



Mr Andrew Cappie-Wood  
Secretary  
Department of Attorney General and Justice  
GPO Box 6  
SYDNEY NSW 2001

7 April 2014

Dear Mr Cappie-Wood,

**Consultation on the proportionate liability model provisions**

Thank you for the invitation to provide input to the Department's consultation on model provisions for Proportionate Liability Legislation. We note the positive step this represents in the larger consideration of Tort law reform that both Professional Standards Legislation and Proportionate Liability Legislation were instruments of. We particularly recognise the progress of the working group in now being able to bring the model provisions forward.

As a general comment we see Proportional Liability Legislation (PL) and Professional Standards Legislation (PSL) each as essential elements of the Tort Reform landscape. We consider PSL to be the necessary step that improves consumer protection and changing behaviour of professional service providers ex-ante. It is hoped though that implementation of nationally harmonised PL will allow liability and causal behaviour to be more clearly articulated so as to further sharpen the remediating benefits of PSL when specific or systemic risks are identified through legal action.

The Councils' provide the following comments on the model provisions for your consideration.

**Interaction between Proportionate Liability Legislation and Professional Standards Legislation**

With respect to the specific interaction between PL and PSL, the Councils' are of the view that the monetary cap on liability specified under a Professional Standards scheme should be applied following the apportionment of liability amongst defendants pursuant to Proportionate Liability Legislation. Procedurally then, liability should be first apportioned and then the cap applied.

**National harmonisation**

As a statutory body responsible for somewhat consistent but not entirely harmonised national legislation the Councils welcome and encourage the efficiency and public certainty that comes from nationally harmonised, consistent, and uniform law with respect to proportionate liability.

Kind regards

A handwritten signature in black ink, appearing to read "Deen Sanders", written in a cursive style.

**Dr Deen Sanders**  
**Executive Officer**

On behalf of the Professional Standards Councils