



About You



What you can expect from Lawcover

Our aim is to provide the highest possible standard of professional indemnity services to insured law practices at a price that is both sustainable and affordable.

Our professional services fall into three categories:

- **Claims Management**
 - Through our highly experienced and skilled team of claims solicitors, often working in conjunction with an expert panel of external lawyers
- **Practice Support Services**
 - Through our dedicated team of legal experts and advisers in risk management and claims prevention strategies
- **Insurance Services and Underwriting**
 - Through our team of advisers who aim to ensure that professional indemnity policy terms meet your needs as quickly and efficiently as possible

As a part of the legal profession, Lawcover will always put the interests of the profession first.

Claims Management

Our Claims Management team consists of claims solicitors who have extensive experience in legal professional indemnity claims over many years.

We understand the difficulties and stresses that can occur when a solicitor is subjected to a complaint or claim for damages. If a claim, or potential claim, is made against you a member of our claims team will be assigned to work with you to achieve the best outcome possible.

Lawcover is fortunate to have an expert panel of legal advisers across Australia whom we may instruct to act on your behalf if court proceedings are issued. The claims solicitor will work closely with you and provide direction to the panel solicitor to ensure coordination amongst all parties.

Sometimes litigation can have long periods of inactivity between proceedings; in such cases you are always welcome to contact your claims solicitor and seek an update. We will keep you informed of events as they arise.

What and when to notify

When you become aware of an incident or interaction with a client which has the potential to result in a claim for damages or loss, or where an assertion is made that there is a departure from the requisite duty of care, you are advised to immediately notify Lawcover.

You can do this online by going to our website at **lawcover.com.au** and completing the online form or by using the Claim Notification Form downloaded from our website.

When notifying a claim or circumstance which may give rise to a claim and you are unsure or have any questions, contact us on (02) 9264 8855 and ask to speak to one of the claims solicitors.

Claims Advice Service

Our claims solicitors are available to assist insured solicitors deal with potential claims, to avoid them turning into claims. They can also advise on whether to notify circumstances that might lead to a claim. You can rely on our team to provide sound advice on the steps to take when a claim is made.

Practice Support Services

We are committed to assisting solicitors improve their practice processes and procedures because the evidence shows that, the more profitable and effectively managed a law practice is, the less likely it is that a professional negligence claim will arise.

A comprehensive range of material and a wide variety of opportunities exist for members of the legal profession to share helpful ideas, experiences and information through Lawcover facilitated events.

Lawcover Risk Management can make a difference

For more than 20 years, Lawcover has collected detailed causation, liability and quantum data relating to claims and notification of potential claims from insured law practices. We regularly commission actuarial consultants to provide analysis of the impact and effectiveness of our Risk Management Education Program (RMEP) and claims prevention strategies. The results are compelling.

The findings of the research indicate that participation by law practices in our RMEP reduces the incidence of claims by as much as 15% and, where claims do occur, leads to a reduction in the size of claims when compared with practices which have not participated in the program.

Similarly, law practices which participate in Practice Advisory Services activity indicate a dramatic fall in propensity for claims compared with those who have not participated.

Risk Management Education Program activities*

The range of Lawcover activities include:

- Risk Management Workshops
 - For Principals
 - For Employees
- Risk Briefings
- The Annual One Day Claims Prevention Seminar
- Claims Prevention Roadshows
- Short Minutes videos
- Risk on Air podcasts
- Risk Online e-learning
- Webinars

*Refer to the *Risk Management Education Program* section of this booklet or visit our website

Insurance Services and Underwriting

Our Insurance Services and Underwriting teams are available to discuss all aspects of a law practice's Professional Indemnity Insurance (PII) policy, including how premiums have been calculated, how claims loadings or discounts can affect the level of premium and the extent of cover provided by the PII policy.

They can also provide help and assistance about Lawcover's Top Up insurance, but we are unable to provide advice on the appropriate level of cover for you. Please refer to the enclosed "Top Up Insurance" section for further information.

Our Insurance Services and Underwriting teams are ready to assist you with your annual renewal, or with any changes you need to make to your PII policy, at any point during the year.

Other useful information

Enclosed in this booklet, you will find useful information about:

New law practices

- Information for new law practices

Claims

- Information for solicitors who think a claim might be made against them
- Information for solicitors who are facing a claim

Risk management and claims prevention

- Practice Support Services – Risk Management Education Program
- Checklists for your law practice

General

- Lawcover's Complaints Handling Procedure
- Top Up insurance

You can depend on Lawcover.

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



Information for new law practices

All legal practitioners practising as principals of a law practice (unsupervised) in NSW are required to hold or be covered by Professional Indemnity Insurance (PII) pursuant to section 45 of the *Legal Profession Uniform Law (NSW)*. Insurable solicitors in the ACT are required to hold an approved professional indemnity policy under section 311 of the *Legal Profession Act 2006 (ACT)* and Northern Territory Solicitors are required to obtain approved professional indemnity insurance under section 376 of the *Legal Profession Act 2006 (NT)*.

Lawcover is responsible for arranging PII on behalf of NSW solicitors and is an approved professional indemnity insurer for ACT and NT solicitors. Lawcover PII provides law practices with cover up to \$2m per claim under a policy underwritten by Lawcover Insurance. All new law practices in NSW, ACT and the NT must take out a PII policy.

Lawcover determines the premium, issues your insurance policy, manages claims and provides practice support services. The Lawcover PII policy sets out the extent of cover and contains certain conditions and exclusions. A copy is sent to each law practice. A sample can also be viewed on our website at lawcover.com.au

How to set up a new law practice

1. In NSW, first-time principals of new law practices must qualify for a principal's practising certificate and inform the Law Society of New South Wales that they wish to apply for a variation of their practising certificate to practice as a principal of a law practice (unsupervised) and provide details of the proposed new law practice.
2. The Law Society will then advise Lawcover of the law practice's details.
3. Lawcover will contact the new law practice directly to organise its insurance arrangements based on whether it is a 'new law practice' or a 'reconstitution'.
4. Practitioners in other states and Territories should contact their local Law Society.

What is a new law practice?

New law practices require a new insurance policy and need to pay a premium. Lawcover defines a 'new law practice' as:

- A new sole practice that is not a reconstitution of an existing practice
- A new partnership that is not a reconstitution of an existing practice
- A new incorporated legal practice that is not a reconstitution of an existing practice

If the new law practice is not a continuation of an existing practice that has paid its premium (see "law practices with a prior practice" below), then it is a new law practice. The insurance year is effective from 1 July to 30 June. Law practices entering into sole practice or partnership after 1 July are charged a premium based on their estimated gross fee income for the pro-rated period.

Once the premium is paid, Lawcover will inform the relevant Law Society, who will then issue the requisite practising certificate.

Law practices with a prior practice

The Lawcover PII policy covers the former partners and employees of any prior practice forming part of any new law practice applying for insurance.

If your law practice acquires or takes on the majority of principals, legal staff, client files, assets or liabilities of a law practice, or holds itself out as a successor to another law practice, then Lawcover will likely consider that the other law practice is a 'prior practice' of your law practice.

Factors Lawcover will consider in determining what constitutes a prior practice are contained in the insurance policy.

If a new law practice has a prior practice, it:

- Can affect the premium payable
- Will result in the insurance policy responding to claims for that prior practice
- Will affect its future premium calculations by taking into account that prior practice's premium and claims history

The effects of this are:

- If the prior practice has been operating for more than a five-year period, you may be entitled to a no-claim or low-claim bonus, subject to claims history
- If the prior practice has claims, there may be a claims loading on the premium
- Continuity of cover under the insurance policy will be maintained for all the former partners and employees of the prior practice

Please see "Considerations when acquiring an existing law practice" following.

You may not have an additional premium to pay in the event that the prior practice to which you succeed has already paid its premium for that insurance year.

No-claim discount

Even if you do not have a prior practice you may, on a discretionary basis, be granted a no-claim discount. Lawcover may grant you a no-claim discount if:

- You have continuously been in practice as a principal for five years
- You and all other partners within the law practice(s) in which you were or are still a partner did not have any claims or notify any circumstances that, due to the potential for a claim, required a claims provision to be made by Lawcover or any previous PII provider

Considerations when acquiring an existing law practice

If you are considering whether to take on (ie: acquire) the majority of client files, legal staff or principals of an existing law practice, the claims experience of that law practice will very likely become the claims history of your law practice upon acquisition. So before acquiring a law practice, or before bringing a new lawyer into your law practice from outside your law practice, enquire into the professional standing and performance of that law practice or lawyer.

Lawcover provides a helpful guide to assist principals in conducting due diligence when considering whether to merge with or acquire a law practice. The *Due Diligence Guide for Principals* is accessible at our website:

lawcover.com.au

For more information about Lawcover Professional Indemnity Insurance, please visit our website at lawcover.com.au or contact us on (02) 9264 8855.



Information for solicitors who think a claim might be made against them

A professional negligence claim against a law practice distracts partners and solicitors from attending to the work of the law practice.

Dealing with a claim consumes time and saps energy. It may raise questions about the competence of the solicitor involved and about the law practice in general. It lowers morale and dents confidence.

Smart law practices ensure they have risk management systems in place to help avoid claims being made. Lawcover can help with this. But what should you do if, despite your risk management systems, a claim is made or threatened against your law practice?

1. Don't freeze

Many actual or potential claims can be managed successfully if they are dealt with quickly. Deal with the claim immediately. It may save you time and anxiety.

2. Seek help

It is not always possible or prudent to manage yourself out of every problem. Sometimes it is important to have an independent view. As soon as you become aware of an actual or potential claim, call Lawcover on (02) 9264 8855 and ask to speak to a claims solicitor. We will be able to give you advice about issues such as whether you can continue acting for the client or should immediately refer them to another solicitor.

We may also be able to suggest ways of mitigating or avoiding a loss to your client.

A delay in notifying a claim can breach your policy and result in you facing another claim if the delay has prejudiced the conduct of the claim. Only you can notify Lawcover of a potential or actual claim against your law practice, and the notification must be in writing.

No claims loadings on notifications

Lawcover encourages the early notification of circumstances by law practices. This allows for early intervention which, in our experience, results in an earlier and more cost-effective resolution and potentially a more favourable claims history for the law practice. Circumstances that are not yet claims are never taken into account when calculating premiums. It is essential that law practices do not avoid notifying claims or circumstances through fear of gaining a claims loading.

3. Consider what can be done now to rectify the situation and do it

Agonising over a past mistake or error of judgment without doing anything positive to deal with it only make things worse. Quick action to rectify the problem will usually improve the situation. If you have made a mistake, or think you have, and want to know whether there is anything you or your client can do to try to avoid a loss being suffered, Lawcover's claims solicitors may be able to provide you with advice based on their experience in similar matters. They can often guide you and your client towards suitable counsel or experts to help you make the right decision in difficult matters.

You will not be charged for any assistance that the claims solicitors are able to provide you.

4. Learn from the claim or 'near miss'

It is important to learn positively from an unpleasant situation in order to prevent it reoccurring. If the systems for processing work in your law practice are not reviewed and/or amended following an actual or potential claim, then a further claim may eventuate.

Take time to consider:

- Your client communication procedures
- Your complaint-handling procedures
- Your system for checking documents
- Your system for the regular review of all open files
- Your system for recording and reviewing critical dates
- Your engagement procedures, including the management of client expectations
- Your method of conducting client satisfaction surveys
- Your method of supervising the performance of partners and staff
- Your system for ensuring that all staff take leave each year
- The training and experience you and your staff have in effective practice management and implementing risk management strategies

5. Use Lawcover's services

Lawcover can assist you with all matters relating to claims or potential claims and information on how to avoid them and/or manage them when they occur. Many of Lawcover's services are available without additional cost to our insured solicitors.

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



Information for solicitors who are facing a claim

Our experience indicates that claims which are resolved promptly generally result in a lower overall financial cost.

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 PII policy when 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. A claim can also cause a great deal of emotional distress. While Lawcover's claims solicitors and panel lawyers are not trained counsellors, you can approach your local Law Society for assistance.

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 Conference

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 or contact us on (02) 9264 8855.



Risk Management Education Program

Since the inception of our education program in 1995, thousands of lawyers, legal administrative support staff and new law graduates have attended Lawcover's Risk Management Education Program.

The Risk Management Education Program (RMEP) draws from extensive resources including our own claims data, studies, external panel lawyer reviews and extensive engagement with the profession. Lawcover's Risk Management Workshops equip lawyers with practice management advice, checklists, case studies and scenarios through an interactive adult learning format. Sharing and learning from each others' experience is a key highlight of the program. The Risk Management Workshops comprise:

Principals Workshops

These workshops focus on the core practice issues of how to provide more effective service to your clients, develop strong client relationships and identify and implement improved systems in your practice.

Workshop 1 | All about the Client

Failure to effectively manage the solicitor-client relationship can lead to client dissatisfaction, reduced fee income and, ultimately, a professional negligence claim. In this workshop practitioners examine the important issues surrounding the initial engagement with a client and the ongoing management of that relationship. Successful client engagement management will place your practice in a stronger position to develop more client work, in a more productive and rewarding practice environment.

Aspects covered include:

- Categorising risk in practice
- Setting up the client engagement – when are you 'on risk'?
- Client selection
- Who is the client?
- Client identification checks
- Conflict checks

Workshop 2 | All about the Matter

Getting the fundamentals of the practice right is crucial for creating systems, efficiencies and better client and matter management. Managing the legal issues effectively is vital for ongoing and successful solicitor/client relationships. In this workshop practitioners examine the technical aspect of their work.

Aspects covered include:

- Practice policies and procedures
- Analysing the legal issues
- Keeping the matter on track by developing a strategy and working plan
- Using Edward de Bono's 'The Six Thinking Hats', to analyse your client's problem
- Risks of reliance on counsel

Workshop 3 | All about the Communication

Almost one in every two professional indemnity insurance claims arises from a breakdown in communication. However, practitioners generally view themselves as being skilled communicators.

Developing and improving these communication skills is vital to strengthening the solicitor-client relationship.

Aspects covered include:

- Changing language and speed of communications and its pressures on legal practice
- Lawyers as communicators
- Clients as communicators
- The influence of practice styles

Workshop 4 | All about the Business

There is a direct link between professional risk and business management.

Aspects covered include:

- Overview of the current business management of the legal profession
- The link between professional negligence risk and business management
- Common business characteristics of claims prone practices
- Reviewing and assessing key structural and operational risks within your practice

Workshop 5 | All about the Dollar

There is a direct link between professional risk and financial management.

Aspects covered include:

- Overview of the current financial management of the legal profession
- The link between professional negligence risk and financial management
- Common financial characteristics of claims-prone practices
- Costs assessment

Employee Workshops

Solicitors Workshop

Designed specifically for employed solicitors and experienced paralegals, the practical 1/2-day course examines the key components of the principals' three-module program.

The objectives of the course are to analyse the roles which solicitors play in managing the risks involved in legal practice and to reduce the incidence of professional indemnity insurance claims made against solicitors.

Issues addressed include:

- The causal symptoms and contributory factors of claims
- The effect of claims – cost to profession – cost to individuals
- Identifying the main areas of risk in law practices
- Managing the engagement and legal issues and effective communication skills

Support Staff Workshop

This special 1/2-day course examines the role of support staff and the importance of that role in relation to minimising the incidence of claims-prone situations arising.

Fundamental areas of responsibility discussed include dealing with:

- The solicitors with whom they work
- The law practice's clients
- The maintenance of files
- Document creation, checking and transmission
- Office systems and effective management

Other issues discussed include:

- Confidentiality
- The importance of file notes
- Keeping client details
- Producing/checking documents
- Identifying problem areas

Visit lawcover.com.au to learn about our other RMEP activities:

Risk Briefings

- Including
 - Traps in Costs
 - Traps in Family Law
 - Traps in Litigation
 - Traps in Property: Conveyancing
 - Traps in Property: Mortgages and Leases
 - Traps in Sale and Purchase of Business
 - Traps in Wills and Estates

Annual One-Day Claims Prevention Seminar

Claim Prevention Roadshows

Short Minutes videos

Risk on Air podcasts

Risk Online e-learning

Webinars

For more information about Lawcover Practice Support Services, please visit our website at lawcover.com.au or contact us on (02) 9286 8877.



Top Up insurance

Lawcover claims data shows that while commercial and property lawyers are most at risk of large claims, all areas of legal practice have exposure.

Over the last 10 years, two thirds of large claims* have involved legal advice and execution of property, mortgage, lending and commercial transactions..

The following scenarios can increase your risk of a large claim:

A volatile property market

In a volatile property market claims against conveyancing lawyers, for example, may increase where there are delays or barriers to completion, problems with financing and fewer purchasers.

Acting for entities representing groups

Claims made by high value groups such as superannuation funds, trustees, owners' corporations, class actions etc. increase the risk of high claims costs due to the combined value of claims and extent of associated legal costs.

High net worth clients

Allegations of negligent tax advice, drafting of binding financial agreements, deeds outlining the ownership or distribution of income from family assets and the settlement of family disputes may result in high quantum claims.

Factors to consider when assessing your level of cover

- The primary policy limit of \$2 million applies to all claims arising from one error, or a series of related errors
- The \$2 million limit under your primary policy includes your legal defence costs

- Some clients, such as councils or government agencies, may require you to hold additional professional indemnity cover
- Purchasing Top Up insurance will provide additional protection for your clients as well as your law practice.

Lawcover is unique – it is Australia's only legal profession-owned and APRA regulated professional indemnity insurer

Our vision is to provide enduring professional indemnity insurance protection to law practices.

Your claim will be handled with efficiency, expertise and empathy

We understand that your professional reputation is paramount, and that a professional negligence claim can be a stressful experience. All Lawcover claims are handled by highly experienced lawyers who are specialists in lawyers' professional responsibilities.

Pricing that is affordable and competitive and run off cover for eligible practices at no cost

Terms and conditions apply - contact us for further details. Law practices that have held Top Up insurance with Lawcover continuously for 3 years may be eligible for free run off cover, to a maximum of \$5 million, extending for 5 years after ceasing practice.

*Claims with a total expected cost greater than or equal to \$1.5 million

For more information about Lawcover's Top Up insurance, please visit our website at lawcover.com.au or contact the Insurance Services team on 1800 650 748.



Lawcover's Complaints Handling Procedure

Lawcover has a policy to handle complaints fairly and expeditiously.

Lawcover defines a complaint as: *A grievance, criticism or objection submitted in writing that requests a response from Lawcover that should be or is requested to be in writing.*

If you are unhappy with a Lawcover decision or some other aspect of Lawcover's operations and you are unable to resolve your concerns through discussions with the relevant Lawcover staff member, you can make a complaint.

How to make a complaint

We request that the complaint is put in writing and forwarded to:

The Complaints Officer

Lawcover
Level 13, 383 Kent Street
SYDNEY NSW 2000
DX 13013 Sydney Market Street
Telephone: (02) 9264 8855
Fax: (02) 9264 8844
Email: lawcover@lawcover.com.au
Web: lawcover.com.au

You should include the following information in your written complaint to Lawcover:

- Your full name, address and other relevant contact details
- If the complaint is against a Lawcover staff member, the name of that staff member
- Details of the complaint
- Your desired outcome

Complaint process

- 1.** Lawcover's Complaints Officer will acknowledge your complaint in writing and include a copy of this brochure on Lawcover's Complaints Handling Procedure.
- 2.** Your complaint will be investigated by the manager of the relevant operation area. If that manager has already been involved with the complaint, the Chief Executive Officer will appoint another manager to investigate the complaint.
- 3.** You will receive a written response to your complaint within 10 business days of our initial acknowledgment provided all the necessary information is available and the investigation has been completed.

Where further information is required, we will agree a reasonable timeframe for response with you. If a timeframe cannot be agreed, a timeframe will be set by Lawcover's Chief Executive Officer.

- 4.** If you are not satisfied with our response, you may request a further review, which will be undertaken by Lawcover's Chief Executive Officer. A final written response will be provided to you within 10 business days of your request for a further review.
- 5.** If you are still not satisfied with our response, you may choose to seek independent legal advice.

For more information about Lawcover's Complaints Handling Procedure, please visit our website at lawcover.com.au or contact us on (02) 9264 8855.

