

Civil Law (Wrongs) Western Australian Bar Association Professional Standards Scheme 2025

Disallowable instrument DI2025–85

made under the

Civil Law (Wrongs) Act 2002, schedule 4, section 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 2025*.

2 Commencement

This instrument commences on 1 July 2025.

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 2030.

Tara Cheyne MLA
Attorney General
13 June 2025

**THE WESTERN AUSTRALIAN BAR ASSOCIATION
PROFESSIONAL STANDARDS SCHEME**

PREAMBLE

- A. The Western Australian Bar Association (Association) is an occupational association for the purposes of the *Professional Standards Act 1997 (WA)* (the Act).
- B. 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.
- C. The scheme applies to members of the Association who are based in and practise as independent barristers in Western Australia.
- D. The scheme will have force in Western Australia, New South Wales, Victoria, Queensland, South Australia, the Australian Capital Territory, the Northern Territory and Tasmania. To the extent that the scheme applies to limit liability in other jurisdictions, it is subject to the professional standards legislation of those jurisdictions.
- E. The Association has furnished the Council with a detailed list of the risk management strategies to be implemented in respect of its members, and the means by which those strategies are to be implemented.
- F. The Association has furnished the Council with details of its insurance standards and professional indemnity insurance claims monitoring process. The Association will not amend these insurance standards while the scheme is in force without prior approval of the Council.
- G. The Association has advised its members to whom the scheme applies that they must have the benefit of a professional indemnity policy that complies with the Association'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 Association has furnished the Council with details of its complaints system and discipline system.
- I. The Association 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 Association 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 2025 and remain in force for 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 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 Western Australian Bar Association professional standards scheme

1. Occupational association

- 1.1 The Western Australian Bar Association Professional Standards Scheme (the scheme) is a scheme under the Professional Standards Act 1997 (WA) (the Act) prepared by the Association, whose business address is Level 16, Allendale Square, 77 St Georges Terrace, Perth, Western Australia.

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 practice as independent barristers in Western Australia as provided under clause 4 of the Association's Constitution. The 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 A person referred to in clause 2.1 may, on application, be exempted from participation in the scheme by the Association with effect from the 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. 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, the Australian Capital Territory, the Northern Territory and Tasmania 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 \$500,000.
- 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 Association,
 - 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 monetary ceiling is \$ 2 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 is 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 Association 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 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 Western Australia, New South Wales, Victoria, Queensland, the Northern Territory and Tasmania, on 1 July 2025; 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 be in force in all applicable jurisdictions 5 years from the date of its commencement in Western Australia.
- 6.3 Clause 6.2 is subject to the provisions of 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:
 - “corresponding laws” means the *Professional Standards Act 1994* (NSW) *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)
 - “court” has the same meaning as it has in the Acts
 - “damages” has the same meaning as it has in the Act
 - “occupational liability” has the same meaning as it has in the Act
 - “person” means an individual or a body corporate.