

Australian Capital Territory

Civil Law (Wrongs) Queensland Law Society Professional Standards Scheme 2022 (No 1)

Disallowable instrument DI2022–109

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) Queensland Law Society Professional Standards Scheme 2022 (No 1)*.

2 Commencement

This instrument commences on 1 July 2022.

3 Notice

- (1) I give notice of the Professional Standards Council of Queensland's approval of the attached 'Queensland Law Society Professional Standards Scheme'.
- (2) The scheme is in force until 30 June 2027.

Shane Rattenbury MLA
Attorney-General
22 June 2022

THE QUEENSLAND LAW SOCIETY PROFESSIONAL STANDARDS SCHEME

PREAMBLE

Occupational Association

- A. The Queensland Law Society (“the Society”) is a voluntary association for legal practitioners who practice as solicitors. It is a statutory corporation constituted under the *Legal Profession Act 2007 (Q)*. It is an occupational association under the *Professional Standards Act 2004 (Q)* (“the Act”).

The Nature of the Scheme

- B. The Society has made an application to the Professional Standards Council (“Council”), for approval of a scheme under the Act, and this document comprises the scheme (“the Scheme”).
- C. The Scheme is intended to operate under the Act, which has the purpose of improving occupational standards of professional persons and to protect the consumers of their services.
- D. The Scheme has been prepared by the Society for the purposes of limiting the occupational liability of Participating Members to the extent such liability may be limited under the Act.
- E. The Scheme limits damages to be awarded against a Participating Member to the monetary ceiling specified for that Participating Member if the Participating Member has the benefit of Insurance as required by the Scheme.

Risk Management

- F. The Society has furnished the Council with a detailed list of the risk management strategies intended to be implemented in respect of its Participating Members and the means by which those strategies are intended to be implemented.
- G. The Society 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.

Insurance

- H. Participating Members are required to have the benefit of current professional indemnity insurance as prescribed by the LPA, the Queensland Law Society Administration Rule 2005 and the Queensland Law Society Indemnity Rule 2005. The Society has furnished the Council with details of its insurance standards and professional indemnity insurance claims monitoring process.
- I. The Society has advised its Participating Members that they must have the benefit of a professional indemnity policy that complies with the Society’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 applicable monetary ceiling specified in the Scheme.

Complaints and Discipline

- J. Participating Members are subject to a complaints and discipline regime operating under the LPA. All Participating Members must comply with provisions of the LPA and the *Legal Profession (Society) Rules 2007*.

Compliance

K. The Society has undertaken:-

- (a) to comply with all the reporting obligations associated with this Scheme, in furtherance of the statutory objects of improvement of the occupation standards of its members and protection of the consumers of such member services;
- (b) to require from its members that participate in this Scheme their agreement to comply with all requirements of the Society so as to enable it to meet its obligations in paragraph sub (a) above; and
- (c) to remit all fees payable under the Professional Standards Regulation 2017 to the Council as and when they become due.

Administration of the Scheme

L. Responsibility for administration of the Scheme and ensuring it complies with the requirements of the Act and the Council lies with the Council of the Society.

Commonwealth prescription of the Scheme

M. 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 QUEENSLAND LAW SOCIETY PROFESSIONAL STANDARDS SCHEME

1. Occupational Association and definitions

1.1 The Queensland Law Society Professional Standards Scheme is a scheme under the Act prepared by the Society whose business address is 179 Ann Street, Brisbane, Queensland.

1.2 Relevant definitions for the purpose of the Scheme are as follows:-

“**Act**” means the *Professional Standards Act 2004* (Q)

“**Australian Lawyer**” has the same meaning as in the LPA.

“**Australian Practising Certificate**” has the same meaning as in the LPA.

“**Corporate practising certificate**” means a practising certificate issued to an Australian lawyer that has a condition that the lawyer is not to engage in legal work other than providing in-house legal services to a corporation that is not an incorporated legal practice.

“**Corresponding Laws**” means the *Professional Standards Act 1994* (NSW), the *Professional Standards Act 2003* (Vic), *Professional Standards Act 2004* (SA), *Professional Standards Act 1997* (WA), *Professional Standards Act 2005* (Tas), *Professional Standards Act 2004* (NT), the *Civil Law (Wrongs) Act 2002* (ACT), as applicable.

“**Council**” means the Professional Standards Council established under s41 of the Act.

“**Court**” has the same meaning as it has in the Act.

“**Damages**” has the same meaning as it has in the Act.

“**Exempted Member**” means a full member, honorary member or an incorporated legal practice member who is, or was at the Relevant Time, exempted by the Society from participation in the scheme under clauses

3.3 and 3.4.

“**Financial year**” means a financial accounting period ending 30 June.

“**Full Member**” means a person within the category of full membership of the Society’s as defined in s7 of the Legal Profession (Society) Rules 2007.

“**Government Legal Officer**” has the same meaning as in the LPA.

“**Honorary Member**” means a person within the category of Honorary Membership of the Society as defined in s10A of the Legal Profession (Society) Rules 2007 who holds an Australian Practising Certificate;

“**Incorporated Legal Practice**” has the same meaning as in the LPA.

“**Incorporated Legal Practice Member**” means a corporation within that category of the Society’s membership as defined in s10B of the Legal Profession (Society) Rules 2007.

“**Indemnity Rule**” means the *Queensland Law Society Indemnity Rule 2005*.

“**LPA**” means the *Legal Profession Act 2007 (Qld)*.

“**Law Practice**” has the same meaning as in the LPA.

“**Occupational Liability**” has the same meaning as it has in the Act.¹

“**Participating Members**” means those persons specified in clause 3.1 of the Scheme.

“**Principal**” has the same meaning as in the LPA.

“**Relevant Time**”, in relation to a cause of action relating to Occupational Liability, means the time when the act or omission giving rise to the cause of action happened.

“**Scheme**” means the Queensland Law Society Professional Standards Scheme.

“**Society**” means the Queensland Law Society.

“**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 members of the Society to whom the Scheme applies.

2. Jurisdictions in which the Scheme Applies

2.1 The Scheme applies in Queensland pursuant to the Act.

2.2 In addition to Queensland the Scheme is intended to operate in New South Wales, Victoria, Tasmania, South Australia, Western Australia, the Northern Territory of Australia and the Australian Capital Territory 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 as an interstate scheme.

¹ Section 6(1) of the Act provides that it does not apply to liability for damages because of the death of or personal injury to a person; any negligence or other fault of a lawyer in acting for a client in a personal injury claim; a breach of trust; fraud or dishonesty. Section 6(2) of the Act provides that it does not apply to liability that may be the subject of proceedings under the Land Title Act 1994, part 9, division 2, subdivision C.

2.3 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.

3. Persons to Whom the Scheme Applies

3.1 The Scheme applies to:-

3.1.1 Full Members and Honorary Members who hold an Australian Practising Certificate, who are not excluded or exempted under clauses 3.2 or 3.3 of the Scheme;

3.1.2 Incorporated Legal Practice Members that are not exempted under clause 3.3 of the Scheme;

3.1.3 all persons to whom, by virtue of ss 20, 21 or 21A of the Act, the Scheme applies²;

3.1.4 all persons to whom clauses 3.1.1 and 3.1.2 applied at the Relevant Time but no longer applies.

3.2 A person referred to in clause 3.1.1 does not include a practitioner who holds or held at the Relevant Time a Corporate Practising Certificate issued by the Society, or is or was at the Relevant Time a Government Legal Officer.

3.3 A person referred to in clause 3.1 may, on written application, be exempted from participation in the Scheme by the Society with effect from the date on which the exemption is granted. This clause does not apply to persons to whom the Scheme applies by virtue of ss 20 or 21 of the Act.

3.4 The Society may, upon application by an Exempted Member revoke an exemption of the person from participation in the Scheme from a date specified by the Society.

4. Limitation of Liability

4.1 The Scheme limits the Occupational Liability of a Participating Member for Damages³:-

4.1.1 arising from a single cause of action founded on an act or omission; and

4.1.2 to the extent those damages exceed the amounts specified as the monetary ceiling in Cl. 4.5.

4.2 If a Participating Member against whom a cause of action relating to Occupational Liability⁴ is brought is

²Section 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 and employee of that person. However, if such officer of the body corporate or partner or employee of the person is entitled to be a member of the same occupational association as the body corporate or person (as applicable) but is not a member, the Scheme does not apply to the officer, partner or employee. Section 21A extends the limitation of liability to other persons to whom the Scheme applies.

³ Damages as defined in Schedule 2 of the Act means:

- (a) damages awarded in respect of a claim or counter-claim or by way of set-off; and
- (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); and
- (c) any interest payable on the amount of those damages or costs

⁴ Section 7A 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 –

- (a) 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
- (b) the amount payable under or in relation to the policy by way of excess."

However, see also section 27A of the Act and its note, which has the effect that section 7A does not reduce the cap on the liability of the Participating Member to the client.

able to satisfy the Court that:-

4.2.1 the Participating Member has the benefit of an insurance policy insuring him or her against the Occupational Liability to which the cause of action relates;

and

4.2.2 the amount payable under the insurance policy in respect of that Occupational Liability is not less than the amount of the monetary ceiling specified in Cl 4.6 as applying to the Participating Member against whom the proceeding is brought:-

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

4.3 For the operation of the scheme in a jurisdiction other than Queensland under a Corresponding Law of that jurisdiction, Occupational Liability means any liability included in the definition of Occupational Liability in the Corresponding Law which is in force in that jurisdiction from time to time.

4.4 Notwithstanding clause 4.1, for the operation of this Scheme in a jurisdiction other than Queensland under a Corresponding Law of that jurisdiction, the Occupational Liability to which the Scheme applies does not include liability to which the corresponding law states from time to time it does not apply.

4.5 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 following table:-

Class	Description	Monetary ceiling
1	Participating Members who at the Relevant Time were in a Law Practice that consisted of up to and including 20 Principals and where the Law Practice generates Total annual fee income for the financial year at the Relevant Time up to and including \$10 million.	\$1.5m
2	a) Participating Members who at the Relevant Time were in a Law Practice that consisted of greater than 20 Principals; or b) Participating Members who at the Relevant Time were in a Law Practice that generated Total annual fee income for the financial year at the Relevant Time greater than \$10 million.	\$10m

4.6 The Scheme limits the Occupational Liability in relation to a cause of action founded on an act or omission that happens when the Scheme is in force of any person to whom the Scheme applies when the act or omission happens.

5 Conferral of Discretionary Authority

5.1 The Society has discretionary authority, on application by a Participating Member, to specify in relation to the Participating Member, a higher monetary ceiling than would otherwise apply under the Scheme in relation to the Participating Member in all cases or any specified case or class of case.

5.2 Before exercising that discretion in favour of the Participating Member, the Society must be satisfied the amount payable under the current professional indemnity insurance of which the Participating Member has the benefit is at least equal to the proposed higher monetary ceiling.

6 Duration

6.1 This Scheme will commence in Queensland, New South Wales, Victoria, Tasmania, Western Australia and the Northern Territory on 1 July 2022.

6.2 In the Australian Capital Territory and South Australia, this Scheme will commence:

- (a) On the date provided for in the Minister's notice in relation to the Scheme if a date is provided; or
- (b) On the first day two months after the day on which notice was given, in any other case.

6.3 The Scheme will remain in force for 5 years from its commencement, subject to s. 33 of the Act.