

PUBLIC CONSULTATION DOCUMENT



THE LAW SOCIETY OF SOUTH AUSTRALIA

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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 for a professional standards scheme. This is a mandatory consideration for the Councils under *Professional Standards Act 2004 (SA)* s9(1), in that Councils is required as part of a process to give public notice explaining the nature and significance of the scheme. This document serves that purpose.

Public notification of a scheme does not necessarily mean the proposed scheme will be approved by the Councils and authorised by the relevant Attorneys General or Minister.

The Law Society of South Australia has submitted an application to the Councils to approve a professional standards scheme. The Councils is the body responsible for approving schemes under the Professional Standards Legislation.

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

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

For a scheme to be approved under Professional Standards Legislation, the occupational association proposing the scheme 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 Law Society of South Australia application is being considered by the Councils and is now available for public submissions and comments.

How can I make a comment or submission?

Comments and submissions must be made in writing to the Chief Executive Officer, Professional Standards Councils, within 28 days of public notification.

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

Website: www.psc.gov.au

Email: 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 *Privacy Act*.

Benefits of a Professional Standards Scheme

How will consumers benefit from the Scheme?

Consumers will benefit from:

- the commitment of the Society and Scheme participants to standards of professional excellence and improvement. The Society will report annually on improvements in the professional standards program, as required by the Professional Standards legislation;
- all Scheme participants undertaking to meet the professional standards required by the Law Society of South Australia, the *Legal Practitioners Act* (or corresponding legal profession legislation) and the Professional Standards Councils;
- all Scheme participants committing to continuing professional development;
- legal practitioners that participate in the Scheme are required to be covered by professional indemnity insurance;
- the Society committing to providing Scheme participants with up to date and relevant resources, ethical support, professional support and personal support aimed at maintaining and improving professional standards and client outcomes; and
- if the required standards are not met, consumers will have access to recourse through strong and fair complaint mechanisms and robust professional indemnity insurance.

How does the Scheme enhance the professional standards of Law Society of South Australia members?

- Scheme participants are required to meet stringent admission requirements, undertake annual continuing professional development, and are subject to the statutory complaints and discipline system.
- On admission, Scheme participants have obtained the academic and practical legal training necessary to practice law, and have been assessed as fit and proper persons to practice law.
- Scheme participants are required to comply with the Australian Solicitors Conduct Rules.
- The Law Society of South Australia has committed to reporting annually on a program of improvement in professional standards, including a Five Year Risk Management Plan and a Compliance Framework.

How does limiting participant liability help consumers?

- The Scheme requires that the Scheme Participants hold insurance to the level of their limit of liability (known as, the Monetary Ceiling).
- All legal practitioners must comply with the regulatory framework that ensures stringent admission requirements, ongoing professional development, adequacy of insurance and risk management oversight by the Society. Each of these assists to reduce the cost and frequency of claims and complaints, to the benefit of consumers of legal services.
- In running the Scheme, the Law Society of South Australia will monitor standards, cost and availability of insurance for legal practitioners.

Is the Scheme professional indemnity insurance?

- No, the Scheme is not insurance. It is an optional Scheme that caps, or limits, liability.

Continuing Educational Program

- All Admitted Members complete at least 10 units annually of prescribed continuing professional development activities, including a unit each of Ethics, Practice Management or Business Skills, Professional Skills and Bullying, Discrimination and Harassment.
- The Law Society of South Australia conducts a comprehensive education program which reflects the needs of legal practitioners and emerging trends within the legal profession.

Complaints and Discipline System

- Under the *Legal Practitioners Act*, the Legal Profession Conduct Commissioner investigates complaints against South Australian legal practitioners and handles any disciplinary issues or proceedings.
- Anyone can make a complaint to the Commissioner about a lawyer practising in South Australia.

The Scheme

What is a professional standards scheme?

- Professional standards schemes operate under the various professional standards legislations and the governance of the Professional Standards Councils, to allow legal practitioners (and other professionals) to limit their occupational liability.
- The professional standards legislations have the objective of improving professional standards and protecting consumers.

What is the Law Society of South Australia Scheme?

- The Scheme is a scheme to limit the occupational liability of Scheme Participants under the *Professional Standards Act 2004 (SA)*, provided that they meet the Scheme's requirements.

Who administers the Scheme?

- The Scheme is administered by the Law Society of South Australia, which is constituted as an incorporated body by the *Legal Practitioners Act 1981 (SA)*.
- The Law Society of South Australia is located at 178 North Terrace, Adelaide, SA 5000.

Who is The Law Society of South Australia?

- The Law Society of South Australia is the peak membership body for the legal profession in South Australia. It represents South Australian legal practitioners.

Where does the Scheme operate?

- The Scheme is intended to operate in South Australia, New South Wales, Victoria, Queensland, Western Australia, Tasmania, Northern Territory and Australian Capital Territory.

When will the Scheme apply?

- The Scheme will commence from 1 July 2022.

Does the Scheme apply to all members?

- The Scheme will apply to Admitted Members and Company Members of the Law Society of South Australia, who at the Relevant Time were not exempted from the Scheme, and who hold or held professional indemnity insurance that complies with the Law Society of South Australia Insurance Standard.
- The Scheme also applies to all persons to whom the Scheme applies by virtue of sections 20, 21 and 22 of the *Professional Standards Act 2004 (SA)* and the corresponding sections of the corresponding laws.
- The Scheme applies to persons or corporations who were participating in the Scheme at the time of an act or omission occurring on which a cause of action is founded even if they later cease to participate in the Scheme.

How does the Scheme operate?

- The Scheme will limit the occupational liability of Scheme Participants to an amount of \$1.5million or \$10million (the Monetary Ceiling) or a higher specified amount, depending on the size, turnover and insurance arrangements of the law practice, and to the extent that liability can be limited under the professional standards legislations.

How is the level of limited liability of participating Law Society of South Australia members determined?

- The limit of liability (known as the Monetary Ceiling) depends on the size, turnover and insurance arrangements of the law practice.
- Firms with up to 20 practitioners OR a total annual fee income up to \$10million, will have a Monetary Ceiling of \$1.5million. Firms with more than 20 practitioners, and/or a total annual fee income greater than \$10million, will have a Monetary Ceiling of \$10million.
- Firms also have the option to apply for a higher limit of liability, as long as they meet the insurance requirements for that higher limit.

Can a Law Society of South Australia member opt out of the Scheme?

- No, Members cannot 'opt out'.
- However, the Law Society of South Australia may exempt members from the Scheme on application by a Member or Members.

How will consumers know if a Law Society of South Australia member is covered by the Scheme?

- Scheme participants are required to disclose their limit liability on all written correspondence with clients and prospective clients, and also on their website, in

accordance with the *Professional Standards Act 2004 (SA)* s35. There is a maximum penalty of \$20,000 for failing to disclose.

- The Professional Standards Regulations prescribe the wording for the disclosure statement as: “Liability limited by a scheme approved under professional standards legislation.”

How long does the Scheme operate for?

- The Scheme will operate for a period of five years from the commencement date.

Law Society of South Australia and its Members

Who are Law Society of South Australia members?

- Law Society of South Australia members are legal practitioners or participate in the legal profession.
- It is proposed that the Scheme apply to the following membership types:
 - a) Admitted Members (including Barrister Members) of the Law Society of South Australia, who hold an Australian practicing certificate and insurance that complies with the Law Society of South Australia Insurance Standard, and who have not been exempted from the Scheme; and
 - b) Company Members of the Law Society of South Australia that have not been exempted from the Scheme.
- The Scheme may also apply to persons to whom the Scheme applies by virtue of sections 20, 21 and 22 of the *Professional Standards Act 2004 (SA)* and the corresponding sections of the corresponding laws, provided that they are Members of the Law Society of South Australia if they are entitled to be members.

What types of work do Law Society of South Australia members carry out?

- The provision of legal and associated services including legal representation, advice and drafting.

Where Can I Find More Information?

- Further information regarding the Law Society of South Australia’s current Professional Standards Scheme may be found at: www.lawsocietysa.asn.au