

## Episode 58

# Claims 101

### Intro

This is Risk on Air by Lawcover. Today's episode is Claims 101.

- Julian:** Welcome to Risk on Air. I'm Julian Morrow and today we are off to claim school for a session we're calling Claims 101. And who better to teach this mini podcast course than former Lawcover claims solicitor and now Chief Legal Officer at Lawcover Elissa Baxter. Elissa, welcome back.
- Elissa:** Thank you very much. It's lovely to be here.
- Julian:** It's great to have you. This is Claims 101, so I'm going to start with the most basic question. What's a claim?
- Elissa:** A claim is an assertion of a right to compensation or damages or an intimation of an intention. That's the words we use in the policy.
- Julian:** And that's a hell of a phrase. An intimation of an intention. I suppose the point here is that claim is probably broader than you might think...
- Elissa:** Much broader. So, you need to have someone saying they claim that they have a right to compensation or damages, or they might intimate that they think that they might.
- Julian:** Intimation of an intention, yeah. So, it is very, very broad.
- Elissa:** It's really, really broad. And also there's another little part of that definition of claim. There are many, many words in the definition, but really it involves personal costs orders. So if a court makes a personal costs order against a solicitor or they give an intimation of an intention to make a personal costs order, that is also a claim. But I guess the really important words in this definition of claim are compensation or damages. I can give you a couple of examples. If a client says, you're terrible, I don't like you anymore, that's not a claim. But if a client says, you're terrible, I don't like you anymore, I think you've done wrong to me and I'm going to come after you...
- Julian:** I'm starting to get some intimations there, yes. And on the flip side, Elissa, what's not a claim?
- Elissa:** So, what's not a claim is something that even might be legal proceedings but doesn't involve compensation or damages. So, for example, restraint proceedings - quite often solicitors ask other solicitors to go off the record because they say they have a conflict of interest.

- Elissa:** And so restraint proceedings, even though they're court proceedings, where they're asking for a declaration from the court or asking for an injunction from the court, doesn't involve compensation or damages. Equally, disciplinary proceedings where what you might be getting is a sanction or some kind of order that you need to do a certain thing wouldn't involve compensation or damages. So it's that concept of compensation or damages that is really important in understanding whether it's a claim or not.
- Julian:** Another concept which seems to be relevant here is a circumstance. Yes. What is a circumstance that might give rise to a claim?
- Elissa:** And now this is a very insurance-y concept, right? So, circumstances that might give rise to a claim for compensation or damages are situations where, for example, a solicitor opens up their file, looks at the contract that's on file, and goes, oh no, I just realized I didn't include the certificate I needed to include in that contract. Now at that point, the solicitor knows that a mistake has been made. And it might well be that contract can go on - in fact there's no loss. The fact that the solicitor knows that a mistake has been made are circumstances that might lead to a claim, and that's something that you might need to tell your insurer about. Under the Lawcover Primary Policy, you don't have to tell the insurer about a circumstance, but if you have Top Up insurance, you do need to notify us of circumstances that might give rise to a claim. And if you wanted to use the right under the Insurance Contracts Act, you have a right to tell an insurer about circumstances that might lead to a claim, because it grounds that claim in a particular policy year. So if I told you now that I've made a mistake, I haven't yet told my client about it, I've made a mistake, it might lead to a claim, and that claim doesn't happen for two years, the insurer has to still take the claim in the policy that's on foot at the moment. So it's kind of like an insurance policy on an insurance policy - you get the certainty of knowing that the insurance is going to respond.
- Julian:** So definitely a potential benefit there. But I suppose all this leads up to the question of in what circumstances does someone with a Lawcover policy have to notify in Lawcover?
- Elissa:** Yes, if you have a claim. That is, claim for compensation or damages or an intimation of an intention to have such a claim, you have to notify Lawcover as soon as practicable. That means really as soon as you possibly can. You need to tell us about it. It's good for you to tell us about it because we can possibly come in and help you, which would be great. Now you don't have to notify a circumstance as I said, under the primary policy you have a right to notify a circumstance, it's probably a good idea to do that, you're not required to do it. You won't be in breach of anything if you don't do it. But, if you notify a circumstance that isn't yet a claim, it has no impact on your premium and we don't ever put a reserve on the circumstance. So we just open it, it just sits there for a little while and later, if you want to come back to it, it's there for you.
- Julian:** And I suppose the thing is, notwithstanding some of the vague phrases, that the line between what is and isn't the circumstance might be very debatable as all things are in law.
- Elissa:** There's a whole bunch of insurance law about what is a circumstance that might... Insurance lawyers love that stuff. We're not going to be too picky. If you tell us about a circumstance, we'll record it.

- Julian:** Yes, and as a practical matter, it's better to notify as soon as possible whenever your radar goes off. And you did tell us that notifying circumstances is not going to have an impact on your premium.
- Elissa:** It is. It will affect your premium, not this year, but next year. And it depends on how much we've reserved. So again, I'm going to talk maybe a little bit about insurance-y topics. But when we have a claim open, we do an assessment as to how much we think it's likely to cost Lawcover, all up from beginning to end. We reserve that money against that claim, making sure that we have enough in our capital reserves to cover that. If we raise a reserve on a claim, then that reserve will sit against the claims history, and it will affect your future premiums. It only affects it when it gets to a certain level, so very small matters are not going to affect premium, but large matters certainly will affect premium. I think something that quite a few solicitors believe incorrectly is that it's only a settlement.
- Julian:** I was going to ask you, yeah.
- Elissa:** And so they'll ask, well, if I agree to settle this claim, how will that affect my premium?
- Julian:** Does that come up often?
- Elissa:** Yeah, it does come up quite often. And the true answer to that is it doesn't affect your premium because your premium's already been affected. Because as soon as we raise a reserve, it starts to affect your premium. And we have to raise a reserve as soon as we understand how much the claim will cost. So, if we get a recommendation, from a panel firm that this, we really should settle this for half \$1 million. We're going to raise a reserve of half \$1 million and we're going to raise some defence cost reserve on top of that. And that's going to affect the premium at the time that we raise the reserve. So settlement doesn't affect premium only because it's already been affected by us having raised a reserve. And if we have to spend money to defend something or to pay the other side some money, it's going to have to come back and affect premium. But I can't tell you how that works, because although I have a lot of people who report into me, but not the Insurance Services team, they have their own special alchemy, they deal with how premiums are calculated, so call the Insurance Services.
- Julian:** So what actually happens when you notify?
- Elissa:** So there's a couple of different ways that you can approach a notification to Lawcover. Sometimes, I think from a human point of view, what happens when you have that solicitor who opens up the file and looks at that contract and they have that sinking feeling where they think, oh no.
- Julian:** I'm getting strong circumstance vibes out of this file.
- Elissa:** This isn't good. I feel bad about this. I actually don't know what to do. Your mind goes blank. Very stressful. What a lot of people will do is pick up the phone and call us. Now, you don't have to call us, but you can call us, and you'll get someone on the end of the phone who will be able to talk you through and say, I've seen this before, I know how to deal with this. Here's what you can say to your client, here's how to fill in the notification form. Or if you've got a cool head and you don't have that sinking feeling, you can just go onto our website. There's a very nice red button that says, make a claim - you can fill in the form by pressing that button and then that will send a form to us and it'll send an email to you and you can attach your documents to it and send it on.

- Elissa:** So you can do it just through the website. If you need someone to talk to, you can call us and we will talk you through it. We're probably still going to send you to the website though.
- Julian:** Sure.
- Elissa:** And then when that comes in, one of our senior claims solicitors will read it through. They'll open up a file and then they'll assign it to a claims solicitor. All of the people who look after claims at Lawcover are trained solicitors. Almost all of them, I think all of them actually, have been in private practice, many were in private practice for a very long time. They know what that feels like. They all know the sinking feeling that happens when you realise you've made a mistake. And they're the people who are going to be able to really understand and keep you on the right track, keep you informed. They're going to be your point person on this claim because we assign one person to a claim and it never changes hands. It's really with that person forever.
- Julian:** We're at claims school on Risk on Air with Elissa Baxter and we've got a claim in principle into Lawcover. What are some of the questions that are then the first things that from your days as a claim solicitor, the first things you're thinking about when it comes in to Lawcover? I imagine the basic issue has got to be whether this is covered.
- Elissa:** Is this a claim? Is it covered? So there's a lot of things that could happen to a solicitor, right? You could get a parking ticket, or you could have somebody slip and fall in your office. You might have a disciplinary action or you might have a claim from a client who alleges negligence against you. There are all the kinds of actions that could happen. The Lawcover professional indemnity policy covers civil liability arising from the provision of legal services. So that means not criminal proceedings, it's civil liability and it needs to have arisen from the provision of legal services. So, things you do in your private life, things that you might have written as a letter to the editor, and it might be defamatory, none of those things are going to be covered. So, the first thing we do is look at the demand that's come in and think, does this arise from the provision of legal services? Is it a claim for compensation or damages? So that's a very broad insuring clause. All civil liability arising from the provision of legal services. And then there are some exclusions in the policy. There are quite a few if you read through it, but there are some broad general ones.
- Julian:** What are the categories of exclusion that I suppose come up the most in claims or the ones that you think are most important for insureds to be having in front of mind?
- Elissa:** So what we try and cover under the professional indemnity insurance policy are things more or less where your client has suffered loss as a result of the legal services you've provided. But what we don't cover are the costs of running your business. So, the exclusion that is invoked most often is the costs and disbursements exclusion. We don't ensure the fees that a solicitor charges - we aren't insuring that you're going to be able to recover those fees. So if you have a dispute about costs and disbursements with your client, that's not going to be covered by the policy. There's a little caveat to that, and that is if you're having a dispute with your client about an enormous bill of costs, that includes some council fees or some experts fees, those are going to be written back in. So costs and disbursements are an area that we don't cover. And lots and lots of claims will be...  
Julian:, you gave me advice. It was terrible advice to run that...
- Julian:** ...Rings true. Yep...

- Elissa:** ...And I should never have run it. And I lost all of this money as a result. And I want you to refund your fees that I paid you. And also you need to pay me \$1 million in damages. We would write to you and say you're covered for the \$1 million in damages, but the part that's a refund of fees that's not going to be covered by the policy. So that's the one that's most common. There are a few others - so for example, if you are sitting on the board of a company, your breaches of director's duties are not going to be covered. If you have a financial interest in the transaction that you've given advice on, then that also might cause some limitations on your cover.
- Julian:** And that's getting us into the territory of whether there's sort of misconduct involved, is it?
- Elissa:** Well, maybe. It doesn't necessarily have to be misconduct. But for example, if you borrowed some money from someone and they came to you to seek that money back, that wouldn't be covered by your insurance policy - that's your debt that you owe. Debts of running your business, paying the rent on your office, that kind of thing. I did mention before someone slipping and falling in your office - so personal injury, the things about running a business, including claims by employees, any kind of workplace health and safety or employment disputes are not going to be covered. And equally, disputes between partners are not going to be covered. So, it's really more about, although it's not limited to clients, we're really trying to cover disputes that you might have with your client or losses that your clients might have suffered.
- Julian:** And I can imagine that an issue that's going to be at front of mind of the practitioner, but it must be something that Lawcover is thinking about from very early on as well is, well, how much is covered here? And that could be at both ends of the scale. I mean, what if it's just really small? What if someone's claiming, I mean, a dollar in compensation? Or if it's a huge amount, what are the issues that it's good for people to be aware of on that scale?
- Elissa:** So Lawcover's PII policy is a compulsory product. There is a minimum standard in Australia that you have to have \$1.5 million worth of insurance. All of our primary policies are \$2 million - it's \$2 million for the compensation or damages, but it also includes defence costs and claimant's costs. So if Julian, your client, sues you for \$1 million and we were to run it to trial and we got all the way to a hearing and we've run up \$250,000 worth of costs and your former client has run up \$250,000 worth of costs, altogether that's going to be \$1.5 million, assuming you lose, which I'm sure you wouldn't. But that would all be covered by the insurance policy. If the compensation or damage was more than that, and you know with property prices in Sydney, it's quite easily more than \$1 million that you might.
- Julian:** Not to mention litigation prices.
- Elissa:** That's exactly right. So it's quite easy for it to go beyond the \$2 million limit. For very, very small matters, so excesses can be quite small. So you can have a \$1,000 excess of 3, 5, 10, depends on how big your law practice is. But for very, very small matters, they're only a couple of \$100. What sometimes happens is that Lawcover will say you should deal with that yourself. You can deal with it inside the excess. That's very rare.
- Julian:** And also, it's not for the practitioner to make that call...
- Elissa:** ..No... no, no...

**Julian:** ...it's still got to go through the process...

**Elissa:** Yeah, exactly...

**Julian:** ...and it comes back the other side. What about if there's more than one claim? How do those numbers play into that scenario?

**Elissa:** So, the policy has what's called an aggregation clause. Now that basically says that where a loss arises from the same act or omission, that is, the solicitor's act or omission, or a series of related acts or omissions, or they were a series of related transactions, and I'll give you an example of that. What if you had a solicitor acting for a developer in relation to a series of houses on the same street, the developer wanted to buy them all up, turn them into apartments (it's a very Sydney scenario), and put in place a bunch of option agreements and the solicitor didn't exercise the options properly. Now, each one of those could arguably be a different claim because it's a different contract, but they are a series of related transactions. They're all interdependent upon one another. They would all be considered for policy purposes as one claim and would have one limit of indemnity.

**Julian:** Right, yeah, so that's obviously very important to be aware of and presumably too, in your disclosures and notifications to Lawcover to really give a full account of the factual situation so that these things can be clear. We've been talking about the Lawcover claims solicitors. Elissa, in what circumstances and how often will a notification be dealt with purely by the Lawcover team as opposed to going out to external advisors, whether that be solicitors or counsel?

**Elissa:** Yeah, for sure. So, there's kind of a range of answers to that question. Most often, if there's no litigation on foot, we will try and deal with those matters in-house. Partly that is to save defence costs, but also because we can deal with things quickly and we can often negotiate a really good settlement if we deal with it in-house away from the court - that always just drives up costs. So, we have a team of 10 qualified lawyers at Lawcover and each one of them will be dealing at any one time with about 50 or 60 files and they will be a mix of litigated and unlitigated. Litigated are usually going to be handled in-house. Sometimes we'll have a range of different ways we can get advice - we might get advice from an external lawyer just to give us advice on a particular area, a little discrete advice. Sometimes we'll send unlitigated matters out, sometimes we'll get an advice from counsel or we'll get an advice from an expert. an expert who might be an expert on stamp duty law (because we have had a number of stamp duty cases) and they'll tell us this is how the Stamp Duties Act works, this is what would have happened if you'd done things a certain way. So we will sometimes get external advice but most of the time the very experienced and very empathetic claims solicitors internally will look after those matters. They'll usually give advice to the insured solicitor, say I think you've got a really good defence to this, I'm going to write this denial letter and say, here are the reasons why your claim doesn't have any basis. They'll write that letter in-house, send it to you, get your input in it, and then send that to the claimant and say, we don't think your claim's got any legs. But they are all experts in professional negligence claims. This is what they've done their whole career. It's what I've done my whole career.

- Elissa:** But each of them isn't an expert in every area of law. And so often what they'll do is they'll call up the insured solicitor and say, you're a family lawyer, it's a whole area in itself, an area of expertise, and they'll talk it through. It's a very collaborative process. You tell me what would have happened if we tried to get different orders from the family court and let's have a discussion about that and then I'll draft a letter that sets all of that out and explains that to the claimant and why their case doesn't have any legs and then we'll send that off together. So usually, it's very much a give and take between the claims solicitor who knows how to conduct professional negligence claims and the solicitor who's insured, who's an expert in their own particular area of law.
- Julian:** And just to reiterate that point that even if there's one of the panel solicitors firms involved, you're still going to have that single point of contact, the claim solicitor at Lawcover.
- Elissa:** Yeah, absolutely.
- Julian:** All right, well, so we know that the obligation is to notify and then that all these things happen after that. And you've alluded to it being a collaborative process. So what's actually needed from the lawyer as Lawcover takes up the cudgels and goes through this process? What does the legal practice have to do?
- Elissa:** Again, I'm going to give you such a lawyer's answer - it depends.
- Julian:** It always depends.
- Elissa:** It depends on what exactly has happened. But let's take a very standard type of matter, which is a letter of demand. So I've got quite a detailed letter of demand that says, here's all the ways in which you made a mistake, here's the loss that's been suffered by my client, we demand that you pay \$1 million into this bank account in 14 days. That comes into Lawcover, the insured solicitor's very upset about it, and the claim solicitor will ring them up and say, I understand you're really upset about this. *That's okay. Hand it over to us, we're going to look after it for you. Send us a copy of your file.* Often we'll do that by getting it scanned in and uploaded on a secure link into our system. The claim solicitor will sit and go through that file, they'll then often, either over the telephone or in person, have a meeting where they discuss, just give me your side, what actually happened? What's set out in this letter of demand? What do you agree with and actually what parts have they got wrong? Is there anything that they're missing here? Do you have a file note of the advice that you gave? If you've got a file note of the advice you gave, that's great because they say you didn't give any advice. And then we can kind of form between us a defence to how we're going to deal with this claim. So what we need is documents, instructions, in truth, we need time. We need time from the insured solicitor to really think about things and to give us those instructions. And then usually a claim solicitor would say, write an advice, draft a letter to defend the matter, and then send that back to the insured solicitor and they would give us instructions back on that advice. So, we need your buy in to the process. We need your documents, we need your time, and we need your thoughtful instructions about how we might resolve the matter.
- Julian:** And I can imagine that that's usually very willingly given, but to be clear, it is actually a duty, isn't it? You have to do it. Yeah.

- Elissa:** It is a duty. And actually, everyone reacts differently under stress, right? Some people, their first reaction is they just want to talk. They just want to talk and get it all out there. And some people have the opposite reaction, and they clam up and they don't want to talk to anyone. And I understand why people might feel like that. So sometimes the challenge can be getting someone to open up and talk to us. It can be very embarrassing to have a claim. It can make people feel, what's the point? What's the point of even doing this job? I feel so hopeless. I haven't even done anything wrong, and yet I'm still having these accusations made against me. So I understand people have different reactions to that. So some people clam up, some people want to take a lot of time to talk about things. Either of those approaches is okay, but it is a duty to cooperate, to provide those documents, to give those instructions, and to hopefully get something out of this process as well, at least feel like a problem shared is a problem. I don't know, double, halved, whatever the expression is!
- Julian:** And just asking for a friend, Elissa, can a lawyer charge for that time that they spend cooperating with you?
- Elissa:** No.
- Julian:** No, I didn't think so.
- Elissa:** In the same way that you can't charge your client to copy the file and give them a copy of their file.
- Julian:** Makes sense.
- Elissa:** Yeah, we try not to take too much time, but it is ultimately for the defence of the insured solicitor. So yeah.
- Julian:** You mentioned that compared to litigation, a speedy resolution that involves a settlement is most likely going to be desirable. How do the discussions about settlement, not just strategy, but whether or not to actually go ahead with a settlement, how do they happen and what are the rules around them?
- Elissa:** Again, it depends. It depends how complicated the matter is, it depends how defensible the matter is, it depends on whether or not the other side is reasonable. Most claims, there's some basis too. Most claims, the person who's making the claim wants it resolved, and the insured solicitor also wants it resolved, and it would be better for everyone if we could get it resolved. Sometimes we can resolve matters for a really small amount of money because in fact the solicitor didn't really cause that much of a loss, or in fact there's no basis to the claim at all. And so sometimes that can be done via telephone discussion or by an exchange of emails, an exchange of offers by email. Usually what will happen, if it's, let's say it's a simple matter, we're handling it in-house, the Lawcover solicitor might write to the insured solicitor and say, we do think you've got some exposure on liability and they're not asking for that much money, so we're thinking we might settle this for about \$25,000. Can I please have your instructions to try and negotiate a settlement up to that level? That could be a really simple transaction and it might be that they can negotiate that by an email. If you have a very large matter, we sometimes have matters that are \$50 million, \$100 million, then it's a much more complicated process and those matters we would normally have an external panel solicitor looking after them.

- Elissa:** There might be a formal mediation, it could be a multi-day mediation where everyone puts their positions in writing, where there is a formal mediator who is going between the parties. If it's a multi-party dispute, it could take a long time. So there's a whole range of ways in which matters might settle. But sometimes we might get to a position where Lawcover takes a particular view about settlement and the insured solicitor has a really different view about settlement. That is really where there is a point of tension because I think we're all on the same page when we're defending matters until we get to a point where maybe our positions diverge and that can be a bit tricky.
- Julian:** How often does that happen?
- Elissa:** I'm going to say in about 10% of cases, there'll be a difference of opinion and it's not necessarily a violent difference of opinion. It could be... because no one knows the future, right? There are matters on which reasonable minds may differ, where I think we're going to win, I'm going to make a good witness, and I think that the claimant is lying, and I remember it because I was there in the meeting, and I know they're not telling the truth. But you, as my lawyer, might have a different view, and you might think, quietly, I won't make such a great witness, or that actually we've got an exposure on liability that I don't agree with you about. They are both legitimate positions, but they're different. And it's a question of whether maybe I can persuade you that I am going to be really good in the witness box, or I might have a different view on the evidence, or it might be that we can get an expert opinion that might support my position, or you might convince me, or we might go and see counsel and counsel might convince me that actually the risk isn't worth it. So we do sometimes get into a position where our insured solicitors want to fight because it's the principle of the thing. They feel hard done by, they feel aggrieved. Actually, this client was difficult from the beginning and they gave the advice that they said they gave and that was the right advice, but it's not really worth running it to trial, and it's not really worth it from a time point of view, and it's not worth it from an emotional point of view and we'd probably be better off if we just settled it for a small amount of money. But it costs more than that to run it to trial so it might be a commercial settlement that we're looking for. So we do have these kind of differences of opinion. How do we resolve that? We resolve it by trying to persuade each other, and if we can't do that, there is a dispute resolution mechanism in the policy which we almost never get to.
- Julian:** Right, okay.
- Elissa:** So we often come to different views, but we almost never get to the position where we have to say, the policy says this is how we sort it out.
- Julian:** So there's a practical emphasis on consultation and consensus, but there is, as you'd expect, a formal mechanism there, rarely used. What does it involve?
- Elissa:** So there's two different ways that it could happen, depending, I think, on what's most appropriate in the circumstances. One of them is getting what's called a senior lawyer's opinion - usually it's a senior counsel's opinion. Let's just get a third party to have a look at all of the issues and decide for us and we agree to be bound by that opinion. So that might be, should we run this matter to trial or should we settle it now? We'll get senior counsel to give a view, and you can give your submissions to senior counsel and I'll give my submissions to senior counsel and then they'll make a decision. Or, alternatively, there is another provision that is called the right to fight - it's not called that in the policy, but that is effectively what it says.

- Elissa:** It says, Lawcover will make a recommendation to settle up to a certain level. If you don't agree with that, that's okay but you can take the risk from here. You can run this matter to trial if you want to and we will pay up to the level at which we recommended settlement. But if you lose over and above that, then that's your risk to take on. Now, we very, very, very, very rarely, if ever, have used that clause, but it is there in circumstances where an insured has a very different view about how to run a hearing than we do.
- Julian:** You mentioned earlier the \$2 million limit on the standard policy. Are all the same considerations that we've just talked about, are they the same if a party has got Top Up insurance as well?
- Elissa:** Yeah, yes, they are. So there's a couple of ways you can get Top Up insurance. You can go out into the market, you can get a broker, go out into the market, get a Top Up policy. And they are usually, this is again very insurance-y talk, usually called follow form policies where you buy excess layer insurers that basically sits on top of the law cover policy and just has the exact same terms and conditions. It just has higher limit on it. You can get that out in the market, or you can buy Top Up insurance from Lawcover, which just puts an endorsement on the policy that increases the limit above the \$2 million. And we can, in the right circumstances, be offering up to \$20 million of cover. Now, there are a couple of different terms and conditions that are different - one is you do need to notify circumstances that you didn't have to before, but you have to notify if you've got Top Up cover. Other than that, it's pretty much the exact same wording, it just takes the limit of indemnity higher.
- Julian:** How does the law cover policy that we've been talking about interact with the professional standards cover?
- Elissa:** Yeah, so the Professional Standards Act, there are various ones across the country. The Professional Standards Act allows professional associations to set up a limitation of liability scheme. The Law Society of New South Wales has set up a limitation of liability scheme - it's an opt out scheme, so most people are in it. You have to pay a small fee, it's like \$100, and what it does is it effectively works as a contract between you and your client that says, we both agree that any legal work I do for you, my liability is capped at \$1.5 million. Now, you've got to jump through a few hoops to get that - you need to put a little notice on the bottom of your letterhead on the bottom of your emails. But nevertheless, most solicitors in New South Wales are going to be in the scheme. And what it does is it acts as a contractual limit on what your client can claim from you. In order to have the benefit of that scheme, you must have insurance that covers at least \$1.5 million. So the \$2 million cover you get from Lawcover covers the \$1.5 million that the scheme is capped at, and it adds on a little \$500,000 for your own defence costs, on top of the \$1.5 million. The Limitation of Liability Act scheme is fantastic, but it doesn't cap every kind of claim. For example, it doesn't cap personal injury claims, it won't cap anything that has to do with fraud, it doesn't cap claims that relate to federal proceedings. It's a New South Wales Act, and claimants are always trying to find a way around it. Because if you were to sue me for \$6 million and I say, haha, you can only sue me for \$1.5 million because we've got this Professional Standards Act limitation of liability, it might be in your best interest to say, let me think of a way around that scheme.

- Elissa:** So, we have quite a few claimants who come up with different arguments as to why the scheme shouldn't apply. We do use it a lot, we do plead that scheme quite often in defence of solicitors. It is a really useful thing to be involved in, and what it can mean is that if you have a \$6 million claim that is successfully capped at \$1.5 million, then your Lawcover limit is going to cover you for the whole of that claim.
- Julian:** Now we know from our discussion before that if you are very diligent and you notify a circumstance, and that little ticking time bomb doesn't go off for a while, then you're covered. But let's talk about the other scenario. What if, for whatever reason, a circumstance hasn't been notified, and let's say you stopped practicing. Do you still have insurance cover after you retire?
- Elissa:** Yes, you do, as long as you were insured with Lawcover right up until when you retired. It's a mechanism that works like this - Lawcover every year sells a policy of insurance to the Law Society of New South Wales, the ACT, the Northern Territory, which is a policy that covers everyone who's no longer in practice. So every law practice that has ceased and every practitioner who's retired or died (it covers their estates as well). We call it a run-off policy. That run-off policy covers all practitioners who are no longer in practice as long as they're insured with us right before they ceased. It has a standard \$5000 excess and you're covered forever.
- Julian:** Well, that sounds good, but I'm assuming that, like the other policy, there is some sort of limit to the coverage. So, can you top up your runoff cover?
- Elissa:** Good question. So, there is a \$2 million limit on the runoff policy. If you had Top Up with Lawcover for a number of years before you retired, it may be possible to buy Top Up runoff. That is a really specific request and you would need to get in contact with our Insurance Services team. But it might be possible, there are criteria that you have to meet, but it might be possible if you call our lovely Insurance Services team, they will talk you through how to do that.
- Julian:** Right, okay, so you have very particular circumstances, but it sounds like it doesn't just follow that if you top up, you've topped up your runoff as well, all right. I don't know, Elissa, we've covered quite a few topics, do you think we can say we've graduated from Claims 101 in Lawcover? Are there a few extra bonus topics we need to tick off?
- Elissa:** I think there are extension topics. I think they're electives for next semester.
- Julian:** Okay.
- Elissa:** But I do think we've probably covered off the basics. And I think as well, maybe the thing to take away from this is you can always just call us. Just call us and we'll tell you, we'll give you the answers to these things. I'm sure there are many questions that I haven't answered in this, but you can always give us a call and we'll answer them then.
- Julian:** Something tells me you've got an honorary doctorate in claims going well beyond 101. Elissa Baxter, Chief Legal Officer for Lawcover, thank you so much for joining us on Risk on Air.
- Elissa:** Thank you.

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## Outro

Thanks for listening to Risk on Air by Lawcover and to stay up to date, join us for the next episode on current risks in legal practice.

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