

## THE LAW SOCIETY OF NEW SOUTH WALES SCHEME DISCRETIONARY HIGHER MONETARY CEILINGS

The Law Society of New South Wales Scheme (the Scheme) provides Law Society Members, who participate in the Scheme, with the benefit of a statutory cap should damages be awarded against them as a result of a successful occupational liability claim.

The Scheme is not professional indemnity insurance (PII). Insurance, however, is required to participate in the Scheme.

To participate in the Scheme members must already be insured to an amount at least equal to the limitation of liability cap applicable to the member at the relevant time. PII must comply with [s 27](#) of the *Professional Standards Act 1994* (as amended) (the Act). In New South Wales, all legal practitioners must hold the approved Lawcover PII policy under the *Legal Profession Uniform Law*, unless exempted. In addition, the Participating Scheme Member must have sufficient business assets to cover any claim made up to the amount of the uninsured deductible (or excess) under their PII. For more information on PII please, contact Lawcover Insurance Services on (02) 9264 8332.

It is essential to select the limitation amount appropriate for the law practice. In addition the law practice may choose to apply for a Discretionary Higher Maximum Amount. The following table sets out the corresponding limitation of liability amounts.

Class	Description	Monetary Ceiling (Maximum amount of liability)
1	Participating Scheme Members who were at the Relevant Time in a Law Practice consisting of up to and including 20 Principals <i>and</i> where the Law Practice generates a total annual fee income for the financial year at the Relevant Time up to and including \$10m.	\$1.5 million
2	a) Participating Scheme Members who were at the Relevant Time in a Law Practice consisting of greater than 20 Principals; <i>or</i> b) Participating Scheme 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 \$10m.	\$10 million (Note: Certificate of top up PII cover must be provided)
<b>Discretionary Higher Monetary Ceiling</b>	Participating Scheme Members who apply for a discretionary higher maximum amount of liability, and which higher amount is authorised by the Law Society.	Discretionary Higher Maximum Amount

If a law practice has less than 20 principals and generates fee income of less than \$10 million, the law practice automatically participates in the Scheme as Class 1 (\$1.5m). If such a law practice requires a higher monetary cap than \$1.5m, the law practice should apply for a discretionary higher cap by completing and submitting an [Application for Discretionary Higher Cap](#).

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Law practices participating in the Scheme in Class 2 (\$10 million) and those in Class 1 who then elect to apply for a Discretionary Higher Cap in excess of \$1.5 million, must ensure that they have top up PII cover that:

- (a) has at least one automatic reinstatement each year;
- (b) covers all civil liability arising in connection with the practice;
- (c) is retrospective for any event giving rise to a claim made during the insured period;
- (d) extends to all employees of the practice or service entity; and
- (e) is a "claims made" policy.

If the Participating Scheme Member is unable to satisfy the Court that he or she has the requisite PII policy, or that the amount payable under his or her insurance policy is *at least* the amount of the relevant monetary ceiling specified in the Scheme, he or she will not be entitled to rely on the Scheme to limit his or her liability for damages.

### VARYING THE STATUTORY CAP FOR ALL CASES OR FOR SPECIFIC CLIENTS OR MATTERS

Section s 24 (1)(b) of the Act, and clauses 4.1 and 4.2 of [the Scheme Instrument](#) confers on the Law Society a discretion to approve a higher monetary ceiling (maximum amount of liability) in all cases or in any specified case or class of case than would otherwise apply under the Scheme, on application by a Participating Scheme Member.

For law practices wishing to choose the Discretionary Higher Cap *in addition to* their primary Scheme participation limit of \$1.5 million or \$10 million, a principal of the law practice should complete an [Application for Discretionary Higher Cap](#) and submit it to the Scheme Manager.

Examples of Discretionary Higher Cap Applications:

- A small law practice participates in Class 1 for Scheme purposes and has the 'approved' PII for \$2 million. If the law practice decides that a discretionary higher cap of \$5 million is appropriate for the type of legal service provided, that law practice can submit an Application for a Discretionary Higher Cap, which must be accompanied by evidence of top up PII commensurate with the monetary ceiling of \$5 million sought.
- A larger law practice, participating in Class 2 for Scheme purposes, will have already provided evidence of top up PII to \$10 million. This law practice may have a particular client, matter or transaction where a discretionary higher cap of \$20 million is more appropriate for them. The law practice can submit an Application for Discretionary Higher Cap for that specific client, matter or transaction, together with evidence of top up PII commensurate with the higher \$20 million monetary ceiling sought.

The law practice is obliged, at the time of the application, to inform the Law Society how the Discretionary Higher Monetary Ceiling will be communicated to client(s).

All Applications for a Discretionary Higher Cap will be submitted to the Scheme Administration Committee for consideration, including review of all relevant documentation. The Committee makes its determination pursuant to a delegated authority from the Council of the Law Society under clauses 4.1 and 4.2 referred to above. The Scheme Administration Committee then notifies the law practice applicant of its determination.