

## **The Western Australian Bar Association**

### **Professional Standards Scheme**

#### **SUMMARY**

##### **The way in which the Association is constituted and the occupational group that the Association represents**

1. The Western Australian Bar Association (**Association**) is constituted as an incorporated body under the *Associations Incorporation Act 1987* (WA).
2. The Association represents independent barristers practising in Western Australia, who are members of the Association.

##### **The jurisdiction where it is intended the Scheme will apply**

3. The Scheme is intended to apply in Western Australia, New South Wales, Queensland, South Australia, Victoria, the Australian Capital Territory and the Northern Territory.

##### **The classes and types of members of the Association to whom the Scheme applies**

4. The Scheme will apply to Members of the Association who are based in and practise as independent barristers primarily in Western Australia. The Scheme will not apply to Interstate Members.
5. There are currently 228 Members of the Association, of whom 33 are Interstate Members. It is anticipated that the Scheme will apply to majority of the 195 Members practising primarily in Western Australia. The Association's Bar Council may, upon application by a Member, exempt that Member from participation in the Scheme.

##### **The types of work carried out by Members of the Association to whom the Scheme will apply**

6. Advocacy in courts and tribunals, legal advice and the drafting and settling of documents.

##### **The way in which liability is limited (insurance, business assets, or a combination of insurance and business assets)**

7. If a person to whom the Scheme applies and against whom a cause of action relating to occupational liability is brought, is able to satisfy the

court that the person has the benefit of an insurance policy or more than one insurance policy –

- (a) that insures the person against that occupational liability; and
- (b) under which the amount payable in respect of the occupational liability relating to that cause of action (including any amount payable by the person by way of excess under or in relation to the policy or policies) is not less than the maximum amount of liability specified in the Scheme in relation to the class of person and the kind of work to which the cause of action relates at the time at which the act or omission giving rise to the cause of action occurred,

the person is not liable in damages in relation to that cause of action for anything done or omitted on or after the commencement of the Scheme for any amount above the monetary ceiling (a maximum amount of liability) subject to clause 4(2) of the Scheme document, of \$2 million.

#### **The different levels of limited liability for different members or circumstances**

- 8. Subject to any discretionary higher limit, the maximum amount of liability specified in the Scheme is \$2 million.

#### **Whether the Association may exempt members from the Scheme**

- 9. Section 1.5.4 of the Scheme Application provides that the Association's Bar Council may, upon application by a Member, exempt that Member from participation in the Scheme. Whether or not to grant an exemption is at the discretion of Bar Council.

#### **Whether the Scheme confers a discretionary authority on the Association to specify a higher maximum amount of liability**

- 10. It is proposed that Bar Council will have a discretionary authority, on application by a Scheme Participant, to approve a higher maximum amount of liability than would otherwise apply under the Scheme in relation to that Scheme Participant.

#### **The Association's membership requirements for persons to whom the Scheme applies**

- 11. Membership of the Association is conditional upon an applicant:
  - (i) being admitted as a legal practitioner of the Supreme Court of Western Australia (or in another Australian jurisdiction);
  - (ii) having completed post-admission restricted practice requirements;
  - (iii) holding a current practising certificate and the requisite professional indemnity insurance.

### **Continuing Professional Development (CPD) Program**

12. Each year, Members are required to complete 10 CPD points across the following three competency areas in order to apply for renewal of practising certificates:
  - (i) Competency Area 1 – Legal Skills or Practice
  - (ii) Competency Area 2 - Ethics or Professional Responsibility
  - (iii) Competency Area 3 - Substantive Law

### **The Association's complaints and discipline system**

13. All Scheme Participants are subject to comprehensive statutory complaints and disciplinary systems that operate in relation to the legal profession of Western Australia.

The Legal Practice Board (**LPB**), which is constituted under the *Legal Profession Act 2008*, has statutory responsibility for the regulation of all legal practitioners in Western Australia. The Legal Profession Complaints Committee (**LPCC**), an independent statutory committee of the LPB, has statutory responsibility for supervising the conduct of all legal practitioners (including barristers) in Western Australia.

The Association, through its Disciplinary Committee, is responsible for determining any complaint by Bar Council in respect of the conduct of a Member where a Member is guilty of unsatisfactory professional conduct or professional misconduct, or has breached the Constitution or the Western Australian Barristers' Rules.

### **The Association's quality assurance and insurance standards**

14. The *Legal Profession Regulations 2009* made pursuant to the *Legal Profession Act 2008*, provide, in Regulation 96 the requirement for all legal practitioners to hold professional indemnity insurance, in order to obtain a practising certificate.

For the 2013-2014 year, the minimum level of cover is \$2 million, for each claim inclusive of cost.

All Members of the Association are required to have professional indemnity insurance of at least \$2 million in order to obtain a practising certificate.

### **A summary of the key strategies to be undertaken by the Association in its five year risk management plan.**

15. Key strategies will include:
  - (1) Prescribing and ensuring compliance with the Association's membership requirements.

- (2) Promoting awareness of, and compliance with, Continuing Professional Development (CPD) requirements under the *Legal Profession Act 2008 (WA)* and the *Legal Profession Rules 2009*.
- (3) The Association offering, as a QA Provider of CPD, a range of CPD seminars and other activities for Members.
- (4) Promoting, maintaining, and ensuring that Members are aware of, and comply with, a code of ethics and practice standards.
- (5) That the complaints and discipline structure in place remains adequate and effective. That voluntary conciliation remains accessible and efficient.
- (6) Promoting awareness of, and compliance with, complaints and disciplinary systems by Members.
- (7) Reviewing the adequacy and availability of professional indemnity insurance policies, and Members' compliance with compulsory professional indemnity insurance requirements.
- (8) Provide training in, and monitor Members' compliance with requirements of disclosure of the limitation of liability to clients and prospective clients.
- (9) Educating Members about risk management strategies, and assessment and implementation of such strategies.

**A description of the management structure within the Association for the management and administration of the Scheme**

- 16. The Scheme will be administered by the Association's Bar Council, the Professional Responsibility Committee, and the Association's staff.

**The website of where the register of members to whom the Scheme will apply can be found**

- 17. The Association's website can be found at [www.wabar.asn.au](http://www.wabar.asn.au)

**The website of the Association where further information about the Association and risk management strategies of the Association can be found**

- 18. Details of risk management strategies, and Members to whom the Scheme will apply, will be placed on the website on commencement of the Scheme.