

# Solicitor consultants: *Have you considered your insurance cover?*



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**J**ust as the term ‘consultant’ is not defined under the *Uniform Law*, it is also not defined for insurance purposes. If you are a consultant to a law practice, then for insurance purposes the critical question is: are you an employee or an independent contractor? The answer to that question will determine whether you are covered by the law practice’s insurance.

## Under whose professional indemnity insurance are you covered?

Principals and employees of a law practice are covered by the practice’s Professional Indemnity Insurance (‘**PII**’) policy. Lawcover PII policy 2019/20, cl 44 (d) defines an employee as ‘a person who, at any time, is or was:

- i. employed or similarly engaged in law practice (such as a solicitor, lawyer, articled clerk, paralegal, overseas qualified legal practitioner, special counsel, office or clerical staff); or
- ii. seconded to work in the law practice or seconded by the law practice to work elsewhere;
- iii. a lawyer engaged by the law practice as a locum on a short-term or fixed-term basis;

but does not mean any independent contractor who provides legal or other services (such as auditing, advisory or consulting) to the law practice or to its clients’.

While it is usually clear whether a person is employed by a law practice or is an independent contractor, there are some consultancy and other contractual arrangements between individuals and law practices which may be more difficult to categorise.

## Not sure if you are an employee for PII purposes?

It is important to clarify the position as you may need to hold separate insurance.

The law practice should complete and submit to Lawcover the Lawcover Consultant Checklist (available for download at: [lawcover.com.au/wp-content/uploads/2019/11/2019\\_Con-sultant-Checklist.pdf](http://lawcover.com.au/wp-content/uploads/2019/11/2019_Con-sultant-Checklist.pdf)). There is no single determining factor that will indicate whether a person is an employee or not. The checklist refers to a number of determining factors and asks key questions which relate to you and the work you do, including:

- **supervision** (e.g. Does the law practice control your relationship with the clients or your workflow?)

- **remuneration** (e.g. Does the law practice pay or give you leave entitlements such as annual leave, sick leave, long service leave etc?)
- **use of resources and property** (e.g. Do you use the law practice’s resources when providing services to clients of the law practice?)
- **engagement of services** (e.g. Do you have an exclusive arrangement with the law practice?)
- **client management** (e.g. When the law practice bills a client for the person’s work, is your work included as part of the law practice’s costs?)

Lawcover will review the completed checklist and advise the law practice of whether or not you are an employee for the purposes of the PII policy. The following scenarios used in the regulatory compliance article opposite, can also illustrate how insurance cover would be applied in practice.

### Scenario 1

Sally has been asked to work as a ‘consultant’ to ABC law practice. Sally is a sole practitioner and therefore may be engaged by ABC law practice as an independent contractor. Effectively, ABC law practice will become a client of her practice. In these circumstances, Sally will need to be covered under her own PII policy as she will not be covered by the PII policy of ABC law practice.

### Scenario 2

Sam has been asked to work as a ‘consultant’ to DEF law practice on a short, fixed-term basis. During that fixed term, Sam would be working exclusively for DEF law practice, within its litigation team, and his work would be billed to clients as part of DEF law practice’s costs.

As Sam does not hold a principal’s practising certificate, he would need to become an employee of DEF law practice, albeit on a short, fixed-term basis. If his status as an employee of DEF law practice is confirmed by Lawcover following completion of the Lawcover Consultant Checklist, Sam will be covered by the PII policy of DEF law practice.

## What should you do if you are not an employee?

If it is determined that you are not an employee, you will need to obtain your own PII insurance, which of course requires a principal’s practising certificate.

For more information, contact Lawcover Insurance Services – 1800 650 748. **LSJ**