

# 2019/2020 Annual Information Booklet

Professional Indemnity Insurance Arrangements  
for Practitioners Insured in Western Australia

## Contents

<b>Definitions</b>	<b>1</b>	Claims loading – (also known as “risk rating”)	9
<b>The Arrangements</b>	<b>2</b>	Practitioners providing legal services to multiple Legal Practices	9
<b>Application for Insurance</b>	<b>3</b>	ILPS	9
<b>The Administration Levy and the Annual Contribution</b>	<b>4</b>	Part-time employed Practitioners	10
Payment of the Administration Levy and the Annual Contribution	4	Unpaid Leave	10
What will the Law Society use the Administration Levy and the Annual Contribution for?	4	Short term contracts – employed Practitioners	10
How the Law Society goes about assessing the Administration Levy and the Annual Contribution	4	Partners retiring during the Period of Insurance	11
Annual Contribution: Discounts	5	Legal Practices operating for part of the Insurance Period	11
Annual Contribution: claims loading (also known as ‘risk rating’)	6	Consultants	11
What the Administration Levy and the Annual Contribution will be for the Period of Insurance (subject to Annual Contribution discounts and loadings)	6	General employees	11
Application to review the Annual Contribution (Regulation 93(1)) or Late Lodgement Fee (Regulation 89)	7	Changes during the Period of Insurance	11
Payment and non-payment	7	Restructure of Legal Practice	12
Miscellaneous	7	<b>Miscellaneous</b>	<b>13</b>
<b>Claims’ Management</b>	<b>7</b>	Partnerships	13
<b>Law Mutual Risk Management</b>	<b>8</b>	Seconded lawyers	13
<b>Rules and Guidelines</b>	<b>8</b>	Locum Practitioners	13
Discounts and Loadings	8	Practitioner working as a volunteer	13
No Claims Bonus	8	The cost of insurance is not reduced for a Partner that is part-time	13
QPS	8	Practitioners moving between States or Territories	13
Risk Management Discount	8	Refunds	14
		<b>LFEs</b>	<b>14</b>
		General	14
		Declaration of GFI	15
		Recognition of income	15
		The Nature of LFE insurance	15

## Definitions

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

Term	Meaning
Administration Levy	has the meaning described in clause 17 of the Certificate.
Annual Contribution	has the meaning described in clause 17 of the Certificate.
Application	an application for insurance cover or any associated application to Law Mutual.
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.
Claimant's Costs	has the meaning described in clause 17 of the Certificate.
CLC	a Community Legal Centre.
Fund's Contribution	has the meaning described in clause 17 of the Certificate.
General employee	means a non-Practitioner employee, for example, a secretary, a receptionist, non-practising director, an accounts staff or a service company or trust employee.
GFI	GFI is gross fee income that includes all professional fees, remuneration and internal costs charged to clients by the Legal Practice in connection with legal services net of any applicable GST and disbursements.
ILP	an incorporated legal practice, as defined by section 3 of the LPA.
Insurance Arrangements	the compulsory insurance arrangements for non-exempt Practitioners in Western Australia.
Insured's Contribution	the first part of a settlement or judgment against the Insured in relation to a Claim as described in clause 11 of the Certificate.
Insured(s)	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"> <li>• Vero Insurance Limited (50%);</li> <li>• Allianz Australia Insurance Limited (25%); and</li> <li>• MS Amlin Syndicate 2001 at Lloyds (25%).</li> </ul>
Late Lodgement Fee	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	a trust of which the Law Society is the trustee.
Law Society	the Law Society of Western Australia Inc.
Legal Practice	has the meaning described in clause 17 of the Certificate
LFE	a Practitioner as described in paragraphs 117 to 122 of this Booklet.
Loss Ratio	has the meaning described in clause 16 of the Certificate.
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	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"> <li>• a Sole Practitioner (in the case of a Legal Practice constituted by the Practitioner);</li> <li>• a partner in a Legal Practice;</li> <li>• a Practitioner director in an ILP; or</li> <li>• a Practitioner partner in an MDP.</li> </ul>
Period of Insurance	1 July 2019 to midnight 30 June 2020.
PI	Professional indemnity.
Practitioner	includes: <ul style="list-style-type: none"> <li>• an Australian Legal Practitioner;</li> <li>• a local legal practitioner; or</li> <li>• an interstate legal practitioner,</li> </ul> as described in section 5 of the LPA.
Pro Bono practising certificate	is 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 17 of the Certificate.
Tax Invoice	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 1 July 2019 to 30 June 2020. 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 of which the Practitioner is a Partner or by whom the Practitioner is employed or engaged, 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. The Law Society, on behalf of the Insurers, issues a Certificate to a Legal Practice:
  - a. that requests a Certificate and has complied with the requirements imposed by the Law Society in relation to the issue of a Certificate;
  - b. in terms of Schedule 1 to the Master Policy as evidence of their 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 Practitioners employed or engaged by it are, subject to the terms of the Certificate, covered for their civil liability up to the Limit of Indemnity, for a Claim first made against them during the Period of Insurance.
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 the difference between:
    - i. \$2,000,000 each and every Claim inclusive of Claimant’s Costs and Related Costs; and
    - ii. the Fund’s Contribution,
 in excess of the Insured’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:

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

- Sub-clause 11.2 of the Certificate describes how the Insured’s Contribution is calculated.
8. Sub-clauses 11.3 and 11.4 of the Certificate describe the circumstances in which the Insured’s Contribution is doubled and multiplied by five respectively.
  9. Sub-clause 11.6 of the Certificate describes the maximum aggregate of the Insured’s Contribution in respect of all Claims covered by the Certificate.
  10. The Law Society will take the following matters into account in deciding whether, and if so how, to exercise the discretion

described in sub-clause 11.5 of the Certificate:

- a. whether, during the five year period or subsequently, the Legal Practice:
  - i. has, in writing, requested Law Mutual to recommend risk management practices specifically for the Legal Practice (Request);
  - ii. if it made a Request, has implemented risk management practices recommended by Law Mutual specifically for the Legal Practice and if so, when and the extent to which it has done so.  
 Law Mutual will take into account the nature and structure of the Legal Practice when recommending risk management practices specifically for it.
  - iii. at its request and its own cost, has been audited by Law Mutual for compliance with risk management practices recommended by Law Mutual specifically for the Legal Practice;
- b. a comparison during the five year period between the average number of Claims per Practitioner:
  - i. in the Legal Practice and in any other Legal Practice substantially constituted by the same Partners and employed Practitioners; and
  - ii. in all Western Australian Legal Practices;
- c. a comparison during the five year period between the average cost of Claims per Practitioner:
  - i. in the Legal Practice and in any other Legal Practice substantially constituted by the same Partners and employed Practitioners; and
  - ii. in all Western Australian Legal Practices.

11. 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 s40(3) of the Insurance Contracts Act 1984 (Cth), be entitled to be indemnified by the Insurers in respect of a Claim subsequently made arising from those facts or circumstances, even though the Claim is first made after the expiration of the Period of Insurance.  
 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.
12. 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.

If you would like to know more about cover under the Certificate in these sorts of circumstances, contact Law Mutual.
13. A Certificate issued to a Legal Practice cannot be cancelled or transferred to another Legal Practice.

## Application for Insurance

14. An existing Legal Practice that requires insurance for the Period of Insurance must submit the relevant application form (Annual Insurance Application) by Sunday, 31 March 2019.
15. Some Practitioners are exempt from obtaining insurance. See Regulation 97.  
 Practitioners who claim they are exempt from obtaining insurance and wish to obtain a practising certificate 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

16. To avoid a Late Lodgement Fee (Regulation 89) a Legal Practice must pay a Tax Invoice in relation to the Annual Insurance Application by Wednesday, 15 May 2019.
17. If a Legal Practice does not pay a Tax Invoice in relation to the Annual Insurance Application on or before Sunday, 30 June 2019, the Law Society may cancel the Tax Invoice and not issue a Certificate to the Legal Practice.

The Law Society may accept payment of the Tax Invoice and the Late Lodgement Fee after 30 June 2019 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?

18. 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

19. 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 1 July 2019.

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, the Law Society may, in its sole 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 General employees the Legal Practice employs as at 1 March 2019 and discounts and loadings described below.
20. The Law Society's assessment of the Annual Contribution:
  - a. by reference to a Practitioner, is reduced for a Practitioner who is not a LFE or a Partner if the Legal Practice expects the Practitioner to work:
    - i. to cease practice before the expiration of the Period of Insurance;
    - ii. a Practitioner (other than a Partner) to take unpaid leave during the Period of Insurance during which the Practitioner does not intend to give any legal advice;
    - iii. a Practitioner to work for the Legal Practice on a short term contract which will finish before the expiration of the Period of Insurance;
    - iv. 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.

21. 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. by circumstances in which the number of employees the Legal Practice expects to employ turns out to be different.

### Annual Contribution: Discounts

22. A Legal Practice that is an LFE or is entitled to a criminal law discount (as set out below) is not entitled to any other discount.
23. Subject to the following paragraph, a Legal Practice is entitled to a 10% No Claim Bonus (also referred to as a No Claims Discount) on the Annual Contribution paid for Partners.

The No Claim Bonus will apply to the Annual Contribution paid for Partners as it stands before the application of any other discounts.

24. A Legal Practice is not entitled to a No Claims Bonus for the Period of Insurance if, during the three year period from midnight 30 June 2015 to midnight 30 June 2018:
- a. two or more Claims were first made against the Legal Practice; and
  - b. the total of all monies reserved by Law Mutual and paid out of the Law Mutual Fund in respect of such Claims was \$50,000 or more.

For these purposes, the Legal Practice includes any subsequent Legal Practices that are substantially constituted by the same Partners and employed Practitioners of the original Legal Practice.

25. A Legal Practice that derives at least 90% of its GFI from the practice of criminal law during the 12 month period ending 31 December 2018 is entitled to a 30% Criminal Law Discount on the Annual Contribution.

To be eligible for the discount, a Legal Practice must apply for a Criminal Law Discount by Sunday, 31 March 2019 by declaring its entitlement to the discount in the Application form. That declaration may be subject to a random audit by the Law Society.

If, notwithstanding the declaration in the Application form, the Legal Practice was not in fact entitled to the discount, the Legal practice will:

- a. immediately repay to Law Mutual the equivalent of the discount it received together with the GST payable thereon;
- b. not be eligible for the discount for the next three insurance years.

The Law Society may, if it believes the incorrect declaration might have been made deliberately or without any proper basis, refer the Application for the discount to the Legal Practice Complaints Committee pursuant to s409 of the LPA as a complaint against the Practitioner who made the declaration.

26. A Legal Practice is entitled to a 5% discount (Risk Management Discount) on the Annual Contribution if:
- a. all of the Partners and at least 80% of the employed Practitioners of the Legal Practice have attended at least two (2) hours of risk management training that has been approved for that purpose by Law Mutual\* in the period 1 March 2018 to 28 February 2019;
  - b. the Legal Practice, by a Partner or Practitioner Director, declares in its Application form that it is entitled to the Risk Management Discount.

If, on a random audit, the Legal Practice does not produce documentary proof that it is entitled to the 5% Risk Management Discount, or if the documentary proof of such entitlement produced by the Legal Practice is not to Law Mutual's satisfaction, the Legal Practice:

- a. must immediately repay to the Law Society the equivalent of the Risk Management Discount it received plus GST;
- b. will not again be entitled to a Risk Management Discount until it has completed two consecutive years of Law Mutual approved risk management training requirements.

The Law Society may, if it believes the incorrect declaration might have been made deliberately or without any proper basis, refer the Application for the discount to the Legal Practice Complaints Committee pursuant to s409 of the LPA as a complaint against the Practitioner who made the declaration.

The Risk Management Discount will apply to the Annual Contribution payable by the Legal Practice as it stands before the application of any other discounts.

\*Please refer to the Law Mutual website for details of approved risk management training.

27. A Legal Practice that has achieved QPS accreditation is entitled to a discount (the QPS Discount) of:
- a. 7% on the Annual Contribution in its first year of accreditation;
  - b. 5% on the Annual Contribution in its second and subsequent years of accreditation.
- The QPS Discount will apply to the Annual Contribution payable by the Legal Practice as it stands before the application of any other discounts.

### **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 2018 to 28 February 2019:
- a. 20%, if the amount paid was equal to or more than 100% and less than 200%;
  - b. 30%, if the amount paid was equal to or more than 200% and less than 300%;
  - c. 40%, if the amount paid was equal to or more than 300% and less than 400%;
  - d. 50%, if the amount paid was 400% or more,

of the Annual Contribution paid by the Legal Practice for the insurance period 30 June 2018 to 30 June 2019.

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 as it stands before the application of any discounts.

This claims loading does not apply if the claims loading in the next paragraph applies and it is higher than this claims loading.

29. If, during the five year period from midnight 30 June 2013 to midnight 30 June 2018:

- a. three or more Claims were first made against a Legal Practice; and
- b. the Loss Ratio for that Legal Practice was in excess of 300%,

the claims loading for the Legal practice will be 200% on its Annual Contribution for the Period of Insurance.

The Law Society may, in its sole discretion, reduce the claims loading taking into account the same factors as are described in paragraph 10 above.

This claims loading does not apply if the claims loading in the previous paragraph applies and it is higher than this claims loading.

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

30. The Table below sets out the Annual Contribution and Administration Levy for various categories of Practitioners that a Legal Practice will pay for the Period of Insurance:

Category of Practitioner	Annual Contribution	Administration Levy	Total (excl. GST)	GST payable	Total (incl. GST)
Director/Partner – base rate*	\$5,455.00	\$100.00	\$5,555.00	\$555.50	\$6,110.50
Director/Partner – with NCB*	\$4,909.50	\$100.00	\$5,009.50	\$500.95	\$5,510.45
Employed Practitioner – F/T	\$2,727.50	\$100.00	\$2,827.50	\$282.75	\$3,110.25
Employed Practitioner – P/T	Pro-Rata of F/T	\$100.00	N/A	N/A	N/A
Director/Partner – Criminal Law	\$3,818.50	\$100.00	\$3,918.50	\$391.85	\$4,310.35

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

31. The Table below sets out the Annual Contribution and Administration Levy for various categories of LFEs that an LFE will pay for the Period of Insurance:

Gross Fee Income	Annual Contribution	Admin Levy	Total (excl. GST)	GST Payable	Total (incl. GST)
Nil	\$273.00	\$100.00	\$373.00	\$37.30	\$410.30
\$1- \$10,000	\$546.00	\$100.00	\$646.00	\$64.60	\$710.60
\$10,001 - \$15,000	\$818.00	\$100.00	\$918.00	\$91.80	\$1,009.80
\$15,001 - \$20,000	\$1,091.00	\$100.00	\$1,191.00	\$119.10	\$1,310.10
\$20,001 - \$25,000	\$1,364.00	\$100.00	\$1,464.00	\$146.40	\$1,610.40
\$25,001 - \$30,000	\$1,637.00	\$100.00	\$1,737.00	\$173.70	\$1,910.70
\$30,001 - \$35,000	\$1,910.00	\$100.00	\$2,010.00	\$201.00	\$2,211.00
\$35,001 - \$40,000	\$2,182.00	\$100.00	\$2,282.00	\$228.20	\$2,510.20
\$40,001 - \$45,000	\$2,455.00	\$100.00	\$2,555.00	\$255.50	\$2,810.50
\$45,001 - \$60,000	\$2,728.00	\$100.00	\$2,828.00	\$282.80	\$3,110.80
\$60,001 - \$75,000	\$3,272.00	\$100.00	\$3,372.00	\$337.20	\$3,709.20
\$75,001 - \$90,000	\$3,818.00	\$100.00	\$3,918.00	\$391.80	\$4,309.80
\$90,001 - \$100,000	\$4,364.00	\$100.00	\$4,464.00	\$446.40	\$4,910.40

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

The Table below sets out the Annual Contribution for General employees that a Legal Practice will pay for the Period of Insurance:

Category	Annual Contribution	Administration Levy	GST Payable	Total (incl. GST)
General employee – Full Time	\$464.00	nil	\$46.40	\$510.40
General employee – Part Time	\$232.00	nil	\$23.20	\$255.20

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 \$273 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, in its sole discretion, amend it;
  - may, in its sole discretion, 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 simply 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.

**Miscellaneous**

36. 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 those employed or engaged by it will be uninsured; and
  - the Legal Practice may not be able to recover its professional fees from its client.
37. Whether insurance will be granted retrospectively will depend on the facts of each case. While the Law Society is obliged to issue a Certificate when a proper application and payment is made, there is no obligation on it or requirement to issue a Certificate with retrospective effect.
38. 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.
39. If an articled 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.
- 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.
40. 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.
41. The Law Society will refund 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.
42. Pursuant to Regulation 90(3), the Law Society may, in its sole discretion, 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.

**Claims' Management**

43. 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.
44. 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.
45. When a Legal Practice notifies Law Mutual of a Claim or of facts or circumstances that might give rise to a Claim, it must promptly provide Law Mutual and its panel solicitor with any information, documents, assistance and co-operation reasonably requested by them in relation to the investigation and conduct of the matter the subject of the notification. This includes meeting with Law Mutual and its panel solicitor and providing them with witness statements.
46. 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

47. Law Mutual will continue to run risk management seminars for the purpose of trying to reduce the frequency and magnitude of Claims and Notifications.

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.

In addition, Law Mutual is providing risk management tools, advices and alerts to Practitioners via its website.

In future, the seminars and website will be supplemented by a risk management advisory service provided to Practitioners by Law Mutual.

48. Law Mutual recognises the importance of risk management training and systems by providing a Risk Management Discount and QPS Discount to qualifying Legal Practices.

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

49. 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.

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

50. Not being entitled to a No Claims Bonus attaches to a specific Legal Practice and not to individual Practitioners.
51. A Legal Practice is not entitled to a No Claims Bonus if two (2) or more Legal Practices merge and at the time of the merger one or both was not entitled to a No Claims Bonus.
52. A new ILP is not entitled to a No Claims Bonus if it was previously a partnership that, at the time it became an ILP, was not entitled to a No Claims Bonus.

### QPS

53. 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.

For more information regarding QPS, please see the Law Society website [lawsocietywa.asn.au](http://lawsocietywa.asn.au).

### Risk Management Discount

54. A Legal Practice is entitled to the Risk Management Discount for the insurance year following the period in which the required risk management training has been carried out.

Please contact Law Mutual for details of approved risk management training.

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

55. The claims loading attaches to a specific Legal Practice and not to individual Practitioners.
56. A Legal Practice will pay a claims loading if:
- two (2) Legal Practices merge and one or both had a claims loading applied, at the time of the merger; or
  - a partnership with a Risk Rating becomes an ILP, and the partnership had a claims loading applied at the time it became an ILP.

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

**Example of calculation of claims loading**

*Damages of \$80,000 are paid. Accumulated costs total \$9,755.15 (exc. GST) comprised of \$7,755.15 of external costs for defending the claim plus indemnity costs of \$2,000.00.*

*Less Insured's Contribution (Based on 2 Directors)    -\$10,000.00*

*Net Damages & Costs   \$79,755.15*

*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 \$28,500.*

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

$$79,755/28,500 \times 100 = 280\%$$

*As the ratio of 280% 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 \$28,500x30% = \$8,550.00.*

**Practitioners providing legal services to multiple Legal Practices**

57. 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.
  - 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.
58. 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.
  - a Partner of a Legal Practice and also practices 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 the Practitioner in that Practitioners' capacity as a sole Practitioner or LFE.

**ILPs**

59. 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 a General employee. No Administration Levy is payable.
60. There is no Annual Contribution or Administration Levy payable for shareholders in an ILP in their capacity as such.
61. Claims against ILP shareholders in their capacity as shareholders are not covered by the Certificate.

**Part-time employed Practitioners**

- 62. There is no part-time rate for a Practitioner providing legal services as an LFE or a Partner as they have the duties and responsibilities as an LFE or Partner at all times for as long as they are in practice.
- 63. 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.
- 64. 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**

- 65. This section does not apply to Sole Practitioners or Partner.
- 66. 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.).
- 67. Where the Practitioner will be on unpaid leave as at 1 July 2019 and will not receive remuneration from the Legal Practice for the period immediately following 30 June 2019, the Legal Practice should not include the employed Practitioner in their Application for insurance.
- 68. If the Practitioner is going to apply for a practising certificate from the Board, the Practitioner must submit an exemption notifying the Law Society that they are exempt from the Law Mutual Insurance Arrangements. That is, the Practitioner is not engaging and will not engage, in legal practice. (Regulations 97(1)(f) and 98.
- 69. 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) = 20/38 x 212/365 x 100%

- 70. Where the Practitioner advises the Law Society before 30 June 2019 that they will be commencing unpaid leave during the Period of Insurance, the following will apply:
  - a. the Legal Practice must include the Practitioner on their annual renewal form as being on unpaid leave;
  - b. the Law Society will charge the Legal Practice a pro rata Annual Contribution for the employed Practitioner;
  - c. prior to the Practitioner returning to paid employment, the Legal Practice must submit an Additional Practitioner form to the Law Society.

The Law Society will raise a separate invoice 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**

- 71. A Legal Practice that employs a Practitioner on a short term contract may take out insurance for that Practitioner on a pro rata basis.

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.

- 72. The Legal Practice must pay the following Annual Contribution for a Practitioner on a short term contract:

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%

- 73. 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

74. 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.

The Partner must advise the Law Society of their proposed retirement prior to the Period of Insurance.

75. If the Partner subsequently stays for a period longer than originally advised to the Law Society, the Legal Practice will be required to pay a further pro rata Annual Contribution.
76. 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

77. If, prior to the Period of Insurance, a Legal Practice advises the Law Society 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)).

If the Legal Practice operates beyond the date to which it has paid the pro rata Contribution, a further pro rata Annual Contribution and Administration Levy is payable.

78. 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.
79. Practitioners of the former Legal Practice must obtain PI insurance before re-commencing practice in any capacity that is not exempted under the Regulations.
80. A pro rata Annual Contribution may be payable by Legal Practices for former employed Practitioners.
81. Legal Practices are required to pay a pro rata Annual Contribution for the former Partners.
82. If a Legal Practice pays for a full year and subsequently ceases to operate during the Period of Insurance, no refund is payable.

### Consultants

83. Independent consultants who work exclusively for a Legal Practice will be covered under the Certificate issued to that Legal Practice, provided the Legal Practice pays an Annual Contribution for them at the same rate as an employed Practitioner.
84. 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

85. A Legal Practice is assessed on the actual number of General employees it has as at 1 March 2019.
86. No additional Annual Contribution is payable by a Legal Practice if it increases the number of General employees during the Period of Insurance. No refund is given if a Legal Practice reduces the number of General employees after 1 March 2019.
87. For General employees working less than 20 hours per week, the Annual Contribution rate is reduced by 50%.
88. 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 2020.
89. No Administration Levy is charged for General employees.

### Changes during the Period of Insurance

90. An insured Legal Practice, and the Practitioner, must advise the Law Society as soon as possible when a Practitioner joins the Legal Practice during the Period of Insurance by submitting an Additional Practitioner form.
91. Where a Practitioner was not previously at a Legal Practice insured through Law Mutual and joins a Legal Practice during the Period of Insurance, 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.
92. 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 <sup>1</sup>	Partner (same practice)	Pro rata Partner Contribution
Employed Practitioner <sup>1</sup>	Partner (new practice)	Pro rata Partner Contribution
Partner <sup>2</sup>	Employed Practitioner (same practice)	None
Partner <sup>2</sup>	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.

93. Where a Legal Practice has advised the Law Society 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.

The Annual Contribution payable is calculated from the date the Practitioner joins the Legal Practice.

94. 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**

95. The Law Society may reduce or waive the Annual Contribution in the circumstances described in Regulation 90.
96. 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

97. 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.
98. A Certificate cannot be issued to a partnership which contains one or more corporate bodies.
99. The Law Society regards a salaried Partner as a Partner.

### Seconded lawyers

100. Subject to the terms and conditions of the Certificate, provided that:
  - a. the agreement is between the client and the Legal Practice; and
  - b. payment is made by the client to the Legal Practice, not to the secondee; and
  - c. 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. Law Mutual and the Insurers reserve the right to consider each case on its facts.

### Locum Practitioners

101. The Professional Indemnity insurance requirements of each locum arrangement need to be assessed on an individual case basis.
102. Legal Practices and Practitioners arranging a locum placement should contact Law Mutual on (08) 9481 3111 or by email [info@lawmutualwa.com.au](mailto:info@lawmutualwa.com.au) to notify them of the intention to engage a locum.
103. A Restricted Practitioner (see LPA) is unable to be a locum. Any questions about cover for a Restricted Practitioner should be referred to Law Mutual.

### Practitioner working as a volunteer

104. A number of Practitioners perform voluntary legal work for individuals or organisations such as sporting groups, schools and charities.  
If a Practitioner wants to be covered by the Insurance Arrangements for this work they should, before performing such work:
  - a. ensure their Legal Practice acknowledges that the Practitioner will be performing pro bono (volunteer) work for the relevant individual or organization on behalf of that Legal Practice; or
  - b. apply for nil fee LFE insurance.
105. The above principles apply to situations where Practitioners intentionally or inadvertently provide gratuitous legal advice.
106. As a matter of good risk management, Practitioners should keep adequate records of the advice or help they give pro bono.

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

107. 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 intends to retire from legal practice during the Period of Insurance.

### Practitioners moving between States or Territories

108. An Insured will not be indemnified for any liability that arises out of an act or omission which occurred outside of WA if a law other than the law of WA requires the Insured to be indemnified against that liability.
109. Where a Partner holds a WA Practising Certificate and leaves WA and then practices permanently interstate:
  - a. the Certificate will not apply to claims made against the Partners' new Legal Practice; and
  - b. professional Indemnity insurance should be obtained from the relevant State or Territory Professional Indemnity scheme from the date of commencement of practice interstate.
110. 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 the Law Society.
111. 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

112. A Certificate cannot be cancelled and is not transferable.
113. If a Practitioner leaves a Legal Practice after the Tax Invoice for the Annual Insurance Application has been paid but on or before 30 June 2019, the Law Society will refund the Legal Practice the appropriate share of the Annual Contribution provided it advises the Law Society in writing by 30 June 2019.
114. 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. 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.
115. 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.
116. The following are some examples of circumstances where no refund is payable:
  - a. an employed Practitioner leaves a Legal Practice covered by a Certificate and is then employed by an exempt organisation;
  - b. an employed Practitioner leaves a Legal Practice covered by a Certificate to go overseas;
  - c. an employed Practitioner leaves a Legal Practice covered by a Certificate and does not continue to practice; or
  - d. a Partner leaves a Legal Practice during the Period of Insurance.

## LFEs

### General

117. Subject to paragraphs 119 and 120, a LFE is a Sole Practitioner or an ILP who carried on business as a Sole Practitioner or an ILP for:
  - a. the whole of the period 1 January 2018 to 31 December 2018 and earned \$100,000 or less in GFI during that period; or
  - b. none of, or only part of, the period 1 January 2018 to 31 December 2018 and estimates they will earn \$100,000 or less GFI in the 12 months from the date on which they commenced carrying on business.
118. LFE Concessional Annual Contribution rates:
  - a. apply to a LFE;
  - b. do not apply to a partnership or a restricted Practitioner;
  - c. increase in increments as the GFI increases.
119. To be classified as a LFE, a Sole Practitioner cannot:
  - a. employ another Practitioner;
  - b. contract legal work to another Practitioner (other than a barrister); or
  - c. employ General employees for more than a combined 20 hours per week.
120. To be classified as a LFE Legal Practice, an ILP must:
  - a. have only one Director;
  - b. not have General employees work more than a combined 20 hours per week;
  - c. not employ any Practitioners; and
  - d. not have any service contracts with one or more other Practitioners (other than a locum).
121. If the conditions described in paragraphs 119 and 120 are not met in full for the entire Period of Insurance, the Sole Practitioner or ILP must pay the balance of the full Annual Contribution.
122. Practitioners holding only a Volunteer or Pro Bono practising certificate:
  - a. must pay the LFE Nil Fee Annual Contribution rate (\$273); and
  - b. do not pay an Administration Levy.



## Declaration of GFI

123. To be eligible for LFE Concessional Annual Contributions rates, a Sole Practitioner or ILP must apply for the rates by Sunday, 31 March 2019 by declaring its GFI for the period 1 January 2018 to 31 December 2018 in the Application form.

If the LFE did not carry on business for the whole of that period, they must declare their estimate of their GFI in the 12 months from the date on which they commenced carrying on business.

That declaration may be subject to audit by Law Mutual.

If, notwithstanding the terms of the declaration in the Application form, the Legal Practice was not entitled to LFE Concessional Annual Contributions rates:

- a. the Law Society will assess the Annual Contribution on the basis the Sole Practitioner or ILP was not an LFE and charge them the extra Annual Contribution;
- b. the Sole Practitioner or ILP will not be eligible for LFE status for the next three Insurance years;
- c. the Law Society may, if it believes the incorrect declaration might have been made deliberately or without any proper basis, refer the Application to the Legal Practice Complaints Committee pursuant to s409 of the LPA as a complaint against the Practitioner who made the declaration.

The Legal Practice must pay the increased amount of Annual Contribution within 30 days of receiving a tax invoice by the Law Society for the increased amount.

## Recognition of GFI

124. An LFE must report their GFI on the same basis they account for it in their income tax return.

## The Nature of LFE insurance

125. LFE insurance only covers Practitioners for work performed on their own account.
126. Some Practitioners employed as in-house counsel 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. Please note that if you do so you may be subject to the Legal Practice Board's requirements in relation to a legal practice. You should contact the Legal Practice Board for further information.
127. The LFE insurance does not cover work done by a Practitioner in their capacity as an employee of a Non or Exempt Legal Practice (as defined in Regulation 95). This includes a Practitioner employed:
- a. as in-house counsel (Regulation 97(1)(c));
  - b. by a union or other member organisation giving advice to their members (Regulation 97(1)(b)); and
  - c. by a CLC giving advice to clients (Regulation 97(1)(e)).
128. If an 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.
129. An employed Practitioner who is separately carrying out legal work as an LFE must take out LFE insurance. Legal work performed by an employed Practitioner in their capacity as an 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.
130. If an LFE Practitioner becomes or is also a Partner of a Legal Practice, the Legal Practice must 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.
- The Annual Contribution paid as an LFE is not credited towards any Annual Contribution payable by the Legal Practice.
131. If an 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.

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

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