

Professional Standards Act 1997 (WA)

THE WESTERN AUSTRALIAN BAR ASSOCIATION SCHEME

PREAMBLE

Occupational Association

- A. The Western Australian Bar Association (**Association**) is an occupational association, constituted as an incorporated body under the *Associations Incorporation Act 1987 (WA)*.
- B. The Association represents independent barristers practising in Western Australia, who are members of the Association.
- C. The Western Australian Bar Association Scheme (**the Scheme**) is a scheme under the *Professional Standards Act 1997 (WA)* (**the Act**) prepared by the Western Australian Bar Association (**Association**) whose business address is: 16th Floor, Allendale Square, 77 St George's Terrace, Perth WA 6000.
- D. The Scheme limits the occupational liability of Scheme Participants who provide services to the public.
- E. The approximate number of members eligible to be Scheme Participants is presently 195.
- F. The objectives of the Association are expressed in clause 2 of its Constitution and include:
 - (a) To promote the worthy traditions of the Western Australian Bar.
 - (b) To uphold the honour and promote the interests of the Bar.
 - (c) To promote fair and honourable practice by and amongst barristers.
 - (d) To confer and collaborate with and in matters relating to the practice of the law generally to act through the Law Society of Western Australia Incorporated (**Law Society**), and to that end, to enter into arrangements with that Law Society whereby Members of the Association can be provided with the benefits of membership of the Law Society.
 - (e) To join or affiliate with the Australian Bar Association (**ABA**) and the Law Council of Australia (**LCA**).
 - (f) To further legal education and study including by providing or arranging a Bar Readers' Course for barristers or persons aspiring to join the Bar and to provide continuing legal education to its Members or to other legal professionals.

- (g) To encourage friendly relations and social and sporting activities among Members.
- (h) To assist needy Members and ex-Members and dependents of Members, ex-Members and deceased Members.
- (i) To provide funds and facilities for and to do all such things as are conducive or incidental to the attainment of the above objects or any of them.

Nature of the Scheme

- G. The Scheme operates for the purpose of improving the occupational standards of professionals and others, and to protect the consumers of their services. It also limits the civil liability of persons to whom the Scheme applies.
- H. The liability limited by the Scheme includes, to the extent permitted by the Act, civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by a member of the Association or to any person to whom this Scheme applies in acting in the performance of his or her occupation. However the Scheme does not apply to liability for damages arising from any matter to which the Act does not apply.
- I. The Scheme does not affect damages which are below the monetary ceiling specified in the Scheme for each member. The Scheme limits liability for damages to the monetary ceiling specified for that member provided that the person has insurance as required by s 34 of the Act.

Risk Management

- J. The Association has adopted strategies which cover requirements for admission as a Member and continuing professional development in the areas of ethics and regulation of the profession; management; substantive law, practice and procedure, and evidence, advocacy, mediation and other barristers' skills.
- K. The complaints and disciplinary system operates pursuant to the requirements of the *Legal Profession Act 2008*.
- L. The Association will report annually 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.

Standards of Insurance

- M. Scheme Participants are required to maintain current professional indemnity insurance policies that comply with the standards determined

by the Association and to comply with regulations relating to professional indemnity insurance.

- N. The *Legal Profession Act 2008* and associated rules and regulations requires (relevantly) that barristers have compulsory professional indemnity insurance. The Association reviews and determines such policies for the required standards for professional indemnity insurance cover.

Complaints and Discipline

- O. Scheme Participants are subject to a complaints and discipline system operating under the *Legal Profession Act 2008*. All Scheme Participants must comply with the provisions of that Act, the Constitution and rules and regulations of the Association.

Scheme Administration

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

Responsibility for administration of the Scheme and ensuring that it complies with the requirements of the Act and of the Professional Standards Council rests with the Association.

Duration of the Scheme

- Q. The Scheme [is intended to commence/commenced] on [insert date] and [will] 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 44A(2) of the Act.

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1. Occupational Association

- 1.1 The Association is an occupational association, constituted as an incorporated body under the *Associations Incorporation Act 1987* (WA).
- 1.2 The Association represents independent barristers practising in Western Australia, who are members of the Association.
- 1.3 The Western Australian Bar Association Scheme (**the Scheme**) is a scheme under the Act prepared by the Western Australian Bar Association (**Association**) whose business address is: 16th Floor, Allendale Square, 77 St George's Terrace, Perth WA 6000.

2 Persons to Whom the Scheme Applies

- 2.1 The Scheme applies to members of Association who are based in and practise as independent barristers primarily in Western Australia. The Scheme does not apply to interstate members.

The Scheme applies to all persons who:

- 2.1.1 are or at the relevant time were members of the Association;
- 2.1.2 are or were at the relevant time not exempted from participating in the Scheme; and
- 2.1.3 have professional indemnity insurance in respect of a liability potentially limited by the Scheme,

by virtue of section 30 of the Act and the corresponding sections of the corresponding laws.

- 2.2 The Association's Bar Council may, upon application by a member, exempt a Member from participation in the Scheme with effect from a date specified by it on or after the date on which the exemption is granted.
- 2.3 The Association's Bar Council may, upon application by a member, revoke an exemption of that person from participation in the Scheme with effect from a date specified by it.
- 2.4 The Scheme also applies to all persons to whom the Scheme applied under clause 2.1 at the time of any act or omission giving rise to occupational liability.

3 Limitation of liability

- 3.1 If a person, who was at the time of the act or omission giving rise to occupational liability, a person to whom the Scheme applied, against whom a proceeding relating to occupational liability is brought, is able to satisfy the court that such person has the benefit of an insurance policy:
- (a) of a kind which complies with the standards determined by the Association,
 - (b) insuring such person against that occupational liability, and
 - (c) under which the amount payable in respect of that occupational liability is not less than the monetary ceiling specified in the Scheme,

that person is not liable in damages in relation to that cause of action above the monetary ceiling specified in the Scheme.

- 3.2 The monetary ceiling (maximum amount of liability) is \$2 million. That amount is applicable for the purpose of limitation of liability under the Scheme at the time the act or omission occurs, not at the time the claim is brought.
- 3.3 The monetary ceiling referred to in 3.2 above may be higher if Bar Council has, on application by a Scheme Participant, approved a higher maximum amount of liability.
- 3.4 Clause 3.2 does not limit the amount of damages to which a person to whom the Scheme applies is liable if the amount is less than the amount specified for the purpose in the Scheme in relation to a person to whom the Scheme applies.
- 3.5 The Scheme limits the occupational liability in respect of a cause of action founded on an act or omission occurring during the period when the Scheme was in force of any person to whom the Scheme applied at the time the act or omission occurred.

4. Discretionary authority

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.

5. Commencement and Duration of the Scheme

- 5.1 The Scheme commences in Western Australia on [] and the Scheme shall commence in any other State or Territory:
 - (a) on the date which is 2 months after the date of its publication in the Government Gazette of that State or Territory; or
 - (b) if the corresponding law of a State or Territory does not provide for the date of commencement of a scheme to be specified in the Scheme, on a date specified or determined in accordance with the corresponding law of that State or Territory.
- 5.2 Subject to clause 5.3, the Scheme will remain in force for a period of 5 years from its commencement unless:
 - 5.2.1 it is revoked or ceases in accordance with the Act, or
 - 5.2.2 it is extended in accordance the Act.
- 5.3 The Scheme will cease to operate in a jurisdiction referred to in clause 5.1 if it is revoked or ceases in accordance with the corresponding law of that jurisdiction.

6. Territorial application of the Scheme

The Scheme is intended to operate as a scheme of Western Australia, New South Wales, Queensland, South Australia, Victoria, the Australian Capital Territory and the Northern Territory.