

## **Legislative Council—No 5A**

As recommitted, reported with further amendments, report adopted, Standing Orders suspended and passed remaining stages, 10 November 2004

South Australia

# **Professional Standards Bill 2003**

A BILL FOR

An Act to provide for the limitation of liability of members of occupational associations in certain circumstances; to facilitate improvement in the standards of services provided by those members; and for other purposes.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Professional Standards Act 2003*.

#### 2—Commencement

5 This Act will come into operation on a day to be fixed by proclamation.

#### 3—Objects of Act

The objects of this Act are—

- (a) to enable the creation of schemes to limit the civil liability of professionals and others; and
- 10 (b) to facilitate the improvement of occupational standards of professionals and others; and
- (c) to protect the consumers of the services provided by professionals and others; and
- 15 (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—

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

*Council* means the Professional Standards Council established by this Act;

*court* includes a tribunal and an arbitrator;

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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);

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

**function** includes a power, authority and duty;

**judgment** includes—

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

**occupational association** means a body corporate—

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

**occupational group** includes a professional group and a trade group;

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

**partner** means a person who is in a partnership within the meaning of the *Partnership Act 1891*;

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

## 5—Application of Act

(1) Subject to this section, this Act applies to liability in damages arising—

- (a) under the law of torts; or
- (b) for breach of a contractual duty of care; or
- (c) under statute.

(2) However, this Act does not apply to liability in damages arising from any of the following:

- (a) the death of, or personal injury to, a person;
- (b) anything done or omitted to be done by a legal practitioner in acting for a client in a personal injury claim;
- (c) an intentional tort;
- (d) a breach of trust;

(e) fraud or dishonesty.

(3) This Act does not apply to liability which may be the subject of proceedings under Part 18 of the *Real Property Act 1886*.

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

## 6—Relationship of this Act to other laws

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

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

## 7—Act binds Crown

(1) This Act binds the Crown in right of South Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

20 (2) Nothing in this Act makes the Crown in any of its capacities liable to be prosecuted for an offence.

# Part 2—Limitation of liability

## Division 1—Making, amendment and revocation of schemes

### 8—Preparation and approval of schemes

(1) An occupational association may prepare a scheme.

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

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

### 9—Public notification of schemes

30 Before approving a scheme, the Council must publish a notice in a daily newspaper circulating throughout the State—

(a) explaining the nature and significance of the scheme; and

(b) advising where a copy of the scheme may be obtained or inspected; and

(c) inviting comments and submissions within a specified time, but not less than 28 days after publication of the notice.

### 10—Making of comments and submissions concerning schemes

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

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

### 11—Consideration of comments, submissions and other matters

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

- 5 (a) all comments and submissions made to it in accordance with section 10;
- (b) the position of persons who may be affected by limiting the occupational liability of members of the occupational association concerned;
- (c) the nature and level of claims relating to occupational liability made against members of the occupational association concerned;
- 10 (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 29) determined by the occupational association concerned in relation to insurance policies;
- 15 (h) the provisions contained in the proposed scheme for the making and determination of complaints and the imposition and enforcement of disciplinary measures against members of the occupational association concerned,

20 and may consider such other matters as the Council thinks fit.

### 12—Public hearings

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

### 25 13—Submission of schemes to Minister

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

### 14—Gazettal, tabling and disallowance of schemes

- (1) The Minister may, after taking into account such matters as the Minister thinks fit, authorise the publication in the Gazette of a scheme submitted to the Minister by the Council.
- 30 (2) Sections 10 (other than subsection (1)) and 10A of the *Subordinate Legislation Act 1978* apply to a scheme published in the Gazette under subsection (1) as though—
- (a) the scheme were a regulation; and
- (b) the regulation had been made when the scheme was published in the Gazette.
- 35 (3) The Minister does not incur any liability for or in respect of a scheme in consequence of its authorisation, commencement or continued operation.

## **15—Commencement of schemes**

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

## **16—Challenges to schemes**

- 10           (1) A person who is, or is reasonably likely to be, affected by a scheme published as referred to in section 14 may, at any time before the expiration of the prescribed period, 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 later time before the scheme commences, order that the commencement of the scheme is stayed until
- 15           further order of the Court.
- (3) The Court, in relation to an application, may—
- (a) make an order that a scheme is void for want of compliance with this Act; or
- (b) decline to make such an order; or
- 20           (c) give directions as to the things that are required to be done in order that a scheme, the commencement of which is stayed under this section, may commence; or
- (d) make any other order it thinks fit.

## **17—Review of schemes**

- 25           (1) The Minister may direct the Council to review the operation of a scheme.
- (2) The Council must comply with any such direction 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.
- 30           (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 29 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.

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

- 35           (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
- 40           approve an amendment to, or revocation of, a scheme that relates to the members of the association.

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- (3) The Minister may direct the Council to prepare an amendment to, or revocation of, a scheme.
  - (4) The Council must comply with any such direction 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 8 to 16 apply, with any necessary modifications, to the amendment or revocation of a scheme as well as to the making of a scheme.

## Division 2—Contents of schemes

### 19—Persons to whom scheme applies

- 10
- (1) A scheme may provide that it applies to—
    - (a) all persons within an occupational association; or
    - (b) a specified class or classes of persons within an occupational association.
  - (2) A scheme may provide that the occupational association concerned may, on application by a person, exempt the person from the scheme.

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  - (3) A scheme ceases to apply to a person exempted from the scheme as referred to in subsection (2)—
    - (a) on and from the date on which the exemption is granted; or
    - (b) on and from a later date specified in the exemption.
  - (4) subsection (2) does not apply to a person to whom a scheme applies by virtue of

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  - section 20, 21 or 22.

### 20—Officers or partners of persons to whom a scheme applies

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

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- (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.
- (4) In this section—

*officer* —

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

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  - takes part in the management of the body corporate.

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

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

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

## **22—Other persons to whom a scheme applies**

5 If persons are prescribed by the regulations for the purposes of section 31(4) as being associated with persons to whom a scheme applies, the scheme also applies to the prescribed persons.

## **23—Limitation of liability by insurance arrangements**

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

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

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

## **24—Limitation of liability by reference to amount of business assets**

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

- 25 (a) that the person has business assets the net current market value of which is not less than the amount of the monetary ceiling specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates at the time at which the act or omission giving rise to the cause of action occurred; or
- (b) that—
- 30 (i) the person has business assets and the benefit of an insurance policy that insures the person against that occupational liability; and
- (ii) the net current market value of the business assets and the amount payable under the insurance policy in respect of the occupational liability relating to the cause of action (including any amount payable by the person by way of excess under or in relation to the policy), if combined, would total an amount that is not less than the amount of the monetary ceiling specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates at the time at which the act or omission giving rise to the cause of
- 35
- 40 action occurred,

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

## 25—Limitation of liability by multiple of charges

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

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

(i) that insures the person against that occupational liability; and

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

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

(c) that—

(i) the person has business assets and the benefit of an insurance policy that insures the person against that occupational liability; and

(ii) the net current market value of the assets and the amount payable under the insurance policy in respect of the occupational liability relating to the cause of action (including any amount payable by the person by way of excess under or in relation to the policy), if combined, would total an amount that is not less than the limitation amount,

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

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

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

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

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

## 26—Specification of different limits of liability

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.

## 27—Combination of provisions under sections 23, 24 and 25

If, in a scheme, provisions of the kind referred to in section 25 and provisions of the kind referred to in section 23 or 24 (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 25 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 23 or 24.

## 28—Amount below which liability cannot be limited

- (1) The amount of any limitation under a scheme affecting a liability for damages arising from a single claim (including a claim by a person who has 2 or more causes of action arising out of a single event) will be 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 applies only to a cause of action founded on an act or omission arising after the determination takes effect.

## 29—Insurance to be of requisite standard

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

**Note—**

The Council may review the scheme under section 17 when the occupational association proposes less stringent insurance standards.

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

### **Division 3—Effect of schemes**

#### **30—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.
- (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 proceedings are brought in respect of it, and even if the scheme has been amended or has, in accordance with section 34, 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 19(2).

#### **31—Limitation of amount of damages**

- (1) A limitation imposed by a scheme in force under this Act of an amount of damages is a limitation of the amount of damages that may be awarded for a single claim and is not a limitation of the amount of damages that may be awarded for all claims arising out of a single event.
- (2) Separate claims by 2 or more persons who have a joint interest in a cause of action founded on the same act or omission are to be treated as a single claim for the purposes of this Act.
- (3) Two or more claims 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 of the same body corporate (within the meaning of section 20); or
  - (b) partners, employees of the same employer or in the relationship of employer and employee; or
  - (c) persons who are prescribed by the regulations for the purposes of this subsection.

### 32—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.

### 33—Proceedings to which a scheme applies

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

### 34—Duration of scheme

- 10 (1) A scheme remains in force for such period (not exceeding 5 years) from its commencement as is determined by the Council unless, before the end of the period so determined—
- (a) it is revoked; or
  - (b) its operation is extended by notice under this section; or
  - (c) its operation ceases because of the operation of another Act.
- 15 (2) The Minister may, by notice published in the Gazette, extend the period for which a scheme is in force.
- (3) A notice under subsection (2) 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.

### 20 35—Notification of limitation of liability

- (1) If the occupational liability of a person is limited in accordance with this Part, the person must ensure—
- 25 (a) that all documents (other than business cards) given, or caused to be given, by the person to a client or prospective client that promote or advertise the person or the person's business, 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; and
  - 30 (b) that any website maintained by (or on behalf of) the person to promote the person's business carries a statement indicating that the person's liability is so limited.

Maximum penalty: \$20 000.

- (2) The regulations may prescribe a form of statement for the purposes of this section.
- 35 (3) A person does not commit an offence against subsection (1) if the statement carried on the person's documents or website (as the case may be) 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.

Maximum penalty: \$5 000.

- (5) For the purposes of this section, a client is a person who engages another to carry out certain 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**

### **36—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.
- (5) The standards are in addition to other statutory requirements and must not be inconsistent with them.

### **37—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**

### **38—Risk management strategies**

- (1) If an occupational association seeks the approval of the Council under section 8 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) detailed information about 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.

### 39—Reporting

- (1) An occupational association must provide information to the Council concerning its risk management strategies if requested to do so by the Council.
- 5 (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 37.
- 10 (4) The occupational association's annual report is to be incorporated into the Council's annual report in such form as the Council determines.

### 40—Compliance audits

- 15 (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—
  - 20 (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.

## 25 Part 5—Complaints and disciplinary matters

### 41—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.
- 30 (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:
  - 35 (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;

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- (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 South Australia).
- (3) The provisions are in addition to other relevant statutory schemes (if any) and must not be inconsistent with them.

## Part 6—The Professional Standards Council

### Division 1—Establishment of Council

#### 10 42—Establishment 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;
  - 15 (c) may sue and be sued in its corporate name;
  - (d) may acquire, hold and dispose of real and personal property;
  - (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.
- 20 (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

#### 43—Membership of Council

- 25
- (1) The Council is to consist of up to 11 persons appointed by the Minister who have such experience, skills and qualifications as the Minister considers appropriate to enable them to make a contribution to the work of the Council.
  - (2) An act or decision of the Council is not invalid merely because of—
    - 30 (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.

#### 44—Provisions relating to members of Council

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

#### 45—Provisions relating to procedure of Council

- 35
- Schedule 3 has effect with respect to the procedure of the Council.

## Division 3—Functions of Council

### 46—Functions of Council

(1) The Council has the following functions—

(a) to give advice to the Minister concerning—

- (i) the publication in the Gazette of a scheme, or of an amendment to a scheme, submitted by it to the Minister, or of notice of the revocation of such a scheme;
- (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;
- (iii) quality management;
- (iv) risk management;
- (v) resolution of complaints by clients;
- (vi) voluntary mediation services;
- (vii) membership requirements;
- (viii) discipline of members;
- (ix) continuing occupational education;

(e) to monitor the occupational standards of members of occupational groups;

(f) to monitor the compliance by an occupational association with its risk management strategies;

(g) to publish advice and information concerning the matters referred to in this section;

(h) to conduct forums, 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.

(2) The Council is not empowered to give advice concerning occupational standards prescribed by another Act, or by regulations under another 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 by or under this or any other Act.

## **Division 4—Miscellaneous**

### **47—Requirement to provide 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 8 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 exercise its functions.
- (2) An occupational association must comply with a notice under this section.  
Maximum penalty: \$10 000.

### **48—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 35 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.

### **49—Committees of Council**

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

### **50—Engagement of consultants**

The Council, or a committee established under section 49, 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.
- 5 (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.

## 52—Professional Standards Council Fund

- 10 (1) There will be a fund kept in a separate account at the Treasury to be called the *Professional Standards Council Fund*.
- (2) The fund will consist of—
  - (a) any money appropriated by the Parliament for the purposes of the fund; and
  - (b) any fees paid to the Council under this Act; and
  - 15 (c) any other money lawfully received by, made available to, or paid to, the Council.
- (3) The money standing to the credit of the 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 49, in carrying out its functions.

## Part 7—Miscellaneous

### 20 53—Characterisation of Act

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

### 54—No contracting out of Act

- 25 (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.

### 55—No limitation on other insurance

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

### 56—Minister's power of delegation

- 35 (1) The Minister may delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Minister under this or any other Act.
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and

- (c) does not derogate from the power of the Minister to act in any matter; and
  - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

## 5 57—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) prescribe fees for applications to the Council under this Act;
  - 10 (b) prescribe an annual fee to be paid to the Council by an occupational association whose members are subject to a scheme in force under this Act and, in respect of any such fee—
    - (i) provide for the collection of the fee;
    - (ii) provide that interest, at the prescribed rate, is payable on any fee not
    - 15 paid in accordance with the regulations;
    - (iii) provide for the remission of any fee;
  - (c) impose a penalty, not exceeding \$5 000, for a contravention of, or failure to comply with, a regulation.
- (3) A regulation under this Act—
- 20 (a) may make different provision according to the matters or circumstances to which they are expressed to apply;
  - (b) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, the Council or any other person or body prescribed by the regulations;
  - 25 (c) may, in relation to fees, prescribe differential fees, or provide for fees to be determined according to prescribed factors.

## 58—Review of Act

- (1) The Minister must cause a review of this Act to be undertaken to determine whether the policy objectives of this Act remain valid and whether the terms of this Act remain
- 30 appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of the Act.
- (3) The Minister must cause a report of the outcome of the review to be tabled in both Houses of Parliament within 12 months after the end of the period of 5 years.

## 35 Schedule 1—Model code

### 1—Citation

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

## 2—Definitions

In this Code—

*Council* means the Professional Standards Council established by the *Professional Standards Act 2003*.

## 3—What actions may be the subject of a complaint?

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

## 4—Who may make a complaint?

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

## 5—How is a complaint made?

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

## 6—What happens after a complaint is made?

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

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

- (1) After an occupational association has conducted a hearing into a complaint against a person, it may, if it finds the complaint substantiated, do any one or more of the following:
  - (a) caution or reprimand the person;
  - (b) impose conditions relating to the carrying out of the person's occupation;

- 
- (c) require the person to complete specified courses of training or instruction;
  - (d) require the person to report concerning the carrying out of his or her occupation at the times, in the manner and to the persons specified by the occupational association;
  - (e) order the person to obtain advice concerning the carrying out of his or her occupation from such persons as are specified by the occupational association;
  - (f) expel the person from membership of the occupational association.

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

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

### **8—Notices of decisions**

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

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

### **9—What rights of representation do parties to a complaint have?**

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

### **10—How may the functions of the occupational association under this Code be exercised?**

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

### **11—Immunity**

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

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

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

## **Schedule 2—Provisions relating to members of Council**

### **1—Chairperson and Deputy Chairperson of Council**

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

- (2) The Minister may remove a member from the office of Chairperson or Deputy Chairperson of the Council at any time.
- (3) A person holding office as Chairperson or Deputy Chairperson of the Council vacates that office if the person—
- 5           (a) is removed from that office by the Minister; or
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a member.

## **2—Deputies of members**

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- 10           (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.
- 15           (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 from time to time determine in respect of the person.

## **3—Term of office**

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

## **4—Allowances**

25           A member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member.

## **5—Vacancy in office of member**

- (1) The office of a member becomes vacant if the member—
- (a) resigns the office by instrument in writing addressed to the Minister; or
- 30           (b) is removed from office by the Minister under this clause; or
- (c) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post unless—
- (i) the member is so absent on leave granted by the Council; or
- 35           (ii) before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings; or
- (d) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or

- (e) is convicted in South Australia of an offence that is punishable by imprisonment for life or for a term of 12 months or more, or is convicted elsewhere than in South Australia of an offence that, if committed in South Australia, would be an offence so punishable.

- 5       (2) The Minister may remove a member from office—
- (a) for incompetence or misbehaviour; or
  - (b) for mental or physical incapacity to carry out duties of office satisfactorily; or
  - (c) for breach of, or non-compliance with, a condition of appointment.

### **6—Filling of vacancy in office of member**

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

### **7—Immunity**

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

## **Schedule 3—Provisions relating to the procedure of the Council**

### **1—General procedure**

25       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**

- 30       (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**

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

**5—First meeting**

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