



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Law Societies—Fidelity and Indemnity Schemes) Instrument 2022/435

I, Rhys Bollen, delegate of the Australian Securities and Investments Commission, make the following notifiable instrument.

Date 31 May 2022

Rhys Bollen

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Part 1—Preliminary

1 Name of notifiable instrument

This is the *ASIC Corporations (Law Societies—Fidelity and Indemnity Schemes) Instrument 2022/435*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under paragraph 601QA(1)(a), 926A(2)(a), 992B(1)(a) and 1020F(1)(a) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Act means the *Corporations Act 2001*.

eligible law society means each of the following:

- (a) Queensland Law Society Incorporated;
- (b) The Law Society of New South Wales;
- (c) The Law Society of South Australia;
- (d) The Law Society of the Australian Capital Territory;
- (e) The Law Society of Tasmania;
- (f) The Law Society of Western Australia Inc.;
- (g) Law Institute of Victoria Limited ACN 075 475 731.

eligible legal body means each of the following:

- (a) an eligible law society;
- (b) the Legal Contribution Trust established by section 5 of the *Legal Contribution Trust Act 1967* (WA) and continued in existence by Division 5 of Part 12 of the *Legal Profession Act 2008* (WA);
- (c) SMIF Management Pty Ltd ACN 003 326 618.

fidelity or indemnity scheme means each of the following:

- (a) the Solicitors' Fidelity Fund of the Australian Capital Territory established by section 320 of the *Legal Profession Act 2006* (ACT);
- (b) professional indemnity insurance arrangements under Part 3.3 of the *Legal Profession Act 2006* (ACT);
- (c) the Legal Practitioners Fidelity Fund under Part 9 of the *Legal Profession Uniform Law Application Act 2014* (NSW);
- (d) insurance arrangements made under Division 1 of Part 8 of the *Legal Profession Uniform Law Application Act 2014* (NSW);
- (e) the Legal Practitioners' Fidelity Guarantee Fund established by section 12 of the *Queensland Law Society Act 1952* (Qld) and continued in existence by section 359 of the *Legal Profession Act 2007* (Qld);
- (f) the Law Claims Levy Fund established by rule 8 of the *Queensland Law Society (Indemnity) Amendment Rule (No. 1) 1996* and continued in existence by rule 17 of the *Queensland Law Society Indemnity Rule 2005*;
- (g) professional indemnity insurance arrangements under the Queensland Law Society Indemnity Rule;
- (h) the Legal Practitioners Fidelity Fund (formerly known as the legal practitioners' guarantee fund) required to be maintained by section 57 of the *Legal Practitioners Act 1981* (SA);
- (i) the scheme providing professional indemnity insurance established under section 52 of the *Legal Practitioners Act 1981* (SA);
- (j) professional indemnity insurance arrangements under Part 6 of the *Rules of Practice 1994* made by The Law Society of Tasmania under section 221 of the *Legal Profession Act 2007* (Tas.);
- (k) the Solicitors' Guarantee Fund established under section 16 of the *Legal Contribution Trust Act 1967* (WA) and continued in existence by section 336 of the *Legal Profession Act 2008* (WA);
- (l) insurance arrangements made under regulation 84 of the *Legal Profession Regulations 2009* (WA), and the associated mutual funds;
- (m) professional indemnity insurance arrangements under Part 7 of the *Legal Profession Uniform Law Application Act 2014* (Vic.);
- (n) the Legal Practitioners Fidelity Fund required to be maintained by section 121(1) of the *Legal Profession Uniform Law Application Act 2014* (Vic.).

Queensland Law Society Indemnity Rule means the *Queensland Law Society Indemnity Rule 2005* made by the Council of the Queensland Law Society Council under sections 226(2)(1) and 227 of the *Legal Profession Act 2004* (Qld) and the replacement of those provisions by sections 231 and 232 of the *Legal Profession Act 2007* (Qld).

relevant eligible law society in relation to a fidelity or indemnity scheme, means the eligible law society that is the primary body representing legal practitioners in the State or Territory under the laws of which the scheme is established or regulated.

responsible: an eligible legal body is **responsible** for a fidelity or indemnity scheme if:

- (a) the body or the governing council of the body (however described) is conferred with functions in relation to the scheme by or under the law of a State or Territory; or
- (b) the body has established the scheme under its rules (however described) made under the law of a State or Territory.

Part 2—Exemption

5 Fidelity and Indemnity Schemes

Exemptions

An eligible legal body does not have to comply with:

- (a) subsection 601ED(5) of the Act in relation to the operation of a managed investment scheme that is or arises from a fidelity or indemnity scheme for which the body is responsible; and
- (b) Divisions 2 to 5 of Part 7.9 and section 992A of the Act in relation to a financial product that arises from a fidelity or indemnity scheme for which the body is responsible; and
- (c) section 911A of the Act for the provision of a financial service where:
 - (i) the service consists of any or all of the following:
 - (A) providing financial product advice;
 - (B) dealing in financial products;
 - (C) providing custodial or depository services;
 - (D) claims handling and settling services; and
 - (ii) the service is only provided to the extent reasonably necessary for the maintenance or operation of a fidelity or indemnity scheme for which the body is responsible.

6 Conditions

The relevant eligible law society must make available on its Internet website in a manner reasonably likely to come to the attention of a person seeking information on the site about the fidelity or indemnity scheme, a prominent notice to the effect that the body is exempt from the requirement to hold an Australian financial services licence under the Act in relation to the operation of the scheme and the scheme is not regulated under the *Insurance Act 1973*.