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Professional Standards Act 1994

Notification pursuant to section 13

Pursuant to section 13 of the *Professional Standards Act 1994*, I authorise the publication of *The Law Society of New South Wales Professional Standards Scheme*. Subject to section 14(1) of the Act, the Scheme is intended to commence on 22 November 2024, being the commencement date specified in the Scheme.

ANOULACK CHANTHIVONG, MP

Minister for Better Regulation and Fair Trading, Minister for Industry and Trade,
Minister for Innovation, Science and Technology, Minister for Building,
Minister for Corrections

Date:

**THE LAW SOCIETY OF NEW SOUTH WALES
PROFESSIONAL STANDARDS SCHEME**

PREAMBLE

- A. The Law Society of New South Wales (“the Law Society”) is an occupational association for the purposes of the *Professional Standards Act 1994 (NSW)* (“the Act”).
- B. The Law Society of New South Wales Professional Standards Scheme (“the Scheme”) is prepared by the Law Society for the purposes of limiting Occupational Liability of Participating Members to the extent to which such liability may be limited under the Act.
- C. The Scheme applies to all Participating Members.
- D. The Scheme will have force in New South Wales, and, under the provisions for mutual recognition contained in the Act, in Victoria, Western Australia, Australian Capital Territory, Northern Territory, Queensland, South Australia and Tasmania. To the extent that the scheme applies to limit liability in jurisdictions other than New South Wales, it is subject to the professional standard legislation of those jurisdictions.
- E. The Law Society has furnished the Professional Standards 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.
- F. The Law Society has furnished the Professional Standards Council with details of its insurance standards.
- G. The Law Society has advised its members to whom the Scheme applies of the requirements of sections 26A and 27 of the Act.
- H. The Law Society has furnished the Professional Standards Council with details of its complaints system and discipline system.
- I. The Law Society will comply with its reporting obligations under the Act, in furtherance of the statutory objects of improvement of the occupational standards of its members, and protection of the consumers of such members’ services.
- J. The Law Society will remit all fees payable under the Act to the Professional Standards Council as and when these become due, pursuant to the Act.
- K. The Scheme is intended to commence on 22 November 2024. The Scheme is intended to remain in force for a period of five (5) years from its commencement, subject to section 32 of the Act.
- L. Sections 12GNA of the *Australian Securities and Investments Commission Act 2001 (Cth)*, 137 of the *Competition and Consumer Act 2010 (Cth)*, and 1044B of the *Corporations Act 2001 (Cth)* provide for limited liability where a professional standards scheme is prescribed in the relevant regulation. The Scheme does not apply to limit any liability pursuant to these provisions unless it has been prescribed under the relevant regulations.

1. Occupational Association

1.1 The Law Society of New South Wales Professional Standards Scheme (“the Scheme”) is a Scheme under the *Professional Standards Act 1994* (NSW) (“the Act”), prepared by and for The Law Society of New South Wales (“the Law Society”), whose business address is 170 Phillip Street, Sydney, New South Wales.

1.2 Relevant definitions for the purpose of the Scheme are as follows:

“Application Act” means the *Legal Profession Uniform Law Application Act 2014* (NSW);

“Australian legal practitioner” has the same meaning as it has in section 6 of the Legal Profession Uniform Law;

“community legal service” has the same meaning as it has in section 6 of the Legal Profession Uniform Law;

“community legal service legal practitioner” means an Australian legal practitioner who engages in legal practice only for or on behalf of a community legal service;

“corporate legal practitioner” has the same meaning as it has in section 6 of the Legal Profession Uniform Law;

“corresponding law” has the same meaning as it has in the Act;

“court” has the same meaning as it has in the Act;

“Damages” has the same meaning as it has in the Act;

“engage in legal practice” has the same meaning as it has in section 6 of the Legal Profession Uniform Law;

“Exempted Member” means a person who is, or was at the Relevant Time, exempted by the Law Society Council from participation in the Scheme pursuant to clause 3.3;

“financial year” means a financial accounting period commencing on 1 July and ending 30 June;

“government legal practitioner” has the same meaning as it has in section 6 of the Legal Profession Uniform Law

“Incorporated Legal Practice” has the same meaning as it has in section 6 of the Legal Profession Uniform Law;

“Incorporated Legal Practice Member” has the same meaning as it has in the Constitution of the Law Society of New South Wales (as amended from time to time)

“interstate scheme” has the same meaning as it has in the Act or a corresponding law, as applicable;

“Law Practice” has the same meaning as it has in section 6 of the Legal Profession Uniform Law but does not include a community legal service;

“Law Society Council” means the Council of the Law Society appointed under the Constitution of the Law Society of New South Wales (as amended from time to

time);

“legal profession legislation” has the same meaning as set out in section 3A of the Application Act;

“the Legal Profession Uniform Law” means the *Legal Profession Uniform Law (NSW)* set out in Schedule 1 to the *Legal Profession Uniform Law Application Act 2014* of Victoria, which applies as a law of New South Wales pursuant to section 4 of the Application Act and where amended, re-enacted or replaced means that amended, re-enacted or replaced legislation or instrument;

“legal services” has the same meaning as it has in section 6 of the Legal Profession Uniform Law;

“Life Member” has the same meaning as in the Constitution of the Law Society of New South Wales (as amended from time to time);

“Occupational Liability” has the same meaning as it has in section 4 of the Act and does not include liability as set out in section 5 of the Act ;

“Participating Members” means those persons specified in clause 3.1;

“person” means an individual or a body corporate;

“Principal” has the same meaning as it has in section 6 of the Legal Profession Uniform Law;

“Professional Standards Council” means the Professional Standards Council constituted by the Act;

“Relevant Time” refers to, in the case of a cause of action founded on an act or omission, to the time when that act or omission occurred;

“Solicitor” has the same meaning as it has in the Constitution of the Law Society of New South Wales (as amended from time to time);

“Solicitor Member” has the same meaning as it has in the Constitution of the Law Society of New South Wales (as amended from time to time) and, for the avoidance of doubt, includes but is not limited to all Life Members;

“total annual fee income” means the amount charged during a financial year for services provided by or on behalf of a Law Practice.

2. Jurisdiction

- 2.1 The Scheme applies in New South Wales in accordance with the Act.
- 2.2 In addition to New South Wales, the Scheme is intended to operate in Victoria, Queensland, South Australia, Western Australia, Tasmania, the Northern Territory and the Australian Capital Territory in accordance with the corresponding law in each jurisdiction, so that references to a provision of the Act, the application of the Scheme to a liability, the limit of a liability under the Act, or what constitutes Occupational Liability, are intended to pick up the relevant provisions of the corresponding law, applied mutatis mutandis, to the extent that is necessary for the application of the Scheme in any of those jurisdictions as an interstate scheme.
- 2.3 Notwithstanding anything to the contrary contained in the Scheme if, in particular circumstances giving rise to Occupational Liability, the liability of any person who is subject to the Scheme is capped both by the Scheme and also by any other scheme under the Act or a corresponding law 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.

3. Persons to whom the Scheme applies

- 3.1 Subject to clauses 3.2 and 3.3, the Scheme applies to any person covered by or holding an approved professional indemnity insurance policy within the meaning of the Legal Professional Uniform Law and who is either a:
 - 3.1.1 Solicitor Member;
 - 3.1.2 Incorporated Legal Practice Member; or
 - 3.1.3 a person to whom the Scheme applies, by virtue of sections 18, 19 or 20 of the Act¹.
- 3.2 A person referred to in clause 3.1 does not include a person who:
 - 3.2.1 is a corporate legal practitioner;
 - 3.2.2 is a government legal practitioner;
 - 3.2.3 is a community legal service legal practitioner; or
 - 3.2.4 has been granted an Australian practicing certificate by the Law Society Council by reason of s 44(5) of the Legal Profession Uniform Law and r 18 of the Legal Profession Uniform General Rules 2015 (NSW).
- 3.3 A person referred to in clause 3.1 may, on application, be exempted from participation in the Scheme by the Law Society Council with effect from the date specified by the Law Society Council. This clause does not apply to persons to whom the Scheme applies by virtue of sections 18, 19 or 20 of the Act.
- 3.4 The Law Society Council may, upon application by an Exempted Member, revoke an exemption of that person from participation in the Scheme with effect from the

¹Sections 18 and 19 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 and employee of that person, provided that if such officer of the corporation or partner or employee of the person is entitled to be a member of the same occupational association, such officer, partner or employee is a member. Section 20 provides that the Scheme also applies to other persons prescribed by the regulations for the purposes of section 29 (4) as being associated with persons to whom a scheme applies.

date specified by the Law Society Council.

4. Limitation of liability

- 4.1 The Scheme only affects the Occupational Liability of a Participating Member for Damages arising from a single cause of action founded on an act or omission to the extent to which the liability results in Damages exceeding the amounts specified in the table in clause 4.3.
- 4.2 If a person who is, or was, at the time of the act or omission giving rise to Occupational Liability, a person to whom the Scheme applies, or applied, and against whom a proceeding relating to Occupational Liability is brought is able to satisfy the Court that such a person has the benefit of an insurance policy or policies:
- 4.2.1 of a kind which, at the time of the act or omission giving rise to the Occupational Liability, complies with the standards then determined by the Law Society Council;
- 4.2.2 that insures such person against Occupational Liability to which the cause of action relates; and
- 4.2.3 under which the amount payable in respect of that Occupational Liability² is not less than the amount of the monetary ceiling (maximum amount of liability) specified in clause 4.3 of this Scheme,

then the person is not liable in damages in relation to that cause of action above the amount of that monetary ceiling.

² Section 4(1A) 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 –

(a) 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

(b) the amount payable under or in relation to the policy by way of excess.

However, see also section 26A of the Act and its note, which has the effect that section 4(1A) does not reduce the cap on the liability in damages of the Participating Member to a client.

- 4.3 The monetary ceiling (maximum amount of liability) applicable for the purposes of limitation of liability under the Scheme is to be determined according to the following table:

Class	Description	Monetary ceiling (Maximum amount of liability)
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 generates total annual fee income for the financial year at the Relevant Time up to and including \$10 million.	\$1.5 million
2	(a) Participating Members who were at the Relevant Time in a Law Practice consisting of more than 20 Principals; or (b) Participating Members who were at the Relevant Time in a Law Practice where the Law Practice generates total annual fee income for the financial year at the Relevant Time greater than \$10 million.	\$10 million

- 4.4 Clause 4.2 does not limit the amount of Damages to which a person to whom the Scheme applies is liable if the amount is less than the amount specified for the purpose of this Scheme in relation to a person to whom the Scheme applies.
- 4.5 The Scheme limits the Occupational Liability in respect of a cause of action founded on an act or omission occurring during the period when the Scheme was in force of any person to whom the Scheme applied at the time of the act or omission.

5. Conferral of discretionary authority

- 5.1 The Law Society Council has discretionary authority, on application by a Participating Member, to specify in relation to the Participating Member a higher maximum amount of liability than would otherwise apply under the Scheme, either in all cases or in any specified case or class of case.
- 5.2 If, in the exercise of discretion under clause 5.1, the Law Society Council has specified a higher maximum amount of liability than would otherwise apply under the Scheme in relation to a Participating Member, after satisfying itself that there is evidence of professional indemnity insurance commensurate with the higher maximum amount of liability sought, then the maximum amount of liability in relation to that Participating Member is that higher maximum amount.

6. Commencement and Duration

- 6.1 The Scheme will commence:
- 6.1.1 in New South Wales, Victoria, Queensland, Western Australia, Tasmania, and the Northern Territory on 22 November 2024; and
- 6.1.2 in the Australian Capital Territory and in South Australia, on this same date, or such other later date, provided the date is specified in the relevant Minister's notice in relation to the Scheme; or

- 6.1.3 in all other cases, subject to the statutory provisions of each applicable jurisdiction.
- 6.2 The Scheme will be in force in all applicable jurisdictions for five (5) years from the date of its commencement in New South Wales.
- 6.3 Clause 6.2 is subject to the corresponding law of each jurisdiction in relation to the revocation, extension or cessation of a scheme.

Attachment A

GAMING MACHINES ACT 2001
SECTION 205A ORDER
CONTINUED TRIALLING AND RESEARCH OF CASHLESS GAMING TECHNOLOGY

I, The Honourable David Harris MP, Minister for Gaming and Racing (being the Minister responsible for the administration of the *Gaming Machines Act 2001* (**the Act**)), DO HEREBY ORDER, pursuant to section 205A of the Act, that for the purposes of enabling the continued trialling and research of Cashless Gaming Technology in venues that participated in the NSW Cashless Gaming Trial, and for the period from 30 September 2024 to 30 September 2025:

1. to vary, in relation to the class of persons specified in Column One of Schedule One, the operation of the provisions of the Act specified in Column Two of Schedule One, to operate to the extent specified in Column Three of Schedule One; and
2. to vary, in relation to the class of persons specified in Column One of Schedule Two, the operation of the provisions of the *Gaming Machines Regulation 2019* (**the Regulation**) specified in Column Two of Schedule Two, to operate to the extent specified in Column Three of Schedule Two.

Signed, the 26th day of September 2024.

The Honourable David Harris MP
Minister for Gaming and Racing

Explanatory Notes

The purpose of this Order is to vary, pursuant to section 205A of the Act, the operation of certain specified provisions of the Act and the Regulation for a specified period and in relation to specified classes of persons, for the purposes of enabling the continued trialling and research of Cashless Gaming Technology in venues that participated in the NSW Cashless Gaming Trial.

Interpretation

This Order commences on the date it is published in the Gazette and is only in effect for the specified period of 30 September 2024 to 30 September 2025.

The variations to the provisions of the Act and the Regulation given effect by this Order only operate to the extent specified in Columns Three of Schedules One and Two respectively. The specified provisions of the Act and the Regulation otherwise operate in accordance with the Act and the Regulation.

Where the Order provides that a variation to the operation of a specified provision applies in relation to more than one specified class of person, the variation applies to each specified class of person concurrently.

Unless otherwise defined in this Order, words and expressions that are defined in the Act or Regulation have the same meaning in this Order.

In this Order:

“Cashless Gaming Technology” means technology that was approved for use in the NSW Cashless Gaming Trial that allows credits to be transferred electronically in relation to the operation of approved gaming machines.

“Liquor & Gaming NSW” means the part of the Department of Creative Industries, Tourism, Hospitality and Sport known as Liquor & Gaming NSW.

“Independent Panel on Gaming Reform” means the Panel of the same name established by the NSW Government on 13 July 2023.

“NSW Cashless Gaming Trial” means the cashless gaming trial overseen by the Independent Panel on Gaming Reform which will conclude on 30 September 2024.

“Order” means this Order made pursuant to section 205A of the Act.

The following references are used in Columns One of Schedules One and Two respectively to indicate a class of person:

A	The class of persons who were approved by the Independent Panel on Gaming Reform for participation, and participated, in the NSW Cashless Gaming Trial, and who agree to the ongoing monitoring, data collection and/or oversight of the use of the Cashless Gaming Technology by Liquor & Gaming NSW.
B	A person who is authorised under the Act by a gaming-related licence to sell approved gaming machines.
C	The holder of a “dealer’s licence” or a “technician” within the meaning of section 4(1) of the Act.

SCHEDULE ONE: GAMING MACHINES ACT 2001

Column One (Class of Person)	Column Two (provision)	Column Three (Variation)
A	Section 4(1)	<p>Insert following definitions under section 4(1):</p> <p>“cashless gaming technology” means technology that was approved for use in the NSW Cashless Gaming Trial that allows credits to be transferred electronically in relation to the operation of approved gaming machines.</p> <p>“cashless gaming technology operator” means a person that is responsible for the cashless gaming technology that was approved for use in the NSW Cashless Gaming Trial.</p> <p>“NSW Cashless Gaming Trial” means the cashless gaming trial overseen by the Independent Panel on Gaming Reform which will conclude on 30 September 2024.</p> <p>“section 205A Order” means this Order made by the Minister pursuant to section 205A of the Act in relation to the continued trialling and research of cashless gaming technology in venues that participated in the NSW Cashless Gaming Trial.</p>
A	Section 45B(1)	<p>The definition of “account card” is varied to:</p> <p>(1) “account card” means a card –</p> <p>(a) issued by:</p> <p>(i) a hotelier or club or a person when the person opens up a player account with the hotelier, or</p> <p>(ii) a person acting on behalf of a hotelier or club (for example, a cashless gaming technology operator), for the purposes of the continued trialling and research of cashless gaming technology (a digital player card), to a person when the person opens up a player account with the hotelier or club, and</p> <p>(b) through which the person can access money held in the player account for the purposes of operating electronic payment gaming machines in the hotel or on the premises of the club.</p>
A	Section 64(4)	<p>(4) if an approved gaming machine kept by a hotelier or club is modified in such a way that it is in the form of a different approved gaming machine, it ceases to be an approved gaming machine despite being in that form unless:</p> <p>(a) the material used to effect the modification was supplied by the holder of a dealer’s licence (either directly or through the holder of another gaming-related licence), and the modification was effected in accordance with a variation of the authorisation in force in relation to the keeping of the approved gaming machine, or</p> <p>(b) the modification related to the installation of hardware or software to enable cashless gaming machine technology given effect by the section 205A order.</p>
A, B	Section 69A(2)	<p>(2) A person who is authorised by a gaming-related licence to sell approved gaming machines must not sell or supply a component to any person unless the relevant device is, with the addition of the component:</p> <p>(a) declared by the Authority under section 64 as an approved gaming machine, or</p> <p>(b) is an approved gaming machine in accordance with the section 205A order.</p>

A, C	Section 69A(3)	(3) The holder of a dealer's licence or a technician must not install any component unless the relevant device is, with the addition of the component: (a) declared by the Authority under section 64 as an approved gaming machine, or (b) is an approved gaming machine in accordance with the section 205A order.
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SCHEDULE TWO: GAMING MACHINES REGULATION 2019

Column One (Class of Person)	Column Two (provision)	Column Three (Variation)
A	Clause 26(1)	<p>A hotelier or registered club may pay so much of the total prize money payable to a person as exceeds \$5,000 –</p> <ul style="list-style-type: none"> (a) by means of a crossed cheque payable to the person, or by means of electronic funds transfer, or (b) to the person via the cashless gaming technology.
A	Clause 42(2)(a)	<p>(2) For the purposes of section 45(4) and (5) of the Act, player activity statements relating to the playing of approved gaming machines by the participants in a player reward scheme conducted by the hotelier or club must –</p> <p>(a) be made available, on request by the participant to whom any such statement relates in either of the following forms:</p> <ul style="list-style-type: none"> (i) within or using the cashless gaming technology, or (ii) at the hotel or club premises.
A	Clause 42(3)	<p>Insert new subclause 42(3)(g):</p> <p>(g) If a participant’s player activity statement is being made available within or using the cashless gaming technology, the following information is the minimum information that must be included:</p> <ul style="list-style-type: none"> (i) losses, (ii) wins, (iii) total expenditure, and (iv) net result.
A	Clause 43	<p>A hotelier or registered club must keep a record or copy of any player activity statement made available by the hotelier or club (whether or not provided under section 45(4) of the Act), unless the player activity statement is made available within or using cashless gaming technology.</p>
A	Clause 45(b)	<p>(b) the participant must give an undertaking, either written and signed or using cashless gaming technology, that the participant will not gamble in the hotel or club premises for the period specified in the undertaking.</p>
A	Clause 45(d)	<p>(d) the participant must be provided by the hotelier or club, or an employee of the hotelier or club, or a person acting on behalf of a hotelier or club (for example, a cashless gaming technology operator), with information outlining the name and contact details of the of the problem gambling counselling service referred to in clause 44(2).</p>
A	Clause 92(3)	<p>(3) Only one player card per person may be issued by a hotelier or registered club. However, this subclause does not prevent a hotelier or club from issuing a person with another player card as a replacement for one that has been lost, stolen or destroyed, or from issuing both a digital player card as well as a physical card.</p>
A	Clause 94(3)	<p>The following information must be provided to a person in writing at the time the person opens a player account as defined in section 45B of the Act – (existing)</p>

		<p>(3) The following information must be provided to a person at the time the person opens a player account–</p> <p>The security of money in player accounts is the responsibility of both the *hotelier/*registered club (<i>*delete whichever does not apply</i>) and the account holder. The government and its agencies take no responsibility for any losses that might occur from the account.</p> <p>An account holder is solely responsible for ensuring that the account holder’s personal identification number (“PIN”) is kept confidential and that no other person has access to the account holder’s player card. The account holder is liable for any losses that might arise from, or in connection with, the account holder’s failure to comply with such responsibilities.</p> <p>Accounts other than a “player account” within the meaning of section 45B(1) of the Act (for example, “wallets” in relation to cashless gaming) is a financial product, and as such, the security of money in these non-player accounts are the responsibility of the account provider and the account holder. The government and its agencies take no responsibility for any losses that might occur from the account.</p>
A	Clause 97(2)	<p>A player activity statement must, on the request of a person who has a player account with a hotelier or registered club, be provided by the hotelier or club:</p> <p>(a) on a monthly basis, or</p> <p>(b) on an ad-hoc basis if made available within or using the cashless gaming technology.</p>
A	Clause 97(3)	<p>Insert new subclause 97(3)(f).</p> <p>(3)(f) if player activity statements are being made available within or using the cashless gaming technology, the following information is the minimum information that must be included:</p> <p>(i) losses,</p> <p>(ii) wins,</p> <p>(iii) total expenditure, and</p> <p>(iv) net result.</p>
A	Clause 97(7)	<p>(7) A player activity statement, if requested to be provided, is to be made available from the cashier or other appropriate outlet (including using cashless gaming technology) at the hotel or club concerned.</p>
A	Clause 98	<p>A hotelier or registered club must keep a record or copy of any player activity statement made available by the hotelier or club under this Part, unless the player activity statement is made available within or using cashless gaming technology.</p>