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Dated 11 October 2023



TASMANIA

PROFESSIONAL STANDARDS ACT 2005

No. 24 of 2005

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PROFESSIONAL STANDARDS ACT 2005

No. 24 of 2005

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 members of occupational associations and to provide for related matters

[Royal Assent 24 June 2005]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Professional Standards Act 2005*.

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2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Objects of Act

The objects of this Act are as follows:

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

- (1) In this Act, unless the contrary intention appears –

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

appropriate council, in relation to another jurisdiction, means the authority that,

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under the corresponding law of that jurisdiction, has functions that are substantially the same as the Council's functions under this Act;

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;

corresponding law means –

- (a) a law of another jurisdiction that corresponds to this Act; and
- (b) a law of another jurisdiction that is prescribed by the regulations to be a corresponding law;

costs includes fees, charges, disbursements and expenses;

Council means the Professional Standards Council established by this Act;

court includes a tribunal and an arbitrator;

damages means –

- (a) damages awarded in respect of a claim or counter-claim or by way of set-off; and
- (b) costs in or in relation to the proceedings ordered to be paid in connection with such an award (other than costs incurred in

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enforcing a judgement or incurred on an appeal made by a defendant); and

- (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 that –

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

judgment includes –

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

occupational association means a body corporate –

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

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

occupational group includes a professional group and a trade group;

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

partner means a person who has entered into a partnership, within the meaning of the *Partnership Act 1891*, with another person;

scheme means a scheme for limiting the occupational liability of members of an occupational association, whether prepared under this Act or a corresponding law;

subordinate legislation has the same meaning as in the *Subordinate Legislation Act 1992*.

- (2) A reference in this Act to the amount payable under an insurance policy in respect of an occupational liability includes a reference to –
- (a) defence costs payable in respect of a claim, or notification that may lead to a claim (other than reimbursement of the

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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 or excess.

5. Application of Act

- (1) This Act does not apply to liability for damages arising from any of the following:
 - (a) the death of, or personal injury to, a person;
 - (b) any negligence or other fault of an Australian legal practitioner in acting for a client in a personal injury claim;
 - (c) a breach of trust;
 - (d) fraud or dishonesty;
 - (e) an intentional tort.
- (2) This Act does not apply to liability which may be the subject of proceedings under Division 2 of Part XI of the *Land Titles Act 1980*.
- (3) This Act does not apply to any cause of action arising under, or with respect to, a contract, or contractual relations, entered into before the commencement of this Act (whether or not the action lies in contract) unless the parties, after the commencement of this Act, vary the relevant

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contract so as to make express provision for the application of this Act.

- (4) This Act does not apply to any cause of action (whether or not the action lies in contract) arising under, or with respect to, a contract, or contractual relations –
- (a) entered into by a member of a scheme approved under section 8 if that member entered into the contract or contractual relations after the commencement of this Act but before that scheme commenced; or
 - (b) entered into by a person before that person became a member of a scheme that, at the time the person became a member, had commenced –

unless the parties, after the commencement of the scheme, vary the relevant contract, or relevant contractual relations, so as to make express provision for the application of this Act.

- (5) This section applies to an interstate scheme in its operation in Tasmania despite a corresponding law that applies to the interstate scheme in another jurisdiction stating that the corresponding law does apply to a liability of a kind referred to in subsection (1) or (2).

6. Relationship of Act to other laws

- (1) If a provision made by or under Part 3, 4 or 5 or Schedule 1 is inconsistent with a provision made

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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 Crown

- (1) This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, 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.
- (1A) A scheme prepared under this section may indicate an intention to operate as a scheme –
 - (a) of Tasmania only; or
 - (b) of Tasmania and another jurisdiction.
- (2) The Council may, on the application of an occupational association, approve a scheme prepared under this section.

9. Public notification of schemes

- (1) Before deciding whether to approve a scheme, the Council must publish a notice in all daily newspapers published in Tasmania –
 - (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.

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- (2) If a scheme indicates an intention to operate as a scheme of both Tasmania and another jurisdiction, the Council must also publish a similar notice in the other jurisdiction in accordance with the corresponding law of that jurisdiction that relates to approval of a scheme prepared in that jurisdiction.

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 deciding whether to approve 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

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- 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 30) determined by the occupational association concerned in relation to insurance policies;
 - (h) the provisions contained in the proposed scheme or under statute for the making and determination of complaints and the imposition and enforcement of disciplinary measures against members of the occupational association concerned.
- (2) If a scheme indicates an intention to operate as a scheme of both Tasmania and another jurisdiction –
- (a) the Council must also consider any matter that the appropriate council for that other jurisdiction would have to consider under the provisions of the corresponding law of that jurisdiction

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that relate to the approval of a scheme prepared in that other jurisdiction; and

- (b) the matters to be considered by the Council, whether under subsection (1) or under paragraph (a) of this subsection, are to be considered in the context of each jurisdiction concerned.

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) At the same time as the Council submits a scheme to the Minister, the Council is to provide the Minister with a summary of the Council's reasons for approving the scheme.
- (3) Paragraph (e) of item 2 of Schedule 1 to the *Subordinate Legislation Act 1992* applies to a proposed scheme submitted to the Minister as if –
 - (a) the proposed scheme were proposed subordinate legislation; and

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- (b) the reference in that paragraph to any other subordinate legislation included a reference to any other existing or proposed scheme.
- (4) If the scheme indicates an intention to operate as a scheme of both Tasmania and another jurisdiction, the Council may also submit the scheme to the Minister administering the corresponding law of that other jurisdiction.

14. Gazettal, tabling and disallowance of schemes

- (1) The Minister, after carrying out any consultation required under section 13(3), may authorise the publication in the *Gazette* of a scheme submitted to the Minister –
 - (a) under section 13 by the Council; or
 - (b) in the case of an interstate scheme, under a corresponding law by the appropriate council for the jurisdiction in which the scheme was prepared.
- (2) Section 47(3)(c), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* applies to a scheme in respect of which the Minister has authorised publication in the *Gazette* under subsection (1) as if the scheme were regulations and notice of the making of the regulations had been published in the *Gazette* when the scheme was published in the *Gazette*.
- (3) Section 7(4) and section 8 of the *Subordinate Legislation Committee Act 1969* apply to a

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scheme in respect of which the Minister has authorised publication in the *Gazette* under subsection (1) as if –

- (a) the scheme were a regulation; and
 - (b) notice of the making of the regulation had been published in the *Gazette* when the scheme was published in the *Gazette*; and
 - (c) section 8(1)(ab) of that Act included a reference to compliance with the provisions of this Act.
- (3A) In subsection (1), a reference to an interstate scheme includes a reference to an instrument amending an interstate scheme.
- (4) The Minister does not incur any liability for or in respect of a scheme in consequence of its authorisation, commencement, continued operation, amendment or revocation.

15. Commencement of schemes

- (1) A scheme published in the *Gazette* with the authorisation of the Minister commences –
 - (a) on such day subsequent to 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.

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- (2) This section is subject to any order of 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.

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 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 be 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
 - (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

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- (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 the scheme was prepared that relate to the contents of schemes prepared in that jurisdiction.
- (5) 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 and the Council must comply with any such direction.
- (2) The Council may on its own initiative at any time 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 Tasmania.

- (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 30 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.
- (5) The Council may recover the cost of any review of a scheme under this section from the occupational association to whose members the scheme relates as a debt due to it from that occupational association.

18. Amendment of Tasmanian schemes

- (1) An occupational association may prepare an amendment to a scheme that relates to its members.
- (2) The Council may, on the application of an occupational association, approve an amendment to a scheme that relates to the members of the association.
- (3) The Minister may direct an occupational association to prepare an amendment to a scheme if the Minister considers that the scheme no longer meets the objects of this Act.
- (4) If the Minister directs an occupational association to prepare an amendment to a

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scheme under subsection (3), the association must do so within a reasonable time.

- (5) If the Minister considers that the occupational association has not prepared an amendment to a scheme within a reasonable time, the Minister may revoke the scheme.
- (6) If an amendment to a scheme is prepared by an occupational association as a result of a direction from the Minister, the occupational association must submit the amendment to the Council for approval and the Council, if it is satisfied that the amendment complies with this Act and the Minister's direction, must approve the amendment.
- (7) The provisions of sections 8, 9, 10, 11, 12, 13, 14, 15 and 16 apply, with any necessary modifications, to the amendment of a scheme as well as to the making of a scheme.
- (8) This section does not apply to an interstate scheme.

19. Revocation of Tasmanian schemes

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

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- (3) The Council may, on its own initiative, at any time while a scheme remains in force, prepare and approve the revocation of the scheme if satisfied that the scheme no longer meets the objects of this Act.
- (4) If a scheme prepared under this Act indicates an intention to operate in both Tasmania and another jurisdiction and is revoked under this section, the Council must give notice of the revocation to the Minister administering the corresponding law of that jurisdiction.
- (5) This section does not apply to an interstate scheme.

19A. Publication of revocation of interstate scheme under corresponding law

If the Minister is notified that an interstate scheme has been revoked under the corresponding law of the jurisdiction in which the scheme was prepared, the Minister must cause notice of that revocation to be published in the *Gazette*.

19B. Termination of operation of interstate scheme in Tasmania

- (1) On the application of an occupational association, the Council may prepare an instrument terminating the operation, in Tasmania, of an interstate scheme that relates to the members of the association.

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- (2) The Minister may direct the Council to prepare an instrument terminating the operation, in Tasmania, of an interstate scheme.
- (3) The Council must comply with a direction under subsection (2) but may, on its own initiative at any time while an interstate scheme remains in force, prepare an instrument terminating the operation, in Tasmania, of the scheme.
- (4) The provisions of sections 9, 10, 11, 12, 13, 14, 15 and 16 apply, with any necessary modifications, to the termination, in relation to Tasmania, of an interstate scheme.
- (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 Tasmania –
 - (a) on such day later than the publication of the instrument as may be specified in the instrument; or
 - (b) if no such day is specified in the instrument, at the end of the period of 2 months commencing on the day of the publication of the instrument.

Division 2 – Contents of schemes

20. Persons to whom scheme applies

- (1) A scheme may provide that it applies to –

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-
- (a) all persons within an occupational association; or
 - (b) a specified class or specified classes of persons within an occupational association; or
 - (c) specified occupational associations within a specified industry.
- (2) A scheme may provide that the occupational association concerned may, on application by a person, exempt the person from the scheme.
- (3) If a person is exempted from a scheme, the person is exempted from the whole of the scheme.
- (4) 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.
- (5) Subsection (2) does not apply to a person to whom a scheme applies by virtue of section 21, 22 or 23.

21. Officers or partners of persons to whom scheme applies

- (1) If a scheme applies to a body corporate, the scheme also applies to each officer of the body corporate.
- (2) If a scheme applies to a person, the scheme also applies to each partner of the person.
- (3) 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 in section 9 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 takes part in the management of the body corporate.

22. Employees of persons to whom scheme applies

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

23. Other persons to whom scheme applies

If persons are prescribed by the regulations for the purposes of section 32(4) as being associated with persons to whom a scheme applies, the scheme also applies to the prescribed persons.

24. 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 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.

25. 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

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proceeding relating to occupational liability is brought is able to satisfy the court –

- (a) that the person has business assets the net current market value of which is not less than the amount of the monetary ceiling specified in the scheme in relation to the 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
 - (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.

26. 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

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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 –

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.

27. Specification of different limits of liability

A scheme –

- (a) may 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) may 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 a specified class of cases.
- (c)

28. Combination of provisions under sections 24, 25 and 26

If, in a scheme, provisions of the kind referred to in section 26 and provisions of the kind referred

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to in section 24 or 25 (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 26 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 24 or 25.

29. Liability that cannot be limited by scheme

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 specified in the scheme.

29A. 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 required or 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.

30. 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,

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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 do so by way of an amendment to the scheme in accordance with the provisions of section 18.

Division 3 – Effect of schemes

31. Limit of occupational liability by schemes

- (1) To the extent provided by this Act and the provisions of the scheme, a scheme limits the occupational liability, in respect of a cause of action founded on an act or omission occurring during the period when the scheme is in force, of any person to whom the scheme applied at the time when the act or omission occurred.
- (2) A scheme does not limit the liability of a person (the “**professional**”) to another person (the “**client**”) if, at no stage before the time of the relevant act or omission, did the professional –
- (a) give, or cause to be given, to the client a document that carried a statement of a kind referred to in section 36(1); or
 - (b) otherwise inform the client, whether orally or in writing, that the

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professional's liability was limited in accordance with this Part.

- (3) Subsection (2) does not affect any limitation of the liability of a professional to a person other than the client.
- (4) The applicable limitation of liability is the limitation specified by the scheme as in force at the time of the relevant act or omission.
- (5) A limitation of liability that, in accordance with this section, applies in respect of an act or omission continues to apply to every cause of action founded on it, irrespective of when the cause of action arises or proceedings are brought in respect of it, and even if the scheme has been amended or has, in accordance with section 35, 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 20(2).

32. 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

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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 of the same type 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 persons 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 21); 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.

33. 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.

34. Proceedings to which scheme applies

Subject to section 5(3) and (4), a scheme in force under this Act applies to proceedings relating to an act or omission that occurred after the commencement of that scheme.

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35. Duration of scheme

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

- (1A) A scheme, other than an interstate scheme, remains in force until whichever of the following first occurs:
 - (a) the expiration of the period specified in the scheme in accordance with subsection (1) or, if that period has been extended under subsection (2), the expiration of that extended period;
 - (b) the scheme is revoked;
 - (c) the scheme's operation ceases because of the operation of another Act;
 - (d) the scheme is declared void 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;
 - (e) the scheme is disallowed under section 47(4) of the *Acts Interpretation Act 1931*.

- (1B) An interstate scheme remains in force in relation to Tasmania until whichever of the following first occurs:

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- (a) the expiration of the period for which the scheme is in force under the corresponding law of the other jurisdiction in which the scheme was prepared or, if that period has been extended under that corresponding law, the expiration of that extended period;
 - (b) the scheme otherwise ceases to have effect in that other jurisdiction;
 - (c) the scheme's operation in relation to Tasmania has been terminated under this Act;
 - (d) the scheme is disallowed under section 47(4) of the *Acts Interpretation Act 1931*.
- (2) The Minister may, by notice published in the *Gazette* on or before the day when the original period ends, extend the period for which a scheme, other than an interstate scheme, is in force.
- (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.
- (4) If the Minister under subsection (2) extends the period for which a scheme is in force and that scheme indicates an intention to operate as a scheme of both Tasmania and another jurisdiction, the Minister is to notify the Minister administering the corresponding law of that other jurisdiction of that extension.

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- (5) If the Minister is notified that the period for which an interstate scheme is in force has been extended under the corresponding law of the jurisdiction in which the scheme was prepared, the Minister must cause notice of that extension to be published in the *Gazette*.

36. 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: Fine not exceeding 50 penalty units.

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

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Penalty: Fine not exceeding 50 penalty units.

PART 3 – COMPULSORY INSURANCE

37. Occupational association may compel its members to insure

- (1) An occupational association may require its members to hold insurance against occupational liability and, if it does so, the requirement must be stated in the scheme.
- (2) Such a requirement may be imposed as a condition of membership or otherwise.
- (3) The occupational association may set the standards with which the insurance must comply.
- (4) The occupational association may specify different standards of insurance for different classes of members.

38. Monitoring claims

- (1) An occupational association may establish a claims committee for monitoring and analysing claims made against its members for occupational liability or 2 or more occupational associations may establish a common committee for that purpose.
- (2) It is not necessary for all the committee members to be members of the occupational association or associations concerned.
- (3) An occupational association may, through such a committee or otherwise, issue practice advice to

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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 functions.

**PART 4 – PROFESSIONAL STANDARDS AND RISK
MANAGEMENT**

39. Risk management strategies

- (1) If, under section 8, an occupational association seeks the approval of the Council to a scheme, it must furnish the Council with –
 - (a) a detailed list of the occupational standards and 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 of the occupational association or otherwise.
- (3) The strategies are to apply in addition to other statutory requirements and must not be inconsistent with them.

40. Reporting

- (1) An occupational association must provide information to the Council concerning its occupational standards and risk management strategies if requested to do so by the Council.
- (2) An occupational association must provide an annual report to the Council and, if requested by the Minister, to the Minister as to the implementation and monitoring of its risk

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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 38.
- (4) The occupational association's annual report is to be incorporated into the Council's annual report in such form as the Council determines.

41. 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 occupational standards and risk management strategies –
 - (a) may be conducted at any time by the Council or the association; and
 - (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

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- 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 and, if requested by the Minister, to the Minister; and
 - (c) the Council may recover the costs of the compliance audit from the occupational 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 and, if requested by the Minister, to the Minister.

**PART 5 – COMPLAINTS AND DISCIPLINARY
MATTERS**

42. 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) To the extent to which the provisions of the Model Code are covered by statutory provisions, a scheme is not required to adopt those provisions in the Code.
- (3) 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;

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Part 5 – Complaints and disciplinary matters

- (e) the grounds on which a complaint may be made;
- (f) the verification of complaints by statutory declaration;
- (g) the suspension of members from membership or from practice;
- (h) the imposition of fines;
- (i) the making of appeals;
- (j) the exchanging of information with other occupational associations (within or outside Tasmania).

**PART 6 – THE PROFESSIONAL STANDARDS
COUNCIL**

Division 1 – Establishment of Council

43. Establishment of Council

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

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Division 2 – Membership and procedure of Council

44. Membership of 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.
- (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.

45. Provisions relating to members of Council

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

46. Provisions relating to procedure of Council

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

Division 3 – Functions of Council

47. 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; and
 - (ii) the operation of this Act; and
 - (iii) any other matter relating to the occupational liability of members of occupational associations;
- (b) to give advice to occupational associations concerning policies of insurance for the purposes of Part 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;

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- (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 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 occupational standards of occupational groups;

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- (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) Subject to subsection (3), the Council may do all things necessary or convenient to be done in connection with the performance of its functions and, in particular, may charge fees to an occupational association for approving schemes and generally for any services provided by the Council.
- (3) The Council is not empowered to give advice concerning occupational standards contained in any other Act or statutory rule.
- (4) Any advice given to the Minister by the Council may be given either at the request of the Minister or without any such request.
- (5) The Council has such other functions as are conferred or imposed on it by or under this or any other Act.
- (6) 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.

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47A. Cooperation with authorities in other jurisdictions

For the purposes of dealing with a scheme that operates, or indicates an intention to operate, as a scheme of both Tasmania and another jurisdiction, the Council –

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

Division 4 – Miscellaneous

48. Requirement to provide information

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 to a scheme under section 8, or to an amendment to or revocation of a scheme –

to provide information to it which it may reasonably require in order to exercise its functions.

49. 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 36 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.

50. 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.

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- (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.

51. Engagement of consultants

The Council, or a committee established under section 50, may engage as consultants to it persons with suitable qualifications and experience either in an honorary capacity or for remuneration.

52. Accountability of Council

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

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- (a) the Minister may cause the direction to be published in the *Gazette*; and
- (b) the direction must be included in the report by the relevant accountable authority under section 42 of the *Financial Management Act 2016*.

53. Council is not Crown

Nothing in this Act has the effect of –

- (a) making the Council the servant or agent of the Crown for the purposes of this or any other Act; or
- (b) conferring on the Council any status, privilege or immunity of the Crown.

PART 7 – MISCELLANEOUS

54. Characterisation of Act

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

55. No contracting out of Act

- (1) Subject to section 27(b), this Act applies in relation to a person to whom a scheme in force under this Act applies despite any contract to the contrary made on or after the date on which the person became a person to whom the scheme applies.
- (2) This section applies to an interstate scheme, in relation to its operation in Tasmania, whether or not contracting out is permitted under the corresponding law applying to the interstate scheme in another jurisdiction.

56. 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.

57. Regulations

- (1) The Governor may make regulations for the purposes of this Act.

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- (2) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (3) The regulations may authorise any matter to be from time to time determined, applied or regulated by any person or body specified in the regulations.

58. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

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SCHEDULE 1 – MODEL CODE

Section 42

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 2005*.

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);

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(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

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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**

Section 45

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 –
 - (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.

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- (2) In the absence of a member, the member's deputy –
 - (a) is, if available, to act in the place of the member; and
 - (b) while so acting, has all the functions of the member and is taken to be a member.
- (3) The deputy of a member who is Chairperson or Deputy Chairperson of the Council does not (because of this clause) have the member's functions as Chairperson or Deputy Chairperson.

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 reappointment.

4. 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
- (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; or
- (e) becomes a represented person within the meaning of the *Guardianship and Administration Act 1995*; or
- (f) is convicted in Tasmania 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 Tasmania of an offence that, if committed in Tasmania, would be an offence so punishable.

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

5. Filling of vacancy in office of member

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

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fill the vacancy for the remainder of the member's term of office.

6. Effect of certain other Acts

- (1) The *State Service Act 2000* does not apply to a member in respect of the office of member.
- (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.

7. 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.

**SCHEDULE 3 – PROVISIONS RELATING TO
PROCEDURE OF COUNCIL**

Section 46

1. General procedure

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

The foregoing text of the *Professional Standards Act 2005* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 July 2019 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Professional Standards Act 2004</i>	No. 24 of 2005	1.8.2005
<i>Justice and Related Legislation (Further Miscellaneous Amendments) Act 2006</i>	No. 43 of 2006	18.12.2006
<i>Legal Profession (Miscellaneous and Consequential Amendments) Act 2007</i>	No. 66 of 2007	31.12.2008
<i>Professional Standards Amendment Act 2016</i>	No. 49 of 2016	24.11.2016
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019

TABLE OF AMENDMENTS

Provision affected	How affected
Section 4	Substituted by No. 43 of 2006 Amended by No. 49 of 2016, s. 4
Section 5	Amended by No. 66 of 2007, Sched. 1 and No. 49 of 2016, s. 5
Section 8	Amended by No. 49 of 2016, s. 6
Section 9	Substituted by No. 49 of 2016, s. 7
Section 11	Substituted by No. 49 of 2016, s. 8
Section 13	Amended by No. 49 of 2016, s. 9
Section 14	Amended by No. 49 of 2016, s. 10
Section 15	Amended by No. 49 of 2016, s. 11
Section 16	Amended by No. 49 of 2016, s. 12
Section 17	Amended by No. 49 of 2016, s. 13
Section 18	Amended by No. 49 of 2016, s. 14
Section 19	Amended by No. 49 of 2016, s. 15

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Provision affected	How affected
Section 19A	Inserted by No. 49 of 2016, s. 16
Section 19B	Inserted by No. 49 of 2016, s. 16
Section 24	Substituted by No. 43 of 2006, s. 50
Section 25	Amended by No. 43 of 2006, s. 51
Section 26	Amended by No. 43 of 2006, s. 52
Section 27	Amended by No. 49 of 2016, s. 17
Section 29A	Inserted by No. 43 of 2006, s. 53
Section 34	Amended by No. 49 of 2016, s. 18
Section 35	Amended by No. 49 of 2016, s. 19
Section 47A	Inserted by No. 49 of 2016, s. 20
Section 52	Amended by No. 4 of 2017, Sched. 1
Section 55	Substituted by No. 49 of 2016, s. 21
