

# PROFESSIONAL NEGLIGENCE: HOW MUCH WILL A CLAIM REALLY COST ME?

By Simone Herbert-Lowe



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**A**t Lawcover, one of the first questions we are often asked when a solicitor notifies us of a claim is: "How much will this cost me? How will my premiums be affected and do I have to pay my excess straight away?" The primary professional indemnity policy issued by Lawcover provides broad protection for civil liability that arises from the provision of legal services – up to \$2 million for each claim. There are, however, some costs of a claim that are not covered under the policy.

## The excess

In most cases, the excess is only payable in the event of a payment to the claimant pursuant to the settlement or judgment of a claim, and Lawcover pays the legal costs associated with defending the claim. Larger law practices sometimes have a 'costs inclusive' excess, which means that once external lawyers are appointed to defend the claim, the insured law practice pays the panel firm's accounts until the excess is fully eroded.

## Premiums

The most significant factor that impacts upon a law practice's professional indemnity insurance (PII) premium is the practice's gross fee income (GFI) for the last financial year. The law practice's claims history and attendance at risk management seminars are then also factored into premium calculations.

When assessing claims history, Lawcover takes account of all claims recorded in the last full five financial years. For example, when 2015/16 premiums are calculated in early 2015, claims notified in the 2009/10, 2010/11, 2011/12, 2012/13 and 2013/14 financial years will be relevant. Under changes to be introduced in 2015/16, claims below \$50,000 will generally be excluded from premium calculations. However, all claims may be subject to an underwriting review. As a matter of course, older claims will have less impact than newer claims.

## Snapshot

- The direct costs for a law practice of a professional negligence claim can include payment of an excess, a possible increase in professional indemnity insurance premiums, and lost professional fees.
- There are also important indirect costs, including lost opportunity to spend time on profitable work and personal and professional costs.
- Increased risk awareness is the best means of avoiding these costs.

However, practices with good claims histories will usually pay lower premiums than those with poor claims histories, assuming they have the same GFI.

## Professional fees

Lawcover's policy excludes indemnity for a practice's own costs and disbursements (other than counsel's fees or expert fees) and disputes in relation to costs and disbursements.

This means that your own professional fees are an uninsured part of any claim against you or your practice.

For example, if you act on behalf of the client in a large litigated matter and you are ultimately sued in relation to the conduct of that litigation, there is no indemnity under the policy for the component of the claim that relates to your own fees.

In some cases, this can be a very significant part of the claim. In other cases, lawyers will not be in a position to sue for outstanding fees where the client is able to prove there has been a failure of consideration because of the solicitor's alleged negligence. Of course, there is also a good chance of permanently losing a client once problems arise.

## Professional time lost

In addition to these explicit costs, there are many indirect costs that are incurred following a professional negligence claim. Where a solicitor is required to defend a claim by a former client, a large amount of professional time can be spent in preparing statements, and in attending conferences, mediations and court hearings. These costs are borne by the law practice itself as they are not covered under the policy, and they represent professional time that could otherwise be spent on profitable legal work.

Court hearing dates are not always predictable and it can be difficult to plan around the intrusion in professional time that these cases present.

## Claims more than \$2 million

Unless a law practice purchases optional top-up cover, the maximum amount insured is \$2 million for each claim, which includes any amounts paid by Lawcover in defence costs.

## Personal and professional costs

Professional negligence claims are always stressful and come at a considerable personal cost. While some practitioners are better able to compartmentalise the stress of a claim from other areas of their practice (and life), for some, the pressure of possible adverse findings or criticism by a former client is personally overwhelming.

## Avoiding the costs of claims

In recent years, the number of claims per lawyer has fallen significantly, which has enabled Lawcover to maintain and/or reduce premiums and provide a significant policyholder rebate in 2014. Our actuarial studies have confirmed that investment in risk management and claims prevention activities significantly reduces a law practice's claims exposure. Being mindful of risk and educating all members of your law practice about claims prevention strategies is the best way of avoiding the significant costs your firm could incur in the event of a professional negligence claim. **LSJ**