

Serial 252
Professional Standards Bill 2004
Mr Stirling

**A BILL
for
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



NORTHERN TERRITORY OF AUSTRALIA
PROFESSIONAL STANDARDS ACT 2004

No. of 2004

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2004

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 2004]
[Second reading 2004]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

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

2. Commencement

This Act comes in to operation on the date, or respective dates, fixed by the Administrator by notice in the *Gazette*.

3. Objects of Act

The objects of this Act are as follows:

- (a) to enable the creation of schemes to limit the civil liability of professionals and others;
- (b) to facilitate the improvement of occupational standards of professionals and others;

- (c) to protect the consumers of the services provided by professionals and others;
- (d) to constitute the Professional Standards Council to supervise the preparation and application of schemes and to assist in the improvement of occupational standards and protection of consumers.

4. Definitions

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 constituted by this Act;

"court" includes a tribunal and an arbitrator;

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

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

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

"function" includes a power, authority and duty;

"judgment" includes –

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

"occupational association" means a body corporate –

- (a) that represents the interests of persons who are members of the same occupational group or related occupational group; and

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

"scheme" means a scheme for limiting the occupational liability of members of an occupational association.

5. Exclusions from Act

(1) This Act does not apply to liability for damages arising from any of the following:

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

(2) This Act does not apply to liability that may be the subject of proceedings under Part 9, Division 2, Subdivision 3 of the *Land Title Act*.

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

6. Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

PART 2 – LIMITATION OF LIABILITY

Division 1 – Making, amending and revoking schemes

7. Preparation and approval of schemes

- (1) An occupational association may prepare a scheme.

(2) The Council may, on the application of an occupational association, prepare a scheme.

(3) The Council may, on the application of an occupational association, approve a scheme prepared under this section.

8. Public notification of schemes

Before approving a scheme, the Council must publish a notice in a daily newspaper circulating throughout the Territory –

- (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.

9. Making of comments and submissions concerning schemes

(1) Any person may make a comment or submission to the Council concerning a scheme of which notice has been published under section 8.

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

10. Consideration of comments, submissions and other matters

Before approving a scheme, the Council must consider the following:

- (a) all comments and submissions made to it in accordance with section 9;
- (b) the position of persons who may be affected by limiting the occupational liability of members of the occupational association concerned;
- (c) the nature and level of claims relating to occupational liability made against members of the occupational association concerned;
- (d) the risk management strategies of the occupational association concerned;
- (e) the means by which those strategies are intended to be implemented;
- (f) the cost and availability of insurance against occupational liability for members of the occupational association concerned;

- (g) the standards (referred to in section 28) determined by the occupational association concerned in relation to insurance policies;
- (h) the provisions contained in the proposed scheme for making and determining complaints and imposing and enforcing disciplinary measures against members of the occupational association concerned.

11. 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 any manner that the Council determines.

12. Submission of schemes to Minister

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

13. Gazettal, tabling and disallowance of schemes

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

(2) Section 63 of the *Interpretation Act* applies to a scheme that is published under subsection (1) as though –

- (a) the proposed scheme were a proposed rule; and
- (b) the publication were notification under section 63(3)(a) of that Act.

14. Commencement of schemes

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

- (a) on the day (subsequent to the date of its publication) specified in the scheme; or
- (b) if no day is specified – 2 months after the date of its publication.

(2) This section is subject to any order of the Supreme Court under section 15(2).

(3) This section applies despite section 63(3)(b) of the *Interpretation Act*.

15. Challenges to schemes

(1) A person who is or is reasonably likely to be affected by a scheme published as referred to in section 13 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 do any of the following:

- (a) make an order that a scheme is void for want of compliance with this Act;
- (b) decline to make an order referred to in paragraph (a);
- (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;
- (d) make any other order it thinks fit.

16. Review of schemes

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

(2) The Council must comply with a 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.

(4) Without limiting subsection (2), the Council may review the operation of a scheme that relates to the members of an occupational association if the association proposes under section 28 an alteration in the standards applying in relation to an insurance policy or kind of insurance policy that would, in the opinion of the Council, result in less stringent standards.

17. 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 a 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) Sections 7 to 15 (inclusive) apply (with the necessary changes) to the amendment or revocation of a scheme as well as to the making of a scheme.

Division 2 – Contents of schemes

18. Persons to whom 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 date on which the exemption is granted or on and from a later date specified in the exemption.

(4) Subsection (2) does not apply to a person to whom a scheme applies by virtue of section 19, 20 or 21.

19. Officers or partners of persons to whom scheme applies

(1) If a scheme applies to a body corporate, the scheme also applies to each officer of the body corporate.

(2) If a scheme applies to a person, the scheme also applies to each partner of the person.

(3) However, if an officer of a body corporate or a partner of a person is entitled to be a member of the same occupational association as the body corporate or person but is not a member, the scheme does not apply to the officer or partner.

(4) In this section –

"officer", in relation to a body corporate –

- (a) that is a corporation, within the meaning of the Corporations Act 2001, has the same meaning as in section 82A of that Act; or
- (b) that is not a corporation within the meaning of the Corporations Act 2001, means any person (by whatever name called) who is concerned in or takes part in the management of the body corporate.

20. Employees of persons to whom scheme applies

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

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

21. Other persons to whom scheme applies

If persons are prescribed by the Regulations for section 30(4) as being associated with persons to whom a scheme applies, the scheme also applies to the prescribed persons.

22. Limitation of liability by insurance arrangements

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

- (a) insuring the person against that occupational liability; and
- (b) under which the amount payable in respect of the occupational liability relating to that cause of action (including any amount payable by the person by way of excess under or in relation to the policy) is not less than the amount of the monetary ceiling specified in the scheme in relation to the person at the time at which the act or omission giving rise to the cause of action occurred,

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

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

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

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

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

24. Limitation of liability by multiple of charges

(1) A scheme may provide that if a person to whom the scheme applies and against whom a cause of action relating to occupational liability is brought is able to satisfy the court –

- (a) that the person has the benefit of an insurance policy –
 - (i) insuring the person against that occupational liability; and
 - (ii) under which the amount payable in respect of the occupational liability relating to that cause of action (including any amount payable by the person by way of excess under or in relation to the policy) is not less than an amount (the "limitation amount"), being a reasonable charge for the services provided by the person or which the person failed to provide and to which the cause of action relates, multiplied by the multiple specified in the scheme in relation

to the person at the time at which the act or omission giving rise to the cause of action occurred;

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

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

(2) In determining the amount of a reasonable charge for the purposes of such a provision, a court must have regard to any amount actually charged and to –

- (a) the amount that would ordinarily be charged in accordance with a scale of charges accepted by the occupational association of which the person is a member; or
- (b) if there is no such scale – the amount that a competent person of the same qualifications and experience as the person would be likely to charge in the same circumstances.

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

25. Specification of different limits of liability

A scheme may –

- (a) specify the same maximum amount of liability for 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.

26. Combination of provisions under sections 22, 23 and 24

If, in a scheme, provisions of the kind referred to in section 24 and provisions of the kind referred to in section 22 or 23 (or both) apply to a person at the same time in respect of the same occupation, the scheme must provide that the damages that may be awarded against the person are to be determined in accordance with section 24 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 22 or 23.

27. Liability that cannot be limited by scheme

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

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

28. Insurance to be of requisite standard

(1) For the purposes of a scheme, an insurance policy must be a policy, or a policy of a kind, that complies with standards determined by the occupational association whose members may be insured under such a policy, or a policy of such a kind.

(2) While a scheme remains in force relating to its members, if an occupational association proposes to alter the standards previously determined by it in relation to an insurance policy or a kind of insurance policy, it must submit the proposal to the Council for approval.

(3) The Council may approve, or refuse to approve, a proposal submitted to it under subsection (2).

(4) If the Council refuses to approve the proposal, the standards remain as previously determined by the occupational association.

Division 3 – Effect of schemes

29. Limit of occupational liability by schemes

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

(2) A scheme does not limit the liability of a person (the "professional") to another person (the "client") if, at no stage before the time of the relevant act or omission, did the professional –

- (a) give, or cause to be given, to the client a document that carried a statement of a kind referred to in section 34(1); or
- (b) otherwise inform the client, whether orally or in writing, that the professional's liability was limited in accordance with this Part.

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

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

(5) A limitation of liability that, in accordance with this section, applies in respect of an act or omission continues to apply to every cause of action founded on it, irrespective of when the cause of action arises or proceedings are brought in respect of it, and even if the scheme has been amended or has, in accordance with section 33, ceased to be in force.

(6) A person to whom a scheme applies cannot choose not to be subject to the scheme, except in accordance with provisions included in the scheme under section 18(2).

30. Limitation of amount of damages

(1) A limitation imposed by a scheme in force under this Act of an amount of damages is a limitation of the amount of damages that may be awarded for a single claim and is not a limitation of the amount of damages that may be awarded for all claims arising out of a single event.

(2) 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) 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) Persons are associated if they are –

(a) officers, within the meaning of section 19, of the same body corporate;

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

(c) persons who are prescribed by the Regulations for the purposes of this subsection.

31. Effect of scheme on other parties to proceedings

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

32. Proceedings to which scheme applies

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

33. Duration of scheme

(1) A scheme remains in force for the period (not exceeding 5 years) from its commencement as determined by the Council unless, before the end of the period –

(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.

(3) The notice must be published on or before the day when the original period ends.

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

34. Notification of limitation of liability

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

Penalty: 50 penalty units.

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

(3) A person does not commit an offence against this section if the statement carried on the person's documents is in the prescribed form.

(4) If the occupational liability of a person is limited in accordance with this Part, the person must ensure that a copy of the scheme concerned is given, or caused to be given, to any client or prospective client who requests a copy.

Penalty: 50 penalty units.

(5) In this section, a document does not include a business card.

(6) In this section, a client is a person who engages another to carry out work (and, if the person is acting on behalf of a third person, then the person will be taken to be the client rather than the third person).

PART 3 – COMPULSORY INSURANCE

35. Occupational association may compel its members to insure

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

(2) 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 (for example, as to the amount of the insurance).

(4) The occupational association may specify different standards of insurance for different classes of members.

36. 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 (for example, members may include representatives of insurers).

(3) An occupational association may, through such a committee or otherwise, issue practice advice to its members with a view to minimising claims for occupational liability.

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

PART 4 – RISK MANAGEMENT

37. Risk management strategies

(1) If an occupational association seeks the approval of the Council under section 7 to a scheme, it must provide 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 other statutory requirements and must not be inconsistent with them.

38. 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 as to the implementation and monitoring of its risk management strategies, the effect of those strategies and any changes made or proposed to be made to them.

(3) An occupational association's annual report must include details of any findings made, or conclusions drawn, by a committee established by it (whether solely or jointly with another association or 2 or more other associations) under section 36.

(4) The occupational association's annual report must be incorporated into the Council's annual report in the form that the Council determines.

39. Compliance audits

(1) An audit (a "compliance audit") of the compliance of members, or of specified members or a specified class or classes of members, of an occupational association with the association's risk management strategies –

- (a) may be conducted at any time by the Council or the association; or
- (b) must be conducted by the association if requested to do so by the Council.

(2) If a compliance audit is conducted by the Council –

- (a) the occupational association must give, and ensure that its members give, the Council any information or a copy of any document that the Council reasonably requests in connection with the conduct of the audit; and
- (b) the Council must provide a copy of a report of the audit to the association.

(3) If a compliance audit is conducted by the occupational association, it must provide a copy of a report of the audit to the Council.

PART 5 – COMPLAINTS AND DISCIPLINARY MATTERS

40. Complaints and discipline code

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

(2) The modifications may include provisions relating to the making and determination of complaints and the imposition and enforcement of disciplinary measures against members of an occupational association, including (but not limited to) the following:

- (a) the establishment of committees for the purpose of implementing the Model Code or any of its provisions;
- (b) the procedure at meetings of any such committee;

- (c) whether any such committee may administer an oath;
- (d) the application or exclusion of the rules of and practice as to evidence;
- (e) the grounds on which a complaint may be made;
- (f) the verification of complaints by statutory declaration;
- (g) the suspension of members from membership or from practice;
- (h) the imposition of fines;
- (i) the making of appeals;
- (j) the exchanging of information with other occupational associations (within or outside the Territory).

PART 6 – PROFESSIONAL STANDARDS COUNCIL

Division 1 – Constitution of Council

41. Constitution of Council

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

Division 2 – Membership and procedure of Council

42. Membership of Council

- (1) The Council consists of 11 persons appointed by the Minister.

(2) The members must be persons who have experience, skills and qualifications that the Minister considers appropriate to enable them to make a contribution to the work of the Council.

- (3) An act or decision of the Council is not invalid merely because of –
- (a) a defect or irregularity in, or in connection with, the appointment of a member; or
 - (b) a vacancy in the membership of the Council, including a vacancy arising from the failure to appoint an original member.

43. Provisions relating to members of Council

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

44. Provisions relating to procedure of Council

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

Division 3 – Functions of Council

45. Functions of Council

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

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- (iii) quality management;
 - (iv) risk management;
 - (v) resolution of complaints by clients;
 - (vi) voluntary mediation services;
 - (vii) membership requirements;
 - (viii) discipline of members;
 - (ix) continuing occupational education;
- (e) to monitor the occupational standards of persons to whom this Act applies;
- (f) to monitor the compliance by an occupational association with its risk management strategies;
- (g) to publish advice and information concerning the matters referred to in this section;
- (h) to conduct forums, approved by the Minister, on issues of interest to members of occupational groups;
- (i) to collect, analyse and provide the Minister with information on issues and policies concerning the standards of occupational groups;
- (j) to institute proceedings in its own name for the prosecution of an offence against this Act or the Regulations that comes to its notice or for injunctive or other relief in respect of such offences.
- (2) The Council is not empowered to give advice concerning occupational standards contained in any other Act or an instrument of a legislative or administrative character.
- (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 by or under this or any other Act.
- (5) The Council is taken to have locus standi for the purpose of pursuing any injunctive or other relief in accordance with subsection (1)(j), and is not to be required to give any undertaking as to damages in connection with the grant of any interlocutory relief.

Division 4 – Other provisions

46. Requirement to provide information

(1) The Council may, by notice in writing, require an occupational association whose members are subject to a scheme in force under this Act or that seeks the approval of the Council under section 7 to a scheme, or an amendment to or revocation of a scheme, to provide information to it which it may reasonably require in order to perform its functions.

(2) An occupational association that does not comply with a notice under this section is guilty of an offence.

Penalty: 20 penalty units.

47. 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 34 or an offence against the Regulations.

(2) An occupational association must provide information to the Council on –

- (a) any complaint or other evidence covered by subsection (1) that it did not refer to the Council; and
- (b) particulars of any action taken by it in respect of any such complaint or other evidence and of the outcome of that action.

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

48. Committees of Council

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

49. Staff of Council

The Council may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, an administrative office or a public or local authority.

50. Engagement of consultants

The Council, or a committee established under section 48, may engage as consultants to it persons with suitable qualifications and experience either in an honorary capacity or for remuneration.

51. Accountability of Council

- (1) The Council must exercise its functions subject to –
 - (a) the general direction and control of the Minister; and
 - (b) any specific written directions given to it by the Minister.
- (2) Without limiting subsection (1)(b), a direction under that subsection may require the Council to give the Minister, or provide the Minister with access to, information in its possession about a matter or class of matter specified in the direction.
- (3) If the Council is given a written direction, the Council –
 - (a) may cause the direction to be published in the *Gazette*; and
 - (b) must publish the direction in its next annual report under section 53.

52. Professional Standards Council Fund

- (1) There is established in the Public Account an account to be known as the Professional Standards Council Fund.
- (2) There must be paid into the Professional Standards Council Fund –
 - (a) any money appropriated for the purposes of the Fund;
 - (b) any fees paid to the Council under this Act; and
 - (c) any other money lawfully received by, made available to, or paid to, the Council.
- (3) The money standing to the credit of the Professional Standards Council Fund is to be applied as directed by the Council in the payment of the expenses incurred by it, or by a committee established by it under section 48, in carrying out its functions.

53. Annual report

(1) As soon as practicable after 30 June, but before 1 October, in each year, the Council must prepare and forward to the Minister a report on the Council's work and activities for the period of 12 months ending on 30 June in that year.

(2) The Minister must table the report in the Legislative Assembly as soon as practicable after receiving the report.

PART 7 – GENERAL

54. Characterisation of Act

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

55. Application of Act

(1) If a provision made by or under Parts 3, 4 and 5 is inconsistent with a provision made by or under another Act, the other provision prevails and the provision made by or under this Act is (to the extent of the inconsistency) of no force or effect.

(2) Except as provided by subsection (1), this Act has effect despite any other law to the contrary.

56. No contracting out of Act

(1) This Act applies in relation to a person to whom a scheme in force under this Act applies despite any contract to the contrary.

(2) Subsection (1) does not apply to a contract entered into before the commencement of this Act.

57. No limitation on other insurance

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

58. Regulations

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters –

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) The Regulations may provide for the following:
 - (a) the fees for applications for the Council's approval under Part 2, Division 1 of a scheme or an amendment to or revocation of a scheme;
 - (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) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.
- (4) Schedule 4 has effect until the first day on which any provision of regulations made under this Act comes into operation.

59. Rules of court

- (1) Rules of court may be made with respect to any matter arising under Part 2.
- (2) A rule of court may specify –
 - (a) matters relating to section 15; and
 - (b) the means by which the net current market value of assets may be determined for the purposes of section 23 or 24.
- (3) This section does not limit the rule-making powers of any court.

60. Review of Act

- (1) The Minister must review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
 - (2) The review must be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
 - (3) A report of the outcome of the review is to be tabled in the Legislative Assembly within 12 months after the end of the period of 5 years.
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SCHEDULE 1

Section 40

COMPLAINTS AND DISCIPLINARY MATTERS

MODEL CODE

1. Citation

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

2. Definition

In this Code –

"Council" means the Professional Standards Council constituted by the *Professional Standards Act*.

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

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

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

4. Who may make a complaint?

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

5. How is a complaint made?

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

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

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

6. What happens after a complaint is made?

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

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

(3) The occupational association is bound by the rules of natural justice if it conducts 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 one or more of the following:

- (a) caution or reprimand the person;
- (b) impose conditions as to the carrying out of the person's occupation;
- (c) require the person to complete specified courses of training or instruction;
- (d) require the person to report as to the carrying out of the person's occupation at the times, in the manner and to the persons specified by the association;
- (e) order the person to obtain advice as to the carrying out of the person's occupation, from such persons as are specified by the association;
- (f) expel the person from membership of the association.

(2) If the association does not find the complaint substantiated, it must dismiss the complaint.

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

8. Notices of decisions

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

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

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

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

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

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

11. Immunity

(1) A member of the executive body of an occupational association or a person acting in accordance with a resolution of an occupational association is not personally liable for anything done or omitted to be done in good faith –

- (a) for the purpose of implementing this Code; or
- (b) in the reasonable belief that the act or omission was for the purpose of implementing this Code.

(2) Any liability resulting from an act or omission that, but for subclause (1), would attach to a person attaches instead to the occupational association.

SCHEDULE 2

Section 43

PROVISIONS RELATING TO MEMBERS OF COUNCIL

1. Chairperson and Deputy Chairperson of Council

(1) The Minister must appoint 2 of the members of the Council (in and by their respective instruments of appointment or in and by other instruments executed by the Minister) as Chairperson and Deputy Chairperson of the Council, respectively.

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

(3) A person holding office as Chairperson or Deputy Chairperson of the Council vacates that office if the person –

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

2. Deputies of members

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

(2) In the absence of a member, the member's deputy –

- (a) is, if available, to act in the place of the member; and
- (b) while so acting – has all the functions of the member and is taken to be a member.

(3) The deputy of a member who is Chairperson or Deputy Chairperson of the Council does not (because of this clause) have the member's functions as Chairperson or Deputy Chairperson.

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

3. Term of office

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

4. Vacancy in office of member

- (1) The office of a member becomes vacant if the member –
 - (a) completes a term of office and is not re-appointed;
 - (b) resigns the office in writing addressed to the Minister;
 - (c) is removed from office by the Minister under this clause;
 - (d) 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, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings;
 - (e) becomes insolvent under administration within the meaning of the Corporations Act 2001; or
 - (f) is convicted in the Territory of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in the Territory of an offence that, if committed in the Territory, would be an offence so punishable.
- (2) The Minister may remove a member from office –
 - (a) for incompetence or misbehaviour;
 - (b) for mental or physical incapacity to carry out the duties of office satisfactorily; or
 - (c) for breach of, or non-compliance with, a condition of appointment.

5. Filling of vacancy in office of member

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

6. Effect of certain other Acts

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

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

(2) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

7. Immunity

(1) This section applies to a person who is –

- (a) a member;
- (b) a deputy of a member; or
- (c) a person acting under the direction of the Council or of a member or a deputy of a member.

(2) The person is not personally liable for anything done or omitted to be done in good faith –

- (a) in the exercise of a function under this Act; or
- (b) in the reasonable belief that the act or omission was in the exercise of a function under this Act.

(3) Any liability resulting from an act or omission that, but for subclause (2), would attach to the person attaches instead to the Council.

SCHEDULE 3

Section 44

PROVISIONS RELATING TO PROCEDURE OF COUNCIL

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 and the Regulations, to be as determined by the Council.

2. Quorum

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

3. Presiding member

(1) The Chairperson of the Council or, in the absence of the Chairperson, the Deputy Chairperson of the Council or, in the absence of both, another member elected to chair the meeting by the members present is to preside at a meeting of the Council.

(2) The person presiding at any meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

4. Voting

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

5. First meeting

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

SCHEDULE 4

Section 58(4)

PART 1 – FEES AND CHARGES

1. Definitions

In this Part –

"annual fee" means the annual fee referred to in section 58(2)(b);

"annual fee period", in relation to a scheme, means each period of 12 months beginning on the date on which the scheme commences and on each anniversary of that date.

2. Application fee for approval relating to occupational liability schemes

(1) An application by an occupational association for the approval of the Council of –

- (a) a scheme prepared under section 7; or
- (b) an amendment to, or the revocation of, such a scheme,

must be accompanied by a fee of \$5 000.

(2) However, if the application is for the approval of the Council of a scheme prepared solely to replace a scheme that is to cease by effluxion of time to apply to the members of the relevant occupational association (and the application is made before the scheme so ceases to apply), the fee that must accompany the application is \$2 000.

(3) Subclause (2) applies whether or not the scheme for which approval is sought differs in any way from the scheme that it is intended to replace.

3. Amount of annual fee

The annual fee to be paid to the Council by an occupational association any of whose members are subject to a scheme in force under the Act (being a scheme that applies to all persons within the association or to a specified class or classes of persons within the association) is \$35 for each person to whom the scheme applies who is a member of the association at any time during the relevant annual fee period.

4. Payment of annual fee

(1) The annual fee must be paid not later than at the end of the first quarter of the annual fee period concerned.

(2) If for any reason a scheme becomes applicable to an additional member of the occupational association during the annual fee period, the payment under clause 3 must be made in respect of the additional member at the end of the quarter in which the scheme became applicable to that member.

5. Interest on overdue annual fee

If any amount of the annual fee (including any payment required under clause 4(2)) is not paid within 30 days after it is due, simple interest at the rate of 0.05% per day is payable to the Council on the outstanding balance until that balance is paid.

6. Remission of amounts payable

The Council may, if it considers that there are special reasons for doing so in a particular case, remit the whole or any part of any or all of the following:

- (a) the fee payable under clause 2 for an application for the approval of the Council of a scheme or of an amendment to, or the revocation of, a scheme;
- (b) the annual fee payable under clause 4;
- (b) any interest payable under clause 5.

PART 2 – FORM OF STATEMENT

7. Notification of limitation of liability

(1) For the purposes of section 34(2), the following form of statement is prescribed:

"Liability limited by the [*insert name of relevant Scheme approved of by the Council*] Scheme, approved under the *Professional Standards Act* (Northern Territory).".

(2) The statement must be printed in a size not less than the face measurement of Times New Roman typeface in 8 point.
