

PROFESSIONAL STANDARDS ACT 1997

SOUTH AUSTRALIAN BAR ASSOCIATION PROFESSIONAL STANDARDS SCHEME

I, John Quigley MLA, Attorney General; Minister for Electoral Affairs, pursuant to section 26 of the *Professional Standards Act 1997* (WA) (the Act), authorise the publication of the South Australian Bar Association Professional Standards Scheme (the Scheme) submitted to me by the Professional Standards Council of South Australia. The Scheme is published with this authorisation and will commence in accordance with section 27 of the Act.

Dated 14 March 2022.

Hon. JOHN QUIGLEY, MLA, Attorney General; Minister for Electoral Affairs.

PROFESSIONAL STANDARDS ACT 2004 (SA)

SOUTH AUSTRALIAN BAR ASSOCIATION PROFESSIONAL STANDARDS SCHEME

PREAMBLE

- A. The South Australian Bar Association (“SABA”) is an occupational association.
- B. SABA has made an application to the Professional Standards Council, established by the *Professional Standards Act 2004* (SA), for approval of a scheme under the Act.
- C. The Scheme is prepared by SABA for the purposes of limiting occupational liability of its participants to the extent to which such liability may be limited under the Act.
- D. The Scheme propounded by SABA applies to Ordinary Members of SABA who have professional indemnity insurance that complies with the approved Insurance Standard.
- E. SABA has furnished the Professional Standards 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 to commence on 1 July 2022 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.
- G. The Scheme is intended to apply in all States and Territories within Australia.
- H. The Scheme only applies to Ordinary Members holding an Australian practising certificate in the practise of domestic law within Australia.
- I. The Scheme will have force in South Australia and, if relevant, the other jurisdictions in which the Scheme will apply under the provisions for mutual recognition contained in the Act. To the extent that the Scheme applies to limit liability in the other jurisdictions, it is subject to the professional standards legislation of those jurisdictions.
- J. Section 12GNA(2) of the *Australian Securities and Investments Commission Act 2001* (Cth); section 137(2) of the *Competition and Consumer Act 2010* (Cth); and section 1044B(2) of the *Corporations Act 2001* (Cth) provide for limited liability in respect of actions for contravention of certain provisions, but only where a professional standards scheme is prescribed in the relevant regulation. The Scheme does not apply to limit any liability under a Commonwealth law unless the Scheme has been prescribed by the Commonwealth.

THE SOUTH AUSTRALIAN BAR ASSOCIATION PROFESSIONAL STANDARDS SCHEME

1. Definitions

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

“Corresponding Law” means a law of another State or Territory of Australia that corresponds to the Act, including for the avoidance of doubt—

- (a) *Professional Standards Act 1994* (NSW);
- (b) *Professional Standards Act 2004* (Qld);
- (c) *Professional Standards Act 2003* (Vic);
- (d) *Professional Standards Act 1997* (WA);
- (e) *Professional Standards Act 2005* (Tas);
- (f) *Professional Standards Act 2004* (NT); and
- (g) *Civil Law (Wrongs) Act 2002* (ACT);

“Court” has the same meaning as it has in the Act;

“Damages” has the same meaning as it has in the Act;

“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 the Relevant Time exempted by SABA from participation in the Scheme pursuant to clause 4.3;

“Insurance Standard” means the Insurance Standard approved by the Law Society of South Australia on 21 June 2021 and adopted by the Bar Council of SABA on 29 July 2021;

“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, \$1,500,000;

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

“Ordinary Member” for the purposes of the Scheme means a person who is or was at a relevant time an ordinary member or bar reader member within the meaning of and pursuant to the Constitution of SABA (as amended from time to time);

“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;

“SABA” means the South Australian Bar Association Incorporated;

“the Scheme” means the South Australian Bar Association Professional Standards Scheme constituted herein;

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

2. Occupational Association

2.1. The Scheme is a scheme under the Act prepared and conducted by SABA whose scheme management address is 24 Flinders Street, 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 SABA holding a current practising certificate;

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 Insurance Standard.

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 any Corresponding Laws.

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

4.4. SABA 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 SABA.

5. Conferral of Discretionary Authority

5.1. The Scheme confers on SABA 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 a specified amount not exceeding \$50 million.

6. Limitation of Liability

6.1 The Occupational Liability of a person who is or at the Relevant Time was a Scheme Participant in respect of a cause of action founded on an act or omission occurring during the Duration of the Scheme 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 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 or policies in accordance with the Insurance Standard insuring the person against the Occupational Liability to which the cause of action relates; and

6.3.2 the amount payable under the policy or policies in respect of that occupational liability is not less than the amount of the Monetary Ceiling.

6.4 The limitation of liability that, in accordance with this Scheme and the Acts, 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 and corresponding provisions in Corresponding Laws, 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. Commencement and Duration of the Scheme

7.1. The Scheme will commence—

- 7.1.1 in New South Wales, the Northern Territory, Tasmania, Western Australia, Victoria and Queensland on 1 July 2022; and
- 7.1.2 in South Australia and the Australian Capital Territory—
 - 7.1.2.1 on this same date or such other later date as may be specified in the relevant Minister's notice in relation to the Scheme; or
 - 7.1.2.2 if no date is specified in the relevant Minister's notice, on the first day two months after the date of the publication of the Minister's notice.

7.2 The Scheme will be in force in South Australia for a period of five years from the date of its commencement in that jurisdiction.

7.3. For any other jurisdiction, the Scheme will be in force for—

- 7.3.1. five years from the date of commencement in that jurisdiction; or
- 7.3.2. five years from the date of commencement in South Australia, whichever period ends first.

7.4. Clauses 7.2 and 7.3 are subject to the provisions of the Act and the Corresponding Law in each jurisdiction in relation to the revocation, extension or cessation of a Scheme.

PROFESSIONAL STANDARDS ACT 1997

LAW INSTITUTE OF VICTORIA LIMITED PROFESSIONAL STANDARDS SCHEME

I, John Quigley MLA, Attorney General; Minister for Electoral Affairs, pursuant to section 26 of the *Professional Standards Act 1997* WA (the Act), authorise the publication of the Law Institute of Victoria Limited Professional Standards Scheme (the Scheme) submitted to me by the Professional Standards Council of Victoria. The Scheme is published with this authorisation and commences on 1 July 2022. The Scheme remains in force for a period of 5 years from its commencement unless the Scheme is revoked, extended, or its operation ceases as specified in the Act.

Dated 23 March 2022.

Hon. JOHN QUIGLEY, MLA, Attorney General; Minister for Electoral Affairs.

PROFESSIONAL STANDARDS ACT 2003 (VIC)

LAW INSTITUTE OF VICTORIA LIMITED PROFESSIONAL STANDARDS SCHEME

PREAMBLE

- A. The Law Institute of Victoria Limited (“the LIV”) is an occupational association for legal practitioners (solicitors) in Victoria for the purposes of the *Professional Standards Act 2003* (Vic) (“the Act”).
- B. The Scheme is prepared by the LIV for the purposes of limiting Occupational Liability to the extent to which such liability may be limited under the Act.
- C. The Scheme applies to all Participating Members, as defined in the Scheme.
- D. The Scheme will have force in Victoria, New South Wales, Queensland, South Australia, Western Australia, the Northern Territory, Tasmania, and the Australian Capital Territory. To the extent that the Scheme applies to limit liability in jurisdictions other than Victoria, it is subject to the professional standards legislation of those jurisdictions.
- E. The LIV has furnished the Council with a detailed list of the risk management strategies to be implemented in respect of its Participating Members and the means by which those strategies are to be implemented.
- F. The LIV has furnished the Council with details of its insurance standards and professional indemnity insurance claims monitoring process. The LIV will not amend these insurance standards while the Scheme is in force without prior approval of the Council.
- G. The LIV has advised its Participating Members that they must have the benefit of a professional indemnity policy that complies with the LIV’s insurance standards and that they remain liable for the amount of any difference between the amount payable to a plaintiff under the policy and the monetary ceiling specified in the Scheme.
- H. The LIV has furnished the Council with details of its complaints system and discipline system.
- I. The LIV and its members to whom the Scheme applies have undertaken to comply with all reporting obligations associated with the Scheme, in furtherance of the statutory objects of improvement of the occupational standards of its members, and protection of the consumers of such members’ services.
- J. The LIV has undertaken to remit all fees payable under the *Professional Standards Regulations 2017* (Vic) to the Council as and when these become due.
The Scheme is intended to commence on 1 July 2022 and remain in force for a period of five (5) years from its commencement, unless, prior to that time, it is revoked, its operation ceases, or it is extended.
- K. Sections 12GNA(2) of the *Australian Securities and Investments Commission Act 2001* (Cth), 137(2) of the *Competition and Consumer Act 2010* (Cth), and 1044B(2) of the *Corporations Act 2001* (Cth) provide for limited liability where a Professional Standards Scheme is prescribed in the relevant regulation. The Scheme does not apply to limit any liability under a Commonwealth law unless it has been prescribed under regulations by the Commonwealth.

LAW INSTITUTE OF VICTORIA LIMITED PROFESSIONAL STANDARDS SCHEME

1. Occupational association

- 1.1 The Law Institute of Victoria Limited Professional Standards Scheme is a scheme under the *Professional Standards Act 2003* (Vic) (“the Act”) prepared by the Law Institute of Victoria Limited (“the LIV”), whose business address is: Level 13, 140 William St, Melbourne, Victoria.

2. Persons to whom the Scheme applies

- 2.1 The Scheme applies to—
 - 2.1.1 Full Members who hold a current Australian Practising Certificate who are not excluded or exempted under clauses 2.2 or 2.3 of the Scheme;
 - 2.1.2 Incorporated Legal Practices that are not exempted under clause 2.3 of the Scheme; and
 - 2.1.3 all persons to whom, by virtue of sections 20, 21 or 22 of the Act, the Scheme applies.

- 2.2 Despite clause 2.1, the Scheme does not apply to a Corporate Legal Practitioner or to a Government Legal Practitioner.
- 2.3 A person referred to in clause 2.1 may, on application, be exempted from participation in the Scheme by the LIV, with effect from the date specified by the LIV. This clause does not apply to persons to whom the Scheme applies by virtue of sections 20, 21 or 22 of the Act.

3. Jurisdiction

- 3.1 The Scheme applies in Victoria.
- 3.2 In addition to Victoria, the Scheme is intended to operate in New South Wales, Queensland, South Australia, Western Australia, the Northern Territory, Tasmania, and the Australian Capital Territory in accordance with the professional standards legislation of those states and territories and subject to the requirements of that legislation ("the Corresponding Laws"), so that references to a provision of the Act, the application of the Scheme to a liability, the limit of a liability under the Act, or what constitutes Occupational Liability, are intended to pick up the relevant provisions of the Corresponding Laws, applied mutatis mutandis, to the extent that is necessary for the application of the Scheme in any of those jurisdictions.

4. Limitation of liability

- 4.1 This Scheme only affects the liability for Damages arising from a single cause of action to the extent to which the liability results in Damages exceeding \$1.5 million.
- 4.2 If a person who is, or was, at the time of the act or omission giving rise to Occupational Liability, a person to whom the Scheme applies, or applied, and 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 LIV;
 - (b) insuring such person against the Occupational Liability to which the cause of action relates; and
 - (c) under which the amount payable in respect of that Occupational Liability is not less than the applicable monetary ceiling specified in clause 4.3 of this Scheme;
- then that person is not liable in Damages in relation to that cause of action above the monetary ceiling specified in clause 4.3 of this Scheme.

- 4.3 The applicable monetary ceiling is to be determined according to the table below—

Class	Description	Monetary ceiling
1	Participating Members who were at the Relevant Time in a Law Practice consisting of up to and including 20 Principals and where the Law Practice generated Total Annual Fee Income for the Financial Year at the Relevant Time up to and including \$10 million.	\$1.5 million
2	Any Participating Member which was at the Relevant Time an Incorporated Legal Practice consisting of up to and including 20 Principals and where the Law Practice generated Total Annual Fee Income for the Financial Year at the Relevant Time up to and including \$10 million.	\$1.5 million
3	(a) Participating Members who were at the Relevant Time in a Law Practice consisting of greater than 20 Principals; or (b) Participating Members who were at the Relevant Time in a Law Practice where the Law Practice generated Total Annual Fee Income for the Financial Year at the Relevant Time greater than \$10 million.	\$10 million
4	(a) Any Participating Member which was at the Relevant Time an Incorporated Legal Practice consisting of greater than 20 Principals; or (b) Any Participating Member which was at the Relevant Time a Law Practice where the Law Practice generated Total Annual Fee Income for the Financial Year at the Relevant Time greater than \$10 million.	\$10 million

- 4.4 Clause 4.2 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 this Scheme in relation to a person to whom the Scheme applies.
- 4.5 This 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.
- 4.6 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 both by 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.

5. Conferral of discretionary authority

- 5.1 The LIV has discretionary authority, on application by a person referred to in clause 2.1, to specify in relation to that person, a higher maximum amount of liability than would otherwise apply under the Scheme in relation to that person, either in all cases or in any specified case or class of case.

6. Commencement and Duration

- 6.1 The Scheme will commence—

- 6.1.1 in Victoria, New South Wales, the Northern Territory, Western Australia, Tasmania and Queensland, on 1 July 2022; and
- 6.1.2 in the Australian Capital Territory and in South Australia, on this same date, or such other later date, provided the date is specified in the relevant Minister's notice in relation to the Scheme; or
- 6.1.3 in all other cases, subject to the statutory provisions of each applicable jurisdiction.

- 6.2 The Scheme will remain in force in all applicable jurisdictions for a period of five (5) years from its commencement in Victoria.

- 6.3 Clause 5.2 is subject to the provisions of the Corresponding Law in each jurisdiction in relation to the revocation, extension or cessation of a scheme.

7. Definitions

- 7.1 Relevant definitions for the purpose of this Scheme are as follows:

“Act” means the *Professional Standards Act 2003* (Vic);

“*Australian Practising Certificate*” has the same meaning as it has in the Legal Profession Uniform Law (Victoria);¹

“*Corporate Legal Practitioner*” has the same meaning as it has in the Legal Profession Uniform Law (Victoria);²

“*Corresponding Laws*” means the *Professional Standards Act 1994* (NSW), the *Professional Standards Act 2004* (Qld), the *Professional Standards Act 2004* (SA), the *Professional Standards Act 1997* (WA), the *Professional Standards Act 2004* (NT), *Professional Standards Act 2005* (Tas), and the *Civil Law (Wrongs) Act 2002* (ACT);

“*Court*” has the same meaning as it has in the Act;

“*Damages*” has the same meaning as it has in the Act;

“*Financial Year*” means a financial accounting period ending 30 June;

“*Full Member*” means an Australian legal practitioner who is a full member of the Law Institute of Victoria Limited;

“*Government Legal Practitioner*” has the same meaning as it has in the Legal Profession Uniform Law (Victoria);³

“*Incorporated Legal Practice*” means an incorporated legal practice within the meaning of the Legal Profession Uniform Law (Victoria) that is a member of the Law Institute of Victoria;⁴

“*Law Practice*” has the same meaning as it has in the Legal Profession Uniform Law (Victoria);⁵

“*LIV*” means the Law Institute of Victoria Limited;

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

“*Participating Members*” means those persons specified in clause 2.1 of the Scheme; “*Person*” means an individual or a body corporate;

“*Principal*” has the same meaning as it has in the Legal Profession Uniform Law (Victoria);⁶

“*Relevant Time*” means, in relation to a cause of action giving rise to Occupational Liability, the time at which an act or omission occurred upon which the cause of action was founded;

“*Scheme*” means the Law Institute of Victoria Limited Professional Standards Scheme constituted by this document;

“*Total Annual Fee Income*” means the amount charged during a Financial Year for services provided by or on behalf of a Law Practice some of whose members are Participating Members.

¹ Refer *Legal Profession Uniform Law Application Act 2014* section 4.

² Refer *Legal Profession Uniform Law Application Act 2014* section 4.

³ Refer *Legal Profession Uniform Law Application Act 2014* section 4.

⁴ Refer *Legal Profession Uniform Law Application Act 2014* section 4.

⁵ Refer *Legal Profession Uniform Law Application Act 2014* section 4.

⁶ Refer *Legal Profession Uniform Law Application Act 2014* section 4.