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PARLIAMENT OF WESTERN AUSTRALIA

**SELECT COMMITTEE ON
PROFESSIONAL AND OTHER OCCUPATIONAL
LIABILITY**

SECOND INTERIM REPORT

Presented by the Hon Max Evans (Chairman)

2
SEPTEMBER 1992

TERMS OF REFERENCE

On November 13 1991 the Legislative Council established a Select Committee on Professional and Occupational Liability with the following terms of reference"

1. *A Select Committee of 4 members, any 2 of whom shall constitute a quorum, be appointed to inquire into and report on limitation of professional and other occupational liability, and more particularly -*
 - (a) *the number and quantum of civil claims against members of professional and occupational groups in Western Australia;*
 - (b) *the extent to which the existing mandatory and voluntary professional indemnity insurance coverage of members of the professions and other occupational groups is adequate to protect the interests of their clients;*
 - (c) *the availability and cost of professional/occupational indemnity insurance;*
 - (d) *whether there should be a system of limitation on liability of members of professional and/or occupational groups linked to any one or more of -*
 - (i) *maintenance of mandatory minimum capital reserves;*
 - (ii) *compulsory mandatory minimum professional indemnity insurance cover;*
 - (iii) *the fee charged for the work done;*
 - (iv) *the cost of the project;*
 - (v) *the existence of a representative self-regulatory professional or occupational body which imposes adequate controls on entry to membership, training and professional development, ethical standards, risk management, and internal dispute resolution and disciplinary procedures;*
 - (vi) *greater Government regulation;*
 - (vii) *any other relevant factor; and*
 - (e) *an examination of the desirability of the New South Wales Occupational Liability Bill as a legislative model for the enactment of limits on the civil liability of professional and other occupational groups.*
2. *The Committee have the power to send for persons, papers and records.*
3. *The Committee have the power to move from place to place.*
4. *The proceedings of the Committee during the hearing of evidence be open to accredited representatives of the news media and the public.*
5. *The Committee report not later than May 15 1992.*

On November 27 1991 the Hon J M Brown; Fred McKenzie, Peter Foss and Max Evans were appointed to be the members of the Committee.

Members of the Committee:

Hon Max Evans (Chairman)
Hon J M Brown (until March 1992)
Hon Fred McKenzie
Hon Peter Foss
Hon Mark Nevill (from March 1992)

Staff of the Committee:

Mrs Jennie Westaway (Advisory/Research Officer)
Ms Jan Paniperis (Clerk)

Address:

Parliament House, Perth, WA 6000 Telephone 222 7222

A. INTRODUCTION

1. In the First Interim Report of the Committee it was made clear that the Committee was awaiting some major submissions before it could deal comprehensively with certain aspects of the Terms of Reference.
2. The Committee has now received major submissions from:-
 - * The Australian Medical Association & the Medical Defence Association of W.A.
 - * The Royal Australian College of Obstetricians and Gynaecologists
 - * The Law Society of W.A.
 - * The Institute of Chartered Accountants
 - * The Australian Institute of Engineers (WA Division)
3. The Committee has also heard from the following witnesses in open meetings of the Committee:-
 - * Mr Des Pearson: Auditor General of WA
 - * Mr Nic Horspool: Director, Professional & Corporate Development, Office of the Auditor General
 - * Professor Con Michael: President of the Royal Australian College of Obstetricians & Gynaecologists
 - * Mr Peter Booth: Chartered Professional Engineer, representing The Institute of Engineers, Australia
 - * Mr Geoff Smith: Consulting Engineer, representing The Institute of Engineers
 - * Mr Greg Pynt: Partner, Mallesons Stephen Jaques
 - * Mr Ron Swinney: Bird Cameron, Chartered Accountants
 - * Mr Geoff Brayshaw: Chairman, Institute of Chartered Accountants
 - * Mr Alan Piper: Director, Consulting Services, Building Management Authority
 - * Mr John Coleman: Manager, Contract & Legal Services, Building Management Authority
4. The Chairman, the Hon Max Evans and the Advisory/Research Officer, Mrs Jennie Westaway also met with Mr Peter Costello, Federal Shadow Attorney General, to advise him of the Committee's activities and to discuss Trade Practices and Corporations Law implications. The Committee thanks Mr Costello for making his time available for this meeting.

B. INVESTIGATIONS

5. The Committee is in the course of drafting its final report. However, we are aware that the State of New South Wales is proceeding to introduce its own legislation this year.

6. In view of the fact that:

- (a) we are directed to have regard to the New South Wales legislation;
- (b) we have formed the opinion that a degree of uniformity between the States is essential for the success of the legislation; and
- (c) there are matters which have arisen from the evidence we have taken that causes us concern with the present drafting of the New South Wales legislation

we consider it vital that we express these concerns to the persons briefing Parliamentary Counsel in New South Wales as soon as possible. This will enable them to benefit from our views and, hopefully, they will be able to incorporate them in their legislation.

7. The Committee advises that it has been given approval to undertake this visit and hereby formally gives the House notice of its intention to travel.

8. Some of the matters we are concerned about are:

- (i) the operation of the Trade Practices (C'wlth) & Fair Trading (WA) Acts;
- (ii) interstate operations, especially partnerships;
- (iii) the joint & several liability of partners;
- (iv) the link with personal injuries actions; and
- (v) the operation of the Limitation Act.

9. Although the Committee is not in a position to make final recommendations or draft amendments, we have annexed some preliminary draft amendments which indicate some of the areas we are considering. These are annexed for comment only. They are not the Committee's recommendations.

10. Whilst in Sydney, the Committee has arranged to meet with the Attorney General, his staff and members of the Office of the Premier, including Mr Dick Humphries and Mr Vic Prosser. The Committee will also meet with Mr John Westlake, Legal Counsel of Ernst & Young, who has been responsible for the preparation of substantive submissions to the Committee from the Institute of Chartered Accountants and Mr Frank Earl, who has provided valuable insurance data on behalf of the Institute.

11. The Committee intends to attach to the Final report a copy of the proposed *Professional Standards (WA) Bill 1992*, however a copy of the current draft *Occupational Standards Bill 1992* is attached to this Report for the information of the House.

C. ANNEXURE 1.

Scheme Establishment

1. The liability of an eligible person may be limited in accordance with a Scheme made under this Act.
2. The Scheme may provide for liability to be limited by reference to:-
 - (i) maintenance of mandatory minimum capital reserves;
 - (ii) compulsory mandatory minimum professional indemnity insurance cover;
 - (iii) the fee charged for the work done;
 - (iv) the cost of the project;
 - (v) the making of any regulations governing the conduct of those members; and
 - (vi) any other relevant factor.or may be a combination of these or other terms.
3. A Scheme may contain provisions, the non-compliance with which:-
 - (a) deprives a person of the entitlement to limitation; or
 - (b) may result in cancellation of the Scheme.
4. A Scheme shall be made by the Court:-
 - (a) on the application of a professional association;
 - (b) with the recommendation of the Council; and
 - (c) with the consent of the Minister.
5. Regulations may vary any amount or multiple provided in a Scheme.
6. Schemes may be amended, varied or cancelled.
7. Subject to subsection (2):-
 - (i) the limitation to be applied shall be that in force at the time the relevant cause of action arose;
 - (ii) where no Scheme was in force at the time the cause of action arose, then with respect to any action in which judgement has not been delivered the limitation to be applied shall be that applying under the Scheme when

first brought into effect;

- (iii) a cancellation of a Scheme shall not prevent limitation with respect to any cause of action that arose before cancellation of the Scheme; and
- (iv) a Scheme shall be a regulation for the purposes of the Interpretation Act and shall into operation when no longer subject to disallowance.

ANNEXURE 2.

Suggested Reponse to Evidence of Medical Profession

1. Subject to subsection 2, in any action against a health professional alleging professional negligence, the question whether the health professional has been negligent shall be determined by the Court with two assessors one of whom shall be a medical practitioner and the other a health professional of the same profession as the person against whom the negligence is alleged.
2. When the action alleges negligence against persons from more than one health profession, the Court shall determine from what profession the second assessor shall be drawn



OCCUPATIONAL STANDARDS BILL 1992

NEW SOUTH WALES

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OCCUPATIONAL STANDARDS BILL 1992

A BILL FOR

AN ACT to provide for the limitation of liability of members of occupational associations in certain circumstances and to facilitate improvement in the standards of services provided by those members.

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short Title

1. This Act may be cited as the *Occupational Standards Act 1992*.

Commencement

2. This Act shall come into operation on such day as is or days as are respectively fixed by proclamation.

Interpretation

3. In this Act, unless the contrary intention appears-

"Council" means the Occupational Standards Council established under this Act;

"court" includes an arbitrator

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

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

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

"function" includes a power, authority and duty;

"judgement" includes:

- (a) a judgement 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 by a member of an occupational association acting in the performance of his or her occupation.

Does this Act apply to all types of occupational liability?

- 4. (1) This Act does not apply to liability for damages arising from any of the following:
 - (a) the death of or personal injury to a person;
 - (b) any negligence or other fault of a solicitor in acting for a client in a personal injury claim;
 - (c) a breach of trust; or
 - (d) fraud or dishonesty;
- (2) This Act does not apply to liability which may be the subject of proceedings under Part 14 of the *Real Property Act 1900*.

Act binds the Crown

- 5. Except where otherwise expressly provided, this Act shall bind the Crown.

PART 2 - LIMITATION OF LIABILITY

Division 1 - Limitation of liability by specified monetary ceiling

To whom does this Division apply?

- 6. (1) This Division applies to the members specified in Schedule 2 of an occupational association so specified.
- (2) A specification of members of an occupational association may specify all members of a class of members.

Limitation of liability by multiple of charges

- 7. (1) If a person to whom this Division applies and against whom a cause of action relating to occupational liability is brought is able to satisfy the court that the person has an insurance policy:
 - (a) insuring the person against that occupational liability;
 - and
 - (b) under which the amount payable in respect of the occupational liability relating to that cause of action is not less than the amount of the monetary ceiling specified in relation to the person in Schedule 1 at the time at which the cause of action arose,the person is not liable in damages in relation to that cause of action above the amount so specified.

Limitation of liability by reference to amount of business assets

8. (1) If a person to whom this Division applies and against whom a cause of action relating to occupational liability is brought is able to satisfy the court:
- (a) that the person has business assets, the net current market value of which is not less than the amount specified in relation to the person in Schedule 1 at the time at which the cause of action arose;
 - (b) that:
 - (i) the person has business assets and an insurance policy insuring the person against that occupational liability; and
 - (ii) the net current market value of the assets and the amount payable under the insurance policy in respect of the occupational liability relating to that cause of action, if combined, would total an amount that is not less than the amount of the monetary ceiling specified in relation to the person in Schedule 1 at the time at which the cause of action arose,

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

(2) In this section, "business assets" means the property of a person which is able to be taken in proceedings for enforcement of a judgment of a court, other than property which is not used in the performance of the person's occupation.

Specification of different amounts for different persons

9. Different amounts may be specified in Schedule 1 for different classes of persons within an occupational association.

Division 2 - Limitation of liability by multiple of charges

To whom does this Division apply?

10. (1) This Division applies to the members specified in Schedule 2 of an occupational association so specified.
- (2) A specification of members of an occupational association may specify all members of a class of members.

Limitation of liability by multiple of charges

11. (1) If a person to whom this Division applies and against whom a cause of action relating to occupational liability is brought is able to satisfy the court that the person has an insurance policy:
- (a) insuring the person against that occupational liability; and
 - (b) under which the amount payable in respect of the occupational liability relating to that cause of action is not less than an amount (in this section called 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 Schedule 2 in relation to the person at the time at which the cause of action arose,

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

(2) In determining the amount of a reasonable charge for the purposes of this section, a court is to have regard to any amount actually charged and to:

- (a) the amount that would ordinarily be charge 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 excluded amount specified in Schedule 2 in relation to the person.

Specification of different multiples for different persons

12. Different multiples may be specified in Schedule 2 for different classes of persons within an occupational association.

Division 3 - Miscellaneous

Combination of principles under Divisions 1 and 2

13. If both Division 1 and Division 2 apply to a person at the same time in respect of the same occupation, the damages which may be awarded against the person are to be calculated in accordance with section 11 but must not exceed the amount of the monetary ceiling specified in relation to the person in Schedule 1 at the time at which the relevant cause of action arose.

Insurance to be of requisite standard

14. For the purposes of this Part, 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 king.

Public sector employees

15. (1) A person to whom Division 1 or 2 (or Divisions 1 and 2) applies who was employed in the public sector at the time at which a cause of action against the person relating to occupational liability arose is taken to have an insurance policy which satisfies the requirements of section 7 or 11 (or sections 7 and 11), and section 14.
- (2) In this section, "employed in the public sector" means:
- (a) employed in the Public Service, the Education Teaching Service or the Police Service; or
 - (b) employed in the service of statutory body representing the Crown; or
 - (c) holding a statutory office.

Limitation of amount of damages

16. A limitation imposed by this Act of an amount of damages is a limitation of the amount of damages which may be awarded for a single claim and is not a limitation of the amount of damages which may be awarded for all claims arising out of a single event.

Effect of Act on other parties to proceedings

17. This Act does not limit the liability of a party to proceedings who is neither a person to whom Division 1 applies nor a person to whom Division 2 applies.

Time limit on limitation of liability

18. (1) The application of Division 1 or 2 (or Divisions 1 and 2) to the members of an occupational association ceases 3 years after the members were specified (or last specified) in Schedule 1 or 2 (or Schedule 1 and 2) unless:
- (a) the application ceases earlier in accordance with an Act of Parliament; or
 - (b) the application ceases later in accordance with an extension under this section.
- (2) The Minister may extend the 3-year period, by up to 6 months, if notice of the extension is published in the Gazette before the 3-year period ends.

Amendment of Schedules 1 and 2

19. (1) Schedules 1 and 2 may only be amended, substituted or repealed by an Act of Parliament, except as provided by this section.
- (2) The regulations may amend Schedule 1 or 2:
- (a) to increase an amount specified in Schedule 1 or 2; and
 - (b) to increase a multiple specified in Schedule 2.
- (3) Such a regulation may contain provisions of a savings or transitional nature consequent on the amendment.
- (4) Such a regulation can be made only on the recommendation of the Council.

Notification of limitation of liability

20. (1) If a person's occupational liability is limited in accordance with this Part, all official correspondence ordinarily used by the person in the performance of the person's occupation is to carry a statement to that effect.
- (2) A person who contravenes this section is guilty of an offence.
Maximum penalty: 50 penalty units.
- (3) The regulations may prescribe a form of statement for the purposes of this section.
- (4) A person does not commit an offence against this section if the statement carried on the person's official correspondence is in the prescribed form.

PART 3 - COMPULSORY INSURANCE

Occupational association may compel its members to insure

21. (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.

Monitoring claims

22. (1) An occupational association may establish a committee for monitoring and assessing 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.

PART 4 - RISK MANAGEMENT

Risk management strategies

23. (1) When an occupational association makes an application under section 31 (Applications by occupational associations for inclusion in this Act), it must include with its application:
- (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 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.

Reporting

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

PART 5 - COMPLAINTS AND DISCIPLINARY MATTERS

Occupational Associations (Complaints and Discipline) Code

25. (1) The regulations may apply the provisions of the Model Code set out in Schedule 3 to an occupational association specified in Schedule 1 or 2 (or Schedules 1 and 2) and to its members, subject to this section.
- (2) The regulations may apply those provisions with such additions, omissions or other modifications (if any) as may be specified in the regulations.
- (3) The modifications may include provisions relating to the making and determination of complaints and the imposition and enforcement of disciplinary measures against members (and former members) of an occupational association, including (but not being limited to):
- (a) the establishment of committees for the purpose of implementing the Model Code or any of its provisions;

- (b) the procedure at meetings of any such committee;
 - (c) whether any such committee may administer an oath;
 - (d) the application or exclusion of the rules and practice as to evidence;
 - (e) the grounds on which a complaint may be made;
 - (f) the verification of complaints by statutory declaration;
 - (g) the suspension of members from membership or from practice;
 - (h) the imposition of fines;
 - (i) the making of appeals;
 - (j) the exchanging of information with other occupational associations (within or outside New South Wales).
- (4) The regulations may not apply the provisions of the Model Code to an occupational association if other statutory provisions regulate the making of and dealing with complaints against members of the association.

PART 6 - THE OCCUPATIONAL STANDARDS COUNCIL

Division 1 - Constitution of the Council

Constitution of the Council

26. There is constituted by this Act a body corporate with the corporate name of the Occupational Standards Council.

Division 2 - Membership and procedure of the Council

Membership of the Council

27. (1) The Council is to consist of such part-time members as may be appointed by the Minister.
- (2) The persons appointed must include:
- (a) a person from a panel of 3 persons nominated by the Insurance Council of Australia; and
 - (b) a representative of the community.
- (3) Other persons appointed must have such experience, skills and qualifications as the Minister considers appropriate for them to make a contribution to the work of the Council.
- (4) If the Insurance Council of Australia does not nominate a panel of 3 persons within such time or in such manner as may be specified by the Minister by notice in writing to the Council, the Minister may instead appoint any person to be a member.

Provisions relating to members of the Council

28. Schedule 4 has effect with respect to the members of the Council.

Provisions relating to procedure of the Council

29. Schedule 5 has effect with respect to the procedure of the Council.

Division 3 - Functions of the Council

Functions of the Council

30. (1) The Council has the following functions:
- (a) to give advice to the Minister concerning:
 - (i) the operation of this Act;

- (ii) the amendment of this Act by the insertion into Schedule 1 or 2 (or Schedules 1 and 2) of members or classes of members of occupational associations to whom, in the opinion of the Council, this Act should apply;
- (iii) any other matter relating to the occupational liability of members of occupational associations;
- (b) to give advice to occupational associations concerning policies of insurance for the purposes of Part 2;
- (c) to encourage and assist in the improvement of occupational standards of members of occupational associations;
- (d) to encourage and assist in the development of self-regulation of occupational associations, including the giving of advice and assistance concerning the following:
 - (i) codes of ethics;
 - (ii) codes of practice;
 - (iii) quality management;
 - (iv) risk management;
 - (v) resolution of complaints by clients;
 - (vi) voluntary mediation services;
 - (vii) membership requirements;
 - (viii) discipline of members;
 - (ix) continuing occupational education;
- (e) to monitor the occupational standards of persons to whom this Act applies;
- (f) to publish advice and information concerning the matters referred to in this section;
- (g) to conduct forums, approved by the Minister, on issues of interest to members of occupational groups;
- (h) to collect, analyse and provide the Minister with information in issues and policies concerning the standards of occupational groups.

(2) The Council is not empowered to give advice concerning occupational standards contained in any other Act or statutory instrument.

(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.

Application by occupational associations for inclusion in this Act

31. An occupational association may apply to the Council for the making of a recommendation by the Council to the Minister that specified members of the association be included in Schedule 1 or 2 (or Schedules 1 and 2).

Consideration of applications

32. (1) On receipt of an application from an occupational association, the Council must publish a notice in a daily newspaper circulating throughout New South Wales:

- (a) explaining the nature and significance of the application; and
- (b) advising where a copy of the application may be obtained or inspected; and
- (c) inviting comments and submissions within a specified time, but not less than 21 days after publication of the notice.

(2) The Council, in considering the application, is to have regard to:

- (a) the matters set out in section 30; and
- (b) the standards (referred to in section 14) determined by the occupational association in relation to insurance policies; and
- (d) all comments and submissions received.

Making of recommendation to the Minister

33. (1) After considering an application from an occupational association, the Council may make a recommendation to the Minister for the inclusion of specified members of the association in Schedule 1 or 2 (or Schedules 1 and 2) or it may decline to make such a recommendation.
- (2) In making a recommendation, the Council may also recommend the making of amendments to other Acts relating to the members of the occupational association concerned.

Division 4 - Miscellaneous

Requirement to supply information

34. (1) The Council may, by notice in writing, require an occupational association whose members are specified in Schedule 1 or 2 (or Schedules 1 and 2) or which has made an application under section 31 to furnish information to it which it may reasonably require in order to exercise its functions.
- (2) An occupational association which does not comply with a notice under this section is guilty of an offence.
- Maximum penalty: 5 penalty units.

Committees of the Council

35. (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 nay 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.

Staff of the Council

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

Annual report

37. (1) As soon as practicable after 1 January, but before 31 March, in each year, the Council must prepare and forward to the Minister a report on its work and activities for the previous year.
- (2) The Minister is required to lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

PART 7 - MISCELLANEOUS

Application of this Act

38. This Act has effect despite any other law to the contrary.

No contracting out of this Act

39. This Act applies in relation to a person to whom Division 1 or 2 of Part 2 applies despite any contract to the contrary, whether the contract was made before or after the date on which the person became a person to whom the relevant Division applies.

No limitation on other insurance

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

Proceedings for offences

41. Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Regulations

42. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the regulations may make provision concerning the following:

(a) the fees for applications under section 31;

(b) the annual fee to be paid to the Council by an occupational association whose members are specified in Schedule 1 or 2 (or Schedules 1 and 2).

(3) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.

Rules of court

43. (1) Rules of court may be made with respect to any matter arising under Part 2.

(2) A rule of court may specify the means by which the net current market value of assets may be determined for the purposes of section 8

(1) (b) (ii).

(3) This section does not limit the rule-making powers conferred by the Supreme court Act 1970.

SCHEDULE 1 - LIMITATION OF LIABILITY BY SPECIFIED MONETARY CEILING

(Secs. 6-9, 19)

Members of occupational associations	Monetary ceiling
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SCHEDULE 2 - LIMITATION OF LIABILITY BY MULTIPLE OF CHARGES
(Secs. 10-12, 19)

Members of occupational associations	Multiple of charge	Excluded amount

SCHEDULE 3 - COMPLAINTS AND DISCIPLINARY MATTERS
(Sec. 25)

MODEL CODE

Citation

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

Definitions

2. In this Code:

"Council" means the Occupational Standards Council constituted by the Occupational Liability Act 1991.

What actions may be the subject of a complaint?

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

Who may make a complaint?

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

How is a complaint made?

5. A complaint may be made to the occupational association or to the

Council. The complaint must be in writing and contain the particulars of the allegations on which it is founded. The occupational association and the Council are each to inform the other if a complaint is made to or by either of them.

What happens after a complaint is made?

6. The occupational association must consider a complaint as soon as practicable after the complaint is received by it.

The 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.

What action may be taken after a hearing into a complaint?

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

If the association does not find the complaint substantiated, it must dismiss the complaint. The association is not entitled to make an award of compensation or any order as to costs.

Notices of decisions

8. 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. The statement must include the reasons for the decision.

What rights of representation do parties to a complaint have?

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

Is there a right of appeal against disciplinary action?

10. A complainant and a person against whom a complaint is made may appeal to the District Court against a decision of the occupational

association concerning the complaint. An appeal is to be made in accordance with the rules of the District Court.

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

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

Protection from liability

12. No matter or thing done or omitted by the occupational association or a person acting in accordance with a resolution of the association subjects the person personally to any liability if the matter or thing was done or omitted in good faith for the purpose of implementing this Code.

SCHEDULE 4 - PROVISIONS RELATING TO MEMBERS OF THE COUNCIL

(Sec. 28)

Chairperson and Deputy Chairperson of the Council

1. (1) Two of the members of the Council are (in and by their respective instruments of appointment or in and by other instruments executed by the Minister) to be appointed 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.

Deputies of members

2. (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.

(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.

Term of office

3. 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.

Allowances

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

Vacancy in office of member

5. (1) The office of a member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
- (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings; or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (g) becomes a mentally incapacitated person; or
- (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

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

Filling of vacancy in office of member

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

Effect of certain other Acts

7. (1) Part 2 of the Public Sector Management Act 1988 does not apply to the appointment of a 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.

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

Personal liability of members

8. No matter or thing done or omitted by the Council, a member or any person acting under the direction of the Council or a member subjects

the member or person personally to any liability if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act.

**SCHEDULE 5 - PROVISIONS RELATING TO PROCEDURE OF
THE COUNCIL**

(Sec. 29)

General procedure

1. 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.

Quorum

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

Presiding member

3. (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.

Voting

4. 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.

First meeting

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