

Authorised Version No. 011
Professional Standards Act 2003

No. 100 of 2003

Authorised Version incorporating amendments as at
24 May 2012

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Authorised Version No. 011
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No. 100 of 2003

Authorised Version incorporating amendments as at
24 May 2012

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is—

- (a) to provide for the limitation of liability of members of occupational associations in certain circumstances; and
- (b) to facilitate improvement in the standards of services provided by those members.

2 Commencement

This Act comes into operation on a day or days to be proclaimed.

3 Objects of this 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; and
- (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

- (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 Definitions

- (1) In this Act—

S. 4
amended by
No. 79/2006
s. 46(2) (ILA
s. 39B(1)).

annual fee means a fee payable to the Council by an occupational association whose members are subject to a scheme in force under the Act;

S. 4(1) def. of
annual fee
inserted by
No. 27/2007
s. 4.

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

S. 4(1) def. of
annual fee period
inserted by
No. 27/2007
s. 4.

another jurisdiction means any State or Territory, other than this jurisdiction;

S. 4(1) def. of
another jurisdiction
inserted by
No. 81/2008
s. 3(1).

appropriate Council, in relation to another jurisdiction, means the authority that, under the corresponding law of that jurisdiction, has functions that are substantially the same as the Council's functions under this Act;

S. 4(1) def. of
appropriate Council
inserted by
No. 81/2008
s. 3(1).

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;

S. 4(1) def. of
corresponding law
inserted by
No. 81/2008
s. 3(1).

corresponding law means a law of another jurisdiction that corresponds to this Act and includes a law of another jurisdiction that is prescribed to be a corresponding law of that jurisdiction for the purposes of this Act;

costs includes fees, charges, disbursements and expenses;

S. 4(1) def. of *costs* inserted by No. 79/2006 s. 46(1)(a).

Council means the Professional Standards Council established by this Act;

court includes a tribunal and an arbitrator;

damages means—

S. 4(1) def. of *damages* substituted by No. 79/2006 s. 46(1)(b).

- (a) damages awarded in respect of a claim or counter-claim or claim by way of set-off; or
- (b) costs in or in relation to the proceedings ordered to be paid in connection with such an award (other than costs incurred in enforcing a judgment or incurred on an appeal made by a defendant); or
- (c) any interest payable on the amount of those damages or costs;

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

function includes a power, authority and duty;

interstate scheme means a scheme—

S. 4(1) def. of *interstate scheme* inserted by No. 81/2008 s. 3(1).

- (a) that has been prepared under the corresponding law of another jurisdiction; and
- (b) that operates, or indicates an intention to operate, as a scheme of this jurisdiction;

judgment includes—

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

occupational association means a body corporate—

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

occupational group includes a professional group and a trade group;

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

partner has the same meaning as in the **Partnership Act 1958**;

scheme means a scheme for limiting the occupational liability of members of an occupational association and includes an interstate scheme;

Secretary means the Secretary to the Department of Justice;

statutory rule has the same meaning as in the **Subordinate Legislation Act 1994**;

this jurisdiction means Victoria.

S. 4(1) def. of *scheme* amended by No. 81/2008 s. 3(2)(a).

S. 4(1) def. of *Secretary* inserted by No. 27/2007 s. 4.

S. 4(1) def. of *statutory rule* amended by No. 81/2008 s. 3(2)(b).

S. 4(1) def. of *this jurisdiction* inserted by No. 81/2008 s. 3(1).

(2) A reference in this Act to the amount payable under an insurance policy in respect of an occupational liability includes a reference to—

S. 4(2)
inserted by
No. 79/2006
s. 46(2).

(a) defence costs payable in respect of a claim, or notification that may lead to a claim (other than reimbursement of the defendant for time spent in relation to the claim), but only if those costs are payable out of the one sum insured under the policy in respect of the occupational liability; and

(b) the amount payable under or in relation to the policy by way of excess.

5 Does this Act apply to all types of occupational liability?

(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 an Australian legal practitioner (within the meaning of the **Legal Profession Act 2004**) in acting for a client in a personal injury claim;

S. 5(1)(b)
amended by
No. 18/2005
s. 18(Sch. 1
item 86).

(c) a breach of trust;

S. 5(1)(c)
amended by
No. 40/2004
s. 19.

(d) fraud or dishonesty.

(2) This Act does not apply to liability which may be the subject of proceedings under section 110 of the **Transfer of Land Act 1958**.

(3) This section applies to an interstate scheme even if, under the corresponding law applying to the interstate scheme, that scheme, in another jurisdiction, would apply in respect of the types of liability referred to in subsection (1) or (2).

S. 5(3)
inserted by
No. 81/2008
s. 4.

6 Relationship of this Act to other laws

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

7 Act binds the Crown

- (1) This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
- (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.
- (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.
- (4) A scheme prepared under this section may indicate an intention to operate as a scheme—
 - (a) of this jurisdiction only; or
 - (b) of this jurisdiction and another jurisdiction.

S. 8(4)
inserted by
No. 81/2008
s. 5.

9 Public notification of schemes

- (1) Before approving a scheme, the Council must publish a notice in a daily newspaper circulating throughout Victoria—
 - (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.
- (2) If the scheme indicates an intention to operate as a scheme of both this jurisdiction and another jurisdiction, the Council must also publish a similar notice in the other jurisdiction in accordance with the requirements of the corresponding law of that jurisdiction that relate to approval of a scheme prepared in that jurisdiction.

S. 9
amended by
No. 81/2008
s. 6 (ILA
s. 39B(1)).

S. 9(2)
inserted by
No. 81/2008
s. 6.

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

- (1) Before approving a scheme, the Council must consider the following—
 - (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;
 - (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;

S. 11
amended by
No. 81/2008
s. 7 (ILA
s. 39B(1)).

-
- (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.
- (2) If the scheme indicates an intention to operate as a scheme of both this jurisdiction and another jurisdiction—
- (a) the Council must also consider any matter that the appropriate Council for the other jurisdiction would have to consider under the provisions of the corresponding law of that jurisdiction that relate to the approval of a scheme prepared in that jurisdiction; and
- (b) the matters to be considered by the Council, whether under subsection (1) or paragraph (a), are to be considered in the context of each of the jurisdictions concerned.

S. 11(2)
inserted by
No. 81/2008
s. 7.

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.

13 Submission of schemes to Minister

- (1) The Council may submit a scheme approved by it to the Minister.
- (2) Section 6(a) of the **Subordinate Legislation Act 1994** applies to a proposed scheme submitted to the Minister as though—
- (a) the proposed scheme were a proposed statutory rule; and

s. 14

S. 13(2)(b)
amended by
No. 79/2006
s. 88.

(b) the reference in that section to any other existing or proposed statutory rule included a reference to any other existing or proposed scheme.

S. 13(3)
inserted by
No. 81/2008
s. 8.

(3) If the scheme indicates an intention to operate as a scheme of both this jurisdiction and another jurisdiction, the Council may also submit the scheme to the Minister administering the corresponding law of the other jurisdiction.

14 Gazettal, tabling and disallowance of schemes

S. 14(1)
amended by
No. 81/2008
s. 9(1).

(1) The Minister, after carrying out any consultation required by section 13(2), may authorise the publication in the Government Gazette of a scheme submitted to the Minister by the Council or, in the case of an interstate scheme, by the appropriate Council for the jurisdiction in which the scheme was prepared.

(2) Section 15 and Part 5 of the **Subordinate Legislation Act 1994** apply to a scheme published in the Government Gazette under subsection (1) as though—

- (a) the scheme were a statutory rule; and
- (b) notice of the making of the statutory rule had been published in the Government Gazette when the scheme was published in the Government Gazette; and
- (c) section 21(1)(j) of that Act included a reference to a contravention of any of the provisions of this Act.

S. 14(3)
inserted by
No. 81/2008
s. 9(2).

(3) In subsection (1), a reference to an interstate scheme includes a reference to an instrument amending an interstate scheme.

15 Commencement of schemes

- (1) A scheme published in the Government Gazette with the authorisation of the Minister commences—
 - (a) on such day 2 months or more after the date of its publication as may be specified in the scheme; or
 - (b) if no such day is specified—2 months after the date of its publication.
- (2) This section is subject to any order made by the Supreme Court under section 16 and any order made by the Supreme Court of another jurisdiction under the corresponding law of that jurisdiction.
- (3) In this section, a reference to a scheme includes, in the case of an interstate scheme, a reference to an instrument amending that scheme.

S. 15(2)
substituted by
No. 81/2008
s. 10.

S. 15(3)
inserted by
No. 81/2008
s. 10.

16 Challenges to schemes

- (1) A person who is, or is reasonably likely to be, affected by a scheme published as referred to in section 14 including a person who is, or is reasonably likely to be, affected by a scheme that operates as a scheme of another jurisdiction may, at any time before the scheme commences, 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 or at any time after the making of the application, order that the commencement of the scheme is stayed until further order of the Court.
- (3) The Court, in relation to an application, may—
 - (a) make an order that a scheme is void for want of compliance with this Act; or
 - (b) decline to make such an order; or

S. 16(1)
amended by
No. 81/2008
s. 11(1).

S. 16(4)
inserted by
No. 81/2008
s. 11(2).

S. 16(5)
inserted by
No. 81/2008
s. 11(2).

S. 16(6)
inserted by
No. 81/2008
s. 11(2).

S. 17(3)
substituted by
No. 81/2008
s. 12.

- (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.
- (4) The Court may not make an order that an interstate scheme is void for want of compliance with this Act on the ground that the scheme fails to comply with Division 2, but may do so on the ground that the scheme fails to comply with the provisions of the corresponding law of the jurisdiction in which it was prepared that relate to the contents of schemes prepared in that jurisdiction.
- (5) This section does not prevent a scheme from being challenged or called into question otherwise than under this section.
- (6) In this section, a reference to a scheme includes, in the case of an interstate scheme, a reference to an instrument amending that scheme.

17 Review of schemes

- (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—
 - (a) in the case of a scheme prepared under this Act, whether the scheme should be amended or revoked or whether a new scheme should be made; or

- (b) in the case of an interstate scheme, whether the operation of the scheme should be terminated in relation to this jurisdiction.
- (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 Victorian schemes

S. 18
(Heading)
amended by
No. 81/2008
s. 13(1).

- (1) An occupational association may prepare an instrument amending or revoking a scheme that relates to its members.
- (2) The Council may, on the application of an occupational association, prepare or approve an instrument amending or revoking a scheme that relates to the members of the association.
- (3) The Minister may direct the Council to prepare an instrument amending or revoking 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 instrument amending or revoking a scheme.
- (5) The provisions of sections 8 to 16 extend, with any necessary modifications, to the amendment of a scheme by an instrument under this section.

S. 18(1)
amended by
No. 81/2008
s. 13(2).

S. 18(2)
amended by
No. 81/2008
s. 13(2).

S. 18(3)
amended by
No. 81/2008
s. 13(2).

S. 18(4)
amended by
No. 81/2008
s. 13(2).

S. 18(5)
substituted by
No. 81/2008
s. 13(3).

s. 18A

S. 18(6)
inserted by
No. 81/2008
s. 13(3).

(6) The provisions of sections 8 to 15 (other than section 13(2)) extend, with any necessary modifications, to the revocation of a scheme by an instrument under this section.

S. 18(7)
inserted by
No. 81/2008
s. 13(3).

(7) This section does not apply to an interstate scheme.

Note

An instrument that amends a scheme operating in another jurisdiction may be submitted to the Minister administering the corresponding law of that jurisdiction under section 13 with a view to its being published under that law.

An instrument made under the corresponding law of another jurisdiction that amends an interstate scheme may be submitted to the Minister administering this Act with a view to its being published under section 14.

S. 18A
inserted by
No. 81/2008
s. 14.

18A Notification of revocation of schemes

- (1) On publication in the Gazette of an instrument revoking a scheme (other than an interstate scheme) that operates as a scheme of another jurisdiction, the Minister must cause notice of that fact to be given to the Minister administering the corresponding law of that jurisdiction.
- (2) On receipt of notice that an interstate scheme has been revoked under the corresponding law of the jurisdiction in which it was prepared, the Minister must cause a statement to that effect to be published in the Gazette.

Note

Under section 34(1B), an interstate scheme will cease to have effect in this jurisdiction when it ceases to have effect in the other jurisdiction.

18B Termination of operation of interstate schemes in this jurisdiction

S. 18B
inserted by
No. 81/2008
s. 14.

- (1) The Council may, on the application of an occupational association, prepare an instrument terminating, in relation to this jurisdiction, the operation of an interstate scheme that relates to members of the association.
- (2) The Minister may direct the Council to prepare an instrument terminating the operation of an interstate scheme in relation to this jurisdiction.
- (3) The Council must comply with any such direction, but may on its own initiative, at any time while an interstate scheme remains in force, prepare an instrument terminating the operation of the scheme in relation to this jurisdiction.
- (4) The provisions of sections 9 to 14 (other than section 13(2)) extend, with any necessary modifications, to the termination of the operation of an interstate scheme under an instrument under this section.
- (5) The operation of an interstate scheme in respect of which an instrument under this section is published under section 14 (as applied by subsection (4)) is terminated, in relation to this jurisdiction—
 - (a) as from such day subsequent to the date of its publication as may be specified in the instrument; or
 - (b) if no such day is specified, as from 2 months after the date of its publication.

Division 2—Contents of schemes

19 Persons to whom scheme applies

- (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.
- (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 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.
- (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*—

- (a) in relation to a body corporate that is a corporation within the meaning of the Corporations Act, has the same meaning as it has in 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 takes part in the management of the body corporate.

S. 20(4)(a)
amended by
No. 81/2008
s. 15.

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

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

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—

- (a) the person has the benefit of an insurance policy insuring the person against the occupational liability to which the cause of action relates; and
- (b) the amount payable under the policy in respect of that occupational liability is not less than the amount of the monetary ceiling

S. 23
substituted by
No. 79/2006
s. 47.

specified in the scheme in relation to the class of person and the kind of work to which the cause of action relates—

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

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—

S. 24(a)
amended by
No. 79/2006
s. 48(1).

(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; or

(b) that—

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

S. 24(b)(ii)
substituted by
No. 79/2006
s. 48(2).

(ii) the net current market value of the business assets and the amount payable under the policy in respect of that occupational liability, 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—

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 that occupational liability 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; 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 policy in respect of that occupational liability, if combined, would total an amount that is not less than the limitation amount—

S. 25(1)(a)(ii)
substituted by
No. 79/2006
s. 49(1).

S. 25(1)(c)(ii)
substituted by
No. 79/2006
s. 49(2).

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 Liability that cannot be limited by a 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 adequately to protect consumers.
- (3) A Council determination applies only to a cause of action that arises after the determination takes effect.

S. 28A
inserted by
No. 79/2006
s. 50.

28A Liability in damages not reduced to below relevant limit

The liability in damages of a person to whom a scheme applies is not reduced below the relevant limitation imposed by a scheme in force under this Act because the amount available to be paid to the claimant under the insurance policy required for the purposes of this Act in respect of that liability is less than the relevant limitation.

Note

Section 4(2) permits a defence costs inclusive policy for the purposes of this Act, which may reduce the amount available to be paid to a client in respect of occupational liability covered by the policy. Section 28A makes it clear that this does not reduce the cap on the liability of the scheme participant to the client, and accordingly the scheme participant will continue to be liable to the client for the amount of any difference between the amount payable to the client under the policy and the amount of the cap.

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) A scheme does not limit the liability of a person (the *professional*) to another person (the *client*) if, at no stage before the time at which the act or omission giving rise to the cause of action concerned occurred, 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 35(1); or
 - (b) otherwise inform the client, whether orally or in writing, that the professional's liability was limited in accordance with this Part.

S. 30(2)
amended by
No. 79/2006
s. 51(1).

Note

A professional may also be prosecuted under section 35 for a contravention of section 35(1).

- (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 at which the act or omission giving rise to the cause of action concerned occurred.

S. 30(4)
amended by
No. 79/2006
s. 51(2).

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- (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 34, 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 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 two 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

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

- (1) A scheme must specify the period (not exceeding 5 years) for which it is to remain in force after its commencement.

S. 34(1)
substituted by
No. 81/2008
s. 16.

- (1A) Subject to subsection (2), a scheme (other than an interstate scheme) remains in force until whichever of the following first occurs—

S. 34(1A)
inserted by
No. 81/2008
s. 16.

- (a) the period specified under subsection (1) ends; or
- (b) the scheme is revoked; or
- (c) the scheme's operation ceases because of the operation of another Act; or
- (d) the scheme is declared void, either by—
- (i) an order made by the Supreme Court under section 16; or
- (ii) an order made by the Supreme Court of another jurisdiction under the corresponding law of that jurisdiction; or
- (e) the scheme is disallowed under Part 5 of the **Subordinate Legislation Act 1994**.

S. 34(1B)
inserted by
No. 81/2008
s. 16.

- (1B) Subject to subsection (2), an interstate scheme remains in force in this jurisdiction until whichever of the following first occurs—
- (a) the period specified under subsection (1) ends; or
 - (b) the scheme's operation in relation to this jurisdiction is terminated under section 18B; or
 - (c) the scheme ceases to have effect in the jurisdiction in which it was prepared; or
 - (d) the scheme is disallowed under Part 5 of the **Subordinate Legislation Act 1994**.
- (2) The Minister may, by notice published in the Government Gazette, extend the period for which a scheme is in force. The notice must be published on or before the day when the original period ends.
- (3) Only one extension may be effected under subsection (2) in respect of any particular scheme, and the maximum period of such an extension is 12 months.

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 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 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.

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- (2) The regulations may prescribe a form of statement for the purposes of this section.
 - (3) A person does not commit an offence against subsection (1) 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.

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.

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.

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- (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.
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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) 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.
- (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.

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- (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

- (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

41 Occupational Associations (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 relating to, evidence;
 - (e) the grounds on which a complaint may be made;
 - (f) the verification of complaints by statutory declaration;
 - (g) the suspension of members from membership or from practice;
 - (h) the imposition of fines;
 - (i) the making of appeals;

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- (j) the exchanging of information with other occupational associations (within or outside Victoria).
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PART 6—THE PROFESSIONAL STANDARDS COUNCIL

Division 1—Establishment of the Council

42 Establishment of the Council

- (1) The Professional Standards Council is established by this Act.
- (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;
 - (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 the Council

43 Membership of the Council

- (1) The Council is to consist of 11 persons appointed by the Minister who have such experience, skills and qualifications as the Minister considers appropriate to enable them to make a contribution to the work of the Council.

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- (2) 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.

44 Provisions relating to members of the Council

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

45 Provisions relating to procedure of the Council

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

Division 3—Functions of the 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 Government Gazette of a scheme, or of an amendment to a scheme, submitted 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;

S. 46(1)(a)(i)
amended by
No. 81/2008
s. 17(1).

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- (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;
 - (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 statutory rule.
- (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 or law.
- (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.

S. 46(4)
amended by
No. 81/2008
s. 17(2).

46A Co-operation with authorities in other jurisdictions

S. 46A
inserted by
No. 81/2008
s. 18.

For the purpose of dealing with a scheme that operates, or indicates an intention to operate, as a scheme of both this jurisdiction and another jurisdiction, the Council—

- (a) may, in the exercise of its functions under this Act, act in conjunction with the appropriate Council for the other jurisdiction; and
- (b) may act in conjunction with the appropriate Council for the other jurisdiction in the exercise of that Council's functions under the corresponding law of that jurisdiction.

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.

Penalty: 5 penalty units.

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.

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- (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 the 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 the 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 Government Gazette; and
 - (b) must publish the direction in its next annual report of operations under Part 7 of the **Financial Management Act 1994**.

52 Professional Standards Council Fund

S. 52(1)
substituted by
No. 27/2007
s. 5(1).

- (1) The Council must establish and keep an account to be known as the Professional Standards Council Fund.

- (2) There must be paid into the Fund—

- (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

S. 52(2)(ba)
inserted by
No. 27/2007
s. 5(2).

- (ba) all money forming part of the Fund by virtue of section 60; and

- (c) any other money lawfully received by, made available to, or paid to, the Council.

S. 52(3)
substituted by
No. 27/2007
s. 5(3).

- (3) The money standing to the credit of the Fund is to be applied as directed by the Council in the payment of—

- (a) expenses incurred in carrying out the Council's functions by the Council or on its behalf; or
- (b) expenses incurred by a committee established under section 49 in carrying out the committee's functions under this Act; or

- (c) any payments to be made—
 - (i) to members of the Council under this Act; and
 - (ii) to other persons engaged to carry out functions under this Act; or
- (d) any other expenses incurred in the administration of this Act.

52A Delegation

S. 52A
inserted by
No. 27/2007
s. 6.

The Council, in writing, may delegate to the Secretary or to a person employed under Part 3 of the **Public Administration Act 2004** as an executive within the meaning of that Act, any function of the Council, other than—

- (a) this power of delegation; or
- (b) a function under Division 1 of Part 2, section 34 or Part 4.

Note

Section 42A(1)(b) of the **Interpretation of Legislation Act 1984** provides that any delegation may be made subject to such conditions or limitations specified by the person or body making the delegation.

52B Council may enter into agreements

S. 52B
inserted by
No. 27/2007
s. 6.

- (1) The Council may enter into an agreement with an entity for the provision by that entity of services of an administrative nature in support of the functions of the Council.
- (2) Without limiting subsection (1), the Council may enter into an agreement with a person acting for another State or a Territory for the provision by an officer or authority of the State or Territory of services of an administrative nature in support of the functions of the Council.

Professional Standards Act 2003
No. 100 of 2003
Part 6—The Professional Standards Council

s. 52B

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- (3) An agreement under this section may make provision for all or any matters necessary or convenient to be provided for, or incidental to, carrying out the agreement.
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PART 7—MISCELLANEOUS

53 Characterisation of this Act

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

54 No contracting out of this 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, whether the contract was made before, on or after the date on which the person became a person to whom the scheme applies.

S. 54
amended by
No. 81/2008
s. 19 (ILA
s. 39B(1)).

- (2) This section applies to an interstate scheme, whether or not contracting out is permitted under the corresponding law applying to the interstate scheme in another jurisdiction.

S. 54(2)
inserted by
No. 81/2008
s. 19.

55 No limitation on other insurance

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

56 Limitation of Supreme Court jurisdiction

It is the intention of sections 30, 31 and 48 to alter or vary section 85 of the **Constitution Act 1975**.

57 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed for carrying out or giving effect to this Act.

S. 57(2)(b)
substituted by
No. 27/2007
s. 7(1).

S. 57(2)(c)
inserted by
No. 27/2007
s. 7(1).

S. 57(2)(d)
inserted by
No. 27/2007
s. 7(1).

S. 57(2)(e)
inserted by
No. 27/2007
s. 7(1).

S. 57(2A)
inserted by
No. 27/2007
s. 7(2).

- (2) Without limiting subsection (1), the regulations may prescribe—
- (a) the fees for applications for the Council's approval, under Division 1 of Part 2, of a scheme, or an amendment to or revocation of a scheme; and
 - (b) an annual fee, whether calculated by an amount payable for each member of that occupational association who is subject to a scheme in force under the Act or by any other means of calculation;
 - (c) an additional member fee payable by an occupational association for each additional member of that occupational association who becomes subject to a scheme in force under this Act during the annual fee period;
 - (d) the payment of interest on unpaid fees and the rate at which that interest accrues;
 - (e) the time by which any fee, and any interest on unpaid fees, must be paid.

- (2A) The regulations—
- (a) may be of general or limited application;
 - (b) may differ according to differences in time, place or circumstances;
 - (c) may confer a discretionary authority or impose a duty on a specified person or body or class of persons or bodies;
 - (d) may provide in a specified case or class of cases for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations—

- (i) whether unconditionally or on specified conditions; and
 - (ii) either wholly or to such an extent as is specified.
- (3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

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S. 57(4)
repealed by
No. 81/2008
s. 22(a).

- (5) The regulations may—
- (a) provide for the waiver or remission by the Council of the whole or any part of any of the following—
 - (i) the fees for applications for the Council's approval, under Division 1 of Part 2, of a scheme, or an amendment to or revocation of a scheme;
 - (ii) an annual fee;
 - (iii) any additional member fee prescribed in accordance with subsection (2)(c);
 - (iv) any interest payable on unpaid fees;
 - (b) set out the circumstances in which waiver or remission of a fee or any interest referred to in paragraph (a) may occur;
 - (c) provide for the waiver or remission by a prescribed person of a fee or any interest referred to in paragraph (a) not exceeding a prescribed amount.

S. 57(5)
inserted by
No. 27/2007
s. 7(3).

58 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of this Act remain valid and whether the terms of this Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 6 years from the day on which this Act receives the Royal Assent.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 6 years.

S. 58(2)
amended by
No. 81/2008
s. 20.

S. 58(3)
amended by
No. 81/2008
s. 20.

S. 59
inserted by
No. 79/2006
s. 52.

59 Transitional provisions—Justice Legislation (Further Amendment) Act 2006

- (1) In this section *the amending Act* means the **Justice Legislation (Further Amendment) Act 2006**.
- (2) A scheme approved under this Act before the commencement of Part 15 of the amending Act is taken to be, and always to have been, a valid scheme if it would have been valid had the amendments made by the amending Act been in force when the scheme was approved.
- (3) Anything done or omitted to be done in respect of such a scheme is taken to be, and always to have been, validly done or omitted. In particular, an insurance policy required by this Act before a limitation on liability in damages of a person to whom such a scheme applies is reduced is taken to comply, and always to have complied, with this Act if it would have complied had the amendments made by the amending Act been in force when the policy was issued.
- (4) This section extends to proceedings pending in a court on the commencement of Part 15 of the amending Act.

60 Transitional provisions—Professional Standards Amendment Act 2007

S. 60
inserted by
No. 27/2007
s. 8.

On the commencement of section 5 of the **Professional Standards Amendment Act 2007**—

- (a) the Professional Standards Council Fund established in the Public Account as part of the Trust Fund under section 52(1) as in force immediately before that commencement is closed; and
- (b) all money standing to the credit of the Fund referred to in paragraph (a) must be paid into, and is taken to form part of, the Professional Standards Council Fund established by section 52(1) as substituted by that Act.

61 Expiry date of existing schemes—Professional Standards and Legal Profession Acts Amendment Act 2008

S. 61
inserted by
No. 81/2008
s. 21.

The period for which the Council has, before the commencement of section 16 of the **Professional Standards and Legal Profession Acts Amendment Act 2008**, determined that a scheme is to remain in force for the purposes of section 34(1), as in force immediately before that commencement, is taken to be specified in the scheme.

SCHEDULES

SCHEDULE 1

MODEL CODE

(Section 41)

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 THE COUNCIL

(Section 44)

1 Chairperson and Deputy Chairperson of the 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—
 - (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.
- (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.

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- (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

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 re-appointment.

4 Allowances

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
 - (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

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cl. 5(1)(d)
amended by
No. 4/2008
s. 32(Sch.
item 26).

- (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; or
 - (e) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
 - (f) is convicted in Victoria 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 Victoria of an offence that, if committed in Victoria, would be an offence so punishable.
- (2) The Minister may remove a member from office for incompetence or misbehaviour.

6 Filling of vacancy in office of member

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

7 Effect of certain other Acts

- (1) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

Sch. 2 cl. 7(1)
substituted by
Nos 108/2004
s. 117(1)
(Sch. 3
item 162),
80/2006
s. 26(Sch.
item 86).

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- (2) 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.

- (3) A member is not, in respect of the office of member, to be taken to hold an office or place of profit under the Crown which would—
- (a) prevent the member sitting or voting as a member of the Legislative Council or Legislative Assembly; or
 - (b) make void the member's election to the Legislative Council or Legislative Assembly; or
 - (c) prevent the member continuing to be a member of the Legislative Council or Legislative Assembly; or
 - (d) subject the member to liability to a penalty under the **Constitution Act 1975**.

8 Immunity

- (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

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- (b) in the reasonable belief that the act or omission was in the exercise of a function under this Act.
- (2) Any liability resulting from an act or omission that, but for subclause (1), would attach to a person attaches instead to the Council.
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SCHEDULE 3

**PROVISIONS RELATING TO PROCEDURE OF THE
COUNCIL**

(Section 45)

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 he or she thinks fit.

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Sch. 4

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Sch. 4
amended by
No. 27/2007
s. 9,
repealed by
No. 81/2008
s. 22(b).

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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 16 October 2003

Legislative Council: 19 November 2003

The long title for the Bill for this Act was "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 and for other purposes."

The **Professional Standards Act 2003** was assented to on 2 December 2003 and came into operation on 8 June 2004: Special Gazette (No. 128) 8 June 2004 page 1.

2. Table of Amendments

This Version incorporates amendments made to the **Professional Standards Act 2003** by Acts and subordinate instruments.

Treasury and Finance Legislation (Amendment) Act 2004, No. 40/2004

Assent Date: 8.6.04
Commencement Date: S. 19 on 9.6.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Professional Standards Act 2003**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 162) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Professional Standards Act 2003**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 86) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Professional Standards Act 2003**

Justice Legislation (Further Amendment) Act 2006, No. 79/2006

Assent Date: 10.10.06
Commencement Date: Ss 46–52, 88 on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Professional Standards Act 2003**

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 86) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Professional Standards Act 2003**

Professional Standards Amendment Act 2007, No. 27/2007

Assent Date: 26.6.07
Commencement Date: Ss 4, 6, 7, 9 on 27.6.07: s. 2(1); ss 5, 8 on 1.7.07: s. 2(2)
Current State: This information relates only to the provision/s amending the **Professional Standards Act 2003**

Motor Car Traders Amendment Act 2008, No. 4/2008

Assent Date: 4.3.08
Commencement Date: S. 32(Sch. item 26) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Professional Standards Act 2003**

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Endnotes

**Professional Standards and Legal Profession Acts Amendment Act 2008,
No. 81/2008**

Assent Date: 11.12.08
Commencement Date: Ss 3–22 on 12.12.08: s. 2
Current State: This information relates only to the provision/s
amending the **Professional Standards Act 2003**

3. Explanatory Details

No entries at date of publication.