



## NOTIFICATION OF AN INSTRUMENT AMENDING A SCHEME

*Professional Standards Act 2004 (SA)*

Notification is hereby given pursuant to section 9 of the *Professional Standards Act 2004 (SA)* of an Instrument to amend a Scheme (“the Instrument”) prepared by the Law Society of South Australia (“LSSA”).

The Instrument is intended to amend the Law Society of South Australia Professional Standards Scheme (“the Scheme”) currently operating in New South Wales, the Australian Capital Territory, the Northern Territory, Queensland, South Australia, Victoria and Western Australia, by extending its operation to Tasmania.

The Scheme:

1. Applies to all Participating Admitted Members or Company Members (“Scheme participants”) of LSSA, who are not exempted from the Scheme.
2. Limits the occupational liability of Scheme participants, in accordance with the following table:

| Description   | Monetary ceiling |
|---|------------------|
| 1. Participating Admitted Members or Company Members other than those in item 2 below.  | \$1.5 million    |
| 2. Participating Admitted Members or Company Members who were as at the 30 June immediately preceding the Relevant Time in a Law Practice:<br>(b) consisting of greater than 20 Admitted Members; or<br>(c) which generated total annual fee income for the financial year ended on 30 June immediately preceding the Relevant Time greater than \$10 million | \$10 million     |

3. Confers a discretionary authority on the LSSA, on application by a Scheme participant, to approve, in relation to that member, a higher maximum amount of liability up to \$50 million.

The Instrument and the Scheme may commence 2 months after the date its publication in the *Gazette*. The Scheme may remain in force up to 30 June 2022.

A copy of the Instrument and the Scheme may be obtained from, or inspected at, the office or website of the Professional Standards Councils.

Before approving the Instrument or the Scheme, the Council hereby invites comments and submissions, to be made in writing, and to be received by the Executive Director, Professional Standards Authority, within 28 days after the publication of this notice.

The office of the Professional Standards Councils is located at Level 2, St James Centre, 111 Elizabeth St, Sydney, NSW, 2000.

Website: [www.psc.gov.au](http://www.psc.gov.au)

Email: [pscinfo@psc.gov.au](mailto:pscinfo@psc.gov.au)

Telephone: 1300 555 772 / (02) 8315 0800.

Comments and submissions received will be public unless confidentiality is specifically requested, and will be subject to the *Freedom of Information Act 1991 (SA)*.

Professional Standards Council

**INSTRUMENT AMENDING THE LAW SOCIETY OF SOUTH AUSTRALIA  
PROFESSIONAL STANDARDS SCHEME**  
*Professional Standards Act 2004 (SA)*

**PREAMBLE**

- A. The Law Society of South Australia (“the Society”) is an occupational association
- B. The Law Society of South Australia Professional Standards Scheme (“the Scheme”) commenced on 1 July 2017.
- C. This instrument of amendment is prepared by the Society for the purposes of amending the Scheme to allow for mutual recognition of the Scheme in Tasmania.

**AMENDMENT TO THE SCHEME**

- 1. This instrument to amend the Law Society of South Australia Professional Standards Scheme is prepared pursuant to section 18 of the *Professional Standards Act 2004 (SA)* by the Law Society of South Australia, whose business address is Level 10, Terrace Towers, 178 North Terrace, Adelaide, SA, 5000.

**Operation of the Scheme in multiple jurisdictions**

- 1.1 Amend recital G of the Preamble to delete the phrase “except Tasmania.”
- 1.2 Amend clause 3.2 in the Scheme to insert the word “Tasmania,” between the words “Western Australia,” and “the ACT” thus:

The Scheme applies in New South Wales, Victoria, Queensland, Western Australia, Tasmania, the ACT and the Northern Territory pursuant to the corresponding laws of each of those jurisdictions respectively.

**Definitions**

- 1.3 In clause 1 in the Scheme, delete the following references to the discretionary authority to specify a higher amount of liability from the definition “Monetary Ceiling”, thus:
  - 1.3.1 Delete the phrase “(a) the higher of”; and
  - 1.3.2 Delete the paragraph “OR (b) such higher amount as has been specified in relation to a specified Scheme Participant in respect of such case or class of case or generally as has been specified by the Society pursuant to clause 5.1;”.

**Conferral of discretionary authority**

- 1.4 Amend clause 5.1 in the Scheme to delete the words “Monetary Ceiling” from the final phrase of the paragraph and replace with the word “amount”, thus:

The Scheme confers on the Society a discretionary authority, on application by a Scheme Participant, to specify in relation to the person a higher maximum amount of liability than would otherwise apply under the Scheme in relation to the person either in all cases or

in any specified case or class of case, being a specified amount not exceeding \$50 million.

### **Limitation of liability**

- 1.5 Amend clause 6.4 in the Scheme to insert the phrase “and the Acts” between the words “Scheme” and “applies” in the first line of the paragraph, thus:

The limitation of liability that, in accordance with this Scheme and the Acts, applies in respect of an act or omission continues to apply to every cause of action founded on it, irrespective of when the proceedings are brought in respect of it, and even if the Scheme has been amended or has ceased to be in force.

- 1.6 Amend clause 6.5 in the Scheme to insert the phrase “and corresponding provisions” between the words “the Act” and “the Scheme” in the first line of the paragraph, thus:

For the purposes of section 28 of the Act and corresponding provisions, the Scheme only affects a liability for damages arising from a Single Claim (including a claim by a person who has 2 or more causes of action arising out of a single event) exceeding \$1,500, 000.

### **Duration of the Scheme**

- 1.7 Amend clause 7.1 in the Scheme to insert the following text after the date “1 July 2017”:

except in relation to its application to Tasmania in which case the Scheme will commence on the date which is 2 months after the date of its publication in the Government Gazette of Tasmania.

### **COMMENCEMENT**

- 2 The amendments to the Scheme made by this instrument will commence 2 months after the date of its publication in the Gazette.

## *Professional Standards Act 2004 (SA)*

### **THE LAW SOCIETY OF SOUTH AUSTRALIA PROFESSIONAL STANDARDS SCHEME**

#### **Preamble**

- A. The Law Society of South Australia (**the Society**) is an occupational association.
- B. The Society has made an application to the Professional Standards Council, appointed under the *Professional Standards Act 2004 (SA)* (**the Act**), for a Scheme under the Act.
- C. The Scheme is prepared by the Society for the purposes of limiting occupational liability to the extent to which such liability may be limited under the Act.
- D. The Scheme propounded by the Society is to apply to Admitted Members or Company Members of the Society who have professional indemnity insurance that complies with the *Legal Practitioners Act 1981 (SA)* in respect of a liability potentially limited by the Scheme.
- E. The Society has furnished the Council with a detailed list of the risk management strategies intended to be implemented in respect of its members and the means by which those strategies are intended to be implemented.
- F. The Scheme is intended to commence on 1 July 2017 and remain in force for five (5) years from its commencement unless, prior to that time, it is revoked, its operation ceases, or it is extended pursuant to section 34 of the Act.
- G. The Scheme is also intended to apply in all other jurisdictions.

#### **1 Definitions**

“Act” means the *Professional Standards Act 2004 (SA)*;

“Acts” means the Act and each corresponding law;

“Admitted Member” means a person who is or was at a relevant time an Admitted Member within the meaning of and pursuant to the Rules of the Society;

“Company Member” means a company who is or was at a relevant time a Company Member within the meaning of and pursuant to the Rules of the Society;

“corresponding law” means a law of another jurisdiction that corresponds to the Act;

“Court” has the same meaning as it has in the Acts;

“Duration of the Scheme” means the period commencing on the date specified in clause 7.1 and ending upon the cessation of the Scheme pursuant to clause 7.2;

“Exempted Member” means an Admitted Member or Company Member who is or was at a Relevant Time exempted by the Society from participation in the Scheme

pursuant to clause 4.3;

“*Law Practice*” means (in accordance with the *Legal Practitioners Act*):

- (a) a legal practitioner who is a sole practitioner; or
- (b) a firm of legal practitioners; or
- (c) an incorporated legal practice; or
- (d) a Community Legal Centre;

“*Legal Practitioners Act*” means the *Legal Practitioners Act* 1981 (SA) or any Act enacted in substitution thereof;

“*Monetary Ceiling*” means, in respect of a liability in respect of a cause of action founded on an act or omission occurring after the commencement of the Scheme:

| Description  | Monetary ceiling |
|--|------------------|
| Participating Admitted Members or Company Members other than those in item 2 below.  | \$1.5 million    |
| Participating Admitted Members or Company Members who were as at the 30 June immediately preceding the Relevant Time in a Law Practice:<br>consisting of greater than 20 Admitted Members;<br>or<br>which generated total annual fee income for the financial year ended on 30 June immediately preceding the Relevant Time greater than \$10 million. | \$10 million     |

“*occupational liability*” has the same meaning as it has in the Acts;

“*person*” means an individual or a body corporate;

“*relevant time*” means, in respect of a liability potentially limited by the Scheme, the time(s) of the act(s) or omission(s) giving rise to the liability;

“*the Scheme*” means the Law Society of South Australia Scheme constituted herein;

“*Scheme Participant*” means a person referred to in clause 4.1 or 4.2;

“*the Society*” means the Law Society of South Australia.

## **2 Occupational Association**

2.1 The Scheme is a Scheme under the Act prepared by the Society whose business address is Level 10, 178 North Terrace Adelaide South Australia.

## **3 Jurisdictions in which the Scheme Applies**

3.1 The Scheme applies in South Australia pursuant to the Act.

3.2 The Scheme applies in New South Wales, Victoria, Queensland, Western

Australia, Tasmania, the ACT and the Northern Territory pursuant to the corresponding laws of each of those jurisdictions respectively.

- 3.3 Notwithstanding anything to the contrary contained in this Scheme, if in particular circumstances giving rise to occupational liability, the liability of any person who is subject to this Scheme should be capped by both this Scheme and also by any other Scheme under Professional Standards legislation (whether of this jurisdiction or under the law of any other Australian state or territory) and if the amount of such caps should differ, then the cap on the liability of such person arising from such circumstances which is higher shall be the applicable cap.

#### **4. Persons to Whom the Scheme Applies**

4.1 The Scheme applies to all persons who:

- 4.1.1 are or at the relevant time were Admitted Members or Company Members of the Society;
- 4.1.2 are or were at the relevant time not Exempted Members; and
- 4.1.3 have professional indemnity insurance that complies with the *Legal Practitioners Act* in respect of a liability potentially limited by the Scheme.

4.2 The Scheme applies to all persons to whom the Scheme applies by virtue of sections 20, 21, and 22 of the SA Act and the corresponding sections of the corresponding laws.

4.3 The Society may, upon application by an Admitted or Company Member, exempt that person from participation in the Scheme with effect from a date specified by the Society on or after the date on which the exemption is granted.

4.4 The Society may, upon application by an Admitted or Company Member, revoke an exemption of that person from participation in the Scheme with effect from a date specified by the Society.

#### **5. Conferral of discretionary authority**

5.1 The Scheme confers on the Society a discretionary authority, on application by a Scheme Participant, to specify in relation to the person a higher maximum amount of liability than would otherwise apply under the Scheme in relation to the person either in all cases or in any specified case or class of case, being a specified Monetary Ceiling not exceeding \$50 million.

#### **6. Limitation of Liability**

6.1 The occupational liability of a person who is or at the relevant time was a Scheme Participant in respect of a cause of action founded on an act or omission occurring during the Duration of the Scheme is limited to the amount of the Monetary Ceiling.

6.2 The liability which is limited by clause 6.1 extends to a liability for damages

(including interest and costs) within the meaning of the Acts but excludes a liability to which the Act does not apply from time to time by reason of section 5 thereof or, if the liability is governed by a corresponding law, excludes a liability to which the corresponding law does not apply from time to time by reason of its provisions.

- 6.3 The operation of clause 6.1 limiting the liability of a person is subject to the proviso that the person is able to satisfy the Court that:
- 6.3.1 the person has the benefit of an insurance policy complying with the *Legal Practitioners Act* insuring the person against the occupational liability to which the cause of action relates; and
  - 6.3.2 the amount payable under the policy in respect of that occupational liability is not less than the amount of the Monetary Ceiling.
- 6.4 The limitation of liability that, in accordance with this Scheme and the Acts, applies in respect of an act or omission continues to apply to every cause of action founded on it, irrespective of when the proceedings are brought in respect of it, and even if the Scheme has been amended or has ceased to be in force.
- 6.5 For the purposes of section 28 of the Act and corresponding provisions, the Scheme only affects a liability for damages arising from a Single Claim (including a claim by a person who has 2 or more causes of action arising out of a single event) exceeding \$1,500,000.

## **7. Duration of the Scheme**

- 7.1 The Scheme commences on 1 July 2017 except in relation to its application to Tasmania in which case the Scheme will commence on the date which is 2 months after the date of its publication in the Government Gazette of Tasmania.
- 7.2 Subject to clause 7.3, the Scheme will remain in force for a period of 5 years from its commencement unless:
- 7.2.1 it is revoked or ceases in accordance with the Act, or
  - 7.2.2 it is extended in accordance the Act.
- 7.3 The Scheme will cease to operate in a jurisdiction referred to in clause 3.2 if it is revoked or ceases in accordance with the corresponding law of that jurisdiction.