

WESTERN AUSTRALIA

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# PROFESSIONAL STANDARDS ACT 1997

(No. 22 of 1997)

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WESTERN AUSTRALIA

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# **PROFESSIONAL STANDARDS ACT 1997**

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**No. 22 of 1997**

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**AN ACT to provide for the limitation of liability of members of occupational associations in certain circumstances and to facilitate improvement in the standards of services provided by those members.**

*[Assented to 18 September 1997]*

The Parliament of Western Australia enacts as follows:

## **PART 1 — PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Professional Standards Act 1997*.

### **Commencement**

2. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

### **Objects of this Act**

3. The objects of this Act are —
- (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; and
  - (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.

### **Interpretation**

4. 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 section 8;

**“court”** includes 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);

**“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; and
- (b) the membership of which is limited principally to members of that occupational group;

**“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 by a member of an occupational association acting in the performance of his or her occupation;

**s. 5**

“**partner**” has the same meaning as it has in *The Partnership Act 1895*;

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

**Matters to which Act does not apply**

**5.** (1) This Act does not apply to liability for damages arising from —

- (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; or
- (d) fraud or dishonesty.

(2) This Act does not apply to liability which may be the subject of proceedings under Part XII of the *Transfer of Land Act 1893*.

**Relationship between this Act and other written laws**

**6.** (1) To the extent to which Parts 4, 5 and 6 are inconsistent with another Act, the other Act prevails.

(2) Otherwise, this Act has effect despite any other written law to the contrary.

(3) This Act does not affect the operation of section 5 of the *Corporations (Western Australia) Act 1990*.

**Crown bound**

7. This Act binds the Crown not only in right of the State but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

**PART 2 — PROFESSIONAL STANDARDS COUNCIL**

***Division 1 — Establishment of the Council***

**Council established**

**8.** (1) The Professional Standards Council is established.

(2) The Council is a body corporate with perpetual succession.

(3) Proceedings may be taken by or against the Council in its corporate name.

***Division 2 — Membership and procedure of the Council***

**Membership of the Council**

**9.** 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.

**Provisions relating to members of the Council**

**10.** Schedule 1 has effect with respect to the members of the Council.

**Provisions relating to procedure of the Council**

**11.** Schedule 2 has effect with respect to the procedure of the Council.

***Division 3 — Functions of the Council***

**Functions of the Council**

- 12.** (1) The functions of the Council are —
- (a) to give advice to the Minister concerning —
    - (i) the publication in the *Gazette* of a scheme submitted by it to the Minister;
    - (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 3;
  - (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 —
    - (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;

**s. 13**

- (viii) discipline of members; and
- (ix) continuing occupational education;
- (e) to monitor the occupational standards of persons to whom this Act applies;
- (f) to monitor the compliance by occupational associations with their risk management strategies;
- (g) to publish advice and information concerning the matters referred to in this section;
- (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 concerning the standards of occupational groups.

(2) The Council is not empowered to give advice concerning occupational standards contained in any written law other than this Act.

(3) Any advice given to the Minister by the Council may be given either at the request of the Minister or without any such request.

(4) The Council has such other functions as are conferred or imposed on it under this Act or any other Act.

**Requirement to supply information**

**13.** (1) 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 under section 20, to a scheme,

to furnish information to it which it reasonably requires in order to perform its functions.

- (2) An occupational association must comply with a notice under this section.

Penalty: \$500.

### **Committees of the Council**

**14.** (1) The Council may, with the approval of the Minister, establish committees to assist it in the performance 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.

### ***Division 4 — Administrative provisions***

#### **Use of outside staff and facilities**

**15.** The Council may, with the approval of the Minister —

- (a) arrange with the employing authority of a department or organization within the meaning of the *Public Sector Management Act 1994* for the use of the services of any staff or facilities of that department or organization;

**s. 16**

- (b) arrange with a local government or regional local government for the use of the services of any staff or facilities of the local government or regional local government;
- (c) engage, under a contract for services or other arrangement, any consultant, or any professional, technical or other assistance, that it considers necessary to enable it to perform its functions.

**Funds**

**16.** (1) The funds available for the purposes of enabling the Council to perform its functions consist of —

- (a) moneys from time to time appropriated by Parliament;
- (b) fees paid to the Council under this Act; and
- (c) any other moneys lawfully received by, made available to, or payable to, the Council.

(2) The funds referred to in subsection (1) are to be credited to an account called the “Professional Standards Council Fund” at either —

- (a) the Treasury and forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
- (b) with the approval of the Treasurer, a bank (as defined in section 3 of that Act).

(3) The Fund referred to in subsection (2) is to be charged with the cost of the administration of this Act.

***Financial Administration and Audit Act 1985* applies**

**17.** (1) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Council and its operations.

(2) Despite the *Financial Administration and Audit Act 1985* the financial year of the Council is the period of 12 months ending on 31 December.

**Minister to have access to information**

**18.** (1) The Minister is entitled —

- (a) to have information in the possession of the Council; and
- (b) where the information is in or on a document, to have, and make and retain copies of, that document.

(2) For the purposes of subsection (1) the Minister may —

- (a) request the Council to furnish information to the Minister;
- (b) request the Council to give the Minister access to information;
- (c) for the purposes of paragraph (b) make use of the staff of the Council to obtain the information and furnish it to the Minister.

(3) The Council must comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

**s. 19**

(4) In this section —

**“document”** includes any tape, disc or other device or medium on which information is recorded or stored;

**“information”** means information specified, or of a description specified, by the Minister that relates to the functions of the Council.

**Minister may give directions**

**19.** (1) The Minister may give directions in writing to the Council with respect to the performance of its functions either generally or in relation to a particular matter, and the Council must give effect to any such direction.

(2) The text of any direction given under subsection (1) shall be included in the annual report submitted by the accountable authority of the Council under section 66 of the *Financial Administration and Audit Act 1985*.

**PART 3 — LIMITATION OF LIABILITY**

***Division 1 — Making, amending and revoking schemes***

**Preparation and approval**

**20.** (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.

**Notifying the public**

**21.** Before approving a scheme, the Council must publish a notice in a daily newspaper circulating throughout Western Australia —

- (a) explaining the nature and significance of the scheme;
- (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 21 days after publication of the notice.

**Public comments and submissions**

**22.** (1) Any person may make a comment or submission to the Council concerning a scheme of which notice has been published under section 21.

**s. 23**

(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.

**Matters to be considered by the Council before approval**

**23.** Before approving a scheme, the Council must consider —

- (a) all comments and submissions made to it in accordance with section 22;
- (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; and
- (g) the standards (referred to in section 40) determined by the occupational association concerned in relation to insurance policies.

**Public hearings**

**24.** (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.

(3) For the purpose of holding a public hearing the Council has the powers of a Royal Commission, and those of the chairman and a member of a Royal Commission, under the *Royal Commissions Act 1968* and that Act applies to such a hearing accordingly.

### **Council may submit approved scheme to Minister**

**25.** The Council may submit a scheme approved by it to the Minister.

### **Minister may gazette a scheme**

**26.** (1) The Minister may authorize the publication in the *Gazette* of a scheme submitted to the Minister by the Council.

(2) Sections 42 and 43 (3) of the *Interpretation Act 1984* apply to a scheme which is published in the *Gazette* with the authorization of the Minister in the same way as they apply to regulations.

### **Commencement of schemes**

**27.** A scheme published in the *Gazette* with the authorization of the Minister commences 2 months after the date of its publication, subject to section 28.

### **Challenges to schemes**

**28.** (1) A person who is or is reasonably likely to be affected by a scheme published as referred to in section 26 may apply to the Supreme Court for an order that the scheme is void for want of compliance with this Act.

**s. 29**

(2) The Court may, on the making of the application or at any time before the scheme commences, order that the commencement of the scheme is 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;
- (b) decline to make such an order;
- (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.

**Amendment and revocation**

**29.** (1) The other provisions of this Division, with any necessary changes, apply to the amendment of a scheme and the revocation of a scheme in the same way as they apply to a scheme.

(2) The amendment or revocation of a scheme does not affect a right or liability arising during the application of the scheme before its amendment or revocation to members of an occupational association.

***Division 2 — Contents of schemes*****Persons to whom schemes apply**

**30.** A scheme must provide that it applies to —

- (a) all persons within an occupational association; or
- (b) a specified class or classes of persons within an occupational association.

**Partners of persons to whom schemes apply**

**31.** (1) If a scheme applies to a person, the scheme also applies to each partner of the person.

(2) However, if a partner 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 that partner.

**Employees of persons to whom schemes apply**

**32.** (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 that employee.

**Other persons to whom schemes apply**

**33.** If persons are prescribed by the regulations for the purposes of section 42 (4) as being associated with persons to whom a scheme applies, the scheme also applies to the prescribed persons.

**Limitation of liability by insurance arrangements**

**34.** A scheme may provide that if a person to whom the scheme applies and against whom an action relating to occupational liability is brought is able to satisfy the court concerned that that person has an insurance policy —

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

**s. 35**

action is not less than the amount of the monetary ceiling specified in the scheme in relation to that person at the time at which that cause of action arose,

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

**Limitation of liability by reference to amounts of business assets**

**35.** A scheme may provide that if a person to whom the scheme applies and against whom an action relating to occupational liability is brought is able to satisfy the court concerned —

- (a) that that 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 that person at the time at which the relevant cause of action arose; or
- (b) that —
  - (i) that person has business assets and an insurance policy insuring that person against that occupational liability; and
  - (ii) the net current market value of the business assets and the amount payable under that insurance policy in respect of the occupational liability relating to the relevant cause of action, if combined, would total an amount that is not less than the amount of the monetary ceiling specified in the scheme in relation to that person at the time at which that cause of action arose,

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

**Limitation of liability by multiple of charges**

**36.** (1) A scheme may provide that if a person to whom the scheme applies and against whom an action relating to occupational liability is brought is able to satisfy the court concerned —

- (a) that that person has an insurance policy —
  - (i) which insures that person against that occupational liability; and
  - (ii) under which the amount payable in respect of the occupational liability relating to the relevant cause of action is not less than an amount (in this section called the “**limitation amount**”), being a reasonable charge for the services which were provided by that person, or which that person failed to provide, and to which that cause of action relates, multiplied by the multiple specified in the scheme in relation to that person at the time at which that cause of action arose;

or

- (b) that —
  - (i) that person has business assets and an insurance policy insuring the person against that occupational liability; and
  - (ii) the net current market value of the business assets and the amount payable under that insurance policy in respect of the occupational liability relating to the relevant cause of action, 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.

**s. 37**

(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 that amount is less than the amount specified for the purpose in the scheme in relation to the person.

**Specification of different limits of liability for different persons and different work**

**37.** A scheme may specify different maximum amounts of liability for different classes of persons within an occupational association, or different kinds of work, or both.

**Combination of provisions under sections 34, 35 and 36**

**38.** If, in a scheme, provisions of the kind referred to in section 36 and provisions of the kind referred to in section 34 or 35 (or both) apply to a person at the same time in respect of the same occupation, the scheme must provide that the damages which may be awarded against the person are to be determined in accordance with section 36 but must not exceed the amount of the monetary ceiling specified in relation to the person in the provisions of the kind referred to in section 34 or 35.

**Liability that cannot be limited by schemes**

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

(2) In making a determination, the Council must have regard to —

- (a) the number and amounts of claims made against persons within the occupational association concerned; and
- (b) the need adequately to protect consumers.

(3) A Council determination applies only to a cause of action that arises after that determination is made.

**Insurance to be of requisite standard**

**40.** 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.

***Division 3 — Effect of schemes***

**Limit of occupational liability by schemes**

**41.** (1) A scheme, on and from its commencement under this Act and for the period for which it is in force, limits in accordance with its provisions the occupational liability of the persons to whom it applies.

**s. 42**

(2) A person to whom a scheme applies cannot choose not to be subject to the scheme.

**Limitation of amount of damages**

**42. (1) Limitation imposed on single claims:** 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) **No splitting of plaintiffs:** 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 the purposes of this Act despite the fact that they may also have several interests.

(3) **No splitting of defendants:** 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 are to be treated as a single claim for the purposes of this Act.

(4) **Associated defendants:** Persons are associated if they are —

- (a) partners, employees of the same employer or in the relationship of employer and employee; or
- (b) persons who are prescribed by the regulations for the purposes of this subsection.

**Effect of schemes on other parties to proceedings**

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

**Proceedings to which schemes apply**

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

**Notification of limitation of liability**

**45.** (1) If the occupational liability of a person is limited under this Part, the person must ensure that all documents given, or caused to be given, by the person to a client or prospective client that promote or advertise the person or his or her occupation, including official correspondence ordinarily used by the person in the performance of his or her occupation, business cards and similar documents, carry a statement to that effect.

Penalty: \$5 000.

(2) The regulations may prescribe a form of statement for the purposes of this section.

(3) A person does not commit an offence under this section if the statement carried on the documents given by the person is in the prescribed form.

**PART 4 — COMPULSORY INSURANCE**

**Occupational associations may compel their members to insure**

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

(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.

**Monitoring claims**

**47.** (1) An occupational association may establish a 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 minimizing claims for occupational liability.

## **PART 5 — RISK MANAGEMENT**

### **Risk management strategies**

**48.** (1) If an occupational association seeks the approval of the Council under section 20 to a scheme, it must furnish the Council with —

- (a) a detailed list of the 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 or otherwise.

(3) The strategies are to apply in addition to the requirements of other written laws and must not be inconsistent with them.

### **Reporting**

**49.** (1) An occupational association must provide information to the Council concerning its risk management strategies if requested to do so by the Council.

(2) An occupational association must provide an annual report to the Council concerning 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) The annual report of an occupational association is to be incorporated into the annual report of the Council in such form as the Council determines.

**PART 6 — COMPLAINTS AND DISCIPLINARY MATTERS****Occupational Associations (Complaints and Discipline)  
Code**

**50.** (1) A scheme may adopt the provisions of the Model Code set out in Schedule 3 with such additions, omissions or other modifications (if any) as may be approved by the Council.

(2) 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) —

- (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 exchange of information with other occupational associations (within or outside Western Australia).

## **PART 7 — MISCELLANEOUS**

### **Characterisation of this Act**

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

### **No contracting out of this Act**

**52.** This Act applies in relation to a person to whom a scheme in force under this Act applies despite any contract to the contrary, whether that contract was made before, on or after the day on which that person became a person to whom that scheme applies.

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

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

### **Proceedings for offences**

**54.** Proceedings for an offence against this Act are to be dealt with summarily before a court of petty sessions constituted by a magistrate sitting alone.

### **Regulations**

**55.** (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

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(2) Without limiting the generality of subsection (1), the regulations may prescribe —

- (a) the fees for applications for the approval of the Council under section 20; and
- (b) the annual fee to be paid to the Council by an occupational association whose members are subject to a scheme in force under this Act.

(3) The regulations may create offences punishable in each case by a penalty not exceeding \$5 000.

**Rules of court**

**56.** (1) Rules of court may be made with respect to any matter arising under Part 3.

(2) A rule of court may specify —

- (a) matters relating to section 28;
- (b) the means by which the net current market value of business assets may be determined for the purposes of section 35 or 36.

(3) This section does not limit the rule-making powers of any court.

**Review of Act**

**57.** (1) The Minister is to review this Act to determine whether or not —

- (a) the policy objectives of this Act remain valid; and
- (b) the terms of this Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the expiry of the period of 5 years from the day on which this Act receives the Royal Assent.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

### **Consequential amendments**

**58.** Schedule 4 has effect.

**SCHEDULE 1 — PROVISIONS RELATING TO MEMBERS OF  
THE COUNCIL**

[Section 10]

**Chairperson and deputy chairperson of Council**

1. (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 that person —

- (a) is removed from that office by the Minister;
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a member.

**Deputies of members**

2. (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 deputy of the member —

- (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 functions of that member as chairperson or deputy chairperson.

(4) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

**Term of office**

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

**Remuneration and allowances**

4. (1) Subject to subclause (2), a member is to be paid out of the funds of the Council such remuneration and allowances as are determined in his or her case by the Minister on the recommendation of the Minister for Public Sector Management.

(2) A member who is an employee (as defined in the *Public Sector Management Act 1994*) is to be paid out of the funds of the Council only such travelling and subsistence allowances as are determined in his or her case by the Minister on the recommendation of the Minister for Public Sector Management.

**Vacancy in office of member**

5. (1) The office of a member becomes vacant if the member —

- (a) dies;
- (b) completes a term of office and is not reappointed;
- (c) resigns that office by instrument in writing addressed to the Minister;
- (d) is removed from office by the Minister under this clause;
- (e) 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 expiry of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings;
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (g) becomes a mentally incapacitated person; or
- (h) is convicted in Western Australia of an offence which is punishable by imprisonment for 12 months or more, or is convicted elsewhere than in Western Australia of an offence which, if committed in Western Australia, would be an offence so punishable.

(2) The Minister may remove a member from office for incompetence or misbehaviour.

**Sch. 1**

**Filling of vacancy in office of member**

**6.** If the office of a member becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

**Member not to be public service officer**

**7.** Part 3 of the *Public Sector Management Act 1994* does not apply to the appointment of a member.

**Personal liability of members**

**8.** A matter or thing done or omitted by the Council, a member or any person acting under the direction of the Council or a member does not subject the member or the person so acting personally to any liability if that matter or thing was done or omitted in good faith for the purpose of executing this Act or any other written law.

**SCHEDULE 2 — PROVISIONS RELATING TO PROCEDURE OF  
THE COUNCIL**

[Section 11]

**General procedure**

1. 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 determined by the Council.

**Quorum**

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

**Presiding member**

3. (1) The chairperson of the Council or, in his or her absence, the deputy chairperson of the Council or, in the absence of both, another member elected to chair the meeting concerned 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.

(3) 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.

**First meeting**

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

**SCHEDULE 3 — MODEL CODE**

[Section 50]

**Citation**

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

**Interpretation**

2. In this Code —

“**Council**” means the Professional Standards Council established by the *Professional Standards Act 1997*.

**Actions that may be the subject of a complaint**

3. (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.

**Who can make a complaint**

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

**How a complaint is made**

5. (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).

**What happens after a complaint is made**

6. (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;
- (e) it may conduct a hearing into the complaint.

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

7. (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 occupation of the person;
- (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.

**Sch. 3****Notices of decisions**

**8.** (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.

**Rights of representation of parties to a complaint**

**9.** 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.

**How an occupational association performs functions under this Code**

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

**Protection from liability**

**11.** A matter or thing done or omitted by the occupational association or a person acting in accordance with a resolution of the occupational association does not subject the person personally to any liability if the matter or thing was done or omitted in good faith for the purpose of implementing this Code.

**SCHEDULE 4 — CONSEQUENTIAL AMENDMENTS**

[Section 58]

***Constitution Acts Amendment Act 1899* amended**

1. The *Constitution Acts Amendment Act 1899\** is amended by inserting in Part 3 of Schedule V after the item relating to the Primary Schools Appointments Board the following —

“  
The Professional Standards Council established under the  
*Professional Standards Act 1997.*  
”.

[\* Reprinted as at 22 January 1997.]

***Financial Administration and Audit Act 1985* amended**

2. The *Financial Administration and Audit Act 1985\** is amended by inserting in Schedule 1 in the appropriate alphabetical position the following —

“ Professional Standards Council ”.

[\* Reprinted as at 10 January 1997.]

***Public Sector Management Act 1994* amended**

3. The *Public Sector Management Act 1994\** is amended by inserting in Schedule 2 after item 37A the following item —

“  
37B Professional Standards Council established under the  
*Professional Standards Act 1997*  
”.

[\* Reprinted as at 16 May 1995.  
For subsequent amendments see 1995 Index to Legislation of  
Western Australia, Table 1, p. 181 and Acts Nos. 14, 35, 42  
and 49 of 1996 and Gazettes 20 August 1996 and  
28 February 1997.]