

Australian Capital Territory

Civil Law (Wrongs) Law Institute of Victoria Limited Scheme 2016 (No 1)

Disallowable instrument DI2016–16

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) Law Institute of Victoria Limited Scheme 2016 (No 1)*.

2 Commencement

This instrument commences on 1 July 2016.

3 Notice

I give notice of the Professional Standards Council of Victoria's approval of the attached Law Institute of Victoria Limited Scheme, which has effect until 30 June 2021.

Simon Corbell MLA
Attorney-General
11 April 2016

LAW INSTITUTE OF VICTORIA LIMITED SCHEME
Professional Standards Act 2003 (Vic)

PREAMBLE

- A. The Law Institute of Victoria Limited (“the LIV”) is a voluntary occupational association for legal practitioners (solicitors) in Victoria.
- B. The LIV has made an application to the Professional Standards Council (“Council”), appointed under the *Professional Standards Act 2003 (Vic)* (“the Act”) for approval of a scheme under the Act, and this document comprises the scheme (“the Scheme”).
- C. The Scheme has been prepared by the LIV for the purposes of limiting Occupational Liability of Participating Members to the extent to which such liability may be limited under the Act.
- D. The Scheme is to apply to all Participating Members.
- E. The LIV has furnished the Council with a risk management program intended to be implemented in respect of its Participating Members and the means by which those strategies are intended to be implemented.
- F. The Scheme is intended to remain in force for a period of five (5) years from its commencement, subject to s34 of the Act
- G. The Scheme commences on 1 July 2016.

LAW INSTITUTE OF VICTORIA SCHEME

1. Preparation of the Scheme

- 1.1. This Scheme is a scheme under the Act prepared by the LIV, whose business address is 470 Bourke Street, Melbourne, Victoria.
- 1.2. The Scheme is intended to operate as a scheme of Victoria, New South Wales, Queensland, South Australia, Western Australia, the Northern Territory and the Australian Capital Territory.
- 1.3. Relevant definitions for the purpose of this Scheme are as follows:

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

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

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

¹ Refer Legal Profession Uniform Law Application Act 2014 s4

² Refer Legal Profession Uniform Law Application Act 2014 s4

“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;

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

“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 Victoria⁴;

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

“Legal Services” has the same meaning as it has in the Legal Profession Uniform Law (Victoria)⁶;

“Occupational Liability” has the same meaning as it has in the Act⁷;

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

“Principal” has the same meaning as it has in the Legal Profession Uniform Law (Victoria)⁸;

“Relevant Time” means the time at which an act or omission in relation to the provision of legal services occurred, upon which a cause of action was founded; and

“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.

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;

³ Refer Legal Profession Uniform Law Application Act 2014 s4

⁴ Refer Legal Profession Uniform Law Application Act 2014 s4

⁵ Refer Legal Profession Uniform Law Application Act 2014 s4

⁶ Refer legal Profession Uniform Law Application Act 2014 s4

⁷ Refer Legal Profession Uniform Law Application Act 2014 s4

⁸ Refer *Legal Profession Uniform Law Application Act, 2014*, (Vic)

- 2.1.2. Incorporated Legal Practices;
 - 2.1.3. all persons to whom, by virtue of sections 20, 21 or 22 of the Act⁹, the Scheme applies;
 - 2.1.4. all persons to whom clause 2.1.1. applied at the Relevant Time but no longer applies;
 - 2.1.5. all corporations to which clause 2.1.2. applied at the Relevant Time but no longer applies;
 - 2.1.6. all persons to whom clause 2.1.3 applied at the Relevant Time but no longer 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 or corporation referred to in clause 2.1 may, on application, be exempted from participation in the Scheme by the LIV. This clause does not apply to persons to whom the Scheme applies by virtue of sections 20 or 21 of the Act.

3. Limitation of liability

- 3.1. The Scheme limits the Occupational Liability of a Participating Member for Damages¹⁰:
- 3.1.1 arising from a single claim founded on the act or omission in relation to the provision of legal services; and
 - 3.1.2. to the extent those Damages exceed \$1.5 million for Participating Members in Class 1 or Class 2 of the table in clause 3.3, or as the case may be, \$10 million for Participating Members in Class 3 or Class 4 of the table in clause 3.3.
 - 3.1.3. the Scheme does not limit liability in respect of damages arising from the death of or personal injury to a person, any negligence or other fault of an Australian legal practitioner in acting for a client in a personal injury claim; a breach of trust or fraud or dishonesty or matters which may be the subject of proceedings under s110 of the *Transfer of Land Act 1958* (Vic).
- 3.2. If a Participating Member against whom a claim relating to Occupational Liability is brought, is able to satisfy the Court that –

⁹ Sections 20 and 21 of the Act provide that if the Scheme applies to a body corporate, the Scheme also applies to each officer of the body corporate and if the Scheme applies to a person, the Scheme also applies to each partner of a person, and if the Scheme applies to a person, the Scheme also applies to each employee of that person, provided that if such officer of the corporation or partner of the person or employee of the person is entitled to be a member of the same occupational association, such officer, partner or employee is a member of the occupational association. Section 22 provides that the Scheme also applies to other persons prescribed by the regulations for the purposes of s 31(4) as being associated with persons to whom a scheme applies.

¹⁰ Damages as defined in section 4 of the Act means:

- a. damages awarded in respect of a claim or counter-claim or by way of set-off; or
- b. costs in or in relation to the proceedings ordered to be paid in connection with such an award (other than costs incurred in enforcing a judgment or incurred on an appeal made by a defendant); or
- c. any interest payable on the amount of those damages or costs.

3.2.1 the Participating Member has the benefit of an insurance policy or policies insuring him or her against the Occupational Liability to which the claim relates; and

3.2.2 the amount payable under the policy or policies in respect of that Occupational Liability¹¹ is not less than the amount of the monetary ceiling (maximum amount of liability) specified in the third column of the table in clause 3.3 as applying to such Participating Member to which the cause of action relates –

the Participating Member is not liable in Damages in relation to that claim above the amount of that monetary ceiling.

3.3 The monetary ceiling applicable for the purposes of limitation of liability under the Scheme at the Relevant Time is to be determined according to the table below –

Class	Description	Monetary ceiling
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	\$10 million

¹¹ Section 4(2) of the Act provides that a reference in the Act 'to the amount payable under an insurance policy in respect of an occupational liability includes a reference to - 'defence costs payable in respect of a claim, or notification that may lead to a claim (other than reimbursement of the defendant for the time spent in relation to the claim), but only if those costs are payable out of the one sum insured under the policy in respect of the occupational liability; and the amount payable under or in relation to the policy by way of excess'. However, see also section 28A of the Act and its note, which has the effect that s 4(2) does not reduce the cap on the liability of the Participating Member to the client.

	greater than \$10 million.	
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3.4 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.

4. Conferral of discretionary authority

4.1 The LIV has discretionary authority, on application by a Participating Member, to specify in relation to the Participating Member, a higher maximum amount of liability (monetary ceiling) than would otherwise apply under the Scheme in relation to him, her or it either in all cases or in any specified case or class of case.

4.2 If, in the exercise of its discretion under clause 4.1, the LIV has specified a higher maximum amount of liability (monetary ceiling) than would otherwise apply under the Scheme in relation to a Participating Member, the maximum amount of liability (monetary ceiling) in relation to that Participating Member is that higher maximum amount.

5. Duration

5.1. The Scheme is intended to remain in force for a period of five (5) years from its commencement, subject to s34 of the Act.