



NEW SOUTH WALES  
BAR ASSOCIATION®

# PROFESSIONAL STANDARDS SCHEME

## PUBLIC CONSULTATION DOCUMENT

### An occupational association

The New South Wales Bar Association (ACN 000 033 652) is an Australian public company, limited by guarantee. Our address and principal place of business is B/174 Phillip Street, Sydney NSW 2000.

### Our objectives

The primary objective of the New South Wales Bar Association is to promote the public good in relation to justice and the provision of legal services. This is achieved by promoting and maintaining the highest standards of excellence among local practising barristers.

### Principal activities

In pursuit of these objectives, the New South Wales Bar Association:

- Carries out its regulatory functions through the work of the Bar Council and its committees
- Operates the NSW Bar Library
- Appoints senior counsel (SCs), barristers who have demonstrated outstanding skill as advocates and advisers in the administration of justice
- Promotes diversity and equality at the bar through its Best Practice Guidelines and other policies
- Monitors educational qualifications and entry requirements via its Education Committee
- Organises the Bar Exams and the Continuing Professional Development (CPD) program
- Supports the standards of practising barristers by running the Bar Practice Course, the Ethical Guidance Scheme and a Mentoring Program
- Assists in matters of professional discipline of members and the resolution of complaints against them
- Runs various programs to promote the wellbeing of its members
- Maintains a professional standards scheme

## Regulating practising barristers

The Council of the New South Wales Bar Association is a regulatory authority, responsible for granting, renewing, varying or cancelling barristers' practising certificates (PCs). Our professional standards scheme applies to those PC holders who are members of the association and who hold approved professional indemnity insurance. Some barristers, such as Crown prosecutors and public defenders, are not covered by the scheme as they are not required to hold professional indemnity insurance.

As at 1 April 2019 the number of members eligible to be covered by the scheme is 2255.

## Our Professional Standards Scheme

The New South Wales Bar Association Professional Standards Scheme is designed to improve the occupational standards of barristers and to protect their clients.

Members of the association who hold a current practising certificate and approved professional indemnity insurance (PII) have their occupational liability for damages limited to \$1.5 million. It does not limit liability for damages arising from death or personal injury to a person, a breach of trust, fraud or dishonesty.

### Commencement

The scheme will commence on 1 July 2020. It will remain in effect until 30 June 2025.

## Previous schemes

Three prior schemes were in place from 19 January 2005 to 30 June 2010, 1 July 2010 to 30 June 2015, and 1 July 2015 to 30 June 2020.

States and territories where the scheme operates

- New South Wales
- The Australian Capital Territory
- Northern Territory
- Queensland
- Victoria
- Western Australia
- South Australia
- Tasmania

## Types of work covered

The scheme applies to work carried out in the performance of a barrister's professional services after 1 July 2020.

## Operation of the scheme

Responsibility for administration of the scheme and ensuring that it complies with the requirements of the *Professional Standards Act 1994* (NSW) and of the Professional Standards Council rests with the executive director of the New South Wales Bar Association.

## How is liability determined?

The Bar Association's scheme limits liability for damages resulting from claims made and notified since 1 July 2020, including amounts determined by judgments, arbitral awards, settlements made with the insurer's consent, as well as various disciplinary fines, penalties and contempt orders made under laws regulating the legal profession.

## Consumer information

Participating members must display a disclosure statement - 'Liability limited by a scheme approved under Professional Standards Legislation' - on all business documents given (or caused to be given) to current or prospective clients, which promote or advertise their occupation as a barrister. Such documents might include letterhead, email, costs disclosure agreements, memoranda of fees and invoices. Business cards and social media accounts are excluded.

Detailed information regarding the New South Wales Bar Association Professional Standards Scheme, including a copy of past schemes, is available on [nswbar.asn.au](http://nswbar.asn.au)

## Benefits of the scheme

The New South Wales Bar Association Professional Standards Scheme benefits the entire community.

Barristers are practising advocates and advisers, both in and out of the courtroom. It is widely accepted that outcomes for clients improve significantly when there is competent legal advice and representation at the earliest possible stage of any dispute. In fact, the proper operation of our court system depends on the interaction between experienced judges and specialist advocates.

Barristers are officers of the court, but they also compete with one another in the market for legal services. That market depends, to a degree, on the availability of affordable professional indemnity insurance to protect both clients and barristers in the event of a claim for financial loss. By limiting the liability of barristers to \$1.5 million, the scheme reduces risk to both insurers and members, and helps to ensure the supply of affordable insurance cover for most possible claims.

### Benefits for consumers

The New South Wales Bar Association Professional Standards Scheme upholds the standards of local practising barristers and ensures that clients may draw upon a large and diverse pool of skilled advocates for representation and advice. It ensures that members of the association are insured appropriately, participate in continuing professional development and are subject to a complaints and disciplinary structure.

### Enhancing professional standards

The New South Wales Bar Association Professional Standards scheme provides a whole-of-organisation approach to maintaining the highest standards of excellence among barristers. It encompasses a wide range of activities, such as legal education, ethical guidance, entry requirements, conduct investigations, mentoring and Best Practice Guidelines for promoting diversity.

### Limiting liability

The scheme limits liability for damages to \$1.5 million provided the barrister has insurance which is not less than \$1.5m. There has never been a successful claim against a NSW barrister that has reached \$1.5m in damages.

## Words with special meaning

**Business documents** that should include the disclosure statement are letterhead, email, websites, fax cover sheets, as well as written advice, invoices, costs disclosure agreements, memoranda of fees that are not accompanied by a letter containing a disclosure statement.

**Professional indemnity insurance (PII)** is a statutory requirement for all barristers in New South Wales. The attorney general approves the type of PII policies, the level of insurance provided by the policies and the terms of the policies which can be offered to the NSW Bar. For the 2018-19 practising year, the minimum level of PII insurance that a NSW barrister must take as set out in the Uniform Laws is \$1.5 million.

**Occupational liability** means civil liability arising directly or indirectly from anything done or omitted by a barrister.

**Regulatory** means the various functions delegated to the Council of the Bar Association (the Bar Council) by section 11 of the *Legal Profession Uniform Law Application Act 2015*.