

Australian Capital Territory

Civil Law (Wrongs) Western Australian Bar Association Scheme 2014 (No 1)

Disallowable instrument DI2014–189

made under the

Civil Law (Wrongs) Act 2002, section 4.10, schedule 4 (Schemes are subject to disallowance)

1 Name of instrument

This instrument is the *Civil Law (Wrongs) Western Australian Bar Association Scheme 2014 (No 1)*.

2 Commencement

This instrument commences 1 July 2014.

3 Notice

I give notice of the Western Australian Professional Standards Council's approval of the attached Western Australian Bar Association Scheme, which has effect until 30 June 2019.

Simon Corbell
Attorney-General
26 June 2014

THE WESTERN AUSTRALIAN BAR ASSOCIATION SCHEME

PREAMBLE

Occupational Association

- A. The Western Australian Bar Association (**Association**) is an occupational association, constituted as an incorporated body under the *Associations Incorporation Act 1987 (WA)*.
- B. The Association represents independent barristers practising in Western Australia, who are members of the Association.
- C. The Western Australian Bar Association Scheme (**the Scheme**) is a scheme under the *Professional Standards Act 1997 (WA)* (**the Act**) prepared by the Association whose business address is: 16th Floor, Allendale Square, 77 St George's Terrace, Perth WA 6000.
- D. The Scheme limits the occupational liability of Scheme Participants who provide services to the public.
- E. The approximate number of members eligible to be Scheme Participants is presently 195.
- F. The objectives of the Association are expressed in clause 2 of its Constitution and include:
 - (a) To promote the worthy traditions of the Western Australian Bar.
 - (b) To uphold the honour and promote the interests of the Bar.
 - (c) To promote fair and honourable practice by and amongst barristers.
 - (d) To confer and collaborate with and in matters relating to the practice of the law generally to act through the Law Society of Western Australia Incorporated (Law Society), and to that end, to enter into arrangements with that Law Society whereby Members of the Association can be provided with the benefits of membership of the Law Society.
 - (e) To join or affiliate with the Australian Bar Association (ABA) and the Law Council of Australia (LCA).
 - (f) To further legal education and study including by providing or arranging a Bar Readers' Course for barristers or persons aspiring to join the Bar and to provide continuing legal education to its Members or to other legal professionals.
 - (g) To encourage friendly relations and social and sporting activities among Members.
 - (h) To assist needy Members and ex-Members and dependents of Members, ex-Members and deceased Members.
 - (i) To provide funds and facilities for and to do all such things as are conducive or incidental to the attainment of the above objects or any of them.

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 Scheme Participant 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 Scheme Participant. The Scheme limits liability for damages to the monetary ceiling specified for that Scheme Participant provided that the person has insurance as required by s 34 of the Act.

Risk Management

- J. The Association has adopted strategies which cover requirements for admission as a member and 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.
- K. The complaints and disciplinary system operates pursuant to the requirements of the *Legal Profession Act 2008 (WA)*.
- L. The 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 Participants are required to maintain current professional indemnity insurance policies that comply with the standards determined by the Association and to comply with regulations relating to professional indemnity insurance.
- N. The *Legal Profession Act 2008 (WA)* and associated rules and regulations require (relevantly) that barristers have compulsory professional indemnity insurance. The Association reviews and determines such policies for the required standards for professional indemnity insurance cover.

Complaints and Discipline

- O. Scheme Participants are subject to a complaints and discipline system operating under the *Legal Profession Act 2008 (WA)*. All Scheme Participants must comply with the provisions of that Act, the Constitution and rules and regulations of the Association.

Scheme Administration

- P. The Scheme will be administered by the Association's Bar Council, the Professional Responsibility Committee, and the Association's staff.

Responsibility for administration of the Scheme and ensuring that it complies with the requirements of the Act and of the Professional Standards Council rests with the Association.

Duration of the Scheme

- Q. Subject to clause 44A of the Act, the Scheme commences on 1 July 2014 and will remain in force for five (5) years from its commencement.

THE WESTERN AUSTRALIAN BAR ASSOCIATION SCHEME

1. Occupational Association

- 1.1 The Association is an occupational association, constituted as an incorporated body under the *Associations Incorporation Act 1987 (WA)*.
- 1.2 The Association represents independent barristers practising in Western Australia, who are members of the Association.
- 1.3 The Western Australian Bar Association Scheme (**the Scheme**) is a scheme under the Professional Standards Act 1997 (WA) (**the Act**) prepared by the Western Australian Bar Association (**Association**) whose business address is: 16th Floor, Allendale Square, 77 St George's Terrace, Perth WA 6000.
- 1.4 Relevant definitions for the purposes of this Scheme (including the Preamble) are as follows:
 - (a) "court" has the same meaning as it has in the Act,
 - (b) "damages" has the same meaning as it has in the Act,
 - (c) "occupational liability" has the same meaning as it has in the Act,
 - (d) "Interstate Member" has the same meaning as in the Association's constitution, as amended from time to time,
 - (e) "relevant time" refers to the time of the act or omission that gave rise to the cause of action for occupational liability, and
 - (f) "Scheme Participant" means those persons specified in clause 2.1.

2. Persons to Whom the Scheme Applies

- 2.1 The Scheme applies to all persons who, at the relevant time:
 - 2.1.1 are members of the Association;
 - 2.1.2 are not exempted from participating in the Scheme under clause 2.2 or, if exempted, have had his/her exemption revoked in accordance with clause 2.3;
 - 2.1.3 have professional indemnity insurance in respect of a liability potentially limited by the Scheme of a kind which complies with the standards determined by the Association; and,
 - 2.1.4 by virtue of sections 31, 32, 33 and 33A of the Act, are covered by the Scheme, but does not apply to Interstate Members of the Association.
- 2.2 The Association may, upon application by a member, exempt a member from participation in the Scheme with effect from a date specified by the Association on or after the date on which the exemption is granted.
- 2.3 The Association may, upon application by a member, revoke an exemption of that person from participation in the Scheme with effect from a date specified by it.

3. Limitation of liability

- 3.1 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 \$500,000.
- 3.2 If a person, who was at the time of the act or omission giving rise to occupational liability, a person to whom the Scheme applied, 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 Association,
 - (b) insuring such person against that occupational liability, and
 - (c) under which the amount payable in respect of that occupational liability is not less than the monetary ceiling specified in clause 3.3 of this Scheme,
- that person is not liable in damages in relation to that cause of action above the monetary ceiling specified in clause 3.3 of this Scheme.
- 3.3 The monetary ceiling (maximum amount of liability) is \$2 million.
- 3.4 The monetary ceiling referred to in clause 3.3 above may be higher for a particular Scheme Participant if the Association has, on application by a Scheme Participant, approved a higher maximum amount of liability.
- 3.5 Clause 3.2 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 in clause 3.3 in relation to a person to whom the Scheme applies.
- 3.6 The 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. Discretionary authority

The Association will have a discretionary authority, on application by a Scheme Participant, to approve a higher maximum amount of liability than would otherwise apply under the Scheme in relation to that Scheme Participant.

5. Commencement and Duration of the Scheme

5.1 Subject to:

- 5.1.1 section 27 of the Act, the Scheme commences in Western Australia on 1 July 2014; and
- 5.1.2 the corresponding law of a State or Territory, being a State or Territory referred to in clause 6, the Scheme commences in that State or Territory on 1 July 2014.

5.2 Subject to:

- 5.2.1 section 44A of the Act, the Scheme will remain in force in Western Australia for a period of 5 years from its commencement; and
- 5.2.2 the corresponding law of a State or Territory, being a State or Territory referred to in clause 6, the Scheme will remain in force in that State or Territory for a

period of 5 years from its commencement.

6. Territorial application of the Scheme

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