

Annual Information Booklet

for the Law Mutual (WA) Professional Indemnity Insurance
Arrangements 2022/2023



lawmutualwa.com.au





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Definitions

The meanings of the terms used in this Booklet are set out below.

| Term | Meaning |
|-------------------------------------|---|
| Application | an application for coverage under the Insurance Arrangements or any associated application to Law Mutual. |
| Australian Legal Practitioner Board | has the meaning given in section 3 of the LPA or equivalent section of the Uniform Law. |
| CLC | Legal Practice Board of Western Australia. |
| Five Year Period | a Community Legal Centre |
| ILP | means 1 July 2016 to 30 June 2021. |
| Insurance Arrangements | an Incorporated Legal Practice. |
| Insured's Contribution | the compulsory insurance arrangements for non-exempt Practitioners in Western Australia. |
| Insurers | the first part of a settlement or judgment against the Insured in relation to a Claim as described in clause 11 of the Certificate. |
| | means |
| | <ul style="list-style-type: none"> • Vero Insurance Limited (50%); • Liberty Specialty Markets (25%); and • MS Amlin Syndicate 2001 at Lloyds (25%). |
| Late Lodgement Fee | 10% of the Annual Contribution payable by a Legal Practice before GST. |
| Law Firm | has the meaning given in section 3 of the LPA. |
| Loss Ratio | means the ratio (expressed as a percentage) between: <ol style="list-style-type: none"> a. 75% of the total of all monies, as at 31 December 2021, reserved by Law Mutual in respect of Claims first made against: <ul style="list-style-type: none"> • a Legal Practice; or • a Predecessor of the Legal Practice; or • a Partner or employed Practitioner of the Legal Practice for a liability which arises directly or indirectly out of an act or omission by the Partner or employed Practitioner before they joined the Legal Practice; or • a Practitioner for a liability which arises directly or indirectly out of an act or omission by the Practitioner before they commenced conducting the Legal Practice as a Sole Practitioner: during the Five Year Period or first made after that period but covered during the Five Year Period pursuant to s 40(3) of the Insurance Contracts Act 1984 (Cth), plus all monies paid out of the Law Mutual Fund in respect of those Claims during the Five Year Period on the one hand, and b. the total of the Annual Contributions and any Administration Levies paid by the Legal Practice for the Five Year Period which, for the purposes of calculating the Loss Ratio, shall be not less than \$100,000, on the other hand. <p>For the purpose of calculating the Loss Ratio, monies paid out of the Law Mutual Fund comprises any settlement amount paid or damages awarded in respect of a Claim, the Claimant's Costs and Related Costs.</p> |
| LPA | <i>Legal Profession Act 2008 (WA)</i> as amended from time to time. |
| MDP | a multi-disciplinary partnership. |
| Notification | a written notice to Law Mutual (WA) of facts or circumstances that might give rise to a Claim. |
| PI | professional indemnity. |
| Tax Invoice | a tax invoice issued by the Law Society to a Legal Practice for payment of an Administration Levy and/or the Annual Contribution. |

A reference in this Booklet to a section of the LPA or to a Regulation should be read as a reference to the equivalent provision in the Legal Profession Uniform Law Application Act (WA) or its associated regulations or rules if the Legal Profession Uniform Law Application Bill becomes law and comes into effect on or before 30 June 2023.

A term used in this Booklet has the same meaning as that same term in Clause 17 of the Certificate.

This Booklet outlines the arrangements made by the Law Society for the provision of PI insurance for the period 1 July 2022 to 30 June 2023. It is published pursuant to the requirements of Regulation 84(3).

The Insurance Arrangements

Master Policy and Certificate

1. A Practitioner, other than an exempt Practitioner, can only engage in legal practice in Western Australia if the Legal Practice of which the Practitioner is a Partner or by whom the Practitioner is employed or engaged, has PI insurance.
2. The Master Policy records the arrangements made by the Law Society for the provision by the Insurers of PI insurance to Legal Practices practising in Western Australia for the Period of Insurance.
3. The Certificate contained in Schedule 1 to the Master Policy records the terms and conditions of the PI insurance provided by the Insurers pursuant to the Master Policy.
4. A Certificate issued to a Legal Practice cannot be cancelled or transferred to another Legal Practice.
5. Practitioners should read the Certificate to understand the full extent and scope, limitations of, exclusions from, and conditions of the provision of PI insurance.
6. The Law Society, on behalf of the Insurers, issues a Certificate to a Legal Practice:
 - a. that requests a Certificate and has complied with the requirements imposed by the Law Society in relation to the issue of a Certificate;
 - b. in terms of Schedule 1 to the Master Policy as evidence of their PI insurance under the Master Policy.
7. In broad terms, a Certificate issued to a Legal Practice means that the Legal Practice and its current and past Partners and Practitioners employed or engaged by it are, subject to the terms of the Certificate, indemnified for their civil liability up to the Limit of Indemnity and subject to the Insured's Contribution, for a Claim first made against them during the Period of Insurance.
8. If the Insured gives a Notification during the Period of Insurance as soon as reasonably practicable after the Insured becomes aware of the facts or circumstances described in the Notification, the Insured may, pursuant to s40(3) of the *Insurance Contracts Act 1984* (Cth), be entitled to be indemnified by the Insurers in respect of a Claim subsequently made arising from those facts or circumstances, even though the Claim is first made after the expiration of the Period of Insurance.
9. The Master Policy extends PI insurance to Ceased Practices and Former Practitioners for a Claim arising from their practice of law whilst covered under a previous Insurance Arrangement.
10. The Certificate:
 - a. covers a Legal Practice for up to the difference between:
 - i. \$2,000,000 each and every Claim inclusive of Claimant's Costs and Related Costs; and
 - ii. the Fund's Contribution,
 - b. does not provide any coverage to a Legal Practice once the limits described in clauses 3 and 4 of the Master Policy are exhausted.

11. The coverage under the Insurance Arrangements is represented diagrammatically below:

| | | |
|--|--|---|
| <p align="center">Primary Insurance</p> <p>Up to \$1,750,000 each & every claim (costs inclusive), in excess of the Fund's Contribution of \$250,000 (costs inclusive) and the Insured's Contribution (costs exclusive)</p> | | |
| <p align="center">Fund Contribution</p> <p>\$250,000 each & every claim up to an aggregate of \$6,000,000 (costs inclusive)</p> | <p align="center">Additional Cover</p> <p>\$250,000 each & every claim, once the Law Mutual Fund's \$6,000,000 aggregate is fully eroded, up to an aggregate of \$6,000,000</p> | <p align="center">Uninsured</p> <p>\$250,000 each & every claim once the Law Mutual Fund's \$6,000,000 aggregate and the Additional Cover is full eroded</p> |
| <p align="center">Insured's Contribution</p> <p>\$7,500 to \$55,000 each & every claim, subject to certain multipliers and aggregation (costs exclusive)</p> | | |

12. Clause 13 of the Certificate is a claims aggregation clause. It describes the circumstances in which multiple Claims will be aggregated so that only one Limit of Indemnity and only one Insured's Contribution is payable.

Insured's Contribution

13. Sub-clause 11.2 of the Certificate describes how the Insured's Contribution is calculated.
14. Sub-clauses 11.3 and 11.4 of the Certificate describe the circumstances in which the Insured's Contribution is doubled and multiplied by five respectively.
15. Sub-clause 11.6 of the Certificate describes the maximum aggregate of the Insured's Contribution in respect of all Claims indemnified under the Certificate.
16. The Law Society will take the following matters into account in deciding whether, and if so how, to exercise the discretion described in sub-clause 11.5 of the Certificate:
- a. whether, during the Five Year Period or subsequently, the Legal Practice:
 - i. has, in writing, requested Law Mutual to recommend risk management practices specifically for the Legal Practice (Request);
 - ii. if it made a Request, has implemented risk management practices recommended by Law Mutual specifically for the Legal Practice and if so, when and the extent to which it has done so.
 - iii. at its request and its own cost, has been audited by Law Mutual for compliance with risk management practices recommended by Law Mutual specifically for the Legal Practice;
 - b. a comparison during the Five Year Period between the average number of Claims per Practitioner:
 - i. in the Legal Practice and in any other Legal Practice substantially constituted by the same Partners and employed Practitioners; and
 - ii. in all Western Australian Legal Practices;
 - c. a comparison during the Five Year Period between the average cost of Claims per Practitioner:
 - i. in the Legal Practice and in any other Legal Practice substantially constituted by the same Partners and employer Practitioners; and
 - ii. in all Western Australian Legal Practices.

Fund's Contribution

17. Under the Master Policy, the Law Society will cause to be paid from the Law Mutual Fund the first \$250,000 of a Claim in excess of the Insured's Contribution.
18. The maximum aggregate amount of all payments from the Law Mutual Fund for the Period of Insurance is \$6,000,000.
19. In the event that the \$6,000,000 aggregate amount referred to above is exhausted, the Insurers will pay up to \$6,000,000 in aggregate for the Period of Insurance for Claims on the same basis as the Fund's Contribution would have been paid.

Application for Insurance (existing Legal Practices)

20. An existing Legal Practice that requires coverage under the Insurance Arrangements for the Period of Insurance must submit its Application (Annual Insurance Application) by Thursday, 31 March 2022.

The Annual Contribution

21. The Law Society assesses the Annual Contribution for a Legal Practice by reference to the Legal Practice's GFI for the period 1 January 2021 to 31 December 2021 as declared in its Application, subject to certain discounts and loadings described below.

Base Annual Contribution

22. The primary assessment will be in accordance with the following table:

| Band | GFI Band | Rate | Maximum Amount for the Band | Cumulative Amount** |
|------|----------------------------|-------|-----------------------------|---------------------|
| 1 | Nil | | \$235* | N/A |
| 2 | \$1 – \$50,000 | 4.26% | \$2,130 | \$2,365 |
| 3 | \$50,001 – \$100,000 | 3.62% | \$1,810 | \$4,175 |
| 4 | \$100,001 – \$250,000 | 1.20% | \$1,800 | \$5,975 |
| 5 | \$250,001 – \$500,000 | 1.15% | \$2,875 | \$8,850 |
| 6 | \$500,001 – \$2,000,000 | 1.09% | \$16,350 | \$25,200 |
| 7 | \$2,000,001 – \$5,000,000 | 1.04% | \$31,200 | \$56,400 |
| 8 | \$5,000,001 – \$10,000,000 | 0.82% | \$41,000 | \$97,400 |
| 9 | \$10,000,001 + | 0.50% | No max | N/A |

This assessment is known as the "Base Annual Contribution".

*This is a fixed minimum fee that must be paid by all practices.

**The Cumulative Amount is the total of the Maximum Amounts of this Band and all lower Bands.

The assessment will be the total of the Cumulative Amount for the Band below plus the calculated amount in the 'relevant' Band. For example, a Legal Practice with a declared GFI of \$388,380 (Band 5) will be assessed as having a Base Annual Contribution as follows: \$5,975 + (\$138,379 x 1.15%) = \$7,566.36.

Discounts and Loadings

23. Some Legal Practices are entitled to one or more discounts to the Base Annual Contribution and some Legal Practices may be required to pay a loading on the Base Annual Contribution.
24. Each discount and loading is calculated separately and independently, and is, in each case, either deducted from or added to the amount of the Base Annual Contribution, so that the final Annual Contribution payable by each Legal Practice comprises the Base Annual Contribution net of each of the applicable discounts and loadings, plus GST.
25. There are no discounts applicable to the fixed minimum fee component of the Base Annual Contribution.

Criminal Law Discount

26. A Legal Practice that derives at least 90% of its GFI from the practice of criminal law during the 12 month period ending 31 December 2021 is entitled to a 30% discount (Criminal Law Discount).
27. To be eligible for the Criminal Law Discount, a Legal Practice must apply for it by Thursday, 31 March 2022 by declaring its entitlement to the Criminal Law Discount in its Application. That declaration may be subject to an audit by the Law Society
28. If, notwithstanding the declaration in its Application, the Legal Practice was not entitled to the Criminal Law Discount, the Legal Practice will:
- immediately repay to Law Mutual the equivalent of the discount it received together with the GST payable thereon;
 - not be eligible for the Criminal Law Discount for the next three insurance years.

29. The Law Society may, if it believes the incorrect declaration might have been made deliberately or without any proper basis, refer the Application for the Criminal Law Discount to the Legal Practice Complaints Committee pursuant to s409 of the LPA as a complaint against the Practitioner who made the declaration.
30. A Legal Practice that is entitled to a Criminal Law Discount is not entitled to any other discount.

Risk Management Discount

31. A Legal Practice is entitled to a 5% discount (Risk Management Discount) if:
- all of the Partners and at least 80% of the employed Practitioners of the Legal Practice have attended at least two (2) hours of risk management training that has been approved for that purpose by Law Mutual* in the period 1 March 2021 to 28 February 2022;
 - the Legal Practice, by a Partner or Practitioner Director, declares in its Application form that it is entitled to the Risk Management Discount.

*Refer to the Law Mutual website for details of approved risk management training.

32. Law Mutual has on record the details of the participation of practitioners at approved risk management training and will use this to determine an insured practice's entitlement to the Risk Management Discount.
33. An insured practice that has not met the requirements to be entitled to the Risk Management Discount may apply to Law Mutual to be allowed it on the basis that:
- there were exceptional circumstances that resulted in some practitioners not completing the required hours of training; and
 - the insured practice could not have been aware of the impact of those circumstances prior to the closing of the relevant training period.
34. Exceptional circumstances may include, but are not limited to:
- unforeseeable circumstances that prevented a practitioner from undertaking approved training; or
 - a genuine but wrongly held belief that training that was undertaken was approved.
35. The application may be allowed based on any conditions imposed by Law Mutual and at the absolute discretion of Law Mutual.

QPS Discount

36. A Legal Practice that has achieved QPS accreditation is entitled to a discount (QPS Discount) of:
- 7% in its first year of accreditation;
 - 5% in its second and subsequent years of accreditation.
37. Law Mutual has on record the details of QPS accredited Legal Practices and will use this to determine an insured practice's entitlement to the QPS Discount.
38. For more information regarding QPS, please see the Law Society website - lawsocietywa.asn.au.

Claims Loadings

39. A Legal Practice will pay a claims loading of between:
- 20%, if the Loss Ratio is 100%, and
 - 50%, if the Loss Ratio is 400% or more
- with the claims loading increasing incrementally pro rata as the Loss Ratio increases, if two or more Claims are made during the Five Year Period.
40. A Legal Practice will pay a claims loading of 200% if:
- the Loss Ratio is in excess of 300%; and
 - three or more Claims are made during the Five Year Period
- (High Risk Claims loading)
41. The Law Society may, in its sole discretion, reduce the High Risk Claims Loading taking into account the same factors as are described in paragraph 16.

42. A Legal Practice will pay an equivalent claims loading to the existing claims loading in the following circumstances:
- it is formed from the merger of other Legal Practices, any of which had an existing claims loading applied at the time of the merger; or
 - a Sole Practitioner or a firm of Practitioners with an existing claims loading become an ILP; or
 - a Predecessor of the Legal Practice would have had a claims loading (existing claims loading) applied.
43. The greater of a High Risk Claims Loading and a claims loading under paragraphs 39 or 42 will apply.
44. For the purposes of calculating a claims loading, the following will not be taken into account. Claims where:
- there is no incurred amount for damages (incurred is paid and reserved amounts);
 - any incurred amount for damages is for the purpose for settling a Claim with little, if any, merit but an amount can be paid to settle the Claim expeditiously; or
 - the Claim is settled by the Insured without Law Mutual incurring any defence costs.
45. Example of calculation of claims loading:

A Legal Practice had two claims in the five year period 1 July 2016 to 30 June 2021. During that period it had paid a total of \$160,000 net of GST in Annual Contributions and Administration Levies.

The total costs and reserves of the two claims (exc GST) are:

- Costs for defending the claims- \$88,000*
- Net settlement costs - \$175,000*
- Remaining balance of reserves - \$50,000*

The total claims costs will be calculated as $A + B + (75\% \text{ of } C)$. Therefore the total costs will equate to \$300,500 ($\$88,000 + \$175,000 + (\$50,000 \times 75\%)$).

The Loss Ratio is derived from dividing the claims costs of \$300,500 by the \$160,000 paid Annual Contributions and Administration Levies.

This will result in a Loss Ratio of 187.81% which will equate to a claims loading of 28.78%.

The claims loading of 28.78% will therefore be applied on the 2022/2023 Base Annual Contribution.

46. A claims loading attaches to a Legal Practice and not to individual Practitioners.

Capping and Capping

47. The move to GFI as the primary assessment factor will mean some practices pay more and some pay less on a like for like basis i.e., all other things being equal. The cost impact of the change will be mitigated by limiting increases and decreases at 20% from the Legal Practice's Base Annual Contribution for the 2021/2022 insurance year (before the impact of any changes in the structure of the legal practice are taken into account). This process is referred to as 'capping and capping'.

Payment of the Annual Contribution

48. A Legal Practice must pay a Tax Invoice in relation to the Application by Monday, 16 May 2022. Failure to do so may result in the imposition of a Late Lodgement Fee (Regulation 89).
49. If a Legal Practice does not pay a Tax Invoice in relation to the Application on or before Thursday, 30 June 2022, the Law Society may cancel the Tax Invoice and not issue a Certificate to the Legal Practice.
50. The Law Society may accept payment of the Tax Invoice and the Late Lodgement Fee after 30 June 2022 on whatever conditions it deems appropriate, including whether the Certificate will cover Claims first made against the Insured prior to the issue of the Certificate.

Incorrect Declaration in Application

51. The Legal Practice's declaration of GFI may be subject to verification by the Law Society as set out in Appendix A.
52. If the declaration in the Application is incorrect, the Legal Practice must immediately pay to Law Mutual any further Annual Contribution it should have paid by reference to the correct GFI together with the GST payable thereon together with any penalty loading as set out in Appendix A.
53. The Law Society may, if it believes the incorrect declaration might have been made deliberately or without any proper basis, refer the Application to the Legal Practice Complaints Committee pursuant to s409 of the LPA as a complaint against the Practitioner who made the declaration.

Application to review the Annual Contribution (Regulation 93) or Waive the Late Lodgement Fee (Regulation 89)

54. The Law Society, on the application of a Legal Practice within 30 days of receiving an invoice for the assessed Annual Contribution or the rendering of a Late Lodgement Fee:
- will review its assessment and may, in its sole discretion, amend it;
 - may, in its sole discretion, waive all or part of a Late Lodgement Fee.
55. A review will determine whether Law Mutual has correctly assessed the Annual Contribution having regard to the assessment factors that are set out in paragraphs 21 to 44. A request for a review that is based on other factors, such as the financial circumstances of an insured practice, will not be entertained. The Legal Practice will be asked to provide written details of the basis for the review.
56. A decision to waive, in whole or part, a late lodgement fee will only be made where the delay in payment is not due to an error made by the Legal Practice. The decision as to whether or not the delay is caused by the error of the Insured is entirely at the discretion of The Chief Executive Officer of Law Mutual (WA) for fees up to \$1000 (exclusive of GST). Thereafter, the decision must be referred to the Council.
57. By way of guidance, the following will be considered errors made by the Legal Practice:
- Having insufficient funds available to pay the Annual Contribution by the required date;
 - An administrative oversight;
 - The non-receipt of reminder notices or invoices unless there is substantive forensic evidence to prove that is the fact and it would have been unreasonable for the practitioner to contact Law Mutual to request an invoice.
58. An extended absence from the Legal Practice over the application and payment period (basically mid March to mid May) due to circumstances outside of the relevant practitioner's control (e.g., unexpected hospitalisation or debilitating illness) may be considered to not be the Legal Practice's error subject to adequate proof of such absence and the reason for it.
59. It is noted that it is the duty of a Legal Practice and responsible practitioner to comply with time frames for the making of applications for insurance and payment of Annual Contributions as set out in Part 9 of the LPR. It is assumed, as with all legislation, that the practitioner is aware of the provisions of Part 9. It is not the duty of the Law Society to remind the practitioner of the need to apply or pay. However, by way of assistance, the Law Society's processes for applications do include reminders which are usually sent by electronic communication to the responsible practitioner's (or nominated contact's) email address.
60. The Law Society will not waive all or part payment of a Late Lodgement Fee simply because a Legal Practice has applied for review of the assessment.
61. If the Law Society reduces its assessment of the Annual Contribution or waives all or part of a Late Lodgment Fee, it will refund the relevant amount to the Legal Practice if the Annual Contribution or Late Lodgement Fee has been paid.
62. An insured practice has a right of appeal to a person nominated by the Attorney General if it is not satisfied with the assessment after review.

Use of the Annual Contribution

63. The Law Society will:
- use the Annual Contributions and the proceeds of the Law Society's investment of the Annual Contributions to pay:
 - the premium to the Insurers for the cover they provide under the Master Policy;
 - the Fund's Contribution;
 - the cost of operating Law Mutual;
 - legal and other costs it incurs in handling Claims and Notifications;
 - income tax incurred on the Law Mutual Fund's investments; and
 - for the maintenance of a prudential capital management framework.
 - manage and apply surplus funds as it thinks fit (Regulation 86).

Refunds

64. A refund of the Annual Contribution will only be paid if the Legal Practice informs the Law Society after payment but prior to the Period of Insurance that it will be ceasing practice or not commencing practice before the Period of Insurance.
65. If a Legal Practice pays for a full year and subsequently ceases to operate during the Period of Insurance, no refund is payable.

Claims' Management

66. Subject to the Master Policy, Law Mutual will manage all Claims and Notifications with a view to resolving every Claim on its merits.
67. The sooner a Legal Practice notifies Law Mutual of a Claim or Notification, the sooner steps can be taken with a view to resolving or limiting the exposure presented by the Claim or Notification.
68. When a Legal Practice notifies Law Mutual of a Claim or provides a Notification to Law Mutual, it must promptly provide Law Mutual and its panel solicitor with any information, documents, assistance and co-operation reasonably requested by them in relation to the investigation and conduct of the matter the subject of the Claim or Notification. This includes meeting with Law Mutual and its panel solicitor and providing them with witness statements.
69. Law Mutual may access information within its Claims and Notifications files for the compilation of claims' management information. It will not use information in documents compulsorily produced by a party to a court action (other than the insured) for the compilation of Claims and risk management information. That is because those documents cannot be used by anyone for any purpose other than the court action.

Risk Management

70. Law Mutual runs a risk management seminar and workshop programme for the purposes of improving the delivery of legal services and reducing the frequency and magnitude of Claims and Notifications.
71. The programme increases Practitioners' awareness of good risk management practices and of the types of facts or circumstances which can lead to Claims and how to reduce the risk of future claims.
72. In addition, Law Mutual is providing risk management tools, advices and alerts to Practitioners via its website and emails.
73. The programme, website and emails are supplemented by a risk management advisory service.
74. As part of this service, Law Mutual may request that a Legal Practice the subject of a Claim or Notification provides it with certain information relating to the policies, procedures and processes that were or are in place at the Legal Practice. This information will be used only for the purpose of enhanced risk management analysis of Law Mutual's portfolio of Claims. It will not be used for the purpose of managing the particular Claim or Notification and will not affect the Annual Contribution payable by the Legal Practice.
75. Law Mutual recognises the importance of risk management training and systems by providing a Risk Management Discount and QPS Discount to qualifying Legal Practices.
76. When setting the premium for the Master Policy, Insurers take into account the standard and quality of risk management training undertaken by Practitioners and the frequency and magnitude of Claims and Notifications.

Miscellaneous

Practising Without Insurance

77. In the rare (but not unknown) situation where an existing Legal Practice continues to practice in the Period of Insurance without having applied for or paid for coverage under the Insurance Arrangements then:
 - a. until a Certificate is issued, the Legal Practice may be practising in contravention of the LPA;
 - b. the Legal Practice, its Partners and those employed or engaged by it will be uninsured; and
 - c. the Legal Practice may not be able to recover its professional fees from its client.
78. Whether coverage will be granted retrospectively will depend on the facts of each case. While the Law Society is obliged to issue a Certificate when a proper application and payment is made, there is no obligation on it or requirement to issue a Certificate with retrospective effect.

Recommencing Practice

79. A Legal Practice that ceases practice in one insurance year but recommences practice during the next insurance year will have the Annual Contribution assessed as of the day the Legal Practice recommenced practice. It will not be covered for any legal services provided in the period of when it ceased until when it recommenced practice.

Practitioner Changes during the Period of Insurance

80. A Legal Practice must inform the Law Society as soon as reasonably practicable if, during the Period of Insurance:
- an employed articled clerk or law graduate becomes admitted to practice; or
 - a Practitioner joins the Legal Practice; or
 - an employed Practitioner becomes a Partner
- by submitting to the Law Society an Additional Practitioner Form. There will be no further Annual Contribution payable in respect of such Practitioners.

ILP Shareholders

81. Claims against ILP shareholders in their capacity as shareholders are not indemnified under the Certificate.

Legal Practices operating for part of the Period of Insurance

82. If, prior to the Period of Insurance, a Legal Practice advises the Law Society that it only requires coverage for part of the Period of Insurance (i.e., it intends to cease practice at a certain date during the Period of Insurance), the Annual Contribution payable by the Legal Practice will be assessed on a pro rata basis. (Regulation 92(5)).
83. If a Legal Practice applies for coverage for part only of the Period of Insurance and then wishes to extend the coverage period, it will have to pay an Administration Levy in addition to a further pro-rata Annual Contribution. The Administration Levy will be 10% of the further Annual Contribution.
84. Once the Legal Practice has ceased practice during the Period of Insurance, there is no coverage under the Insurance Arrangements for legal work performed after the cessation date.
85. Practitioners of the former Legal Practice must obtain coverage under the Insurance Arrangements before re-commencing practice in any capacity that is not exempted under the Regulations.
86. A Legal Practice commencing practice during the Period of Insurance will have the Annual Contribution calculated from the date the Legal Practice applied for coverage. The coverage will only take effect once payment has been received.

Restructure of Legal Practice

87. The Law Society must be informed of any structural changes to a Legal Practice where the whole or part of the business of the Legal Practice is to be conducted by a new Legal Practice which must apply and pay for coverage under the insurance arrangements. Examples of this would be:
- a Sole Practitioner or Partnership changes to an ILP
 - two or more Legal Practices combine into a single Legal Practice
88. The resulting Legal Practice must immediately apply for coverage under the Insurance Arrangements. However, the Law Society may reduce or waive the Annual Contribution in the circumstances described in Regulation 90(3).

Note:

Insurance Considerations when restructuring or joining or merging with another practice

If you are considering changing the structure or ownership of your practice or joining or merging with another practice, you should consider the definition of "Predecessor of the Legal Practice" in the Definitions section (clause 17) of the Certificate of Insurance (Schedule 1 to the Master Policy) and the impact that may have on a continuing legal practice.

Importantly, a Predecessor of the Legal Practice, as determined by the Law Society, and any Partner or employee of it, will be an Insured under the Certificate of Insurance in place at the time a Claimant makes a claim (or circumstances are notified). This means a claim made under the Certificate of Insurance by a Legal Practice arising from work carried out by a Predecessor will be a claim on that Certificate of Insurance (not a previous Certificate of Insurance issued to the Predecessor). Accordingly, all the provisions that apply to an Insured in respect of a claim, including calculation of any Claims Loading or Insured's Contribution (excess), will apply to a claim arising from the Predecessor's work.

89. The Law Society will not require a payment of an Annual Contributions by the new Legal practice where:
- A new Legal Practice is commenced which continues the business previously conducted by another type of Legal Practice; or
 - Two or more Legal Practices (covered under the insurance arrangements) combine into a new Legal Practice which continues the business previously conducted by the Legal Practices; or
 - A Legal Practice ceases and the former Partners/Directors commence new Legal Practices that Continue parts of the business previously conducted by the ceased Legal Practice.

Corporate Partners

90. A Certificate cannot be issued to a firm of Practitioners which has a corporate entity as a Partner.

Consultants

91. Independent consultants who work exclusively for a Legal Practice will be indemnified under the Certificate issued to that Legal Practice, provided they are listed as a Practitioner on the Application or an Additional Practitioner Form as applicable.
92. A consultant will need to take out their own insurance if they work for themselves (other than exclusively for a Legal Practice) or for more than one Legal Practice.

Seconded Lawyers

93. Subject to the terms and conditions of the Certificate, a Legal Practice will be indemnified for the legal services provided by a secondee if:
- The secondee agreement is between the client and the Legal Practice; and
 - payment is made by the client to the Legal Practice, not to the secondee.

Practitioner working as a Volunteer

94. Subject to the terms and conditions of the Certificate, a Practitioner working as a volunteer will be indemnified under the Certificate if, prior to working as a volunteer, their Legal Practice acknowledges in writing that the Practitioner will be performing pro bono (volunteer) work for the relevant individual or organization on behalf of that Legal Practice.
95. Sole Practitioners holding a practising certificate with a Volunteer or Pro Bono condition will only have to pay the minimum Annual Contribution.
96. As a matter of good risk management, Practitioners should keep adequate records of the advice or help they give pro bono.

Practitioners doing work outside Western Australia

97. An Insured will not be indemnified for any liability that arises out of an act or omission which occurred outside of WA if a law other than the law of WA requires the Insured to be indemnified against that liability other than by the Certificate (see the Certificate, exclusion 2.1.25).
98. Where a Partner holds a WA Practising Certificate and leaves WA and then practices permanently interstate with or for a new Legal Practice:
- the Certificate will not apply to claims made against the Partner's new Legal Practice; and
 - PI insurance should be obtained from the relevant State or Territory Professional Indemnity scheme from the date of commencement of practice interstate.
99. Where an employed Practitioner holding a WA practising certificate resigns and moves permanently interstate, there is no indemnity under the Certificate for legal services provided by the Practitioner after the resignation date.
100. Where a Legal Practice indemnified under a Certificate employs an interstate Practitioner who does not work in WA, the employed Practitioner is an Insured for the purposes of the Insurance Arrangements.

APPENDIX A

Selection of Legal Practices to Verify GFI Declarations

There will be two categories of selection.

1. Flags

1.1 Upon receipt of its application, a Legal Practice that declares a 'rounded' GFI (e.g. \$150k) will be requested by email to confirm this was their actual GFI. Where it is confirmed, the Legal Practice will be required to supply the documentation it relied on to calculate the declared GFI.

Where a 'new' GFI is declared, an invoice based on that GFI will be raised.

1.2 Legal Practices that declare a 25% or greater decrease in GFI from the previous year without a comparative decrease in the number of Practitioners will be requested to provide reasons for the decrease. If the reasons are not satisfactory, the Legal Practice will be required to supply the documentation it relied on to calculate the declared GFI.

1.3 Legal Practices that have a 25% or greater increase in the number of Practitioners from the previous year without a comparative increase in declared GFI will be requested to provide reasons for the lack of a comparative increase. If the reasons are not satisfactory, the Legal Practice will be required to supply the documentation it relied on to calculate the declared GFI.

2. Random Verification

Approximately 1% of Legal Practices will be randomly selected to receive a request to provide an explanation of the basis for calculation of the declared GFI, noting that Law Mutual may require to inspect or be provided with copies of any base documentation.

Law Mutual will then require the base documentation to be provided to it:

- where the explanation is inadequate; or
- randomly

such that at least 50% of the selected Legal Practices will provide copies or allow inspection of base documentation.

Legal Practices that have been selected:

- already due to "Flags"; or
 - in the previous three years
- will not be included in this category.

Consequences

Any required documentation or inspection must be provided with 15 business days from the day the Legal Practice receives the request for the same.

The raising of an invoice based on the declared GFI will not be delayed only by reason of the fact that a Legal Practice has been selected as set out above and requested to provide confirmation, explanation, or documentation.

Within 20 business days of receiving or inspecting adequate documentation, Law Mutual will inform the Legal Practice that:

- it is satisfied that the declared GFI is accurate, and no further action is required; or
- it considers that GFI has been understated, what it considers to be the accurate GFI; and that an invoice for a further annual contribution based on the accurate GFI together with an administration fee of 10% of the total Annual Contribution invoiced will be issued within seven days.

If the Legal Practice refuses to provide any or adequate documentation that would be reasonably available (e.g., BAS; tax returns; invoices; general ledger; bank statements) the Legal Practice will be informed that:

- its applications for coverage for the next three insurance years will be required to be accompanied by documentation that supports the declared GFI in each application and a penalty loading of 25% of the Annual Contribution will be imposed in addition to any other loadings; and

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- if, in its opinion, the refusal amounts to professional misconduct or unsatisfactory professional conduct, the Law Society may make a complaint to the Legal Profession Complaints Committee regarding the refusal about the conduct of the authorised practitioner.

If the Legal Practice understates its declared GFI on two consecutive applications, the Legal Practice will be informed that:

- its applications for coverage for the next three insurance years will be required to be accompanied by documentation that supports the declared GFI in each application and a penalty loading of 25% of the Annual Contribution will be imposed in addition to any other loadings; and
- if, in its opinion, the refusal amounts to professional misconduct or unsatisfactory professional conduct, the Law Society may make a complaint to the Legal Profession Complaints Committee regarding the refusal about the conduct of the authorised practitioner.

The penalty loading of 25% will be added to the Risk Rating loading section on the invoice and will be in addition to any existing claims loading.

Contact Law Mutual (WA) for further information. All enquiries are treated with the utmost confidentiality.

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