

Australian Capital Territory

Civil Law (Wrongs) Law Society of Western Australia Scheme 2014 (No 1)

Disallowable instrument DI2014–98

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) Law Society of Western Australia 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 Law Society of Western Australia Scheme, which has effect until 30 June 2019.

Simon Corbell
Attorney-General
30 May 2014

THE LAW SOCIETY OF WESTERN AUSTRALIA SCHEME
Professional Standards Act 1997 (WA)

PREAMBLE

- A. The Law Society of Western Australia (“Law Society WA”) is a voluntary occupational association for legal practitioners in Western Australia.
- B. The Law Society WA has made an application to the Professional Standards Council (“PS Council”) appointed under the *Professional Standards Act 1997 WA* (“Act”), for a scheme under the Act and this document comprises the scheme (“Scheme”).
- C. The scheme has been prepared by the Law Society WA for the purpose of limiting Occupational Liability of Participating Members to the extent to which such liability may be limited under the Act.
- D. The Scheme is to apply to all Participating Members.
- E. The Law Society WA has furnished the PS Council with a detailed list of the risk management strategies intended to be implemented in respect of its Participating Members and the means by which those strategies are intended to be implemented.
- F. The Scheme is intended to remain in force for a period of five (5) years from its commencement, subject to section 44A of the Act.
- G. The Scheme commences on 1 July 2014.
- H. The scheme is intended to apply in Western Australia, New South Wales, Victoria, Queensland and South Australia, Northern Territory and Australian Capital Territory.

THE LAW SOCIETY OF WESTERN AUSTRALIA SCHEME

1 Preparation of the Scheme

1.1 The Scheme is a scheme under the *Professional Standards Act 1997 WA* prepared by the Law Society WA whose business address is Level 4, 160 St Georges Terrace, Perth, Western Australia.

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

“Australian Practising Certificate” has the same meaning as it has in the *Legal Profession Act 2008 WA*.

“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.

“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.

“Principal” has the same meaning as in section 6(3) of the LP Act:

A principal of a law practice is an Australian legal practitioner who is —

- a sole practitioner (in the case of a law practice constituted by the practitioner); or
- a partner in the law practice (in the case of a law firm); or
- a legal practitioner director in the law practice (in the case of an incorporated legal practice); or
- a legal practitioner partner in the law practice (in the case of a multi-disciplinary partnership).

“Relevant Time” refers to the time at which the act or omission occurs, not the time when the claim is brought.

“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.

2 Persons to Whom the Scheme Applies

2.1 The Scheme applies to:

2.1.1 Incorporated Legal Practice members, and ordinary and life members of the Law Society WA who hold an Australian Practising Certificate who are not exempted under clause 2.2 of the Scheme;

2.1.2 All persons to whom, by virtue of sections 31, 32, 33 and 34A of the Act, the Scheme applies;

2.1.3 All persons to whom clause 2.1.1 applied at the Relevant Time but no longer applies;

2.1.4 All persons to whom clause 2.1.2 applied at the Relevant Time but no longer applies.

2.2 A person referred to in clause 2.1 may, on application by that person, be exempted by the Law Society WA from participation in the Scheme.

3 Limitation of liability

3.1 The Scheme only limits the Occupational Liability of a Participating Member for damages¹:

3.1.1 arising from a single 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 of the act or omission.

¹ “Damages” as defined in section 4 of the Act means —

- (a) damages awarded in respect of a claim or counter-claim or claim by way of set-off; and
- (b) costs in or in relation to the proceedings ordered to be paid in connection with such an award (other than costs incurred in enforcing a judgment or incurred on an appeal made by the defendant); and
- (c) any interest payable on the amount of those damages or costs.

- 3.1.2 to the extent that those Damages exceed \$1.5 million for Participating Members in class 1 of the table in clause 3.3, or, as the case may be, \$5 million for Participating Members in class 2 and \$10 million for Participating Members in class 3.
- 3.2 If a Participating Member against whom a proceeding relating to Occupational Liability is brought is able to satisfy the Court that:
- 3.2.1 the Participating Member has the benefit of an insurance policy or policies insuring him or her against the occupational liability to which the cause of action relates; and
- 3.2.2 the amount payable under the policy or policies in respect of that occupational liability is not less than the amount of the monetary ceiling (maximum amount of liability) specified in clause 3.3 as applying to such Participating Member to which the cause of action relates,
- the Participating Member is not liable for damages in relation to that cause of action above the amount of that monetary ceiling.
- 3.3 The monetary ceiling (maximum amount of liability) applicable for the purpose of limitation of liability under the Scheme at the Relevant Time is to be determined according to the following table.

Tier	Description	Monetary ceiling (Maximum amount of liability)
1	Participating Members who were at the Relevant Time in a Law Practice that generated a total annual fee income for the financial year immediately preceding the Relevant Time up to and including \$5 million	\$1.5 million
2	Participating Members who were at the Relevant Time in a Law Practice that generated a total annual fee income for the financial year immediately preceding the Relevant Time of more than \$5 million and up to \$10 million	\$5 million
3	Participating Members who were at the Relevant Time in a Law Practice that Generated a total annual fee income for the financial year immediately preceding the Relevant Time of more than \$10 million	\$10 million

4 Conferral of discretionary authority

- 4.1 The Law Society WA has discretionary authority, on application by a Participating Member, to specify in relation to a Participating Member, a higher maximum amount of liability (monetary ceiling) than would otherwise apply under the Scheme in relation to him or her either in all cases or any specified case or class of case.

- 4.2 If, in exercise of its discretion under clause 4.1 the Law Society of WA has specified a higher maximum amount of liability (monetary ceiling) than would otherwise apply under the Scheme in relation to a Participating Member, the maximum amount of liability (monetary ceiling) in relation to that Participating Member is that higher maximum amount.

5 Duration

- 5.1 Subject to section 44A of the Act, the Scheme will remain in force for a period of 5 years from the date of commencement. The date of the Scheme's commencement is 1 July 2014.