



17 February 2023

Mr Paul McKnight

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NSW Department of Communities and Justice

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Dear Paul

Professional indemnity insurance for NSW solicitors

Following our meeting on Wednesday 25 January and 15 February 2023, I am writing to provide further information as to why the Law Society strongly opposes any proposal for an alternative professional indemnity insurance (PII) policy for solicitors in New South Wales.

The benefits of mandating professional indemnity insurance

As you are aware, under the *Legal Profession Uniform Law* (NSW) (**the Uniform Law**), solicitors engaged in private practice must hold or be covered by an 'approved insurance policy' for this jurisdiction.¹

There are strong public interests for the legal profession to have mandatory PII. Besides ensuring that the professions' clients are adequately protected, having mandatory PII is an important tool to regulate the legal professions' conduct. For example, having the PII insurer adjust the terms on which they offer cover directly affects the legal entity's behaviour. On a larger scale, this practice reduces risk within the legal profession overall.

Having mandatory PII therefore also works to build trust between legal practitioners and their clients, which is essential in a profession such as ours that provides specialist expertise.

Additionally, mandating PII removes the potential for legal practices with little risk (or who believe they are of low risk) to go without cover and consequently drive-up premiums for those who are (or perceive themselves to be) at higher risk. Compulsory PII therefore assists to keep premiums affordable for legal entities that have greater risk exposure and for the legal profession and with the right settings can drive improved performance of higher risk areas.

¹ See sections 211 and 45(1)(b) of the *Legal Profession Uniform Law* (NSW)



However, imposing a requirement on the legal profession to hold PII is only feasible if insurance is available to provide cover that is affordable and meets the minimum requirements specified in the Legal Profession Uniform General Rules 2015 (**General Rules**).

The General Rules imposes minimum requirements for PII that are difficult for market insurers to meet at affordable premiums

PII for solicitors in NSW must generally meet stringent minimum requirements under the General Rules to be considered an 'approved policy' under the Uniform Law. One of these minimum requirements is that the PII must provide indemnity for run-off liabilities for a minimum of seven years from the date the law practice ceases to practise or the date of the expiry of the period of insurance.²

As will be discussed in greater detail below, the Law Society's experience is that insurers in the open market find it extremely challenging to meet such standards at an affordable premium. It would therefore be difficult for the Attorney General to ensure the policy in question meets such standards without making detailed inquiries or without there being reliable historical data to evidence ability to and willingness to comply without passing on prohibitively expensive premiums to law practices, who in turn, pass it onto consumers seeking legal services.

Having high premiums disproportionately affect smaller practices that, unlike large firms would typically service non-commercial clients and who do not have the financial means or income to absorb those costs. It follows that high premiums are likely to have a significant and direct effect on access to justice issues.

Prima facie, the Uniform Law legislative framework does not preference a competitive market over a single provider, or vice versa

The Attorney has the power under the *Legal Profession Uniform Law Application Act 2014* to, by order, approve an insurance policy. This authority derives from Part 4.4 of the Uniform Law itself which provides jurisdictional legislation may specify the process for selecting insurance policies.

Importantly, neither piece of legislation mandates a competitive market of commercial insurers, or that only insurers must provide the relevant coverage. Section 210 of the Uniform Law refers to approving either "an insurer or other provider", the latter not being a traditional commercial insurer (and indeed other jurisdictions have only approved [an]"other provider" - for example, the statutory PII scheme in Victoria).

Further, the Uniform Law does not create an application process, or an appeal process, for those who may want to enter the market. It is open to the Attorney to approve a single

² See Rule 78(6) of the Legal Profession General Rules 2015.



provider, whether an insurer (in the traditional sense) or another non-insurance provider if that will deliver the best outcome in terms of the objectives of the legislation.

Accordingly, the Attorney has a broad discretion to decide what insurance is appropriate for achieving the objectives of the legislation, both in the short and long term. In exercising the order making function the Attorney should have regard to both the requirements of Rule 78 and the broad range of objectives set out in the Uniform Law. It is important to consider what regulatory arrangements will be most “efficient and effective” in the long term. Those objectives from Part 4.4 of the Uniform Law (Professional indemnity insurance) are:

- To ensure that each Australian legal practitioner who engages in legal practice in this jurisdiction has or is covered by approved professional indemnity insurance; and
- To ensure that clients of law practices have adequate protection against the consequences of professional negligence.

Equally important are the objectives of the Uniform Law itself, as set out relevantly in section 3:

...

- b) ensuring lawyers are competent and maintain high ethical and professional standards in the provision of legal services; and
- (c) enhancing the protection of clients of law practices and the protection of the public generally; and

...

- (e) promoting regulation of the legal profession that is efficient, effective, targeted and proportionate.

The Society’s position is that the objectives of the Uniform Law are best served by the current single provider model. This is because the current single licensed insurer, Lawcover Insurance P/L (**Lawcover**), strictly operates on the principles of mutuality, which are closely aligned with the regulator’s objective of delivering the best outcome for the legal profession and the community it serves.

Historically, market forces have struggled to ensure the efficient distribution of mandatory PII to meet demand

An important distinction between PII for solicitors and many other forms of commercial insurance is the nature of claims. In transactions handled by solicitors, a cause of action for economic loss arising from, say, defective advice, may well not arise until the claimant suffers damage. Claims therefore can take time to be made, lodged and then resolved, potentially resulting in a long lead time between the act and the claim.



The complexity of PII claims mean such claims also have the tendency to make the estimation of success and costs recovery uncertain, particularly for insurers who are unfamiliar with the profession.³ These factors highlight the importance of PII to include adequate run-off liability coverage. Equally, the nature of the product increases the risks of insurers engaging in behaviour that is not in the long-term interests of consumers or the profession, e.g. adverse selection of risk. These issues are discussed further below.

It is therefore unsurprising that for-profit insurers often have difficulty meeting the distinct demands of the legal PII market. Indeed, we only need to look to the United Kingdom for a direct comparison of how market forces have impacted PII premiums compared to the single PII provider scheme in NSW.

The United Kingdom's experience of an open PII market

In the late 1990s, PII for solicitors in the UK was in crisis. By 2000, the UK's single PII provider, a mutual fund option known as the *Solicitors Indemnity Fund* ('SIF'), was abolished in favour for an open PII market. We understand that this decision was made by and large not because there was a push in the market for competition, but because the SIF had been very poorly managed.

In January 1997, the SIF was required to raise an additional 248 million pounds from solicitors due to 'miscalculations in predicting future claims against the fund,' and by mid-1997 the substantial shortfall between the contributions it had collected and the anticipated cost of claims had risen to 454.5 million pounds.⁴ The UK Council of the Law Society faced the bleak prospect of increasing contributions to SIF up to 85%, which had the very real possibility of forcing many legal practitioners out of business.⁵ As will be evidenced below, the current situation in NSW is very different to what the UK was facing in the late 90s.

Abolishing the single, mutual PII scheme in favour for a profit-driven PII market has not ultimately solved the problem of PII affordability for the UK's legal profession, and has arguably made the situation worse in that jurisdiction.

The initial and short-lived price war in the UK was soon followed by many legal practices, particularly the smaller practices, being unable to attain PII coverage as many insurers withdrew from the market. Run-off cover became either unaffordable or unavailable and the mandatory PII limit dropped from \$2 million to only \$500,000, significantly compromising consumer protection.

³ See J Morgan and P Hanrahan, 'Professional indemnity insurance: protecting clients and regulating professionals,' *UNSW Law Journal*, Vol 40(1), page 360.

⁴ *International Journal of the Legal Profession*, 'Wither mutuality? A recent history of solicitors' professional indemnity insurance,' Vol 5, No 1, 1998, page 29 (enclosed).

⁵ *International Journal of the Legal Profession*, 'Wither mutuality? A recent history of solicitors' professional indemnity insurance,' Vol 5, No 1, 1998, page 29 (enclosed).



Our research shows that, in 2017-2018, approximately 20% of legal practices in the UK pay more than 5% of their gross fee income on their PII premiums. In contrast, in 2022-2023, only approximately 1% of Lawcover insured practices pay premiums that are more than 5% of their gross fee income.⁶

Surveys conducted by the Law Society in the UK also reveal that in 2017-2018, the average PII premium for all practices is 4.9% of the practice's gross fee income. Currently in NSW, this average premium sits consistently at 1.3%. A comparison of the latest data sets available show that in every category of practice (e.g. sole practitioners, small, medium and large firms etc), as a proportion of gross fee income, PII premiums in the UK are more than double the size of Lawcover's premiums.⁷

Our understanding of reasons for this is that new for-profit driven entrants to the PII scheme will invariably undercut existing market pricing, reasoning that the long tail liability of claims will allow them to raise premiums later. However, the requirement that any PII must provide indemnity for run-off liabilities for a minimum of seven years from the date the practice ceases to practice or the period of insurance expires is onerous for commercial PII insurers and therefore difficult to honour in the long term.⁸

Opening the PII market to for-profit insurers will therefore mean there is a high risk that these insurers will raise premiums significantly before eventually exiting the market (as was the case in the UK). Indeed, Lawcover was established precisely because many legal practices were not able to attain PII as a result of the collapse of HIH Insurance and has a policy of offering coverage to all applicants.

Market-led insurers will also inevitably adopt adverse selection (or "cherry picking") which leads to the denial of cover for practices regarded by the insurer as too risky to insure. While the denial of cover is common practice for for-profit insurers to manage its risk, this practice is abrasive with the fundamental public interest considerations for mandating PII for the legal profession. Cherry picking will also substantially erode Lawcover's capacity to cover all risks in the market and operate as an insurer of last resort.

We are therefore wary of having history repeat itself if NSW's current PII scheme was to be put in peril to accommodate a profit-driven entrant, particularly given that Lawcover, in contrast to the SIF, is astutely managed.

The Society's position is that these risks are likely to be more acute if a single, for-profit provider is allowed to enter the market. As discussed at our meeting on 15 February, there is no push from the broader market to enter this particular market, and indeed the general trend is that for-profit insurers are moving away from providing PII (see below).

⁶ See attached information from Lawcover

⁷ See attached information from Lawcover.

⁸ See section 210(1)(b) of the *Legal Profession Uniform Law* (NSW) and rule 78(6) of the *Legal Profession Uniform General Rules* 2015.



We are of the firm view that dismantling the current PII model in NSW will inevitably be injurious to the legal profession, adversely affect legal professional standards, ultimately disadvantage consumers of legal services and jeopardise access to justice.

The experience of other Australian jurisdictions with a commercially driven PII market that has few players

While the empirical evidence presented by United Kingdom's experience provides us with a good idea of what to expect if NSW were to follow suit by opening PII, evidence from sources closer to home suggest a low appetite from profit-driven insurers to provide PII at affordable premiums. This has on more than one occasion left Australian legal practices, particularly community legal centres, in a precarious position.

Northern Territory

In late 2018, Lawcover was asked by the Law Society Northern Territory (**LSNT**) to take over the underwriting of LSNT PII Scheme (**the Scheme**). The Scheme had been underwritten by QBE Insurance since around 1997, but between 2013 and 2018, QBE premiums had increased by 10% year on year, in response to a series of large claims generated by some large firms over that period. The LSNT had been informed by the Scheme's broker that QBE Insurance was likely to increase premiums by 10 to 20% for the next few years to improve their loss ratio. According to LSNT, premiums at those levels would mean that PII would be unaffordable and unsustainable for legal practices in the Northern Territory.

It also transpired that QBE Insurance's contribution to risk management education in the Northern Territory per annum was a modest one-day risk management workshop for practitioners. No other assistance was offered by QBE to mitigate claims or moderate premium increases.

In contrast, Lawcover offers comprehensive risk management education for principal legal practitioners and their staff all year round. Lawcover's risk management education program includes targeted workshops for principals, employed solicitors and support staff, risk briefings, claims prevention roadshows, online seminars and in-house presentations.

The Australian Capital Territory

In 2021, we were informed that Liberty Insurance had withdrawn from the legal PII market in the ACT, due to the size of the ACT portfolio being too small to be profitable and the cost of claims having significantly increased over recent years. Had Lawcover not stepped in, premiums would have increased to unaffordable and unsustainable levels.

Community Legal Centres in New South Wales

Currently, the PII landscape for community legal centres is dire. The hardening of the market in recent years mean that no community legal centre in NSW, unless it is insured by Lawcover, is covered by a PII policy that meets all of the minimum standards prescribed by



the General Rules, particularly in relation to run off cover. For NSW community legal centres that are not covered by an approved PII policy issued by Lawcover, the NSW Law Society grants exemptions to rely on other PII policies to allow the community legal centre to continue operating.

The vast majority of NSW community legal centres granted an exemption are covered by the Community Legal Services Australia (CLSA) PII Scheme Group policy, which is currently underwritten by QBE Insurance. Such centres, as well as others not covered by this Scheme, have relied on an exemption from the Law Society as the PII coverage does not meet every minimum standard prescribed by the General Rules. The increasing unaffordability of premiums and contraction of coverage terms has led to a large number of community legal centres seeking an alternative provider.

In 2020, Lawcover commenced offering PII to community legal centres and this policy now forms part of the suite of PII policies that are annually approved by the Attorney General.

It is therefore difficult to see any community legal centre in NSW being afforded a PII policy which meets the minimum standards under the Uniform Law with a for profit insurer.

Other mandatory insurance markets

The difficulty of ensuring the market can meet the demands imposed by mandatory PII can also be seen in the NSW home warranty insurance scheme (**HWI Scheme**), which was introduced to form part of the consumer protection system in the home building sector. In 1997, the HWI Scheme was privatised and, following adverse economic conditions that severely affected the building industry, saw private insurers gradually withdraw from the market.

In an effort to keep the HWI scheme viable, the government significantly reduced the level of coverage required through legislative reform. However, these reforms did not prevent insurers withdrawing, ultimately forcing the government to intervene in mid-2010 to correct market failure.

The Government owned NSW Self Insurance Corporation, the entity that took over the HWI Scheme, is now part of Insurance and Care NSW.

Why the current single PII provider scheme benefits the profession and wider community

Since the collapse of HIH Insurance in 2004, Lawcover has been the single provider of approved PII policies. Lawcover is Australia's only profession owned, APRA licensed and regulated insurer of the legal profession.

Lawcover is an independent subsidiary of the Law Society, but while the Law Society is the sole shareholder of Lawcover, no dividends can be paid to the Law Society without the Attorney General's approval.



Unlike for-profit insurers, Lawcover is not driven by increasing profitability for shareholders. Rather, its purpose is (and has been since its establishment in 1979) to 'provide affordable and sustainable PII protection to law practices, rigorously defend unmeritorious claims and quickly and fairly resolve legitimate claims'.

Practically, this mutual insurer ethos means that, unlike for-profit insurance companies, Lawcover:

- offers insurance to all legal practices, irrespective of their size and claim history. Lawcover does not 'cherry pick' law practices to insure based on their risk profile as profit driven insurers are wont to do, and
- provides unlimited run off cover for retired and ceased law practices, meaning that Lawcover remains indefinitely liable for claims caused by wrongful acts that took place under expired or cancelled policies.
- provides its insureds with comprehensive risk management education which supports and upskills participants to handle key risks in their legal practice. Lawcover provides these workshops at either low or at no cost. It also offers premium discounts to further encourage participation.
- provides all insureds with a separate cyber risk policy, at no extra cost.
- provides PII at affordable premiums. In fact, since 2013, Lawcover's premium rates have *decreased* by approximately 40% while national PII premiums have increased over 20%.

The attached paper from Lawcover provides detailed information on the risk management approach of Lawcover and long term-trends in relation to premiums.

In summary, the public interest considerations central to Lawcover's ethos means that it operates very differently to a profit-driven insurer, which in contrast would be piloted primarily by changing (and often unpredictable) market demands and conditions.

The current single PII provider scheme in NSW therefore works well to benefit the profession and protect the wider community. However, Lawcover's model, particularly the public interests it serves by its commitment to broad, sustainable and affordable PII for all practices, would be jeopardised if Lawcover is forced to compete with another insurer not bound by the mutuality principle.

Premium stability

As an APRA regulated insurer, Lawcover is required to hold a prescribed minimum amount of capital. However, Lawcover targets a capital adequacy ratio well in-excess of the minimum required. In June 2022, Lawcover's capital ratio was over three times the



prescribed capital amount required – approximately double that held by open market general insurers.⁹ While Lawcover’s healthy capital ratio position may be taken by some to suggest it is over-provisioning and is therefore charging higher premiums than necessary. In reality however, Lawcover prudently maintains a conservative capital adequacy ratio knowing it cannot, unlike other commercial insurers, raise capital through portfolio diversification such as investing in share offers or other commercial capital raising activities.¹⁰

This also has the benefit of being able to provide long-term stability in relation to premiums and enables Lawcover to use its surplus capital to improve its services to members through risk management strategies¹¹, which in turn leads to substantial benefits in terms of improved professional standards.

Customer satisfaction

Lawcover consistently receives customer satisfaction ratings of above 90% (or ‘Excellent/Good’). Areas of highest customer satisfaction include claims outcomes and insurance renewal experience. In its most recent risk management education program workshop survey, participants gave an average satisfaction rating of 99%.

In 2022, Lawcover’s Net Promotor Score (NPS) customer engagement survey result was +46. This score far exceeds the general insurance benchmark of +29.

In 2019, Lawcover won the Direct General Insurer of the Year award run by the Australia & New Zealand Institute of Insurance & Finance (ANZIIF). In 2021, Lawcover was a finalist in the Small General Insurer category of these awards. These achievements represent an acknowledgement by a leading insurance and financial services association of the merits of Lawcover’s business model, products and services to its customers and the community it serves.

Availability of run-off cover

As was noted above, unless an exception is granted, the Lawcover PII policy for solicitors in NSW must meet stringent minimum requirements under the General Rules to be considered an ‘approved policy’ under the Uniform Law.

One of these minimum requirements imposed by the General Rules is that the PII must provide indemnity for run-off liabilities for a minimum of seven years from the date the law practice ceases to practise or the date of the expiry of the period of insurance.¹² This has been challenging for commercial insurers and has consistently been a problem in both the

⁹ See attached information from Lawcover.

¹⁰ See attached information from Lawcover.

¹¹ See attached information from Lawcover.

¹² See Rule 78(6) of the Legal Profession General Rules 2015.



UK deregulated market in other Australian states and territories, and as evidenced by above case studies.

It is therefore highly valuable to the profession and wider community that Lawcover provides unlimited run-off cover to all its insureds.. This is made possible because under current arrangements, the NSW Law Society is the holder of each unlimited run-off cover provided to Lawcover's insureds.

Enhancing regulation

The active feedback loop between the Law Society and Lawcover benefits the legal profession and wider community

Lawcover currently insures 81% of the Law Society's private practice membership. This coverage allows it to accurately monitor emerging claims risks to the profession and be a source of reliable data. This also enables Lawcover to use the information it collects to benefit its members. For example, Lawcover, either solely or in conjunction with the Law Society, has used its data to inform and create topical risk management strategies and programs for the legal profession. J Morgan and P Hanrahan have observed in their article, 'Professional indemnity insurance: protecting clients and regulating professionals', that:

'...where there is a close connection between the relevant professional body and the insurer...there is more active feedback to the professional groups on risk management and causes of claim. For example, Lawcover provides premium discounts for meeting certain risk management requirements. These risk management requirements are informed by their claims analysis and the publication of information on a regular basis – this alerts members to take particular care in certain areas. Other legal professional associations take a similar approach'.¹³

Morgan and Hanrahan's extensive research into professional indemnity insurance found the following:

Our examination of PI insurance arrangements in place for lawyers and accountants in Australia suggests some important conclusions.

PI insurance does perform a regulatory function in Australia, but that function largely depends on the involvement of the professional associations and the roles they play (including under the professional standards schemes) in understanding and reporting on both the type of cover held by their members and the claims history of the relevant profession. Indemnity insurance arrangements wholly negotiated bilaterally between an insurer and an insured do not, we think, have a regulatory character because the necessary public interest considerations are not

¹³ J Morgan and P Hanrahan, 'Professional indemnity insurance: protecting clients and regulating professionals,' *UNSW Law Journal*, Vol 40(1), page 369.



typically present in that negotiation. It is the involvement of the professional associations, through the schemes, that give the PI insurance its regulatory character through the creation of the feedback loop. While governmental requirements to hold PI insurance are often directed at the public interest in providing compensation to clients, the professional associations' involvement is often directed at the public interest in maintaining trust and confidence in the profession.

The closer the relationship between the professional association and the insurers, the more effectively the PI insurance itself (as distinct from the requirement to hold it) appears to work as regulation. This is because of the professional association's purchasing power and its ability to assume the gatekeeping and feedback functions. The apogee of this is perhaps the risk management work undertaken with practitioners and firms by the insurers affiliated with the various law societies. In all cases though the professional associations had an important role to play in educating their members as to how PI insurance works and the kinds of policy features that are necessary or desirable for members and their clients.¹⁴

Consistent with this research, independent data from the Professional Standards Council indicates that the current PII model works well to delivering on the core objectives of the Uniform Law.

PII and the Professional Standards Scheme (Limitation of Liability)

The Law Society of New South Wales Professional Standards Scheme (**the Scheme**) presents a practical example of how the single PII provider scheme assists to regulate the NSW legal profession.

The Scheme binds the Law Society as the occupational association for the solicitor branch of the legal profession in NSW to monitor, enforce and improve the professional standards of its members, and protect consumers of professional services. In return, the Scheme permits private practice solicitors to cap their liability if a court upholds a claim for damages.

Scheme participants hold an Australian practising certificate and membership issued by the Law Society. They must have insurance coverage equal to the liability cap that applies to the law practice through which they are employed (\$1.5m or \$10m, whichever is applicable having regard to its size and total annual fee income), which must be maintained throughout the Scheme year. Evidence of top-up PII is required for a cap above \$10 million.

¹⁴ J Morgan and P Hanrahan, 'Professional indemnity insurance: protecting clients and regulating professionals,' *UNSW Law Journal*, Vol 40(1), page 383.



Currently, approximately 13,535 Law Society solicitor members are participants of the Scheme (approximately 50% of all private practice solicitors in NSW). In the 2021 reporting year, approximately 5,633 law practices were recorded as having all of their solicitors participating in the Scheme.

Scheme participants are expected to demonstrate their commitment to high professional standards by implementing policies and processes within their law practices to identify risks in providing legal services, implement strategies to mitigate those risks, ensure compliance with the Uniform Law, and reduce exposure to claims and complaints.

A report released by the Professional Standards Council last year found that the risk environment for Law Society members lowered as claims frequency significantly decreased since the Scheme's implementation in 2002.¹⁵ According to the report, this lower risk environment and subsequent reduction in premiums was in large due to Lawcover being 'very active in promoting risk management and member education'.¹⁶

As outlined above, Lawcover's ability to provide extensive risk management training and investment of its capital to improve its services to members is only made possible by its wide coverage and mutual insurer ethos.

The ability of Lawcover to offer affordable compulsory insurance and top up insurance encourages participation in the Scheme, which would undoubtedly be affected should a law practice be unable to afford an insurance premium. This has a direct knock-on effect on the number of participants in the Scheme benefiting from its improvements to professional standards.

While the Uniform Law espouses neither a single PII provider scheme nor a competitive PII market, it is difficult to see how deconstructing the current PII scheme – one that has consistency outperformed competing models in both Australia and abroad - would more effectively deliver on the objectives of the Uniform Law.

¹⁵ See 'The benefits of professional standards schemes – limitation of liability and consumer protection measures: Final report to the Professional Standards Councils', 31 March 2022, p 26, https://psc.gov.au/sites/default/files/2022-04/The%20benefits%20of%20professional%20standards%20schemes%E2%80%93limitation%20of%20liability%20and%20consumer%20protection%20measures_3.pdf, accessed 15 February 2022.

¹⁶ See 'The benefits of professional standards schemes – limitation of liability and consumer protection measures: Final report to the Professional Standards Councils', 31 March 2022, p 26, https://psc.gov.au/sites/default/files/2022-04/The%20benefits%20of%20professional%20standards%20schemes%E2%80%93limitation%20of%20liability%20and%20consumer%20protection%20measures_3.pdf, accessed 15 February 2022.



Operational impacts on Lawcover and the Law Society if a profit-driven provider of PII were to be approved by the Attorney General this year

Lawcover

Approving a new entrant to the legal PII landscape would require a complete overhaul of Lawcover's pricing and operating business model.

Lawcover's current pricing model assumes coverage of all NSW law practices. If another PII provider were to be approved this year, Lawcover would have insufficient time to amend its model for the upcoming practising certificate year which opens in April 2023. This would mean either:

- a) a large financial loss to be suffered by Lawcover, not only in lost revenue but due to its need to increase its actuarial work, commence distribution of its product and revise market strategy. The increase in operational costs will lead to an increase in premiums to the practices it insures, a cost which ultimately will be borne by consumers of legal services; or
- b) Lawcover delays the PII renewal timeline to enable it to revise its model and adopt a pricing approach to match a commercial open market environment. Assuming this could be achieved by early April 2023 when the 2023/24 practising certificate renewal period opens, Lawcover would not be able to provide evidence of PII cover to the Law Society in time for practising certificates to be renewed by 15 May 2023.

Lawcover would also need to change its operating business model to one of risk selection, that is, only offering PII to practices that meet rigid risk and return criteria, rather than its current model, which is to insure all private legal practices in NSW, irrespective of risk profile. Delivery of this new model would require re-development of Lawcover's systems and processes as well as intensive retraining for Lawcover staff.

In addition to the short-term considerations regarding the current renewal period, Lawcover's Board and the Society (as its shareholder) would need to fundamentally reconsider its position in the changed market longer-term, including withdrawal from the market.

Operational impacts on operational and licensing functions

If a new entrant is to be approved this year, the Law Society's internal regulatory processing systems would require significant changes, as we currently rely on Lawcover for receipt of automated daily information to confirm a legal practice has adequate PII, so as to issue a practising certificate.

A practising certificate cannot be issued without confirmation of PII in place, as prescribed by the Uniform Law.



THE LAW SOCIETY
OF NEW SOUTH WALES

Any new entrant to the PII market must inform the Law Society's Licensing and Registry department of each of their clients' success in attaining PII coverage in order for the Society to issue their client with a practising certificate. Lawcover's process of informing the Law Society of PII coverage is automated. This significantly reduces the administrative burden that would otherwise have to be borne by our staff and streamlines the timely issuance of practising certificates so that the continued provision of legal services is not impacted. There are currently approximately 39,500 practising certificate holders in NSW.

Given the practising certificate renewal season opens on Tuesday 4 April, it is too late this year to make the necessary operational information technology changes to our internal database to ensure the 2023/2024 renewal process operates smoothly and practising certificates are issued in time for 1 July 2023. Manual processes would need to be adopted, which present significant operational impacts to the smooth running of the renewal process and issuance of practising certificates, whilst posing a significant issue for the continued provision of legal services post 1 July 2023.

Recommended position

I trust that the above information provides you with persuasive reasons as to why jeopardising the current PII scheme in NSW will ultimately be severely detrimental to the NSW legal profession and very likely raise barriers to justice for those most in need. As discussed above, our experience and research tell us that dismantling the current PII system in NSW to accommodate market entry by a stock insurer would not effectively deliver on the Uniform Law's objectives.

The Society's position is that a new market entrant should not be supported.

Should you or your office wish to discuss further, please do not hesitate to contact Ms Bobbie Wan, Team Leader, Professional Support and Regulatory Policy at bobbie.wan@lawsociety.com or (02) 9926 0158.

Yours sincerely

Sonja Stewart
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