

Australian Capital Territory

Civil Law (Wrongs) New South Wales Bar Association Professional Standards Scheme 2020 (No 1)

Disallowable instrument DI2020-122

made under the

Civil Law (Wrongs) Act 2002, sch 4, s 4.10 (Schemes are subject to disallowance)

1 Name of instrument

This instrument is the *Civil Law (Wrongs) New South Wales Bar Association Professional Standards Scheme 2020 (No 1)*.

2 Commencement

This instrument commences on 1 July 2020.

3 Notice

- (1) I give notice of the Professional Standards Council of New South Wales' approval of the attached 'New South Wales Bar Association Professional Standards Scheme.'
- (2) The scheme is in force until 30 June 2025.

Gordon Ramsay MLA
Attorney-General
21 May 2020

The New South Wales Bar Association

Professional Standards Scheme

Professional Standards Act 1994 (NSW)

PREAMBLE

- A. The New South Wales Bar Association [NSWBA] is an occupational association.
- B. The NSWBA has made an application to the Professional Standards Council, appointed under the *Professional Standards Act 1994 (NSW)* (the Act), for a scheme under the Act.
- C. The scheme is prepared by the NSWBA for the purposes of limiting occupational liability to the extent to which such liability may be limited under the Act.
- D. The scheme propounded by the NSWBA is to apply to all members of the New South Wales Bar Association who hold a NSW barrister's practising certificate issued by the NSWBA and who have professional indemnity insurance that is required under law to be held by New South Wales barristers in order to practise.
- E. The NSWBA has furnished the Councils with a detailed list of the risk management strategies intended to be implemented in respect of its members and the means by which those strategies are intended to be implemented.
- F. The scheme is intended to commence on 1 July 2020 and remain in force for five (5) years from its commencement unless, prior to that time, it is revoked, its operation ceases, or it is extended pursuant to s32 of the Act.
- G. The scheme is also intended to apply in Victoria, Western Australia, Australian Capital Territory, Northern Territory, Queensland, South Australia, Tasmania

1. Occupational Association

The New South Wales Bar Association (the Bar Association) is an occupational association whose business address is Selborne Chambers, 174 Phillip Street Sydney. The New South Wales Bar Association Scheme (the scheme) is a scheme under the *Professional Standards Act 1994 (NSW)* (the Act). The scheme applies in New South Wales, the Australian Capital Territory, the Northern Territory, Queensland, Victoria, Western Australia, South Australia and Tasmania.

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

- 2.1 The scheme applies to persons referred to in clause 2.2 and clause 2.3 of this scheme.
- 2.2 All members of the Bar Association who hold a NSW barrister's practising certificate issued by the Bar Association and who have professional

indemnity insurance that is required under law to be held by New South Wales barristers in order to practise.

2.3 Persons to whom the scheme applies:

- 2.3.1 In New South Wales by virtue of sections 18, 19, 20 and 20A of the Act; and
- 2.3.2 In the Australian Capital Territory, the Northern Territory, Queensland, Victoria, Western Australia, South Australia and Tasmania by virtue of the comparable provisions to sections 18 and 19 of the Act in the corresponding legislation of those jurisdictions; and
- 2.3.3 In the Australian Capital Territory, the Northern Territory, Victoria, Western Australia, South Australia and Tasmania by virtue of the comparable provision to section 20 of the Act in the corresponding legislation of those jurisdictions; and
- 2.3.4 In Queensland by virtue of section 21A of the Professional Standards Act 2004 (Qld), and in Western Australia by virtue of section 34A of the Professional Standards Act 1997 (WA).

3. Limitation of Liability

- 3.1 Subject to clause 3.3 below, a person to whom the scheme applies 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 \$1,500,000.
- 3.2 For the purposes of the operation of the scheme in NSW ‘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. Similarly, for the purposes of the operation of the scheme in other jurisdictions in which it applies i.e. ACT, Northern Territory, Queensland, Victoria, Western Australia, South Australia and Tasmania, ‘occupational liability’ has the same meaning as it has in the corresponding legislation of those jurisdictions and excludes any liability which may not from time to time be limited pursuant to that legislation.
- 3.3 The person to whom the scheme applies 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 person to whom the scheme applies and the kind of work to which the cause of action relates at the time at which the act or omission giving rise to the cause of action occurred.
- 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. Commencement and duration

- 4.1. The scheme will commence:
- 4.1.1. In New South Wales, the Northern Territory, Tasmania, and Western Australia, on 1 July 2020, or, if the date of its publication is later than 1 July 2020, two months after the date of its publication; and
- 4.1.2. In Queensland, on 1 July 2020, or, if the date the Minister's notice of approval of the scheme is given later than 1 July 2020, two months after the date on which notice is given; and
- 4.1.3. In Victoria, on 1 July 2020, or, if the date of its publication is later than 1 May 2020, two months after the date of its publication; and
- 4.1.4. In the Australian Capital Territory and South Australia, on the date provided for in the notice giving approval of or publishing the scheme or, if no such date is specified, two months after the approval or scheme is published.
- 4.2. The scheme will remain in force in force in New South Wales, the Northern Territory, Tasmania, Western Australia, Queensland, Victoria, the Australian Capital Territory and South Australia until 30 June 2025 unless:
- 4.2.1. in the case of New South Wales, in accordance with section 32 of the Act it is earlier revoked or ceases to have effect or its

period of operation is extended for a period of up to 12 months;
or

- 4.2.2. in so far as the scheme operates in the Australian Capital Territory, the Northern Territory, Queensland, Victoria, Western Australia, South Australia, and Tasmania, in accordance with the law of those jurisdictions its operation in those jurisdictions is earlier revoked or ceases to have effect or its period of operation is extended for a period of up to 12 months, or it ceases to have effect in New South Wales.