

SCHEME SUMMARY

Occupational association and the Scheme

The Law Institute of Victoria Limited (“the LIV”) is the occupational association of legal practitioners (solicitors) practising in Victoria. It has prepared a scheme (“the Scheme”) to apply in Victoria for the purpose of limiting occupational liability to the extent that it may be limited under the *Professional Standards Act 2003 (Vic)*.

The LIV is a company limited by guarantee. It is governed by a Council of 18 members elected in accordance with its Constitution, who are representative of legal practitioners (solicitors) practising in Victoria. The LIV has approximately 13,873 members, of whom approximately 10,049 hold current Australian practising certificates. Associate membership is also available for law students or those with qualifications or experience which the LIV Council deems appropriate.

The LIV’s objectives are set out in its Constitution. They include fostering the rule of law, promoting improvements and developments in the law, safeguarding the independence of the legal profession, strengthening the community’s understanding and confidence in the legal profession, acting as a public voice for members, representing the professional interests of members, promoting and ensuring high standards of professional and ethical conduct amongst legal practitioners, and providing continuing legal education for legal practitioners.

Under the *Legal Profession Act 2004 (Vic)* the LIV accepts delegations of regulatory functions from the Legal Services Board (including issuing of Victorian practising certificates) and delegations of investigatory functions from the Legal Services Commissioner. The latter means that the LIV is involved in the investigation of complaints about legal practitioners.

Membership

Membership of the LIV includes full, associate and honorary life membership categories. The Scheme is intended to apply to full members (which includes honorary life members) who hold an Australian practising certificate (other than a certificate which enables the member to practise as a corporate legal practitioner as defined in section 1.2.1 of the *Legal Profession Act 2004 (Vic)*) and who have the benefit of an insurance policy under which the amount payable in respect of occupational liability is not less than the maximum amount of liability applicable to that person at the relevant time. The Scheme applies to other persons by virtue of sections 20, 21 and 22 *Professional Standards Act 2003 (Vic)*. It is expected that the Scheme will apply to the majority of the LIV’s 10,049 full members.

Application can be made to the LIV to be exempted from the Scheme. In order to hold a practising certificate and be able to engage in legal practice, a practitioner must complete a minimum of 10 units of continuing occupational education (or continuing professional development (“CPD”)) each year and otherwise meet a range of conduct requirements. Details of CPD obligations are set out in the *Law Institute of Victoria Continuing Professional Development Rules 2008* and the *Legal Services Board Continuing Professional Development Rules 2008*.

Continuation of coverage

Former members of the Scheme will continue to be covered under the Scheme for civil liability arising from their acts or omissions occurring during the period in which they were members of the Scheme, provided they meet the insurance requirements of the Scheme at the relevant time.

Nature of liability to be limited

The liability limited by the Scheme includes, to the extent permitted by the *Professional Standards Act 2003* (Vic), all civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted to be done by any person to whom the Scheme applies in the performance of that person's occupation.

The Scheme does not apply to liability for damages arising from the death of or personal injury to a person, or any negligence or other fault of a practitioner in acting for a client in a personal injury claim¹, nor does it limit liability in respect of a breach of trust, fraud or dishonesty. Also, the Scheme does not apply to liability which may be the subject of proceedings under section 110 of the *Transfer of Land Act 1958* (Vic).

Liability is limited on the following basis:

Class	Description	Monetary ceiling	Description of policy or policies for clause 3.2
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 generated Total Annual Fee Income for the Financial Year at the Relevant Time up to and including \$10 million	\$2 million	An insurance policy or policies that provide(s) coverage of \$2 million whether inclusive or exclusive of defence costs.
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 generated Total Annual Fee Income for the Financial Year at the Relevant Time greater than \$10 million	\$10 million	An insurance policy or policies that provide(s) coverage of \$10 million, whether inclusive or exclusive of defence costs.

Discretion to specify higher amount

The Scheme confers discretionary authority on the LIV to specify, on application by a participating member, a maximum amount of liability than would otherwise apply in relation to the participating member.

Complaints and discipline

Members of the Scheme are subject to the existing statutory disciplinary and complaints system that operates in Victoria under the *Legal Profession Act 2004* (Vic).

¹ Application has been made to the Attorney General to delete s 5(1)(b) of the *Professional Standards Act 2003* (Vic).

Risk management and quality assurance

The LIV and the Legal Practitioners' Liability Committee (LPLC) offer a wide range of riskmanagement strategies for members, which are designed to improve practice standards and to minimise risk. Strategies are informed by historical claims data sourced from the LPLC, which is the statutory insurer for all legal practitioners in Victoria. Strategies include services provided by the LIV's dedicated Ethics Department (including telephone advice services, free risk management and ethics seminars, non-binding rulings from the Ethics Committee for legal practitioners facing complex practice dilemmas, and dissemination of information via the Ethics Liaison Group, the website and other forums).

Victorian legal practitioners are also required to undertake a minimum of 10 units of CPD each year, as a prerequisite to renewal of the annual practising certificate. Units in legal ethics, professional responsibility, professional skills, practice management and substantive law are compulsory strands of this program.

Other risk management tools include dissemination of information via practice section committees, a range of telephone advice services (for example Property, Costing and Human Resources Enquiries), a mentoring/peer support program to commence August 2009, and a range of LIV and LPLC publications such as self-assessment checklists and LIV Council approved Ethics Guidelines.

Through its Professional Standards Departments the LIV also provides guidance and information to legal practitioners on trust accounting and compliance; fidelity fund claim procedure; incorporated legal practice obligations and auditing in the context of complaint based criteria. The latter will be available to all practices in the future.

Courses provided by the LIV to legal practitioners and their staff are also intended to ensure that legal practices properly and appropriately handle clients money.

Quality assurance is monitored through the practising certificate renewal process as well as through detailed analysis of claims data over time.

The LIV will report annually to the Professional Standards Council on claims monitoring and risk management strategies.

Exemption of members

The LIV may exempt members from application of the Scheme, upon application by the member.

Duration of Scheme

It is proposed that the Scheme will operate for 5 years from the date of commencement, being 1 July 2010.

Scheme management structure

The LIV Council will be responsible for the operation and administration of the Scheme, and for ensuring that the Scheme complies with the *Professional Standards Act 2003 (Vic)*. The LIV is considering additional resources to manage the Scheme on a day-to-day basis, reporting directly to the LIV Council.

Website

The LIV website is maintained at www.liv.asn.au and is undergoing substantial changes. This site includes extensive information about the LIV generally and its risk management strategies.

A register of members of the Scheme will be maintained on the LIV's website, subject to compliance with privacy legislation.