

PROFESSIONAL STANDARDS ACT 1994 No. 81

NEW SOUTH WALES



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PROFESSIONAL STANDARDS ACT 1994 No. 81

NEW SOUTH WALES



Act No. 81, 1994

An Act to provide for the limitation of liability of members of occupational associations in certain circumstances and to facilitate improvement in the standards of services provided by those members.
[Assented to 12 December 1994]

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Professional Standards Act 1994.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Objects of this Act

3. The objects of this Act are as follows:
 - (a) to enable the creation of schemes to limit the civil liability of professionals and others;
 - (b) to facilitate the improvement of occupational standards of professionals and others;
 - (c) to protect the consumers of the services provided by professionals and others;
 - (d) to constitute the Professional Standards Council to supervise the preparation and application of schemes and to assist in the improvement of occupational standards and protection of consumers.

Definitions

4. In 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;
 - “**Council**” means the Professional Standards Council constituted by 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 payable in respect of an amount awarded as damages;and

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

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

“function” includes a power, authority and duty;

“judgment” includes:

- (a) a judgment given by consent; and
- (b) 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;

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

Does this Act apply to all types of occupational liability?

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

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

(2) This Act does not apply to liability which may be the subject of proceedings under Part 14 of the Real Property Act 1900.

Act binds the Crown

6. This Act binds the Crown not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

PART 2—LIMITATION OF LIABILITY**Division 1—Making, amendment and revocation of schemes****Preparation and approval of schemes**

7. (1) An occupational association may prepare a scheme.
- (2) The Council may, on the application of an occupational association, prepare a scheme.
- (3) The Council may, on the application of an occupational association, approve a scheme prepared under this section.

Public notification of schemes

8. Before approving a scheme, the Council must publish a notice in a daily newspaper circulating throughout New South Wales:
- (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 21 days after publication of the notice.

Making of comments and submissions concerning schemes

9. (1) Any person may make a comment or submission to the Council concerning a scheme of which notice has been published under section 8.
- (2) A comment or submission must be made within the period specified for that purpose in the notice or within such further time as the Council may allow.

Consideration of comments, submissions and other matters

10. Before approving a scheme, the Council must consider the following:
- (a) all comments and submissions made to it in accordance with section 9;
 - (b) the position of persons who may be affected by limiting the occupational liability of members of the occupational association concerned;
 - (c) the nature and level of claims relating to occupational liability made against members of the occupational association concerned;
 - (d) the risk management strategies of the occupational association concerned;

- (e) the means by which those strategies are intended to be implemented;
- (f) the cost and availability of insurance against occupational liability for members of the occupational association concerned;
- (g) the standards (referred to in section 27) determined by the occupational association concerned in relation to insurance policies.

Public hearings

11. (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.

Submission of schemes to Minister

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

Gazettal, tabling and disallowance of schemes

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

(2) Part 6 of the Interpretation Act 1987 (sections 39, 42 and 43 excepted) applies to a scheme which is published in the Gazette with the authorisation of the Minister in the same way as it applies to a statutory rule.

Commencement of schemes

14. A scheme published in the Gazette with the authorisation of the Minister commences 2 months after the date of its publication, subject to section 15.

Challenges to schemes

15. (1) A person who is or is reasonably likely to be affected by a scheme published as referred to in section 13 may apply to the Supreme Court for an order that the scheme is void for want of compliance with this Act.

(2) The Court may, on the making of the application or at any time before the scheme commences, order that the commencement of the scheme is stayed until further order of the Court.

- (3) The Court, in relation to an application, may:
- (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
 - (d) make any other order it thinks fit.

Amendment and revocation of schemes

16. The other provisions of this Division apply to the amendment of a scheme and the revocation of a scheme in the same way as they apply to a scheme.

Division 2—Contents of schemes

Persons to whom a scheme applies

17. A scheme may provide that it applies to all persons within an occupational association or to a specified class or classes of persons within an occupational association.

Partners of persons to whom a scheme applies

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

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

Employees of persons to whom a scheme applies

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

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

Other persons to whom a scheme applies

20. If persons are prescribed by the regulations for the purposes of section 29 (4) as being associated with persons to whom a scheme applies, the scheme also applies to the prescribed persons.

Limitation of liability by insurance arrangements

21. A scheme may provide that if a person to whom the scheme applies and against whom a cause of action relating to occupational liability is brought is able to satisfy the court that the person has 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 the scheme 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 amount so specified.

Limitation of liability by reference to amount of business assets

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

- (a) that the person has business assets the net current market value of which is not less than the amount of the monetary ceiling specified in the scheme in relation to the person at the time at which the cause of action arose; or

(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 the scheme 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 amount so specified.

Limitation of liability by multiple of charges

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

- (a) that the person has an insurance policy:
 - (i) insuring the person against that occupational liability; and
 - (ii) under which the amount payable in respect of the occupational liability relating to that cause of action 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 the scheme in relation to the person at the time at which the cause of action arose; or
- (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 limitation amount,

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 such a provision, 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 person.

Specification of different limits of liability for different persons and different work

24. A scheme may specify different maximum amounts of liability for different classes of persons within an occupational association or different kinds of work, or both.

Combination of provisions under sections 21, 22 and 23

25. If, in a scheme, provisions of the kind referred to in section 23 and provisions of the kind referred to in section 21 or 22 (or both) apply to a person at the same time in respect of the same occupation, the scheme must provide that the damages which may be awarded against the person are to be determined in accordance with section 23 but must not exceed the amount of the monetary ceiling specified in relation to the person in the provisions of the kind referred to in section 21 or 22.

Liability that cannot be limited by a scheme

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

(2) In making a determination, the Council must have regard to:

- (a) the number and amounts of claims made against persons within the occupational association concerned; and
- (b) the need to adequately protect consumers.

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

Insurance to be of requisite standard

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

Division 3—Effect of schemes**Limit of occupational liability by schemes**

28. (1) A scheme, on and from its commencement in accordance with this Act and for the period for which it is in force, limits in accordance with its provisions the occupational liability of the persons to whom it applies.

(2) A person to whom a scheme applies cannot choose not to be subject to the scheme.

Limitation of amount of damages

29. (1) Limitation imposed on single claims: 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) No splitting of plaintiffs: Claims by a number of persons who have a joint interest in a cause of action are to be treated as a single claim for the purposes of this Act despite the fact that they may also have several interests.

(3) No splitting of defendants: Two or more claims by the same person arising out of a single event against persons to whom a scheme in force under this Act applies and who are associated are to be treated as a single claim for the purposes of this Act.

(4) Associated defendants: Persons are associated if they are:

- (a) partners, employees of the same employer or in the relationship of employer and employee; or
- (b) persons who are prescribed by the regulations for the purposes of this subsection.

Effect of scheme on other parties to proceedings

30. 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.

Proceedings to which a scheme applies

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

Time limit on limitation of liability

32. (1) The application of a scheme to the members of an occupational association ceases at the end of such period, not exceeding 5 years after the commencement of the scheme, as is determined by the Council 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 period of application of a scheme, by up to 6 months, if notice of the extension is published in the Gazette before the period ends.

(3) A right or liability arising during the application of a scheme to members of an occupational association is not affected by the scheme's ceasing to apply.

Notification of limitation of liability

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

PART 3—COMPULSORY INSURANCE

Occupational association may compel its members to insure

34. (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

35. (1) An occupational association may establish a committee for monitoring and analysing claims made against its members for occupational liability or two 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

36. (1) If an occupational association seeks the approval of the Council under section 7 to a scheme, it must furnish the Council with:

- (a) a detailed list of the risk management strategies intended to be implemented in respect of its members; and
- (b) the means by which those strategies are intended to be implemented.

(2) The means of implementation may be imposed as a condition of membership or otherwise.

(3) The strategies are to apply in addition to other statutory requirements and must not be inconsistent with them.

Reporting

37. (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

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

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

- (a) the establishment of committees for the purpose of implementing the Model Code or any of its provisions;
- (b) the procedure at meetings of any such committee;
- (c) whether any such committee may administer an oath;
- (d) the application or exclusion of the rules of and practice as to evidence;
- (e) the grounds on which a complaint may be made;
- (f) the verification of complaints by statutory declaration;
- (g) the suspension of members from membership or from practice;
- (h) the imposition of fines;
- (i) the making of appeals;
- (j) the exchanging of information with other occupational associations (within or outside New South Wales).

PART 6—THE PROFESSIONAL STANDARDS COUNCIL

Division 1—Constitution of the Council

Constitution of the Council

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

Division 2—Membership and procedure of the Council

Membership of the Council

40. 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.

Provisions relating to members of the Council

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

Provisions relating to procedure of the Council

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

Division 3—Functions of the Council**Functions of the Council**

- 43. (1)** The Council has the following functions:
- (a) to give advice to the Minister concerning:
 - (i) the publication in the Gazette of a scheme submitted by it to the Minister;
 - (ii) the operation of this Act;
 - (iii) any other matter relating to the occupational liability of members of occupational associations;
 - (b) to give advice to occupational associations concerning policies of insurance for the purposes of Part 2;
 - (c) to encourage and assist in the improvement of occupational standards of members of occupational associations;
 - (d) to encourage and assist in the development of self-regulation of occupational associations, including the giving of advice and assistance concerning the following:
 - (i) codes of ethics;
 - (ii) codes of practice;
 - (iii) quality management;
 - (iv) risk management;
 - (v) resolution of complaints by clients;
 - (vi) voluntary mediation services;
 - (vii) membership requirements;
 - (viii) discipline of members;
 - (ix) continuing occupational education;
 - (e) to monitor the occupational standards of persons to whom this Act applies;
 - (f) to monitor the compliance by an occupational association with its risk management strategies;
 - (g) to publish advice and information concerning the matters referred to in this section;
 - (h) to conduct forums, approved by the Minister, on issues of interest to members of occupational groups;
 - (i) to collect, analyse and provide the Minister with information on issues and policies concerning the standards of occupational groups.

(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.

Division 4—Miscellaneous

Requirement to supply information

44. (1) The Council may, by notice in writing, require an occupational association whose members are subject to a scheme in force under this Act or which seeks the approval of the Council under section 7 to a scheme 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

45. (1) The Council may, with the approval of the Minister, establish committees to assist it in the exercise of its functions.

(2) It does not matter that any or all of the members of a committee are not members of the Council.

(3) The procedure for calling committee meetings and for the conduct of business at those meetings is to be as determined by the Council or (subject, to any determination of the Council) by the committee.

Staff of the Council

46. 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

47. (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

Characterisation of this Act

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

Application of this Act

49. (1) To the extent to which Parts 3, 4 and 5 are inconsistent with another Act, the other Act prevails. Otherwise, this Act has effect despite any other law to the contrary.

(2) This Act does not affect the operation of section 5 of the Corporations (New South Wales) Act 1990.

No contracting out of this Act

50. This Act applies in relation to a person to whom a scheme in force under this Act applies despite any contract to the contrary, whether the contract was made before, on or after the date on which the person became a person to whom the scheme applies.

No limitation on other insurance

51. 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

52. 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

53. (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 for the approval of the Council under section 7;
- (b) the annual fee to be paid to the Council by an occupational association whose members are subject to a scheme in force under this Act.

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

Rules of court

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

(2) A rule of court may specify:

- (a) matters relating to section 15; and
- (b) the means by which the net current market value of assets may be determined for the purposes of section 22 or 23.

(3) This section does not limit the rule-making powers of any court.

Review of Act

55. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

SCHEDULE 1—COMPLAINTS AND DISCIPLINARY MATTERS

(Sec. 38)

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 Professional Standards Council constituted by the Professional Standards Act 1994.

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

What happens after a complaint is made?

6. 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. 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.

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SCHEDULE 1—COMPLAINTS AND DISCIPLINARY MATTERS—*continued*

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.

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.

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

10. 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.

SCHEDULE 1—COMPLAINTS AND DISCIPLINARY MATTERS—*continued***Protection from liability**

11. 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 2—PROVISIONS RELATING TO MEMBERS OF THE COUNCIL

(Sec. 41)

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.

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SCHEDULE 2—PROVISIONS RELATING TO MEMBERS OF THE COUNCIL—
continued

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.

Professional Standards Act 1994 No. 81

SCHEDULE 2—PROVISIONS RELATING TO MEMBERS OF THE COUNCIL—
continued

- (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 3—PROVISIONS RELATING TO PROCEDURE OF THE
COUNCIL**

(Sec. 42)

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.

Professional Standards Act 1994 No. 81

SCHEDULE 3—PROVISIONS RELATING TO PROCEDURE OF THE
COUNCIL—*continued*

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

*[Minister's second reading speech made in—
Legislative Council on 14 September 1994
Legislative Assembly on 22 September 1994]*