

## THE LAW SOCIETY OF NEW SOUTH WALES SCHEME INCORPORATED LEGAL PRACTICES



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THIS IS AN INFORMATION SHEET ON INCORPORATED LEGAL PRACTICES AND A LIMITATION OF LIABILITY SCHEME IN ACCORDANCE WITH THE *PROFESSIONAL STANDARDS ACT 1994* (NSW).

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Solicitors employed by a company which is an incorporated legal practice may have the benefit of The Law Society of New South Wales Scheme. The company however, not being a member of the Law Society of New South Wales, cannot enjoy the benefit of limiting occupational liability under the *Professional Standards Act 1994* (NSW).

The regulations under the *Professional Standards Act 1994* provide that, if a person's occupational liability is limited, all documents given by the person to a client or prospective client that promote or advertise the person or person's occupation, including official correspondence ordinarily used by the person in the performance of the person's occupation and similar documents, must carry the statement "Liability limited by a scheme approved under Professional Standards Legislation".

It would seem wrong to say on letters from the incorporated legal practice that liability is limited by a scheme approved under Professional Standards Legislation, when the liability of the incorporated legal practice is not so limited.

Such a statement on correspondence from an incorporated legal practice may be conceived as being in breach of sections 29(1)(m) and 151(1)(m) of the Australian Consumer Law (Schedule 2 of the *Competition and Consumer Act 2010 (Cwlth)*). Those sections proscribe the making of a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services.

Provided legal practitioners employed by an incorporated legal practice are indeed persons to whom the scheme applies in accordance with cl.2 of The Law Society of New South Wales Scheme, the following expanded statement does not appear to contravene the Australian Consumer Law while still satisfying the requirements of New South Wales Professional Standards Legislation.

Liability limited by a scheme approved under Professional Standards Legislation.  
Legal practitioners employed by (name of ILP) are members of the scheme.

The statement may need to be varied further where legal practitioners who are members of the scheme are, for example, directors but are not employees.