

The Law Society of New South Wales v Attorney General of New South Wales

ABC Insurance v Law Society of NSW

Proceedings commenced in Supreme Court of NSW - removed to the NSW Court of Appeal

- For many years the sole PI Insurance provider in NSW, for the majority of law practices, has been Lawcover Insurance Pty Limited ('Lawcover Insurance'), a wholly owned subsidiary of the Law Society of NSW ('Law Society').
- On 17 January 2024 a letter was sent to the Law Society on behalf of ABC Insurance Pty Ltd ('ABC') announcing ABC's intention to distribute a professional indemnity (PI) Insurance policy, effective 1 July 2024, which will provide law practices with the mandatory minimum \$2 million of cover.
- The letter sent to the Law Society on 17 January 2024 requested a meeting to discuss relevant processes and protocols and seeking an assurance that ABC would be treated on a competitively neutral basis relative to Lawcover Insurance.
- On 1 March 2024, the Law Society commenced proceedings in the Supreme Court of NSW against the NSW Attorney General. The Law Society published the Notice below on the same day.
- In the Court proceedings the Law Society sought declaratory relief which would have the effect of maintaining the current position by which most solicitors in NSW are only able to obtain their insurance from Lawcover Insurance.
- ABC subsequently commenced a separate proceeding seeking the Court's confirmation that its policy wording meets the minimum standards specified in the Uniform Rules. The Law Society has also opposed the making of those orders.
- Lawcover Insurance's policy is not required to meet those minimum standards.
- On 26 March 2024 the Law Society issued a further Notice stating that the proceedings were commenced in its regulatory capacity (presumably, as distinct from its other roles as a member body and owner of Lawcover Insurance) and that, pending a decision of the Court, it "will not be in a position to process practising certificate applications attached to PII policies issued by ABC Insurance". A copy of this Notice is included below.
- The two proceedings were removed to the Court of Appeal, which heard the Law Society's proceeding on 2 April 2024 (there was insufficient time available to also hear ABC's proceeding).
- ABC is awaiting the outcome of that hearing.

Law Society's 'Notice' sent by e-mail to its members on Friday 1 March 2024

Dear,

The Law Society of New South Wales is aware of a potential new provider of professional indemnity insurance for NSW solicitors.

In light of the approaching practising certificate renewal cycle, the Law Society is seeking urgent judicial clarification from the Supreme Court of New South Wales.

The Law Society is committed to keeping you informed about this matter as appropriate.

Law Society's 'Notice' sent by e-mail to its members on Tuesday 26 March 2024

Dear,

Further to our email dated 1 March 2024, we are writing to update you on current proceedings regarding a potential new provider of professional indemnity insurance (PII) in NSW.

The Law Society, as the regulatory authority responsible for the granting and renewing of Australian practising certificates to Australian legal practitioners, approached the Supreme Court of NSW on 29 February 2024 in a proceeding against the Attorney General of NSW seeking judicial clarification about the statutory interpretation of relevant provisions relating to PII policies for NSW solicitors.

The approach to the Court follows public statements by ABC Insurance Pty Ltd (ABC Insurance) that its PII policy for NSW solicitors is an "approved insurance policy" for the purposes of Part 4.4 of the Legal Profession Uniform Law.

The Law Society is seeking judicial clarification to ensure that it can be satisfied that a legal practitioner who applies for a practicing certificate to engage in legal practice in NSW, has or is covered by an approved PII policy in accordance with the applicable legislation. ABC Insurance has also commenced legal proceedings against the Law Society seeking a declaration that its PII policy is an approved insurance policy under the Legal Profession Uniform Law.

The Law Society is keenly aware that solicitors will commence practising certificate renewal applications from 3 April 2024. That is why it has urgently approached the Court for clarification.

Given that the matter is of public importance, the matters have been transferred to be heard together before the NSW Court of Appeal on Tuesday, 2 April 2024.

Practitioners are notified that, until the Law Society has received judicial clarification from the NSW Court of Appeal, the Law Society's Licensing Department will not be in a position to process practising certificate applications attached to PII policies issued by ABC Insurance.

The Law Society is committed to working towards certainty for the profession as the 2024-25 renewal cycle begins and will keep you informed as appropriate.

Additional Information

NSW Attorney General (NSW AG)

- In November 2022 ABC Insurance Pty Ltd (ABC) submitted an application to the then NSW AG (The Hon. Mark Speakman) seeking approval of its insurance policy to cover the mandatory \$2 million of professional indemnity insurance required to engage in private legal practise in NSW for the 2024/25 financial year.
- Despite correspondence between the parties, no progress was made prior to the State election.
- In May 2023 the current NSW AG (The Hon. Michael Daley) informed ABC that he intended to commission a report to inform his decision.
- On 8 February 2024 the NSW AG approved Lawcover Insurance's policy for the 2024/25 financial year.
- Despite the elapse of more than 14 months, the NSW AG has made no decision and has not approved ABC's PI insurance policy.
- In the Law Society proceeding, the NSW AG has filed submissions supportive of the relief sought by the Law Society (though supported by different legal reasoning).
- It is unclear why the NSW AG has approved Lawcover Insurance's policy while failing to make a decision in relation to ABC's policy, despite the elapse of more than a year.
- There is nothing to prevent the NSW AG from approving ABC's policy, which would make the current Court action unnecessary, remove uncertainty for the legal profession, and would ensure that long overdue competition can be introduced, in the interests of the people of NSW and the legal profession. Pending a decision by the NSW AG or a decision by the Court, solicitors are not able to benefit from choice and competition.