



LAW
INSTITUTE
VICTORIA

LIV PROFESSIONAL STANDARDS SCHEME

Public Notification Document

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This purpose of this document is to seek comments and submissions from the public in consideration of an application by the Law Institute of Victoria (LIV) for a new Professional Standards Scheme.

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Public Consultation Document

Purpose

The purpose of this Public Consultation Document is for the Professional Standards Councils (Councils) to seek comments and submissions from the public in considering an application by the Law Institute of Victoria (LIV) for a new professional standards scheme to replace the current scheme which ceases on 30 June 2022.

Gathering comments and submissions from consumers provides the Councils with valuable insights into how consumers view and understand the proposed scheme.

The *Professional Standards Act 2003* (Vic) requires Councils to give public notice prior to approving any new scheme. This document supports the public notification process and examines the nature and significance of the proposed LIV scheme.

Professional Standards Legislation is Australian state-based legislation. Its objectives (generally across all jurisdictions) are:

- To protect the consumers of services provided by professionals and other occupations
- To facilitate the improvement of occupational standards for professionals and other occupations
- To enable the creation and approval of schemes that limit the liability of persons to whom a scheme applies.

Public notification of a scheme does not necessarily mean the proposed scheme will be approved by the Councils and authorised by the Victorian Attorney General.

The LIV has applied to the Councils to approve a professional standards scheme. The Councils is the body responsible for approving schemes under the Professional Standards Legislation.

For a scheme to be approved under Professional Standards Legislation, the LIV must demonstrate a high commitment to professional standards and consumer protection, implement comprehensive risk management strategies and set professional indemnity insurance standards for scheme participants.

The LIV's application is being considered by the Councils and is now available for public submissions and comments.

How to make a comment or submission

Comments and submissions on the Law Institute of Victoria application must be made in writing within 28 days of public notification to:

Chief Executive Officer
Professional Standards Councils
GPO Box 4021
SYDNEY NSW 2001

E: pscinfo@psc.gov.au

W: psc.gov.au

T: 1300 555 772 (outside Sydney) or (02) 8315 0800

Comments and submissions in the form of a letter to the Professional Standards Councils are preferred

Comments and submissions received will be public, unless confidentiality is specifically requested, and will be subject to the *Privacy and Data Protection Act 2014* (Vic).

Consider framing your response around questions, including:

- *Do you understand which members the LIV professional standards scheme will apply to?*
- *Do you think the operation of the proposed limitation of liability scheme is easy to understand?*
- *As a consumer can you access easily understand information about the standards which apply to the provision of legal services by solicitors in Victoria?*
- *Is it easy to understand if your solicitor was a participant in the scheme?*
- *Is it clear how a consumer could make a complaint against a LIV member or seek redress?*
- *Can you describe the benefits to consumers of services provided by members of this occupational association being covered by a scheme?*

The Law Institute of Victoria and its members

1. Who is the Law Institute of Victoria?

The Law Institute of Victoria is the peak body for the Victorian legal profession and was founded in 1859. We represent around 18,600 lawyers, students and people working in the law in Victoria, interstate and overseas. Our members offer their commitment, diversity and expertise to help shape the laws of Victoria and to ensure a strong legal profession for the future.

The LIV's core purpose is to foster the rule of law and to promote improvements and developments in the law as it affects the Victorian community. We have a long history of promoting justice, contributing to, shaping and developing effective state and federal legislation, and undertaking extensive advocacy for education of the community and of lawyers. We also assure the standards and professionalism of lawyers, including accreditation and specialisation in contemporary legal disciplines.

The LIV initiates programs to support the needs of a changing profession, promotes an active law reform advocacy agenda, responds publicly to issues affecting the profession and broader community, delivers continuing legal education programs and continues to provide expert services and resources to support our members and the community.

The LIV is a non-profit organisation and a registered charity dedicated to its members and the development, maintenance and the sustenance of the law for the benefit of the community.

2. Who are LIV members?

The LIV Constitution allows four categories of membership: Full Members, Associate Members; Honorary Life Members and Incorporated Legal Practice. Only Full Members and Honorary Life Members have voting rights.

Full Membership is only available to those persons who are admitted as an Australian lawyer and who hold a practising certificate approved by the Victorian Legal Services Board (VLSB). The VLSB is an independent statutory authority, responsible for regulation of the legal profession in Victoria under *Legal Profession Uniform Law Application Act 2014 (Vic)* and the *Legal Profession Uniform Law*.

Qualifications for lawyers are determined by an independent statutory body, the Legal Professions Board of Victoria, a statutory body which performs functions associated with the admission of lawyers in Victoria in accordance with the *Legal Profession Uniform Law Application Act 2014 (Vic)*.

3. What type of work do LIV members do?

LIV members work in a variety of roles to provide legal services to the community, the main areas are:

- **Firm Lawyer** – members working in private practice as practising lawyers with a law firm, Incorporated Legal Practice or as sole practitioner
- **Corporate Lawyer** – employed as in-house counsel for an organisation
- **Government Lawyer** – employed in the government sector (Commonwealth, State or Local)
- **Community Legal Centre Lawyers** – providing legal work Community Legal Centre

The LIV Professional Standard Scheme will only limit the liability of LIV members working in private practice and Incorporated Legal Practices.

What is a Professional Standards Scheme?

4. What is Professional Standards Legislation?

Professional Standards Legislation (PSL) allows the registration of professional standard schemes by professional associations which have the effect of limiting the civil liability of participants in the scheme. These schemes are approved and monitored by the Professional Standards Councils (PSC), in consultation with the relevant professional association.

Limited civil liability means that, if participating members or law practices are sued by a client, a monetary ceiling will generally apply to the amount of damages that can be awarded.

Applicable legislation:

- Professional Standards Act 2003 (Vic)
- Professional Standards Regulations 2017 (Vic)

5. Why was Professional Standards Legislation introduced?

Professional standards legislation was introduced as a measure to improve professional standards and allows for predictability and improvement in the affordability and availability of professional indemnity insurance (PII).

The LIV lobbied for harmonised PSL through-out Australia with other professional associations. This was as a result of the indemnity insurance crisis sweeping Australia in the 1990s and early 2000 to ensure professionals could continue to access professional indemnity insurance to protect their clients.

The legislation objectives are to:

- maintain accessibility to PII and keep insurance premiums at a realistic level for professionals
- protect the interests of consumers receiving services from members of a professional association and assist consumers in the knowledge that a PII claim can be settled
- improve professional standards and risk management strategies
- allow professional associations and other occupational groups to limit the civil liability of members

6. How does Professional Standards Legislation benefit consumer?

PSL encourages professional associations to promote better business practices and implement a range of measures to improve professional standards– from effective risk management strategies and continuing professional development programs, to codes of ethics and conduct and integrity systems.

The PSC website includes consumer information exploring the benefits of schemes in more detail.

7. Is the Scheme another form of Professional Indemnity Insurance?

No. The scheme provides capped liability for lawyers who engage in private legal practice.

8. What is the LIV Professional Standards Scheme?

The Scheme is designed to limit the occupational liability for members who are Solicitors in private practice and is a legal instrument that requires the LIV to monitor, enforce and improve the professional standards of its Members, and protect the consumers of the services provided by members who participate in the Scheme.

In return for these commitments, the Scheme caps the civil liability of damages that participants in the Scheme may be required to pay if a court upholds a claim against them.

The occupational services covered by the Scheme is determined by Legal Profession Uniform Law Application Act 2014 (Vic) and the Legal Profession Uniform Law (Vic).

A member's liability for an act or omission outside their occupation (or which would not be covered by the member's / firm's professional indemnity insurance) will not be capped by the Scheme.

9. When will the Scheme apply?

The current LIV scheme expires on 30 June 2022. The new scheme is proposed to commence on 1 July 2022 for a period of 5 years.

10. Is this the first Scheme for the LIV?

No. The first LIV Scheme commenced on 1 July 2010 and ceased on 30 June 2016. The second LIV Scheme commenced on 1 July 2016 and ceases on 30 June 2022. The new Scheme is designed to provide continuity in coverage for Scheme participants.

11. Who administers the Scheme?

Responsibility for administering the Scheme and ensuring compliance with the Professional Standards Act 2003 (Vic) and Professional Standards Regulations 2017 (Vic) rests with the LIV Council supported by the CEO and the Senior Leadership team.

12. How is the level of limited liability of participating LIV members determined?

Consumers are entitled to make a claim for damages against a lawyer who has failed to discharge their duties properly. However, if their lawyer is inadequately insured, consumers can end up missing out on any compensation awarded by the court, while still having to pay court costs and other expenses.

The limits (caps) are determined to be high enough to cover losses any person and most companies would suffer if they needed to make a claim. The caps for the proposed LIV scheme are based on analysis of claims data, undertaken by the Legal Practitioners Liability Committee, an independent statutory authority providing professional indemnity insurance to Victorian barristers and solicitors. This data is then reviewed by an independent actuary.

The proposed LIV Scheme provides Participating Members with the benefit of a statutory limit of liability (cap) if damages are awarded against them as a result of a successful occupational liability claim. Under the Scheme the participant must have the benefit of insurance to an amount at least equal to the monetary ceiling.

The proposed liability caps for the Scheme are:

Class	Description	Monetary cap
1	Participating members in a law practice which had, at the time of the relevant cause of action: <ul style="list-style-type: none">• 20 or fewer principals, <i>and</i>• \$10 million or less in total annual fee income in the financial year.	\$1.5 million
2	Participating members in an incorporated legal practice which had, at the time of the relevant cause of action: <ul style="list-style-type: none">• 20 or fewer principals, <i>and</i>• \$10 million or less in total annual fee income in the financial year.	\$1.5 million
3	Participating members in a law practice which had, at the time of the relevant cause of action: <ul style="list-style-type: none">• more than 20 principals, <i>or</i>• more than \$10 million in total annual fee income in the financial year.	\$10 million
4	Participating members in an incorporated legal practice which had, at the time of the relevant cause of action: <ul style="list-style-type: none">• more than 20 principals, <i>or</i>• more than \$10 million in total annual fee income in the financial year.	\$10 million

The Scheme allows the LIV Council or their delegate discretionary authority to specify a high maximum amount of liability than would otherwise apply under the Scheme in relation to the law practice for any specified case, a class of case or in all cases.

13. How will consumers know if a LIV member is a Scheme participant?

All Scheme participants are required to disclose liability on their business documents and communications sent to clients in the following prescribed format.

“Liability limited by a scheme approved under Professional Standards legislation.”

All scheme members are educated on their ongoing disclosure requirements and an annual verification of compliance is undertaken.

A consumer may also contact the LIV to confirm whether a member or Incorporated Legal Practice is a participant in the scheme.

14. Can an eligible member or Incorporated Legal Practice choose to not participate in the Scheme?

Yes, an eligible participant may seek an exemption from participating in the Scheme. The exemption is subject to LIV approval and requires a practice to undertake a risk assessment which includes a review of their legal service, client profile and risk management framework prior to application.

Benefits of a Professional Standards Scheme

15. How will consumers benefit from the Scheme?

Limiting participant liability plays a role in underpinning the availability of a sustainable and affordable professional indemnity insurance policy for Scheme Members.

The Scheme assists participants to run an efficient and viable law practice, improves consumers access to justice and timely and fair compensation for legitimate claims.

In return for the benefits of capped liability, Scheme Members are expected to meet the requisite professional standards, community expectations and the development of legal services that are more accessible to a greater range of people in the community.

Risk Management

16. How does the LIV enhance the standards of Scheme participants?

The LIV works collaboratively with the VLSB to develop risk management frameworks to deliver quality legal services, ethical behavior, continuous improvement and ongoing practice sustainability.

To support the Scheme the LIV has adopted the principles of risk management as set out in the Risk Management Standard – AS/NZS ISO 31000:2009 Risk Management – Principles and Guidelines in developing its Scheme risk management framework and 5-year plan. The plan outlines key objectives and strategies that the LIV will implement to monitor, measure, address and mitigate occupational and consumer risks.

LIV Risk management strategies include:

Continuing Professional Development (CPD)

Members entering private practice (as a principal of the practice) are required to complete a Practice Management Course (PMC) developed to assess if Solicitors have the appropriate skills and expertise required to be a principal. The purpose of a Practice Management Course is to:

- equip principals of a law practice with the management skills and information necessary to conduct a law practice
- protect consumers by ensuring that principals have the capacity to meet their needs in an efficient and competent manner, and
- provide principals with the necessary skills to enable them to maintain high ethical and professional standards.

Members are required to maintain and update their knowledge and skills by completing 10 CPD units every year with at least one unit in ethics, practice management, professional skills and substantive law.

The LIV also offers a nationally recognised Accredited Specialist certification allowing specialists to demonstrate superior knowledge, expertise and proficiency in a particular area of law. The Scheme aims to benefit the public and the profession in three ways by:

- offering the public and other professionals a reliable means of identifying legal practitioners who are recognised by their peers as having special competence in particular areas of practice
- providing an incentive and an opportunity for legal practitioners to reach and maintain higher levels of competence in their chosen areas of practice, and
- by encouraging improvement in the quality, speed and cost-efficiency of legal services.

Oversight of Members

Under the Legal Profession Uniform Law Application Act 2014 (Vic) and the Legal Profession Uniform Law the VLSB as a statutory body has responsibility for regulating the legal profession including licensing of practitioners and management of complaints and discipline.

Pursuant to section 44(1) of the Legal Profession Uniform Law Application Act 2014 (Vic), the Victorian Legal Services Board delegates some of its functions, duties and powers related to the oversight of some functions to the LIV.

The LIV Council may discipline a member for failing to comply with the provisions of the LIV Constitution or being guilty of any conduct which, in the Council's opinion, is inappropriate for a member or prejudicial to the interests of the profession.

Protecting Clients Money

Members who hold monies on behalf of clients have an obligation to ensure that monies are held in a prescribed trust account to protect the interests of those persons on whose behalf those monies are held. Members holding trust monies are required to undertake prescribed training prior to becoming authorised to receive monies on behalf of the client and have an external examination of the trust accounts undertaken annually.

Should a client lose money or property as a result of dishonest or fraudulent behaviour by a lawyer or other officer of a law practice, a Fidelity Fund has been established by the VLSB for which they may be eligible to claim back that money.

Member support and guidance

The LIV offers a range of services providing support and guidance on ethics and practice management issues. The services include a member support line, ethical rulings, complimentary trust money and practice management consultancy programs. The programs aim to support good practice, support consumer protection and safeguard client money.

Professional Well-being

Research consistently highlights the high-pressure environment in which legal professionals work, meaning lawyers are more prone to mental illness, including anxiety and depression as well as stress and burnout. Acknowledging wellbeing issues impact the individual practitioners, their families, practices and consumers of legal services, the LIV has developed a wellbeing program specifically designed to help members build and develop their wellbeing skillset and resources through a range of events, activities, services and support.

17. How does limiting participant liability help consumers

PSL encourages professional associations to promote better business practices and implement a range of measures to improve professional standards– from effective risk management strategies and continuing professional development programs, to codes of ethics and conduct and integrity systems. The PSC website includes consumer information exploring the benefits of schemes.

Uniform Law

Victoria and NSW adopted a Uniform Law framework in July 2015 with the framework being extended to WA from 2022. The framework is designed to create a simpler and more efficient system for both law firms and their clients by cutting red tape, better protecting consumers and ensuring consistency across our borders.

Mutual Recognition

All states and territories have equivalent legislation and a framework to allow mutual recognition of schemes across jurisdictions. The LIV Scheme will apply to acts or omissions by participating members in all Australian States and Territories.

Similar Professional Standard Schemes are in place for Law Society of NSW, Law Society of South Australia, Law Society of Western Australia and the Queensland Law Society.

Further Information

About the LIV

Information about LIV – information about the LIV can be accessed at: www.liv.asn.au/About

The website includes details of LIV advocacy activities access to public submissions.

LIV Professional Standards Scheme

Information about the existing and proposed LIV Professional Standards Scheme is published on the LIV Website: www.liv.asn.au/Scheme

To confirm if a lawyer or Incorporated Legal Practice is a scheme participants email: scheme@liv.asn.au or call LIV on 03 9607 9470

About the Victorian Legal System

The LIV website includes information on the operations of the Victorian Legal system, guidance on choosing the right lawyer and Consumer Fact Sheets. www.liv.asn.au/ForPublic

Consumer Complaints

The Victorian Legal Service Board is a statutory body responsible for the oversight of legal practitioners in Victoria.

Information on consumer complaints and redress systems is published on the Victorian Legal Service Board website. <https://lsbc.vic.gov.au/consumers/how-we-can-help>



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