

Subject: Letter from ABC Insurance to Councillors of The Law Society of NSW

Dear Councillor

I write to you directly in your capacity as a Councillor of The Law Society of NSW (Law Society) and as a representative of the profession to inform you that:

- ABC Insurance (ABC) intends to distribute its professional indemnity insurance policy to NSW solicitors (the ABC Policy) for the practising year commencing on 1 July 2026 (2026-27 Practising Year);
- the ABC Policy is in the same terms and the same insurance arrangements as sought to be distributed by ABC for the current practicing year (2025-26 Practising Year);
- the ABC Policy meets the requirements of s 210 of the *Legal Professional Uniform Law Act 2014* (NSW) (Uniform Law). Thus, the ABC Policy is an '*approved insurance policy*'.

The Uniform Law is intended (as set out in the first three objectives) to promote the administration of justice and an efficient and effective Australian legal profession, by:

1. providing and promoting interjurisdictional consistency;
2. ensuring lawyers are competent and maintain high ethical and professional standards; and
3. enhancing the protection of clients of law practices and the protection of the public generally.

In accordance with the Uniform Law, law practices which operate in multiple states, generally larger practices, enjoy a degree of choice and competition. They are also able to obtain insurance with significantly lower premiums on average per legal practitioner than are currently available for the majority of solicitors in NSW.

The majority of NSW law practices (usually small to mid-size practices), as a consequence of the maintenance of the current monopoly, are only able to purchase their insurance from one provider and, accordingly, they have no choice. Estimates, based on data published by the Law Society, indicate that approximately 70% of practising certificates issued for private practice in NSW fall into this category. Lawcover Insurance's average premium per insured legal practitioner is between 2 and 2.5 times the average premium in Victoria, as confirmed by a leading firm of actuaries.

As a consequence there is a two-class legal system with significantly higher premiums paid by the majority i.e. those who are subject to a monopoly.

The current monopoly arrangements have adverse implications for solicitors in terms of fairness, quality, cost and cost differences for practise across jurisdictions. The arrangements also have adverse consequences for the cost of legal service and the quality of protection afforded to the public. The outcomes are not consistent with the objectives of the Uniform Law.

Needless to say, the Uniform Law is not intended to protect underperforming solicitors. The cost of doing so must inevitably result in a higher incidence of adverse outcomes for users of legal service, higher costs for the public as well as higher costs for the vast majority of soundly performing solicitors.

The Court of Appeal last year confirmed (in proceedings commenced by the Law Society), in support of submissions made on behalf of the Attorney General, that s210(1) of the Uniform Law constitutes the default, uniform pathway for approved insurance (Uniform Law Pathway).

In accordance with the Uniform Law Pathway, an insurance policy is an approved insurance policy if it satisfies the statutory criteria which include minimum policy standards. This pathway does not involve or require the exercise of any function by the Attorney General.

The Uniform Law Pathway was developed in consultation with the Law Society and Lawcover Insurance and there can be no question that Lawcover Insurance's policy ought to be able to comply with the objective criteria and, if so, Lawcover Insurance's policy is already an '*approved insurance policy*' for the 2026-27 Practising Year.

As mentioned above, ABC's Policy is currently an '*approved insurance policy*' for the forthcoming (2026-27) Practising Year. ABC's policy provides broader insurance cover than that of Lawcover Insurance and, as confirmed arising from a significant number of inquiries during the current year, ABC's premiums will be significantly lower on average.

In accordance with the decision of the Court of Appeal last year, the NSW Attorney General's authority under s95 of the Legal Profession Uniform Law Application Act (Application Act Pathway) can only be invoked by a prospective provider of insurance seeking approval for its policy from the Attorney General via this pathway. If, in such circumstances, the Attorney General approves one or more policies, this will extinguish all approvals already in force in accordance with the Uniform Law Pathway, for the relevant year.

To date, the Law Society has made clear its preference for its subsidiary, Lawcover Insurance, to be maintained as the sole (monopoly) supplier for solicitors working in law firms which only have offices in NSW.

The purpose of this letter is to encourage you and your fellow Councillors, in your capacity (among other things) as elected representatives of the profession, to put aside the apparent past singular financial preoccupation of the Law Society with maintaining its monopoly (operated through its wholly owned and controlled subsidiary, Lawcover Insurance), and allow choice and competition to flow automatically for the benefit of the people of NSW, the profession and the Law Society. This will produce a fair and efficient outcome and, among other things, eliminate any risk of contravention of competition laws.

This can be achieved by the Law Society ensuring that its wholly owned and controlled subsidiary, Lawcover Insurance, relies on approval via the Uniform Law Pathway and refrains from submitting an application to the NSW Attorney General for approval in accordance with Application Act Pathway.

While we are hopeful that Councillors will adopt this approach to allowing competition to be achieved, ABC Insurance reserves its right to continue to pursue all of its options to enter the Market (including undertaking a more formal process to vindicate its rights).

We should appreciate the opportunity to meet with Councillors to co-operate to ensure the smooth introduction of this new insurance policy, including addressing practical implementation issues, in the interests of the people of NSW, the legal profession and the Law Society.

We would be pleased to meet with you, if you are interested in learning more about ABC's policy offerings and views, as well as views which solicitors have been expressing to ABC.

I look forward to hearing from you.

Yours sincerely

David

David Sandig

Director



Level 17, Angel Place, 123 Pitt Street, Sydney NSW 2000