

Copy of Letter to Attorney General

3 March 2025

The Hon Michael Daley MP
Attorney General of NSW
52 Martin Place
Sydney NSW 2000

By email to: office@daley.minister.nsw.gov.au

Dear Attorney General

Solicitors Professional Indemnity Insurance Policies

We have been informed by Mr Paul McKnight that the Department will provide you with various documents and their advice in the coming days and we infer that a decision will be made by you in the near future.

The recent correspondence from Mr McKnight does nothing to assuage the concerns we have expressed previously. I do not propose to elaborate on or revisit our concerns in this letter.

To assist you in your decision making, below is a summary of the matters which we should very much appreciate you taking into account in considering our application in accordance with s95 of the LPUAA for the 2025-26 year:

1. ABC's policy meets the Minimum Standards and overall is superior in coverage to that of Lawcover Insurance's policy for the current year.
2. ABC anticipates that on average its premiums will be significantly and sustainably lower than Lawcover Insurance's premiums and there is good evidence to support this.
3. ABC insureds will be members of [name of mutual insurer redacted].
4. [Name of insurer redacted] is APRA licensed and is a true mutual. Any surpluses and its net assets belong to and are used for the benefit of its members, which will include ABC policy holders.
5. On 24 February, belatedly, we received a subset of the documents requested in accordance with a GIPA. These documents, received so long after our initial application, demonstrate that the Law Society and its wholly owned and controlled subsidiary, Lawcover Insurance, are acting anti-competitively and are wedded to maintaining their monopoly in respect of the majority of the NSW market, and to blocking our entry.
6. The Law Society's wholly owned and controlled subsidiary, Lawcover Insurance, is not a mutual and its financial performance demonstrates it is operating on a thoroughly 'for-profit' basis.
7. In the 21 years since it commenced trading, , Lawcover Insurance has:
 - a. Achieved a compound annual rate of return of more than 15% p.a. which is substantially in excess of the total return (with dividends reinvested) of the S&P/ASX 200 over the same period, which demonstrates that the Law Society and Lawcover Insurance have very a strong profit maximising mind-set.

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- b. Accumulated net assets which are in excess of 3 times its APRA Capital Adequacy requirements. The excess capital is more than \$110m¹.
 - c. Achieved these results despite operating with a significantly higher cost structure than its counterpart in Victoria and despite annual payments to its parent, which in 2024 were close to half a million dollars.
8. Given the above super profit focus, it is not surprising that the average premium per insured legal practitioner paid to Lawcover Insurance is approximately double to 2.5 times the equivalent for LPLC in Victoria.
 9. There is an obvious disjunction between the various claims and assertions of ‘mutuality’ and ‘not-profit-maximising’, made by both the Law Society and Lawcover Insurance, and their actions². Their actions clearly demonstrate very successful profit seeking and profit accreting behaviour.
 10. A mutual would welcome competition. Profit seeking enterprises prefer as little competition as possible, with the ideal being a monopoly.
 11. Lawcover Insurance acknowledges that it is cross subsidising poorly performing solicitors, which must inevitably be at the expense of the people of NSW and the majority of well performing solicitors. By contrast, insurance which is priced to match risk plays a very useful role in providing a feedback mechanism to encourage improvements in professional capabilities and practices.
 12. Part of the market (relevant to approximately 30% NSW solicitors requiring insurance) is open to competition and that part of the market is not based on a policy approved by you. This portion of the market, which enjoys competition, has demonstrably and significantly lower premiums and these premiums have been stable and predictable over many years. An actuarial opinion based on hypothetical assumptions informed by the monopolist can be no substitute or answer to the lived experience of the national uniform scheme with choice and competition.
 13. Commercial insurers, including [name of insurer redacted], underwrite Law Mutual’s policy in WA, one of the three jurisdictions participating in the Uniform Law scheme.
 14. While there should be no need to justify competition, Lawcover Insurance’s super profits and excess capital accretion strongly add to the need for market forces to be allowed to operate.
 15. In a recent speech, Chief Justice Bell has highlighted corresponding concerns, in relation to the College of Law, which have received broad and overwhelming support from the profession and other circles.

Obviously, it is a matter for you whether, exercising your functions appropriately, you wish to approve policies in accordance with s95 of the LPUAA or to keep your power in reserve (to be utilised if circumstances arise in the future where there are good reasons for you to exercise it) and allow ABC’s policy and Lawcover Insurance’s policy (assuming the latter meets the Minimum Standards) to remain approved in accordance with s210(1). This would allow s210(1) to remain operational in accordance

¹ Page 39 of The Law Society of NSW Annual Financial Report 2024.

² Those assertions appear to be from submissions made to your predecessor. This year the Law Society has formally indicated it will not be making any submissions because ABC has raised concerns about contravention of competition law. The Law Society should be held to that election, previous submissions should be disregarded and respectfully you should proceed on the basis that the Law Society has no legitimate submission to make against competition or ABC’s entry into the Market (which is a conclusion overwhelmingly supported by the objective considerations in any event).

with the arguments you submitted successfully in the Court of Appeal. We have drawn attention, separately, to the obvious benefits and fairness of approved insurance being determined by reference to the objective statutory criteria.

Mr Rod Sims (former Chair of the ACCC) has noted that “Too much market power in our economy, however, can cause a range of harms to many Australians and to our society. It is, therefore, a key role of government to push against the instincts of corporate Australia and foster competition.”

As previously mentioned, we are continuing to receive requests for insurance for the coming year and we anticipate that the volume of these requests will grow quickly in the coming days.

ABC has invested heavily over a number of years and is working hard in the run up to the practising certificate renewal cycle which opens in approximately one month. Our application for approval was submitted in November 2022.

ABC Insurance looks forward, subject to your decision, to providing NSW Practitioners and consumers of their legal services with the benefits of competition and choice, with solicitors able to obtain cover from ABC with confidence that the Law Society will issue practising certificates based on ABC’s policy, as it currently does for a number of other policies.

We should very much appreciate it if you would inform us when you intend to finalise your decision.

I look forward to hearing from you at your earliest convenience.

We remain available to meet with you at short notice.

Yours sincerely

David Sandig

David Sandig, Director
ABC Insurance