



THE LAW SOCIETY  
OF NEW SOUTH WALES

# Public consultation document

The Law Society of New South Wales has prepared a professional standards scheme under the *Professional Standards Act 1994* (NSW) (the **Act**).

Each state and territory has professional standards legislation to:

- protect consumers of professional services and other occupational services;
- improve occupational standards;
- allow scheme participants to limit their civil liability.

The Professional Standards Council of New South Wales (**Council**) invites public comments and submissions on our scheme by 24 July 2024.

Your comments will provide valuable insight into how consumers view and understand our proposed scheme. This will help the Council decide whether to approve the scheme or not. If Council approves the scheme, it will then need the relevant Attorney-General or Minister's authorisation.

This document covers:

1. The Law Society of New South Wales and our members;
2. Our proposed scheme;
3. The benefits of our scheme;
4. Comments and submissions.

## **1. The Law Society of New South Wales and our members**

### **Who is the Law Society of New South Wales?**

The Law Society of New South Wales (the **Law Society**) is the professional association for solicitors who practise law in New South Wales. The Law Society is constituted as a company limited by guarantee and is governed by a council of 17 members (the **Council of the Law Society**) who are elected or appointed in accordance with the Law Society's Constitution.

The Law Society's role is two-fold: to act as a co-regulator of the solicitor branch of the legal profession in ensuring solicitors meet the highest ethical and professional standards, and to provide services to solicitors as a membership body.

The Law Society is located at 170 Phillip Street, Sydney, New South Wales, 2000.

### **Who are our members?**

The Law Society's members include Solicitor and Life Members, Associate Members, Student Members, Honorary Members, Incorporated Legal Practice (**ILP**) Members and such other classes of membership as the Council of the Law Society determines from time to time. Only Solicitor and Life Members have the right to vote at any general meeting of the Law Society, and represent approximately 32,700 of the total members of the Law Society.

A natural person qualifies for Solicitor Membership of the Law Society if they are a solicitor as defined by [section 6](#) of the *Legal Profession Uniform Law (NSW)* (**Uniform Law**) who hold a current Australian practising certificate issued by the Council of the Law Society.

### **What types of work do our members do?**

Our members engage in legal practice and provide legal services as solicitors in New South Wales through a broad range of business structures and size, across a broad range of practice and geographical areas, and to a diverse range of clients.

## **2. Our proposed scheme**

### **What is a professional standards scheme?**

A professional standard scheme is a legal instrument that limits the damages that members of an occupational association participating in a scheme may be liable for if a Court upholds a relevant claim against them.

Pursuant to the objectives of the professional standards legislation, an occupational association with an approved scheme must meet statutory reporting obligations and show

that it regulates its members to improve their professional standards and protect consumers of their professional services.

In New South Wales, professional standards schemes are approved by the Professional Standards Councils pursuant to the Act.

### **What is the Law Society's Professional Standards Scheme?**

The Law Society's Professional Standards Scheme (the **Scheme**) is a legal instrument, established under the Act. The Scheme is for those Solicitor Members, Life Members and ILP Members of the Law Society engaging in private legal practice.

The statutory objectives of the Scheme are reciprocal in nature:

1. It binds the Law Society (as the occupational association for the solicitor branch of the legal profession in New South Wales) to monitor, enforce and improve the professional standards of its members and protect consumers of legal services; and
2. Serves to cap the civil liability or damages Scheme participants may be required to pay if a Court upholds a claim against them.

### **How does the Scheme operate?**

The Scheme serves to cap the civil liability or damages Scheme participants may be required to pay if a Court upholds a claim against them. In principle, if proceedings are brought against a Scheme participant relating to occupational liability for damages arising from a single cause of action, and the Scheme participant is able to show that:

- a) they are a Member of the Law Society and participant in the Scheme at the time the cause of action arose; and
- b) they have the requisite professional indemnity insurance cover insuring against occupational liability to which the cause of action relates; and
- c) The amount payable under the insurance policy is no less than the amount of the relevant limitation of liability specified by the Scheme,

a Court, in awarding damages, will limit those damages to the relevant liability cap specified in the Scheme.

Liability limited by the Scheme is to the extent permitted by the Act.

### **Who administers the Scheme?**

Responsibility for administering the Scheme rests with the Council of the Law Society and senior staff within the Law Society, predominantly the Chief Executive Officer, the Director, Licensing and Registry, and the Manager, Scheme Operations.



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### **Where does the Scheme operate?**

The Scheme is intended to apply New South Wales and in all States and Territories where mutual recognition provisions exist (Western Australia, Victoria, Northern Territory, South Australia, Australian Capital Territory, Queensland and Tasmania).

### **When will the Scheme apply?**

The Scheme is proposed to commence on 22 November 2024 and operate for a period of 5 years from the date of commencement.

### **Does the Scheme apply to all members?**

No. Unless excluded or exempted by the Scheme, the Scheme is intended to apply to Solicitor, Life and ILP Members of the Law Society engaging in private legal practice.

### **How is participating members' level of limited liability determined?**

The level of limited liability is determined by the Scheme pursuant the following descriptions:

1. A limit of liability of \$1.5 million (AUD) for Participating Members who were at the Relevant Time in a Law Practice consisting of up to and including 20 Principals and where the Law Practice generates total annual fee income for the financial year at the Relevant Time up to and including \$10 million;
2. A limit of liability of 10 million (AUD) for Participating Members who were at the Relevant Time in a Law Practice consisting of more than 20 Principals; or Participating Members who were at the Relevant Time in a Law Practice where the Law Practice generates total annual fee income for the financial year at the Relevant Time greater than \$10 million.

The Scheme confers discretionary authority on the Council of the Law Society to specify a higher maximum amount of liability than would otherwise apply under the Scheme. The discretion can be exercised for a specified case, a class of case, or in all cases.

### **Can a Law Society member leave the Scheme?**

Yes. A Solicitor, Life or ILP Member of the Law Society to whom the Scheme is intended to apply, can make a written application for exemption from the Scheme for consideration by the Council of the Law Society.

### **How will consumers know if a Law Society Member is covered by the Scheme?**

If a participating members' occupational liability is limited in accordance with the Scheme, all documents given by the participating member to a client or prospective client that



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promote or advertise the participating member or member's occupation, including official correspondence ordinarily used by the person in the performance of the participating members' occupation and similar documents, must carry a statement to that effect ([section 33](#) of the Act). For the purposes of [section 33](#), the notification must comply with the form of statement prescribed by [clause 9](#) of the *Professional Standards Regulation 2019* (NSW).

Participating members are informed by the Law Society of these obligations and must declare ongoing compliance with these obligations. The Law Society conducts audits to ensure participating members are compliant.

### **3. The benefits of our scheme**

#### **How will consumers benefit from the Scheme?**

The benefit to consumers of the Scheme is an assurance that the professional standards of participating members meet those required by the Law Society, the *legal profession legislation* and the Professional Standards Councils, ensuring consumers are well served by ethical and competent solicitors and ensuring constant enhancement of consumer protection.

#### **How does the Scheme enhance our members' occupational standards?**

The Professional Standards Councils expects the Law Society, as an occupational association seeking approval of a professional standards scheme, to demonstrate that the Law Society has developed and implemented a number of activities, strategies and services to enhance the professional standards of its members and identify, treat, manage and monitor risks pertaining to maintaining and improving these professional standards. In addition to those co-regulatory statutory functions and obligations of the Council of the Law Society pursuant to the *legal profession legislation*, the Law Society regulates its members in such a manner to maintain and improve professional standards of those members and enhance consumer protection.

The Law Society reports annually to the Professional Standards Councils regarding its risk management strategies for upholding professional standards, the effect of those strategies and any changes made to them.

#### **How does limiting participant liability help consumers?**

Enhancing the professional standards of participating members through the administration of a professional standards scheme plays a role in underpinning the availability of sustainable and affordable professional indemnity insurance for participating members, which in turn benefits consumers in seeking redress for any claim made.



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### **Is the Scheme a professional indemnity insurance scheme?**

No. The Scheme is not an insurance product and does not affect the requirement of participating members to obtain professional indemnity insurance. Participating members who have professional indemnity insurance equal to an amount not less than the applicable limit of liability imposed by the Scheme may limit their civil liability in the event of a relevant claim.

### **What continuing education can members access?**

It is a statutory requirement pursuant to [section 52](#) of the Uniform Law that participating members comply with their Continuing Professional Development (CPD) requirements. Participating members are required to undertake 10 CPD units every year with at least one unit in each of the following fields:

- i. Ethics and Professional Responsibility;
- ii. Practice Management and Business Skills;
- iii. Professional Skills; and
- iv. Substantive Law.

Members of the Law Society have access to discounts to CPD activities offered by the Law Society's LawInform platform, delivered by the Law Society's Professional Development Department.

CPD ensures participating members provide competent legal advice and services to consumers, improving professional standards and consumer protection.

### **How are complaints and discipline managed?**

The complaints and disciplinary system for solicitors practising in New South Wales is statutorily determined pursuant to, inter alia, [Chapter 5](#) of the Uniform Law. The Council of the Law Society, through its co-regulatory role with the New South Wales Legal Services Commissioner, not only endeavours to uphold high professional standards and protect members of the public, but also sets and enforces professional standards, licenses solicitors to practise, investigates complaints and administers discipline. Participating members are subject to this complaints and discipline system.

## **4. Comments and submissions**

### **How can I make a comment or submission?**

All comments and submissions must be made in writing within 28 days of public notification.

In your submission, you may wish to respond to the following questions:

THE LAW SOCIETY OF NEW SOUTH WALES

170 Phillip Street, Sydney NSW 2000, DX 362 Sydney

ACN 000 000 699 ABN 98 696 304 966

[lawsociety.com.au](http://lawsociety.com.au)

T +61 2 9926 0333 F +61 2 9231 5809

E [lawsociety@lawsociety.com.au](mailto:lawsociety@lawsociety.com.au)



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- Are you a member of The Law Society of New South Wales?
- Are you already a consumer of the type of services covered by the proposed scheme?
- Do you think the scope of the scheme is clear? (including work, jurisdictions and membership classes covered)?
- Is it clear how you, as a member or consumer, could make a complaint regarding the conduct of a member of The Law Society of New South Wales?
- Can you describe how consumers would benefit from the Law Society of New South Wales' members' services being covered by a scheme?

Your comments will be provided to the Professional Standards Councils who will consider these along with any other comments and submissions received, before deciding on whether to approve a Professional Standards Scheme.

If necessary, the Professional Standards Councils may ask The Law Society of New South Wales to consider and respond to any issues raised in the submissions.

Please send comments and submissions (preferably as a letter) to:

The Chief Executive Officer  
Professional Standards Councils  
Level 2, St James Centre  
111 Elizabeth Street  
Sydney NSW 2000.

You can also contact the Professional Standards Councils by:

- email: [pscinfo@psc.gov.au](mailto:pscinfo@psc.gov.au)
- phone: 1300 555 772 or (02) 8315 0800
- website: [www.psc.gov.au](http://www.psc.gov.au).

### **How are comments and submissions managed?**

The Professional Standards Councils must consider all comments and submissions it receives, in line with the public consultation process pursuant to [section 10](#) of the Act.

Comments and submissions will be:

- made public unless you request confidentiality;
- subject to the *Privacy Act 1988* (Cth).

### **Where can I find out more?**

To find out more about The Law Society of New South Wales and our proposed professional standards scheme, please contact [scheme@lawsociety.com.au](mailto:scheme@lawsociety.com.au).

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