



LAW
INSTITUTE
VICTORIA

Professional Standards (Liability Scheme) Guide

Professional benefits for LIV members

The LIV is pleased to have in force a Professional Standards Scheme pursuant to the *Professional Standards Act 2003* (Vic). This is an initiative of the LIV which showcases ways we work on behalf of our members to increase the value of membership.

Status of Scheme

The first LIV Professional Standards Scheme commenced 1 July 2010 for a period of 5 years and was extended for an additional year.

The second scheme commenced 1 July 2016 for 5 years.

The scheme instrument has changed over time to reflect the changing regulatory environment and allow the recognition of both individual members and incorporated legal practices.

An application for a new scheme will be lodged in June 2020, a year prior to the cessation of the current scheme.

This Guide examines the history of the schemes and provides guidance on the operation of the current scheme which expires on 30 June 2021.

About the Scheme

In essence, the Scheme will cap the occupational liability of participating LIV members to an amount of \$1.5 million or \$10 million depending on the insurance policies, total revenue of the law practice and the number of principals of the law practice, and to the extent that liability can be limited under the *Professional Standards Act 2003* (Vic).

Participating in the Scheme

This Guide examines the participation rules for the LIV Scheme.

It is important to note that the Scheme operates on a 'one-in, all-in basis'. This means that 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, would need to be members of the LIV and of the Scheme.

Further questions can be directed to the Scheme Coordinator at scheme@liv.asn.au Information is also available from the Professional Standards Council at www.psc.gov.au.

About this guide

This Guide is designed to assist members to understand the operation and benefits of the LIV Professional Standards Scheme.

Topics examined include:

- Professional Standards Legislation
- LIV Professional Standards Scheme
- Scheme Participation
- Scheme Exemptions or Higher Limits of Liability
- Limited Liability Disclosure
- Professional Indemnity Insurance (PII)
- Claiming Limited Liability
- Limited Liability Case Studies
- Ongoing risk management
- Q&As about the LIV Professional Standards (Limited Liability) Scheme

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Professional Standard Legislation

1. What is Professional Standards Legislation (PSL)?

Professional Standards Legislation (PSL) allows the registration of professional standard schemes by professional associations which have the effect of limiting the civil liability of participants in the scheme. These schemes are approved and monitored by the Professional Standards Councils (PSC), in consultation with the relevant professional association.

Limited civil liability means that, if participating members or law practices are sued by a client, a monetary ceiling will generally apply to the amount of damages that can be awarded.

Applicable legislation:

- *Professional Standards Act 2003 (Vic)*
- *Professional Standards Regulations 2017 (Vic)*

2. Why was PSL introduced?

Professional standards legislation was introduced as a measure to improve professional standards and allows for predictability and improvement in the affordability and availability of professional indemnity insurance.

The LIV lobbied for harmonised PSL through-out Australia with other professional associations as a result of the indemnity insurance crisis sweeping Australia in the 1990s and early 2000.

3. What were the objectives of PSL?

The legislation objectives were to:

- maintain accessibility to PII and keep insurance premiums at a realistic level for professionals
- protect the interests of consumers receiving services from members of a professional association and assist consumers in the knowledge that a PII claim can be settled
- improve professional standards and risk management strategies
- allow professional associations and other occupational groups to limit the civil liability of members

4. How does PSL benefit consumers?

PSL encourages professional associations to promote better business practices and implement a range of measures to improve professional standards and practices – from effective risk management strategies and continuing professional development programs, to codes of ethics and conduct and integrity systems.

The PSC website includes [consumer information](#) exploring the benefits of schemes.

5. Is PSL harmonised across Australia?

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

State and Territory governments have established a framework for national administration of state and territory professional standards legislation via an Intergovernmental Professional Standards Agreement.

To support the operations of the schemes the federal government passed legislation to allow liability to be limited under the following acts:

- Trade Practices Act 1974 (now the Competition & Consumer Act 2010)
- Corporations Act 2001
- Australian Securities and Investment Commission Act 2001

LIV is working with interstate law societies to enhance the guidance to law practices working in other states and territories.

The LIV Professional Standards (Limited Liability) Scheme

6. What is the status of the LIV Professional Standards Scheme?

The first LIV Professional Standards Scheme commenced 1 July 2010 for a period of 5 years. The second scheme commenced 1 July 2016 for an additional 5 years.

The scheme instrument has changed over time to reflect the changing regulatory environment and allow the recognition of both individual members and incorporated legal practices.

An application for a new scheme will be lodged in June 2020, a year prior to the cessation of the current scheme.

7. Where can I obtain a copy of the LIV Scheme?

Appendix A is copy of the LIV Limitation of Liability Scheme is available on the [Professional Standards website](#). This link also provides access to all other professional standards schemes, past and present.

8. What services are capped under the LIV Scheme?

PSL imposes a limit (cap) on occupational liability. This is a member's civil liability, as determined by a court, arising (in tort, contract or otherwise) from an act or omission of a member acting in the performance of his or her occupation.

A member's liability for an act or omission outside his occupation (or which would not be covered by his occupational liability insurance) will not be capped by a scheme which otherwise applies to the member.

The Legal Profession Uniform Law and Rules prescribed the regulatory framework for the provision of legal services in Victoria.

9. What services are excluded from the LIV Scheme?

PSL imposes a limit (cap) on occupational liability. The *Professional Standards Act 2003* (Vic) however specifically excludes the limitation of liability of claims in relation to:

- Personal Injuries Claims – negligence of a legal practitioner acting for a client in a personal injury claim
- a breach of trust;
- fraud or dishonesty; or
- certain proceedings under the *Transfer of Land Act 1958*.

10. What are the Scheme Caps?

In essence, the Scheme caps the occupational liability of participating LIV members to an amount of \$1.5m or \$10m depending on the total revenue of the law practice and the number of principals of the law practice, and to the extent that liability can be limited under the *Professional Standards Act 2003* (Vic).

Class	Description	Monetary cap
1	Participating members in a law practice which had, at the time of the relevant cause of action: <ul style="list-style-type: none">• 20 or fewer principals, <i>and</i>• \$10 million or less in total annual fee income in the financial year.	\$1.5 million
2	Participating members in an incorporated legal practice which had, at the time of the relevant cause of action: <ul style="list-style-type: none">• 20 or fewer principals, <i>and</i>• \$10 million or less in total annual fee income in the financial year.	\$1.5 million
3	Participating members in a law practice which had, at the time of the relevant cause of action: <ul style="list-style-type: none">• more than 20 principals, <i>or</i>• more than \$10 million in total annual fee income in the financial year.	\$10 million
4	Participating members in an incorporated legal practice which had, at the time of the relevant cause of action: <ul style="list-style-type: none">• more than 20 principals, <i>or</i>• more than \$10 million in total annual fee income in the financial year.	\$10 million

Both the participating members in a law practice and the Incorporated Legal Practice must be members of LIV and scheme participants for Class 2 and Class 4.

11. Why does the scheme segregate ILPs separately?

An ILP corporation is a legal entity. The legal practitioner and the firms may both be named in a claim. If only the legal practitioners are a member of the scheme, then both the ILP and the legal practitioners (as directors of the ILP) may be exposed to the risk of a claim exceeding any cap the individual legal practitioners within the ILP may have applied for under the Scheme.

12. How have the LIV Scheme caps been determined?

The caps have been determined following extensive assessment of past claims by over the past ten years and independent actuarial assessment. The caps are set at level sufficient to cover most claims.

13. Can I apply for a Higher Cap / Limit of Liability?

Yes, the legislation provides discretionary authority for the LIV to confer higher discretionary caps upon application. Higher caps can be approved for all services, or in any specific case or class of case.

See section 29 for information on how to apply for higher limits of liability.

14. Can I contract-out of Scheme Coverage?

No, Professional Standards legislation specifically prohibits contracting out of a Scheme.

Contracting out may mean that you are also contracting out of proportionate liability and agreeing to be responsible for the acts and omissions of others who have a liability. Contracting out may also affect the coverage under your professional indemnity insurance policy.

While contracting out is prohibited a member may seek an exemption or a higher discretionary cap.

Scheme Participation

15. Who can participate in the LIV Scheme?

All members who hold a current Australia Practising Certificate, unless they are corporate or government lawyers. Incorporated legal practices are also defined as a participating member.

Professional Standards Schemes are not 'opt-in' schemes. All members are deemed to be a participating member unless an exemption has been approved.

If a scheme applies to a certain member, it also applies to each partner and employee of that member, and if the member is a body corporate, to each officer of that member.

This means that all solicitors (that is, any person who holds a current Australian Practising Certificate) within the law practice would need to be members of the LIV and of the LIV Scheme if an incorporated legal practice wishes to participate

Sections 19 – 22 of the *Professional Standards Act 2003* (*Vic*) provides additional interpretation.

16. What is the risk if an eligible member does not participate but all other partners / body corporate members do?

If a successful claim is made against a principal or body corporate member who is not a scheme participant, they may be liable for the full amount of the claim and could possibly be entitled to bring a contribution claim against all other principals to contribute to the balance of the claim which exceeds the monetary limit of the insurance policy held by the law practice. This would undermine the effectiveness of the limitation of liability cap.

If a claim is brought against the employee solicitor, the principal/s as employer could possibly be vicariously liable for the employee's act or omission committed in the course of employment, but might not be able to rely on the limitation of liability cap.

17. When am I covered by a scheme?

A member is covered by a scheme if they were a participating scheme member on the date/s the act or omission/s occurred.

LIV confirms scheme coverage on an annual basis.

18. How do I participate in the Scheme?

To participate in the LIV Scheme you will need to complete the Scheme Participation Form. If you are not already an LIV member you will also need to complete the [LIV Membership Application Form](#).

New members:

From 1 December 2019, all new applicants for LIV membership will be required to become a scheme participant or seek an exemption from scheme participation prior to membership approval.

Existing members:

Download and complete the [Professional Standards Scheme Participation form](#).

19. Can my Incorporated Legal Practice also be a scheme participant?

Yes. In order to participate in the LIV Limitation of Liability Scheme (Scheme), an Incorporated Legal Practice (ILP) must also be a [member of the LIV](#).

Whilst individual solicitors within Incorporated Legal Practices (ILPs) who are scheme members are protected by the cap on liability, ILPs as corporate entities are not protected unless the entity is also a scheme member.

20. What happens if there is a change in the participating members of the ILP?

To ensure your law practice is covered you must immediately notify LIV of any changes to your law practice structure of staff, or when an incorporated legal practice is created or dissolved during the Scheme membership by contacting membership@liv.asn.au.

Timely notification is essential as a court may rely on LIV records to verify scheme participation status.

21. What fees are payable to participate?

An annual fee is payable for each scheme participant as well as for an ILP. An ILP is defined as a participating member under the LIV Scheme.

As at 1 July 2019 the fee is \$167 per participating member. Fees are payable at the time of joining the scheme and on annual renewal of membership.

22. How does LIV confirm scheme participation?

Scheme membership is confirmed in writing following approval of the scheme participation application form.

An annual statement and survey of scheme participation is undertaken in the first quarter of each year to confirm participation records are correct prior to distribution of annual subscription notices.

23. Are there ongoing obligations for scheme participants?

Yes, as a scheme participant the law practice undertakes to provide information to the LIV as required under the *Professional Standards Act 2003 (Vic)*. A law practice will:

- immediately advise the LIV when a PII notification or claim approaches the law practice's applicable monetary ceiling under the Scheme; and
- provide information to the LIV, on request, about the law practice's notification and claims, complaints and disciplinary findings, and PII coverage.

Law practices who are subject to higher caps are also required to provide evidence of top-up cover on an annual basis.

24. What happens if I am a participant in several schemes?

In the rare circumstances where a scheme participant is also covered by any other scheme under professional standards legislation (whether of this jurisdiction or under the law of any other Australian state or territory) the higher applicable scheme cap will apply.

Scheme Exemption Process

25. Can I apply for a scheme exemption?

Yes, PSL allows the LIV to consider applications for a scheme exemption.

The LIV Professional Standards Scheme is a legal agreement that obligates the LIV to monitor, enforce and improve the professional standards of members, reducing the risk for Victorian consumers of legal services. The scheme exemption application process focuses on an individual risk assessment of a firm and their clients.

26. How do I apply for a scheme exemption?

An exemption application may be lodged using the prescribed form downloadable from the www.liv.asn.au/professionalstandards.

Applications for an exemption must address the prescribed criteria which requires:

- a review of their legal service, client profile and risk management framework
- an assessment of adequacy of their current professional indemnity insurance policy coverage
- consideration of the appropriateness of top-up cover to manage **uncapped** liability
- an acknowledgement of the consequences of **unlimited** liability for individual principles and law practices

LIV scheme operates on a 'one in all in' basis and requires all eligible associates and/or participating members in a legal practice to be scheme members subject to an exemption application. LIV refers members to the *Professional Standards Act 2003 (Vic)* section 20 – 22 'Other persons to whom a scheme applies'.

The LPLC has developed a [Risk Management Audit Checklist](#) to assist legal practitioners to determine and monitor whether their practice is at risk of a negligence claim arising from poor management of the retainer or the matter. The checklist provides an excellent tool for members to undertake a risk assessment.

An exemption may be granted on and from the date on which the exemption is granted or on and from a later date specified in the exemption.

27. How long is an exemption granted?

An exemption only applies for the duration of the current scheme, unless otherwise specified.

Any exemption granted under the new exemption framework from 1 November 2019 to 30 June 2021 will carry over to the next LIV scheme.

Should a legal practice restructure, split or merge the practice must notify LIV to discuss the status of scheme participation.

28. Are there additional requirements imposed on legal practices who have an exemption?

No, the LIV does not impose any additional requirements on members who have an exemption.

Applications for Higher Caps

29. How do I apply for Discretionary Higher Caps?

While PSL prohibits contracting out of a Scheme (see question 14) the LIV has discretion to increase the monetary ceiling in accordance with Scheme Instrument.

Higher caps may be approved in relation to all cases or in any specified case or class of case.

An application for a higher limit of liability must be lodged using the prescribed form downloadable from the www.liv.asn.au/professionalstandards.

LIV recommends that applicants discuss proposed higher caps with the LIV Professional Standards Scheme Administrator prior to lodging an application.

30. How will my application be assessed?

When assessing an application for higher caps the LIV will examine:

- the services which a higher discretionary cap will apply
- the profile of the clients
- evidence of top-up Professional Indemnity Insurance commensurate with the higher maximum amount of liability sought
- the capacity of the legal practice to maintain top-up PII cover
- consideration of the appropriateness of the PII top-up policy based on the PSC Policy Statement on Professional Indemnity Insurance. This includes reviewing:
 - if the insurer is recognised under a prudential regulatory regime, authorised, licensed or approved under Commonwealth or State legislation.
 - the terms on which the insurance will be available including extensions or exclusions, reinstatements and deductible or excess levels, and any retroactive and the ability of the insurer to financially respond to and meet a claim under the policy of insurance
 - the insurers experience with the legal profession including claims management processes.

31. How long are higher capping arrangements approved for?

The higher caps will be approved for the period of the current scheme, unless otherwise specified.

PSC schemes are not renewed and are subject to a new scheme application. As a result, the caps for the scheme and risk management framework may change when a new scheme is approved.

32. Are there additional obligations for law practices with higher caps?

Yes, law practices with higher caps are required to provide evidence of top-up PII cover annually.

Limited Liability Disclosure

33. Is disclosure of limited liability mandatory?

Yes, failure to disclose limitation of liability is an offence under the Victorian Professional Standards Act and carries the following consequences. Failure to disclose may result in uncapped liability.

- failure to disclose limited liability using the prescribed format – 50 penalty units
- failure to provide a copy of the LIV scheme, if requested by a client – 50 penalty units

As well as the prescribed legislative consequences, a court will likely have regard to your level of compliance in determining whether your liability can be limited, in the event a relevant claim is made against you or the incorporated legal practice and if the plaintiff, another party of the Court raises the issue.

34. Is there a prescribed format for scheme participant disclosure?

PSL requires all practitioner and incorporated legal practice participants to ensure that all documents given to current and prospective clients disclose their limited liability status.

The prescribed disclosure statement:

Liability limited by a scheme approved under Professional Standards Legislation

Printed in a font size not less than Times New Roman in 8 point.

The Professional Standards Councils' directs that the disclosure statement appear on:

- Letterhead and letters signed by the law practice or on its behalf
- Emails
- Fax cover sheets
- Documents, including written advice, memorandum of fees and invoices, and other documents produced for clients which are not accompanied by a covering letter containing the disclosure statement
- Newsletters and other publications
- Websites

It is not necessary to include the disclosure statement on:

- Print media advertising, directory listings and similar promotion
- Social media networks, blogs, etc. that are accessed voluntarily by consumers, rather than being given, or caused to be given, by you or your legal practice to a client or prospective client.

A [fact sheet on disclosure requirements](#) is available from the Professional Standards Council website.

35. What are the consequences of non-compliance with the disclosure statement?

Non-compliance with the section 35(1) requirement to provide the prescribed disclosure statement to clients will result in you being **unable to rely on the Scheme to limit your liability** in relation to any relevant client who brings an action against you – see section 30(2) of the *Professional Standards Act 2003*.

Additionally, sub-sections 35(1) and (4) prescribe a penalty of for non-compliance with the requirements to use the prescribed disclosure statement and not providing a copy of the Scheme upon request.

Professional Indemnity Insurance

36. Is the Professional Standards Scheme just another insurance policy?

No, a Professional standards scheme is not an insurance policy.

Section 2112 of the Legal Profession Uniform Law (Victoria) requires all legal practitioners to hold or be covered by professional indemnity insurance before engaging in legal practice in Victoria.

Professional indemnity insurance (PII) indemnifies you for a claim made against you, subject to the terms, conditions and limit of the policy. PII does not limit your occupational liability, it simply transfers the financial risk to the insurer. The LIV professional standards scheme provides an additional level of security in a legal practices risk management framework by capping liability.

Capped liability means that damages made pursuant to a claim is limited to a prescribed amount.

37. Does the LPLC PII policy meet the insurance requirements for scheme participants in smaller law practices?

All legal practitioners in Victoria are required to obtain and maintain a minimum level (compulsory layer) of professional indemnity insurance. The LPLC policy meets the minimum PII requirements of the LIV scheme for law practices with 20 or fewer principals and/or less than \$10 million in annual turnover.

However, LIV recommends law practices regularly review whether they need to purchase additional (top-up) PII having regard to a variety of factors including the firm profile, areas of law, value of transactions undertaken, client profile, contractual requirements with the clients, areas of occupational liability excluded from the LIV Scheme and the risk of appetite of the firm's principals.

Firms should also be aware that the LPLC's compulsory layer insurance policy contains various limitations and exclusions:

- if the policy of \$2m includes expenditure by the insurer for defence costs associated with a claim
- normal PII exclusions such as
 - claims for refunds of costs paid to the firm
 - claims for contractually assumed liability beyond that otherwise payable at law
 - claims for penalties, fines or enquiries into a practitioners conduct

In the situation where liability is capped at \$1.5 million, there may be potential shortfall equal to the amount by which defence costs exceed \$500,000 that a law practice will be required to finance from its own resources, in order to complete a full payment to the claimant.

A legal practice is not liable for damages in relation to the cause of action above the prescribed scheme cap if the claim is covered by the LIV scheme.

38. Has PSL reduced the cost of PII?

Professional associations believe that PSL and capped liability in some sectors has assisted to stabilised the cost of PII premium in the long term through a reduction in the number of, and amount paid, to settle, claims.

In addition, risk management practices have been strengthened to minimise the risk of claims arising in the first place.

39. Does the Scheme reduce the need for my law practice to purchase additional top-up cover?

Membership of the Scheme is not a substitute for top-up insurance.

Law practices need to make their own assessment of the level of insurance they may need for their practice having regard to a variety of factors including the firm profile, areas of law practised, value of transactions undertaken, client profile, contractual requirements with the clients, areas of occupational liability excluded from the LIV Scheme and the risk of appetite of the firm's principals.

The compulsory layer PII policy provided by the LPLC meets the minimum insurance requirements for most scheme participants, but larger practices with more than 20 principals or turn over of more than \$10m are required to hold top-up cover to support a minimum \$10 liability cap.

LPLC sets its policy limit (Currently \$2m) at a level that is adequate to cover nearly all claims notified to it, however there are always a small number of claims each year which exceed LPLC's limit.

40. What should a Top-Up PII Policy include to meet the higher cap requirements under the Scheme?

Any Top-Up PII Policy must provide coverage that is broadly equivalent to the breadth of cover provided under the LPLC policy and must include:

- Relevant Period – 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;
- Reinstatements – provide at least one automatic reinstatement of the policy limit of indemnity or an aggregate limit of indemnity that is at twice the firms scheme cap. (Aggregate of \$20m firms in Class 3 or Class 4).
- Defence Costs – defence costs should be in addition (cost exclusive) to the limit of indemnity. If an exclusive policy is not obtainable a cost inclusive must be increased by at least 25% to take account of defence costs. (coverage of \$12.5m for firms in Class 3 or 4 or aggregate of \$25m)
- Who is Covered – any past, present or future directors, partners or employees of any law practice;
- Retroactive Cover – provide retrospective coverage to the date on which the scheme participants first become a member of a LIV scheme

- Recognised Insurer – the policy must be underwritten by an APRA authorised general insurer. LIV has the discretion to approve other insurers based on [PSC Policy Statement on Professional Indemnity Insurance](#).
- Run Off Cover – reasonable run-off cover for at least traditional statutory limitation periods.

Limited Liability Claims

41. How do I claim limitation of liability?

It is important to immediately notify your insurer if you become aware of a circumstance which may give rise to a claim against you.

You should ensure that the lawyers appointed by your insurer to defend the claim on your behalf plead the liability cap under the Scheme as part of your defence to the claim.

The Court will determine whether the scheme applies to the cause of action relied on by the plaintiff, whether the person against whom the claim is made ('the scheme member') was covered by the scheme at the time of the relevant act or omission) and whether the scheme member is able to satisfy the Court they have the benefit of an insurance policy which covers the claim and which is for not less than the monetary ceiling of the liability cap.

In addition, the scheme member may be required to establish their compliance with the notification to clients or prospective clients of the limitation of liability requirements in section 35 of the Professional Standards Act.

42. What happens if a claim is made after I have ceased practice?

You need to have been a member of the scheme at all times relevant to the cause of action relied on by the plaintiff.

Professional indemnity insurance is written on a claims made basis which means the policy in force at the time the claim is made (or the time at which the circumstances from which the claim arose are first notified to the insurer) is the policy which responds to the claim.

Provided you were insured by LPLC immediately prior to ceasing to engage in legal practise (and assuming the firm in which you practised has also ceased to exist and is not continuing or has not merged with another firm), then claims made after you cease practise will be covered by LPLC's run-off policy arrangements.

If you were last insured by an insurer other than LPLC you will need to enquire about their run-off policy arrangements.

43. How are multiple claims dealt with under the LIV Scheme?

Clause 3.1 of the LIV Scheme seeks to limit the occupational liability of a Participating Member for damages arising from a 'single cause of action' to the relevant monetary ceiling specified in the LIV Scheme.

Participating Members should note that:

- claims by a number of persons who have a joint interest in a cause of action are to be treated as a 'single claim' for the purposes of the Act, even though they may also have several interests; and
- two or more claims by the same person arising out of a single event against persons to whom the LIV Scheme applies and who are associated persons (that is, partners or employees of the same employer or in the relationship of employer and employee) are to be treated as a single claim for the purposes of the Act.

LPLC's policy wording includes provisions for aggregating claims in certain circumstances into one loss under the policy (with one limit of \$2m and one policy excess payable):

- (a) all claims against any insured arising from –
 - (i) one act or omission;
 - (ii) one matter or transaction;
 - (iii) one series of related acts or omissions;
 - (iv) the same or similar act or omission in a series of related matters or transactions;
 - (v) the same or similar act or omission in one or more matters or transactions for the same client (or a relative or associate of the same client);
 - (vi) the same or similar series of related acts or omissions in one or more matters or transactions for the same client (or a relative or associate of the same client); or
 - (vii) all dealings and advice in respect of one managed investment scheme (including a contributory or nominee mortgage)
- (b) all claims arising from all dishonesty or fraud of any one person or any two or more people acting in collusion

LPLC's aggregation of claims mean that only one limit of insurance may be available in circumstances where there is more than a single cause of action for Professional Standards Act purposes. For example, a class action by multiple investors may constitute multiple causes of action with multiple liability caps for PSA purposes but only one limit of indemnity under LPLC's policy.

The risk of claims being aggregated under LPLC's policy is a good reason for considering whether you should purchase top-up insurance.

Ongoing Risk Management

The LPLC has developed a wealth of resources to assist law practices to implement and tailor a risk management framework for their practice. These tools are regularly updated and examine both current and emerging issues including:

- Client engagement
- Cyber security
- File management – opening, closing, internal or external transfer
- Legal firm risk scan
- Risk management checklist
- Risks checklists based on areas of practice

Further Resources

- [LIV Professional Standards Scheme home page](#)
- [Professional Standards Acts & Regulations](#)
- [Law Institute of Victoria Professional Standards Scheme \(2016-2021\)](#)

Disclaimer

The information in this guide regarding the Law Institute of Victoria Professional Standards (Limited Liability) Scheme is intended to be a general guide only. The information is not intended to constitute professional or legal advice, and you should rely on your own enquiries and assessment. The Law Institute of Victoria expressly disclaims any and all liability for any loss or damage arising from reliance upon any information in this guide.

Appendix A

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 LIV has furnished the Council with a risk management program intended to be implemented in respect of its Participating Members and the means by which those strategies are intended to be implemented.
- (f) The Scheme is intended to remain in force for a period of five (5) years from its commencement, subject to s34 of the Act
- (g) The Scheme commences on 1 July 2016.

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 140 William Street, Melbourne, Victoria.

- 1.2 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.

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

“Australian Practising Certificate” has the same meaning as it has in the Legal Uniform Law (Victoria)¹;

“Corporate Legal Practitioner” has the same meaning as it has in the Legal Profession Uniform Law (Victoria)²;

“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 an Australian legal practitioner who is a full member of the Law Institute of Victoria;

“Government Legal Practitioner” has the same meaning as it has in the Legal Profession Uniform Law (Victoria)³;

“Incorporated Legal Practice” means an incorporated legal practice within the meaning of the Legal Profession Uniform Law (Victoria) that is a member of the Law Institute of Victoria⁴;

“Law Practice” has the same meaning as it has in the Legal Profession Uniform Law (Victoria)⁵;

“Legal Services” has the same meaning as it has in the Legal Profession Uniform Law (Victoria)⁶;

“Occupational Liability” has the same meaning as it has in the Act⁷;

“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 Uniform Law (Victoria)⁸;

“Relevant Time” means the time at which an act or omission in relation to the provision of legal services occurred, upon which a cause of action was founded; and

1 Refer Legal Profession Uniform Law Application Act 2014 s4

2 Refer Legal Profession Uniform Law Application Act 2014 s4

3 Refer Legal Profession Uniform Law Application Act 2014 s4

4 Refer Legal Profession Uniform Law Application Act 2014 s4

5 Refer Legal Profession Uniform Law Application Act 2014 s4

6 Refer Legal Profession Uniform Law Application Act 2014 s4

7 Refer Legal Profession Uniform Law Application Act 2014 s4

8 Refer Legal Profession *Uniform Law Application Act, 2014, (Vic)*

“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 sections 20, 21 or 22 of the Act⁹, the Scheme applies;
- 2.1.4 all persons to whom clause 2.1.1. applied at the Relevant Time but no longer 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 Despite clause 2.1, the Scheme does not apply to a Corporate Legal Practitioner or to a Government 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 sections 20 or 21 of the Act.

3. Limitation of liability

3.1 The Scheme limits the Occupational Liability of a Participating Member for Damages¹⁰:

- 3.1.1 arising from a single claim founded on the act or omission in relation to the provision of legal services; 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.

3.1.3 the Scheme does not limit liability in respect of 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 or matters which may be the subject of proceedings under s110 of the Transfer of Land Act 1958 (Vic).

3.2 If a Participating Member against whom a claim 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 claim relates; and

3.2.2 the amount payable under the policy or policies in respect of that Occupational Liability¹¹ 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 – the Participating Member is not liable in Damages in relation to that claim above the amount of that monetary ceiling.

9 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

10 Damages as defined in section 4 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.

11 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 section 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

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

3.4 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 both by 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 cap on the liability of such person arising from such circumstances which is higher shall be the applicable cap.

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 The Scheme is intended to remain in force for a period of five (5) years from its commencement, subject to s34 of the Act.



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