

Australian Capital Territory

Civil Law (Wrongs) Victorian Bar Inc Scheme 2010 (No 1)*

Disallowable instrument DI2010–72

made under the

Civil Law (Wrongs) Act 2002, section 4.10, schedule 4 (Approval of schemes by Minister)

1 Name of instrument

This instrument is the *Civil Law (Wrongs) Victorian Bar Inc Scheme 2010 (No 1)*.

2 Commencement

This instrument commences on 11 May 2010.

3 Approved scheme

Pursuant to section 4.10, schedule 4 of the *Civil Law (Wrongs) Act 2002* I approve the attached Victorian Bar Inc Scheme.

Simon Corbell MLA
Attorney General
10 May 2010

*Name amended under Legislation Act, s 60

THE VICTORIAN BAR INC
A Scheme under
the *Professional Standards Act 2003 (Vic)*

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 1,805;
- 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 (l), 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, all 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. 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;

- 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, the Australian Capital Territory and the Northern Territory.