

## Professional Standards Act 2004 (SA)

### THE SOUTH AUSTRALIAN BAR ASSOCIATION INC PROFESSIONAL STANDARDS SCHEME

#### PREAMBLE

- A. The South Australian Bar Association Inc (**the Bar**) is an occupational association.
- B. The Bar 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 Bar 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 Bar is to apply to ordinary members of the Bar 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 Bar 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 New South Wales, Victoria, Queensland, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory, under the mutual recognition provisions of the professional standards legislation.

# THE SOUTH AUSTRALIAN BAR ASSOCIATION INC PROFESSIONAL STANDARDS SCHEME

## 1. Definitions

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

“Acts” means the Act and each corresponding law;

“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 Ordinary Member who is or was at a Relevant Time exempted by the Bar from participation in the Scheme pursuant to clause 4.3;

“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, the sum of \$1,500,000.

“Occupational Liability” has the same meaning as it has in the Acts;

“Ordinary Member” means a person who is or was at a relevant time an ordinary member within the meaning of and pursuant to the South Australian Bar Association Inc Constitution;

“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 South Australian Bar Association Inc Scheme constituted herein;

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

*“Single Claim”* has the same meaning as it has in the Acts;

*“The Bar”* means the South Australian Bar Association Inc.

## **2. Occupational Association**

- 2.1. The Scheme is a Scheme under the Act prepared by the Bar whose business address is Level 12, 211 Victoria Square, 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 Australian Capital Territory 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 Ordinary Members of the Bar;

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 Act and the corresponding sections of the Corresponding Laws.

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

4.4 The Bar may, upon application by an Ordinary member, revoke an exemption of that person from participation in the Scheme with effect from a date specified by the Bar.

## **5. Conferral of Discretionary Authority**

5.1 The Scheme confers on the Bar 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 an amount not exceeding \$50 million.

## **6. Limitation of Liability**

6.1 The occupational liability of a person who is or was at the Relevant Time a Scheme Participant and the subject of a single claim in respect of one or more causes of action founded on an act or omission occurring during the Duration of the Scheme, to the extent to which it is an Occupational Liability, 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, to the extent provided by the Act and the provisions of the Scheme, 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, 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. In the event that the Scheme is published in the *Government Gazette* of any jurisdiction after 1 July 2017, the Scheme will commence on such day 2 months after the date of its publication in that jurisdiction.

7.2 Subject to clause 7.3, the Scheme will remain in force for a period of 5 years from its commencement in South Australia 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.