

Professional Standards Scheme - Update on mutual recognition and prescription

The Association's new professional standards scheme which limits liability for damages to \$1.5 million commenced on 1 July 2010 and expires on 30 June 2015.

Persons covered by the scheme

In order to be covered by the scheme a barrister must:

1. be a member of the New South Wales Bar Association; AND
2. hold a NSW barristers practising certificate; AND
3. have approved professional indemnity insurance.

Mutual Recognition

The Association applied for mutual recognition of its new scheme in the ACT, Western Australia, Queensland, Northern Territory and Victoria. The scheme commenced to be recognised in the ACT and WA on 1 July 2010.

The scheme has also recently been Gazetted in Victoria (19 August) and NT (1 September) and commenced to be recognised in those jurisdictions on 19 October and 1 November respectively.

The scheme is yet to be Gazetted in Qld - the Professional Standards Council advises that the delay was caused by an amendment being made to the Qld legislation and that Gazettal is expected in the near future. Members will be advised via *In Brief* of any developments regarding mutual recognition in Qld.

Prescription of Scheme under Federal Legislation

The scheme has now been prescribed under the *Trade Practices Act 1974* (TPA).

Prescription of the scheme under the TPA ensures that the state professional standards laws cannot be bypassed by litigants attempting to access uncapped payouts under those Acts.

As advised via *In Brief* in July, Treasury is currently not prescribing schemes under the *Australian Securities and Investments Commission Act 2001* (ASIC Act) and the *Corporations Act 2001* (the CA). The Association along with the Victorian Bar made submissions to the Minister asking that that decision be reconsidered. The Professional Standards Council has also made representations to that effect.

Reminder of members' obligations - Mandatory disclosure statement

Liability limited by a scheme approved under Professional Standards Legislation.

Members are reminded that to ensure they are able to rely on the scheme to protect them against unlimited liability they display the required disclosure statement on all documentation sent to existing and prospective clients – including instructing solicitors. This is particularly important when conducting business in those other jurisdictions to which we now have mutual recognition of the scheme. A person covered by a scheme who does not

use the disclosure statement as required is guilty of an offence (refer s33(2) of the *Professional Standards Act 1994*).

Clause 9 of the *Professional Standards Regulation 2004* sets out the prescribed disclosure statement to be used, i.e. 'Liability limited by a scheme approved under Professional Standards Legislation'. Please note that the statement must be printed on a size not less than the face measurement of Times New Roman typeface in 8 point.

As a guide, the disclosure should appear on:

- Letterhead and letters;
- Fax cover sheets;
- Documents such as written advice and other documents produced for clients but not accompanied by a letter or other document containing a disclosure statement;
- E-mail, including those sent through a Blackberry and/or iPhone;
- Memorandum of fees and invoices not accompanied by a letter or other document containing a disclosure statement;
- News letters and other publications; and
- Websites

Please check to ensure you are using the correct disclosure statement on all documents as required as random audits are required to be undertaken by the Association.

Should you have any queries regarding the Scheme, please contact the Bar Association's Scheme Administrator, Ms Kim Kemp on ph 9232 4055, fax 9221 1149 or e-mail kkemp@nswbar.asn.au.