



Seeking a higher limitation of liability

A Solicitor Member or Incorporated Legal Practice Member (ILP) may apply for a higher monetary ceiling (maximum amount of liability) under the Scheme Instrument. The following limitations of liability otherwise apply:

1. 1.5 million AUD: 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 a total annual fee income for the financial year at the Relevant Time up to and including \$10 million.
2. 10 million AUD:
 - a. Participating Members who were at the Relevant Time in a Law Practice consisting of more than 20 Principals; or
 - b. 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.

To apply for a higher monetary ceiling, you must first be covered by or hold a professional indemnity insurance policy commensurate with the limitation of liability you are seeking and provide evidence of this. That policy must:

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

You must have sufficient business assets to cover any claim made up to the amount of the uninsured deductible (or excess) under your policy.

If the Participating 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 not less than 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 ceiling for all cases or for specific clients or matters

Section s.24 (1)(b) of the Act, and clauses 5.1 and 5.2 of the Scheme Instrument confer on the Law Society a discretion on application by a Participating Member, to approve a higher monetary ceiling (maximum amount of liability) than would otherwise apply under the Scheme, either in all cases or in any specified case or class of case.

For law practices wishing to choose a higher maximum amount of liability above their primary Scheme participation limit of \$1.5 million or \$10 million, a principal of the law practice should access the online Scheme portal [here](#), complete an application for Discretionary Higher Cap, and submit this.

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 not less than 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 not less than the higher \$20 million monetary ceiling sought, and any other material the Society requires to properly consider the application.

- A Large 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 \$300 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 not less than the higher \$300 million monetary ceiling sought, and any other material the Society requires to properly consider the application.

At the time of application, the law practice is requested to inform the Law Society how the Discretionary Higher Cap will be communicated to their 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 5.1 and 5.2 referred to above. The Scheme Administration Committee then notifies the applicant law practice of its determination.

Disclaimer

The information in this Discretionary Higher Maximum Amount of Liability document regarding The Law Society of New South Wales Professional Standards Scheme is intended as a general guide only. The information is not intended to constitute professional or legal advice, and you should make your own enquiries and assessment. The Law Society of New South Wales expressly disclaims any and all liability for any loss or damage arising from reliance upon any information in this Discretionary Higher Maximum Amount of Liability document.