

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



This is an information sheet on incorporated legal practices (ILPs) and The Law Society of New South Wales Professional Standards Scheme (the Scheme) in accordance with the [Professional Standards Act 1994](#) (the Act).

The Act enables the creation of schemes to limit the civil liability of all persons, or to a specified class or classes of persons, within an occupational association. The Scheme provides a significant benefit for Members of The Law Society of New South Wales (the Society).

The new Scheme commences on 22 November 2018 and is due to expire on 21 November 2023.

An ILP corporation is a legal entity in its own right.<sup>1</sup> It follows therefore, that if *only the legal practitioners* in the ILP are able to limit their liability under the Scheme, then both the ILP and the legal practitioners (as directors of the ILP) may be exposed to the risk of a claim exceeding any cap the individual legal practitioners within the ILP may have applied for under the Scheme.

The new Scheme, as approved by the Professional Standards Councils, permits an ILP entity to avail itself of the benefits of the Scheme.

To facilitate this, an ILP can now become a Member of the Society<sup>2</sup> so as to enjoy the benefit of limiting occupational liability under the Act. An ILP is qualified to be an ILP Member if all of its principals and Australian legal practitioners who are recorded by the Society as having their principal place of practice in New South Wales, are either Solicitor Members or Life Members of the Society. The Society does not charge a membership fee for an ILP Member. However, the Professional Standards Councils will charge its fee of \$50 per ILP entity Scheme participant.

Under the new Scheme, for a law practice to gain the full benefit of the Scheme and the limitation of liability, all legal practitioners within the law practice, *and* the ILP entity itself, would need to be Members of the Society *and* participating in the Scheme. It is a matter for each ILP as to whether they elect to take up the option.

### ILP Entity Scheme Participation and the Disclosure Requirements under the Act

The regulations under the Act 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 following statement:

Liability limited by a scheme approved under Professional Standards Legislation.

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<sup>1</sup> The Uniform Law requires that there must always be at least one legal practitioner who holds a practising certificate entitling them to engage in legal practice as a principal and that practitioner must also be a director of the corporate ILP entity.

<sup>2</sup> See [clauses 2, 3 and 5](#) of the Memorandum and Articles of Association of the Law Society of New South Wales.

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If however, the ILP entity itself does *not* become an ILP Member of the Society - thereby entitling it to register its participation in the Scheme - then it would seem wrong to say on letters from the ILP that liability is limited by a scheme approved under Professional Standards Legislation, when the liability of the ILP entity itself is not so limited.

Such a statement on correspondence from an ILP 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 ILP are indeed persons to whom the Scheme applies in accordance with the Scheme instrument, 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. The ability for the ILP to participate in the Scheme would serve to remove the risk of possible contraventions by ILPs and their practitioners of the disclosure requirement and sections 29(1)(m) and 151(1)(m) of the *Australian Consumer Law (Schedule 2 of the Competition and Consumer Act 2010 (Cwlth))*.