The Professional Indemnity Insurance Scheme was established by The Law Society of South Australia pursuant to section 52 of the Legal Practitioners Act (“the Act”) and has been in operation since 1988.

The Law Society strives to provide cover for practitioners that is broad and affordable. Practitioners often have questions about the Scheme. This article highlights policy aspects, but does not provide a comprehensive overview of the policy as a whole. You can access the Scheme documents at the Law Society’s website www.lawsocietysa.asn.au at – Other Services and Information – Law Claims.

Who is insured?

The following are insured:

- any of the following who hold a current practising certificate under the Act:
  - a practitioner;
  - each partner of a firm;
  - a company practitioner;
  - each director of a company practitioner;
- a firm to which insurers have agreed to issue and have issued a certificate of insurance;
- and in each case includes:
  - each employee of any of the foregoing;
  - the estate and/or legal representative of any of the foregoing;
  - each service, administration, trustee or nominee company to the extent that it provides services exclusively in connection with the practice.

However, the insured does not include any firm, practitioners, partners, directors or employees who practise wholly or principally outside the State of South Australia unless the certificate of insurance is specifically endorsed to include them.
I am about to retire. What cover do I have under the Scheme?

The Scheme provides free run-off cover, if there is no other cover in place, up to the compulsory limit of indemnity, to former practitioners for loss arising from an act or omission of the former practitioner which occurred wholly while the former practitioner held a practising certificate and was lawfully entitled to practise and during a period while the former practitioner was insured under the Scheme.

What is insured?

On the terms and conditions of the certificate of insurance, the Scheme provides cover against civil liability arising from the provision of legal services by the insured in connection with the practice. The cover extends to costs claimed by the claimant and the costs, disbursements and related expenses incurred in defending the claim.

What is the limit of indemnity?

The current limit of cover under the Scheme is $2,000,000 which is inclusive of claimant’s costs, defence costs, and insured’s excess.

How much is the excess to a claim?

The current excess under the Scheme for each claim including claimant’s costs and payment of defence costs is the greater of:
- $3,000; or
- an amount of $3,000 multiplied by the number of partners / directors / shareholders as at the date of the act or omission giving rise to the liability to compensate the claimant, up to a maximum of $50,000.

What claims attract an increase in excess?

The Scheme identifies a number of claims that will attract an increased excess. These are:

Out of Time Claims
If a claim arises out of or is contributed to by the failure to comply with any time for the doing of any act where the time stipulated for compliance:
- is 30 days or less, the excess is increased by 50%;
- is greater than 30 days, the excess is increased by 100%.

Financial Certificate Claims
If a claim arises out of providing any advice to or any certification in respect of a proposed guarantor, indemnifier, surety, mortgagor, or co-borrower who was not to derive substantial direct new financial benefit from the transaction where the insured was first retained:
- after 1 January 1994 and before 31 December 1998, the excess is increased by 50%;
- after 1 January 1999, the excess is increased by 300%.

Innocent Partner Claims
If a claim arises out of the dishonest or fraudulent act or omission of a Partner or Director of which the insured is also a Partner or Director, the amount of the excess payment by the insured in relation to the claim is increased by 100%.

Conflicting Parties
If a claim arises out of a transaction or a series of transactions related to each other for which the insured was first retained after 1 July 2004 and with respect to which the insured acts for more than one party whose respective interests are or may be in conflict the excess is increased by 100%, except for:
- The executors of a will;
- The trustees of a will;
- Persons who are married to each other and engaged in the sale or purchase of any property or the giving or discharging of a mortgage solely for the purpose of completing the sale or purchase.
What claims are excluded from the Scheme?

The Scheme documents list the areas in which a claim will not be indemnified under the Scheme. The areas excluded (while not being exhaustive) include:

- any claim for death, bodily injury (other than bodily injury consequent upon an act or omission in the provision of a professional service which gives rise to a civil liability in respect of which the insured is entitled to indemnity);
- physical loss of a or physical damage to property;
- any claim for the payment of any trading debt incurred;
- any claim involving fee dispute;
- any civil penalty or any punitive, exemplary or like damages or any fine, costs or expenses incurred or ordered to be paid or imposed by law;
- any claim brought about by the dishonest or fraudulent act or omission of any insured;
- any claim arising from acts or omissions in business activities, which include:
  - acting as an insurance agent,
  - other business interests,
  - money lending activities,
  - providing of financial services, and
  - any connection with the provision of an incorporated multi-disciplinary practice or a multi-disciplinary partnership other than a legal service of the type usually provided by a legal practitioner in private practice in the jurisdiction.
- any claim arising in connection with practice / partnership disputes;
- any claim directly or indirectly caused or contributed by external factors such as war, radiation, pressure waves, malfunction of computer software or hardware;
- components of some claims are excluded because they fall outside the insuring clause and the definition of “legal services as are usually provided by a legal practitioner in private practice in Australia”;
- any warranty, guarantee, indemnity or other agreement that
  - extends the practitioner’s duty beyond exercising the standard of care and skill reasonably to be expected in the circumstances; or
  - increases the compensation or damages for which any insured is liable for breach of duty beyond the amount that would be payable in tort or under any applicable statute.
- any claim arising out of any liability incurred in connection with the Practice of an interstate legal practitioner to whom, or to whose Firm, a Certificate of Insurance has not been issued;
- any claim arising out of any liability incurred in connection with a practice conducted outside or primarily outside the Commonwealth of Australia;
- specific conditions and exclusions apply to any claims with respect to which the laws of USA or Canada apply.

When must a claim be notified to Law Claims?

The insured must notify Law Claims in writing as soon as practicable of:

- any demand for, or an assertion of a right to civil compensation or civil damages; or
- an intimation of an intention to seek compensation or damages.

Who has conduct of the claim?

Law Claims are entitled at any time to take over and conduct in the name of the insured the defence or settlement of any claim notified to Law Claims on behalf of the insured or served on Law Claims pursuant to any rules of Court.

Where a claim is under a firm’s excess then the insured may assume the conduct of, and settle the claim provided that the insured has obtained Law Claim’s consent.
Who decides whether to **defend or settle** a claim?

Law Claims will seek the insured’s consent before proceeding to a defended hearing or the settling of a claim or in deciding whether to pursue an appeal.

If there is a dispute between the insured and Law Claims as to whether to defend, settle or appeal a claim there is provision in the policy for a binding opinion to be obtained from Queen’s Counsel.

What are the **duties of a practitioner** in respect to claims?

In summary the insured has the following duties:

- not to admit liability for, or incur any costs or expenses in connection with any claim without the consent of Law Claims;
- to cooperate fully with and provide all information, documents and, assistance as may be reasonably be required by Law Claims;
- to waive in favour only of insurers, Law Claims and legal representatives appointed by them any claim for legal professional privilege; and
- to comply with any request or direction of the Law Society of South Australia or the Chairperson of the Claims Committee.

Can the insurer **avoid or cancel the policy**?

The insurers are not entitled to avoid, repudiate or rescind the certificate of insurance upon any ground, even if a practitioner breaches a policy condition, however, should such breach result in “substantial prejudice” then, the insured, having been indemnified for the claim, may be liable to reimburse the insurer the difference between the amount paid in respect to the claim and/or defence costs and the amount that would have been payable had the breach or non-compliance not occurred.

Where can I obtain further information?

If you have any questions regarding the Scheme, please contact Law Claims on telephone 8410 7677.

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