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PROFESSIONAL STANDARDS ACT 1997



PROFESSIONAL STANDARDS ACT 2003
(VICTORIA)



**THE VICTORIAN
BAR INCORPORATED
SCHEME**

PROFESSIONAL STANDARDS ACT 1997

VICTORIAN BAR INCORPORATED SCHEME

I, C. Christian Porter MLA, Attorney-General, pursuant to section 26 of the **Professional Standards Act 1997 (WA)** (the Act), authorise the publication of the Victorian Bar Incorporated Scheme submitted to me by the Victorian Professional Standards Council pursuant to the mutual recognition provisions of the Victorian and Western Australian professional standards legislation. The Scheme is published with this authorisation and commences in accordance with section 27 of the Act. The Scheme remains in force from the date of its commencement until 30 June 2013, unless the Scheme is revoked, extended, or its operation ceases as specified in the Act.

C. CHRISTIAN PORTER MLA, Attorney-General.

Dated: 24 January 2012.

PROFESSIONAL STANDARDS ACT 2003 (VIC)

THE VICTORIAN BAR INC

PREAMBLE**Occupational Association**

- A. The Victorian Bar Inc (“the Victorian Bar”) is an incorporated association constituted under the *Associations Incorporation Act 1981*;
- B. The occupational group represented by the Victorian Bar consists of barristers practising in Victoria;
- C. The Victorian Bar Professional Standards Scheme (“the Scheme”) is a scheme under the *Professional Standards Act 2003 (Vic)* (“the Act”) that applies to those persons referred to below in clause 3. The Scheme does not apply to all members of the Victorian Bar;
- D. The Scheme limits the occupational liability of Scheme members who provide services to the public;
- E. The approximate number of members eligible to apply to have the Scheme apply to them is 1,846;
- F. The objectives of the Victorian Bar are expressed in clause 3 of its Constitution and include—
- (a) To maintain in the public interest a strong and independent Bar in the State of Victoria;
 - (b) To promote, foster and develop within the executive and legislative arms of the Government of Victoria and within the general community, an understanding and appreciation that a strong and independent Bar is indispensable to the rule of law and to the continuation of a democratic society;
 - (c) To improve the relationship between the Victorian Bar and the executive and legislative arms of the Government of Victoria without in any way diminishing the independence of the Victorian Bar and its members;
 - (d) To promote, maintain and improve the quality of the Victorian Bar;
 - (e) To seek to ensure that access to the courts is open to all members of the community;
 - (f) To arrange training for Bar Readers and regulate entry to membership of the Bar;
 - (g) To arrange and promote Continuing Professional Development;
 - (h) To promote the resolution of disputes by mediation, arbitration and other appropriate methods of alternative dispute resolution;
 - (i) To perform such functions as may be assigned, permitted, referred or delegated to the Victorian Bar by or under legislation regulating the legal profession or the practice of law;
 - (j) To seek to ensure that as far as practicable chambers are available for counsel;
 - (k) To seek to promote the welfare of members of the Victorian Bar;
 - (l) To promote the rule of law including the proper administration of justice; and
 - (m) Without limiting (I), to make recommendations with respect to legislation, law reform, rules of court and the business and procedure of courts.

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 Victorian Bar 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 s23 of the Act;

Risk Management

- J. The Victorian Bar has adopted strategies which cover requirements for professional entry to practice at the Bar and continuing professional development in the areas of ethics and regulation of the profession; management; substantive law, practice and procedure, and evidence, and advocacy, mediation and other barristers’ skills;

- K. The complaints and disciplinary system operates pursuant to the requirements of the *Legal Profession Act 2004*;
- L. The Bar 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 members are required to maintain current professional indemnity insurance policies on offer to barristers with a Victorian practising certificate and otherwise to comply with any regulations relating to professional indemnity insurance from time to time of the Victorian Bar Council;
- N. The Legal Services Board determines the statutory minimum level of professional indemnity insurance required to be taken out by barristers and also approves the professional indemnity insurance policy on offer from the Legal Practitioners Liability Committee;

Claims Monitoring

- O. The Victorian Bar has established a relationship with the insurers who provide cover for scheme members which will ensure the Victorian Bar will be able to obtain and monitor claims data. The Victorian Bar will report annually on claims monitoring, tactics, performance measures and monitoring systems;

Complaints and Discipline

- P. Scheme members are subject to a complaints and discipline system operating under the *Legal Profession Act 2004*. All scheme members must comply with the provisions of that Act, the Constitution and rules and regulations of the Victorian Bar;

Scheme Administration

- Q. Responsibility for administration of the scheme and ensuring that it complies with the requirements of the *Professional Standards Act 2003* (Vic) and of the Professional Standards Council rests with the Victorian Bar;

THE VICTORIAN BAR SCHEME

1. Occupational Association

(1) The Victorian Bar Professional Standards Scheme is a scheme under the *Professional Standards Act 2003* (Vic) ("the Act") of the Victorian Bar whose registered address is 205 William Street, Melbourne, Victoria.

2. Definitions

- (1) Unless the context otherwise requires—
 - "damages" has the meaning given it in section 4 of the Act;
 - "Scheme register" means the register of members to whom the Scheme applies maintained by the Victorian Bar Council;
 - "the Act" means the *Professional Standards Act 2003* (Vic) as amended from time to time.

3. Persons to whom the Scheme applies (participating members and other persons)

- (1) The Scheme applies;
 - (a) to the class of persons within the Victorian Bar more particularly specified in sub-clause 3(2) of this Scheme document; and
 - (b) to persons to whom the Scheme applies by virtue of sections 20, 21 and 22 of the Act.
- (2) The class of Scheme members referred to in sub-clause 3(1)(a) comprises all members of the Victorian Bar—
 - (a) who hold a current practising certificate issued by the Victorian Legal Services Board or the Victorian Bar;
 - (b) who are admitted to membership of the Scheme by resolution of the Victorian Bar Council; and
 - (c) whose names remain on the Scheme register maintained by the Victorian Bar Council.
- (3) On application in writing by a member to whom the Scheme applies, the Victorian Bar may exempt the member from the Scheme.

4. Limitation of Liability

- (1) 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 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 \$2 million.

(2) If on application from time to time or at any time by a person to whom the Scheme applies, in all cases or any specified case or class of case, the Victorian Bar has specified pursuant to the conferral of discretionary authority in clause 5 of this Scheme document a higher maximum amount of liability than would otherwise apply under the Scheme in relation to the person, the monetary ceiling (maximum amount of liability) in relation to that person either in all cases or in any specified case or class of case (as the case may be) is that higher maximum amount of liability.

(3) In this Scheme document—

- (a) “occupational liability” has the same meaning as it has in the Act and excludes any liability which may not from time to time be limited pursuant to the Act; and
- (b) a reference in clause 4(1) to the amount payable under an insurance policy in respect of occupational liability includes a reference to—
 - (i) defence costs payable in respect of a claim, or notification that may lead to a claim (other than reimbursement of the defendant for time spent in relation to the claim), but only if those costs are payable out of the one sum insured under the policy in respect of the occupational liability; and
 - (ii) the amount payable or in relation to the policy by way of excess.

(4) If the provisions of section 23 of the Act are amended by any subsequent Act or Acts, the provisions of clause 4(1) above shall be taken to have been amended correspondingly and shall operate as so amended.

5. Discretionary authority

(1) The Victorian Bar has a discretionary authority, on application from time to time or at any time by a person to whom the Scheme applies, 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.

6. Commencement of the Scheme

(1) The scheme commenced in Victoria on 1 July 2008 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.

7. Duration

(1) It is intended for the scheme to remain in force for a period of 5 years from its commencement in Victoria unless it is revoked, extended or ceases in accordance with section 34 of the Act

8. Territorial application of the Scheme

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

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PROFESSIONAL STANDARDS ACT 1997

**THE NEW SOUTH WALES BAR
ASSOCIATION SCHEME**

PROFESSIONAL STANDARDS ACT 1997**AUTHORISATION AND PUBLICATION PURSUANT TO SECTION 26
THE NEW SOUTH WALES BAR ASSOCIATION SCHEME
INSTRUMENT AMENDING A SCHEME**

I, C. Christian Porter MLA, Attorney-General, pursuant to section 26 of the *Professional Standards Act 1997* WA (the Act), authorise the publication of the Instrument Amending the New South Wales Bar Association Scheme (the Instrument) submitted to me by the New South Wales Professional Standards Council pursuant to the mutual recognition provisions of the New South Wales and Western Australian professional standards legislation. The Instrument is published with this authorisation and commences in accordance with section 27 of the Act.

C. CHRISTIAN PORTER MLA, Attorney-General.

Dated: 24 January 2012.

PROFESSIONAL STANDARDS ACT 1994 (NEW SOUTH WALES)**THE NEW SOUTH WALES BAR ASSOCIATION SCHEME
INSTRUMENT AMENDING THE NEW SOUTH WALES BAR ASSOCIATION SCHEME****PREAMBLE**

- A. The New South Wales Bar Association (ACN 000 033 652) is an Occupational Association and Australian Public Company, Limited by Guarantee.
- B. The New South Wales Bar Association's Scheme (the Scheme) commenced on 1 July 2010.
- C. This instrument of amendment is prepared by the New South Wales Bar Association for the purposes of amending its scheme to allow for mutual recognition of its scheme in South Australia.

INSTRUMENT AMENDING A SCHEME

1. This instrument to amend the New South Wales Bar Association Scheme is prepared pursuant to the *Professional Standards Act 1994* (NSW) (the Act) by the New South Wales Bar Association whose business address is Selborne Chambers, 174 Phillip Street, Sydney NSW 2000.

Preamble

Delete the existing first paragraph and in its place insert the following—

The New South Wales Bar Association (CAN 000 033 652) is an Australian Public Company, Limited by Guarantee. The Association's Scheme commenced on 1 July 2010.

Delete the existing first paragraph under the heading 'Nature and operation of the scheme' and in its place insert the following—

The Scheme operates for the purpose of improving the occupational standards of barristers and to protect the consumers of their services. The Scheme limits the civil liability of barristers to whom it applies. The Scheme is intended to operate in New South Wales, the Australian Capital Territory, the Northern Territory, Queensland, Victoria, Western Australia and South Australia.

Delete the existing paragraph under the heading 'Scheme Administration' and in its place insert the following—

Responsibility for administration of the scheme and ensuring that it complies with the requirements of the *Professional Standards Act 1994* (NSW) and of the Professional Standards Council rests with the Executive Director; who is assisted on a day to day basis by the Association's Policy Lawyer.

Delete the existing paragraph under the heading 'Duration' and in its place insert the following—

The scheme will remain in force for a period of 5 years from 1 July 2010 unless it is revoked, extended or ceases in accordance with section 32 of the Professional Standards Act.

The Scheme

Delete the existing paragraph 1.1 of the Scheme and in its place insert the following—

1.1 The New South Wales Bar Association Scheme (the scheme) is a scheme under the Professional Standards Act 1994 (NSW) (the Act) of the New South Wales Bar Association (the Bar Association) whose business address is Selborne Chambers, 174 Phillip Street, Sydney. The scheme applies in New South Wales, the Australian Capital Territory, the Northern Territory, Queensland, Victoria, Western Australia and South Australia.

Delete the existing paragraph 3.2 of the Scheme and in its place insert the following—

3.2 For the purposes of the operation of the scheme in NSW 'occupational liability' has the same meaning as it has in the Act and excludes any liability which may not from time to time be limited pursuant to the Act. Similarly, for the purposes of the operation of the scheme in other jurisdictions in which it applies i.e. ACT, Northern Territory, Queensland, Victoria, Western Australia and South Australia, 'occupational liability' has the same meaning as it has in the corresponding legislation of those jurisdictions and excludes any liability which may not from time to time be limited pursuant to that legislation.

Delete the existing paragraph 4.2 of the Scheme and in its place insert the following—

4.2 The scheme will remain in force for a period of five years from its commencement in the ACT, Northern Territory, Queensland, Victoria, Western Australia and South Australia, unless it is extended, terminated or otherwise ceases in accordance with the law of each of those respective jurisdictions.

Delete the existing paragraph 5.1 of the Scheme and in its place insert the following—

5.1 The scheme commenced as follows—

5.1.1 1 July 2010 in New South Wales, the ACT and Western Australia;

5.1.2 19 October 2010 in Victoria;

5.1.3 1 November 2010 in Northern Territory;

5.1.4 17 February 2011 in Queensland; and

5.1.5 2 months after the date of its publication in the Gazette in South Australia.

COMMENCEMENT

The amendments to the scheme will commence 2 months after its publication in the Gazette.

PROFESSIONAL STANDARDS ACT 1994 (NEW SOUTH WALES)

THE NEW SOUTH WALES BAR ASSOCIATION SCHEME

PREAMBLE**Occupational Association**

The New South Wales Bar Association (ACN 000 033 652) is an Australian Public Company, Limited by Guarantee. The Association's Scheme commenced on 1 July 2010.

The NSW Bar Association's website is www.nswbar.asn.au

The occupational group represented by the Association is barristers holding a New South Wales practising certificate. The Scheme only applies to barristers who hold a New South Wales practising certificate, who are members of the Association and who hold approved professional indemnity insurance as provided for in the Scheme. The number of members eligible to be covered by the Scheme is approximately 2100.

The Association's objectives are outlined in clause 3 of the Constitution and include—

- to promote the administration of justice;
- to promote, maintain and improve the interests and standards of local practising barristers;
- to make recommendations with respect to legislation, law reform, rules of court and the business and procedure of courts;
- to seek to ensure that the benefits of the administration of justice are reasonably and equally available to all members of the community;
- to arrange and promote continuing legal education;
- to promote fair and honourable practice amongst barristers; to suppress, discourage and prevent malpractice and professional misconduct;
- to inquire into questions as to professional conduct and etiquette of barristers;
- to confer and cooperate with bodies in Australia or elsewhere representing the profession of the law;
- to encourage professional, educational, cultural and social relations amongst the members of the Bar Association; and
- to make donations to charities and such other objects in the public interest as determined from time to time by the Bar Council.

Nature and Operation of the Scheme

The Scheme operates for the purpose of improving the occupational standards of barristers and to protect the consumers of their services. The Scheme limits the civil liability of barristers to whom it applies. The Scheme is intended to operate in New South Wales, the Australian Capital Territory, the Northern Territory, Queensland, Victoria, Western Australia and South Australia.

The liability limited by the Scheme includes, to the extent permitted by the Act, all 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 the Scheme applies in acting in the performance of his or her occupation. The Scheme does not apply to liability for damages arising from any matter to which the Act does not apply, including, but not limited to, liability for damages arising from death or personal injury to a person, a breach of trust, fraud or dishonesty.

The Scheme does not affect damages which are below \$1.5 million. The Scheme limits liability for damages to \$1.5 million provided the person has insurance which is not less than \$1.5 million. To date, there has never been a successful claim against a NSW barrister that has reached \$1.5 million in damages.

Risk Management

The Association has adopted many risk management strategies, including—

- requirements for professional entry to practice at the Bar;
- 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;
- codes of ethical conduct;
- technical standards and guidance;
- advisory and support services;
- complaints and discipline systems; and
- claims monitoring.

The Bar Association will continue to 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.

Complaints and Discipline

Scheme members are subject to a complaints and discipline system operating under the *Legal Profession Act 2004* (NSW). All scheme members must comply with the provisions of the *Legal Profession Act 2004* (NSW) and *Legal Profession Regulation 2005*.

Standards of Insurance

Scheme members are required to have approved professional indemnity insurance before they are issued with a practising certificate. The NSW Attorney General determines the statutory minimum level of professional indemnity insurance required to be taken out by barristers and also approves the professional indemnity insurance policies on offer by brokers each year. The professional indemnity insurance taken out by NSW barristers covers them for liability in all Australian States and Territories.

Claims Monitoring

The Association will continue to request that the Attorney General's Order approving the policies for NSW barristers each year requires that the brokers/insurers provide the Association with claims data so that the Association can continue to monitor claims made against its members. The Association will continue to maintain its long established relationship with the insurers. The Bar Association will continue to report annually to the Professional Standards Council on claims monitoring, tactics, performance measures and monitoring systems.

Scheme Administration

Responsibility for administration of the scheme and ensuring that it complies with the requirements of the *Professional Standards Act 1994* (NSW) and of the Professional Standards Council rests with the Executive Director; who is assisted on a day to day basis by the Association's Policy Lawyer.

Duration

The scheme will remain in force for a period of 5 years from 1 July 2010 unless it is revoked, extended or ceases in accordance with section 32 of the Professional Standards Act.

PROFESSIONAL STANDARDS ACT 1994 (NEW SOUTH WALES)

THE NEW SOUTH WALES BAR ASSOCIATION SCHEME

Amended 2 December 2011

1. Occupational Association

1.1 The New South Wales Bar Association Scheme (the scheme) is a scheme under the *Professional Standards Act 1994* (NSW) (the Act) of the New South Wales Bar Association (the Bar Association) whose business address is Selborne Chambers, 174 Phillip Street Sydney. The scheme applies in New South Wales, the Australian Capital Territory, the Northern Territory, Queensland, Victoria, Western Australia and South Australia.

2. Persons to Whom the Scheme Applies (Participating Members & Other Persons)

2.1 The scheme applies to scheme members as defined in clause 2.2 of the scheme and persons defined in clause 2.3 of the scheme.

2.2 All members of the Bar Association who hold a NSW barrister's practising certificate issued by the Bar Association and who have professional indemnity insurance that complies with the standard approved by the NSW Attorney General under the *Legal Profession Act 2004* (NSW).

2.3 Persons to whom the scheme applies by virtue of sections 18, 19, and 20 of the Act.

2.4 In New South Wales and Queensland, persons to whom the scheme applies by virtue of section 20A of the Act.

3. Limitation of Liability

3.1 Subject to clause 3.3 below, a person to whom the scheme applies against whom a cause of action relating to occupational liability is brought, 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 above a monetary ceiling (a maximum amount of liability) of \$1,500,000.

3.2 For the purposes of the operation of the scheme in NSW 'occupational liability' has the same meaning as it has in the Act and excludes any liability which may not from time to time be limited pursuant to the Act. Similarly, for the purposes of the operation of the scheme in other jurisdictions in which it applies i.e. ACT, Northern Territory, Queensland, Victoria, Western Australia and South Australia, 'occupational liability' has the same meaning as it has in the corresponding legislation of those jurisdictions and excludes any liability which may not from time to time be limited pursuant to that legislation.

3.3 The person to whom the scheme applies must be able to satisfy the court that they have the benefit of—

3.3.1 an insurance policy insuring them against that occupational liability, and

3.3.2 an insurance policy under which the amount payable in respect of the occupational liability relating to that cause of action is not less than the maximum amount of liability specified in the scheme in relation to the person to whom the scheme applies at the time at which the act or omission giving rise to the cause of action occurred.

4. Duration

4.1 The scheme will remain in force for a period of 5 years from its commencement in New South Wales unless—

4.1.1 it is revoked, extended or ceases in accordance with section 32 of the Act, or

4.1.2 it is extended for a period of up to 12 months in accordance with section 32 of the Act.

4.2 The scheme will remain in force for a period of five years from its commencement in the ACT, Northern Territory, Queensland, Victoria, Western Australia and South Australia, unless it is extended, terminated or otherwise ceases in accordance with the law of each of those respective jurisdictions.

5. Commencement

5.1 The scheme commenced as follows—

5.1.1 1 July 2010 in New South Wales, the ACT and Western Australia;

5.1.2 19 October 2010 in Victoria;

5.1.3 1 November 2010 in the Northern Territory;

5.1.4 17 February 2011 in Queensland; and

5.1.5 2 months after the date of its publication in the *Gazette* in South Australia.
