



PROFESSIONAL STANDARDS SCHEME



PUBLIC CONSULTATION DOCUMENT

What is the Western Australian Bar Association?

An occupational association

The Western Australian Bar Association (Association) is an occupational association, constituted as an incorporated body under the *Associations Incorporation Act 2015* (WA). Our address and principal place of business is Level 16, 77 St George's Terrace, Perth WA 6000.

The Independent Bar of Western Australia was established in 1962 and the Association was formed in 1963 as a voluntary professional association for members of the legal profession practising exclusively as barristers in Western Australia. The Association was incorporated on 9 February 1983.

Our objectives

The Association exists as an association of independent sole barristers so as to further the objects referred to in clause 2 of the Association's Constitution and in particular with a dedicated commitment to promoting:

- the highest standards of competence and ethical practice by persons choosing to practise as independent barristers with the Association;
- the sharing of knowledge between barrister members of the Association consistently with the objectives of the profession;
- the support and nurturing of younger barristers; and
- free speech, freedom of association and adherence to and respect for the rule of law, including equality before

the law, untrammelled by oppression or tyranny from any quarter.

The objects of the Association as set out in clause 2 of our Constitution are:

- to promote the worthy traditions of the Bar.
- to uphold the honour and promote the interests of the Bar.
- to promote fair and honourable practice by and amongst barristers.
- to confer and collaborate the Law Society of Western Australia Incorporated.
- to join or affiliate with the Australian Bar Association and the Law Council of Australia.
- to further legal education and study, including by providing or arranging a Bar Readers' Course for barristers or persons aspiring to join the Bar and to provide continuing legal education to its members or to other like-minded persons.
- to encourage friendly relations and social and sporting activities among members.
- to assist needy members and ex-members and dependents of members, ex-members and deceased members.
- to provide funds and facilities for and to do all such things as are conducive or incidental to the attainment of the above objects or any of them.

Who are the Western Australian Bar Association's members?

The Association has six types of membership as provided in the Association's Constitution:

1. Member (being a member who is based in and practises as an independent barrister primarily in Western Australia);
2. Honorary Member;
3. Judicial Member;
4. Magistrate Member;
5. Interstate Member; and
6. Ex-officio Member.

Honorary, Judicial, Magistrate, Interstate and Ex-Officio Members are not entitled to hold office or vote at meetings of the Association.

Our Professional Standards Scheme

What is the Association's Professional Standards Scheme?

The Association's Professional Standards Scheme is designed to improve and promote the occupational standards of barristers and to protect their clients.

Who administers the Professional Standards Scheme?

The Association's Executive Officer has responsibility for administering the Scheme to ensure it complies with the requirements set out in the *Professional Standards Scheme Act 1997* (WA) [the Act].

Commencement of the Scheme?

The Scheme will commence on 1 July 2020.

This scheme will be in force in Western Australia for 5 years from the date of commencement.

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.

How long has the Association administered a Professional Standards Scheme?

The Association has administered a Scheme continuously since 1 July 2014.

Where will the Professional Standards Scheme operate?

In addition to operating in Western Australia, the Scheme is intended to apply in New South Wales, Victoria, Queensland, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory.

What types of work will the Scheme cover?

The Scheme will cover the work carried out in the provision of a barrister's services, including appearing as advocates in Courts and Tribunals, providing opinions and drafting and settling legal documents.

The Scheme does not limit liability for damages arising from any matter to which the Act does not apply. This includes, but is not limited to liability for damages arising from death or personal injury to a person, a breach of trust, fraud or dishonesty and liability the subject of proceedings under Part XII of the *Transfer of Land Act 1893* (WA).

Who will the Professional Standards Scheme be available to?

The Scheme is intended to apply to members of the Association who are based in and practise as independent barristers in Western Australia.

Who will the Professional Standards Scheme not apply to?

The Scheme is not proposed to apply to the following-

- a. Members to whom an exemption is granted by the Association's Bar Council
- b. Interstate Members, as those Members will have the benefit of a Scheme operating in their principal jurisdiction
- c. Honorary, Judicial, Magistrate or Ex Officio Members, as those members do not practise as independent barristers in Western Australia.

Operation of the Scheme

How is the level of liability of participating Association members determined?

The Association's Scheme limits liability for damages resulting from civil claims made and notified since 1 July 2020. 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.

The professional liability of Association members covered by the Scheme will be limited to a monetary amount of \$2 million, an amount which members are required to be indemnified in accordance with a professional indemnity insurance policy that complies with the standards determined by the Association.

The specified limit of liability is further made on the basis of an analysis of the Association's claims data and risk profile. Analysis since 2009 indicates that there has been no amount paid by an insurer in respect of a claim against an Association member which exceeds or approaches the monetary ceiling provided for in the Scheme.

How will consumers know if an Association member is covered by the Professional Standards Scheme?

Members of the Association participating in the Scheme must display a disclosure statement 'Liability limited by a scheme approved under Professional Standards Legislation' on all documents, excluding business cards, given (or caused to be given) to a client or prospective client, which promote or advertise the member or the member's occupation. Documents could include email, letterhead, costs disclosure agreements, memoranda of fees or invoices.

The listing of members provided on the Association's website: www.wabar.asn.au also indicates whether the member is covered by the Scheme.

How long will the Professional Standards Scheme operate?

The Scheme will be in force for a period of 5 years from the date of commencement in that jurisdiction.

The duration of the Scheme is subject to the provisions of each jurisdiction applicable to the revocation, extension or cessation of schemes.

Benefits of the Scheme

How will consumers benefit from the Scheme?

The benefit to consumers from the Scheme is the assurance that Association members covered by the Scheme are consumer-focussed

professionals, required to meet and uphold high professional standards of practice and hold appropriate levels of professional indemnity insurance.

How does the Scheme enhance the professional standards of Association members?

Consistent with the Scheme objectives of demonstrating a high professional standard of practice in an environment of continuous improvement, to protect the consumer and reduce risk, the Association has adopted a multi-factorial approach to enhancing the professional standards of its Members.

A robust risk management framework, including the development of a Scheme Risk Management Plan, informed by analysis of contemporary and emerging professional risks, insurance data claims, external regulator complaints and discipline data has been developed by the Association. The Plan identifies professional standard risks and outlines strategy objectives for implementation and monitoring to address and mitigate those risks and measure the effectiveness of those strategies.

A focus on good risk management practices is also reflected in the Association's Continuing Professional Development (CPD) program. The Association's Education and Professional Responsibility Committees regularly review the operation and effectiveness of CPD activities conducted by the Association to ensure relevance, and to identify and provide education and training in emerging areas of law, ethical practice and conduct, practitioner wellbeing and risk.

Association Scheme Members in Western Australia are subject to external statutory regulation, including complaints and discipline under the *Legal Profession Act 2008* (WA) [LPA]. The Legal Profession Complaints Committee (LPCC) is established under the LPA to receive, investigate, mediate and prosecute complaints. Additionally, the Association's Disciplinary Committee established under the Association's Constitution has a role in dealing with matters pertaining to the discipline of Members, including referral of matters to the LPCC.

How does limiting liability help consumers?

Members covered by the Scheme which provides for limiting liability must meet and uphold the required high level of professional standards and conduct, within an environment of continuous improvement.

The implementation of capped liability reduces risk to both insurer and the Association Member covered by a Scheme and contributes, in part, to the availability of affordable premiums and a sustainable professional indemnity insurance market.

In such an environment, consumers of legal services can be assured that Scheme members are maintaining high professional standards, are insured appropriately, and the consumer has access to timely and reasonable compensation for relevant claims.

Is the Scheme a professional indemnity insurance scheme?

The Scheme is not a professional indemnity insurance scheme.

Regulation 97(1)(a) of the *Legal Profession Regulations 2009* (WA) provides an exemption to the general professional indemnity requirements for legal practitioners in Western Australia under regulations 96(a) and (b). The exemption applies relevantly to Association Members, who as barristers are covered by a policy of professional indemnity insurance in a form approved by the Council of the Western Australian Bar Association and which provides cover up to a limit which in the aggregate, is not less than that provided under the PII arrangement for that period as provided under regulation 84(1)(a). This is currently set at a minimum level of cover of \$2 million. Association members who are covered by the Scheme have a liability limited to \$2 million, subject to meeting Scheme participation requirements.

Further information regarding the Bar Association of Western Australia's Professional Standards Scheme can be found on the Association's website www.wabar.asn.au or contact the Association (08) 9220 0477.