approved by the council.

### **56 Council minutes**

The council must keep a record of the minutes of its meetings and its decisions.



***Division 4—Signing documents*****57 The council’s seal**

(1) The council’s seal must be kept in the custody directed by the council and may be used only as directed by the council.

(2) Judicial notice must be taken of the imprint of the council’s seal appearing on a document.

**58 Judicial notice of certain signatures**

Judicial notice must be taken of—

- (a) the official signature of a person who is or has been the chairperson; and
- (b) the fact that the person holds or has held the office concerned.

**59 Authentication of documents**

(1) A document made by the council, other than a document that is required to be sealed, is sufficiently made if it is signed by the chairperson or a person authorised by the council.

(2) A document made by the council under seal is sufficiently made under seal if it is sealed in the way authorised under section 57(1) and signed by the chairperson or a person authorised by the council.

***Division 5—Other provisions*****60 Requirement to provide information**

(1) This section applies to an occupational association—

- (a) whose members are subject to a scheme in force under this Act; or
- (b) that seeks the council’s approval of—
  - (i) a scheme; or
  - (ii) an amendment to, or revocation of, a scheme.

(2) The council may, by signed notice given to the occupational association, require it within the time stated in the notice, at least 7 days, to give the council the information or a document the council reasonably requires to exercise its functions.

(3) The occupational association must not contravene the notice unless it has a reasonable excuse.

Maximum penalty—

- (a) for an individual guilty of the offence under the Criminal Code, chapter 2<sup>7</sup>—7 penalty units; or
- (b) for the occupational association—35 penalty units.

## 61 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 contravened this Act.

(2) An indemnified person is not civilly liable for an act done, or omission made, honestly and without negligence under subsection (1).

(3) In this section—

**“indemnified person”** means—

- (a) a member of the association’s executive body; or
- (b) an agent or employee of the association.

## 62 Establishing committees

(1) The council may, with the Minister’s earlier signed approval, establish a committee to help it to perform its functions.

(2) When seeking the Minister’s approval, the council must give the Minister a statement of the proposed committee’s terms of reference or functions.

(3) The council may appoint a person to the committee by signed notice of appointment given to the person.

---

7 Criminal Code, chapter 2 (Parties to offences)

(4) The council may appoint a person to the committee only if the person has skills or experience appropriate to the committee's terms of reference or functions.

(5) A committee member is not entitled to any remuneration, other than the reimbursement of reasonable expenses and travel allowance, without the Minister's earlier written approval.

(6) Subsection (1) does not apply to a committee of the council's own members.

### **63 Chief executive to help council**

(1) The chief executive is to give the council reasonable help to perform its functions.

(2) Without limiting subsection (1), the chief executive must nominate an appropriately qualified departmental officer to help the council in performing its functions.

(3) A departmental officer is appropriately qualified if the officer has qualifications, experience or standing appropriate to help the council in performing its functions.

### **64 Report on council's operations**

(1) The council must prepare and give to the Minister, within 3 months after the end of each financial year, a report on its operations during the financial year.

(2) The Minister must table a copy of the report in the Legislative Assembly within 14 days after the Minister receives it.

### **65 Accountability of the council**

(1) The council must perform 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 provision 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, the council—
- (a) may publish the direction in the gazette; and
  - (b) must publish the direction in its next annual report.

## **PART 7—GENERAL**

### **66 Characterisation of Act**

The provisions of this Act are part of the substantive law of the State.

### **67 No contracting out**

An agreement or arrangement is void to the extent to which it purports to exclude, change or restrict the application or operation of a provision of this Act to a person to whom a scheme in force under this Act applies.

### **68 No limitation on other insurance**

This Act does not limit the insurance arrangements a person may make apart from those made for the purposes of this Act.

### **69 Summary proceedings for offences**

A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886* within the later of the following—

- (a) 1 year after the offence is committed;
- (b) 6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

### **70 Protection from liability**

(1) An indemnified person is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to the person, the liability attaches instead to—

- (a) if the indemnified person is a member of the council, or of a committee established by the council—the council; or
- (b) otherwise—the State.

(3) In this section—

**“indemnified person”** means any of the following—

- (a) the Minister;
- (b) the chief executive;
- (c) an officer or employee of the department;
- (d) a member of the council or of a committee established by the council;
- (e) a person who helps the council by arrangement with the chief executive under section 63(1).<sup>8</sup>

## **71 Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may do any of the following—

- (a) prescribe offences for a contravention of a regulation, and fix a maximum penalty of not more than 20 penalty units for a contravention;
- (b) prescribe fees payable under this Act;
- (c) prescribe the content of an application to approve a scheme made to the council;
- (d) prescribe the way in which an application to approve a scheme may be made to the council.

## **72 Review of Act**

(1) The Minister must ensure the operation of this Act is reviewed.

---

8 Section 63 (Chief executive to help council)

(2) The review must start within 2 years after the commencement of this section.

(3) The Minister must table in the Legislative Assembly a report on the outcome of the review within 3 months after the review is finished.

## **PART 8—AMENDMENT OF CIVIL LIABILITY ACT 2003**

### **73 Act amended**

This part amends the *Civil Liability Act 2003*.

### **74 Amendment of s 4 (Application of Act)**

(1) Section 4(3) to (5)—

*renumber* as section 4(4) to (6).

(2) Section 4—

*insert*—

‘(3) Chapter 2, part 2 applies only in relation to a breach of duty happening on or after the commencement of this subsection.’

### **75 Amendment of s 7 (Provisions relating to operation of Act)**

Section 7(3), ‘chapter 3,’ and footnote—

*omit, insert*—

‘chapter 2, part 2 and chapter 3,<sup>9</sup>’.

### **76 Replacement of ch 2, pt 2**

‘Chapter 2, part 2—

*omit, insert*—

---

9 Chapter 2 (Civil liability for harm), part 2 (Proportionate liability) and chapter 3 (Assessment of damages for personal injury)

## ‘PART 2—PROPORTIONATE LIABILITY

### ‘28 Application of pt 2

‘(1) This part applies to either or both of the following claims (“**apportionable claim**”)—

- (a) a claim for economic loss or damage to property in an action for damages arising from a breach of a duty of care;
- (b) a claim for economic loss or damage to property in an action for damages under the *Fair Trading Act 1989* for a contravention of section 38<sup>10</sup> of that Act.

‘(2) For this part, if more than 1 claim of a kind mentioned in subsection (1)(a) or (1)(b) or both provisions is based on the same loss or damage, the claims must be treated as a single apportionable claim.

‘(3) This part does not apply to a claim—

- (a) arising out of personal injury; or
- (b) by a consumer.

‘(4) Also, this part does not apply to a claim to the extent that an Act provides that liability for an amount payable in relation to the claim is joint and several.

‘(5) A provision of this part that gives protection from civil liability does not limit or otherwise affect any protection from liability given by any other provision of this Act or by another Act or law.

### ‘29 Definitions for pt 2

‘In this part—

“**apportionable claim**” see section 28(1).

“**consumer**” means an individual whose claim is based on rights relating to goods or services, or both, in circumstances where the particular goods or services—

- (a) are being acquired for personal, domestic or household use or consumption; or

---

10 *Fair Trading Act 1989*, section 38 (Misleading or deceptive conduct—TPA s 52)

- (b) relate to advice given by a professional to the individual for the individual's use, other than for a business carried on by the individual whether solely or as a member of a business partnership.

**“court”**, in relation to a claim for damages, means any court by or before which the claim falls to be decided.

**“defendant”** includes any person joined as a defendant or other party in the proceeding (except as a plaintiff) whether joined under this part, under rules of court or otherwise.

### **‘30 Who is a concurrent wrongdoer**

‘(1) A concurrent wrongdoer, in relation to a claim, is a person who is 1 of 2 or more persons whose acts or omissions caused, independently of each other, the loss or damage that is the subject of the claim.

‘(2) For this part, it does not matter that a concurrent wrongdoer is insolvent, is being wound up, has ceased to exist or has died.

### **‘31 Proportionate liability for apportionable claims**

‘(1) In any proceeding involving an apportionable claim—

- (a) the liability of a defendant who is a concurrent wrongdoer in relation to the claim is limited to an amount reflecting that proportion of the loss or damage claimed that the court considers just and equitable having regard to the extent of the defendant's responsibility for the loss or damage; and
- (b) judgment must not be given against the defendant for more than that amount in relation to the claim.

‘(2) If the proceeding involves both an apportionable claim and a claim that is not an apportionable claim—

- (a) liability for the apportionable claim, to the extent it involves concurrent wrongdoers, is to be decided in accordance with this part; and
- (b) liability for the other claim, and the apportionable claim to the extent it is not provided for under paragraph (a), is to be decided in accordance with the legal rules, if any, that, apart from this part, are relevant.



‘(3) In apportioning responsibility between defendants in a proceeding the court may have regard to the comparative responsibility of any concurrent wrongdoer who is not a party to the proceeding.

‘(4) This section applies to a proceeding in relation to an apportionable claim whether or not all concurrent wrongdoers are parties to the proceeding.

### **‘32 Onus of parties to identify all relevant parties**

‘(1) A person (“**claimant**”) who makes a claim to which this part applies is to make the claim against all persons the claimant has reasonable grounds to believe may be liable for the loss or damage.

‘(2) A concurrent wrongdoer, in relation to a claim involving an apportionable claim, must give the claimant any information that the concurrent wrongdoer has—

- (a) that is likely to help the claimant to identify and locate any other person (not being a concurrent wrongdoer known to the claimant) who the concurrent wrongdoer has reasonable grounds to believe is also a concurrent wrongdoer in relation to the claim; and
- (b) about the circumstances that make the concurrent wrongdoer believe the other person is or may be a concurrent wrongdoer in relation to the claim.

‘(3) The concurrent wrongdoer must give the information to the claimant, in writing, as soon as practicable after becoming aware of the claim being made or of the information, whichever is the later.

‘(4) If the claimant fails to comply with the claimant’s obligations under this section, a court may, on a concurrent wrongdoer’s application, make orders as it considers just and equitable in the circumstances of the case on the following—

- (a) apportionment of damages proven to have been claimable;
- (b) costs thrown away as a result of the failure to comply.

‘(5) If a concurrent wrongdoer fails to comply with the concurrent wrongdoer’s obligations under this section, a court may on application, if it considers it just and equitable to do so, make either or both of the following orders—

- (a) an order that the concurrent wrongdoer is severally liable for any award of damages made;
- (b) an order that the concurrent wrongdoer pay costs thrown away as a result of the failure to comply.

(6) However if, as a result of information given by a concurrent wrongdoer under subsection (2), the claimant joins another party to the proceeding for the claim, and that party is found not to be liable to the claimant, the court may make orders about costs as it considers just and equitable in the circumstances of the case.

### **‘32A Contribution not recoverable from concurrent wrongdoer**

Subject to this part, a concurrent wrongdoer against whom judgment is given under this part in relation to an apportionable claim—

- (a) can not be required to contribute to the damages recovered or recoverable from another concurrent wrongdoer for the apportionable claim, whether or not the damages are recovered or recoverable in the same proceeding in which the judgment is given; and
- (b) can not be required to indemnify the other concurrent wrongdoer.

### **‘32B Subsequent actions**

‘(1) In relation to an apportionable claim, nothing in this part prevents a plaintiff who has previously recovered judgment against a concurrent wrongdoer for an apportionable part of any loss or damage from bringing another action against any other concurrent wrongdoer for that loss or damage.

‘(2) However, in any proceeding in relation to the other action, the plaintiff can not recover an amount of damages that, having regard to any damages previously recovered by the plaintiff in relation to the loss or damage, would result in the plaintiff receiving compensation for loss or damage that is greater than the loss or damage actually suffered by the plaintiff.

**‘32C Joining non-party concurrent wrongdoer in the action**

‘(1) Subject to subsection (2), the court may give leave for any 1 or more persons who are concurrent wrongdoers in relation to an apportionable claim to be joined as defendants in a proceeding in relation to that claim.

‘(2) The court is not to give leave for the joinder of any person who was a party to any previously concluded proceeding in relation to the apportionable claim.

**‘32D What if a concurrent wrongdoer is fraudulent**

‘Despite sections 31 and 32A,<sup>11</sup> a concurrent wrongdoer in a proceeding in relation to an apportionable claim who is found liable for damages and against whom a finding of fraud is made is severally liable for the damages awarded against any other concurrent wrongdoer to the apportionable claim.

**‘32E What if a concurrent wrongdoer intends to cause loss or damage**

‘Despite sections 31 and 32A, a concurrent wrongdoer in a proceeding in relation to an apportionable claim who is found to have intended to cause the loss or damage suffered, and is found liable for damages, is severally liable for the damages awarded against any other concurrent wrongdoer to the apportionable claim.

**‘32F What if a concurrent wrongdoer is proved to have engaged in misleading or deceptive conduct under the Fair Trading Act**

‘Despite sections 31 and 32A, a concurrent wrongdoer in a proceeding in relation to an apportionable claim who contravenes the *Fair Trading Act 1989*, section 38 is severally liable for the damages awarded against any other concurrent wrongdoer to the apportionable claim.

**‘32G Liability for contributory negligence not affected**

‘In apportioning responsibility as between concurrent wrongdoers, the court is to exclude the proportion of the damage or loss in relation to which the plaintiff is contributorily negligent under any relevant law.

---

11 Sections 31 (Proportionate liability for apportionable claims) and 32A (Contribution not recoverable from concurrent wrongdoer)

**‘32H Concurrent wrongdoer may seek contribution from person not a party to the original proceeding**

‘Nothing in this part prevents a concurrent wrongdoer from seeking, in another proceeding, contribution from someone else in relation to the apportionable claim.

**‘32I Part not to affect other liability**

‘Nothing in this part—

- (a) prevents a person from being held vicariously liable for a proportion of any apportionable claim for which another person is liable; or
- (b) prevents a person from being held jointly and severally liable for the damages awarded against another person as agent of the person; or
- (c) prevents a partner from being held jointly and severally liable with another partner for that proportion of an apportionable claim for which the other partner is liable; or
- (d) prevents a court from awarding exemplary or punitive damages against a defendant in a proceeding.

**‘33 Court may give directions**

‘(1) This section applies for the purposes of this part in relation to a claim for damages.

‘(2) To the extent a matter about the court’s procedure is not provided for by rules of court, the matter may be dealt with by a direction under subsection (3).

‘(3) On application by a party, the court may give directions about the way a matter not dealt with by the rules is to proceed.’.

**77 Amendment of s 61 (Assessment by court of injury scale)**

Section 61(1)(c)—

*omit, insert—*

- ‘(c) in assessing the injury scale value, the court must—

- (i) assess the injury scale value under any rules provided under a regulation; and
- (ii) have regard to the injury scale values given to similar injuries in previous proceedings.’.

### **78 Amendment of s 67 (Offer of structured settlement—legal costs)**

Section 67(1), ‘chapter 11, part 5’ and footnote—

*omit, insert—*

‘chapter 9, part 5<sup>12</sup>’.

### **79 Amendment of sch 2 (Dictionary)**

(1) Schedule 2, definition, ‘a professional’—

*omit.*

(2) Schedule 2—

*insert—*

“**apportionable claim**”, for chapter 2, part 2, see section 29.

“**a professional**” see section 20.

“**consumer**”, for chapter 2, part 2, see section 29.

“**court**”, for chapter 2, part 2, see section 29.’.

---

12 Uniform Civil Procedure Rules 1999, chapter 9 (Ending proceedings early), part 5 (Offer to settle)

## **SCHEDULE 1**

### **MODEL CODE**

section 40

#### **1 Definition**

In this code—

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

#### **2 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 a way that justifies 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.

#### **3 Who may make a complaint**

Any person may make a complaint including the occupational association and the council.

#### **4 How is a complaint made**

(1) A complaint may be made to the occupational association.

(2) The complaint must be written and state the particulars on which it is based.

(3) The occupational association must notify the council of each complaint made to it, other than a complaint made by the council.

## SCHEDULE 1 (continued)

**5 What happens after a complaint is made**

(1) As soon as practicable after the occupational association receives a complaint, or notice of a complaint from the council, the occupational association must—

- (a) advise the complainant, or the council, that it has received the complaint; and
- (b) consider the complaint.

(2) In considering the complaint, the association may—

- (a) require the complainant to provide further particulars of the complaint; or
- (b) investigate the complaint; or
- (c) attempt to resolve the complaint by conciliation; or
- (d) refuse to consider the complaint, because, for example, the complaint is frivolous, vexatious, misconceived or lacking in substance; or
- (e) conduct a hearing into the complaint.

**6 What action may be taken after a hearing into a complaint**

(1) If, after considering a complaint against a person, an occupational association finds the complaint substantiated, the association may do any of the following—

- (a) caution or reprimand the person;
- (b) impose conditions about the carrying out of the person's occupation;
- (c) require the person to complete stated training or instruction;
- (d) require the person to report on the carrying out of the person's occupation at the time, in the way and to whom the association requires;
- (e) order the person to obtain advice about the carrying out of the person's occupation, from a person stated by the association;
- (f) expel the person from membership of the association.

**SCHEDULE 1 (continued)**

(2) The association may not award compensation to the complainant or anyone else.

(3) If the association finds the complaint is not substantiated, it must dismiss the complaint.

**7 Notice of decision**

(1) An occupational association must, within 30 days after deciding a complaint against a person, give a written statement of its decision to the complainant and the person.

(2) The statement must include the reasons for the decision.

**8 What rights of representation do parties to a complaint have**

The complainant and the person about 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.



## SCHEDULE 2

### DICTIONARY

section 7

**“amount payable”**, under an insurance policy in relation to an occupational liability relating to a cause of action, includes any amount payable by way of excess under or in relation to the policy.

**“business assets”**, of a person, means the property of the person that—

- (a) is used in the performance of the person's occupation; and
- (b) is able to be taken in proceedings to enforce a judgment of a court.

**“comment”** includes submission.

**“convicted”** includes being found guilty, and the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

**“council”** means the Professional Standards Council established under section 41.

**“court”** includes an arbitrator.

**“damages”** means damages awarded for a claim or counter-claim or by way of set-off, and includes—

- (a) interest payable on 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.

**“defendant”** means a person to whom a scheme applies and against whom a cause of action relating to occupational liability is brought.

**“insolvent under administration”**, in relation to an individual, means the individual is an insolvent under administration within the meaning of the Corporations Act, section 9.<sup>13</sup>

---

13 Corporations Act, section 9 (Dictionary)

## SCHEDULE 2 (continued)

**“insurance standards”** see section 28.

**“judgment”** includes a judgment given by consent and an award of an arbitrator.

**“model code”** see section 40.

**“occupational association”** means a body corporate—

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

**“occupational group”** includes a professional group and a trade group.

**“occupational liability”** means any civil liability arising, whether in tort, contract or otherwise, directly or vicariously from anything done or omitted by a member of an occupational association acting in the performance of the member’s occupation.

**“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 82A of that Act;<sup>14</sup> 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.

**“partner”** has the same meaning as in the *Partnership Act 1891*.

**“relevant time”**, in relation to a cause of action relating to occupational liability, means the time when the act or omission giving rise to the cause of action happened.

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

---

14 Corporations Act, section 82A (Officers of bodies corporate and other entities)

