

2016/2017 Annual Information Booklet

Professional Indemnity Insurance Arrangements for
Practitioners Insured in Western Australia



2016/2017 Annual Information Booklet

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DEFINITIONS

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

Term	Meaning
Administration Levy	is the levy fixed by the Law Society pursuant to Regulation 102.
Annual Contribution	the annual contribution each Legal Practice is liable to pay the Law Society for the purpose of the Insurance Arrangements.
Application	an application for insurance cover or any associated application to Law Mutual (WA).
Australian Legal Practitioner	has the meaning given in section 3 of the LPA.
Board	Legal Practice Board of Western Australia.
Certificate	the insurance policy for non-exempt Practitioners in Western Australia.
CLC	a Community Legal Centre.
Fund's Contribution	the first \$250,000 in excess of the Insured's Contribution as described in clause 3.2 of the Master Policy.
General employee	a non-Practitioner employee, for example, a secretary, a receptionist, an accounts staff or a service company or trust employee.
Law Firm	has the meaning given in section 3 of the LPA.
ILP	an incorporated legal practice, as referred to in the LPA.
Insurance Arrangements	the compulsory insurance arrangements for non-exempt Practitioners in Western Australia.
Insured's Contribution	is the first part of of a settlement or judgment against the Insured in relation to a Claim as described in clause 11 of the Certificate.
Insureds	all legal Practitioners and all other persons in respect of whom contributions are made by Practitioners as part of the Annual Contribution.
Insurers	means <ul style="list-style-type: none"> • Vero Insurance Limited (50%); • Allianz Australia Insurance Limited (25%); and • Amlin Syndicate 2001 at Lloyds (25%).
Late Lodgement Fee	is 10% of the Annual Contribution and Administration Levy payable by a Legal Practice before GST
Law Mutual	an organisation to carry out and administer the Insurance Arrangements for the Law Society
Law Mutual Fund	is a trust of which the Law Society is the trustee.
Law Practice	means: <ul style="list-style-type: none"> • an Australian Legal Practitioner who is a sole Practitioner; • a law firm; • a MDP; or • an ILP that conducts or has conducted a legal practice
Law Society	the Law Society of Western Australia Inc.
LFE	a Practitioner who, at the time he or she applies for insurance: <ol style="list-style-type: none"> a) expects to earn, on their own account, less than \$50,000 legal fees exclusive of GST and disbursements during the Period of Insurance; b) does not employ or contract out work to another Practitioner; and c) does not employ non-Practitioners for more than a combined 20 hours a week
LPA	<i>Legal Profession Act 2008 (WA)</i> as amended from time to time.
Master Policy	the agreement between the Law Society and the Insurers for the Period of Insurance.
MDP	a multi-disciplinary partnership, as defined by section 3 of the LPA
Notification	means a written notice of facts or circumstances that might give rise to a Claim.
Partner	a partner of a Legal Practice is an Australian Legal Practitioner who is: <ul style="list-style-type: none"> • a sole Practitioner (in the case of a Legal Practice constituted by the Practitioner); • a partner in a Legal Practice; • a Practitioner director in an ILP; and • a Practitioner partner in an MDP.
Period of Insurance	midnight 30 June 2016 to midnight 30 June 2017.
PI	Professional indemnity.
Practitioner	includes: <ul style="list-style-type: none"> • an Australian Legal Practitioner; • a local legal practitioner; and • an interstate legal practitioner, within the meaning of Section 5 of the LPA.
Pro Bono practising certificate	A practising certificate that is issued free of fees by the Board on condition that the holder is only engaged in the provision of legal services on a not-for-profit basis and does not charge any person nor seek to recover a fee from any person.
Regulation	means a Regulation of the <i>Legal Profession Regulations 2009 (WA)</i> as amended from time to time.
Related Costs	has the meaning described in clause 16 of the Certificate.
Tax Invoice	means a tax invoice issued by the Law Society to a Legal Practice for payment of the Administration Levy and the Annual Contribution

This Booklet outlines the arrangements made by the Law Society for the provision of professional indemnity insurance to Legal Practices practising in Western Australia for the insurance period 30 June 2016 to 30 June 2017. It is published pursuant to the requirements of Regulation 84(3).

THE ARRANGEMENTS

1. A Practitioner, other than an exempt Practitioner, can only engage in legal practice in Western Australia if the Legal Practice he or she is a Partner of or is employed by has professional indemnity insurance.
2. The Master Policy records the arrangements made by the Law Society for the provision by the Insurers of professional indemnity insurance to Legal Practices practising in Western Australia for the Period of Insurance. The Certificate contained in Schedule 1 to the Master Policy records the terms and conditions of the insurance cover provided by the Insurers pursuant to the Master Policy. You should read the Certificate carefully for the full extent and scope of cover, limitations of, and exclusions from, cover and conditions of cover.
3. Law Mutual, 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 insurance cover under the Master Policy.
4. In broad terms, a Certificate issued to a Legal Practice means that the Legal Practice and its current and past Partners and employees are, subject to the terms of the Certificate, covered for their civil liability up to the Limit of Liability, for a Claim first made against them during the Period of Insurance, with the Legal Practice, the Law Mutual Fund and the Insurers combining to contribute up to the Limit of Liability as described in the Master Policy.
5. The Master Policy extends cover to Ceased Practices and former Practitioners for a Claim arising from their practice of law whilst covered under a previous insurance arrangement made by the Law Society.
6. The Certificate
 - a. covers a Legal Practice for up to \$1,750,000 each and every Claim (inclusive of Claimant’s Costs and Related Costs) in excess of the Insured’s Contribution and the Fund’s contribution. A Legal Practice that wants more than this amount of cover should engage an insurance broker to arrange top-up insurance.
 - 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.
7. The cover is represented diagrammatically below:

Primary Insurance		
Up to \$1,750,000 each & every claim (costs inclusive), in excess of Fund’s Contribution of \$250,000 (costs inclusive) and the Insured’s Contribution (costs exclusive).		
Fund Contribution	Additional Cover	Uninsured
\$250,000 each & every claim up to an aggregate of \$6,000,000 (costs inclusive)	\$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	\$250,000 each & every claim once the Law Mutual Fund’s \$6,000,000 aggregate and the Additional Cover is fully eroded
Insured’s Contribution		
\$7,500 to \$75,000 each & every claim (costs exclusive)		

8. The Certificate does not cover a Claim first made against an Insured after the expiration of the Period of Insurance. However, if the Insured gives a Notification to the Insurers 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 s 40(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. In the circumstances, it is important to give notice to Law Mutual of facts or circumstances that might give rise to a Claim as soon as reasonably practicable after the Insured becomes aware of those facts or circumstances.
9. Depending on the circumstances, the Certificate might not cover the liability of a Practitioner for legal advice provided:
 - a. gratuitously;
 - b. as a secondee to a third party;
 - c. in the course of a locum tenens service; or
 - d. on a volunteer basis, for example, to a charity or a fund raising or sporting association.
10. If you would like to know more about cover under the Certificate in these sorts of circumstances, contact Law Mutual.
11. A Certificate issued to a Legal Practice cannot be cancelled or transferred to another Legal Practice

APPLICATION FOR INSURANCE

12. A Legal Practice requiring insurance for the Period of Insurance must submit its Application for insurance in the attached form entitled 'Application for professional indemnity insurance' by Thursday, 31 March 2016.
13. Some Practitioners are exempt from obtaining insurance. See Regulation 97. Practitioners who claim they are exempt from obtaining insurance must notify the Law Society that they claim exemption: Regulations 98 and 99.

THE ADMINISTRATION LEVY AND THE ANNUAL CONTRIBUTION

Payment of the Administration Levy and the Annual Contribution

14. A Legal Practice must pay a Tax Invoice within 30 days of receiving it. If the Legal Practice pays a Tax Invoice in respect of the Period of Insurance after Monday, 16 May 2016, it must also pay a Late Lodgement Fee (Regulation 89).
15. If a Legal Practice does not pay a Tax Invoice on or before Thursday, 30 June 2016, Law Mutual may cancel the Tax invoice and not issue a Certificate to the Legal Practice. Law Mutual may accept payment of the Tax Invoice and the Late Lodgement Fee after 30 June 2016 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.

What will the Law Society use the Administration Levy and the Annual Contribution for

16. The Law Society will:
 - a. use the Administration Levy to cover the cost of processing Applications for the cover described in the Master Policy;
 - b. use the Annual Contributions and the proceeds of the Law Society's investment of the Annual Contributions to pay:
 - (i) the premium to the Insurers for the cover they provide under the Master Policy;
 - (ii) its contribution out of the Law Mutual Fund towards the payment of Claims;
 - (iii) the cost of running Law Mutual;
 - (iv) for legal and other costs it incurs in handling Notifications and Claims;
 - (v) income tax incurred on the Law Mutual Fund's investments; and
 - (vi) for the maintenance of a prudential management framework.
 - c. manage and apply surplus funds as it thinks fit (Regulation 86).

How the Law Society goes about assessing the Administration Levy and the Annual Contribution

17. The Law Society assesses the:
 - a. Administration Levy for a Legal Practice by reference to the number of Practitioners and Partners in the Legal Practice and the number of Practitioners the Legal Practice expects to employ as at 30 June 2016. The Administration Levy is the same for Partners and employed Practitioners (full time or part time). The Administration Levy will be charged for all Applications that involve the raising of a Tax Invoice. In certain circumstances, Law Mutual may, at its absolute discretion, waive the payment of the Administration Levy.
 - b. Annual Contribution for a Legal Practice by reference to the same factors as it assesses the Administration Levy, as well as the number of non-Practitioners (article clerks, law graduates, secretaries and other non-legal employees) the Legal Practice employs as at 1 March 2016 and discounts and loadings described below.
18. The Law Society's assessment of the Annual Contribution by reference to a:
 - a. Practitioner is reduced for a Practitioner who is not a LFE or a Partner if the Practitioner is expected to work:
 - (i) part time (assuming a 38 hour week is full-time); or
 - (ii) for only a part of the Period of Insurance;
 - b. general employee is reduced by 50% if he or she is expected to work less than 20 hours a week
19. The Law Society's assessment of the Annual Contribution for a Legal Practice will depend on whether the Legal Practice, at the time it applies for insurance, expects:
 - a. to cease practice before the expiration of the Period of Insurance;
 - b. a Practitioner (other than a Partner) to take unpaid leave during the Period of Insurance during which he or she does not intend to give any legal advice;
 - c. a Practitioner to work for the Legal Practice on a short term contract which will finish before the expiration of the Period of Insurance;
 - d. a Partner to retire during the Period of Insurance.

More information about how the Law Society makes its assessment in any of the above circumstances is provided in the Rules and Guidelines below.
20. The Law Society's assessment of the Administration Levy and Annual Contribution is not affected:
 - a. by the fact that a Practitioner is a Partner or employee in another Legal Practice;
 - b. in circumstances where the number of employees the Legal Practice expects to employ turns out to be different.

Annual Contribution: Discounts

21. A Legal Practice (other than a LFE) is entitled to a 10% No Claim Bonus (also referred to as a No Claims Discount) on the Annual Contribution paid for Partners.

22. The No Claims Bonus is forfeited for the following three insurance years if Law Mutual incurs external costs greater than \$10,000 in respect of a Claim or Notification first made during the Period of Insurance.
23. If a Legal Practice has forfeited its No Claims Bonus, the No Claims Bonus will be forfeited for the remaining amount of the following three insurance years for any subsequent Legal Practices that are substantially constituted by the same Partners and employed Practitioners of the original Legal Practice.
24. A Legal Practice (other than a LFE) that derives at least 90% of its legal fees from the practice of criminal law during the 12 month period ending 29 February 2016 is entitled to a 30% Criminal Law discount on the Annual Contribution. A Legal Practice entitled to a Criminal Law discount is not entitled any other discount.
25. A Legal Practice that has met the requirements for a “risk management discount” as set out below is entitled to a 5% discount (the Risk Management discount) on its total Annual Contribution.
26. The requirements for entitlement to the Risk Management discount are as follows:
- 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 1st March 2016 to 28th February 2017.
 - The Legal Practice declares in its Application for Insurance that it has met the requirements above and is entitled to the Risk Management discount
 - The Legal Practice is able to produce, within 7 days of a written request by Law Mutual, documentary proof that it has met the requirements, such as certificates of the attendance of Practitioners at approved training
 - The Legal Practice agrees that if such documentary proof is not produced to the satisfaction of Law Mutual, the Legal Practice will immediately repay to Law Mutual the equivalent of the Risk Management discount it received together with the GST payable thereon and will not be entitled to a Risk Management discount for the following three (3) insurance years.
- *Please refer to the Law Mutual website for details of approved risk management training.
27. A Legal Practice (other than a LFE) that has achieved QPS accreditation is entitled to a discount (the QPS discount) of:
- 7% on the Annual Contribution in its first year of accreditation;
 - 5% on the Annual Contribution in its second and subsequent years of accreditation.
- The QPS and Risk Management discounts will be applied to the Annual Contribution payable by the Legal Practice after any application of the No Claim Bonus.

Annual Contribution: claims loading (also known as ‘risk rating’)

28. A Legal Practice pays the following additional claims loading on its Annual Contribution for the Period of Insurance and the following insurance year if the Society has paid monies out of the Law Mutual Fund in respect of a settled or adjudicated claim against the Legal Practice during the period 1 March 2015 to 29 February 2016:
- 20%, if the amount paid was between 100% and 199%;
 - 30%, if the amount paid was between 200% and 299%;
 - 40%, if the amount paid was between 300% and 399%;
 - 50%, if the amount paid was 400% or more,
- of the Annual Contribution paid by the Legal Practice for the insurance period 1 July 2015 to 30 June 2016.
- For the purpose of the above calculation, the amount paid comprises any settlement amount or damages awarded, the Claimant’s Costs, Related Costs and indemnity costs.
- The claims loading will apply to the Annual Contribution payable by the Legal Practice prior to the application of the QPS or Risk Management discounts.

What the Administration Levy and the Annual Contribution will be for the Period of Insurance (subject to Annual Contribution discounts and loadings)

29. The Table below sets out the Annual Contribution and Administration Levy for various categories of Practitioners for the 2016/2017 insurance year that a Legal Practice will pay for the Period of Insurance:

Category of Practitioner	Annual Contribution	Administration Levy	Total (exc GST)	GST payable	Total (inc GST)
Director/Partner - base rate*	\$5,510	\$100	\$5,610	\$561	\$6,171
Director/Partner – with NCB*	\$4,959	\$100	\$5,059	\$505.90	\$5,564.90
Employed Practitioner – F/T	\$2,755	\$100	\$2,855	\$285.50	\$3,140.50
Employed Practitioner – P/T	Pro-Rata of F/T	\$100	N/A	N/A	N/A
Director/Partner – Criminal Law	\$3,857	\$100	\$3,957	\$395.70	\$4,352.70

*Includes a practitioner held out to be a Partner or a Director.
A Restricted Practitioner is regarded as an Employed Practitioner

30. The Table below sets out the Annual Contribution and Administration Levy for various categories of LFEs for the 2016/2017 insurance year that an LFE will pay for the Period of Insurance:

Estimated fees	Annual Contribution	Admin Levy	Total (exc GST)	GST Payable (\$)	Total (\$) (inc GST)
Nil	\$276	\$100	\$376	\$37.60	\$413.60
\$1- \$10,000	\$552	\$100	\$652	\$65.20	\$717.20
\$10,001 - \$15,000	\$828	\$100	\$928	\$92.80	\$1,020.80
\$15,001 - \$20,000	\$1,104	\$100	\$1,204	\$120.40	\$1,324.40
\$20,001 - \$25,000	\$1,380	\$100	\$1,480	\$148.00	\$1,628.00
\$25,001 - \$30,000	\$1,652	\$100	\$1,752	\$175.20	\$1,927.20
\$30,001 - \$35,000	\$1,928	\$100	\$2,028	\$202.80	\$2,230.80
\$35,001 - \$40,000	\$2,204	\$100	\$2,304	\$230.40	\$2,534.40
\$40,001 - \$45,000	\$2,480	\$100	\$2,580	\$258.00	\$2,838.00
\$45,001 - \$50,000	\$2,756	\$100	\$2,856	\$285.60	\$3,141.60

Note: LFEs commencing practice during the Insurance Year will be charged an Annual Contribution calculated on a pro rata basis from the start of the quarter in which they commenced.

31. The Table below sets out the Annual Contribution for General employees for the 2016/2017 insurance year that a Legal Practice will pay for the Period of Insurance:

Category	Annual Contribution	Administration Levy	GST Payable	Total (inc GST)
General employee – Full Time (> 20 hours per week)	\$468	nil	\$46.80	\$514.80
General employee – Part Time (< 20 hours per week)	\$234	nil	\$23.40	\$257.40

32. A Practitioner to whom the Legal Practice Board has issued a practicing certificate pursuant to Regulation 97(1)(h)(i) pays an Annual Contribution of \$276 and no Administration Levy.

Application to review the Annual Contribution (Regulation 93(1)) or Late Lodgement Fee (Regulation 89)

33. The Law Society, on the application of a Legal Practice within 30 days of receiving an assessment of the Annual Contribution or the rendering of a Late Lodgement Fee:
- will review its assessment and may amend it;
 - may waive all or part of a Late Lodgement Fee.
34. The Law Society will not waive all or part payment of a Late Lodgement Fee just because a Legal Practice has applied for review of the assessment.
35. If the Law Society reduces its assessment of the Annual Contribution or waives all or part of a Late Lodgement Fee, it will refund the relevant amount to the Legal Practice if the Annual Contribution or Late Lodgement Fee has been paid.

Payment and non-payment

36. The Regulations require Legal Practices to pay their Annual Contribution and Administration Levy by 15 May preceding the commencement of the Period of Insurance. (Regulation 88). Five (5) days are allowed for the clearance of funds. If the due date falls on a weekend, payment is due on the next business day.
37. In the most unlikely (but not unknown) situation where an existing Legal Practice continues to practice in the Period of Insurance without having applied for or paid for insurance then:
- until a Certificate is issued, the Legal Practice may be practising in contravention of the LPA;
 - the Legal Practice, its Partners and its Employees will be uninsured; and
 - the Legal Practice may not be able to recover its professional fees from its client.
38. Whether insurance can be granted retrospectively will depend on the facts of each case. While Law Mutual 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.
39. 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.

Miscellaneous

40. If an articulated clerk or law graduate employed by a Legal Practice becomes admitted to practice during the Period of Insurance, the Legal Practice must inform the Law Society as soon as reasonably practicable of that happening.
41. The Law Society will increase the Legal Practice's Administration Levy and the Annual Contribution on the basis of the new circumstances and charge the Legal Practice the extra amount of the Administration Levy and Annual Contribution.
42. The Legal Practice must pay the increased amount within 30 days of receiving a tax invoice issued by the Law Society for the increased amount.
43. A Legal Practice must inform the Law Society as soon as reasonably practicable of a Practitioner joining the Legal Practice during the Period of Insurance by submitting to the Law Society an 'Additional Practitioner Form'. The Form is available from the Law Society on request.

44. A Practitioner issued with a Certificate on the basis that he or she is a LFE must lodge a statutory declaration with the Law Society by 30 September 2017 in the form required by the Law Society. The form is available from the Law Society on request.
45. If the Practitioner did not meet the definition of a LFE at any time during the Period of Insurance, the Law Society will increase the Administration Levy and the Annual Contribution on the basis of the new circumstances and charge the Practitioner the extra amount of the Administration Levy and Annual Contribution.
46. The Practitioner must pay the increased amount within 30 days of receiving a tax invoice issued by the Law Society for the increased amount.
47. If the Practitioner does not lodge the required statutory declaration by 30 September 2017, the Law Society will reassess the Administration Levy and the Annual Contribution on the basis that the Practitioner did not meet the definition of a LFE at any time during the Period of Insurance.
48. The Law Society will refund a part of the Administration Levy and the Annual Contribution for a Legal Practice if a Practitioner that the Legal Practice expected in its Application for insurance to be employed by it during the Period of Insurance is not employed by the Legal Practice during the Period of Insurance.
49. Pursuant to Regulation 90(3), the Law Society may waive or reduce the Annual Contribution for a Legal Practice that changes its business structure during the Period of Insurance if the Legal Practice was issued with a Certificate before the restructure.

CLAIM'S MANAGEMENT

50. Subject to the Master Policy, Law Mutual will manage all Claims and Notifications during the Period of Insurance with a view to resolving every Claim on its merits.
51. 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. In addition, a fresh set of Law Mutual 'eyes' looking at a problem might see a way of dealing with a Claim or Notification not appreciated by the notifying Legal Practice.
52. Law Mutual may access information within its 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.

LAW MUTUAL RISK MANAGEMENT

53. Law Mutual will continue to run risk management seminars for the purpose of trying to reduce the frequency and magnitude of Claims and Notifications.
54. The seminars increase 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.
55. In addition, Law Mutual is providing risk management tools, advices and alerts to Practitioners via its website.
56. In future, the seminars and website will be supplemented by a risk management advisory service provided to Practitioners by Law Mutual.
57. Law Mutual recognises the importance of risk management training and systems by providing a risk management discount and QPS discount to qualifying Legal Practices.
58. 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.

RULES AND GUIDELINES

The following Rules and Guidelines provide further details on certain aspects of the Insurance Arrangements. Most relevantly, they deal with the calculation of Annual Contributions in a variety of circumstances outside of the annual application process.

Discounts and Loadings

59. Some Legal Practices are entitled to one or more discounts to the Annual Contribution and some Legal Practices may be required to pay a loading on the Annual Contribution.
60. Each discount and loading is calculated separately and independently, and is in each case either deducted or added to the amount of the Annual Contribution, so that the final contribution payable by each Legal Practice comprises the Annual Contribution net of each of the discounts and loading as may be applicable under this clause plus GST.

No Claims Bonus

61. The loss of a No Claims Bonus attaches to a specific Legal Practice and not to individual Practitioners.
62. A Legal Practice will lose its No Claims Bonus if two (2) or more Legal Practices merge where one or both had previously lost their No Claims Bonus.
63. A new ILP will not receive a No Claims Bonus where it was previously a partnership that had lost its No Claims Bonus.

Criminal Law Discount

64. A Legal Practice receiving the criminal law discount does not receive any other discount.

QPS

65. Law Mutual has on record the details relating to Legal Practices entitled to the QPS discount. If you are in any doubt as to eligibility, please contact Law Mutual.
66. For more information regarding QPS, please see the Law Society website lawsocietywa.asn.au.

Risk Management Discount

67. A Legal Practice will be able to claim the Risk Management Discount for the insurance year following the period in which the require risk management training has been carried out.
68. Please contact Law Mutual for details of approved risk management training.

Claims loading – (also known as “risk rating”)

69. The claims loading attaches to a specific Legal Practice and not to individual Practitioners.
70. The Legal Practice will pay a claims loading if two (2) Legal Practices merge where one or both had a claims loading applied.
71. The Legal Practice will pay a claims loading where a partnership with a Risk Rating becomes an ILP.

Example of calculation of claims loading

Damages of \$60,000 are paid. Accumulated costs total \$2,702.14 (exc GST) comprised of \$1,702.14 of external costs for defending the claim plus indemnity costs of \$1,000.00.

Less Insured’s Contribution (Based on 2 Directors) -10,000.00

Net Damages & Costs 52,702.14

The Contribution for the purposes of the calculation is the Annual Contribution invoiced in the year immediately preceding the first year of the claims loading. However, it excludes any discounts. Let’s say the contribution is \$20,687.

The ratio based on the above example is Net Damages and costs/Contribution x 100 i.e.

52,702/20,687x100 = 255%

As the ratio of 255% falls in the range of 200% - 300%, the loading is 30%.

The ratio and the level of loading will remain the same for each of the two (2) insurance years that the claims loading is applied.

The application of the claim loading first occurs during the next available insurance year. If the firm had the same composition in that year (such that its Annual Contribution was the same) then the claims loading payable would be \$20,687x30% = \$6,206.

Practitioners providing legal services to multiple Legal Practices

72. Where simultaneously a Practitioner is a Partner at two or more Legal Practices, each Legal Practice is required to pay a full Annual Contribution and Administration Levy for that Practitioner.
73. Where simultaneously a Practitioner is a Partner at one Legal Practice and an employed Practitioner at another, a full Annual Contribution and Administration Levy is payable by both Legal Practices for that Practitioner. This would include an employed Practitioner who also takes out LFE insurance.
74. Where the Practitioner is working as an employed Practitioner on a part-time basis, the Annual Contribution rates will be assessed on a pro rata basis.
75. Where a Practitioner is a Partner of a Legal Practice and they also practice in their own name (e.g. LFE or Sole Practitioner), an Annual Contribution and Administration Levy will be payable by both the Legal Practice and also the Practitioner in that Practitioners’ capacity as a sole Practitioner or LFE.

ILPS

76. For directors of ILPs who are not Practitioners, the Legal Practice will be charged an Annual Contribution at the same rate as that charged for general employees. No Administration Levy is payable.
77. There is no Annual Contribution or Administration Levy payable for shareholders in their capacity as such.
78. Claims against shareholders in their capacities as shareholders are not covered by the Certificate.

Part-Time employed Practitioners

79. There are no part-time rates for Practitioners providing legal services as LFEs or Partners as they have the duties and responsibilities as a LFE or Partner at all times for as long as they are in practice.
80. A pro rata Annual Contribution is levied for a part-time employed Practitioner based on the number of estimated hours to be worked per week, with a minimum of four (4) hours per week. An employed Practitioner working 38 hours per week or more is classified as full-time.
81. A Practitioner employed part-time at more than one Legal Practice during the Period of Insurance does not give rise to an Annual Contribution greater than the equivalent of one full-time employed Practitioner.

Unpaid Leave

82. This section does not apply to Sole Practitioners or Partners.

- 83. A Practitioner may be employed by a Legal Practice during the Period of Insurance but does not perform work for the Legal Practice (e.g. on maternity leave, sabbatical, travelling etc.)
- 84. Where the Practitioner will be on unpaid leave as at 30 June at the commencement of the Period of Insurance and will not receive remuneration from the Legal Practice for that period in the Period of Insurance, the Legal Practice does not include the employed Practitioner on their application form.
- 85. If the Practitioner is going to apply for a practising certificate from the Board, the Practitioner must submit an exemption form (3A) notifying they are exempt from the Law Mutual Insurance Arrangements. That is, the Practitioner is not engaging and will not engage, in legal practice. (Regulation 97(1)(f)).
- 86. Prior to returning to work, the Legal Practice must provide an Additional Practitioner form (Form 1A) and pay a pro rata Annual Contribution.
For example, if the Practitioner is on unpaid leave from 1 July – 30 November:
Full-time = 7/12 x 100%
Part-time (20 hours per week) = 20/40 x 7/12 x 100%
- 87. Where the Practitioner advises Law Mutual before 30 June in the preceding insurance year that they will be commencing unpaid leave during the Period of Insurance, the following will apply:
- 88. The Legal Practice must include the Practitioner on their annual renewal form as being on unpaid leave.
- 89. The Legal Practice will be charged a pro rata Annual Contribution for the employed Practitioner.
- 90. Prior to the Practitioner returning to paid employment with the Legal Practice an Additional Practitioner form must be submitted to Law Mutual.
- 91. A separate invoice will be raised for the Annual Contribution and Administration Levy in respect of a Practitioner commencing unpaid leave during the Period of Insurance.
No refund is payable if a Legal Practice pays for a full year for a Practitioner who subsequently goes on unpaid leave during the Period of Insurance.

Short term contracts – employed Practitioners

- 92. A Legal Practice that appoints an employed Practitioner on a short term contract may take out insurance for that Practitioner on a pro rata basis.
- 93. A short term contract would be one with a Legal Practice that has start and finish dates. A short term contract may span across two insurance years.
- 94. The Legal Practice must pay the following for that Practitioner:

Type of fee	Contract period	Proportion of fee payable
Annual Contribution	Less than or equal to 6 months	Pro rata
	Between 6 to 9 months	Pro rata plus 10%
	Greater than 9 months	Pro rata plus 20%

- 95. For contracts of less than 6 months that are renewed/extended at their expiry date, if the total period of the contract is then greater than 6 months, the rates for the second period will be pro rata plus 10%; and for any further period pro rata plus 20%.

Partners retiring during the Period of Insurance

- 96. A Partner may pay at the commencement of the Period of Insurance for part of the Period of Insurance if they intend to retire from legal practice entirely during the Period of Insurance. The Annual Contribution will be pro rata.
- 97. The Partner must advise Law Mutual of their proposed retirement prior to the Period of Insurance.
- 98. If the Partner subsequently stays for a period longer than originally advised to Law Mutual, the Legal Practice will be required to pay a further pro rata Annual Contribution.
- 99. If a Legal Practice pays for a full year for a Partner who subsequently retires from legal practice during the Period of Insurance, no refund is payable.

Legal Practices operating for part of the Insurance Period

- 100. Legal Practices that know that they are going to cease during the Period of Insurance.
- 101. If, prior to the Period of Insurance, a Legal Practice advises Law Mutual that it only requires insurance for part of the Period of Insurance (ie. it intends to cease practice during the Period of Insurance), the Annual Contribution payable by the Legal Practice will be assessed on a pro rata basis. (Regulation 92(5)).
- 102. If the Legal Practice operates beyond the date to which it has paid the pro rata Contribution, a further pro rata Annual Contribution is payable.
- 103. Once the Legal Practice has ceased practice during the Period of Insurance, no Partner or employed Practitioner has PI insurance for legal work performed after the cessation date.
- 104. Practitioners of the former Legal Practice must obtain PI insurance before re-commencing practice in any capacity that is not exempted under the Regulations.
- 105. A pro rata Annual Contribution may be payable by Legal Practices for former employed Practitioners.
- 106. Legal Practices are required to pay a pro rata Annual Contribution for the former Partners.
- 107. If a Legal Practice pays for a full year and subsequently ceases to operate during the Period of Insurance, no refund is payable.

Consultants

108. Independent consultants who work exclusively for a Legal Practice will be covered under the Master Policy provided the Legal Practice pays an Annual Contribution for them at the same rate as an employed Practitioner.
109. A consultant will need to take out their own insurance if the Legal Practice does not pay their Annual Contribution or if they work for themselves or for more than one Legal Practice.

General employees

110. At each renewal, a Legal Practice is assessed on the actual number of General employees it has as at 1 March each year.
111. No additional Annual Contribution is payable by a Legal Practice if it increases the number of General employees during the Period of Insurance. If the numbers change after 1st March 2016, no refund is given if the number of General employees reduces after this date.
112. For General employees working less than 20 hours per week, the Annual Contribution rate is reduced by 50%.
113. Articled clerk/law graduates are assessed as General employees. However, if an articled clerk/law graduate is admitted during the Period of Insurance an additional Annual Contribution will be payable. The Annual Contribution as a General employee will be credited against the employed Practitioner Annual Contribution on a pro rata basis, calculated from the date of admission to 30 June 2017.
114. No Administration Levy is charged for General employees.

Changes during the Period of Insurance

115. An insured Legal Practice, and the Practitioner, must advise Law Mutual as soon as possible when a Practitioner is employed by submitting an Additional Practitioner form.
116. Where a Practitioner was not previously at a Legal Practice insured through Law Mutual and joins a Legal Practice during the year, a pro rata Annual Contribution is payable. A common example is a Practitioner moving from a national exempt Legal Practice to a WA Legal Practice.
117. The additional Annual Contribution payable is set out below:

Number of hours working at the new Legal Practice compared to previously	Additional Contribution
Same or less	None
More	Pro rata (not exceeding maximum Contribution)

Change of status during the year

Former role	New role	Further Contribution
Employed Practitioner ¹	Partner (same practice)	Pro rata Partner Contribution
Employed Practitioner ¹	Partner (new practice)	Pro rata Partner Contribution
Partner ²	Employed Practitioner (same practice)	None
Partner ²	Partner (different practice)	Pro rata Partner Contribution
Partner	Employed Practitioner (different practice)	Pro rata Contribution

1. The unused portion of the existing Annual Contribution is rebated against the additional Annual Contribution payable.
2. No refund, pro rata credit or otherwise of the Annual Contribution is payable by Law Mutual.

118. Where a Legal Practice has advised Law Mutual as soon as reasonably practicable of an additional Partner or employed Practitioner, the Legal Practice insurance for that Practitioner will be effective from the date the Practitioner joined the Legal Practice.
119. The Annual Contribution payable is calculated from the date the Practitioner joins the Legal Practice. The invoice for additional Practitioners must be paid within 14 days of the invoice date.
120. A Legal Practice commencing practice during the Period of Insurance will have the Annual Contribution calculated from the date the Legal Practice applied for insurance. The insurance will only take effect once payment has been received

Restructure of Legal Practice

121. Regulation 90(3) empowers the Law Society to reduce or waive Annual Contributions when:
- i. two or more Legal Practices merge;
 - ii. a Legal Practice becomes a MDP or an ILP;
 - iii. a Legal Practice otherwise changes its business structure.
122. The Law Society may reduce or waive the Annual Contribution and Administration Levy if all the pre-merger Legal Practices were covered by the Insurance Arrangements.

123. Other structural changes to Legal Practices and associated further payments are as follows:

Change in the business structure	Additional Contribution
Sole Practitioner/Legal Practice becomes an ILP (no change in Partners)	None
2 or more Legal Practices merge (no change in Partners)	None
2 or more Legal Practices merge (no new Partners but the number of Partners decreases)	None
2 or more Legal Practices merge (external Partner joins the new entity)	Payable for the new Partner
2 or more Legal Practices merge (one or more Partners do not join the new entity but simultaneously establish a further new Legal Practice)	None
Where a 2 Partner Legal Practice splits and forms 2 Sole Practitioners	None
Where an ILP ceases practice and the Directors form one or more ILP's, Partnerships or Sole Practices	None
Where an ILP ceases practice and the Sole Director becomes a Sole Practitioner	None

MISCELLANEOUS

Partnerships

124. The LPA only allows partnerships to be comprised of Australian Legal Practitioners or one or more Australian Legal Practitioners and one or more Australian-registered foreign lawyers (Section 3 of the LPA). It cannot be comprised of two or more corporate bodies or non-legal Practitioners. Specific rules exist in relation to MDPs as set out in Division 3 of the LPA.
125. A Certificate cannot be issued to a partnership which contains one or more corporate bodies
126. A salaried Partner is classified as a Partner.

Seconded lawyers

127. Subject to the terms and conditions of the Certificate, provided that:
- the agreement is between the client and the Legal Practice; and
 - payment is made by the client to the Legal Practice, not to the secondee; and
 - the work done is of a legal nature,
- the Legal Practice will generally be insured by the Certificate for work done by its employee as a secondee.
128. Law Mutual and the Insurers reserve the right to consider each case on its facts.

Locum Practitioners

129. The Professional Indemnity insurance requirements of each locum arrangement need to be assessed on an individual case basis.
130. Legal Practices and Practitioners arranging a locum placement should contact Law Mutual on (08) 9481 3111 or by email info@lawmutualwa.com.au to notify them of the intention to engage a locum.
131. A Restricted Practitioner (see LPA) is unable to be a locum and would be uninsured. Any questions should be referred to Law Mutual.

Practitioner working as a volunteer

132. A number of Practitioners perform voluntary legal work for organisations or individuals, e.g. sporting groups, schools and charities.
133. Where such legal work is provided directly to the entity in its own right or to a client of the entity on behalf of the entity:
- an employed Practitioner of a Legal Practice who is not acting in the Practitioner's capacity as an employee of the insured Legal Practice, is NOT covered by the Insurance Arrangements;
 - a Partner of a Legal Practice who is not acting in the Practitioner's capacity as a Partner of the insured Legal Practice, is NOT covered by the Insurance Arrangements;
 - a Partner or employed Practitioner would need to apply for LFE insurance before carrying out the work or for the Legal Practice to have the relevant entity (school, charity etc) as a client of the Legal Practice for the work undertaken.
134. A Sole Practitioner or LFE would generally be covered by a Certificate if the advice is legal advice.
135. Depending on individual circumstances, a Certificate may not be required if the organisation has PI insurance that covers the Practitioner for this legal work. If not, the Partner or employed Practitioner would need to apply for LFE insurance before carrying out the work.
136. The above principles apply to situations where Practitioners intentionally or inadvertently provide gratuitous legal advice.

The cost of insurance is not reduced for a Partner that is part-time

137. A Partner cannot pay for insurance for part of the Period of Insurance. They have the duties and responsibilities as Partner at all times for as long as they are in practice. The only exception is where a Partner is retiring from legal practice.

Practitioners moving between States or Territories

138. Where a Practitioner holding a WA Practising Certificate does most or all their work interstate for a Legal Practice that is covered by a Certificate, that practitioner is covered, provided that the Practitioner is working under the direction of the Legal Practice in WA (Clause 2.2(c) of the Certificate).
139. However, if a Partner or employed Practitioner of a MDP is entitled to claim under another mutual fund or insurance policy for the same liability, the Practitioner will not be indemnified in respect of such liability if it arose predominantly from:
- i. acts or omissions committed outside of WA; or
 - ii. the Practitioner was, at the time of the act or omission, residing in, or a resident of, a Territory or State other than WA. (Clause 2.2(a)(2) of the Certificate).
140. Where a Partner holds a WA Practising Certificate and leaves WA and then practices permanently interstate:
- i. the Certificate will not apply to claims made against the Partners' new Legal Practice; and
 - ii. professional Indemnity insurance should be obtained from the relevant State or Territory Professional Indemnity scheme from the date of commencement of practice interstate.
141. Where an employed practitioner holding a WA Practising Certificate resigns and moves permanently interstate, coverage under a Certificate ceases from the resignation date and no refund of the Annual Contribution is payable by Law Mutual.
142. Where a Legal Practice covered by a Certificate employs an interstate Practitioner who does not work in WA, the employed Practitioner is subject to the Insurance Arrangements.

Refunds

143. A Certificate cannot be cancelled and is not transferable.
144. If a Practitioner leaves a Legal Practice after 15 May 2016 but on or before 30 June 2016, Law Mutual will refund the Legal Practice the appropriate share of the Annual Contribution provided it advises Law Mutual in writing by 30 June 2016.
145. A refund of the Annual Contribution is payable if a Legal Practice pays for a future employed practitioner and that practitioner never commences with the Legal Practice.
146. No refund is paid when an employed Practitioner leaves a Legal Practice covered by a Certificate during the Period of Insurance to work at another insured Legal Practice.
147. The following are examples of circumstances where no refund is payable:
- i. an employed Practitioner leaves a Legal Practice covered by a Certificate and is then employed by an exempt organisation;
 - ii. an employed Practitioner leaves a Legal Practice covered by a Certificate to go overseas;
 - iii. an employed Practitioner leaves a Legal Practice covered by a Certificate and does not continue to practice; or
 - iv. a Partner leaves a Legal Practice during the Period of Insurance.

LFES**General**

148. Concessional Annual Contribution rates apply to Sole Practitioners or ILPs who estimate they will earn less than \$50,000 in gross fee income for the entire Period of Insurance.
149. The concessional Annual Contribution rates increase in increments as the level of estimated fee income increases.
150. Gross fee income is exclusive of GST and disbursements.
151. To be classified as a LFE, a Sole Practitioner cannot:
- i. employ another Practitioner;
 - ii. contract legal work to another Practitioner (other than a barrister); or
 - iii. employ General employees for more than a combined 20 hours per week.
152. An ILP can be classified as a LFE Legal Practice if:
- i. there is only one Director;
 - ii. any General employees work no more than a combined 20 hours per week;
 - iii. there are no employed Practitioners; or
 - iv. there are no service contracts with one or more other Practitioners (other than a locum).
153. If all of the conditions are not met in full for the entire Period of Insurance, the Practitioner/ILP must pay the balance of the full Annual Contribution and Administration Levy.
154. LFE concessional Annual Contributions do not apply to:
- i. a partnership; or
 - ii. restricted Practitioners.

155. The No Claims Bonus and Criminal Law, Risk Management and QPS discounts do not apply to LFEs. A claims loading may apply to an LFE.
156. If a Practitioner takes out insurance as a Partner, once the Insurance Year commences, the insurance cannot be changed to LFE if gross fees earned are subsequently estimated to be less than \$50,000 or are in fact less than \$50,000 for the Period of Insurance.
157. Practitioners holding only a Volunteer or Pro Bono Practising Certificate:
 - i. must pay the LFE Nil Fee Annual Contribution rate (\$276); and
 - ii. do not pay an Administration Levy.

Statutory Declaration of Fees

158. A LFE must submit a completed statutory declaration to Law Mutual by 30 September 2017, stating the actual gross fee income earned for the Period of Insurance.
159. If the actual fee income exceeds the estimated fee income, an additional Annual Contribution will be payable. If the actual fee income is less than estimated, Law Mutual will pay a refund.
160. If a statutory declaration is not received by Law Mutual by 30 September 2017, the LFE will be immediately assessed as having earned over \$50,000 in gross fee income and will be invoiced the full additional Annual Contribution and a further Administration Levy. This must be paid within 30 days of the invoice date.
161. A LFE cannot have this invoice cancelled by subsequently lodging a statutory declaration declaring fees of less than \$50,000. To have the assessment amended, a LFE must apply to the Law Society for a review of the assessment.
162. Law Mutual is not obliged to offer cover for the following insurance year if the LFE has not sent the required statutory declaration and paid any outstanding re-assessment amounts by 15 March 2017 (Regulation 91).

Recognition of income

163. A LFE must report their gross fee income on the same basis they account for it in their income tax return.
164. If a LFE declares income to the Australian Taxation Office on a cash basis (ie. the financial year in which the LFE receives the payment of their invoice), the income must be included on the relevant Law Mutual statutory declaration on that cash basis and not the date the invoice is raised.
165. If a LFE declares income to the ATO on an accrual basis, the income should be included in the Law Mutual statutory declaration in the financial year the invoice is raised.
166. Where a LFE has completed work several years ago but an invoice is not, or cannot be, raised or paid until the case is settled, perhaps several years later, these fees are not included in the current year's estimated income.
167. The specific details of each situation will be assessed on a case by case basis.

The Nature of LFE insurance

168. LFE insurance only covers Practitioners for work performed on their own account.
169. It is common practice for many Practitioners employed as in-house counsel to obtain LFE insurance even though they are entitled to apply for an exemption under regulation 97(1)(c). This is usually in the nil fee earner category.
170. The LFE insurance does not cover work done by Practitioners in their capacity as employees of Non or Exempt Legal Practices (as defined in Regulation 95). This includes Practitioners employed:
 - i. as in-house counsel (Regulation 97(1)(c));
 - ii. by unions and other member organisations giving advice to their members (Regulation 97(1)(b)); and
 - iii. by CLCs giving advice to clients (Regulation 97(1)(e)).
171. If a LFE becomes an employed Practitioner, the employer of the Practitioner must also take out Professional Indemnity Insurance in respect of the Practitioner. Legal work performed by the Practitioner in their capacity as an employee of a Legal Practice, is not covered by their LFE insurance. An additional Annual Contribution and Administration Levy is payable. The Annual Contribution paid as an LFE is not credited towards any Annual Contribution payable by the Legal Practice.
172. An employed Practitioner who is separately carrying out legal work as a LFE must take out LFE insurance. Legal work performed by an employed Practitioner in their capacity as a LFE, is generally not covered by the insurance of their employer. An additional Annual Contribution and Administration Levy is payable. The Annual Contribution paid as an employed Practitioner is not credited towards any Annual Contribution payable by the LFE.
173. If the LFE Practitioner becomes or is also a Partner of a Legal Practice, the Legal Practice must also take out Professional Indemnity insurance for the Practitioner. Legal work performed in the capacity as a Partner of a Legal Practice is not covered by LFE insurance. An additional Annual Contribution and Administration Levy is payable by the Legal Practice.
174. The Annual Contribution paid as an LFE is not credited towards any Annual Contribution payable by the Legal Practice.
175. If a LFE ceases practice and takes up a position as a Partner or employed Practitioner, no refund of the Annual Contribution paid by the LFE will be made other than through the normal year end reassessment procedures

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

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