



# Information for solicitors who are facing a claim

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## How will Lawcover manage a claim against me?

Our claims management procedures focus on the early identification of issues in dispute and on determining at the earliest possible time whether or not a claim is reasonably defensible.

### **Our philosophy is simple:**

- Rigorous defence of unmeritorious claims
- Quick and fair compensation to consumers of legal services for legitimate claims

Please refer to the Professional Indemnity Insurance policy responding to the claim as this sets out the rights and obligations of the solicitor and of Lawcover and provides the framework for the management of the claim.

## Why does Lawcover focus on the early resolution of a claim?

Our experience indicates that claims which are resolved promptly generally result in lower overall financial costs. Defence costs incurred in protracted litigated or unlitigated claims can have a direct impact on your premiums.

Protracted disputes can result in “hidden” costs such as impacts on your professional reputation and personal life and your time and attention. Prompt resolution of a claim helps to lessen the impact on you of these “hidden costs”, particularly if the claim can be resolved without litigation and on confidential terms.

## The effect of a claim

A professional negligence claim against a law practice can distract partners and staff. It can consume time, lower morale and dent confidence. A claim can also cause a great deal of emotional distress. While Lawcover’s claims solicitors and panel lawyers are not trained counsellors, we can assist by referring you to the Lawyers Assistance Program ([lap.com.au](http://lap.com.au)) and LawCare, both initiatives of the Law Society of New South Wales.

## Will I have a say in how the claim is managed?

Yes. If the claim is litigated, we will refer the matter to one of our panel lawyers who will consult with you about the claim. If it is unlitigated, one of our claims solicitors will discuss it with you before deciding how to deal with it.

In notifying a claim under the Lawcover PII policy you agree that Lawcover will have the conduct of the claim on your behalf including its investigation, defence, avoidance, reduction or settlement. Decisions about whether claims should be settled are made in consultation with you. The process for deciding whether to settle a claim is set out in your insurance policy. Please refer to the policy wording.

### Will I have to pay an excess?

If your policy has an indemnity only excess, you will only have to pay the excess if there is a settlement, order or verdict requiring a payment by you to the claimant. This will include a payment of the claimant's costs.

With our excess options, you will know from the start of the year exactly what your excess will be for any claims notified that year, irrespective of how the law practice was constituted at the date of the underlying events. Some larger firms have an excess which is payable towards defence costs, not just claim payments.

To confirm which excess option you selected, simply check the Schedule to your insurance policy or telephone our Insurance Services team on 1800 650 748.

### Can I do anything to help Lawcover resolve the claim against me?

The most important thing for you to do at the outset is notify us of the claim as soon as you become aware of it, whether or not court proceedings have commenced. Of course, early resolution can only be achieved with the cooperation of all parties. We will seek your views about matters such as requests for particulars, strategy and invitations to the claimant to discuss the issues in dispute on a "without prejudice" basis. We are always prepared to consider your views about how a claim should be managed and defended or settled. Feel free to raise any concerns or suggestions at any time.

### How does Lawcover resolve claims?

For some years, we have emphasised the use of alternative dispute resolution (ADR) to achieve early resolution of claims. For claims which are considered to be lacking in merit, invitations to claimants to participate in one or

more of these processes are generally made on the clear understanding that they should not expect an offer of monetary compensation to be made. The range of ADR techniques and processes used in the management of claims against solicitors to maximise the prospects of an early outcome includes the following:

#### Issues Conferences

As soon as possible after the claim is notified, we may invite the parties and/or their legal representatives to discuss the factual and legal issues and, if appropriate, to identify options for settlement. The primary aim of issues conferences is to reach a mutual understanding of the nature of the claim and the defence to it. When the issues are clear, claims may be resolved at the issues conference stage.

#### Negotiation

We always try to negotiate an early resolution by talking to the parties or those representing them at the earliest opportunity. Direct negotiation is usually the most cost-effective means of resolving claims.

#### Mediation

This is a flexible process whereby a neutral person assists the parties in exploring disputed issues and identifying options for resolving claims in whole or in part. The parties work together to select the most appropriate mediator from a list of experienced mediators.

#### Adjudication

If all other avenues for resolution have been exhausted, we will defend your claim at hearing.

For more information about Lawcover, please visit our website at [lawcover.com.au](http://lawcover.com.au) or contact us on (02) 9264 8855