



INFORMATION SHEET

The Victorian Bar Professional Standards Scheme (the **Scheme**) is a **voluntary** statutory consumer protection regime operated by the Victorian Bar (the **Bar**) under the *Professional Standards Act 2003* (the **Act**) for the purposes of improving the occupational standards of barristers, protecting consumers of legal services provided by Victorian barristers and expanding professionalism throughout the Bar.

The Scheme limits the civil liability of a barrister covered by the Scheme to an approved monetary cap of \$2 million.

THE SCHEME

Under the Act, an occupational association can apply to the Professional Standards Councils (the **PSC**) for acceptance of a scheme to limit occupational liability.

The Bar's Scheme was first commenced on 1 July 2008. Since then, the Scheme has been renewed twice, in 2014 and 2019. The current Scheme will remain in force until 30 June 2024.

The Bar's Executive Director has responsibility for administering the Scheme to ensure it complies with the requirements set out in the Act. The Scheme must have features designed to:

- minimise the occurrence of events giving rise to claims;
- facilitate the handling of claims which are made; and
- increase the likelihood of claims being satisfied if liability is established.

Under the Scheme, the Bar must:

- ensure that Scheme members have insurance to cover the relevant level of liability;
- have a system of handling complaints and discipline of members; and
- have a program of risk management in place.

Occupational liability

The liability limited by the Scheme is defined by the Act.

The Scheme will not apply to any occupational liability specifically excluded by the Act, which are currently:

- liability for damages arising from the death of, or personal injury to, a person;
- liability for any negligence or other fault in acting for a client in a personal injury claim;
- liability for a breach of trust;
- liability for fraud or dishonesty; and
- liability which may be the subject of proceedings under section 100 of the *Transfer of Land Act 1958* (Vic).

APPLICATIONS INVITED

Barristers who hold a current Victorian practising certificate and who are members of the Bar are eligible to participate in the Scheme. The Scheme document and the prescribed application form is available on the Victorian Bar website.

Members wishing to participate in the Scheme are asked to complete the application form and return it to the Bar office on **Level 5, Owen Dixon Chambers East**. By participating in the Scheme, members agree to be bound by the Scheme.

WHY PARTICIPATE IN THE SCHEME?

Limitation of liability

The Scheme will cover civil liability against barristers who are members of the Scheme, arising in the course of the provision of legal services. This includes work such as appearing in Court, providing legal advice and drawing and settling documents including court documents.

A barrister who resigns or retires from the Bar and ceases to be a Scheme member can still invoke the limitation of liability if the relevant act or omission occurred while he or she was a Scheme member.

Consumer confidence

Participation in the Scheme will assure consumers that barristers have high professional standards of practice that they must uphold and that the Victorian Bar will monitor, enforce and improve those standards.

NATURE OF THE SCHEME

Membership of the Scheme is voluntary.

The Scheme is open to members of the Bar -

- who hold a current Victorian practising certificate;
- who are admitted to membership of the Scheme by resolution of the Bar Council; and
- whose names remain on the Scheme register maintained by the Bar Council.

The Bar Council will enter the name of each member of the Scheme in a register which will be available for public inspection.

The Scheme is not available to members falling within the following divisions:

- Division A – Parts II to IV;
- Division B; and
- Division C.

The Bar Council has determined that the annual fee payable to the Bar by a member of the Scheme shall be **\$88 including GST**.

PROFESSIONAL INDEMNITY INSURANCE

Members of the Scheme must have professional indemnity insurance issued by the Legal Practitioners' Liability Committee (the LPLC). The primary mandatory cover from the LPLC is \$2 million inclusive of defence costs. Top up insurance cover is available to meet any shortfall in the primary layer of cover and may cover your costs of defending a disciplinary charge.

The civil liability capped by the Scheme provides an additional layer of protection.

DISCRETIONARY HIGHER CAP

On application by a person to whom the Scheme applies, Bar Council has discretionary authority, to specify a higher maximum amount of liability than \$2 million in relation to that person, either in all cases or in any specified case or class of case.

Where a higher maximum cap has been specified by Bar Council, the barrister must arrange for top up insurance issued by an insurer for an amount which, when aggregated with the LPLC professional indemnity insurance, is equal to or greater than the specified higher cap.

Section 4(2) of the Act allows a person to whom a scheme applies to rely on a costs-inclusive policy.

EXEMPTIONS

Current Scheme members are eligible to apply for an exemption from continuing to participate in the Scheme, which is subject to approval by the Victorian Bar.

MEMBER REQUIREMENTS

Disclosure statement

Members to whom the Scheme applies, must pursuant to s35 of the Act, disclose their limited liability by placing a prescribed statement on -

"all documents (other than business cards) given, or caused to be given, by the person to a client or prospective client that promote or advertise the person or the person's occupation, including official correspondence ordinarily used by the person in the performance of the person's occupation and similar documents..."

The disclosure statement prescribed by the *Professional Standards Regulations 2017* is:

"Liability limited by a scheme approved under Professional Standards Legislation"; and must be printed in a size not less than the face measurement of Times New Roman typeface in 8 point.

The disclosure statement should be included on all correspondence, memoranda, emails, website profiles and fee slips relating to a Scheme member.

Failure to comply with disclosure requirements can result in a fine of 50 penalty units.

Compliance declarations

Scheme members are required to declare their compliance with disclosure requirements each year as part of the Bar's annual membership renewal process.

Compliance audit

The Act allows the PSC or the Bar to conduct compliance audits with respect to disclosure statement requirements. The Bar's practice is to conduct a compliance audit of a random sample of 10% of Scheme members on an annual basis.

Last updated on 11 March 2022