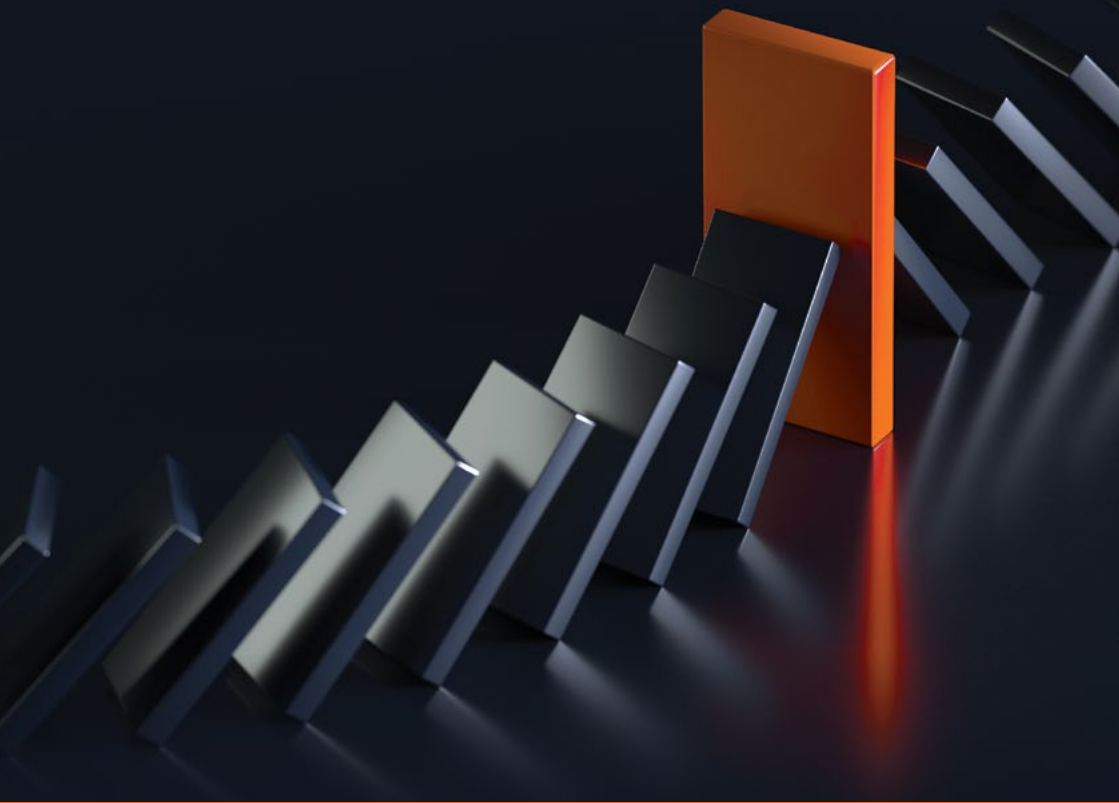


THE LAW SOCIETY OF NSW

PROFESSIONAL STANDARDS SCHEME

Improving standards. Reducing risk.



THE LAW SOCIETY
OF NEW SOUTH WALES

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INTRODUCING THE SCHEME

What is the Professional Standards Scheme?

The Professional Standards Scheme (**Scheme**) is a legal instrument, established under the *Professional Standards Act 1994* (**Act**) and approved by the Professional Standards Councils.

The statutory objectives of the Scheme are reciprocal in nature:

- The Law Society of New South Wales (**Law Society**) (as the occupational association for the solicitor branch of the legal profession in NSW) monitors, enforces and facilitates the improvement of the professional standards of its Members which is designed to protect consumers of professional services; and
- Serves to cap the civil liability or damages the Law Society's Scheme participants may be required to pay if a Court upholds a claim against them.

How does the Scheme operate?

In principle, if proceedings are brought against a Participating Member relating to occupational liability for damages, and the Participating Member is able to show that:

- a) the Participating Member has the requisite professional indemnity insurance (**PII**) cover insuring against occupational liability to which the cause of action relates; and
- b) The amount payable under the insurance policy is not less than the amount of the relevant monetary ceiling specified in the Scheme,

the Court, in awarding damages, will limit those damages to the relevant monetary ceiling specified by the Scheme.

If the Participating Member is not able to satisfy the Court that;

- a) they have the requisite insurance cover; or
- b) the amount payable under the PII policy is not less than the relevant monetary ceiling specified in the Scheme Instrument,

then they will not be entitled to rely on the Scheme to limit liability for damages.

How is the Scheme different to Professional Indemnity Insurance?

The approved Scheme is an insurance-based Scheme (see s. 21 of the Act).

At the time of registration of participation in the Scheme, the Law Society requires all Scheme participants to provide:

- a) evidence of PII (of a kind which, at the time of the act or omission giving rise to the Occupational Liability, complies with the standards then determined by the Law Society Council that meets the limitation cap they apply for); and
- b) certification that their law practice has sufficient business assets to cover any PII excess, payable in the event of a claim.

Scheme applicants who seek a cap higher than \$1.5M must provide evidence of top up PII 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;
- e) is a “claims made” policy.



Who does the Scheme apply to?

Subject to meeting all Scheme requirements, coverage under the Scheme extends to:

- a) A Solicitor Member (including a Life Member) who is not excluded or exempted from the Scheme;
- b) An ILP that is itself an ILP Member of the Law Society that is not excluded or exempted from the Scheme;
- c) Partners and employees of Solicitor Members (including a Life Member) who are not excluded or exempted from the Scheme;
- d) Officers or employees of law practices that are Members of the Law Society and who have not been excluded or exempted from the Scheme;

In addition, all persons to whom the Scheme applied when the act or omission giving rise to the relevant cause of action, also have their occupational liability limited.

Under the Scheme, which commenced 22 November 2024, pursuant to clause 6.2.5 of the Law Society's Constitution, clause 3.1.2 and clause 1.2 of the Scheme Instrument, for an ILP to gain the full benefit of the Scheme and the limitation of liability, it will need to be an ILP Member, and ensure 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 Solicitor Members.

(Ss. 17-20A Professional Standards Act 1994)

What is covered by the Scheme?

The Scheme provides for limitation of occupational liability arising from a single cause of action to the extent to which the liability results in damages exceeding the amount of the cap specified in the Scheme. The Act defines “Occupational liability” as meaning civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by a member of an occupational association acting in the performance of their occupation.

The Scheme does not provide absolute protection from occupational liability due to the operation of section 5 of the Act which specifically excludes coverage of liability arising from:

- the death of, or personal injury to, a person;
- a breach of trust;
- fraud or dishonesty; or
- liability which may be the subject of proceedings under Parts 13 or 14 of the *Real Property Act 1900*.

Incorporated Legal Practices and the Scheme

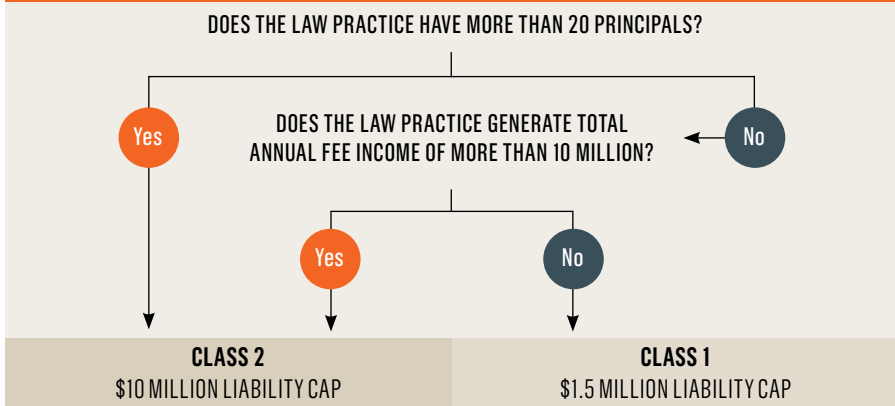
An ILP as defined by s 6 of the *Legal Profession Uniform Law* (NSW), is a legal entity in its own right. Pursuant to clause 6.2.5 of the Constitution of The Law Society of New South Wales, clause 3.1.2 and clause 1.2 of the Scheme Instrument, an ILP is qualified to be an ILP Member of the Law Society and participant of the Scheme, if all of its principals and Australian legal practitioners who are recorded by the Law Society as having their principal place of practice in New South Wales are Solicitor Members.

Why add the ILP as a participant as well as its legal practitioners?

If only the legal practitioners in an ILP are able to limit their liability under the Scheme, then both the ILP entity and the legal practitioners who are directors of the ILP would be exposed to the risk of a claim exceeding any liability cap the individual legal practitioners applied for under the Scheme.

The Law Society’s Constitution provides that an ILP entity qualifies to be an ILP Member of the Law Society if all of its principals and Australian legal practitioners who are recorded by the Law Society as having their principal place of practice in New South Wales, are Solicitor Members.

WHAT IS THE APPROPRIATE LIABILITY CAP FOR MY LAW PRACTICE?



Liability Caps

The Scheme is intended to operate so as to limit the occupational liability of Participating Scheme Members for damages arising from a single cause of action to an amount of \$1.5 million, \$10 million, or a higher maximum amount specified by the Law Society. The ceiling that applies is determined in accordance with the current Scheme and depends on the PII, total revenue and the number of principals of the law practice and to the extent that liability can be limited under the Act.

The liability in damages of a person to whom a scheme applies is not reduced below the relevant limitation imposed by a scheme in force under this Act because the amount available to be paid to the claimant under the insurance policy required for the purposes of this Act in respect of that liability is less than the relevant limitation. Refer to Section 26A of the Act. The monetary ceilings under the Scheme are set out in the Scheme Instrument as follows:

Class 1 – \$1.5 million Monetary ceiling (Maximum amount of liability)

Participating Members who were at the Relevant Time in a Law Practice consisting of up to and including 20 Principals and where the Law Practice generates total annual fee income for the financial year at the Relevant Time up to and including \$10 million.

Class 2 – \$10 million Monetary ceiling (Maximum amount of liability)

- Participating Members who were at the Relevant Time in a Law Practice consisting of more than 20 Principals; or
- Participating 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 \$10 million.

Evidence of Top Up PII is required for a liability cap above \$1.5 million. It is important to speak with your insurer directly about the requirements of Top Up PII and how it might work for your particular circumstances.

Can I tailor my Scheme participation to suit my business and risk management needs?

Participating Members who, upon successful application, can be granted a higher maximum amount of liability than would otherwise apply under the Scheme.

We call this a Discretionary Higher Cap (**DHC**).

When could a Discretionary Higher Cap benefit my law practice?

In deciding whether or not a DHC is appropriate for your law practice, consideration might be given to the circumstances, business and client requirements of the law practice. If you answer yes to any of the questions below, please call our team on 9926 0189 who can assist you.

☐ Do you tender, or wish to tender for Government contracts?

☐ Are there prospective clients who might be willing to retain your services if you have a higher liability cap?

☐ Would implementing a higher liability cap serve as a positive risk management strategy without limiting your ability to:

- Attract different clients; or
- Act for existing clients on larger matters?



Mutual Recognition

The Scheme recognises that the provision of legal services transcends state boundaries, particularly in the current fast changing legal practice landscape. The Scheme Instrument provides for mutual recognition across Australia.

Approval of the Scheme under Professional Standards Legislation of another state or territory is designed to have the effect of limiting the liability of any person to whom the Scheme applied at the Relevant Time (as defined in the Scheme instrument) at which the relevant act or omission occurred and where the act or omission occurred in the state or territory that has recognised the Scheme.

If your NSW office is part of a national practice, or if your law practice engages in legal practice interstate, specific consideration should be given to the effect of the mutual recognition provisions of all relevant legislation to ensure that the Scheme applies to all parts of your practice.



ADMINISTERING THE SCHEME

Requirement to make an application

In order to administer the Scheme so as to meet all of the Professional Standards Councils' requirements, all Solicitor Members, Life Members and Incorporated Legal Practice Members of the Law Society are required to either register participation in, or apply for exemption from, the Scheme. The Law Society administers this participation and exemption process through the relevant law practice.

Applications to be made by the Scheme Co-ordinator

For administrative purposes, the Law Society requires a principal (as defined in the *legal profession legislation*) of each law practice to be the responsible Scheme Co-ordinator and make applications on behalf of the law practice and its legal practitioners.

The principal must ensure that they are authorised to either register participation in, or apply for exemption from, the Scheme for all legal practitioners in their law practice after discussion with the practitioners about the Scheme.

Failure to notify of law practice changes may affect your Scheme coverage.

Register for participation in the Scheme

Law Practices

For a law practice to gain the full benefit of the Scheme and the limitation of liability, all employees, partners and officers of the law practice who are eligible to be a member of the Law Society will need to be a member so that the Scheme applies to them.

Incorporated Legal Practices

If your law practice is an ILP, and the ILP entity (as opposed to the legal practitioners within the ILP) wishes to enjoy the benefit of limiting its occupational liability under the Act by participating in the Scheme, it must be an ILP Member of the Law Society which means that all of its legal practitioners whose principal place of practice is New South Wales must be Solicitor Members.

Applications for exemption from the Scheme

For those law practices that do not wish to participate in the Scheme, an application for exemption must be made in respect of all Law Society Members within the law practice. An application for exemption will also need to be completed for any additional Solicitor Members that join the law practice throughout the relevant Scheme year. The Law Society maintains a register of its Members who have been granted exemption from the Scheme in order to comply with its obligations under the Professional Standards Act. Please note that an exemption will be recorded as effective for the duration of the Scheme year or until a subsequent application for participation is made.

Participation Fees

	PROFESSIONAL STANDARDS COUNCILS FEE	LAW SOCIETY ADMINISTRATION FEE	TOTAL ANNUAL FEE
Per Solicitor Member and Life Member	\$50.00	\$55.00*	\$105.00
Incorporated Legal Practice (entity) Members	\$50.00	Nil	\$50.00

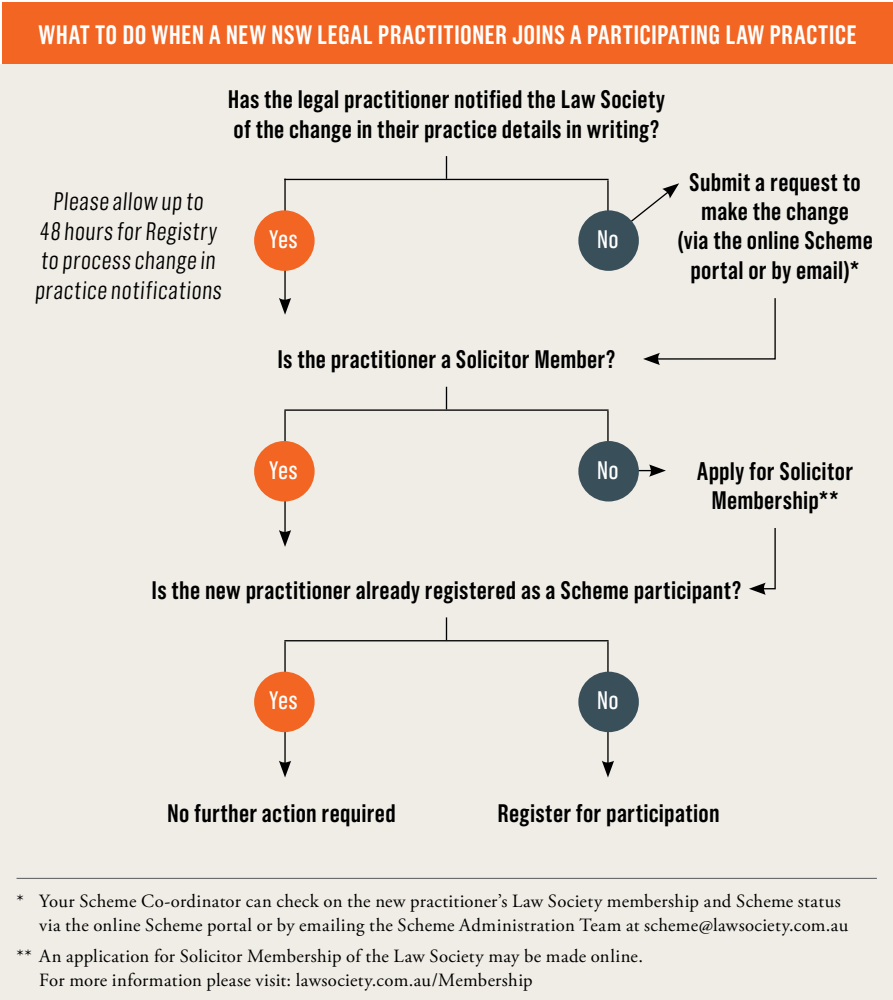
* Inclusive of \$5.00 GST

Applications completed via the online Scheme portal are quick and simple. You will receive a copy of your application and invoice tax receipt via email on completion. Call one of our friendly team members on 9926 0189 if you need help.

Practitioner maintenance during the Scheme year

Participating Law Practices

In order for a law practice to ensure that all employees, partners and/or officers are participants of the Scheme, it must ensure any person who is an employee, partner and/or officer be a member of the Law Society.





COMPLYING WITH THE SCHEME

To maintain our Scheme's accreditation with the Professional Standards Councils, the Law Society must demonstrate that it adequately monitors, regulates and improves the professional standards of its Members.

Disclosure Notification Requirements

The Act and the *Professional Standards Regulation 2024* require Scheme participants to disclose their limited liability status. The following disclosure statement is permitted and prescribed:

**Liability limited by a scheme approved under
professional standards legislation.**

The statement must be printed in a size not less than that of Times New Roman 8 point font.

The following information is sourced directly from The Professional Standards Councils(PSC) website, which indicates that a disclosure statement should appear on all documents given to current or prospective clients by Scheme participants to promote themselves or their occupation.

Disclosure notification should appear on:

- letterhead and letters signed by the law practice or on its behalf
- emails
- fax cover sheets
- Newsletters and other publications
- Your website(s)
- Written advice, plans, drawings, specifications and any other client documents not accompanied by a separate document with the disclosure statement
- Memorandum of fees and invoices unaccompanied by a separate document with the disclosure statement.

The Law Society of New South Wales Professional Standards Scheme Logo

The Law Society has developed its own Professional Standards Scheme logo which you are welcome to use on your letterhead, emails and websites and other law practice documentation whilst participating in the Scheme. Please note that this logo is optional and does not replace the disclosure statement.



Professional Indemnity Insurance Requirements

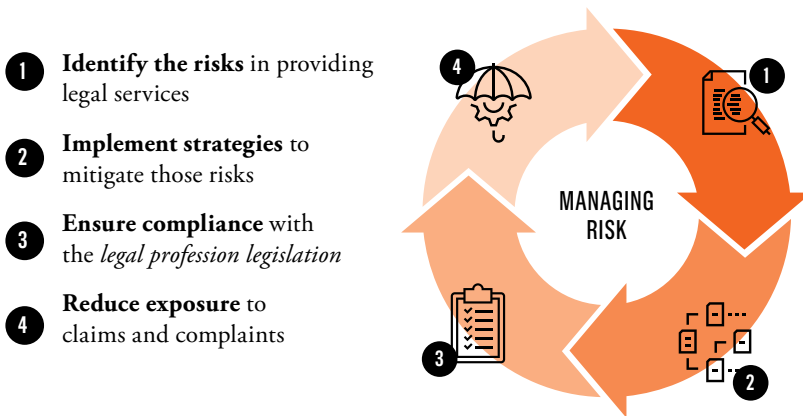
Professional Standards Legislation and the Scheme require all participants to have professional indemnity insurance to an amount no less than the applicable liability cap (monetary ceiling) set out in the Scheme Instrument. This level of insurance must be maintained throughout the Scheme year.

Scheme applicants who seek a cap higher than \$1.5M must provide evidence of top up PII 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;
- e) is a “claims made” policy.

Risk Management Requirements

Scheme participants are expected to demonstrate their commitment to high professional standards by implementing policies and processes within their law practices to:

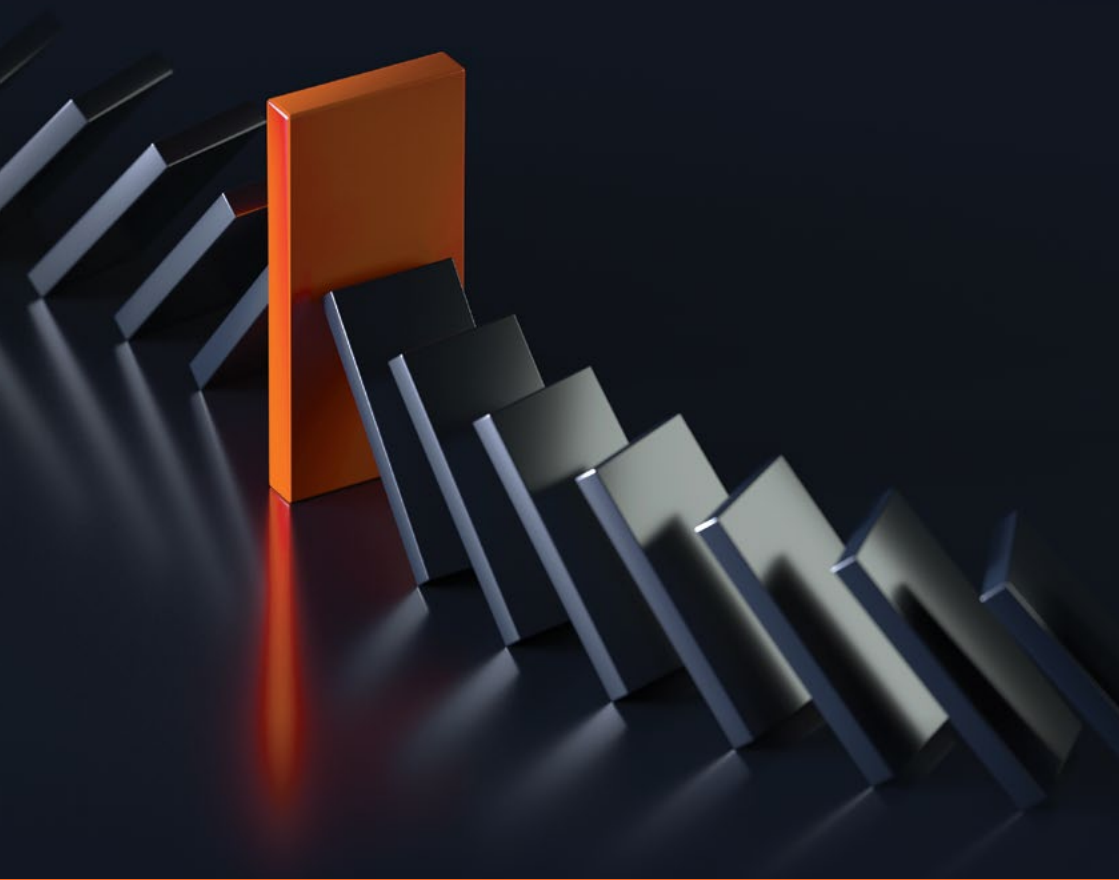


For more information on Scheme compliance requirements, please visit lawsociety.com.au/scheme.

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For further information please visit
lawsociety.com.au/scheme



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