

QUEENSLAND LAW SOCIETY
Professional Standards Act 2004 (Qld)

PREAMBLE

- A. Queensland Law Society is a voluntary occupational association for legal practitioners (solicitors) in Queensland.
- B. Queensland Law Society has made an application to the Professional Standards Council ("Council"), appointed under the *Professional Standards Act 2004 (Qld)* ("the Act"), for approval of a scheme under the Act, and this document comprises the scheme ("the Scheme").
- C. The Scheme has been prepared by Queensland Law Society for the purposes of limiting occupational liability of Participating Members to the extent to which such liability may be limited under the Act.
- D. The Scheme is to apply to all Participating Members.
- E. Queensland Law Society has furnished the Council with a detailed list of the risk management strategies intended to be implemented in respect of its Participating Members and the means by which those strategies are intended to be implemented.
- F. The Scheme is intended to remain in force for a period of five (5) years from its commencement, subject to s33 of the Act.
- G. The Scheme commences on 1 July 2010.
- H. A register of members to whom the scheme applies and information on the association's risk management strategies will be placed on the Queensland Law Society website at www.qls.com.au.

QUEENSLAND LAW SOCIETY SCHEME

1. Preparation of the Scheme

1.1 The Scheme is a scheme under the *Professional Standards Act 2004 (Qld)* prepared by Queensland Law Society whose business address is 179 Ann Street, Brisbane, Queensland.

1.2 Relevant definitions for the purpose of this Scheme are as follows:

"Australian practising certificate" has the same meaning as in the *Legal Profession Act 2004 (Qld)*

"Corporate practising certificate" means a practising certificate issued to an Australian lawyer that has a condition that the lawyer is not to engage in legal work other than providing in-house legal services to a corporation that is not an ILP.

"Court" has the same meaning as it has in the Act.

"Damages" has the same meaning as it has in the Act.

"Financial year" means a financial accounting period ending 30 June.

"Full Member" means a person within the category of the Queensland Law Society as contemplated in the Legal Profession (Society) Rule 2007.

"Law Practice" has the same meaning as in the *Legal Profession Act 2007 (Qld)*.

"Occupational liability" has the same meaning as it has in the Act¹.

¹ Occupational liability is defined in Schedule 4 of the Act as 'any civil liability arising, whether 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

“Participating Members” means those persons specified in clause 2.1 of the Scheme.

“Principal” has the same meaning as in the *Legal Profession Act 2007* (Qld).

“Relevant Time” refers to a cause of action founded on an act or omission, specifically to the time of that act or omission occurring.

“Total annual fee income” means the amount charged during a financial year for services provided by or on behalf of a Law Practice some of whose members are members of the Queensland Law Society to whom the scheme applies:

2. Persons to whom the Scheme applies

2.1 The Scheme applies to:

- 2.1.1. Full Members who hold a current Australian Practising Certificate who are not excluded or exempted under clauses 2.2 or 2.3 of the Scheme;
- 2.1.2. all persons to whom, by virtue of ss20, 21 or 21A² of the *Act*, the Scheme applies ;
- 2.1.3. all persons to whom clause 2.1.1 applied at the Relevant Time but no longer applies;
- 2.1.4 all persons to whom clause 2.1.2 applied at the Relevant Time but no longer applies;

2.2 A person referred to in clause 2.1 does not include a practitioner who only holds a corporate practising certificate.

2.3 A person referred to in clause 2.1 may, on application, be exempted from participation in the Scheme by Queensland Law Society. This clause does not apply to persons to whom the Scheme applies by virtue of ss20 or 21 of the *Act*.

3. Limitation of liability

3.1 The Scheme limits the Occupational liability of a Participating Member for damages³:

- 3.1.1. arising from a single cause of action founded on the act or omission; and
- 3.1.2. to the extent those damages exceed \$1.5m for participating members in Class 1 of clause 3.3 or, as the case may be, \$10m for participating members in Class 2 of the table in clause 3.3.

3.2 If a Participating Member against whom a proceeding relating to occupational liability is brought is able to satisfy the Court that –

- 3.2.1 the Participating Member has the benefit of an insurance policy or policies insuring him or her against the Occupational liability to which the cause of action relates; and

the member's occupation. However, s6(1) of the *Act* provides that the *Act* does not apply to liability for damages arising in a personal injury claim; a breach of trust or fraud and dishonesty. Section 6(2) of the *Act* also provides that the *Act* does not apply to liability, which may be the subject of proceedings under part 9, division 2, subdivision C of the *Land Title Act 1994*.

² Section 20(1) of the *Act* provides that if the Scheme applies to a body corporate, the Scheme also applies to each officer of the body corporate. Section 20(2) provides that if the Scheme applies to a person, the Scheme also applies to each partner of the person. However, s20(3) provides that if the officer of a body corporate or partner of a person is entitled to be member of the same occupational association, but is not a member, the Scheme will not apply to that officer or partner. Section 21 of the *Act* provides that if the Scheme applies to a person, the Scheme also applies to each employee of that person. However, if an employee of a person is entitled to be a member of the same occupational association as the person, but is not a member, the Scheme does not apply to that employee. Section 21A provides that the Scheme may also apply to other persons as specified in that section.

³ Damages as defined in Schedule 2 of the *Act* means

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

3.2.2 the amount payable under the policy or policies in respect of that Occupational liability⁴ is not less than the amount of the monetary ceiling (maximum amount of liability) specified in the 3rd column of the Table in clause 3.3 as applying to such Participating Member to which the cause of action relates -

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

3.3 The monetary ceiling applicable for the purposes of limitation of liability under the Scheme at the Relevant Time is to be determined according to the following table –

Class	Description	Monetary ceiling
1	Participating Members who were at the Relevant Time in a Law Practice consisting of up to and including 20 Principals and where the Law Practice generates total annual fee income for the financial year at the Relevant Time up to and including \$10million	\$1.5million
2	(a) Participating Members who were at the Relevant Time in a Law Practice consisting of greater than 20 Principals; or (b) Participating Members who were at the Relevant Time in a Law Practice where the Law Practice generates total annual fee income for the financial year at the Relevant Time greater than \$10million	\$10million

4. Conferral of discretionary authority

4.1 The Queensland Law Society has discretionary authority, on application by a Participating Member, to specify in relation to the Participating Member, a higher maximum amount of liability (monetary ceiling) than would otherwise apply under the Scheme in relation to him or her either in all cases or any specified case or class of case.

4.2 If, in the exercise of its discretion under clause 4.1, the Queensland Law Society has specified a higher maximum amount of liability (monetary ceiling) than would otherwise apply under the Scheme in relation to a Participating Member, the maximum amount of liability (monetary ceiling) in relation to that Participating Member is that higher maximum amount.

5. Duration

5.1 Subject to s33 of the *Act*, the Scheme will remain in force for a period of 5 years from the date of its commencement. The date of the Scheme's commencement is 1 July 2010.

⁴ Section 7A of the *Act* provides that a reference in the *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 defendant for the time spent in relation to the claim), but only if those costs are payable out of the one sum insured under the policy in respect of the occupational liability; and
- (b) the amount payable under or in relation to the policy by way of excess⁵.

However, see also s27A of the *Act* and its note, which has the effect that s7A does not reduce the cap on the liability of the Participating Member to the client.