

Professional Standards Scheme Guide 2024-25

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Introduction

Professional benefits for Law Society of Western Australia members

The Law Society of Western Australia's (the Society) Professional Standards Scheme (Scheme) was approved by the Professional Standards Council of Western Australia, acting in conjunction with the appropriate Councils for the other States and Territories, on 2 February 2024, pursuant to the *Professional Standards Act 1997* (WA) (the Act).

The Scheme is an initiative of the Society which showcases ways we work on behalf of our members to increase the benefits of membership.

Status of Scheme

The Scheme will commence on Monday, 1 July 2024, and will apply in Western Australia. The Scheme is intended to apply across other jurisdictions also, and include New South Wales, Victoria, Queensland, South Australia, Tasmania, the Northern Territory and the ACT under the mutual recognition scheme.

The Professional Standards Councils (PSC) have published a Guidance Note on the operation of multi-jurisdiction professional standards schemes. Please see their [website](#) for the [guidance note](#) and further information.

This Scheme replaces the current 2019 scheme which commenced on 1 July 2019 and was designed to remain in effect for 5 years. As with the previous scheme, the new Scheme limits occupational liability to the extent that it may be limited under the Professional Standards Act 1997 (WA) (PS Act).

The 2024 Scheme does not apply to claims prior to its date of commencement.

About the Scheme

This is an 'opt-out' limitation of liability scheme that applies to Participating Members as defined in the Scheme document. The Scheme caps the occupational liability of participating Society members to an amount of \$1.5 million, \$5 million or \$10 million depending on the insurance policies and total annual fee income of the law practice, (see paragraph 9 of this guide for further information).

This is a Scheme for limiting liability of members and is not an insurance policy or product.

Participation in the Scheme

A Professional Standards Scheme Participant Information form regarding participation in the Scheme must be submitted and is available on the Scheme page of our website. The Professional Standards Scheme Information form must be returned together with payment.

Practitioners who are not members of the Society, who wish to benefit from the Scheme, must also return a completed membership application form with payment at the same time. A Society membership application form is also available on our website.

For a law practice to gain the full benefit of the Scheme and the limitation of liability, all legal practitioners (that is, any person who holds a current Australian practising certificate) within the law practice, and the law practice itself if it is an incorporated legal practice (ILP), would need to be members of the Society and the Scheme.

If you have any enquiries, please contact Scheme Coordinator, at pss@lawsocietywa.asn.au

1 What is a Professional Standards Scheme?

- 1.1 The Professional Standards legislation enables the establishment of schemes to limit liability of members of occupational associations.
- 1.2 The legislation is state based, and the relevant Act in Western Australia is the Professional Standards Act 1997 (WA) (Act).
- 1.3 The relevant regulations in Western Australia are the Professional Standards Regulations 1998 (WA) (Regulations).
- 1.4 For a scheme to be approved under the Act, occupational associations such as the Society are required to demonstrate a high commitment to professional standards and consumer protection, and implement comprehensive risk management strategies. An approved scheme will limit the occupational liability of members of the occupational association, subject to the scheme itself and the Act.

2 Where can I obtain a copy of the Law Society of Western Australia's Professional Standards Scheme?

The Society's Scheme is attached to this Guide as an appendix and is also available, together with the Act, at lawsocietywa.asn.au.

3 What is the Scheme's commencement date?

The previous Scheme commenced on 1 July 2019 and ceased on 30 June 2024.

The current Scheme commenced on 1 July 2024. The Scheme is not retrospective. It applies to Participating Members during the period of their membership of the Society.

4 Who is covered by the Scheme?

- 4.1 Members should refer to sections 30 to 34A of the Act and clause 2 of the Scheme. In general, the Scheme applies to:
 - (a) All Ordinary Members and Life members holding an Australian Practising Certificate (Law Society's Constitution rules 9 and 13), who are not a Corporate Legal Practitioner or a Government Legal Practitioner, and who are not exempted under clause 2.2 of the Scheme; and
 - (b) Incorporated legal practice members of the Society (Law Society Constitution rule 15) that have not been exempted from participation in the Scheme; and
 - (c) Otherwise as described in clause 2 of the Scheme document.
- 4.2 The Scheme may also apply to employees of a law practice who are not legal practitioners or who do not hold a current practising certificate, but who are members of the Society.

5 How do I notify the Society of Participation?

- 5.1 Members seeking to notify the Society of their participation **must** provide a completed Professional Standards Scheme Participant Information form to the Society. The form is a compliance requirement and is available at <https://lawsocietywa.asn.au/membership/professional-standards-scheme/>.

6 Benefits of Participation

Law practices wishing to benefit from the limitation of liability provided by the Scheme should ensure that:

- All Australian legal practitioners (both principals and legal practitioner employees) renew their membership of the Society and the Scheme on an annual basis;
- If the law practice is an ILP, the ILP retains or gains membership of the Society and the Scheme and renews membership on an annual basis; and
- All Australian legal practitioners who join a law practice (both principals and legal practitioner employees) retain or immediately gain membership of both the Society and the Scheme.

A total fee of \$100 (per annum) including GST will be payable by each Participating Member in the Scheme. This fee will be reviewed annually. The annual fee consists of a \$50 fee (GST free) set by the Professional Standards Council (PSC), and a \$50 administrative fee (GST inclusive). The \$50 PSC fee from the total annual fee must be remitted by us to the PSC under legislation.

7 How does the Scheme apply to an Incorporated Legal Practice (ILP)?

- 7.1 ILPs that are members of the Society will need to provide a completed Professional Standards Scheme Participant Information form to the Society. The form is available at lawsocietywa.asn.au.
- 7.2 The information is required by The Society in order to administer the Scheme and report to the PSC regarding the Scheme. This information includes:
 - (a) Name of each principal (legal practitioner director) of the ILP; and
 - (b) Approximate total annual fee income for the relevant financial year; and
 - (c) Professional indemnity insurance policy number/s for any top-up insurance for the ILP.
- 7.3 From 1 July 2024, a total fee of \$100 (per annum) including GST will be payable by ILPs participating in the Scheme. This fee will be reviewed annually. The annual fee consists of a \$50 fee (GST free) set by the Professional Standards Council (PSC), and a \$50 administrative fee (GST inclusive). The \$50 PSC fee from the total annual fee must be remitted by us to the PSC under legislation.

8 What if I do not wish to participate in the Scheme?

This is an 'opt-out' Scheme which, subject to the provisions of the Act, applies to Society members. However, members to whom the Scheme applies and who wish to seek exemption may do so by making an application to the Society pursuant to clause 3.2 of the Scheme. An Application for Exemption form can be found on the [exemption page](#) of the website. A member who is exempted from participation in the Scheme will not gain the benefit of a limitation of liability under the Scheme in the event of a claim.

9 How will the Scheme work in the event of a claim?

9.1 The Scheme is not an insurance product and does not affect a practitioner's requirement to obtain insurance through Law Mutual (WA) or otherwise, as applicable.

9.2 In principle, if proceedings are brought against a Participating Member relating to occupational liability for damages arising from a single cause of action, and the Participating Member is able to show that –

- (a) the Participating Member has the benefit of an insurance policy or policies insuring him or her against the occupational liability to which the cause of action relates; and
- (b) the amount payable under the policy or policies in respect of that occupational liability is not less than the amount of the monetary ceiling (maximum amount of liability) specified in the Scheme as applying to such Participating Member to which the cause of action relates, the Participating Member is not liable for damages in relation to that cause of action above the amount of that monetary ceiling (clause 4 of the Scheme).

9.3 The benefit of limited liability under the Scheme is conditional upon the member maintaining the requisite level of insurance cover up to the liability cap. If the Participating Member is not able to satisfy the Court that he or she has the requisite insurance policy, or that the amount payable under his or her insurance policy is not less than the amount of the relevant monetary ceiling specified in the Scheme, he or she will not be entitled to rely on the Scheme to limit his liability for damages.

10 What are the monetary ceilings for limitation of liability under the Scheme?

The Scheme will limit the occupational liability of Participating Members for damages arising from a single cause of action to an amount of \$1.5 million, \$5 million or

\$10 million depending on the insurance policies and total annual fee income of the law practice of the Participating Member, and to the extent that liability can be limited under the Act.

TIER	DESCRIPTION	MONETARY CEILING
1	Participating Members who were at the Relevant Time in a Law Practice that generated a total annual fee income for the financial year immediately preceding the Relevant Time up to and including \$5 million.	\$1.5 million
2	Participating Members who were at the Relevant Time in a Law Practice that generated a total annual fee income for the financial year immediately preceding the Relevant Time of more than \$5 million and up to \$10 million.	\$5 million
3	Participating Members who were at the Relevant Time in a Law Practice that generated a total annual fee income for the financial year immediately preceding the Relevant Time of more than \$10 million.	\$10 million

The ceiling on liability under the Scheme is in accordance with the following table:

11 Is it possible for a higher monetary ceiling to be specified?

The Society has discretionary authority under the Scheme, on application by a Participating Member to specify a higher maximum liability for that member. In order for the Society to do so, the Participating Member's liability must be insured up to the higher maximum specified. The Society contemplates that such a request may be made for the purpose of a Participating Member's commercial relationship with a client or other parties to a commercial transaction. On such an application the Society is entitled to approve a higher maximum amount of liability either in all cases or in any specified case or class of case (clause 5 of the Scheme).

The Higher Maximum Amount Application Form is available at

<https://lawsocietywa.asn.au/membership/professional-standards-scheme/>.

12 What type of liability can be limited under the Scheme?

12.1 In compliance with the Act, the Scheme provides for limitation of occupational liability arising from a single cause of action. "Occupational liability" is defined in the Act as follows:

occupational liability means civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by a member of an occupational association acting in the performance of his or her occupation.

13 What type of liability cannot be limited under the Scheme?

13.1 There are a number of exclusions which might prevent reliance on the Scheme to limit liability.

Participating Members should therefore seek independent legal advice both in relation to the adequacy or otherwise of their insurance arrangements and the operation of the Scheme.

13.2 Exclusions Under the Act

The Act (and, therefore, the Scheme) does not apply to liability for damages arising from:

- the death of, or personal injury to, a person; or
- a breach of trust; or
- fraud or dishonesty; or
- liability which may be the subject of proceedings under Part XII of the Transfer of Land Act 1893 (WA).

However, the Act does not operate to exclude liability for damages arising out of any negligence or other fault of a legal practitioner in acting for a client in a personal injury claim.

13.3 Defence costs

The Scheme operates to cap damages only. However, the compulsory insurance scheme run by Law Mutual (WA) is a defence costs and excess inclusive scheme, meaning that the \$2 million cover provided by Law Mutual (WA)

includes the defence and related costs of handling the claim as well as damages, up to a total of \$2 million.

The Law Society has implemented an Insurance Standard in the interests of members and consumers of legal services to ensure the quality, consistency and level of insurance of the legal practices of their members with particular reference to the requirements of the new Professional Standards Scheme.

The Society's Insurance Standard is attached to this Guide as an appendix and is also available, together with the Scheme and the Act, at lawsocietywa.asn.au.

Clause 4.2 of the Law Society's Professional Standards Scheme document requires that if a participating member of the Scheme seeks to rely on the Scheme to limit liability in the event of a claim, then they must have the benefit of an insurance policy insuring them against the occupational liability to which the cause relates, and that the amount payable under the policy or policies in respect of that occupational liability is not less than the amount of the limit of liability.

If your practice falls within the Tier 2, Tier 3 or intends on making an application for a Higher Maximum Amount limitation of liability, we draw your attention to clause 3 (c) of the Insurance Standard.

Clause 3 (c) provides that if your top up insurance cover is defence costs inclusive, then you must ensure that the top up insurance policy limit provides for an aggregate cover that is at least \$500,000 more than your practice's limit of liability under the Scheme.

For example:

If you have a \$5M limitation of liability under the Scheme, then you would require a top up insurance limit of \$3.5M under this scenario to ensure that, as far as possible, the limit of liability can be paid from the insurance cover even where substantial defence costs have been paid out.

13.4 **Single Causes of Action**

Members are referred to section 42 of the Act in regard to the characteristics of the limitation of damages by reference to the event giving rise to the cause of action, claims by multiple claimants and claims against multiple or associated defendants.

It is important to note that there may be potential inconsistencies between the Scheme and the insurance arrangements applicable to a Participating Member, including but not limited to insurance provisions relating to 'aggregation', which might prevent reliance on the Scheme to limit liability.

Participating Members should therefore seek independent legal advice both in relation to the adequacy or otherwise of their insurance arrangements and the operation of the Scheme.

13.5 **Relevant Time vs Claims Made**

The Scheme is intended to limit liability arising from an act or omission where a person was a Participating Member at the relevant time—that is, the time an act or omission occurred on which a cause of action is founded—rather than at the time the claim is made.

14 **Will the Scheme apply to all claims made after the Scheme commencement date?**

The Scheme will only limit liability in respect of an act or omission that occurs while the Scheme is in operation. This means that a Participating Member cannot rely on the Scheme to limit liability arising from an act or omission that occurred before the Scheme commenced. In relation to any such acts or omissions giving rise to a potential liability, Participating Members will continue to be reliant on their professional indemnity (or other) insurance and will not gain the benefit of limited liability under the Scheme in respect of such claims.

15 **Is the Scheme enforceable under the laws of other Australian states or territories?**

In addition to this jurisdiction, the Scheme is designed to apply in New South Wales, Victoria, Queensland, South Australia, the Northern Territory and the ACT by means of provisions for mutual recognition in the other jurisdictions. Members should note, however, that provisions for mutual recognition are not uniform nationally and this may affect the extent to which they can benefit from schemes outside of Western Australia.

The PSC have published a Guidance Note on the operation of multi-jurisdiction professional standards schemes. Please see their [website](#) for the [guidance note](#) and further information.

16 **What should I tell my clients if I am participating in the Scheme?**

Participating members need to disclose their limited liability status. **Non-disclosure is an offence under the Act.**

Section 45(1) of the Act states:

45. Notification of limitation of liability

(1) If the occupational liability of a person is limited under this Part, the person must ensure that all documents given, or caused to be given, by the person to a client or prospective client that promote or advertise the person or his or her occupation, including official correspondence ordinarily used by the person in the performance of his or her occupation and similar documents, carry a statement to that effect.

Penalty: \$5000.

The Regulations prescribe the following form of statement: "Liability limited by a scheme approved under Professional Standards Legislation."

The statement must be printed in a size equal or greater than Times New Roman 8 point.

DOCUMENTS ON WHICH DISCLOSURE SHOULD APPEAR

- Documents (written advice, plans, drawings, specifications and other) produced for clients not accompanied by another document containing a disclosure statement;
- Emails;
- Fax cover sheets;
- Letterheads and letters signed by the company or on its behalf;
- Memoranda of fees and invoices not accompanied by another document containing a disclosure statement; and
- Newsletters and other publications.

DOCUMENTS NOT REQUIRING DISCLOSURE

- Advertisements in print media, directory listings and similar forms of promotion or advertising; and
- Business cards; and
- Social media networks, blogs, etc that are accessed voluntarily by consumers – rather than being ‘given, or caused to be given’ by professionals to their clients or prospective clients.

By way of illustration, above is an extract from the PSC council website www.psc.gov.au.

17 **What if I do not notify my clients that I am participating in the Scheme?**

Failure by a Participating Member to comply with disclosure requirements exposes the Participating Member to a penalty under section 45 of the Act. The Society must undertake an annual audit of Participating Members' compliance with the disclosure requirements. In the event of non-compliance the PSC is required to be informed.

DISCLAIMER: The Professional Standards Scheme is administered by the Law Society of Western Australia. The Society is unable to provide any legal advice, and gives no warranties and makes no representations as to whether any claim brought against a Participating Member or Law Practice will be covered by the Scheme. Participating Members should rely on their own enquires and assessments, specifically as to the adequacy or otherwise of any insurance arrangements and as to the consistency or otherwise of such arrangements with either the Scheme or the Act, and seek their own independent legal advice.

APPENDIX A

THE LAW SOCIETY OF WESTERN AUSTRALIA SCHEME

Professional Standards Act 1997 (WA)

PREAMBLE

- A. The Law Society of Western Australia Inc. ("Law Society WA") is an occupational association for legal practitioners in Western Australia for the purposes of the Professional Standards Act 1997 (WA) ("the Act").
- B. The Scheme is prepared by the Law Society WA for the purposes of limiting Occupational liability to the extent to which such liability may be limited under the Act.
- C. The Scheme applies to all Participating Members, as defined in the Scheme.
- D. The Scheme will have force in Western Australia, Victoria, New South Wales, Queensland, South Australia, the Northern Territory, Tasmania and the Australian Capital Territory. To the extent that the Scheme applies to limit liability in jurisdictions other than Western Australia, it is subject to the Professional Standards Legislation of those jurisdictions.
- E. The Law Society WA has furnished the Council with a detailed list of the risk management strategies to be implemented in respect of its Participating Members and the means by which those strategies are to be implemented.
- F. The Law Society WA has furnished the Council with details of its insurance standards and professional indemnity insurance claims monitoring process. The Law Society WA will not amend these insurance standards while the Scheme is in force without prior approval of the Council.
- G. The Law Society of WA has advised its Participating Members that they must have the benefit of a professional indemnity policy that complies with Law Society WA's insurance standards and that they remain liable for the amount of any difference between the amounts payable to a plaintiff under the policy and the monetary ceiling specified in the Scheme.
- H. The Law Society WA has furnished the Council with details of its complaints system and discipline system.
- I. The Law Society WA and its members to whom the Scheme applies have undertaken to comply with all reporting obligations associated with the Scheme, in furtherance of the statutory objects of improvement of the occupational standards of its members, and protection of the consumers of such members' services.
- J. The Law Society WA has undertaken to remit all fees payable under the Professional Standards Regulations 1998 (WA) to the Council as and when these become due.
- K. The Scheme is intended to commence on 1 July 2024 and remain in force for a period of five (5) years from its commencement, unless, prior to that time, it is revoked, its operation ceases, or it is extended.

- L. 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 a 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 LAW SOCIETY OF WESTERN AUSTRALIA SCHEME

1 Occupational Association

- 1.2 The Scheme is a scheme under the Professional Standards Act 1997 WA prepared by the Law Society WA whose business address is Level 4, 160 St Georges Terrace, Perth, Western Australia.

2 Persons to Whom the Scheme Applies

- 2.2 The Scheme applies to:
 - 2.1.1 All Ordinary Members and Life Members holding an Australian Practising Certificate, who are not a Corporate Legal Practitioner or a Government Legal Practitioner, and who are not exempted under clause 2.2 of the Scheme;
 - 2.1.2 Incorporated Legal Practice Members that are not exempted under clause 2.2 of the Scheme; and
 - 2.1.3 All persons to whom, by virtue of sections 31, 32 or 33 of the Act, the Scheme applies.
- 2.2 A person referred to in Clause 2.1 may, on application by that person, be exempted from the Scheme from the date specified by the Law Society WA. This clause does not apply to persons to whom the Scheme applies by virtue of sections 31, 32 or 33 of the Act.

3 Jurisdiction

- 3.2 The Scheme applies in Western Australia.
- 3.2 In addition to Western Australia, the Scheme is intended to operate in New South Wales, Victoria, Queensland, South Australia, Tasmania, the Northern Territory 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.

4 Limitation of Liability

- 4.1 The Scheme only affects the liability for damages arising from a single cause of action to the extent to which the liability results in Damages exceeding \$1.5 million.

- 4.2 If a person who is, or was, at the time of the act or omission giving rise to Occupational liability, a person to whom the Scheme applies, or applied, and against whom a proceeding relating to Occupational liability is brought, is able to satisfy the Court that such person has the benefit of an insurance policy:
- Of a kind which complies with the standards determined by the Law Society WA;
 - Insuring such person against the Occupational liability to which the cause of action relates; and
 - Under which the amount payable in respect of that Occupational liability is not less than the applicable monetary ceiling specified in clause 4.3 of this Scheme;

then that person is not liable in Damages in relation to that cause of action above the monetary ceiling specified in clause 4.3 of this Scheme.

- 4.3 The applicable monetary ceiling is to be determined according to the table below:

TIER	DESCRIPTION	MONETARY CEILING (Maximum amount of liability)
1	Participating Members who were at the Relevant Time in a Law Practice that generated a Total Annual Fee Income for the financial year immediately preceding the Relevant Time up to and including \$5 million	\$1.5 million
2	Participating Members who were at the Relevant Time in a Law Practice that generated a Total Annual Fee Income for the financial year immediately preceding the Relevant Time of more than \$5 million and up to \$10 million	\$5 million
3	Participating Members who were at the Relevant Time in a Law Practice that Generated a Total Annual Fee Income for the financial year immediately preceding the Relevant Time of more than \$10 million	\$10 million

- 4.4 Clause 4.2 does not limit the amount of Damages to which a person to whom the Scheme applies is liable if the amount is less than the amount specified for the purpose in this Scheme in relation to a person to whom the Scheme applies.
- 4.5 This Scheme limits the Occupational liability in respect of a cause of action founded on an act or omission occurring during the period when the Scheme was in force of an person to whom the Scheme applied at the time the act or omission occurred.
- 4.6 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 by both 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 higher cap shall be the applicable cap.

5 Conferral of Discretionary Authority

- 5.1 The Law Society WA has discretionary authority, on application by a person referred to in clause 2.1, to specify in relation to that person, a higher maximum amount of liability than would otherwise apply under the Scheme in relation to that person, either in all cases or in any.

6 Commencement and duration

- 6.1 The Scheme will commence:
- in Western Australia, New South Wales, Queensland, Tasmania, and the Northern Territory on 1 July 2024; and
 - in Victoria, on 1 July 2024 if the Scheme is published in the Government Gazette at least two months prior to that date; or in any other case, two months after the date the Scheme is published in the Government Gazette.
 - in the Australian Capital Territory and in South Australia, on this same date, or such other later date, provided the date is specified in the relevant Minister's notice in relation to the Scheme; or
 - in all other cases, subject to the statutory provisions of each applicable jurisdiction.
- 6.2 The Scheme will be in force in all applicable jurisdictions for a period of five (5) years from its commencement in Western Australia.
- 6.3 Clause 6.2 is subject to the provisions of the Corresponding laws in each jurisdiction in relation to the revocation, extension, or cessation of a scheme.

7 Definitions

- 7.1 Relevant definitions for the purpose of this Scheme are as follows:
- "Act" means the *Professional Standards Act 1997* (WA).
- "Australian Practising Certificate" has the same meaning as it has in the *Legal Profession Uniform Law* (Western Australia)¹.
- "Corporate Legal Practitioner" has the same meaning as it has in the *Legal Profession Uniform Law* (Western Australia)².
- "Corresponding laws" means the *Professional Standards Act 1994* (NSW), the *Professional Standards Act 2003* (Vic), the *Professional Standards Act 2004* (Qld), the *Professional Standards Act 2004* (SA), the *Professional Standards Act 2005* (Tas), the *Professional Standards Act 2004* (NT), and the *Civil Law (Wrongs) Act 2002* (ACT), as applicable.

¹ Refer Legal Profession Uniform Law Application Act 2022 section 6.

² Refer Legal Profession Uniform Law Application Act 2022 section 6.

“Council” means the Professional Standards Council established under section 8(1) 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 member of the Law Society WA who is, or was, at the Relevant Time, exempted by the Law Society WA from participation in the Scheme pursuant to clause 2.2;

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

“Government Legal Practitioner” has the same meaning as it has in the *Legal Profession Uniform Law* (Western Australia)³.

“Incorporated Legal Practice Member” means an incorporated legal practice within the meaning of the *Legal Profession Uniform Law* (Western Australia) that is a member of the Law Society WA under rule 15 of the Constitution of the Law Society WA, as amended from time to time⁴.

“Law Practice” has the same meaning as it has in the *Legal Profession Uniform Law* (Western Australia)⁵.

“Law Society WA” means the Law Society of Western Australia Inc.

“Life Member” means a person who is a Life Member of the Law Society WA within the meaning of rule 13 of the Constitution of the Law Society WA, as amended from time to time.

“Occupational liability” has the same meaning as it has in the Act.

“Ordinary Member” means a person who is an Ordinary Member of the Law Society WA within the meaning of rule 9 of the Constitution of the Law Society WA, as amended from time to time.

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

“Person” means an individual or a body corporate.

“Professional Standards Legislation” means the legislation applicable in each State and Territory, namely, the *Professional Standards Act 1994* (NSW), the *Professional Standards Act 2003* (Vic), the *Professional Standards Act 2004* (Qld), the *Professional Standards Act 2004* (SA), the *Professional Standards Act 2005* (Tas), the *Professional Standards Act 2004* (NT), and the *Civil Law (Wrongs) Act 2002* (ACT), as applicable.

“Relevant Time” refers to the time at which the act or omission occurs, not the time when the claim is brought.

“Scheme” means the Law Society of Western Australia Inc. Professional Standards Scheme.

“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.

³ Refer Legal Profession Uniform Law Application Act 2022 section 6.

⁴ Refer Legal Profession Uniform Law Application Act 2022 section 6.

⁵ Refer Legal Profession Uniform Law Application Act 2022 section 6.

APPENDIX B

LAW SOCIETY OF WESTERN AUSTRALIA PROFESSIONAL STANDARDS SCHEME

Insurance Standards (the Insurance Standards)

DEFINITIONS

APRA – the Australian Prudential Regulation Authority or its successors

LSWA – the Law Society of Western Australia (Inc)

Legislated Cover – any insurance provided or taken out pursuant to any legislative professional indemnity insurance coverage requirements in force in the State of Western Australia for law practices and legal practitioners including exemptions to such coverage

Limited Liability – the required Monetary Ceiling or Maximum Amount of Liability as set out in the PSS

National Law Practice – as defined in the Legislated Cover

PII Arrangements – professional indemnity insurance arrangements of a law practice or a PSS Member

PSS – any approved professional standards scheme to which these Insurance Standards apply.

PSS Member – any member of the LSWA who participates in a PSS

Top-up Policy – any professional indemnity insurance policy taken out as part of the PII Arrangements that provides insurance coverage in addition to the Legislated Cover.

APPLICATION

The Insurance Standards apply to any PSS member.

In addition to any PSS requirement to provide evidence of coverage, any PSS Member must, within five (5) business days of a written request from the LSWA, produce proof, satisfactory to LSWA, that the PSS Member is covered by PII Arrangements that comply with the requirements of the Insurance Standards and has been and will be so covered at all times while a PSS Member.

RISK MANAGEMENT

1. The PII Arrangements must, at a minimum, comply with the Legislated Cover other than as set out in point 2 below and must provide for a minimum limit of indemnity or cover of \$2m for any one claim
2. Where the PSS member is a practitioner in a National Law Practice, the PII Arrangements must, at a minimum, comply with any legislative professional indemnity insurance coverage requirements in force in the State or Territory of Australia in which the National Law Practice has taken out professional indemnity insurance and must provide for a minimum limit of cover or indemnity of \$2m for any one claim.

3. Any Top-up Policy must provide coverage that is broadly equivalent to the coverage provided under the Legislated Cover and, in particular, must:
 - a. Provide indemnity for claims made during the relevant period of insurance or from circumstances which are notified during the relevant period of insurance that subsequently give rise to a claim;
 - b. If possible, provide at least one automatic reinstatement of the policy limit of indemnity or an aggregate limit of indemnity that is at least two (2) times the PSS member's Limited Liability;
 - c. Defence costs must be in addition to the limit of indemnity under the PII Arrangements or the Top-up Policy limit must be increased by no less than 25% of the PII Arrangements limit to take into account these costs.
 - d. Indemnify any past, present or future directors, partners or employees of any law practice of which the PSS member is a practitioner;
 - e. Provide retrospective coverage to the date on which the PSS member first become a member of the PSS or any predecessor scheme under which the PSS member's liability was limited;
 - f. Remain current for the same period as the Legislated Cover
 - g. Must be underwritten by an APRA authorised general insurer or insurers unless otherwise approved in writing by LSWA having regard to any regulatory guidance published by the Professional Standards Council in respect of professional indemnity insurance and in accordance with the applicable Professional Standards Act and any relevant subordinate legislation.
4. After a PSS Member ceases to provide legal services, or ceases to practice or retires or the PSS Member's law practice merges with another law practice, the PSS Member must use their best endeavours to maintain a policy of professional indemnity insurance for a period of not less than 7 years where the PSS Member's liability for the provision of legal services previously provided will not otherwise be covered by other PII Arrangements. The coverage of the policy of professional indemnity insurance should be broadly equivalent to the coverage for ceased practices provided under the Legislated Cover.
5. Any PSS Member who is a practitioner in a National Law Practice who makes a claim under their PII Arrangements must promptly notify LSWA of the claim, the amount of the claim and sufficient details of the claim to enable LSWA to understand the nature of the claim and any settlement or other finalisation of that claim.
6. The insurer must be financially stable and able to meet the claim(s) in full. All Participants of the LSWA PSS, especially those participants holding professional indemnity insurance interstate and PSS Participants with a policy or policies of top up insurance, should seek their own legal advice as to whether their insurance complies with this Insurance Standard. LSWA does not by the publication of this Insurance Standard purport to provide advice as to whether any policy or policies of insurance satisfy this Insurance Standard.

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