



THE VICTORIAN BAR ASSOCIATION

PUBLIC CONSULTATION DOCUMENT

PROFESSIONAL STANDARDS SCHEME

INTRODUCTION

What is the Victorian Bar's Professional Standards Scheme?

The Victorian Bar's Professional Standards Scheme (the Scheme) is a statutory consumer protection regime operated by the Victorian Bar for its members and consumers of the legal services provided by its members.

The Scheme will serve to bind the Victorian Bar to monitoring, enforcing and improving the professional standards of its members in order to ensure the protection of consumers of the legal services provided by Victorian barristers. Consistent with the *Professional Standards Act 2003*, this will include developing and implementing risk management strategies and initiatives and, protecting consumers of the legal services offered by our members through strengthening and expanding professionalism throughout the Bar.

The Scheme will limit the civil liability of a barrister covered by the Scheme to an approved monetary amount of \$2 million.

THE VICTORIAN BAR ASSOCIATION

What is the Victorian Bar Association?

The Victorian Bar Association (the Victorian Bar) was established in 1884 as the professional association representing the interests of barristers practising in Victoria. It was incorporated on 18 December 1996.

The work and functions of the Victorian Bar are guided by the Bar's Constitution and its Strategic Plan. The Victorian Bar's ultimate purpose is to ensure that the Bar and its members thrive and continue to do so. The Bar aims to achieve this purpose by meeting four key objectives set out in its Strategic Plan:

- maintain and expand market share;
- provide services to members to support and enhance their practices;
- foster excellence and enhance the performance of Victorian barristers; and
- to be a strong, independent and authoritative voice.

Membership of the Victorian Bar is available to all barristers practising in Victoria, or those practising overseas or interstate. Upon becoming a member of the Victorian Bar, barristers can access a suite of benefits and services such as a comprehensive continuing professional development program, education and training seminars, a free counselling service and ongoing professional support and assistance.

Since 1 July 2015, the *Legal Profession Uniform Law* (LPUL) has applied to lawyers in Victoria (and New South Wales). The LPUL enables delegation by the Victorian Legal Services Board + Commissioner (VLSBC) of its regulatory functions to the Victorian Bar. Such delegation includes the issuing of practising certificates to members of the Victorian Bar and investigating and making non-binding recommendations to the VLSBC in relation to disciplinary complaints received against members of the Victorian Bar.

Who are the Victorian Bar's members?

The Victorian Bar has four divisions of membership:

- Division A comprises all counsel practising as counsel;
- Division B comprises counsel who have accepted judicial appointment or other public office;
- Division C comprises retired counsel; and
- Division D comprises counsel who are academics.

THE PROFESSIONAL STANDARDS SCHEME

Who administers the Professional Standards Scheme?

The Victorian Bar's Chief Executive Officer has responsibility for administering the Scheme to ensure it complies with the requirements set out in the *Professional Standards Act 2003* (Vic) (the Act).

How long has the Victorian Bar administered a Professional Standards Scheme?

The Victorian Bar has administered a Scheme since 1 July 2008.

Where will the Professional Standards Scheme operate?

The Scheme is intended to operate both in Victoria and in each of the other States and Territories of the Commonwealth of Australia.

What types of work will the Professional Standards Scheme cover?

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

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. Currently, the liability excluded by the Act is:

- 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).

Who will the Professional Standards Scheme be available to?

Barristers who hold a current Victorian practising certificate who are members of the Victorian Bar shall be eligible to participate in the Scheme.

Who will the Professional Standards Scheme not apply to?

The Scheme will not apply to members falling within the following divisions:

- Division A – Parts II to IV: Crown Prosecutors and Public Defenders, Interstate and Overseas Practising Counsel and Victorian Practising Counsel who are temporarily absent from practice and do not hold a practising certificate;
- Division B; and
- Division C.

On application in writing by a member of the Victorian Bar participating in the Scheme, the Victorian Bar may exempt the member from the Scheme.

OPERATION OF THE SCHEME

How is the level of limited liability of participating Victorian Bar members determined?

The Scheme will limit liability by reference to the insurance policy for barristers administered by the Legal Practitioners' Liability Committee (LPLC). The professional liability of all Victorian Bar members who are covered by the Scheme will be limited to a monetary ceiling of \$2 million, an amount for which they are also required to be indemnified in accordance with the professional indemnity insurance policy of the LPLC.

The specified limit of liability in the Scheme is further made on the basis of an analysis of the Victorian Bar's risk profile and claims data. Since 1995 to date the data discloses that no amount has been paid by any insurer in respect of a claim against a Victorian barrister which exceeds or approaches the monetary ceiling of \$2 million provided for in the Scheme.

How will consumers know if a Victorian Bar member is covered by the Professional Standards Scheme?

If a member of the Victorian Bar is participating in the Scheme, all documents (other than business cards) given by the participating member to a client or prospective client that promote or advertise the member or member's occupation, will display a disclosure statement, 'Liability limited by a scheme approved under Professional Standards Legislation'. Further, consumers are welcome to contact the Victorian Bar on (03) 9225 7111 if they wish to find out whether or not particular members participate in the Scheme.

How long will the Professional Standards Scheme operate?

The Scheme will be in force for a period of five years from the date of its commencement in Victoria.

BENEFITS OF THE SCHEME

How will consumers benefit from the Professional Standards Scheme?

Consumers will benefit from the Scheme as it will assure consumers that barristers covered by the Scheme have high professional standards of practice that they must uphold and that the Victorian Bar will monitor, enforce and improve those standards of practice by participating members.

How does the Professional Standards Scheme enhance the professional standards of Victorian Bar members?

The Victorian Bar is committed to a proactive, risk-based approach to ensuring that high levels of professional standards are maintained by participating Victorian Bar members. Maintaining and continually improving the high level of professional standards at the Victorian Bar is imperative in safeguarding the protection of consumers of legal services.

The work undertaken by the Victorian Bar to date to maintain, improve and enforce professional standards amongst its members is detailed below.

Continuing professional development program

The *Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015* (the Barristers' CPD Rules) require every Victorian barrister to earn at least 10 continuing professional development (CPD) points. The CPD activities undertaken by each barrister must cover four compulsory fields:

- Ethics and Professional Responsibility;
- Practice Management and Business Skills;
- Substantive Law, Practice and Procedure, and Evidence; and
- Barristers' Skills.

The Victorian Bar runs over 100 CPD events per year for its members. The program is of direct relevance to practise as a barrister, comprehensive in its scope and of extremely high quality. While attendance levels at CPD is relatively high, almost all CPD sessions are recorded and available to view online by members.

Each year the Victorian Bar conducts an annual CPD audit. The audit is a random selection of 5% of the members to ensure that they are complying with their CPD requirements. If they have fallen short of compliance, they must provide the Bar with a rectification plan demonstrating compliance prior to their practising certificates being issued.

CPD for barristers is overseen by the Continuing Professional Development Committee. The Committee undertakes regular reviews of the Bar's CPD Program in conjunction with analysis and identification of areas of emerging risk across a variety of practice areas on which future CPD seminars can address.

Complaints and discipline system

All Scheme members must comply with the provisions of the LPUL which prescribes the system for handling complaints and discipline which is regulated by the Legal Services Commissioner (LSC). The Code of Ethics and Code of Practice applicable to the members of the Victorian Bar are contained within the *Legal Profession Uniform Conduct (Barristers) Rules 2015* (the Barristers Conduct Rules).

The LSC is given authority under the LPUL to deal with complaints against practitioners. Under the LPUL, the LSC can refer the investigation of disciplinary complaints against barristers to the Victorian Bar. In this situation the investigation is conducted by the Victorian Bar's Ethics Committee and non-binding

recommendations are made by the Ethics Committee to the LSC. This system ensures that high professional and ethical standards amongst members are upheld.

Health and wellbeing initiatives

The Victorian Bar's Health and Wellbeing Committee works to identify the risks associated with poor maintenance of physical and mental health and wellbeing. It also oversees the operation of the Victorian Bar's counselling service.

In June 2018, the Victorian Bar conducted a health and wellbeing survey of its members. 856 respondents completed the survey (approximately 40% of all practising counsel). The findings will be used to develop proactive preventative resources that provide support for members experiencing poor health and wellbeing, and to educate our members on health and wellbeing strategies. This will include the development and release of a health and wellbeing portal in 2019. The health and wellbeing survey was commissioned in recognition that poor health and wellbeing may lead to poor performance by barristers and implementation of health and wellbeing initiatives will not only benefit members personally but ensure the improvement of professional standards for the benefit of consumers of the legal services provided by our members.

Following the release of the results of the health and wellbeing survey, the Bar introduced a Judicial Conduct Policy. The objectives of the policy include defining the standards of conduct that members are entitled to expect from judicial officers. It also outlines the grievance mechanisms that are available to members when those standards are not met.

During 2017 and 2018, the Victorian Bar commissioned the State of the Victorian Bar Report. It was the biggest and most comprehensive demographic study of the Bar ever conducted and followed on from similar studies of the Bar conducted in 2008 and 2013. It was commissioned by the Victorian Bar to provide an account of members' work practices, incomes, and demographic information to identify opportunities and challenges for the Bar. Upon release of the results, the Victorian Bar instilled new measures aimed at promoting equality, inclusion and diversity at the Victorian Bar. This included the introduction of new conduct policies in March 2018 in respect of workplace bullying, discrimination and sexual harassment. The policies outline the Bar's processes for reporting or making a complaint regarding instances of workplace bullying, discrimination or sexual harassment against barristers by barristers, or by persons who engage with barristers in the workplace including barristers' clerks, clerks' staff and Victorian Bar staff. Under the policies, a process for conciliation of complaints through Conciliators appointed by the Victorian Bar has also been implemented. The Bar Conciliators have all completed specialist training conducted by the Australian Human Rights Commission. The implementation of these policies further demonstrates the Victorian Bar's commitment to upholding high professional and ethical standards.

Entry requirements

In order to become a member of the Victorian Bar, a prospective member must:

- obtain the required qualifications for admission as an officer of the Supreme Court of Victoria or other state and have the required qualifications for admission as an "Australian lawyer;"
- undertake the Victorian Bar Entrance Exam and receive a result of no less than 75%; and

- complete the Bar Readers' Course – a specialised 8-week advocacy and ethics course.
- In addition to the above, Readers must, upon entry to the Victorian Bar, undertake a 9-month period of reading with an experienced barrister of not less than 10 years standing.

These entry requirements ensure that members are equipped with the knowledge and skills to perform the duties associated with being a barrister.

The Victorian Bar's Readers' Course Committee undertakes regular reviews of the content of the Bar's Entrance Exam and Bar Readers' Course. This includes analysis and identification of new and emerging areas of risk and changes in law, work practices and areas of consumer complaint that can be addressed through the Exam and Readers' Course.

By an instrument of delegation, the Victorian Bar has been delegated by the Victorian Legal Services Board (VLSB) the authority to issue practising certificates to barristers and in this way, the Victorian Bar further ensures that its members adhere to the ethical rules of the Victorian Bar and the LPUL and satisfy the Victorian Bar that they are a fit and proper person to hold a practising certificate.

Reporting to the Professional Standards Councils and audit of compliance with the Act

The Act requires the Victorian Bar to provide an annual report to the Professional Standards Councils as to 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.

Additionally, a survey of all participating members as to their compliance with the disclosure requirements of the Scheme has been conducted by the Victorian Bar annually since December 2013 where a declaration is sought from participating members as to compliance with the Scheme disclosure requirements.

Is the Professional Standards Scheme a professional indemnity insurance scheme?

The Scheme is not a professional indemnity insurance scheme. Professional indemnity insurance provides indemnity to Victorian Bar members in relation to their civil liability. Every practising Victorian barrister is required to maintain professional indemnity insurance for the primary layer of \$2 million with the LPLC in order to practise as a barrister in Victoria. In contrast, the Scheme caps the civil liability of participating members and participation in it provides an additional layer of protection.

Further information regarding the Victorian Bar's current Professional Standards Scheme can be found on the Victorian Bar's website: www.vicbar.com.au.