

Australian Capital Territory

Civil Law (Wrongs) The Law Society of Western Australia Professional Standards Scheme 2024

Disallowable instrument DI2024–205

made under the

Civil Law (Wrongs) Act 2002, sch 4, s4.10(Schemes are subject to disallowance)

1 Name of instrument

This instrument is the *Civil Law (Wrongs) The Law Society Of Western Australia Professional Standards Scheme 2024*.

2 Commencement

This instrument commences on 1 July 2024.

3 Notice

- 1) I give notice of the Professional Standards Council of Western Australia's approval of the attached 'The Law Society of Western Australia Professional Standards Scheme'.
- 2) The Scheme is in force until 30 June 2029.

Shane Rattenbury
Attorney-General
27 June 2024

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

PREAMBLE

- A. The Law Society of Western Australia Inc. (“Law Society WA”) is an occupational association for legal practitioners in Western Australia for the purposes of the Professional Standards Act 1997 (WA) (“the Act”).
- B. The Scheme is prepared by the Law Society WA 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 Western Australia, Victoria, New South Wales, Queensland, South Australia, the Northern Territory, Tasmania and the Australian Capital Territory. To the extent that the Scheme applies to limit liability in jurisdictions other than Western Australia, it is subject to the Professional Standards Legislation of those jurisdictions.
- E. The Law Society WA 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 Law Society WA has furnished the Council with details of its insurance standards and professional indemnity insurance claims monitoring process. The Law Society WA will not amend these insurance standards while the Scheme is in force without prior approval of the Council.
- G. The Law Society of WA has advised its Participating Members that they must have the benefit of a professional indemnity policy that complies with Law Society WA’s insurance standards and that they remain liable for the amount of any difference between the amounts payable to a plaintiff under the policy and the monetary ceiling specified in the Scheme.
- H. The Law Society WA has furnished the Council with details of its complaints system and discipline system.
- I. The Law Society WA 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 Law Society WA has undertaken to remit all fees payable under the *Professional Standards Regulations 1998 (WA)* to the Council as and when these become due.
- K. The Scheme is intended to commence on 1 July 2024 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.

- L. 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 a 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.

THE LAW SOCIETY OF WESTERN AUSTRALIA SCHEME

1. Occupational association

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

2. Persons to Whom the Scheme Applies

- 2.1 The Scheme applies to:
 - 2.1.1 All Ordinary Members and Life Members holding an Australian Practising Certificate, who are not a Corporate Legal Practitioner or a Government Legal Practitioner, and who are not exempted under clause 2.2 of the Scheme;
 - 2.1.2 Incorporated Legal Practice Members that are not exempted under clause 2.2 of the Scheme; and
 - 2.1.3 All persons to whom, by virtue of sections 31, 32 or 33 of the Act, the Scheme applies.
- 2.2 A person referred to in Clause 2.1 may, on application by that person, be exempted from the Scheme from the date specified by the Law Society WA. This clause does not apply to persons to whom the Scheme applies by virtue of sections 31, 32 or 33 of the Act.

3. Jurisdiction

- 3.1 The Scheme applies in Western Australia.
- 3.2 In addition to Western Australia, the Scheme is intended to operate in New South Wales, Victoria, Queensland, South Australia, Tasmania, the Northern Territory 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 as an interstate scheme.

4. Limitation of liability

4.1 The 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 Law Society WA;
- 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:

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

4.4 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 a 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 by both 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 higher cap shall be the applicable cap.

5 Conferral of discretionary authority

- 5.1 The Law Society WA 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.

6 Commencement and duration

- 6.1 The Scheme will commence:
- 6.1.1 in Western Australia, New South Wales, Queensland, Tasmania, and the Northern Territory on 1 July 2024; and
 - 6.1.2 in Victoria, on 1 July 2024 if the Scheme is published in the Government Gazette at least two months prior to that date; or in any other case, two months after the date the Scheme is published in the Government Gazette.
 - 6.1.3 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
 - 6.1.4 in all other cases, subject to the statutory provisions of each applicable jurisdiction.
- 6.2 The Scheme will be in force in all applicable jurisdictions for a period of five (5) years from its commencement in Western Australia.
- 6.3 Clause 6.2 is subject to the provisions of the Corresponding laws 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 1997* (WA).

“Australian Practising Certificate” has the same meaning as it has in the *Legal Profession Uniform Law* (Western Australia)¹.

“Corporate Legal Practitioner” has the same meaning as it has in the *Legal Profession Uniform Law* (Western Australia)².

¹ Refer *Legal Profession Uniform Law Application Act 2022* section 6.

² Refer *Legal Profession Uniform Law Application Act 2022* section 6.

“Corresponding laws” means the *Professional Standards Act 1994* (NSW), the *Professional Standards Act 2003* (Vic), the *Professional Standards Act 2004* (Qld), the *Professional Standards Act 2004* (SA), the *Professional Standards Act 2005* (Tas), the *Professional Standards Act 2004* (NT), and the *Civil Law (Wrongs) Act 2002* (ACT), as applicable.

“Council” means the Professional Standards Council established under section 8(1) of the Act.

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

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

“Exempted Member” means a member of the Law Society WA who is, or was, at the Relevant Time, exempted by the Law Society WA from participation in the Scheme pursuant to clause 2.2;

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

“Government Legal Practitioner” has the same meaning as it has in the *Legal Profession Uniform Law* (Western Australia)³.

“Incorporated Legal Practice Member” means an incorporated legal practice within the meaning of the *Legal Profession Uniform Law* (Western Australia) that is a member of the Law Society WA under rule 15 of the Constitution of the Law Society WA, as amended from time to time⁴.

“Law Practice” has the same meaning as it has in the *Legal Profession Uniform Law* (Western Australia)⁵.

“Law Society WA” means the Law Society of Western Australia Inc.

“Life Member” means a person who is a Life Member of the Law Society WA within the meaning of rule 13 of the Constitution of the Law Society WA, as amended from time to time.

“Occupational liability” has the same meaning as it has in the Act.

“Ordinary Member” means a person who is an Ordinary Member of the Law Society WA within the meaning of rule 9 of the Constitution of the Law Society WA, as amended from time to time.

“Participating Members” means those persons specified in clause 2.1 of the Scheme.

“Person” means an individual or a body corporate.

“Professional Standards Legislation” means the legislation applicable in each State and Territory, namely, the *Professional Standards Act 1994* (NSW), the *Professional Standards Act 2003* (Vic), the *Professional Standards Act 2004* (Qld), the *Professional Standards Act 2004* (SA), the *Professional Standards Act 2005* (Tas), the *Professional Standards Act 2004* (NT), and the *Civil Law (Wrongs) Act 2002* (ACT), as applicable.

³ Refer *Legal Profession Uniform Law Application Act 2022* section 6.

⁴ Refer *Legal Profession Uniform Law Application Act 2022* section 6.

⁵ Refer *Legal Profession Uniform Law Application Act 2022* section 6.

⁶ Refer *Legal Profession Uniform Law Application Act 2022* section 6.

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

“Scheme” means the Law Society of Western Australia Inc. Professional Standards Scheme.

“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.