

Information Brochure

Claims against the Legal Practitioners Fidelity Guarantee Fund

Acknowledgment

Thank you to the Law Society of New South Wales for allowing us to adopt and adapt their Information Brochure

November 2025

Table of Contents

KEY WORDS.....	3
THE PURPOSE OF THE FUND.....	4
WHAT IS A DEFAULT.....	4
LOSSES THAT ARE NOT COVERED BY THE FUND	4
WHO CAN MAKE A CLAIM	4
TIME LIMITS FOR MAKING A CLAIM	5
MAKING A CLAIM	5
INVESTIGATION OF CLAIMS	5
PROCEDURE FOR DETERMINING CLAIMS.....	6
MAXIMUM AMOUNT PAYABLE FOR A CLAIM	6
LENGTH OF TIME TO DETERMINE CLAIMS	6
THE AMOUNT THAT CAN BE PAID FROM THE FUND	6
INTEREST AND LEGAL COSTS	7
RIGHT TO APPLY FOR A REVIEW OF A DECISION	7
REPAYMENT REQUIREMENT.....	7
FURTHER INFORMATION	7
DISCLAIMER	7

WHAT IS THE FUND

The Legal Practitioners Fidelity Guarantee Fund (the Fund) is a compensation fund administered by the Law Society under the Legal Profession Act 2007 (LPA). The Fund is not an insurance scheme. It is funded by compulsory annual contributions from solicitors holding practising certificates issued by the Queensland Law Society.

The laws relating to the Fund are found in Part 3.6 of the LPA commencing at s.355.

KEY WORDS

Certain key words are used in the LPA and in this brochure. Some of those key words and their meanings are as follows:

An **associate** of a law practice is a person who is a principal, partner, director, employee or agent of a law practice.

The **Committee** is the Committee of Management from time to time, which comprises a minimum of 5 and a maximum of 9 volunteer solicitor members, the majority of whom must be members of the Law Society Council. The Committee is empowered to determine Fund claims through a delegation made by the Council pursuant to the LPA.

The term **default** refers to a failure by a law practice to pay or deliver trust money or trust property that was received by the law practice in the course of legal practice, where that failure to pay or deliver arose from a dishonest act or omission by an associate of that law practice.

In the case of trust property, default also refers to a fraudulent dealing with trust property, that was received by the law practice in the course of legal practice.

A **law practice** is:

- an Australian legal practitioner who is a sole practitioner; or
- a law firm; or
- an incorporated legal practice; or
- a multi-disciplinary partnership.

Legal services are work done, or business transacted, in the ordinary course of legal practice.

Pecuniary loss is either:

- the amount of trust money or the value of trust property that was not paid or delivered; or
- the amount of money that a person loses or is deprived of, or the loss of value of trust property, as a result of a fraudulent dealing.

Trust money is money entrusted to a law practice, in the course of or in connection with the provision of legal services and includes:

- money received by the practice on account of legal costs in advance of providing the services; and
- controlled money received by the practice; and
- transit money received by the practice; and
- money received by the practice, that is the subject of a power, exercisable by the practice or an associate of the practice, to deal with the money for another person.

Trust money does not generally include investment moneys.

Trust property means property entrusted to a law practice in the course of or in connection with the provision of legal services, but does not include trust money.

THE PURPOSE OF THE FUND

The Fund was established to compensate persons who suffer loss as a result of defaults by law practices, arising from, or constituted by, acts or omissions of associates of law practices.

WHAT IS A DEFAULT

All of the following must be satisfied for a default to be proven:

- trust money or trust property must have been received by the relevant law practice (or an associate of the law practice) in the course of, or in connection with, legal practice; and
- there has been a failure by the law practice to pay or deliver trust money or trust property or there has been a fraudulent dealing with trust property; and
- the law practice's failure, to pay or deliver trust money or trust property, or the fraudulent dealing with trust property, must have arisen from an act or omission of an associate that involved dishonesty.

LOSSES THAT ARE NOT COVERED BY THE FUND

The Fund does not cover claims for negligence by a solicitor or law practice.

Claims will generally not be allowed for money or property received by a law practice for investment purposes.

Claims are not allowed for losses arising from a financial service, regulated mortgage, management investment scheme or mortgage financing activities of a law practice.

In the LPA, "mortgage financing" is defined to mean facilitating a loan secured or intended to be secured by mortgage by:

- acting as an intermediary to match a prospective lender and borrower; or
- arranging a loan; or
- receiving or dealing with payments under the loan.

"Mortgage financing" does not include providing legal advice or preparing a mortgage for a loan that wasn't facilitated by the law practice, or an associate of the law practice.

The Fund does not generally cover disputes about the amount of legal costs deducted by a law practice from trust money. Disputes in relation to legal costs charged by a law practice must be dealt with by means of the cost assessment process. The right to have a law practice's costs assessed should be notified on any tax invoices issued by a law practice.

The Fund does not cover money paid to a person or entity that is not a law practice at the time the money is paid, including former law practices.

The Fund does not cover consequential losses, otherwise known as "indirect losses". An example of a consequential loss is bank interest a claimant might have earned on trust money had that money been received by the claimant at the time when it was due to be paid.

WHO CAN MAKE A CLAIM

Any person (whether real or corporate) who has suffered a pecuniary loss because of a default by a law practice, can make a claim on the Fund. The person who suffers pecuniary loss is usually a client of the law practice.

To have an allowable claim against the Fund:

- the money, or property, must have been held by the law practice as trustee for the claimant; or
- the person for whom the money or property was held must have given a direction to the law practice to deliver the trust money or trust property to the claimant.

TIME LIMITS FOR MAKING A CLAIM

Except where the Law Society has advertised for claims (see below), a person doesn't have an allowable claim against the Fund, unless they have notified the Law Society of the alleged default, within six months of becoming aware of that default. Notifications may be made by email to fgf@qls.com.au

If notification is not made within the required time, the prospective claimant will be asked to provide an explanation as to why the notification was not made in time. After considering the reason provided, the alleged facts and any potential prejudice to the parties, the Law Society may allow further time to provide notification. If the Law Society refuses to allow further time, the Queensland Civil and Administrative Tribunal (QCAT) may do so on application by the prospective claimant.

The Law Society may advertise for Fund claims in relation to a law practice in the press and on the Law Society's website. Claims must be received by the Law Society no later than 5 pm on the date stated in the advertisement as being the final date for claims to be received.

If a prospective claimant has notified the Law Society of an alleged default and an advertisement is subsequently published, the Law Society will attempt to notify that prospective claimant of the final date for claims to be received.

Claims against the Fund in relation to a law practice cannot be made after the date advertised as being the final date for claims to be received. If a prospective claimant attempts to lodge a Fund claim after the final date for claims, they will be asked to provide an explanation as to why the claim was not lodged in time.

After considering the reasons provided, the alleged facts and any potential prejudice to the parties, the Law Society may allow further time to lodge the claim. If the Law Society refuses to allow further time, QCAT may do so on application by the prospective claimant.

MAKING A CLAIM

To make a claim the prospective claimant must complete a Fund claim form.

A claim form may be requested at the time of making a notification of an alleged default or by emailing fgf@qls.com.au

The Fund claim form must be completed as fully as possible. Additional pages may be attached if there is insufficient space on the form.

The Law Society's staff can assist in the completion of the claim form but for more complex claims it might be necessary to engage a law practice to assist in the completion of the claim Form.

If a law practice is engaged by a claimant and the claim is wholly or partly allowed, the Law Society must pay the claimant's reasonable legal costs unless the Law Society considers that special circumstances exist warranting a reduction in the amount of costs, or a decision that no amount should be paid for costs.

A completed claim form can be lodged with the Law Society by emailing it and all supporting documentation to fgf@qls.com.au

No fees are payable to the Law Society in respect of the claim process.

INVESTIGATION OF CLAIMS

Claims against the Fund are investigated by staff of the Law Society (the investigators) who have a duty to investigate claims pursuant to the LPA.

The investigators may make such enquiries as are considered necessary and appropriate to fully investigate a claim. This may involve requesting the claimant, or the claimant's legal representative, to provide additional documents and/or information.

PROCEDURE FOR DETERMINING CLAIMS

When a claim has been investigated, the Committee will decide whether to wholly or partly allow, or wholly disallow the claim.

The Committee can wholly or partly disallow, or reduce a claim if it determines:

- the claimant assisted in or contributed towards, or was a party or accessory to, the act or omission that gave rise to the claim; or
- the negligence of the claimant contributed to the loss; or
- the conduct of the transaction in relation to which the claim is made was illegal and the claimant knew, or ought reasonably to have known, that it was illegal; or
- proper and usual records were not brought into existence during the conduct of the transaction, or were destroyed, and the claimant knew, or ought reasonably to have known that records of that kind would not be kept, or would be destroyed; or
- the claimant has unreasonably refused to disclose information or documents or cooperate in connection with the investigation of the claim; or
- the claimant unreasonably failed to mitigate losses arising from the act or omission that gave rise to the claim

MAXIMUM AMOUNT PAYABLE FOR A CLAIM

The amount that a successful claimant will recover from the Fund may be reduced if the balance of the Fund is insufficient to meet the Fund's ascertained and contingent liabilities.

LENGTH OF TIME TO DETERMINE CLAIMS

The length of time it takes for claims to be investigated and determined depends on a multitude of factors including but not limited to:

- the material available, such as whether files maintained by the law practice are available;
- the volume of any available material;
- the cooperation of the claimant and third parties who may have relevant information or documents, including how promptly and satisfactorily any requests for information are responded to by the claimant and third parties.

Claims are generally finalised within 6 to 12 months.

If the Law Society considers that it will take more than 12 months to investigate and decide a claim, the Law Society is required to notify the claimant and give a brief statement of reasons for the delay.

THE AMOUNT THAT CAN BE PAID FROM THE FUND

A claimant can't be paid more than the claimant's pecuniary loss.

A claimant's pecuniary loss is calculated as:

- the specific sum of trust money which the law practice failed to pay or the value of trust property that it failed to deliver; or
- the loss in value of trust property fraudulently dealt with.

A claimant is not entitled to be paid:

- an amount that has already been paid to or received by the claimant; or
- an amount that is payable to, or receivable by, the claimant; or
- an amount that the Law Society believes is likely to be paid to, or received by, the claimant; or
- an amount that the Law Society believes might, but for the neglect or failure of the claimant, have been paid or payable to, or received or receivable by, the claimant.

INTEREST AND LEGAL COSTS

Interest is payable on the allowed amount of a claim, at the rate prescribed in s. 78A of the Legal Profession Regulation 2017 unless the Committee decides that special circumstances exist that warrant a reduction in the amount of interest, or a decision that no amount should be paid for interest.

If interest is payable, it is paid from the date the claim form was received by the Law Society to the date the claimant is notified of the allowance of the claim.

If a claim is wholly or partly allowed, the claimant's reasonable legal costs in making and proving a claim must be paid to the claimant unless the Law Society decides that special circumstances exist that warrant a reduction in the amount of costs, or a decision that no amount should be paid for costs.

If a claim is wholly disallowed, the Law Society can pay the whole or part of the claimant's reasonable legal costs involved in making and attempting to prove the claim.

RIGHT TO APPLY FOR A REVIEW OF A DECISION

If a claim is wholly or partly disallowed, or a decision is made to reduce the amount paid in relation to a claim, the claimant can apply to QCAT for a review of the Law Society's decision.

The claimant must establish that all or part of the amount sought to be recovered from the Fund is not reasonably available from other sources. The Law Society can waive that requirement, or can apply to QCAT to stay the review application pending further action being taken by the claimant to seek recovery of that amount from other sources.

REPAYMENT REQUIREMENT

If a claimant receives compensation from the Fund in relation to a pecuniary loss and later receives money from one or more other sources in relation to that pecuniary loss, the claimant must repay the excess amount received to the Law Society. The excess is the amount by which the amount paid from the Fund (excluding interest and legal costs) plus the total amount received from other sources, exceeds the amount of the original pecuniary loss.

FURTHER INFORMATION

To obtain further information please contact the Fund's Claims Manager on fgf@qls.com.au or alternatively please call the Law Society on 07 3842 5888 and ask to speak with the Fund's Claims Manager.

DISCLAIMER

The purpose of this document is to provide a brief summary to potential claimants of some information in relation to Fund claim procedures.

It is not legal advice.