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ANZASW

A Guide to the Professional Liability Claims Process

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ANZASW – Professional Liability Claims Process

Following is what we hope will be a simple guide that will help members determine whether they have a claim and what action they should take. It is a guide to help members. It is not an insurance policy or description of available cover.

If you think you have a claim here are some things that must be present:-

Following are some of the main things that must be present for you to have a claim. Above all there must be an allegation against you and it must suggest you have made an error or done something wrong in relation to the professional services you have delivered.

In some cases Exclusions may mean cover is not available or limited. In others Extensions may enhance cover.

This list is not exhaustive but gives direction in some of the fundamental areas where we see confusion when claims are reported. **If you are unsure** call Crombie Lockwood or the Legal Advisory Panel to report the incident.

Key Factors for a Claim	Additional Notes
There must be actual or alleged negligence in the delivery of your Professional Services.	<ul style="list-style-type: none"> • Cover is for any actual or alleged wrongful act, error or omission, misleading or deceptive conduct, libel or slander, breach of confidentiality or omission in performance or failure to perform. • You must have utilised your professional social work skills, knowledge, values and ethics. • The definition of professional services as it relates to Insurance is available on the ANZASW web-site • You must be legally liable.
It must arise from the delivery of Social Work.	<ul style="list-style-type: none"> • The definition of Social Work as it relates to Insurance is available on the ANZASW web-site.
You must be a member and therefore an Insured when the claim is notified.	<ul style="list-style-type: none"> • You can only claim if the matter arises when you are a current member. If you are not a member and a claim arises [even if it is the day after membership ends and even if the incident occurred while you were a financial member] you will not be insured. • If you are Suspended the insurance will not apply to any event that occurs during your suspension period.
A formal complaint or proceeding must be issued or is likely to be issued.	<ul style="list-style-type: none"> • This is likely to be a written complaint or proceeding. • It is likely to seek damages or nonmonetary compensation. It may be an allegation of a criminal charge or official, written notice in connection with an Investigation.
The complaint must be made against you.	<ul style="list-style-type: none"> • As a member of ANZASW and arising out of the professional social work services you provide.
There must be a "Loss".	<p>A Loss is typically one of the following;</p> <ul style="list-style-type: none"> • Compensatory damages or reparation, legal costs and expenses. • Loss does not include; <ul style="list-style-type: none"> ○ Fines or penalties. ○ Employment related compensation or benefits. ○ Internal or overhead expenses. ○ Matters which are uninsurable by law. ○ Refunding of fees.

The policy does not cover

Following are some of the main things that are not insured. In some cases there may be partial cover [because an allegation may cover something that is clearly not insured as well as something that clearly is] or there may be limited coverage [the allegation is primarily excluded but an extension gives some limited cover].

This list is not exhaustive but gives direction in some of the fundamental areas where we see confusion when claims are reported. **If you are unsure** call Crombie Lockwood or the Legal Advisory Panel to report the incident.

Key Exclusions & Limitations	Additional Notes
Employment Disputes	<ul style="list-style-type: none"> • If the matter is one of a dispute with your employer in relation to your conduct as an employee this is not insured. • It is likely that as you work in “Social Work” that the dispute may involve an element that relates to your professional social work services. Investigation costs may be covered [see Extension below]. • There is no insurance for defending Employment Disputes or for legal fees to represent you in an Employment Dispute.
Some Types of Conduct	<p>The following are not generally covered;</p> <ul style="list-style-type: none"> • Improper use of position or information for profit or advantage. • Illegal remuneration paid to or received. • Criminal, fraudulent, willful or malicious acts, error or omission, or any intentional or knowing violation of law. • Assault or battery.
Knowledge of past incidents that could lead to a claim	<ul style="list-style-type: none"> • Something claimable that you knew or would reasonably be expected to know that occurred prior to you becoming a member of ANZASW and having insurance.
Sexual Molestation	<ul style="list-style-type: none"> • Actual or alleged. There is however limited cover provided by an extension [see below].
Territorial Limits outside New Zealand	<p>Your cover is for New Zealand only. You are not able to claim for;</p> <ul style="list-style-type: none"> • Any wrongful act that occurs outside New Zealand. • Any legal proceeding brought in a court outside New Zealand.
Return of Fees	<ul style="list-style-type: none"> • If you have to give back your fees this is not covered. • Compensation or awards for the return of any fees, charges, commissions etc charged by you for your professional services is not insured.

The policy may cover you in some other ways

Following are some areas where the insurance is extended for special circumstances. Your claim may be covered partially or fully or some limited cover may be available.

This list is not exhaustive but gives direction in some of the fundamental areas. **If you are unsure** call Crombie Lockwood or the Legal Advisory Panel to report the incident.

Key Extensions [more cover]	Additional Notes
ANZASW Complaints Resolution	<ul style="list-style-type: none"> Limited cover for awards and mediation/investigation costs incidental to the Resolution Process. There does not have to be legal proceedings, legal liability or compensation sought outside the Resolution process. Penalties awarded against you are not covered.
Investigation Expenses	<ul style="list-style-type: none"> Reasonable costs and expenses incurred with prior consent in preparing for and attending any Investigation. An investigation is an examination or inquiry into allegations of unprofessional conduct by: <ul style="list-style-type: none"> a professional licensing board or a professional body or a government authority or an employer [but only where the investigation relates to the performance of Professional Services]
Investigations for Sexual Molestation	<ul style="list-style-type: none"> As above but limited to \$25,000. There is no cover for any fine, monetary penalty or reparation arising out of Sexual Molestation.
Legal Prosecution Defence	<ul style="list-style-type: none"> Costs in defending any legal action for a Statutory offence arising out for your employments, but limited to \$25,000 Includes Section 195a of the Crimes Act.
EAP Assist Programme	<ul style="list-style-type: none"> Counselling support services with EAP Service Ltd. Members to apply to the Chief Executive, ANZASW.
Loss of Documents	<ul style="list-style-type: none"> For which you are legally responsible.

What you must do

Following are some of the things that you need to do when an incident comes to your attention that you think could lead to a claim. By the time you get to this part of the process you should have read the information above. You most likely will have formed an opinion as to whether you have a claim. **If you are unsure** call Crombie Lockwood or the Legal Advisory Panel to report the incident.

Key Factor's	Additional Notes
Legal Advisory Panel	<ul style="list-style-type: none"> You can contact the lawyers on the Advisory Panel if you have a claim, or think you have a claim, and want advice. This service is for insurance claims related to this insurance only; or if you think a matter is likely to become a claim. Do not ring the panel for general legal advice, employment dispute advice or other “non-insurance claim” advice. Contact details for the Panel are via 0800 694294. Further details are on your website.
Crombie Lockwood – Insurance Professionals	<ul style="list-style-type: none"> You can contact us at any time for advice or information. Details are on your website. If you are unsure if what has occurred is a claim ring Crombie Lockwood before you contact the Legal Advisory Panel. We will be able to help. For insurance questions ask for <u>Iain McKenzie</u>.
Things you <u>must do</u>	<ul style="list-style-type: none"> Report the matter as early as possible. Keep copies of any documents you receive. Take notes at any meetings you have attended.
Things you <u>mustn't do</u>	<ul style="list-style-type: none"> Do not admit liability or make any offer of settlement. Never do this it may invalidate your insurance. Do not incur any costs without prior approval. Do not engage your own lawyer without prior approval.
Maintain financial membership of ANZASW	<ul style="list-style-type: none"> In order to make a claim you must have insurance cover at the time you are notified of an incident or issue. Insurance cover is <u>ONLY</u> available to members whose membership fees are paid and up-to-date.