

Australian Capital Territory

Civil Law (Wrongs) Western Australian Bar Association Professional Standards Scheme 2020 (No 1)

Disallowable instrument DI2020–121

made under the

Civil Law (Wrongs) Act 2002, sch 4, s 4.10 (Schemes are subject to disallowance)

1 Name of instrument

This instrument is the *Civil Law (Wrongs) Western Australian Bar Association Professional Standards Scheme 2020 (No 1)*.

2 Commencement

This instrument commences on 1 July 2020.

3 Notice

- (1) I give notice of the Professional Standards Council of Western Australia's approval of the attached 'Western Australian Bar Association Professional Standards Scheme.'
- (2) The scheme is in force until 30 June 2025.

Gordon Ramsay MLA
Attorney-General
21 May 2020

Professional Standards Act 1997 (WA)

**THE WESTERN AUSTRALIAN BAR ASSOCIATION
PROFESSIONAL STANDARDS 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 2015 (WA)*.
- B. The Association has made an application to the Professional Standards Council, appointed under the *Professional Standards Act 1997 (WA)* (**the Act**), for a scheme under the Act.
- C. The scheme is prepared by the Association for the purposes of limiting occupational liability to the extent to which such liability may be limited under the Act.
- D. The scheme propounded by the Association is to apply to members of the Association who are based in and practise as independent barristers in Western Australia.
- E. The Association has furnished the Councils with a detailed list of the risk management strategies intended to be implemented in respect of its members and the means by which those strategies are intended to be implemented.
- F. This scheme is intended to commence on the following day:
 - (a) In New South Wales, the Northern Territory, Queensland, Tasmania, Victoria and Western Australia on 1 July 2020; and
 - (b) In the Australian Capital Territory and in South Australia:
 - (i) On the date provided for in the Minister's notice in relation to the amendments, if a date is provided; or
 - (ii) On the first day two months after the day on which notice was given, in any other case.
- G. The scheme is also intended to apply in New South Wales, Victoria, Queensland, South Australia, the Australian Capital Territory, the Northern Territory and Tasmania.

THE WESTERN AUSTRALIAN BAR ASSOCIATION SCHEME

- 1. Occupational association
 - 1.1 The Association is a voluntary occupational association of legal practitioners practising exclusively as independent barristers in Western Australia.
 - 1.2 The Association Scheme (**the Scheme**) is a scheme under the Act, prepared by the Western Australian Bar Association (**Association**) whose business address is Level

25, Allendale Square, 77 St Georges Terrace, Perth, Western Australia.

1.3 the Scheme applies in Western Australia and also in New South Wales, Victoria, Queensland, South Australia, the Australian Capital Territory, the Northern Territory and Tasmania.

1.4 Relevant definitions for the purposes of this Scheme are as follows:

“Interstate Member” means a practising barrister whose primary occupation is at the Bar who does not normally reside in Western Australia and who is a member of the Bar of another state or Territory in Australia who has been elected as an Interstate Member of the Association as provided under clause 9(d) of the Association’s Constitution.

“Honorary Member” means any person who, in the opinion of a General Meeting of the Association, is worthy of being elected as an Honorary Member of the Association who has been elected as an Honorary Member of the Association as provided under clause 9(a) of the Association’s Constitution.

“Judicial Member” means any person who is a judge of the High Court of Australia, Supreme Court of Western Australia, the Federal Court of Australia, the Family Court of Western Australia, the Family Court of Australia, the District Court of Western Australia or the Federal Circuit Court or any person who is a judicial officer of equivalent status in any other Court or Tribunal who has been elected as a Judicial Member of the Association as provided under clause 9(b) of the Association’s Constitution;

“Magistrate Member” means any person who is the Chief Magistrate of the Magistrates Court of Western Australia; and, upon the recommendation of Bar Council, a former member who is a Magistrate of the Magistrates Court of Western Australia or the Family Court who has been elected as a Magistrate Member of the Association as provided under clause 9(c) of the Association’s Constitution.

“Member” means any of the following persons who are eligible for membership of the Association under clause 4 of the Association’s Constitution and who have been elected as Members of the Association under clause 5 of the Association’s Constitution:

- (a) a barrister who does not carry on any other occupation inconsistent with the maintenance of proper standards of professional conduct and integrity;
- (b) a barrister who is not primarily occupied at the Bar due to the fact that she or he is responsible for the care of a child
- (c) a Queen's Counsel or Senior Counsel for the State who is a law officer of the Crown in right of the State or of the State, including the offices of Attorney General, Solicitor General, Director of Public Prosecutions, or any law officer of the Crown in right of the Commonwealth or of the Commonwealth, including the Attorney General, Solicitor General, Director of Public Prosecutions or any Special Prosecutor appointed by the Commonwealth;
- (d) a university lecturer who is a practising barrister; and
- (e) a member of the State or Federal Parliament who practises or practised as a barrister or a barrister who is a Minister of the Crown.

“Ex officio Member” means the Attorney General of Western Australia and the Solicitor-General for Western Australia if elected as ex officio members of the Association by Bar Council under clause 10 of the Association’s Constitution.

2. Persons to Whom the Scheme Applies
 - 2.1 The Scheme applies to all Members of the Association, being those members who are based in and practise as independent barristers in Western Australia as provided under clause 4 of the Association's Constitution.

This Scheme does not apply to-

 - (a) Members to whom an exemption is granted by the Association's Bar Council under cl. 2.2;
 - (b) Interstate Members; and
 - (c) Honorary, Judicial, Magistrate or Ex Officio Members.
 - 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.
 - 2.4 This Scheme also applies to all persons to whom the Scheme applied under clause 2.1 at the time of any act or omission, giving rise to occupational liability.
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 this scheme,that person is not liable in damages in relation to that cause of action above the monetary ceiling specified in this scheme.
 - 3.3 The monetary ceiling is \$ 2 million.
 - 3.4 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.
 - 3.5 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 by both this Scheme and also by any other 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 a person arising from such

circumstances which is higher shall be the applicable cap.

4. Commencement

This Scheme is intended to commence on the following day:

- (a) In Western Australia, New South Wales, the Northern Territory, Queensland, Tasmania and Victoria on 1 July 2020; and
- (b) In the Australian Capital Territory and in South Australia:
 - (i) On the date provided for in the Minister's notice in relation to the amendments, if a date is provided; or
 - (ii) On the first day two months after the day on which notice was given, in any other case

5. Duration

5.1 This Scheme will be in force in Western Australia for 5 years from the date of commencement in that jurisdiction.

5.2 For any other jurisdiction, the Scheme will be in force for:

- (a) 5 years from the date of commencement in that jurisdiction; or
- (b) 5 years from the date of commencement in Western Australia;

whichever period ends first.

5.3 Clauses 5.1 and 5.2 are subject to the provisions of each jurisdiction applicable to the revocation, extension or cessation of schemes.