Western Australia

Professional Standards Act 1997

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Western Australia

Professional Standards Act 1997

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.

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Part 1 — Preliminary

1. Short title

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

2. Commencement

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation [1].

3. Objects of this Act

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.

4. Interpretation

In this Act, unless the contrary intention appears —

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

Council means the Professional Standards Council established by section 8;

court includes an arbitrator;

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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 or related occupational groups; and

(b) the membership of which is limited principally to members of that occupational group or those occupational groups;

occupational group includes a professional group and a trade group;

occupational liability means civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by a member of an occupational association acting in the performance of his or her occupation;

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.

[Section 4 amended by No. 74 of 2003 s. 144(2); No. 25 of 2004 s. 4.]

5. Matters to which Act does not apply

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

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(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*.

6. Relationship between this Act and other written laws

(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* [2].

7. Crown bound

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.

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Part 2 — Professional Standards Council

Division 1 — Establishment of the Council

8. Council established

(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

9. Membership of the Council

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.

10. Provisions relating to members of the Council

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

11. Provisions relating to procedure of the Council

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

Division 3 — Functions of the Council

12. Functions of the Council

(1) The functions of the Council are —

(a) to give advice to the Minister concerning —

(i) the publication in the *Gazette* of a scheme, or of an amendment to a scheme, submitted by it to the

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Minister, or of notice of the revocation of a scheme;

(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;

(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 on issues of interest to members of occupational groups;

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(i) to collect, analyse and provide the Minister with information on issues and policies concerning the standards of occupational groups; and

(j) to institute proceedings in its own name for —

(i) the prosecution of; or

(ii) injunctive or other relief in respect of,

an offence against this Act that comes to its notice.

(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.

(5) The Council is taken to have *locus standi* for the purpose of pursuing any injunctive or other relief under subsection (1)(j), and is not to be required to give any undertaking as to damages in connection with the grant of any interlocutory relief.

[Section 12 amended by No. 25 of 2004 s. 5.]

13. Requirement to supply information

(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, or an amendment to or revocation of a scheme,

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

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

Penalty: $500.

[Section 13 amended by No. 25 of 2004 s. 6.]

13A. Referral of complaints

(1) An occupational association may refer to the Council any complaint or other evidence received by it that a member or former member of the association has committed an offence against section 45 or an offence under the regulations.

(2) Nothing that is done in good faith under this section by or on behalf of an association subjects the association, any member of the association's executive body or any person acting under the direction of the association or its executive body to any action, liability, claim or demand.

[Section 13A inserted by No. 25 of 2004 s. 7.]

14. Committees of the Council

(1) The Council may 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.

[Section 14 amended by No. 25 of 2004 s. 8.]

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Division 4 — Administrative provisions

15. Use of outside staff and facilities

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;

(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.

16. Funds

(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) An account called the Professional Standards Council Account is to be established —

(a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or

(b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act,

to which the funds referred to in subsection (1) are to be credited.

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

[Section 16 amended by No. 28 of 2006 s. 41; No. 77 of 2006 s. 17.]

17. *Financial Management Act 2006* and the *Auditor General Act 2006* applies

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Council and its operations.

[Section 17 amended by No. 74 of 2003 s. 95; No. 77 of 2006 s. 17.]

18. Minister to have access to information

(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.

(4) In this section —

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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.

19. Minister may give directions

(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 Part 5 of the *Financial Management Act 2006*.

[Section 19 amended by No. 77 of 2006 s. 17.]

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Part 3 — Limitation of liability

Division 1 — Making, amending and revoking schemes

20. Preparation and approval

(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.

21. Notifying the public

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.

22. Public comments and submissions

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

(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.

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23. Matters to be considered by the Council before approval

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.

24. Public hearings

(1) The Council may conduct a public hearing concerning a scheme if the Council thinks it appropriate.

(2) A public hearing may be conducted in such manner as the Council determines.

[Section 24 amended by No. 25 of 2004 s. 9.]

25. Council may submit approved scheme to Minister

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

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26. Minister may gazette a scheme

(1) The Minister may authorise 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 authorisation of the Minister in the same way as they apply to regulations.

27. Commencement of schemes

(1) A scheme published in the *Gazette* with the authorisation of the Minister commences —

(a) on a day specified in the scheme, being a day that is later than the day of its publication; or

(b) if no day is so specified, 2 months after the day of its publication.

(2) This section is subject to any order made by the Supreme Court under section 28(2).

[Section 27 inserted by No. 25 of 2004 s. 10.]

28. Challenges to schemes

(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.

(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;

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(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.

29. Review of schemes

(1) The Minister may direct the Council to review the operation of a scheme.

(2) The Council must comply with any direction under subsection (1) but may on its own initiative at any time (whether before or after the scheme ceases to have effect) review the operation of a scheme.

(3) A review may, but need not, be conducted in order to decide whether a scheme should be amended or revoked or whether a new scheme should be made.

[Section 29 inserted by No. 25 of 2004 s. 11.]

29A. Amendment and revocation of schemes

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

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

(3) The Minister may direct the Council to prepare an amendment to or revocation of a scheme.

(4) The Council must comply with any direction under subsection (3) but may on its own initiative, at any time while the scheme remains in force, prepare an amendment to or revocation of a scheme.

(5) The provisions of sections 20 to 28 apply, with any necessary modifications, to the amendment or revocation of a scheme in the same way as they apply to the making of a scheme.

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

[Section 29A inserted by No. 25 of 2004 s. 11.]

Division 2 — Contents of schemes

30. Persons to whom a scheme applies

(1) A scheme may provide that it applies to all persons within an occupational association or to a specified class or classes of persons within an occupational association.

(2) A scheme may provide that the occupational association concerned may, on application by a person, exempt the person from the scheme.

(3) A scheme ceases to apply to a person exempted from the scheme as referred to in subsection (2) on and from the day on which the exemption is granted or on and from a later day specified in the exemption.

(4) Subsection (2) does not apply to a person to whom a scheme applies by virtue of section 31, 32 or 33.

[Section 30 inserted by No. 25 of 2004 s. 12.]

31. 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 that officer or partner.

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(4) In this section —

officer —

(a) in relation to a body corporate that is a corporation as defined in section 57A of the *Corporations Act 2001* of the Commonwealth, has the meaning given to that term in section 82A of that Act; and

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

[Section 31 inserted by No. 25 of 2004 s. 12.]

32. Employees of persons to whom schemes apply

(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.

33. Other persons to whom schemes apply

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.

34. Limitation of liability by insurance arrangements

A scheme may provide that if a person to whom the scheme applies and against whom a proceeding relating to occupational liability is brought is able to satisfy the court concerned that that person has the benefit of 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 cause of action

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

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

[Section 34 amended by No. 25 of 2004 s. 13.]

35. Limitation of liability by reference to amounts of business assets

A scheme may provide that if a person to whom the scheme applies and against whom a proceeding relating to occupational liability is brought is able to satisfy the court 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 the class of person and the kind of work to which the cause of action relates at the time at which the act or omission giving rise to the cause of action occurred; or

(b) that —

(i) that person has business assets and the benefit of 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 the insurance policy in respect of the occupational liability relating to the cause of action (including any amount payable by the person by way of excess under or in relation to the policy), if combined, would total an amount that is not less than the amount of the monetary ceiling specified in the scheme in relation to the class of person

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and the kind of work to which the cause of action relates at the time at which the act or omission giving rise to the cause of action occurred,

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

[Section 35 amended by No. 25 of 2004 s. 14.]

36. Limitation of liability by multiple of charges

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

(a) that that person has the benefit of 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 cause of action (including any amount payable by the person by way of excess under or in relation to the policy) is not less than an amount (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 the cause of action relates, multiplied by the multiple specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates at the time at which the act or omission giving rise to the cause of action occurred;

(aa) that person has business assets the net current market value of which is not less than the limitation amount; or

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(b) that —

(i) that person has business assets and the benefit of 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 cause of action (including any amount payable by the person by way of excess under or in relation to the policy), if combined, would total an amount that is not less than the limitation amount,

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

(2) In determining the amount of a reasonable charge for the purposes of a provision made under subsection (1), a court is to have regard to any amount actually charged and to —

(a) the amount that would ordinarily be charged in accordance with a scale of charges accepted by the occupational association of which the person is a member; or

(b) if there is no such scale, the amount that a competent person of the same qualifications and experience as the person would be likely to charge in the same circumstances.

(3) This section does not limit an amount of damages to which a person is liable if that amount is less than the amount specified for the purpose in the scheme in relation to the class of person and the kind of work concerned.

[Section 36 amended by No. 25 of 2004 s. 15.]

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37. Specification of limits of liability and multiples

(1) A scheme may —

(a) specify the same maximum amount of liability in relation to all cases to which the scheme applies or different maximum amounts of liability for different cases or classes of case or for the same case or class of case for different purposes; and

(b) 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.

(2) A scheme may 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.

[Section 37 inserted by No. 25 of 2004 s. 16.]

38. Combination of provisions under sections 34, 35 and 36

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 kind of work, the scheme must provide that the damages which may be awarded against the person are to be determined in accordance with section 36 but must not exceed the amount of the monetary ceiling specified in relation to the class of person and the kind of work in the provisions of the kind referred to in section 34 or 35.

[Section 38 amended by No. 25 of 2004 s. 17.]

39. Liability that cannot be limited by schemes

(1) A scheme can only affect the liability for damages arising from a single cause of action to the extent to which that liability

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results in damages exceeding such amount (but not less than $500 000) as is determined for the purposes of the scheme by the Council and specified in the scheme.

(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 —

(a) takes effect when an amendment providing for its specification in the scheme takes effect; and

(b) applies only to a cause of action that arises after the determination takes effect.

[Section 39 amended by No. 25 of 2004 s. 18.]

40. Insurance to be of requisite standard

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

41. Limit of occupational liability by schemes

(1) To the extent provided by this Act and the provisions of the scheme, a scheme limits the occupational liability, in respect of a cause of action founded on an act or omission occurring during the period when the scheme is in force, of any person to whom the scheme applied at the time when the act or omission occurred.

(2) The applicable limitation of liability is the limitation specified by the scheme as in force at the time of the relevant act or omission.

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(3) A limitation of liability that, in accordance with this section, applies in respect of an act or omission continues to apply to every cause of action founded on it, irrespective of when the cause arises or proceedings are instituted in respect of it, and even if the scheme has been amended or has, in accordance with section 44A, ceased to be in force.

(4) A person to whom a scheme applies cannot choose not to be subject to the scheme, except in accordance with provisions included in the scheme under section 30(2).

[Section 41 inserted by No. 25 of 2004 s. 19.]

42. Limitation of amount of damages

(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.

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43. Effect of schemes 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 that person.

44. Proceedings to which schemes apply

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

44A. Duration of scheme

(1) Having commenced, a scheme remains in force for a period (not exceeding 5 years) determined by the Council by notice published in the *Gazette* unless, before the end of the period so determined —

(a) it is revoked;

(b) its operation is extended by notice under this section; or

(c) its operation ceases because of the operation of another Act.

(2) The Minister may, by notice published in the *Gazette*, extend the period for which a scheme is in force. The notice must be published on or before the day when the original period ends.

(3) Only one extension may be effected under subsection (2) in respect of any particular scheme, and the maximum period of an extension is 12 months.

[Section 44A inserted by No. 25 of 2004 s. 20.]

45. Notification of limitation of liability

(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

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in the performance of his or her occupation 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.

(4) In this section, a reference to a document does not include a reference to a business card.

[Section 45 amended by No. 25 of 2004 s. 21.]

Part 4 — Compulsory insurance

46. Occupational associations may compel their members to insure

(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 or for different kinds of work or on the basis of any other differing circumstances that it considers relevant.

[Section 46 amended by No. 25 of 2004 s. 22.]

47. Monitoring claims

(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.

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Part 5 — Risk management

48. Risk management strategies

(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.

49. Reporting

(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.

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Part 6 — Complaints and disciplinary matters

50. Occupational Associations (Complaints and Discipline) Code

(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).

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Part 7 — Miscellaneous

51. Characterisation of this Act

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

52. No contracting out of this Act

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.

53. No limitation on other insurance

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

54. Offences to be dealt with by magistrate

A court of summary jurisdiction dealing with an offence under this Act is to be constituted by a magistrate.

[Section 54 inserted by No. 59 of 2004 s. 141.]

55. Regulations

(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.

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

(a) the fees for applications for the Council's approval, under Part 3 Division 1, of a scheme, or an amendment to or revocation of a scheme; and

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(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.

[Section 55 amended by No. 25 of 2004 s. 23.]

56. Rules of court

(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.

57. Review of Act

(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.

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58. Savings, transitional and other provisions

Schedule 4 has effect.

[Section 58 inserted by No. 25 of 2004 s. 24.]

Schedule 1 — Provisions relating to members of the Council

[Section 10]

1. Chairperson and deputy chairperson of Council

(1) The Minister is to appoint 2 of the members of the Council (in and by their respective instruments of appointment or in and by other instruments executed by the Minister) as chairperson and deputy chairperson of the Council, respectively.

(2) The Minister may remove a member from the office of chairperson or deputy chairperson of the Council at any time.

(3) A person holding office as chairperson or deputy chairperson of the Council vacates that office if 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.

2. Deputies of members

(1) The Minister may from time to time appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.

(2) In the absence of a member, the 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.

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3. Term of office

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.

4. Remuneration and allowances

(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.

5. Vacancy in office of member

(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;

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(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.

6. Filling of vacancy in office of member

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

7. Member not to be public service officer

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

8. Personal liability of members

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.

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Schedule 2 — Provisions relating to procedure of the Council

[Section 11]

1. General procedure

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

2. Quorum

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

3. Presiding member

(1) The chairperson of the Council or, in 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.

4. First meeting

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

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Schedule 3 — Model Code

[Section 50]

1. Citation

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

2. Interpretation

In this Code —

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

3. Actions that may be the subject of a complaint

(1) A complaint may be made that a member of the occupational association has acted (or has failed to act) in such a way as to justify the taking of disciplinary action against the member under this Code.

(2) A complaint may be made and dealt with even though the person about whom it is made has ceased to be a member.

4. Who can make a complaint

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

5. How a complaint is made

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

(2) The complaint must be in writing and contain the particulars of the allegations on which it is founded.

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

6. What happens after a complaint is made

(1) The occupational association must consider a complaint as soon as practicable after the complaint is made to it or notified to it by the Council.

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(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.

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

(1) After an occupational association has conducted a hearing into a complaint against a person, it may, if it finds the complaint substantiated, do any one or more of the following —

(a) caution or reprimand the person;

(b) impose conditions relating to the carrying out of the 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.

8. Notices of decisions

(1) Within 30 days after a decision is made by an occupational association concerning a complaint, the complainant and the person

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against whom the complaint is made must be given a written statement of the decision.

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

9. Rights of representation of parties to a complaint

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

10. How an occupational association performs functions under this Code

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.

11. Protection from liability

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 a member of the executive body of the association, or the person so acting, personally to any liability if the matter or thing was done or omitted in good faith for the purpose of implementing this Code.

[Clause 11 amended by No. 25 of 2004 s. 25.]

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Schedule 4 — Savings, transitional and other provisions

[s. 58]

[Heading inserted by No. 25 of 2004 s. 26.]

1. Terms used in this Schedule

In this Schedule —

amending Act means the *Professional Standards Amendment Act 2004*;

commencement means the commencement of the amending Act.

[Clause 1 inserted by No. 25 of 2004 s. 26.]

2. Review of schemes

Section 29, as inserted by the amending Act, extends to apply in respect of schemes in force at the commencement.

[Clause 2 inserted by No. 25 of 2004 s. 26.]

3. Limitation of damages in respect of subsisting causes of action

(1) Sections 34, 35 and 36, as in force immediately before the commencement, continue to apply in respect of any cause of action that arose before the commencement as if those amendments had not been made, except as provided by subclause (2).

(2) The amendments to sections 34, 35 and 36 made respectively by sections 13(b), 14(c) and 15(1)(b) of the amending Act apply in relation to a cause of action arising before as well as after the commencement.

(3) Section 41, as in force immediately before its repeal by the amending Act, continues to apply in respect of any cause of action arising from anything done or omitted before its repeal.

[Clause 3 inserted by No. 25 of 2004 s. 26.]

4. Determination of extent of limitation of damages

The amendments made by the amending Act to section 39 do not apply in respect of a determination made under that section before those amendments took effect.

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[Clause 4 inserted by No. 25 of 2004 s. 26.]

5. Fees for applications for approval of amendment to or revocation of scheme

For the avoidance of doubt, section 55, as in force immediately before the commencement of the amending Act, is to be taken always to have empowered the prescription by regulation of any fee that might be prescribed under that section as in force after the commencement.

[Clause 5 inserted by No. 25 of 2004 s. 26.]

6. Regulations for savings or transitional purposes

(1) Regulations made under section 55 may contain provisions of a savings or transitional nature consequent on the enactment of the amending Act.

(2) If regulations made under subsection (1) provide that a state of affairs specified or described in the regulations is to be taken to have existed, or not to have existed, at and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the day on which the amending Act is assented to, the regulations have effect according to their terms.

(3) If regulations contain a provision referred to in subsection (2), the provision does not operate so as to —

(a) affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the day of publication of those regulations; or

(b) impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

[Clause 6 inserted by No. 25 of 2004 s. 26.]

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Notes

[1] This is a compilation of the *Professional Standards Act 1997* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
Professional Standards Act 1997	22 of 1997	18 Sep 1997	18 Apr 1998 (see s. 2 and *Gazette* 17 Apr 1998 p. 2045)
Statutes (Repeals and Minor Amendments) Act 2003 s. 95 & 144(2)	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
Professional Standards Amendment Act 2004	25 of 2004	28 Sep 2004	26 Jan 2005 (see s. 2 and *Gazette* 25 Jan 2005 p. 339)
Courts Legislation Amendment and Repeal Act 2004 s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)
Reprint 1: The *Professional Standards Act 1997* as at 18 Mar 2005 (includes amendments listed above except those in the *Courts Legislation Amendment and Repeal Act 2004*)			
Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 3 Div. 4	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and *Gazette* 27 Jun 2006 p. 2347)
Financial Legislation Amendment and Repeal Act 2006 s. 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and *Gazette* 19 Jan 2007 p. 137)

[2] On 15 July 2001 the *Corporations (Western Australia) Act 1990* was superseded by the *Corporations Act 2001* of the Commonwealth, see Part 2 of the *Corporations (Ancillary Provisions) Act 2001*.

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