



Bar Association of Queensland Professional Standards Scheme

Public Consultation Document

The Bar Association of Queensland

1. What is the Bar Association of Queensland?

The Bar Association of Queensland (the Association) was established in 1903 as the professional body representing the interests of barristers practising in Queensland. Whilst the scope and functions of the Association have broadened since its establishment, its primary goals of promoting the rule of law and maintaining the high ethical standards of the Queensland Bar remain.

Membership of the Association is available to all barristers practising in Queensland, barristers practising interstate and others associated with the legal profession. The Association provides a comprehensive range of member benefits and services, including regular continuing professional development (CPD) seminars, conferences, mentoring through its readership program and ongoing professional support and assistance.

In addition, since July 2004, the Association has assumed important regulatory responsibilities under the *Legal Profession Act 2007* (Qld) (the LP Act), including to issue Queensland barristers' practising certificates and to assist the Legal Services Commission in carrying out its disciplinary functions by investigating and making non-binding recommendations about complaints made against barristers.

2. Who are the Association's members?

Members of the Association fall within one (or more in the case of Life members) of the following classes of membership:

- Ordinary member Class A – a barrister practising at the private Bar in Queensland;
- Ordinary member Class B – a barrister practising in an employed capacity in Queensland;

- Ordinary member Class C – a barrister who holds an interstate practising certificate;
- Associate member – a non-practising barrister or judicial officer;
- Honorary member – an eminent person appointed by nomination by the President, seconded by the Vice President, and approved by the Bar Council; or
- Life member – a current or former member appointed by nomination of the President, seconded by the Vice President, and approved by a general meeting of members.

The Professional Standards Scheme

1. What is the Association's Professional Standards Scheme?

The Association's Professional Standards Scheme serves the critical dual-purpose of:

- protecting the public as consumers of legal services provided by barristers practising at the Queensland private Bar; and
- improving the professional standards of barristers practising at the Queensland private Bar.

The Scheme will limit the civil liability of a barrister covered by the Scheme, to an approved monetary ceiling of \$1.5 million.

2. Who administers the Scheme?

Responsibility for administering the Scheme and ensuring it complies with the requirements of both the *Professional Standards Act 2004* (Qld) (the PS Act) and the Professional Standards Councils rests with the Association, and in particular, the Chief Executive of the Association.

3. How long has the Association administered a Scheme?

The Association has administered a scheme since 1 July 2013.

4. Where will the Scheme apply?

The Scheme will apply in Queensland, New South Wales, the Australian Capital Territory, South Australia, the Northern Territory, Victoria, Western Australia and Tasmania.

5. What types of liability will the Scheme limit?

The liability limited by the Scheme is defined by the PS Act. Currently, the Scheme covers civil liability against barristers who are covered by the Scheme, arising in the course of providing legal services.

The Scheme does not apply to any liability which the PS Act excludes. The PS Act currently excludes:

- any liability for damages arising from death or personal injury to a person;
- any negligence or other fault in acting for a client in a personal injury claim;
- a breach of trust, fraud or dishonesty; or
- liability that may be the subject of proceedings under the *Land Title Act 1994* (Qld), part 9, division 2, subdivision C.

6. When will the Scheme commence?

The Scheme will commence on 1 July 2019.

7. Who will the Scheme be available to?

Unless exempted by the Association, the Scheme will apply to a barrister who:

- holds a Queensland practising certificate;
- practises at the private Bar in Queensland;
- is a Class A Ordinary member or Life member of the Association; and
- is insured under an approved professional indemnity insurance policy

(a participating member).

The Scheme also applies to other persons related to a participating member by operation of ss 20, 21 and 21A of the PS Act.

8. Who will the Scheme not apply to?

The Scheme will not apply to Class B Ordinary members, Class C Ordinary members, Associate members or Honorary members.

The Association may, upon application by a participating member, exempt that member from the operation of the Scheme. The exemption would take effect from a date specified by the Association, (either the date the exemption is granted or a later specified date).

Operation of the Scheme

1. What form will the limited liability take under the Scheme?

Participating members' professional liability will be limited to the monetary ceiling of \$1.5 million, for which they are required to be indemnified by an approved policy of professional indemnity insurance to a minimum limit of \$1.5 million.

2. How will consumers know if an Association member is covered by the Scheme?

Participating members must display the disclosure statement, '*Liability limited by a scheme approved under Professional Standards Legislation*', on all business documents sent to existing and potential clients.

The term "business document" is defined by s 34(5) of the PS Act.

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 Scheme assures that consumers are well served by ethical and competent barristers. Participating members must adhere to the highest professional standards and conduct, and hold a professional indemnity policy approved under the LP Act.

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

The Association has implemented comprehensive risk management strategies designed to ensure participating members maintain and improve their professional standards.

These strategies form part of the Association's 5 year risk management plan underpinning the Scheme, and include:

Minimum requirements for professional entry to practice at the Queensland Bar

Prospective barristers must pass examinations, which comprise three 1.5 hour exams regarding legal ethics, practice and procedure, and evidence. They must also complete the Bar Practice Course – a six week full-time intensive course which allows a participant to attain the skill level of a junior barrister.

When applying for a barristers' practising certificate, applicants must satisfy the Association that they are a fit and proper person under the LP Act to hold a practising certificate.

Continuing professional development

CPD is an important professional obligation on participating members to ensure their skills and knowledge are maintained and updated.

The Association requires participating members to obtain 10 CPD points per year, with four core strands covering: ethics and professional responsibility, practice management and business skills, substantive law evidence practice and procedure, and barristers' skills.

The Association provides a comprehensive annual CPD program at no or low cost to members. In the first year of practice at the private Bar, participating members must complete 'readership' which includes compulsory attendance at a specialised CPD program.

Complaints and discipline system

The system for handling complaints about barristers in Queensland is prescribed by the LP Act. The Association maintains processes to ensure that any complaints referred to it by the Legal Services Commission (the body responsible under the LP Act for dealing with complaints) are investigated and reported on in a fair, accountable and accessible way which maintains the integrity of the legal profession, and protects consumers.

Monitoring and review of professional standards

The Association will report annually to the Professional Standards Councils on the implementation and monitoring of its risk management strategies, the effect of those strategies and any changes made (or proposed to be made) to them.

Additionally, the Association is required to conduct an annual audit of at least 10% of participating members to monitor their compliance with the PS Act, the outcome of which is included in the Association's annual report to the Professional Standards Councils.

3. How is liability limited under the Scheme?

Liability will be limited under the Scheme by way of insurance arrangements.

All barristers practising at the private Bar in Queensland are required by the LP Act and regulations made under it to have professional indemnity insurance:

- (a) for at least \$1.5 million inclusive of defence costs; and
- (b) provided by an insurer approved by the Association.

This complies with the PS Act which requires that any amount payable to a participating member under a relevant insurance policy be at least equal to the amount of the Scheme's monetary ceiling of \$1.5 million.

Further information regarding the Association's current Professional Standards Scheme can be found on the Association's website: www.qldbar.asn.au.