

THE VICTORIAN BAR PROFESSIONAL STANDARDS SCHEME

A scheme under
the *Professional Standards Act 2003* (Vic)

PREAMBLE

- A. The Victorian Bar Incorporated (“the Victorian Bar”) is an incorporated association constituted under the *Associations Incorporation Reform Act 2012* (Vic) and is an occupational association within the meaning of the *Professional Standards Act 2003* (Vic) (“the Act”).
- B. With effect from 1 July 2008, the Victorian Bar has had in operation the Victorian Bar Professional Standards Scheme under the Act, which expires on 30 June 2025.
- C. The Victorian Bar has applied for approval and gazettal of the Victorian Bar Professional Standards Scheme for the period 1 July 2025 to 30 June 2030 (“the Scheme”), which is prepared by the Victorian Bar for the purpose of continuing to limit occupational liability to the extent to which such liability may be limited under the Act.
- D. The Scheme applies to the persons referred to below in clause 2.1.1, including barristers practising in Victoria and in interstate or overseas jurisdictions. The Scheme does not apply to all members of the Victorian Bar.
- E. The Scheme facilitates improvement in the standards of services provided by scheme members who provide services to the public and limits the Occupational Liability of those members.
- F. The purposes of the Victorian Bar are expressed in clause 2 of the Victorian Bar’s Constitution and are:
 - (a) to manage, administer and develop the Victorian Bar as an independent professional association for barristers in Victoria, including by:
 - (i) setting the requirements for entry onto the Bar Roll and membership of the association;
 - (ii) making chambers available, as far as practicable;
 - (iii) providing support services; and
 - (iv) arranging continuing legal education and professional development;
 - (b) to regulate aspects of barristers’ practice (including regulation subject to delegation from the Victorian Legal Services Board) and the professional and related conduct of members;
 - (c) to promote and support the physical and mental well-being of barristers;
 - (d) to maintain a strong and independent bar in Victoria by, among other things:

- (i) promoting the Victorian Bar, and the distinctive competencies of barristers, to users of legal services and to the community; and
 - (ii) enhancing relationships between the Victorian Bar and others (including governments, the judiciary, the broader legal profession, other professional associations and the community); and
- (e) to promote the administration of and access to justice and to uphold the rule of law and democracy.
- G. 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 legislations of those jurisdictions.
- H. The Victorian Bar furnished the Professional Standards Councils (“the Council”) with a detailed list of the risk management strategies to be implemented in respect of Victorian Bar members and the means by which those strategies are to be implemented.
- I. The Victorian Bar has furnished the Council with details of its insurance standards and professional indemnity insurance claims monitoring process. The Victorian Bar will not amend these insurance standards while the Scheme is in force without prior approval of the Council.
- J. The Victorian Bar has advised its members to whom the Scheme applies that they must have the benefit of a professional indemnity policy that complies with the Victorian Bar’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.
- K. The Victorian Bar has furnished the Council with details of the complaints and disciplinary system to which its members are subject, as set out in the *Legal Profession Uniform Law*.
- L. The Victorian Bar 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.
- M. The Victorian Bar has undertaken to remit all fees payable under the *Professional Standards Regulations 2017* (Vic) to the Council as and when these become due.
- N. 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.
- O. 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.

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1. Occupational association

1.1 The Victorian Bar Inc Professional Standards Scheme ("the Scheme") is a scheme under the *Professional Standards Act 2003* (Vic) ("the Act") prepared by the Victorian Bar Inc ("the Victorian Bar"). The registered address of the Victorian Bar is Level 5, Owen Dixon Chambers East, 205 William Street, Melbourne, Victoria.

2. Persons to whom the Scheme applies

2.1 The Scheme applies to:

- 2.1.1 the class of persons within the Victorian Bar, more particularly specified in sub-clause 2.2 of this Scheme document; and
- 2.1.2 to persons to whom the Scheme applies by virtue of sections 20, 21 and 22 of the Act.

2.2 The class of Scheme members referred to in sub-clause 2.1.1 comprises the members of the Victorian Bar:

- (a) who hold a current Barrister's 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.

2.3 Participation in the Scheme is voluntary for members of the Victorian Bar. Once admitted to the membership of the Scheme, a member may notify the Victorian Bar in writing of their intention to discontinue their membership of the Scheme, in accordance with clause 2.4.

2.4 A person referred to in clause 2.1.1 may, on application, be exempted from the participation in the Scheme by the Victorian Bar with effect from the date specified by the Victorian Bar.

3. Jurisdiction

3.1 The Scheme applies in Victoria in accordance with the Act.

3.2 In addition to Victoria, the Scheme is intended to operate in the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania, and Western Australia, 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, apply *mutatis mutandis*, to the extent that is necessary for the application of the Scheme in any of those jurisdictions as an interstate Scheme.

4. Limitation of liability

4.1 This Scheme only affects the liability for Damages from a single cause of action to the extent to which the liability results in Damages exceeding \$2 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 Victorian Bar;
- (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 the 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 \$2 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 The Scheme limits the Occupational Liability in respect of a cause of action founded on an act or omission 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 another scheme under the 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 will be the applicable cap.

4.7 A reference in clause 4.2 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 in relation to the policy by way of excess.

5. Conferral of discretionary authority

5.1 The Victorian Bar has discretionary authority, on application by a person referred to in clause 2.1.1, 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:

- (a) in Victoria, New South Wales, the Northern Territory, Tasmania, Western Australia, Victoria and Queensland, on 1 July 2025; and
- (b) 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
- (c) 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 five years from the date of its commencement in Victoria.

6.3 Clause 6.2 is subject to the provisions of the Act or the Corresponding Laws of 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:

"Barrister" means an Australian legal practitioner who engages in legal practice solely as a barrister pursuant to sections 43 and 47(1)(b) of the LPUL, and whose Australian practising certificate is subject to a condition that the holder is authorised to engage in legal practice as or in the manner of a barrister only;

"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 2005* (Tas), the *Professional Standards Act 2004* (NT), and the *Civil Law (Wrongs) Act 2002* (ACT).

"Damages" has the same meaning as it has in the Act;

"Legal services" means work done, or business transacted, in the ordinary course of legal practice;

"LPUL" means the *Legal Profession Uniform Law* (Victoria), being Schedule 1 of the *Legal Profession Uniform Law Application Act 2014* (Vic);

"Occupational Liability" has the same meaning as it has in 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.