

Australian Capital Territory

# Civil Law (Wrongs) Law Institute of Victoria Limited Professional Standards Scheme 2022 (No 1)

Disallowable instrument DI2022–108

made under the

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

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## 1 Name of instrument

This instrument is the *Civil Law (Wrongs) Law Institute of Victoria Limited Professional Standards Scheme 2022 (No 1)\**.

## 2 Commencement

This instrument commences on 1 July 2022.

## 3 Notice

- (1) I give notice of the Professional Standards Council of Victoria's approval of the attached 'Law Institute of Victoria Limited Professional Standards Scheme'.
- (2) The scheme is in force until 30 June 2027.

Shane Rattenbury MLA  
Attorney-General  
22 June 2022

\*Name amended under Legislation Act, s 60

**LAW INSTITUTE OF VICTORIA LIMITED  
PROFESSIONAL STANDARDS SCHEME**

**PREAMBLE**

- A. The Law Institute of Victoria Limited (“the LIV”) is an occupational association for legal practitioners (solicitors) in Victoria for the purposes of the *Professional Standards Act 2003 (Vic)* (“the Act”).
- B. The Scheme is prepared by the LIV for the purposes of limiting Occupational Liability to the extent to which such liability may be limited under the Act.
- C. The Scheme applies to all Participating Members, as defined in the Scheme.
- D. 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 legislation of those jurisdictions.
- E. The LIV has furnished the Council with a detailed list of the risk management strategies to be implemented in respect of its Participating Members and the means by which those strategies are to be implemented.
- F. The LIV has furnished the Council with details of its insurance standards and professional indemnity insurance claims monitoring process. The LIV will not amend these insurance standards while the Scheme is in force without prior approval of the Council.
- G. The LIV has advised its Participating Members that they must have the benefit of a professional indemnity policy that complies with the LIV’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
- H. The LIV has furnished the Council with details of its complaints system and discipline system.
- I. The LIV 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.
- J. The LIV has undertaken to remit all fees payable under the *Professional Standards Regulations 2017 (Vic)* to the Council as and when these become due.

The Scheme is intended to commence on 1 July 2022 and remain in force for a period of five (5) years from its commencement, unless, prior to that time, it is revoked, its operation ceases, or it is extended.

- K. 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.

## LAW INSTITUTE OF VICTORIA LIMITED PROFESSIONAL STANDARDS SCHEME

### 1. Occupational association

- 1.1 The Law Institute of Victoria Limited Professional Standards Scheme is a scheme under the *Professional Standards Act 2003 (Vic)* (“the Act”) prepared by the Law Institute of Victoria Limited (“the LIV”), whose business address is: Level 13, 140 William St, Melbourne, Victoria.

### 2. Persons to whom the Scheme applies

- 2.1 The Scheme applies to:

- 2.1.1 Full Members who hold a current Australian Practising Certificate who are not excluded or exempted under clauses 2.2 or 2.3 of the Scheme;
- 2.1.2 Incorporated Legal Practices that are not exempted under clause 2.3 of the Scheme; and
- 2.1.3 all persons to whom, by virtue of sections 20, 21 or 22 of the Act, the Scheme applies.

- 2.2 Despite clause 2.1, the Scheme does not apply to a Corporate Legal Practitioner or to a Government Legal Practitioner.

- 2.3 A person referred to in clause 2.1 may, on application, be exempted from participation in the Scheme by the LIV, with effect from the date specified by the LIV. This clause does not apply to persons to whom the Scheme applies by virtue of sections 20, 21 or 22 of the Act.

### 3. Jurisdiction

- 3.1 The Scheme applies in Victoria.

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

### 4. Limitation of liability

- 4.1 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 \$1.5 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 LIV;

- (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 that 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 applicable monetary ceiling is to be determined according to the table below:

<b>Class</b>	<b>Description</b>	<b>Monetary ceiling</b>
1	Participating Members who were at the Relevant Time in a Law Practice consisting of up to and including 20 Principals and where the Law Practice generated Total Annual Fee Income for the Financial Year at the Relevant Time up to and including \$10 million.	\$1.5 million
2	Any Participating Member which was at the Relevant Time an Incorporated Legal Practice consisting of up to and including 20 Principals and where the Law Practice generated Total Annual Fee Income for the Financial Year at the Relevant Time up to and including \$10 million.	\$1.5 million
3	(a) Participating Members who were at the Relevant Time in a Law Practice consisting of greater than 20 Principals; or (b) Participating Members who were at the Relevant Time in a Law Practice where the Law Practice generated Total Annual Fee Income for the Financial Year at the Relevant Time greater than \$10 million.	\$10 million
4	(a) Any Participating Member which was at the Relevant Time an Incorporated Legal Practice consisting of greater than 20 Principals; or (b) Any Participating Member which was at the Relevant Time a Law Practice where the Law Practice generated Total Annual Fee Income for the Financial Year at the Relevant Time greater than \$10 million.	\$10 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 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.

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 any other scheme under 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 shall be the applicable cap.

## 5. Conferral of discretionary authority

5.1 The LIV has discretionary authority, on application by a person referred to in clause 2.1, 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:

6.1.1 in Victoria, New South Wales, the Northern Territory, Western Australia, Tasmania and Queensland, on 1 July 2022; and

6.1.2 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

6.1.3 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 a period of five (5) years from its commencement in Victoria.

6.3 Clause 5.2 is subject to the provisions of the Corresponding Law in 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:

“Act” means the *Professional Standards Act 2003* (Vic);

“Australian Practising Certificate” has the same meaning as it has in the Legal Profession Uniform Law (Victoria);<sup>1</sup>

“Corporate Legal Practitioner” has the same meaning as it has in the Legal Profession Uniform Law (Victoria);<sup>2</sup>

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

“Court” has the same meaning as it has in the Act;

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<sup>1</sup> Refer *Legal Profession Uniform Law Application Act 2014* section 4.

<sup>2</sup> Refer *Legal Profession Uniform Law Application Act 2014* section 4.

“Damages” has the same meaning as it has in the Act;

“Financial Year” means a financial accounting period ending 30 June;

“Full Member” means an Australian legal practitioner who is a full member of the Law Institute of Victoria Limited;

“Government Legal Practitioner” has the same meaning as it has in the Legal Profession Uniform Law (Victoria);<sup>3</sup>

“Incorporated Legal Practice” means an incorporated legal practice within the meaning of the Legal Profession Uniform Law (Victoria) that is a member of the Law Institute of Victoria;<sup>4</sup>

“Law Practice” has the same meaning as it has in the Legal Profession Uniform Law (Victoria);<sup>5</sup>

“LIV” means the Law Institute of Victoria Limited;

“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;

“Person” means an individual or a body corporate;

“Principal” has the same meaning as it has in the Legal Profession Uniform Law (Victoria);<sup>6</sup>

“Relevant Time” means, in relation to a cause of action giving rise to Occupational Liability, the time at which an act or omission occurred upon which the cause of action was founded;

“Scheme” means the Law Institute of Victoria Limited Professional Standards Scheme constituted by this document;

“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.

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<sup>3</sup> Refer *Legal Profession Uniform Law Application Act 2014* section 4.

<sup>4</sup> Refer *Legal Profession Uniform Law Application Act 2014* section 4.

<sup>5</sup> Refer *Legal Profession Uniform Law Application Act 2014* section 4.

<sup>6</sup> Refer *Legal Profession Uniform Law Application Act 2014* section 4.