

ATTACHMENT B – AMENDED LIV SCHEME

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 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.
- F. The LIV 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. Subject to s34 of the Act, the Scheme is intended to remain in force after its commencement in all applicable jurisdictions until 30 June 2015.
- H. The Scheme commences on 1 July 2010.

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. Relevant definitions for the purpose of this Scheme are as follows:

"Australian Practising Certificate" has the same meaning as it has in the *Legal Profession Act 2004 (Vic)*;

"Corporate Legal Practitioner" has the same meaning as it has in the *Legal Profession Act 2004 (Vic)*;

"Court" has the same meaning as it has in the Act;

"Damages" has the same meaning as it has in the Act;

"Financial Year" means a financial accounting period ending 30 June;

"Full Member" means a person within the category of full membership of the LIV as contemplated in the LIV's constitution (as amended from time to time);

"Incorporated Legal Practice" means a corporation within the category of incorporated legal practice membership as contemplated in the LIV's constitution (as amended from time to time);

"Law Practice" has the same meaning as it has in the *Legal Profession Act 2004* (Vic);

"Occupational Liability" has the same meaning as it has in the Act¹;

"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 Act 2004* (Vic);

"Relevant Time" refers to a cause of action founded on an act or omission, specifically to the time of that act or omission occurring; 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;

2.1.2. Incorporated Legal Practices;

2.1.3. all persons to whom, by virtue of ss20, 21 or 22 of the Act², the Scheme applies;

2.1.4. all persons to whom clause 2.1.1. applied at the Relevant Time but no longer applies;

¹ Section 5(1) of the Act provides that the Act does not apply to liability for 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. Section 5(2) of the Act also provides that the Act does not apply to liability, which may be the subject of proceedings under s110 of the *Transfer of Land Act 1958* (Vic).

² 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.

- 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. A person referred to in clause 2.1 does not include a Corporate 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 ss20 or 21 of the Act.

3. Limitation of liability

3.1. The Scheme limits the Occupational Liability of a Participating Member for Damages³:

3.1.1. arising from a single cause of action founded on the act or omission; 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.

3.2. If a Participating Member against whom a proceeding relating to Occupational Liability is brought is able to satisfy the Court that –

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 cause of action relates; and

3.2.2 the amount payable under the policy or policies in respect of that Occupational Liability⁴ 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 –

³ Damages as defined in s4 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.

⁴ 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 s 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.

the Participating Member is not liable in Damages in relation to that cause of action 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 greater than \$10 million.	\$10 million

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. Subject to s34 of the Act, the Scheme will be in force after its commencement in all applicable jurisdictions until 30 June 2015.

