

# Important Information about the Limitation of Liability Scheme



Queensland  
Law Society®

## 1. Incorporated Legal Practices (ILPs)

The Scheme does not currently apply to Incorporated Legal Practices (as separate entities) or to personal injury work. Members are strongly encouraged to read the *Guidance for members document* (available at [qls.com.au](http://qls.com.au)) in relation to these and other exemptions, claims aggregation, claims made insurance versus occurrence based Scheme and other areas of concern.

Whilst ILPs as corporate entities are currently unable to participate in the Scheme, individual solicitors within ILPs are entitled to participate. Given the asset protection already enjoyed by corporate entities, many litigants will seek, where possible, to name individual solicitors in any action. For this reason, solicitors within ILPs should strongly consider joining the Scheme to protect their personal assets in the event damages are awarded in excess of PI cover. The Society is seeking a change in the *Legal Profession Act 2007* (Qld) to enable ILPs to benefit from a cap on liability in the near future.

## 2. Disclosure requirements

Scheme members must ensure that all business documents given to a client or prospective client that promote or advertise the member's occupation, including correspondence and memoranda of fees, carry a prescribed statement indicating liability is limited by the Scheme.

*The Professional Standards Regulation 2007* (Qld) prescribes a statement of words for practitioners to use to ensure that clients are aware of the practitioner participation in the Scheme. The wording, which must be printed in a size not less than the face measurement of Times New Roman typeface in 8 point is:

**“Liability limited by a scheme approved under professional standards legislation.”**

Whilst the prescribed statement cannot be altered, it can be added to at either end to clarify a practice's specific situation.

ILPs, for instance, might consider adding the word “Individual” to their statement to clarify that individual rather than corporate liability is limited, with the statement therefore reading:

**“Individual liability limited by a scheme approved under professional standards legislation.”**

Practices who do personal injury work might also wish to clarify that personal injury work is excluded from the cap by adding to the statement as follows:

**“Liability limited by a scheme approved under professional standards legislation (personal injury work exempted).”**

A guidance document outlining which documents require the prescribed statement can be found at Professional Standards Council website: <https://www.psc.gov.au/sites/default/files/Disclosure%20factsheet.pdf>.

Failure to disclose may result in both criminal proceedings under s34(1) of the Act, and the risk that members may not be covered by the Scheme. Members should, therefore, move to make the appropriate changes to their letterhead/stationery as soon as possible, and should also consider including additional information on the Scheme in their client retainer letters, and separately advising existing clients of the limitation of liability. Under s34(4) of the Act, members must ensure that a copy of the Scheme concerned is given, or caused to be given, to any client or prospective client who requests a copy (a copy of the Scheme is available at [qls.com.au](http://qls.com.au)).

### 3. Class 2 notification/Change of class

The Scheme limits the liability of members as follows:

Class	Description	Monetary Ceiling
1	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.	\$1.5 million
2	(a) Participating members who were at the relevant time in a law practice consisting of greater than 20 principals.  Or:  (b) 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.	\$10 million

It is the responsibility of members to:

- confirm to the Society if they fall into Class 2, rather than Class 1
- ensure they have the benefit of insurance policy/policies under which the amount payable in respect of occupational liability is not less than the maximum amount of liability applicable to that person at the relevant time.

**Please note:**

- If the Society receives no notification re higher Scheme class or change of class, it will assume a cap to apply at \$1.5 million.
- If a practice fails to comply with the requirements of the Scheme – including complying with the additional insurance requirements applicable to higher caps – the practice risks not being protected under the Scheme.

A form for notifying the Society in relation to Class 2 categorisation or change of class for your practice can be found at [qls.com.au](http://qls.com.au).

### 4. Application for higher caps

The Society has discretionary authority, on application by a participating member, to specify in relation to the participating member, a higher maximum amount of liability (monetary ceiling) than would otherwise apply under the Scheme in relation to him or her either in all cases of any specified case or class of case.

If, in the exercise of its discretion, the Society has specified a higher maximum amount of liability (monetary ceiling) than would otherwise apply under the Scheme in relation to a participating member, the maximum amount of liability (monetary ceiling) in relation to that participating member is that higher maximum amount.

An application form in relation to exercise of discretionary authority for a higher cap can be found at [qls.com.au](http://qls.com.au).