

# Law Society of NSW Professional Standards Scheme and Lawcover's Top Up insurance: Broad protection for your practice

The complexity of legal practice means that even the most diligent solicitors can face unexpected claims. Without adequate protection, a single claim could have serious financial and reputational consequences.

That's why many law practices take a "belt and braces" approach — adding to the \$2 million primary layer of Professional Indemnity Insurance (PII) protection, where their potential exposure exceeds this amount.

The Law Society of NSW Scheme established under the Professional Standards Act 1994 (NSW) provides a valuable safeguard for eligible practitioners by limiting their occupational liability. However, it's important to recognise its parameters and consider whether your law practice requires Top Up insurance above the \$2 million primary PII limit of cover.

## What is the Law Society of NSW Scheme?

The Law Society of NSW Scheme (Scheme) serves to cap the civil liability or damages a practice may be required to pay if a Court upholds a claim against them.

Liability caps are:

- \$1.5 million for law practices billing under \$10 million annually (or with 20 or fewer principals)
- \$10 million for law practices billing above this threshold (or with more than 20 principals)

If a claim is made, a practice can rely on the Scheme as a defence, provided they meet the following requirements:

- Active membership of the Law Society of NSW
- Participation in the Scheme
- Adequate professional indemnity insurance in place
- Compliance with the Scheme **terms**

View the [Scheme brochure](#) for more details.

## What's the point of Top Up, when I am in the Scheme?

While the Scheme provides a strong foundation there are limitations and exclusions which should be considered:

### - **Billing and Eligibility:**

Practices **billing fees of more than \$10 million per year** must hold up to **\$10 million in professional indemnity insurance** to qualify for the Scheme.

### - **Potential jurisdictional limitations:**

Although the Scheme offers mutual recognition in each jurisdiction, it is the legislation of the other jurisdiction, not the legislation of the home jurisdiction, which gives the Scheme operative effect in that other jurisdiction. [More information can be found here.](#)

### - **Exclusions:**

The Scheme does not cover claims related to:

- The death of or personal injury to a person\*
- Breach of trust
- Dishonesty\*\*
- Violations of Parts 13 & 14 of the Real Property Act 1900

\* Consider your law practice requirements for workers compensation and public liability insurance.\*\* Lawcover's PII policy covers claims relating to dishonesty, where an insured was not knowingly connected with the dishonesty or fraud."

### - **Defence Costs:**

The Scheme seeks to limit liability for damages and claimants' costs to \$1.5 million (or \$10 million for larger practices). Damages do not include defence costs.

Lawcover's PII policy provides cover of up to \$2 million each claim and includes cover for defence costs.

Defence costs can substantially erode the primary \$2 million limit, particularly if a claim is complex or subject to numerous interlocutory applications or appeals. That leaves the balance for the claimant's damages and their costs if an award is made in their favour. If the total amount exceeds the policy limit, the principal(s) may face personal exposure against which they are not insured.

### - **Timing of PII Coverage vs. Scheme Protection:**

The Scheme applies to alleged acts or omissions occurring while the law practice participates in the Scheme.

Lawcover's PII policy applies to claims first made or notified in the period of insurance.

If a practitioner joins the Scheme today, it does not limit liability for past mistakes.

Additional Top Up insurance, however, can offer coverage for past mistakes if claims arise while the policy is active.

While participating in the Law Society of NSW Scheme is a great safeguard, purchasing Top Up insurance to help cover any remaining exposure should be considered.