

# THE LAW SOCIETY OF NSW (NSW) SCHEME - SUMMARY

## OCCUPATIONAL ASSOCIATION

The Law Society of NSW (NSW) scheme (the scheme) is a scheme prepared by The Law Society of New South Wales (the Law Society). The Law Society is the professional association of solicitors practising in New South Wales and its details are: The Law Society of New South Wales, ACN 000 000 699, 170 Phillip Street, Sydney NSW.

The Law Society is constituted as a company limited by guarantee. It is governed by a council of 21 members elected in accordance with its articles of association and who are representative of the solicitors in New South Wales. The Law Society has approximately 19,000 Solicitor Members and Life Members practising on their own account, or as employees in private practice, government service or corporate service, Approximately 13,000 Solicitor Members and Life Members are private practitioners of whom more than 50% are principals.

Since 1935 the Law Society has been vested with powers pursuant to statute to regulate the practice of solicitors in New South Wales. These powers are comprehensive and, as they currently exist, are set out in the *Legal Profession Act 2004* (NSW) (Legal Profession Act). In particular, the Council of the Law Society is empowered by the Legal Profession Act to grant practising certificates to legal practitioners authorising them to practise as solicitors and to refuse to issue a practising certificate if certain requirements specified in the Legal Profession Act 2004 are not met including, among others, failure to pay a required insurance premium, contribution or levy.

The objects for which the Law Society is established include:

- (1) To consider, originate and promote reform and improvements in the law; to consider proposed alterations, and oppose or support the same; to remedy defects in the administration of justice; to effect improvements in administration or practice. And for the said purposes to petition Parliament or take such other proceedings as may be deemed expedient.
- (2) To represent generally the views of the profession; to preserve and maintain its integrity and status; to suppress dishonourable conduct or practices; to provide for the amicable settlement or adjustment of professional disputes, and to consider and deal with all matters affecting the professional interests of members of the Society.
- (3) To encourage and promote the study of law, and to provide means for securing efficiency and responsibility on the part of those seeking admission to the profession.
- (4) To form and maintain a law library and reading rooms.

- (5) To acquire any rights or privileges which the Society may regard as necessary or convenient for the purposes thereof, or for promoting the interests of the profession.

## **NATURE OF LIABILITY TO BE LIMITED**

The scheme operates for the purpose of improving the occupational standards of solicitors, and to protect the consumers of their services. It also limits the civil liability of persons to whom the scheme applies.

The liability limited by the scheme includes, to the extent permitted by the *Professional Standards Act 1994* (NSW) (Professional Standards Act), all civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by any person to whom the scheme applies in acting in the performance of his or her occupation.

The scheme does not apply to liability for damages arising from any matter to which the Act does not apply, including but not limited to, liability for damages arising from death or personal injury to a person, a breach of trust, fraud or dishonesty. However, the scheme does apply to liability for damages arising out of any negligence or other fault of a solicitor in acting for a client in a personal injury claim.

Liability is limited by reference to the number of principals in the law practice. The lowest limitation of liability is \$1.5 million for a law practice with 1-3 principals. For each additional principal, the limitation of liability increases \$0.5 million for every principal to 19 principals. The limitation of liability for a law practice with 20 to 99 principals is \$10 million, and for law practices with more than 100 principals, \$20 million.

The scheme confers discretionary authority on the Law Society to specify a higher maximum amount of liability than would otherwise apply under the scheme, to a maximum amount of \$50 million in all cases, and a maximum amount of liability between \$50 million and \$200 million in specified cases.

## **STANDARDS OF INSURANCE**

Under the scheme, the person must have the benefit of insurance to an amount at least equal to the amount of the limitation of liability applying to that person at the relevant time which insurance complies with standards set from time to time by the Law Society in accordance with section 27 of the Professional Standards Act.

## **RISK MANAGEMENT**

An array of risk management strategies are provided for Solicitor Members and Life Members of the Law Society which are designed to improve standards and to minimise risk. They are provided through existing structures, are monitored by the Law Society which reports annually on the implementation and effect of strategies.

Solicitor Membership and Life Membership of the Law Society is available to members of the Law Society who are legal practitioners who hold practising

certificates issued by the Law Society. Under the Legal Profession Act, qualifications for admission as a lawyer are determined by an independent statutory body, the Legal Profession Admission Board.

The centrepiece of the Law Society's risk management strategies is the Risk Management Education Program conducted by LawCover Pty Limited. The program is designed to assist practitioners in devising appropriate risk management and practice management systems delivered through a course program covering engagement training, managing legal issues, communication skills, and quality assurance and risk management.

A Risk Management Consultation Program is conducted which identifies practitioners requiring risk management assistance and assists practitioners to introduce effective risk management initiatives.

Solicitor Members are required to undergo continuing education on an annual basis to retain certification to practise. The types of allowable activities include: education programs, seminars, workshops, discussion groups, research and presentations, Practical Legal Training Programs, Risk Management and Practice Management Seminars. Presentations are provided and a program concerning quality management in legal practice is available.

Other risk management activities include: a range of Guides to Good Practice, Client Care Guidelines, Schemes of Accreditation, Field Counselling, Specialist publications, and the Buddy Network designed to provide support for practitioners in small legal practices.

## **CLAIMS MONITORING**

The Law Society will monitor claims made against Solicitor Members and Life Members for the purpose of developing strategies to improve standards and to minimise claims. The Law Society will report annually on claims monitoring and strategies.

## **COMPLAINTS AND DISCIPLINE MATTERS**

Solicitor Members and Life Members to whom the scheme applies are subject to the complaints and disciplinary system operating under Chapter 4 of the Legal Profession Act. Solicitor Members and Life Members of the occupational association must comply with the Revised Professional Conduct and Practice Rules made pursuant to sections 703 and 704 of the Legal Profession Act.

## **SCHEME ADMINISTRATION**

Responsibility for administering the scheme and ensuring that it complies with the requirements of the Professional Standards Act 1994 (NSW) and of the Professional Standards Council rests with the Law Society and senior officers of the Law Society.

## **CONTINUATION OF SCHEME COVERAGE**

Former Solicitor Members, Life Members or Other Persons, will continue to be protected under the scheme for civil liability arising from their acts, errors or omissions occurring during the period in which they were Solicitor Members, Life Members or Other Persons as defined provided they meet the requirements of the scheme in respect of maintaining sufficient professional indemnity insurance to the amount of the limitation of liability applicable to the Solicitor Member, Life Member or Other Person at the relevant time.

## **DURATION OF THE SCHEME**

It is proposed that the scheme will operate for 5 years.