

Market Update

JUNE 2021

New Conduct and Client Care Rules create compliance risks for solicitors

AT A GLANCE

The new Lawyers' Conduct and Client Care Rules (RCCC) are coming into force on 1 July 2021. It's important brokers and underwriters are up to speed with the changes and their impact on solicitors' negligence risks.

The amendments are designed to cover bullying, sexual harassment and other inappropriate workplace behaviour.

THE HEADLINE ISSUES

The RCCC are changing after a long review process by the Law Society. This followed the 2018 Bazley report and media scrutiny on bullying and sexual harassment in the profession.

The amendments are designed to cover bullying, sexual harassment and other inappropriate workplace behaviour. The changes tie in with Worksafe's strengthened focus on bullying and sexual harassment, and we expect other professional bodies will follow suit in due course. The aim is an improved legal culture with safe, healthy, respectful, and inclusive workplaces.

The changes:

- Provide clear guidance that bullying and harassment is prohibited and can – and will – be investigated by the Law Society.
- Lower the threshold for mandatory reporting to reasonable grounds to suspect another lawyer “may have engaged in” misconduct.
- Make duties to employees (and contractors and volunteers) a professional standards' matter.
- Clarify that a lawyer can terminate a retainer with a client for unacceptable behaviours, such as bullying or discrimination by the client towards the lawyer, their staff or any barrister instructed by the firm.

- Require:
 - practices to have processes in place to protect staff/ prevent bullying harassment and discrimination
 - practices to report to the Law Society where internal employment issues for this kind of conduct result in written warnings or dismissal or a lawyer resigns after such conduct issues are raised, and
 - a designated partner to certify yearly that that the practice is complying with these obligations and processes.

We expect these changes will impact the nature and volume of complaints for insured solicitors, even if there is a delayed lead-in. Small-to-medium practices, barristers and sole practitioners, particularly, may need some education on their new obligations. The NZLS is providing guidance on these changes, but not all firms will take this in.

These changes will impact the nature and volume of complaints for insured solicitors.

WHAT SHOULD YOU DO?

Underwriters may want to consider these new exposures on renewal. Brokers should remind firms to have policies and systems (including procedures to investigate complaints) to prevent and protect employees, and other people the law practice engages with, from prohibited behaviour. This will assist in mitigating EPL claims, as well as disciplinary complaints.

It may be worth checking that practices:

- Actively comply with these obligations, understand their reporting requirements and have a designated lawyer in place. The NZLS are producing a Guidance document (currently in draft) that will assist with this.
- Are training staff regularly on what conduct is prohibited, and what to do if they experience or suspect unreasonable, offensive or unwelcome behaviour.
- Do not victimise or disadvantage complainants, even inadvertently.
- Have a policy on alcohol consumption, both in the workplace and at work functions.
- Get good HR and leadership support, including to drive cultural change if necessary.
- Are informed on appropriate insurance cover.

Need to know more?

If you'd like any more information about the changes, let us know. We're happy to have a chat, or deliver a formal presentation for your team or your clients.



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