

The New South Wales Bar Association Scheme

Professional Standards Act 1994 (NSW)

PREAMBLE

OCCUPATIONAL ASSOCIATION

The New South Wales Bar Association Scheme is a scheme under the *Professional Standards Act 1994* (NSW) applying in respect of The New South Wales Bar Association (the Bar Association). The Bar Association is a body corporate constituted under NSW corporations law and the *Registered Clubs Act 1976* (NSW).

The Bar Association Scheme limits the occupational liability of scheme members who provide services to the public.

The occupational group represented by the Bar Association consists of barristers practising in New South Wales. The Scheme only applies to barristers who hold a New South Wales practising certificate and who are members of the Bar Association, and who hold the requisite insurance as provided for in the Scheme. The approximate number of members eligible to be covered by the Scheme is 2000.

The objectives of the Bar Association are expressed in clause 3 of the Constitution and include:

- to promote the administration of justice;
- to promote, maintain and improve the interests and standards of local practising barristers;
- to make recommendations with respect to legislation, law reform, rules of court and the business and procedure of courts;
- to seek to ensure that the benefits of the administration of justice are reasonably and equally available to all members of the community;
- to arrange and promote continuing legal education;
- to promote fair and honourable practice amongst barristers; to suppress, discourage and prevent malpractice and professional misconduct;
- to inquire into questions as to professional conduct and etiquette of barristers;
- to confer and cooperate with bodies in Australia or elsewhere representing the profession of the law;
- to encourage professional, educational, cultural and social relations amongst the members of the Bar Association; and
- to make donations to charities and such other objects in the public interest as determined from time to time by the Bar Council.

NATURE OF THE SCHEME

A scheme operates for the purpose of improving the occupational standards of professionals and others, and to protect the consumers of their services. It also limits the civil liability of persons to whom the scheme applies.

The liability limited by the scheme includes, to the extent permitted by the Act, all civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by a member of the Bar Association or to any person to whom this scheme applies in acting in the performance of his or her occupation. The scheme does not apply to liability for damages arising from any matter to which the Act does not apply, including, but not limited to, liability for damages arising from death or personal injury to a person, a breach of trust, fraud or dishonesty.

The scheme does not affect damages which are below \$1 million. The scheme limits liability for damages to \$1 million provided the person has insurance which is not less than \$1 million.

RISK MANAGEMENT

The Bar Association has adopted strategies which cover requirements for professional entry to practice at the Bar and continuing professional development in the areas of ethics and regulation of the profession; management; substantive law, practice and procedure, and evidence, and advocacy, mediation and other barristers' skills.

The Complaints and Disciplinary system operates pursuant to the requirements of the *Legal Profession Act 1987* (NSW) and *Legal Profession Regulations 2002*.

The Bar Association will report annually on the implementation and monitoring of its risk management strategies, the effect of those strategies and any changes made or proposed to be made to them.

STANDARDS OF INSURANCE

Scheme members are required to maintain a current professional indemnity insurance policy on offer to barristers with a NSW practising certificate. The NSW Attorney General determines the statutory minimum level of professional indemnity insurance required to be taken out by barristers and also approves the professional indemnity insurance policies on offer by brokers each year. The amount payable under the insurance policy in respect of occupational liability is to be not less than the amount of the person's limitation of liability.

CLAIMS MONITORING

The Bar Association has established a relationship with the insurers who provide cover for scheme members which will ensure the Bar Association will be able to obtain and monitor claims data. The Bar Association will report annually on claims monitoring, tactics, performance measures and monitoring systems.

COMPLAINTS AND DISCIPLINE

Scheme members are subject to a complaints and discipline system operating under the *Legal Profession Act 1987* (NSW). All scheme members must comply with the provisions of the *Legal Profession Act 1987* (NSW) and *Legal Profession Regulation 2002*.

SCHEME ADMINISTRATION

Responsibility for administration of the scheme and ensuring that it complies with the requirements of the *Professional Standards Act 1994* (NSW) and of the Professional Standards Council rests with the Bar Association.

DURATION

The scheme remains in force for a period of 5 years from its commencement unless it is revoked, extended or ceases in accordance with section 32 of the Act.

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1. Occupational Association

- 1.1** The New South Wales Bar Association Scheme (the scheme) is a scheme under the *Professional Standards Act 1994 (NSW)* (the Act) of the New South Wales Bar Association (the Bar Association) whose business address is Selborne Chambers, 174 Phillip Street Sydney.

2. Persons to Whom the Scheme Applies (Participating Members & Other Persons)

- 2.1** The scheme applies to scheme members as defined in clause 2.2 of the scheme and persons defined in clause 2.3 of the scheme.
- 2.2** All members of the Bar Association who hold a current NSW barrister's practising certificate issued by the Bar Association and who have current insurance that complies with the standard approved by the NSW Attorney General under the *Legal Profession Act 1987 (NSW)*.
- 2.3** Persons to whom the scheme applies by virtue of sections 18, 19 and 20 of the Act.

3. Limitation of Liability

- 3.1** A scheme member or other person against whom a cause of action relating to occupational liability is brought, is not liable in damages in relation to that cause of action for anything done or omitted on or after the commencement of the scheme above a monetary ceiling (a maximum amount of liability) of \$1,000,000.
- 3.2** In the scheme "occupational liability" has the same meaning as it has in the Act and excludes any liability which may not from time to time be limited pursuant to the Act.
- 3.3** The scheme member or other person must be able to satisfy the court that they have the benefit of:
- 3.3.1** an insurance policy insuring them against that occupational liability, and
 - 3.3.2** an insurance policy under which the amount payable in respect of the occupational liability relating to that cause of action is not less than the maximum amount of liability specified in the scheme in relation to the scheme member or other person at the time at which the act or omission giving rise to the cause of action occurred.