

Professional Standards Scheme

Public Consultation Document

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Contents

The Law Society of Western Australia	3
1. What is the Law Society of Western Australia?	3
2. Who are the Law Society's members?	3
The Professional Standards Scheme (the Scheme)	3
1. What is the Law Society of Western Australia Professional Standards Scheme	3
2. Who administers the Scheme?	4
3. How long has the Law Society administered a scheme?	4
4. Where does the Scheme Operate?	4
5. What types of work will the Scheme cover?	4
6. When will the Scheme commence?	4
7. Who will the Scheme be available to?	4
8. Who will the Scheme not apply to?	5
Operation of the Scheme	5
1. How will the level of limited liability of participating Law Society members be determined?	5
2. How will consumers know if a Law Society Member is covered by the Scheme?	6
3. How long will the Scheme operate?	6
Benefits of the Scheme	6
1. How will consumers benefit from the Scheme?	6
2. How does the Scheme enhance the professional standards of Law Society members?	6
Risk Management	7
Continuing Professional Education	7
Law Society Committees	7
Quality Practice Standard (QPS)	7
Regulating Members	8
3. How does limiting liability help consumers?	8
4. How is liability limited under the Scheme?	8

The Law Society of Western Australia

1. What is the Law Society of Western Australia?

The Law Society of Western Australia is the peak professional association for legal practitioners in Western Australia. The Law Society is legally incorporated under the *Associations Incorporation Act 2015* (WA) and is governed by a Council of 20 members elected in accordance with its Constitution.

The Law Society is a not-for-profit incorporated association dedicated to the representation of its members and to the enhancement of the legal profession through being a respected leader and contributor on law reform, access to justice and rule of law.

2. Who are the Law Society's members?

The Law Society's members include Ordinary Members, Constituent Members, Associate Members, Judicial Members, Life, Honorary Members and Incorporated Legal Practices. Only Ordinary Members and Life Members have the right to vote at a general meeting of the Law Society and represent 79% of total members.

Ordinary membership of the Law Society is available to Australian Legal Practitioners (Practitioners), as defined in the *Legal Profession Act 2008* (WA), who hold a current Australian practicing certificate.

All practitioners must be covered by appropriate professional indemnity insurance prior to joining the Scheme.

The Professional Standards Scheme (the Scheme)

1. What is the Law Society of Western Australia Professional Standards Scheme

It is proposed that the Scheme will apply in Western Australia for the purpose of limiting occupational liability to the extent that it may be limited under the *Professional Standards Act 1997* (WA) (*PS Act*). It is designed for the purposes of:

- (a) Improving and promoting professional standards of Law Society members; and
- (b) Protecting the consumers of legal services.

The Scheme will limit the civil liability of Scheme Participants to selected amounts, provided that they meet the Scheme's requirements.

2. Who administers the Scheme?

The responsibility for administering the Scheme and ensuring compliance with the requirements of the Act and the Professional Standards Councils (PSC) will rest with the Law Society's Council, Chief Executive Officer, General Manager, Advocacy and Manager Risk Law Mutual (WA).

3. How long has the Law Society administered a scheme?

The Law Society has administered a scheme under the PS Act continuously since 2014.

4. Where does the Scheme Operate?

The Scheme is intended to apply in Western Australia as well as New South Wales, Victoria, Queensland, South Australia, Tasmania, the Northern Territory and the ACT by means of provisions for mutual recognition in the other jurisdictions.

5. What types of work will the Scheme cover?

The liability to be limited by the Scheme includes, to the extent permitted by the PS Act, 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 will not apply to liability for damages arising from the death of or personal injury to a person, nor does it limit liability in respect of a breach of trust, fraud or dishonesty nor to liability which may be the subject of proceedings under Part XII of the *Transfer of Land Act 1893* (WA).

6. When will the Scheme commence?

It is proposed that the Scheme will commence on 1 July 2019.

7. Who will the Scheme be available to?

Unless exempted by the Law Society, it is proposed that the Scheme will apply to and define Participating Members as:

- (a) Ordinary and Life members of the Society (Law Society's Constitution rules 9 and 13) who hold a current Australian practising certificate and who have not been exempted from participation in the Scheme; and
- (b) Incorporated legal practice members of the Society (Law Society Constitution rule 15) that have not been exempted from participation in the Scheme; and
- (c) Partners and employees of Ordinary and Life members of the Society who have not been exempted from participation in the Scheme, provided that the partners and employees are members of the Society if they are entitled to be members; and
- (d) Officers of incorporated legal practices that are members of the Society and who have not have been exempted from participation in the Scheme, provided that the officers are members of the Society if they are entitled to be members; and

- (e) Any persons referred to in paragraphs (a) or (c) who are participating in the Scheme at the time of an act or omission occurring on which a cause of action is founded, but later cease to participate in the Scheme; and
- (f) Any persons or corporations referred to in paragraphs (b) or (d) who or which are participating in the Scheme at the time of an act or omission occurring on which a cause of action is founded, but later cease to participate in the Scheme.

8. Who will the Scheme not apply to?

The Scheme will not apply to any person who has applied to the Law Society to be exempted from participation in the Scheme or to in-house and government lawyers.

Operation of the Scheme

1. How will the level of limited liability of participating Law Society members be determined?

The Scheme will limit the occupational liability of Participating Members for damages arising from a single cause of action to an amount of \$1.5 million, \$5 million or \$10 million depending on the insurance policies and total annual fee income of the law practice of the Participating Member, and to the extent that liability can be limited under the Act.

The ceiling on liability under the Scheme is in accordance with the following table shown on the next page.

TIER	DESCRIPTION	MONETARY CEILING
1	Participating Members who were at the Relevant Time in a Law Practice that generated a total annual fee income for the financial year immediately preceding the Relevant Time up to and including \$5 million.	\$1.5 million
2	Participating Members who were at the Relevant Time in a Law Practice that generated a total annual fee income for the financial year immediately preceding the Relevant Time of more than \$5 million and up to \$10 million.	\$5 million
3	Participating Members who were at the Relevant Time in a Law Practice that generated a total annual fee income for the financial year immediately preceding the Relevant Time of more than \$10 million.	\$10 million

The Scheme will confer discretionary authority on the Council of the Law Society to specify a higher maximum amount of liability than would otherwise apply under the Scheme. The discretion can be for a specified case, a class of case or in all cases subject to any terms or conditions under the Act or the Scheme.

2. How will consumers know if a Law Society Member is covered by the Scheme?

All Scheme participants will be required to disclose on all materials that are or could be given to current or prospective clients that their liability is limited under a Professional Standards Scheme. The disclosure must comply with the form of statement prescribed in clause 6 of the *Professional Standards Regulations 1998* (WA).

It is intended that Scheme participants will be informed of their statutory obligation, under section 45(2) of the Act, to comply with the disclosure statement requirement.

It is intended that any breaches of the above will be referred to the Professional Standards Council.

Alternately, consumers of legal services may contact the Law Society to enquire as to whether the legal practitioner they seek to instruct is participating in the Scheme.

3. How long will the Scheme operate?

It is proposed that the Scheme will operate for five years from the date of commencement.

Benefits of the Scheme

1. How will consumers benefit from the Scheme?

The benefit to consumers of the Scheme will be an assurance that the professional standards of Scheme participants meet those required by the Law Society, the legal profession legislation and the Professional Standards Council, ensuring that the consumers are represented by responsible legal practitioners.

Legal practitioners are required to be covered by professional indemnity insurance, to ensure that consumers of legal services receive timely and fair compensation for legitimate claims.

2. How does the Scheme enhance the professional standards of Law Society members?

Members of the Scheme will be subject to the statutory disciplinary and complaints systems that operate in Western Australia under the *Legal Profession Act 2008* (WA). Established under that Act are the Legal Practice Board of Western Australia as regulator of the legal profession in Western Australia and the Legal Profession Complaints Committee to investigate and prosecute complaints.

In addition to the legislated requirements on practitioners, the Law Society, which includes Law Mutual (WA) has implemented a number of strategies to enhance the professional standards of the Scheme participants.

Risk Management

The Law Society has adopted a Five Year Risk Management Plan and a Risk and Compliance Framework, which identifies the risks to professional standards, the causes of the risks and control implemented by the Law Society to mitigate the risks.

Law Mutual (WA) provides a series of risk management seminars to assist practitioners in managing professional liability risks, including the publication of Practice and Matter Management Guidelines. These documents are also available to Law Society members who participate in the Scheme that are not insured by Law Mutual (WA).

Continuing Professional Education

The Law Society is a leading accredited CPD provider for the legal profession in Western Australia. Legal practitioners in Western Australia are required to undertake a minimum of 10 units of CPD each year, as a prerequisite to renewal of their annual practising certificate. The Law Society CPD programme incorporates all four areas of competency and provides members with access to relevant and topical seminars developed by the profession for the profession.

Law Society Committees

The Committees provide forums for legal practitioners to participate actively on topical and important developments in their members areas of practice. More than 30 active committees and working groups have been established, constituted by volunteer members of the Law Society, covering a range of substantive law and other areas of interest. Many of the Law Society's committees are policy committees that deal with references for comment from outside organisations and initiate comment on various legal and practice issues as and when they arise.

Committee membership is an exclusive benefit for Law Society members. Joining a committee is a great way to give back to the profession, influence the agenda and develop networks in different sectors of the profession. Committee members are expected to abide by the committee standing orders and code of conduct.

Quality Practice Standard (QPS)

The Law Society's Quality Practice Standard (QPS) is a legal services management standard that allows participants to demonstrate their commitment to quality service delivery in the provision of legal services. The Quality Practice Standard (QPS) recognises firms that have developed and adhere to documented internal processes designed to improve client satisfaction and avoid wastage.

Quality Practice Standard law firms are audited each year to ensure they comply with standards which go beyond the requirements set out by legislation. Firms complying with QPS can use the Approved Quality Practice logo on their letterheads and promotional material.

Regulating Members

The Law Society produces Ethical & Practice Guidelines and other practical guides to assist members to understand their obligations under the statutory rules and of proper professional conduct, to ensure continuing improvement in professional standards within the profession.

3. How does limiting liability help consumers?

Scheme participants will be expected to meet certain professional standards in delivering legal services to consumers. This creates an environment in which Scheme participants will run efficient and effective law practices to improve access to justice for consumers of legal services.

In addition, improving professional standards, risk management initiatives and accreditation of participants provides an opportunity for legal practices to obtain discounts on the premiums for professional indemnity insurance. This ensures that the consumers of legal services receive timely and fair compensation for legitimate claims.

4. How is liability limited under the Scheme?

The Law Society has chosen to limit liability for Scheme Members by way of insurance arrangements. Under Part 11 of the *Legal Profession Act 2008* (WA) the Law Society is required to make professional indemnity insurance arrangements for legal practitioners and former legal practitioners in Western Australia. Law Mutual (WA), which is owned and managed by the Law Society, administers the compulsory professional indemnity scheme for legal practitioners in Western Australia. For the purposes of the Scheme, the amount payable under the insurance policy must not be less than the amount for which liability has sought to be capped.

Further information regarding The Law Society of Western Australia's current Professional Standards Scheme may be found on the Law Society's website: www.lawsocietywa.asn.au

