



Lawcover Explanatory Notes

About The Insurer

Your professional indemnity insurance (PII) is underwritten by Lawcover Insurance Pty Limited (Lawcover). Lawcover is a wholly-owned subsidiary of the Law Society of NSW and is a general insurer authorised by the Australian Prudential Regulation Authority (APRA).

The NSW Attorney General has approved the terms and conditions of the Lawcover primary PII policy for 2023/24 making it an approved policy under the *Legal Profession Uniform Law*.

The Law Society Northern Territory has approved Lawcover as insurer of primary PII for law practices operating in the NT in 2023/24.

The Council of the ACT Law Society has approved Lawcover as an insurer of primary PII for solicitors practising in the ACT in 2023/24.

The primary PII policy provides your law practice with professional indemnity insurance of \$2 million each claim (including claimants' costs and defence costs).

You must purchase this insurance.

You may also choose to purchase Top Up insurance from Lawcover. If you do, your increased limit of indemnity will be shown on the Top Up PII Schedule. The Top Up PII Endorsement will show the terms on which the increased cover is provided. There are some differences between the terms of insurance provided up to \$2 million and the terms of any insurance above that amount.

A sample PII policy and sample Top Up PII Endorsement are available at lawcover.com.au. It is important that you review these documents prior to completing this form, especially the Top Up PII Endorsement if you are purchasing an increased limit of indemnity, to ensure that the cover meets your needs. If you do not have access to the Internet, please contact a member of the Insurance Services team on **1800 650 748** for this information.

About The Primary PII

1. Base Premium Calculation

Your base premium is calculated by applying a percentage to your law practice's Gross Fee Income (GFI) estimate. This is based on information provided by your law practice in the 2023/24 proposal form or online application. This premium may be adjusted if your GFI varies from the estimate.

2. Claims Adjustment Calculation

Claims adjustments are calculated by reference to claims reported by your law practice in the five policy years from 2017/18 to 2021/22.

Your practice may also be eligible for a no claims discount. The amount of any discount or loading will vary according to the number of claims notified, the size of those claims, the size of your law practice and the length of time your practice has been operating.

3. Other Discounts

In addition to the claims discount, Lawcover also provides discounts on primary PII premiums in the following circumstances. The total maximum discount available is 30%.

External Risk Management Certification

Where all offices of the law practice are certified at 30 June 2023 to the International Standard ISO 9001 - Quality Management Systems, and provided the certification remains current from 1 July 2023 to 30 June 2024, a 12.5% discount may be applied in addition to any claims experience discount.

Lawcover Risk Management Education Program (RMEP)

If, by 31 March 2023, all principals of a law practice have successfully completed at least three Principals Workshops (with all three workshops completed by each principal within 3 years of completion of the first workshop by that principal), and at least one Maintenance Event in each policy year after completion of the Workshops, a discount may be applied to the law practice's 2023/24 PII premium.

If, by 31 March 2023, all principals of a law practice have successfully completed all five Principals Workshops (with all five workshops completed by each principal within 3 years of completion of the first workshop by that principal), and at least one Maintenance Event in each policy year after completion of the Workshops, a discount may be applied to the law practice's 2023/24 PII premium.

Criminal Law Discount

Law practices specialising in criminal law may be entitled to a discount if 100% of their 2022/23 Gross Fee Income (GFI), is derived exclusively from:

- Matters which, if litigated, would be litigated in the criminal jurisdiction of any court
- Appellate work that flows from such litigation
- Any other advice or litigation that directly flows from such litigation or
- Matters which are the subject of Commissions of Inquiry which may result in a recommendation for criminal prosecution

4. Excess Adjustment

A law practice's premium may be reduced if a higher excess is chosen (if available).

5. Additional Premium If Required By APRA

Under the primary PII policy, Lawcover is entitled to charge you an additional premium if the Australian Prudential Regulation Authority (APRA) requires Lawcover to increase its capital during the period of insurance. The additional premium can be charged at any time during or after the period of insurance. Any additional premium payable by you will be calculated in the proportion that your premium bears to the total of all premiums payable for primary PII by all law practices that Lawcover insures in the period of insurance in the same State or Territory as your principal place of practice.

About Top Up Insurance

1. Your Duty Of Disclosure

Before you enter into the insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate the insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

2. Extent Of Cover

The Top Up PII Endorsement is provided on substantially the same terms and conditions as the primary PII policy but there are some differences. You must comply with your duty of disclosure as set out above. Lawcover retains its rights to cancel or avoid the Top Up PII Endorsement. There is an exclusion for asbestos claims but not claims in connection with the provision of legal services in relation to asbestos. There is no cover under the Top Up PII Endorsement for prior claims or circumstances (see below) although there is continuity of cover for claims arising from prior circumstances for law practices that have had Top Up insurance for at least one year immediately preceding the period of insurance (but not where there has been fraudulent non-disclosure or misrepresentation). Also, the limit of indemnity and excess may not be the same. You must read the Top Up PII Endorsement carefully to ensure that it meets your needs.

3. Claims Made Policy

The primary PII policy is a claims made policy of insurance. This means that the policy covers you for claims first made against you during the period of insurance.

Unless continuity of cover applies (see above), the Top Up PII Endorsement will not cover you:

1. for any claim of which you, or any of you, were aware, or reasonably should have been aware, prior to the commencement of the endorsement
2. for any claim that relates to or arises out of any matter, fact or circumstance of which you, or any of you, were aware, or reasonably should have been aware, prior to the commencement of the endorsement and which you, or a reasonable person in your position, considered, or would have considered, might give rise to a claim against you.

You also have a statutory right under section 40(3) of the *Insurance Contracts Act 1984* (C'th) to cover for claims arising out of a circumstance that may give rise to a claim against you if you notify the insurers in writing during the period of insurance.

If your Top Up PII Endorsement shows a retroactive date, the endorsement will not cover claims that arise from matters, facts or circumstances that occurred prior to the retroactive date.

4. Inception Dates

The inception date for any Top Up insurance purchased is detailed at item 1 on your Top Up Endorsement Schedule. Your Top Up insurance will expire on 30 June 2024, in line with your primary PII policy.

Other Important Information

1. Reduction Of Defence Costs and Claimants' Costs

Lawcover is only required to pay defence costs and claimants' costs that are fairly attributable to allegations which are covered under the policy. If a claim is made which involves allegations which are covered and allegations which are not covered, Lawcover will allocate defence costs and claimants' costs between them. You will have to pay that proportion of the defence costs and claimants' costs that are not fairly attributable to the covered allegations.

2. GST Explanation

GST is payable on your premium, prior to the addition of stamp duty.

3. Stamp Duty Explanation

Stamp duty in Australia is payable at different rates, depending on the location of your business. The stamp duty rate is applied to the sum of your adjusted premium (after this is amended to reflect your selected excess option) and GST.

For the NT, the rate is 10%.

For the ACT, there is no stamp duty payable.

For NSW, the rate is 5%. However, there is a stamp duty exemption for small businesses. Your law practice may be exempt from paying NSW Stamp Duty if you declare that you are a Capital Gains Tax small business entity (within the meaning of section 152-10 (1AA) of the Income Tax Assessment Act 1997 of the Commonwealth) for the income year in which the insurance is effected or renewed and that you are eligible for the exemption to pay duty under section 259B of the Duties Act 1997 (NSW).

You are a small business if you are an individual, partnership, company or trust that:

- Is carrying on a business, and
- The business has an aggregated turnover of less than \$2 million.

Aggregated turnover is your Australia wide annual turnover plus the annual turnovers of any business entities that are your affiliates or are connected with you.

It is your responsibility to ensure that you are eligible for the exemption. If you make this declaration and are ineligible for the exemption, Lawcover will be charged stamp duty by Revenue NSW. Lawcover will recover the amount of that unpaid duty from you pursuant to s259D of the Duties Act 1997 (NSW).

4. Dissolution Of Law Practices

If your law practice is dissolved during the year, your premium may be adjusted. Please contact a member of the Insurance Services team on **1800 650 748** to discuss what premium adjustments may apply to you.

5. New Law Practices

New law practices established during the year will need to apply for primary PII and pay the appropriate premium.

6. Commission On Premium Funding

Lawcover does not receive commission from any premium funder or financier in relation to any premium funding or monthly instalment payment facility.

For More Information

To assist you in understanding the information we require, detailed information is available on our website at **lawcover.com.au**. Alternatively, you can contact a member of the Insurance Services team on **1800 650 748** if you are unsure about what information is required.