



THE VICTORIAN BAR ASSOCIATION

**PUBLIC CONSULTATION
DOCUMENT**

PROFESSIONAL STANDARDS SCHEME

INTRODUCTION

The Victorian Bar Inc. (the Victorian Bar) has applied to the Professional Standards Councils (the Council) for approval of its professional standards scheme under the *Professional Standards Act 2003* (Vic) (the Act). The objects of the Act include:

- (a) to enable the creation of schemes to limit the civil liability of professionals and others; and
- (b) to facilitate the improvement of occupational standards of professionals and others; and
- (c) to protect the consumers of the services provided by professionals and others.

The Act requires the Council to publish a public notice prior to the approval of the proposed Scheme.

Your comments will provide valuable insight into how consumers view and understand the proposed Scheme. This will help the Council decide whether or not to approve the Scheme and if a public hearing concerning the Scheme is appropriate. If Council approves the Scheme, it may submit the approved Scheme to the Victorian Attorney-General as the Minister responsible for administering the Act.

Comments and submissions on the Victorian Bar's application must be made in writing (preferably by letter) within 28 days of public notification addressed to:

Chief Executive Officer

Professional Standards Councils
GPO Box 4021
SYDNEY NSW 2001

E: pscinfo@psc.gov.au

The Council can also be contacted by phone at: 1300 555 772 or (02) 8315 0800.

Please note: All comments and submissions will be made public unless you request confidentiality subject to the *Privacy and Data Protection Act 2014* (Vic).

This document is divided into four parts:

1. The Victorian Bar and its members
2. The proposed Scheme
3. The benefits of the proposed Scheme
4. Comments and submissions

THE VICTORIAN BAR AND ITS MEMBERS

Who is the Victorian Bar?

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 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 its key objectives set out in its Strategic Plan:

- Support and promote a strong and independent Bar;
- Foster excellence and enhance the performance of Victorian Barristers;
- Maintain and increase the diversity of VicBar to reflect the community which it serves, in a manner consistent with VicBar's standards of professional excellence;
- Provide services to members to support and enhance their practices;
- Ensure that members can build and maintain sustainable and successful practices both now and into the future; and
- Provide leadership and a strong 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, free counselling services 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 and most recently Western Australia). The LPUL enables delegation by the Victorian Legal Services Board (VLSB) of its regulatory functions to the Victorian Bar. Regulatory functions which have been delegated by the VLSB to the Victorian Bar includes the issuing of practising certificates to members of the Victorian Bar and investigating and making non-binding recommendations to the VLSB and the Victorian Legal Services Commissioner (**VLSC**) 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 of Victorian practising counsel, barristers temporarily absent from practice, interstate and overseas practising counsel, crown prosecutors and public defenders;
- 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 predominantly academics.

What types of work do our members do?

Section 11 of the *Legal Profession Uniform Conduct (Barristers) Rules 2015 (Barristers Conduct Rules)* provides that barristers' work consists of:

- appearing as an advocate;
- preparing to appear as an advocate;
- negotiating for a client with an opponent to compromise a case;
- representing a client in or conducting a mediation or arbitration or other method of alternative dispute resolution;
- giving legal advice;
- preparing or advising on documents to be used by a client or by others in relation to the client's case or other affairs;
- carrying out work properly incidental to the kinds of work referred above; and
- such other work as is from time to time commonly carried out by barristers.

THE PROPOSED SCHEME

What is a professional standards scheme?

A professional standards scheme as a legal instrument that obliges associations to monitor, enforce and improve the professional standards of their members. This is designed to help protect the people, or consumers, who use their members' services.

What is the Victorian Bar's Professional Standards Scheme?

The Victorian Bar's Scheme, which commenced in 2008, 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 Act, 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.

How does the Scheme operate?

Operating the Scheme binds the Victorian Bar to monitoring, enforcing and improving the professional standards of its members, and protecting consumers of the professional services performed by our members.

Who administers the Scheme?

The Victorian Bar's Executive Director has responsibility for administering the Scheme to ensure it complies with the requirements set out in the Act.

Where will the Scheme operate?

The Scheme is intended to operate in Victoria and in each of the other states and territories of Australia.

When will the Scheme operate?

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

Does the Scheme apply to all members?

The Scheme observes an opt-in model and 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 Scheme will not apply to members falling within the following categories:

- 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.

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. From 1995 to date, 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.

Can a Victorian Bar member leave the Scheme?

A member of the Victorian Bar participating in the Scheme may notify the Victorian Bar advising that they no longer want to participate as a member of the Scheme. Alternatively, they may also seek exemption from Scheme requirements. Their notification will be noted by the Victorian Bar Council and their names will then be removed from the Scheme register.

How will consumers know if a Victorian Bar member is covered by the 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.

BENEFITS OF THE SCHEME

How will consumers benefit from the 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 Scheme enhance our members occupational standards?

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.

How does limiting participant liability help consumers?

The Scheme encourages the Victorian Bar members to promote better business practices and implement a range of measures to improve professional standards – from effective risk management strategies and continuing professional developments to codes of ethics and conduct and integrity systems. The Council's website includes consumer information exploring the benefits of schemes.

Uniform Law

Victoria and NSW adopted the *Uniform Law* framework in July 2015, with the framework being extended to WA from 2022. The framework is designed to create a simpler and more efficient system for barristers and their clients by cutting red tape, better protecting consumers and ensuring consistency across between jurisdictions.

Mutual recognition

All states and territories have a framework to allow mutual recognition of schemes across jurisdictions. The Scheme will apply to acts or omissions by participating members in all Australian states and territories.

Similar Professional Standards Schemes are in place for the NSW Bar Association, the Bar Association of Queensland, the South Australian Bar Association and the Western Australia Bar Association.

Is the Scheme a professional indemnity insurance scheme?

The Scheme is not a professional indemnity insurance scheme. Every practising Victorian barrister is separately 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.

What continuing education can members access?

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. The Victorian Bar also records almost all of its CPD sessions, which are made available to members for viewing online.

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.

How are complaints and disciplinary proceedings managed?

All Scheme members must comply with the provisions of the *Uniform Law*, which prescribes the system for handling complaints and disciplinary proceedings.

The Code of Ethics and Code of Practice applicable to the members of the Victorian Bar are contained within the Barristers Conduct Rules.

The Victorian Bar maintains strict policies against sexual harassment, discrimination and bullying. The Victorian Bar's Ethics Committee also deals with grievances against barristers, one of the outcomes of which is the referral of a matter to the VLSC for investigation.

The VLSC is the local regulatory authority under the *Uniform Law* to deal with complaints against barristers. This system ensures that high professional and ethical standards amongst members of the Victorian Bar are upheld.

COMMENTS AND SUBMISSIONS

How can I make a comment or submission?

In your submission, you may wish to respond to the following questions:

- Are you a member of the Victorian Bar?
- Are you already a consumer of the type of services covered by the proposed Scheme?
- Do you think the scope of the Scheme is clear? (including work, jurisdictions and membership classes covered)
- Is it clear how you, as a member or consumer, could make a complaint?
- Can you describe how consumers would benefit from Victorian Bar members' services being covered by the Scheme?

How are comments and submissions managed?

The Council must consider all comments and submissions it receives, in line with the public consultation process under the relevant professional standards legislation.

All comments and submissions will be made public unless you request confidentiality subject to the *Privacy and Data Protection Act 2014 (Vic)*.

Where can I find out more?

To find out more about the Victorian Bar and the proposed Scheme, please contact the Victorian Bar on (03) 9225 7111, via email at policy@vicbar.com.au, or visit the Victorian Bar website: www.vicbar.com.au.