

2017/2018 Professional Indemnity Insurance

Master Policy

LPP012059016

2017/2018 Professional Indemnity Insurance Master Policy

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1 Purpose of Master Policy

This Master Policy sets out the arrangement made by the Law Society under the Act and Regulations for:

- 1.1 the establishment of a mutual fund by the Law Society and utilisation of that fund for the benefit of Insureds;
- 1.2 the provision of insurance by the Insurers to Insureds; and
- 1.3 the handling of claims.

2 Insuring clause

2.1 What is insured?

In consideration of the payment of the Premium to the Insurers and subject to the terms and conditions of this Master Policy, the Insurers will provide insurance in accordance with the terms and conditions contained in a Certificate issued to a Legal Practice under clause 6, as set out in Schedule 1.

2.2 Former Practitioners - Run-off Cover

- 2.2.1 The insurance provided under clause 2.1 extends to Ceased Practices and to any Former Practitioner and the Former Practitioner's estate and legal representatives for any Claim first made during the Period of Insurance directly arising from any act or omission by the Ceased Practice or Former Practitioner.
- 2.2.2 This clause 2.2 only extends insurance to an Insured for a Claim that the Insured is not otherwise insured for under a Certificate issued to a Legal Practice under clause 6, and on the condition that the liability of the Law Society and the Insurers for any Claim made against that Insured shall not exceed the Limit of Liability.

3 Law Society's contribution towards payment of Claims

- 3.1 The Law Society is responsible for the administration of the Law Mutual Fund.
- 3.2 Subject to clause 3.3, the Law Society will pay the first \$250,000 (including Claimant's Costs and Related Costs) out of the Law Mutual Fund in excess of the Insured's Contribution towards each Claim.
- 3.3 The Law Society's payments out of the Law Mutual Fund will not exceed in the aggregated \$6,000,000 (including Claimant's Costs and Related Costs) for all Claims covered by this Master Policy.

4 Insurers' contribution towards payment of Claims

- 4.1 The Insurers will pay up to \$1,750,000 (including Claimant's Costs and Related Costs) in excess of:
 - 4.1.1 the Insured's Contribution; and
 - 4.1.2 the contribution by the Law Society out of the Law Mutual Fund pursuant to clause 3.2 or by the Insurers pursuant to clause 4.2, towards each Claim.
- 4.2 The Insurers will pay the first \$250,000 (including Claimant's Costs and Related Costs) in excess of the Insured's Contribution towards each Claim:
 - 4.2.1 on and after payment by the Law Society of the \$6,000,000 described in clause 3.3;
 - 4.2.2 up to \$6,000,000 towards all Claims covered by this Master Policy.

5 Premium

The Law Society will pay the Insurers out of the Law Mutual Fund, the Premium shown in Schedules 2 and 3 in consideration of the insurance provided under this Master Policy and the Certificate.

6 Issue of Certificates of Insurance

The Insurers authorise the Law Society to issue a Certificate on behalf of the Insurers to a Legal Practice that has complied with the requirements imposed by the Law Society in relation to the issue of the Certificate.

7 Conduct of Claims

The Insurers authorise the Law Society to conduct Claims covered by this Master Policy in accordance with any Claims protocol.

8 Release

The Insurers waive any rights against and release:

- 8.1 the Law Society, its officers and employees;
- 8.2 the Law Society Council and its members; and
- 8.3 the Professional Indemnity Insurance Management Committee and its members,

from any liability to the Insurers arising out of the manner in which the Law Society conducts a Claim, except where an officer, employee or member has acted fraudulently or with a willful disregard for the consequences of their acts, errors or omissions.

9 Term of the Master Policy

This Master Policy commences at midnight 30 June 2017, ends at midnight 30 June 2018 (Australian Western Standard Time) and is not renewable.

10 Governing Law and Mediation

10.1 Governing Law

- 10.1.1 This Master Policy is governed by the law of Western Australia.
- 10.1.2 Each party irrevocably submits to the exclusive jurisdiction of the courts of Western Australia.
- 10.1.3 This Master Policy is entered into, and all Certificates are issued, in Western Australia, and each Claim is made and paid in Western Australia.

10.2 Mediation

- 10.2.1 Where any dispute arises out of or in relation to this Master Policy, a party may give notice in writing of the dispute to the other party setting out the material particulars of the dispute. The parties must confer within 2 weeks of the other party receiving the notice of dispute and use their best endeavours to resolve the dispute.
- 10.2.2 If any dispute notified in accordance with clause 10.2.1 has not been resolved within 30 days of the other party receiving the notice of dispute, either party may refer the dispute to mediation before an experienced mediator jointly nominated by the Law Society and the Insurers, or failing agreement as to the mediator within 21 days of the dispute being referred to mediation, an experienced mediator nominated by the President of the Western Australian Bar Association.
- 10.2.3 If a dispute is referred to mediation, the Law Society and the Insurers must act in good faith and use their best endeavours to resolve the dispute by mediation.
- 10.2.4 The mediator may determine the most efficient procedure for the mediation required to resolve the dispute quickly and cost effectively.
- 10.2.5 Each party will bear its own costs in relation to the mediation. The costs and expenses of the mediator will be borne in equal shares by the parties to the dispute.

11 Notice of a Claim or of facts that might give rise to a Claim

11.1 Law Society is authorised to receive Notice on behalf of Insurers

The Insurers authorise the Law Society to receive on behalf of the Insurers notice of a Claim or of facts that might give rise to a Claim.

11.2 Notice by the Law Society to the Insurers

The Law Society must give notice of a Claim or of facts that might give rise to a Claim to the Insurers as required by the Claims Protocol.

12 Reporting to the Insurers

The Law Society must give the Insurers reports and information about Claims and about notices of facts that might give rise to a Claim as required by the Claims Protocol.

13 Service

Any document or notice to be given to or served on the Law Society is properly given or served if delivered to the Chief Executive Officer, Law Mutual (WA), Level 4, 160 St Georges Terrace, Perth, Western Australia.

Any document or notice to be served or given to the Insurers may be served on or posted to:

- 13.1 AAI Limited, 18 Jamison Street, Sydney NSW 2000;
- 13.2 Allianz Australia Insurance Limited Forecourt Building, 2 Market Street Sydney NSW 2000
- 13.3 Amlin Syndicate 2001 at Lloyds at One Lime Street, London, England, EC3M 7HA.

14 Definitions

The definitions in clause 16 and elsewhere of the Certificate apply to this Master Policy.

15 Insurers several liability

Each Insurer's liability under this Master Policy is several and is limited to its own specified percentage proportion of the Insurers' liability as shown in Schedules 2 and 3. No Insurer is liable for the proportion of the Insurers' liability undertaken by any other Insurer.

16 GST

16.1 GST Gross-Up

If the contribution towards a Claim paid by the Law Society out of the Law Mutual Fund is consideration for a taxable supply, the contribution is automatically increased by an amount determined by multiplying the contribution by the rate at which GST is imposed on the taxable supply.

16.2 Payment

The Law Society will pay the additional amount described in clause 16.1 on receipt of a tax invoice from the Insured in respect of the taxable supply.

16.3 Interaction with the limit of the Law Society's contribution described in clause 3.3

To the extent the Law Society as trustee for the Law Mutual Fund is entitled to an Input Tax Credit for the additional amount described in clause 16.1, this additional amount will not be included in calculating the limit of the Law Society's contribution described in clause 3.3.

16.4 The meaning of words in this clause

The definitions in the GST Act apply to this clause.

Schedule 1

Certificate of professional indemnity insurance issued to Western Australian legal practices

1 Insuring Clause

- 1.1 Subject to the Master Policy and to the terms and conditions contained in this Certificate, the Insurers agree to indemnify the Insured up to the Limit of Liability for:
- 1.1.1 any amount payable by the Insured to a Claimant (including Claimant's Costs) in respect of any kind of civil liability incurred in connection with the Practice for any Claim first made against the Insured during the Period of Insurance; and
 - 1.1.2 Related Costs with respect to that Claim.

2 What is not Insured?

- 2.1 The Insurers will not indemnify the Insured in respect of:
- 2.1.1 a liability which arises out of facts or circumstances that might give rise to a Claim that were notified to an insurer or a mutual fund prior to the Period of Insurance;
 - 2.1.2 a liability which arises directly out of facts that might give rise to a Claim of which the Insured was aware or ought reasonably to have been aware before 1 July 1995 or in the case of a Barrister, before 30 June 2010;
 - 2.1.3 a liability which arises directly out of an act or omission of a Practitioner who is not a Partner in, an employee of, or directly contracted by, a Legal Practice located wholly or partly in Western Australia;
 - 2.1.4 a liability which arises directly or indirectly out of the Insured acting as a public officer, company director, company secretary or other company officer (other than a Claim arising from the Legal Practice's provision of legal services through any of its directors or officers who are Practitioners);
 - 2.1.5 the Insured's Contribution;
 - 2.1.6 a liability which arises directly or indirectly out of the performance or non-performance of a contract by an insured other than a contract by the Insured to provide legal services in connection with the Practice;
 - 2.1.7 a liability to repay, refund, account for, or pay compensation or damages by reference to any:
 - 2.1.7.1 fee charged or commission received or taken by an Insured; or
 - 2.1.7.2 disbursement incurred by an Insured (other than a disbursement for the fee of an expert or for a barrister engaged by the Insured);
 - 2.1.8 a liability for costs incurred by the Insured in relation to a dispute about fees or disbursements (other than the fees of experts and counsel, except in the case of a barrister covered under the Master Policy) charged by the Insured to a client;
 - 2.1.9 a liability for damages for death or injury other than mental distress or anxiety arising out of legal services provided by the Insured in connection with the Practice;
 - 2.1.10 a liability for physical loss or damage to property, unless the property was in the care, custody and control of the Insured in connection with the Practice and for which the Insured is responsible, not being property occupied or used by the Insured for the purposes of the Practice;
 - 2.1.11 the payment of a trading debt incurred by the Insured;
 - 2.1.12 a liability brought about by the dishonest or fraudulent act or omission of an Insured, but this exclusion will not apply to:
 - 2.1.12.1 the liability of an Insured or former Insured not engaged in or knowingly connected with the dishonest or fraudulent act or omission, where the dishonest or fraudulent act or omission occurred after 30 June 1999; or
 - 2.1.12.2 a liability brought about by the dishonest or fraudulent act or omission of a person employed in connection with the Practice.

This exclusion shall only apply once the dishonesty or fraudulent act or omission has been established by express admission, court judgment or other final adjudication;

The provisions of clause 12 of this Certificate will apply if the Insurers have indemnified an Insured for a liability of the Insured brought about by a dishonest or fraudulent act or omission.

Notwithstanding subclauses 2.1.12.1 and 2.1.12.2 above, the Insurers shall not be liable to indemnify the Insured for any amount payable under a Guarantee Fund or analogous fidelity fund, nor for any Claim made by any Guarantee Fund or analogous fidelity fund;

- 2.1.13 a liability for any:
 - 2.1.13.1 fine;
 - 2.1.13.2 civil penalty;
 - 2.1.13.3 punitive, exemplary, aggravated, additional or like damages; or
 - 2.1.13.4 costs or expenses incurred or ordered to be paid by an Insured in connection with a complaint against, or investigation into, the professional misconduct of an Insured;
- 2.1.14 a liability directly or indirectly caused by or contributed to by, or arising from, ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- 2.1.15 a liability directly or indirectly caused by or contributed to by, or arising from, the radioactive toxic explosive or other hazardous property of any explosive nuclear assembly or nuclear component;
- 2.1.16 a liability which arises from war, invasion, acts of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power;
- 2.1.17 a liability for any costs awarded against an Insured in proceedings if the Insured is not a party to the proceedings, but is or was acting for or on behalf of a party to the proceedings at the time of the events that gave rise to the liability;
- 2.1.18 a liability incurred by an Insured in his or her capacity as an insurance agent;
- 2.1.19 a liability arising out of death, injury, illness, loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with:
 - 2.1.19.1 an Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss; or
 - 2.1.19.2 an action in controlling, preventing, suppressing, retaliating against, or responding to any Act of Terrorism;
- 2.1.20 a liability arising out of an actual or alleged liability whatsoever for a Claim in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity;
- 2.1.21 any Claim directly or indirectly based upon, attributable to, or in consequence of insolvency, bankruptcy or liquidation of an Insured;
- 2.1.22 a liability in relation to a dispute between:
 - 2.1.22.1 Partners;
 - 2.1.22.2 shareholders of the Legal Practice if it is an Incorporated Legal Practice; or
 - 2.1.22.3 Partners and shareholders of the Legal Practice if the Legal Practice is an Incorporated Legal Practice;
 - 2.1.22.4 the Legal Practice and current or former Partners, shareholders or officers of the Legal Practice;
- 2.1.23 a liability in relation to an employment related dispute brought by an employee of a Legal Practice against the Insured;
- 2.1.24 a liability which arises directly or indirectly out of an Insured being:
 - 2.1.24.1 an Exempt Practitioner or a Partner or employee of an Exempted Firm;
 - 2.1.24.2 a Partner or employee of a Legal Practice conducted in Western Australia and at least one other State or Territory prior to or during the Period of Insurance, if the Insured is entitled to claim under another mutual fund or insurance policy for the same liability, and such liability arose predominantly from an act or omission committed by a person or persons who was or were, at the time of the act or omission:
 - 2.1.24.2.1 residing in; or
 - 2.1.24.2.2 a resident or residents of, a Territory or State other than Western Australia.

2.2 Where Exclusions 2.1.19, 2.1.20, 2.1.21 and 2.1.22 do not apply if

- 2.2.1 Exclusions 2.1.19, 2.1.20, 2.1.21 and 2.1.22 do not apply if such liability is in relation to legal services provided by the Insured.
- 2.2.2 If the parties cannot agree whether exclusion 2.1.19, 2.1.20, 2.1.21 or 2.1.22 applies to a Claim, either party may refer the dispute to mediation before an experienced mediator jointly nominated by the Insurers and the Insured, or failing agreement as to the mediator within 21 days of the dispute being referred to mediation, an experienced mediator nominated by the President of the Western Australian Bar Association.
- 2.2.3 If a dispute under this clause is referred to mediation, the parties must act in good faith and use their best endeavours to resolve the dispute by mediation.
- 2.2.4 The mediator may determine the most efficient procedure for the mediation required to resolve the dispute quickly and cost effectively.
- 2.2.5 Each party will bear its own costs in relation to the mediation. The costs and expenses of the mediator will be borne in equal shares by the parties to the dispute.

3 The Insurers are not entitled to avoid, repudiate or refuse insurance

The Insurers are not entitled to avoid, repudiate or otherwise refuse the provision of insurance (as opposed to providing indemnity for any Claim) under this Certificate on any ground whatsoever, including, in particular, pre-contractual non-disclosure or misrepresentation by any person.

4 Cover in certain circumstances for a Claim first made after the expiration of the Period of Insurance

This Certificate does not cover a Claim first made against an Insured after the expiration of the Period of Insurance. Where the Insured gives written notice to the Insurers during the Period of Insurance of facts that might give rise to a Claim as soon as reasonably practicable after the Insured becomes aware of those facts, the Insured may be entitled pursuant to s40(3) of the *Insurance Contracts Act 1984* (Cth) to be indemnified by the Insurers in respect of a Claim subsequently made arising from those facts, notwithstanding the Claim is first made after the expiration of the Period of Insurance.

5 Notification of a Claim as soon as reasonably practicable

An Insured must give written notice of a Claim first made against the Insured during the Period of Insurance as soon as reasonably practicable after the Claim is made.

6 Limitation on an Insured's right to incur costs, admit liability or settle a Claim

An Insured must not incur costs in connection with, admit liability for, or settle, a Claim, without Law Mutual's prior written consent, which consent will not be unreasonably withheld.

7 Insured must co-operate with the Insurers in the investigation and conduct of a Claim

An Insured must co-operate with the Insurers by promptly providing Law Mutual and its agents with any information and assistance reasonably requested by them in relation to the investigation and conduct of a Claim.

8 Limitation on the Insurers' right to reject or reduce payment of a Claim

The Insurers are not entitled to refuse or reduce payment in respect of a Claim because of any pre-contractual non-disclosure or misrepresentation by any person.

9 Defending a Claim

9.1 Disputes about how a Claim should be Resolved

- 9.1.1 If the Insured and the Insurer are in dispute about how a Claim should be Resolved, they agree to be bound by the recommendation of an Independent Legal Practitioner jointly agreed upon by the Insured and the Law Society on behalf of the Insurers (or failing agreement a legal practitioner appointed by the President of the Western Australia Bar Association) as to how the Claim should be Resolved, having regard to:
- 9.1.1.1 the prospects of the Insured successfully defending the Claim on its merits at trial or on appeal;
 - 9.1.1.2 the estimated quantum of the Claim; and
 - 9.1.1.3 all cost implications associated with the defence of the Claim to trial or on appeal (including the potential for recovery of costs from a party arising by reason of a taxed entitlement to costs).
- 9.1.2 The Independent Legal Practitioner will act as an expert, not an arbitrator, and is empowered to give directions to resolve the dispute quickly and cost effectively.
- 9.1.3 The fee payable to the Independent Legal Practitioner is to be paid as directed by the Independent Legal Practitioner, having regard to all of the circumstances of the recommendation, including especially whether any party had substantial success.
- 9.1.4 If the Independent Legal Practitioner recommends under clause 9.1.1 that the Claim be settled, the Independent Legal Practitioner must recommend an amount that the Claim should be settled for (Recommended Settlement Amount).
- 9.1.5 If the Independent Legal Practitioner recommends under Clause 9.1.1 that the Claim be settled and the Insured does not, within 14 days after receiving the Independent Legal Practitioner's recommendation and Recommended Settlement Amount (or such lesser time as may be reasonable in the circumstances), notify the Insurers that the Insured consents to the Insurers offering to settle the Claim for up to the Recommended Settlement Amount, the Insurers are not liable to indemnify the Insured for more than:
- 9.1.5.1 the Recommended Settlement Amount plus Claimant's Costs and Related Costs incurred to the date the Insured received the recommendation; or
 - 9.1.5.2 the Limit of Liability,
- whichever is the lesser.
- 9.1.6 If the Independent Legal Practitioner recommends under clause 9.1.1 that the Claim be settled and the Insurers do not, within 14 days after receiving the Independent Legal Practitioner's recommendation and Recommended Settlement Amount (or such lesser time as is reasonable in the circumstances), notify the Insured that they consent to the Insured offering to settle the Claim for up to the Recommended Settlement Amount, the Insurers are liable to indemnify the Insured for the full amount of the Insured's liability to the Claimant. The Insurers' liability to indemnify is not subject to the Limit of Liability.

9.2 Conduct of defence and settlement of a Claim or Claims by the Insurers

- 9.2.1 Subject to clause 9.1, the Insurers are entitled at any time:
- 9.2.1.1 at their own cost, to take over the conduct of the Insured's defence of a Claim;
 - 9.2.1.2 to relinquish conduct of the Insured's defence of a Claim; or
 - 9.2.1.3 to settle a Claim, but only with the Insured's consent, unless the consent is unreasonably withheld or the Insured unreasonably delays informing the Insurers whether or not it consents to settlement of the Claim.
- 9.2.2 The Insurers will not unreasonably refuse to conduct the Insured's defence of a Claim that is covered by this Certificate.

9.3 Defending and settling Claims

If the Insurers elect to defend or settle a Claim pursuant to clause 9.2, Law Mutual or a legal practitioner appointed by Law Mutual will defend or settle the Claim on behalf of the Insurers.

10 Dispute between Insureds

10.1 Dispute

If a dispute arises between two or more Insureds who are insured under different certificates of insurance issued by the Law Society (whether insured under this Master Policy or another master policy), as to which of them is liable to the Claimant and if more than one, as to the proportionate liability of each Insured, such dispute shall be referred to an Independent legal practitioner nominated by the Insureds and the Law Society on behalf of the Insurers (or failing agreement a practitioner appointed by the President of the Western Australian Bar Association).

10.2 Independent Legal Practitioner's duties

- 10.2.1 The Independent Legal Practitioner shall give a brief written opinion as to:
- 10.2.1.1 which one or more of the Insureds (if any) is, in their opinion, likely to be found liable to the Claimant; and
 - 10.2.1.2 the apportionment of liability between the Insureds if the Independent Legal Practitioner thinks more than one Insured is likely to be found liable to the Claimant.
- 10.2.2 The Independent legal practitioner shall give the opinion:
- 10.2.2.1 as an expert, not as an arbitrator; and
 - 10.2.2.2 on the basis of written documentation and submissions provided by each of the Insureds and without the hearing of oral evidence or representations; and
 - 10.2.2.3 on the basis of what the Independent Legal Practitioner believes is just and equitable in the circumstances.

10.3 Opinion

The Independent legal practitioner's opinion shall be binding on the Insureds and the Insurers and the defence or settlement of the Claim shall be conducted in accordance with the opinion.

11 Insured's Contribution (excess)

11.1 Insured's responsibility for the Insured's contribution

The Insured is responsible for the Insured's Contribution.

11.2 Calculation of the Insured's Contribution

Subject to the following sub-clauses, the Insured's Contribution is:

- 11.2.1 \$7,500 if the Legal Practice or the Predecessor of the Legal Practice liable to the Claimant was a Sole Practitioner or Barrister at the time of the act or omission which gave rise to the liability of the Insured to the Claimant; or
- 11.2.2 in all other circumstances, \$5,000 multiplied by the number of Partners in the Legal Practice or the Predecessor of the Legal Practice liable to the Claimant at the time of the act or omission which gave rise to the liability of the Insured to the Claimant, up to a maximum of \$75,000.

11.3 Circumstances in which the Insured's Contribution is doubled

The Insured's Contribution is double the amount calculated under clause 11.2 if the Claim arises out of:

- 11.3.1 a matter or transaction in which the Insured acted for or advised more than one party to the matter or transaction in circumstances where the interests of one of the parties for whom the Insured acted conflicted with the interests of any other party;
- 11.3.2 a matter or transaction in which the interests of the Insured conflicted with the interests of the party or parties for whom the Insured acted;
- 11.3.3 the Insured's failure to commence or recommend the commencement of an action or proceeding against all relevant parties within a limitation period;
- 11.3.4 the provision by an Insured of a Practitioner Guarantee Certificate; or
- 11.3.5 a Claim brought for a dishonest or fraudulent act or omission of any Partner or former Partner of the Insured.

This clause 11.3 does not apply if the Insured's Contribution is multiplied pursuant to clause 11.4 below

11.4 Circumstances in which the Insured's Contribution is multiplied by five

The Insured's Contribution is five times the amount calculated under clause 11.2 if three or more Claims were first made against the Legal Practice during the five year period from 30 June 2011 to 30 June 2016 (Five year period) and its Loss Ratio for the Five year period was in excess of 300%.

11.5 Insurers' discretion to reduce multiplication factor

The Insurers authorise the Law Society, in its sole discretion, to reduce the multiplication factor of the Insured's Contribution under clause 11.4 to no less than double.

11.6 Maximum Aggregate of the Insured's Contribution

The maximum aggregate of the Insured's Contribution in respect of all Claims covered by this Certificate is:

- 11.6.1 \$37,500 if the Legal Practice or the Predecessor of the Legal Practice liable to the Claimant was a Sole Practitioner or Barrister at the commencement of the Period of Insurance;
- 11.6.2 in all other circumstances, \$25,000 multiplied by the number of Partners in the Legal Practice or the Predecessor of the Legal Practice liable to the Claimant at the commencement of the Period of Insurance, up to a maximum amount of \$375,000.

12 The Insurers' and the Law Society's right of subrogation in case of an Insured's dishonesty or fraud**12.1 Insurers**

If the Insurers have indemnified an Insured for a liability of the Insured brought about by a dishonest or fraudulent act or omission, the Insurers are entitled to be subrogated to the rights of the Insured against the person who committed or was responsible for that dishonest or fraudulent act or omission, whether or not that person is an Insured.

12.2 The Law Society

If the Law Society has paid out of the Law Mutual Fund in respect of a liability of an Insured brought about by a dishonest or fraudulent act or omission, the Law Society is entitled to be subrogated to the rights of the Insured against the person who committed or was responsible for that dishonest or fraudulent act or omission whether or not that person is an Insured.

13 Claims Aggregation**13.1 All Claims made, whether made by one or more Claimants, against an Insured arising from:**

- 13.1.1 one act or omission;
- 13.1.2 one matter or transaction;
- 13.1.3 one series of related acts or omissions;
- 13.1.4 the same or similar act or omission in a series of related matters or transactions;
- 13.1.5 the same or similar act or omission in one or more matters or transactions for the same client (or a relative, or Associate or Related Entity of the same client);
- 13.1.6 the same or similar series of related acts or omissions in one or more matters or transactions for the same client (or a relative, or Associate or Related Entity of the same client);
- 13.1.7 the same or similar series of related acts or omissions in one or more matter or in relation to one transaction or one or more related transactions; or
- 13.1.8 all dealings and advice in respect of one managed investment scheme (including a contributory or nominee mortgage),
will be regarded as one Claim.

13.2 Otherwise each Claim will be regarded as a separate Claim.

14 Notices

14.1 All notices and notifications required to be given under this Certificate must be in writing and must be either:

- 14.1.1 delivered by hand;
- 14.1.2 sent by pre-paid post;
- 14.1.3 sent by facsimile; or
- 14.1.4 sent by email,

to the other party (Receiving Party) at the address, facsimile number or nominated email address for that party a described in the following sub-clauses.

14.2 Parties' details:

14.2.1 Law Mutual and the Insurers: Chief Executive Officer, Law Mutual (WA), Level 4, 160 St Georges Terrace, Perth, Western Australia, 6000;

Facsimile: (08) 9481 3166

Email address: info@lawmutualwa.com.au

14.2.2 Insured: the person and address to which the invoice for the Annual Contribution was most recently sent.

14.3 A party may change their address by giving written notice of their new address.

14.4 A notice is deemed to be received by the Receiving Party:

- 14.4.1 if delivered by hand, when delivered to the address of the receiving party;
- 14.4.2 if sent by post, the day which is 3 business days from and including the date of postage;
- 14.4.3 if sent by facsimile, when transmitted; and
- 14.4.4 if sent by email, when the email (including any attachment) comes to the attention of the receiving party or a person acting on its behalf,

but a notice given on a day that is not a business day in Western Australia or after 4pm on a business day, is deemed to be received by the Receiving Party at 9.00am on the next business day.

15 Use of Claims Information

15.1 The parties acknowledge that Law Mutual receives Claim Information in the course of conducting a Claim.

15.2 Unless notice is given in accordance with clause 15.4, Law Mutual may, in its absolute discretion, use Claim Information for the purposes described in clause 15.3. Employees and officers of the Law Society and Law Mutual and the Professional Indemnity Insurance Management Committee and its members, and any other person who Law Mutual reasonably requires to assist in the collection and use of Claim Information, will have access to Claims Information.

15.3 Claim information may be used by Law Mutual for the purposes of:

- 15.3.1 reviewing and assisting in current Claims management;
- 15.3.2 determining trends in the types of work or instructions or circumstances which give rise to Claims;
- 15.3.3 the amounts expended to settle or defend Claims;
- 15.3.4 the education of Insureds;
- 15.3.5 the compilation of statistics and reports in relation to the above information, and including the sizes of firms and Insureds working on files giving rise to Claims; and
- 15.3.6 any other purpose that would be generally useful to Law Mutual to enable it to more properly and cost effectively effect the insurance arrangements and the management of the Law Mutual Fund.

15.4 If any Insured does not want Law Mutual to use Claim Information relating to a Claim against them for any of the purposes set out in clause 15.3, they must inform Law Mutual in writing.

16 Definitions

In this Certificate:

Act means the *Legal Profession Act 2008 (WA)*, as amended from time to time.

Act of Terrorism has the same meaning given to the term “terrorist act” in section 3 of the *Terrorism Insurance Act 2003 (Cth)*.

Administration Levy means the administration levy fixed by the Law Society pursuant to Regulation 102.

Annual Contribution means the annual contribution each Legal Practice is liable to pay the Law Society pursuant to Regulation 92.

Associate has the meaning given to it in the *Corporations Act 2001 (Cth)*.

Barrister means a person that has announced his or her intention to practise solely as a barrister in the manner contemplated by Practice Direction 10.5 of the Consolidated Practice Directions of the Supreme Court of Western Australia, as amended from time to time.

Ceased Practice means a Legal Practice that has ceased to practise in Western Australia where such Practice was insured under this Certificate or a preceding certificate of insurance issued by the Law Society at the time that acts or omissions giving rise to the Claim arose, and shall include any administration company that was established purely for the purposes of providing services to the Practice.

Certificate means a certificate of insurance issued to a Legal Practice containing the terms and conditions set out in the form of the certificate of insurance shown in Schedule 1.

Claim means

1. a demand for, or assertion of rights to, compensation or damages from or against the Insured made to the Insured;
2. an intimation of an intention to seek compensation or damages from or against the Insured, made to the Insured;
3. a writ or other court document served on the Insured or provided to the Insured in which a demand for or assertion of rights to, compensation or damages is made against the Insured; or
4. a liability to pay money imposed by a Court order against the Insured.

Claimant means the person or entity making a Claim.

Claimant's Costs means legal costs payable by the Insured to the Claimant net of any Input Tax Credit the Insured is entitled to in respect of the payment.

Claims Information means any information in Law Mutual's possession relating to a Claim, and includes information as to the type, quantum, cause of, process of administering, cost of a Claim (both legal and settlement), and any other type of information that Law Mutual reasonably requires for the purposes set out in clause 15.3

Claims Protocol means the Claims Protocol for the Master Policy agreed to by the Insurers and the Law Society for the Period of Insurance.

Consultant means a contractor, sub-contractor, agent or consultant engaged, or previously engaged, on a paid or unpaid basis, in connection with the Legal Practice or Predecessor of the Legal Practice, but does not include an employee or a Partner of the Legal Practice or Predecessor of the Legal Practice.

Consultant contract means a contract by a Consultant to provide services as a Practitioner exclusively to or on behalf of the Legal Practice or Predecessor of the Legal Practice and not to any other legal practice.

Exempt Practitioner means a Practitioner exempted for the Period of Insurance pursuant to Regulation 97.

Exempted Firm(s) means a Legal Practice that is an ‘exempt law practice’ for the Period of Insurance as described in Regulation 95.

Former Practitioner means an Australian legal practitioner who held a local practising certificate in Western Australia and who was, or whose successors in practice were, insured under:

1. a Law Cover Policy; or
2. this Certificate or a preceding certificate of insurance issued by the Law Society;

at the time that acts or omissions giving rise to the claim arose and who:

1. has ceased to practice in private practice; or
2. has commenced in private practice solely as a Barrister.

Former Practitioner does not include a person who is indemnified against the Claim under a professional indemnity policy or certificate of insurance:

1. in force under the Law Society of New South Wales Professional Indemnity Insurance Scheme after 30 June 1995; or
2. required to be effected by or under a law, including a law of a State or Territory of Australia (other than Western Australia); or
3. in force under or issued by a mutual fund or insurer after 30 June 1995.

Fund's Contribution means the contribution by the Law Society out of the Law Mutual Fund pursuant to clause 3.2 of the Master Policy or by the Insurers pursuant to clause 4.2 of the Master Policy.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantee Fund has the meaning given in s3 of the Act.

Incorporated Legal Practice has the meaning given in s3 of the Act.

Independent Legal Practitioner means a legal practitioner who does not have an existing relationship with the Insurer, the Insured or Law Mutual.

Input Tax Credit has the meaning given in the GST Act.

Insured means severally and for their respective rights liabilities and interests:

1. the Legal Practice and each Partner in the Legal Practice shown in the Schedule for attachment to the Certificate and each former Partner;
2. each Predecessor of the Legal Practice and each Partner in each Predecessor of the Legal Practice;
3. each person employed or engaged, or previously employed or engaged, on a paid or unpaid basis, in connection with the Legal Practice or Predecessor of the Legal Practice, including any trainee, volunteer, part-time, seasonal, temporary, or work experience personnel, a practical legal trainee, or legal practitioner performing Restricted Legal Practice for the purpose of attaining Required Experience, but not including a Consultant.
4. each Consultant provided that:
 - (a) at the time of any act, error or omission giving rise to a Claim, the Consultant was under the direct control and supervision of the Legal Practice or Predecessor of the Legal Practice or a Partner of the Legal Practice or partner of the Predecessor of the Legal Practice;
 - (b) the act, error or omission giving rise to the Claim occurred in the course of or arose out of the services provided by the Consultant pursuant to the Consultant contract.
5. the estate or the legal representatives of each person included in paragraphs 1, 2, 3 and 4; and
6. each service or administration company or trust connected with the Legal Practice to the extent that its activities are carried out exclusively in connection with the Practice;

Insured's Contribution is the first part of a settlement or judgment against the Insured in relation to a Claim as provided in clause 11, including Claimant's Costs but not including Related Costs.

Insurer means one of, and Insurers means all of, the insurers named in clause 13 of the Master Policy.

Law Cover Policy means a policy or certificate of insurance or master policy in force under the Law Society of New South Wales Professional Indemnity Insurance Scheme during the period from 1 July 1988 to 30 June 1995 being one of master policy Numbers:

1. 88 NSW 5;
2. 89 NSW6;
3. 90 NSW 7;
4. 91 NSW 8;
5. 92 NSW 9;
6. 93 NSW 10;
7. 95 NSW 11.

Law Mutual means Law Mutual (WA), which was established (and is administered) by the Law Society pursuant to the Regulations to effect compulsory insurance for the Insureds.

Law Mutual Fund is the Law Mutual Fund described in s327(1) of the Act.

Law Society Council has the meaning given to the term 'Council' in the Constitution of the Law Society.

Law Society means The Law Society of Western Australia (Inc.).

Legal Practice means:

1. a Sole Practitioner or Barrister that;
2. a firm of Practitioners that; or
3. a Multi-disciplinary partnership, to the extent that it; or
4. an Incorporated Legal Practice that,

conducts or has conducted a legal practice.

Limit of Liability means the difference between:

- (a) \$2,000,000 inclusive of Claimant's Costs and Related Costs, and
 - (b) the Fund's Contribution
- in excess of the Insured's Contribution

Loss Ratio means the ratio (expressed as a percentage) between:

- (a) the total of all monies, as at 31 December 2016, reserved by Law Mutual in respect of Claims first made against a Legal Practice during the five year period referred to in clause 11.4 above plus all monies paid out of the Law Mutual Fund in respect of those Claims during that five year period on the one hand, and
- (b) the total of the Annual Contributions and Administration Levies paid by the Legal Practice for the same five year period on the other hand.

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.

Master Policy means the professional indemnity insurance master policy for the Period of Insurance.

Multi-disciplinary partnership has the meaning given in s3 of the Act.

Partner includes a partner in the Legal Practice, a director of an Incorporated Legal Practice and any Practitioner held out by the Legal Practice as a partner in the Legal Practice, or as a director of an Incorporated Legal Practice.

Period of Insurance means the period shown in the Schedule for attachment to the Certificate.

Practice means

1. the practice of law which, as at the date of commencement of the Period of Insurance, was carried on by the Legal Practice and includes any Legal Practice which was earlier merged into that practice or which is merged into that practice during the Period of Insurance; and
2. a Ceased Practice.

Practitioner means an Australian legal practitioner who holds a local practising certificate and is insured under a Certificate.

Practitioner Guarantee Certificate means a certificate provided by an Insured as required by a financier, lender or financial institution in relation to advice given by the Insured to a guarantor or proposed guarantor in relation to a matter or transaction or proposed matter or transaction.

Predecessor of the Legal Practice means any Legal Practice that the Law Society determines to be a predecessor of the Legal Practice.

In so determining, the Law Society may take into account any circumstances it reasonably considers relevant, including whether the Legal Practice, at the relevant time:

- (a) holds itself out as the successor of, or as incorporating, the predecessor practice;
- (b) employs, or has as Partners, all or a majority of the Partners of the predecessor practice immediately prior to the predecessor practice ceasing to carry on business;
- (c) employs all or a majority of the Practitioners employed by the predecessor practice immediately prior to the predecessor practice ceasing to carry on business;
- (d) uses the name or a name which incorporates all or part of the name used by the predecessor practice;
- (e) carries on business from the same premises as the predecessor practice carried on business immediately prior to the predecessor practice ceasing to carry on business;
- (f) acquired the goodwill, assets, or a majority of client files of the predecessor practice;
- (g) assumed the liabilities of the predecessor practice.

The Law Society's determination is final and binding.

Premium is the amount referred to in clause 5 of the Master Policy.

Professional Indemnity Insurance Management Committee means the committee established by the Law Society pursuant to s331 of the Act.

Receiving Party has the meaning given in clause 14 above.

Regulations means the *Legal Profession Regulations 2009* (WA), and Regulation means an individual regulation therein.

Related Costs means all costs and expenses incurred by the Insurers, the Law Society as trustee for the Law Mutual Fund or Law Mutual in the investigation, defence or settlement of a Claim or such costs and expenses incurred by the Insured with the Insurers' consent, such consent not to be unreasonably withheld, net of any Input Tax Credit any such party is entitled to claim in respect of the costs and expenses.

Related Entity has the meaning given to it in the *Corporations Act* (2001) (Cth).

Required Experience has the same meaning given to the term "required experience" in s50 of the Act.

Resolved means defended, or continued to be defended, appealed, or continued to be appealed, or settled.

Responsible Entity has the meaning given to it in the *Corporations Act* (2001) (Cth).

Restricted Legal Practice has the same meaning given to the term "restricted legal practice" in s50 of the Act.

Schedule means a schedule to the Master Policy, or the Schedule for attachment to the Certificate, as appropriate.

Sole Practitioner means a Practitioner who practices on his or her own account alone, or the sole director of an Incorporated Legal Practice.



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

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