

## **The New South Wales Bar Association Professional Standards Scheme**

### **Preamble**

- A. The New South Wales Bar Association ('Bar Association') is an occupational association for the purposes of the Professional Standards Act 1994 (NSW) ('the Act').
- B. The scheme is prepared by the Bar Association 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 members of the Bar Association who hold a practising certificate issued by the Council of the New South Wales Bar Association and who have professional indemnity insurance that is required under law to be held by New South Wales barristers in order to practise.
- D. The scheme will have force in New South Wales and, under the provisions for mutual recognition contained in the Act, Victoria, Western Australia, Australian Capital Territory, Northern Territory, Queensland, South Australia and Tasmania. 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.
- E. The Bar Association has furnished the Council with a detailed list of the risk management strategies to be implemented in respect of its members, and the means by which those strategies are to be implemented.
- F. The Bar Association has furnished the Council with details of its insurance standards and professional indemnity insurance claims monitoring process. The Bar Association will not amend these insurance standards while the scheme is in force without prior approval of the Council.
- G. The Bar Association has advised its members to whom the scheme applies that they must have the benefit of a professional indemnity policy that complies with the association's insurance standards.
- H. The Bar Association has furnished the Council with details of its complaints system and discipline system.
- I. The Bar Association 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 Bar Association has undertaken to remit all fees payable under the Professional Standards Regulation 2019 (NSW) to the Council as and when these become due.
- K. The scheme is intended to commence on 1 July 2025 and remain in force for five years from its commencement unless, prior to that time, it is revoked, its operation ceases, or it is extended.
- L. 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.

## **The New South Wales Bar Association Professional Standards Scheme**

1. Occupational association
  - 1.1 The New South Wales Bar Association Professional Standards Scheme ('the scheme') is a scheme under the *Professional Standards Act 1994* (NSW) ('the Act') prepared by the New South Wales Bar Association ('Bar Association') whose business address is: Basement Level, Selborne Chambers, 174 Phillip Street, Sydney NSW 2000.
2. Persons to whom the scheme applies
  - 2.1 This scheme applies to 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 is required under law to be held by New South Wales barristers in order to practise.
3. Jurisdiction
  - 3.1 The scheme applies in New South Wales.
  - 3.2 In addition to New South Wales, the scheme is intended to operate in Victoria, Western Australia, Australian Capital Territory, Northern Territory, Queensland, South Australia and Tasmania 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 cause of action to the extent to which the liability results in damages exceeding \$1,500,000.
  - 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 Bar Association,
    - 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 monetary ceiling is \$1,500,000.
- 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 is 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. Commencement and duration

- 5.1 The scheme will commence:
  - 5.1.1 in New South Wales, the Northern Territory, Tasmania, Western Australia, Victoria, and Queensland, on 1 July 2025; and
  - 5.1.2 in the Australian Capital Territory and in South Australia, on 1 July 2025, or such other later date, provided the date is specified in the relevant Minister's notice in relation to the scheme; or
  - 5.1.3 in all other cases, subject to the statutory provisions of each applicable jurisdiction.
- 5.2 The scheme will be in force in all applicable jurisdictions for five years from the date of its commencement in New South Wales.
- 5.3 Clause 5.2 is subject to the provisions of each jurisdiction in relation to the revocation, extension, or cessation of a scheme.

## 6. Definitions

- 6.1 Relevant definitions for the purpose of this scheme are as follows:
  - “corresponding laws” means the Professional Standards Act 2003 (Vic), the Professional Standards Act 2004 (Qld), the Professional Standards Act 2004 (SA), the Professional Standards Act 1997 (WA), the Professional Standards Act 2005 (Tas), the Professional Standards Act (NT), 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
  - “occupational liability” has the same meaning as it has in the Act
  - “person” means an individual or a body corporate.