

# **LAW SOCIETY OF NSW (NSW) SCHEME**

*Professional Standards Act 1994 (NSW)*

## **PREAMBLE**

- A. The Law Society of New South Wales (the Law Society) is an occupational association.
- B. The Law Society has made an application to the Professional Standards Council, appointed under the *Professional Standards Act 1994 (NSW)* (the Act), for a scheme under the Act.
- C. The scheme is prepared by the Law Society for the purposes of limiting occupational liability to the extent to which such liability may be limited under the Act.
- D. The scheme propounded by the Law Society is to apply to Solicitor Members and Life Members and Other Persons as defined in ss.18, 19, 20 and 20A of the Act.
- E. The Law Society has furnished the Council with a detailed list of the risk management strategies intended to be implemented in respect of its members and the means by which those strategies are intended to be implemented.
- F. The scheme is intended to remain in force for five (5) years from its commencement unless prior to that time it is revoked, its operation ceases or it is extended pursuant to s32 of the Act.

## **THE LAW SOCIETY OF NSW (NSW) SCHEME**

### **1. Occupational association**

- 1.1 The Law Society of NSW (NSW) Scheme (the scheme) is a scheme under the *Professional Standards Act 1994 (NSW)* (the Act) prepared by the Law Society of New South Wales (the Law Society) whose business address is 170 Phillip Street Sydney NSW.

### **2. Persons to Whom the scheme Applies<sup>1</sup>**

- 2.1 The scheme applies to Solicitor Members and Life Members as defined in clause 2.2 and Other Persons as defined in clause 2.3 of the scheme. The scheme also applies to persons who were Solicitor Members, Life Members and Other Persons so defined as set out in clause 2.4.
- 2.2 All Solicitor Members and Life Members of the Law Society who hold a current practising certificate issued by the Law Society who have not been exempted under clause 2.5 of the scheme, and who have the benefit of an insurance policy under which the amount payable in respect of occupational liability is not less than the maximum amount of liability applicable 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 Act.

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<sup>1</sup> Sections 18 and 19 of the Act provide that if the scheme applies to a body corporate, the scheme also applies to each officer of the body corporate and if the scheme applies to a person, the scheme also applies to each partner of the person, and if the scheme applies to a person the scheme also applies to each employee of the person, provided that if such officer of the corporation or partner of the person or employee of the person is entitled to be a member of the same occupational association, such officer, partner or employee is a member of the occupational association. Section 20 provides that the scheme may also apply to other persons as specified in that section. Section 20A extends the limitation of liability of persons to whom the scheme applies by virtue of sections 18 to 20.

- 2.3 Persons to whom the scheme applies by virtue of sections 18, 19, 20 and 20A of the Act.
- 2.4 Persons who were Solicitor Members, Life Members or Other Persons as defined in clauses 2.2 and 2.3 for civil liability arising from acts, errors or omissions occurring during the period in which they were Solicitor Members, Life Members or Other Persons and to whom a scheme applied at that time.
- 2.5 A person may, on application, be exempted from the scheme by the Law Society. This clause does not apply to Other Persons as defined in clause 2.3 of the scheme.

### 3. Limitation of liability

3.1 If a person, who was at the time of the act or omission giving rise to occupational liability<sup>2</sup> a member of a class described in clause 3.2 against whom a proceeding relating to occupational liability is brought, is able to satisfy the court that such member has the benefit of an insurance policy or policies:

- (a) insuring such member against that occupational liability, and
- (b) under which the amount payable in respect of the occupational liability relating to the cause of action (including any amount payable by way of excess under or in relation to the policy) is not less than the amount of the monetary ceiling (maximum amount of liability) specified in clause 3.2 hereof as applying to such members at the time at which the act or omission giving rise to the cause of action occurred,

the person is not liable in damages<sup>3</sup> in relation to that cause of action above the amount so specified.

3.2 The monetary ceiling (maximum amount of liability) required for the purposes of limitation of liability under this scheme at the time at which the act or omission giving rise to the cause of action occurred is to be determined according to the following table:

<b>Class</b>	<b>Description</b>	<b>Monetary ceiling (maximum amount of liability)</b>
1	Persons in a law practice with 1, 2 or 3 principals	\$ 1.5 million
2	Persons in a law practice having 4 principals	\$ 2 million
3	Persons in a law practice having 5 principals	\$ 2.5 million

<sup>2</sup> Occupational liability is defined in s.4(1) of the Act to mean '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 his or her occupation. However, s.5(1) of the Act provides that the Act does not apply to liability for damages arising from the death or personal injury to a person, a breach of trust or fraud or dishonesty. Section 5(2) of the Act also provides that the Act does not apply to liability, which may be the subject of proceedings under Part 13 or 14 of the *Real Property Act 1900* (NSW). Section 5(3) of the Act provides Subsection (1)(a) does not operate to exclude from the operation of this Act liability for damages arising out of any negligence or other fault of a legal practitioner in acting for a client in a personal injury claim.

<sup>3</sup> Damages as defined in section 4 of the Act means damages awarded in respect of a claim or counter-claim or by way of set-off and includes interest payable in respect of an amount awarded as damages; and legal costs and expenses ordered to be paid in connection with an award of damages (other than legal costs and expenses incurred in enforcing a judgment or incurred on an appeal made by a defendant).

4	Persons in a law practice having 6 principals	\$ 3 million
5	Persons in a law practice having 7 principals	\$ 3.5 million
6	Persons in a law practice having 8 principals	\$4 million
7	Persons in a law practice having 9 principals	\$ 4.5 million
8	Persons in a law practice having 10 principals	\$5 million
9	Persons in a law practice having 11 principals	\$ 5.5 million
10	Persons in a law practice having 12 principals	\$6 million
11	Persons in a law practice having 13 principals	\$ 6.5 million
12	Persons in a law practice having 14 principals	\$7 million
13	Persons in a law practice having 15 principals	\$ 7.5 million
14	Persons in a law practice having 16 principals	\$8 million
15	Persons in a law practice having 17 principals	\$ 8.5 million
16	Persons in a law practice having 18 principals	\$9 million
17	Persons in a law practice having 19 principals	\$ 9.5 million
18	Persons in a law practice having 20 to 99 principals	\$10 million
19	Persons in a law practice having 100 or more principals	\$20 million
20	Persons who have applied to the Law Society and the Law Society has exercised its discretion pursuant to clause 4.1 hereof to specify in relation to that person a higher monetary ceiling (maximum amount of liability) than would otherwise apply under this scheme in relation to that person	Such amount not exceeding \$50 million as may be specified by the Law Society pursuant to the conferral of discretionary authority pursuant to clause 4.1 hereof to apply to such person.
21	Persons who have applied to the Law Society and the Law Society has exercised its discretion pursuant to clause 4.2 hereof to specify in relation to that person a higher monetary ceiling (maximum amount of liability) than would otherwise apply under this scheme in relation to that person	Such amount greater than \$50 million but not exceeding \$200 million as may be specified by the Law Society pursuant to the conferral of discretionary authority pursuant to clause 4.2 hereof to apply to such person.

3.3 This scheme limits the occupational liability in respect of a cause of action founded on an act or omission occurring during the period when the scheme was in force of any person to whom the scheme applied at the time the act or omission occurred.

3.4 Relevant definitions for the purposes of this clause are as follows:

**“law practice”** has the same meaning as it does in the *Legal Profession Act 2004* (NSW)

**“principal”** has the same meaning as it does in the *Legal Profession Act 2004* (NSW)

**“Australian practising certificate”** has the same meaning as it does in the *Legal Profession Act 2004* (NSW)

3.5 This scheme only affects the liability for damages arising from a single cause of action to the extent to which the liability results in damages exceeding \$1,500,000.

#### **4 Conferral of discretionary authority**

4.1 Pursuant to s24 of the Act, this scheme confers on the Law Society a discretionary authority to specify, on application by a person to whom the scheme applies and who, at the time of the application falls within classes 1 to 19 of clause 3.2 of this scheme, a monetary ceiling (maximum amount of liability) in all cases not exceeding \$ 50 million.

4.2 Pursuant to s24 of the Act, this scheme confers on the Law Society a discretionary authority to specify, on application by a person to whom the scheme applies and who, at the time of the application falls within classes 1 to 20 of clause 3.2 of this scheme, a monetary ceiling (maximum amount of liability) in specified cases greater than \$50million but not exceeding \$200 million.

#### **5 Commencement**

5.1 This scheme commences on 22 November 2006.

#### **6 Duration**

6.1 This scheme will be in force for a period of 5 years from the date of commencement.