Risk watch – managing your risk through the Limitation of Liability Scheme

To maximise the benefit provided by the Limitation of Liability Scheme firms should check that all practitioners are participants in the Scheme.

The Law Society’s Limitation of Liability Scheme (“LLS”) is an important tool for firms to manage the level of their risk, in conjunction with their insurance arrangements. The LLS can cap the amount that a firm is liable for, to an amount dependant on the size and turnover of the firm, and to the extent that liability can be limited under the Professional Standards Act 2004 (SA).

Circumstances have recently arisen in which a firm has received a claim which may activate the LLS. Some of the practitioners in the firm, including the Partners, were participating in the LLS at the relevant date on which the claim arose. Due to an administrative oversight however, the practitioner handling the file on which the claim arose was not participating in the LLS on the relevant date.

Participation in the LLS attaches to the practitioner, not to the firm. For the firm to receive the full benefit of the LLS, all practitioners and any incorporated legal practice (“ILP”), should be participating, and meet the other eligibility requirements, which include but are not limited to: current and paid-up Law Society Membership (including Company Membership for the ILP) and correct use of the disclosure statement.

In the scenario above, there is a very real possibility that the firm will not be able to cap their liability in the claim.

Firms need to take active steps to ensure that all practitioners in the firm are participating in the LLS, from the first day that they commence working for the firm. They also need to ensure that Law Society membership is kept up to date, and that the disclosure statement is in use on all correspondence and on the firm’s website (the website requirement is specific to South Australia).

We recommend that firms make it a part of the induction process to complete and lodge the LLS participation form for new employees.

Additionally, we recommend that someone senior in the firm is allocated the task of regularly (perhaps monthly or quarterly) checking the Firm Record on the Law Society website, which lists the LLS status and the membership status for all practitioners in the firm.

The Law Society can assist firms to set up these procedures, and can provide more information on these issues. In the first instance, please contact the Limitation of Liability Scheme Manager, Mia Bell on (08) 8229 0225, or Law Claims Deputy Director, Grant Feary on (08) 8410 7677.
Law Society launches Wellbeing & Resilience Guide

You would have to have been living under a rock to have escaped the publicity over the last few years about the significant mental health issues faced by the community and the legal profession in particular. The cost to the economy of mental health issues has been estimated at approximately $100billion per annum and the link between health issues – both physical and mental – and professional indemnity claims is often seen at Law Claims.

To this end, at the recent Great Debate held in Mental Health Week the Chair of the Law Society’s Wellbeing and Resilience Committee, Toni Vozzo launched the Society’s Wellbeing & Resilience Guide. This is a 34 page booklet devoted to helping keep lawyers’ bodies and minds together and was produced by the Wellbeing and Resilience Committee and the Risk Management section of Law Claims, with the help of funding from Professional Services Councils.

It is clear that there is a close link between good physical health and fitness and mental health because physical exercise is one of the most important ways of dealing with stress and anxiety.

As the Introduction to the Guide states

“Good mental matters. Good physical health matters. Without good health we cannot function as lawyers, indeed, we cannot function properly as people.”

Looking after yourself should not be seen as selfish because being unwell (whether that be physically or mentally) costs much more than being well. Unless we are healthy and are able to remain so those who rely on us – whether that be professionally or in our home life – may suffer.

There is, of course, an absolute mountain of material available in books, magazines and on-line relating to health and wellbeing issues. What the Society’s Guide attempts to do is to set out in a clear and simple way the key aspects of obtaining and maintaining good health and we commend it to all practitioners.


GRANT FEARY
Deputy Director (Law Claims)

766 words