

2023/2024 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 Uniform Law for:

- the establishment of a mutual fund by the Law Society and utilisation of that fund for the benefit of Insureds;
- the provision of insurance by the Insurers to Insureds; and
- 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 Cover for Ceased Practices and Former Practitioners

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 as if the Ceased Practice or Former Practitioner were an Insured under a Certificate issued to the Ceased Practice or Former Practitioner under clause 6.

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 Indemnity.

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 but not limited to 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 aggregate \$6,000,000 (including but not limited to 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 but not limited to Claimant's Costs and Related Costs) towards each Claim in excess of:

- the Insured's Contribution; and
- 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.

4.2 The Insurers will also pay the first \$250,000 (including but not limited to the Claimant's Costs and Related Costs) in excess of the Insured's Contribution towards each Claim on and after payment by the Law Society of the \$6,000,000 described in clause 3.3.

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 Certificates issued under it.

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 the Claims Protocol.

8 Release

The Insurers waive any rights against and release:

- the Law Society, its officers and employees;
- the Law Society Council and its members; and
- 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 wilful disregard for the consequences of their acts, errors or omissions.

9 Term of the Master Policy

This Master Policy commences on 1 July 2023, ends at midnight 30 June 2024 (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 for indemnity under the Master Policy 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

13.1 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.

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

13.2.1 AAI Limited, 10 Shelley Street, Sydney NSW 2000 ("AAI Limited"),

13.2.2 Liberty Mutual Insurance Company, Australia Branch trading as Liberty Specialty Markets, Level 38, Governor Phillip Tower, 1 Farrer Place Sydney, NSW, 2000 ("Liberty Specialty Markets"),

13.2.3 MS Amlin Syndicate 2001 at Lloyd's One Lime Street, London, England, EC3M 7HA ("MS Amlin").

13.3 If the Law Society or an Insured intends to commence legal proceedings against MS Amlin, it will, within 14 days of being informed in writing of that intention, nominate an address for service in Western Australia at which proceedings can be served on it.

14 Definitions

The definitions in clause 19 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 Indemnity 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 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);
 - 2.1.3 the Insured's Contribution;
 - 2.1.4 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;
 - 2.1.5 a liability arising from a contract to the extent that it:
 - 2.1.5.1 extends the Insured's duty beyond exercising the standard of care and skill to be reasonably expected of a Practitioner or Barrister in the circumstances; or
 - 2.1.5.2 increases the compensation or damages for which the Insured is liable for breach of duty beyond the amount payable in tort or under any applicable statute;
 - 2.1.6 a liability to repay, refund, account for, or pay compensation or damages by reference to any:
 - 2.1.6.1 fee charged or commission received or taken by an Insured; or
 - 2.1.6.2 disbursement incurred by an Insured (other than a disbursement for the fee of an expert or for a barrister engaged by the Insured);
 - 2.1.7 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;
 - 2.1.8 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;
 - 2.1.9 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;
 - 2.1.10 the payment of a trading debt incurred by the Insured;
 - 2.1.11 a liability brought about by the dishonest or fraudulent act or omission of an Insured, but this exclusion will not apply to the liability of an 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.

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 this subclause 2.1.11, the Insurers will not indemnify the Insured in respect of a liability brought about by a Default.

- 2.1.12 a liability for any:
 - 2.1.12.1 fine;
 - 2.1.12.2 civil penalty;
 - 2.1.12.3 punitive, exemplary, aggravated, additional or like damages; or
 - 2.1.12.4 fine, compensation, compensation order or costs or expenses incurred or ordered to be paid by an Insured in connection with a complaint against, or investigation into, the Unsatisfactory Professional Conduct or the Professional Misconduct of an Insured;
- 2.1.13 a liability which arises directly or indirectly out of:
 - 2.1.13.1 a Cyber Incident;
 - 2.1.13.2 a Cyber Act; or
 - 2.1.13.3 a breach of Data Protection Law by the Insured, or parties acting for the Insured, involving access to, processing of, use of or operation of any Computer System or Data, including notification costs, crisis consultancy costs, credit monitoring expenses, replacement of actual credit or payment cards, forensic expenses, public relations expenses, or legal advice and services;

in each case other than a civil liability incurred in connection with the Practice for any Claim first made against the Insured during the Period of Insurance and Related Costs with respect to that Claim. Related Costs do not include any ransom or extortion payment or any cost or expense incurred in relation to a ransom or extortion demand;
- 2.1.14 the costs of reconstituting or recovering lost or damaged Data;
- 2.1.15 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;
- 2.1.16 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;
- 2.1.17 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;
- 2.1.18 a liability for any costs awarded against an Insured in proceedings if the Insured is not a party to proceedings, but is or was acting or purporting to act for or on behalf of a party to the proceedings at the time of the events that gave rise to the liability.

Notwithstanding this subclause 2.1.18, Insurers will pay the necessary and reasonable legal costs and disbursements incurred by the Insured in successfully defending or successfully appealing an application or an order that the Insured personally pay costs to a party to proceedings other than an Insured's client.
- 2.1.19 a liability which arises directly or indirectly out of any Insured engaging in any activity that constitutes the provision of a financial service under the *Corporations Act 2001* (Cth) including as amended or replaced (other than an activity that constitutes a referral under the *Corporations Regulations 2001* Regulation 7.6.01(e) or any amendment or replacement of that regulation);
- 2.1.20 a liability which arises directly or indirectly out of any Insured engaging in any activity that constitutes the provision of a credit facility, as defined in the *Corporations Regulations 2001* including as amended or replaced;
- 2.1.21 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:
 - 2.1.21.1 an Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss; or
 - 2.1.21.2 an action in controlling, preventing, suppressing, retaliating against, or responding to any Act of Terrorism;

- 2.1.22 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;
- 2.1.23 any Claim directly or indirectly based upon, attributable to, or in consequence of insolvency, bankruptcy or liquidation of an Insured;
- 2.1.24 any Claim by an Insured in connection with the provision of legal services by the Legal Practice to that Insured if that person handled or supervised the whole or any part of the provision of those legal services;
- 2.1.25 a liability in relation to a dispute between:
 - 2.1.25.1 Partners;
 - 2.1.25.2 shareholders of the Legal Practice if it is an Incorporated Legal Practice;
 - 2.1.25.3 Partners and shareholders of the Legal Practice if the Legal Practice is an Incorporated Legal Practice; or
 - 2.1.25.4 the Legal Practice and current or former Partners, shareholders or officers of the Legal Practice;
- 2.1.26 a liability in relation to an employment related dispute brought by an employee of a Legal Practice against the Insured;
- 2.1.27 a liability which arises directly or indirectly out of an Insured being an Exempt Practitioner or a Partner or employee of an Exempted Firm;
- 2.1.28 a liability which arises directly out of any act or omission which occurred outside the State of Western Australia if a law other than the law of Western Australia requires the Insured to be insured against that liability other than by this Certificate;
- 2.1.29 a liability that would expose Insurers, their parents or ultimate holding companies or the Law Society to any sanction, prohibition or restriction under United Nations resolutions or trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America.

2.2 Where Exclusions 2.1.13, 2.1.14, 2.1.21, 2.1.22, 2.1.23 and 2.1.25 do not apply

- 2.2.1 Exclusions 2.1.21, 2.1.22, 2.1.23 and 2.1.25 do not apply if such liability is in relation to legal services provided by the Insured but in the case of exclusion 2.1.25, only if exclusion 2.1.24 does not apply.
- 2.2.2 If the parties cannot agree whether exclusion 2.1.13, 2.1.14, 2.1.21, 2.1.22, 2.1.23 and 2.1.25 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

- 4.1 This Certificate does not cover a Claim first made against an Insured after the expiration of the Period of Insurance.
- 4.2 However, 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 section 40(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 Conduct of defence and settlement of a Claim or Claims by the Insurers

- 9.1.1 Subject to clause 9.2, the Insurers are entitled at any time:
- 9.1.1.1 at their own cost, to take over the conduct of the Insured's defence of a Claim;
 - 9.1.1.2 to relinquish conduct of the Insured's defence of a Claim; or
 - 9.1.1.3 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.
- 9.1.2 The Insurers will not unreasonably refuse to conduct the Insured's defence of a Claim that is covered by this Certificate.

9.2 Disagreement on how a Claim should be Resolved

- 9.2.1 If the Insured and the Insurers cannot agree on 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:
- 9.2.1.1 the prospects of the Insured successfully defending the Claim on its merits at trial or on appeal;
 - 9.2.1.2 the estimated quantum of the Claim; and
 - 9.2.1.3 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).
- 9.2.2 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.
- 9.2.3 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.
- 9.2.4 If the Independent Legal Practitioner recommends under clause 9.2.1 that the Claim be settled, the Independent Legal Practitioner must recommend an amount that the Claim should be settled for (Recommended Settlement Amount).
- 9.2.5 If the Independent Legal Practitioner recommends under clause 9.2.1 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:

9.2.5.1 the Recommended Settlement Amount plus Claimant's Costs and Related Costs incurred to the date the Insured received the recommendation; or

9.2.5.2 the Limit of Indemnity, whichever is the lesser.

9.2.6 If the Independent Legal Practitioner recommends under clause 9.2.1 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 Indemnity.

9.3 Defending and settling Claims

If the Insurers elect to defend or settle a Claim pursuant to clause 9.1, 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's GFI is \$1,000,000 or less, or if the Legal Practice is a Ceased Practice and it did not declare gross professional fees (not including disbursements) to Law Mutual in its last successful application for insurance; or

11.2.2 \$10,000 if the Legal Practice's GFI is more than \$1,000,000 but not more than \$3,000,000;

11.2.3 \$15,000 if the Legal Practice's GFI is more than \$3,000,000 but not more than \$5,000,000;

11.2.4 \$25,000 if the Legal Practice's GFI is more than \$5,000,000 but not more than \$6,000,000;

11.2.5 \$35,000 if the Legal Practice's GFI is more than \$6,000,000 but not more than \$8,000,000;

11.2.6 \$45,000 if the Legal Practice's GFI is more than \$8,000,000 but not more than \$9,000,000;

11.2.7 \$55,000 if the Legal Practice's GFI is more than \$9,000,000.

11.3 Circumstances in which the Insured's Contribution is doubled

11.3.1 The Insured's Contribution is double the amount calculated under clause 11.2 if:

11.3.1.1 the Claim arises out of 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;

11.3.1.2 the Claim arises out of 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;

11.3.1.3 the Claim arises out of the Insured's failure to:

- comply with any time for doing an act or taking a step (including any limitation of action time period) stipulated by any legislation, delegated legislation or order or rule of any court or tribunal; or
- commence or recommend the commencement of an action or proceeding against all relevant parties within a limitation period;

11.3.1.4 the Claim arises out of the provision by an Insured of a Practitioner Guarantee Certificate;

11.3.1.5 the Claim is brought for a dishonest or fraudulent act or omission of any Partner or former Partner of the Insured; or

11.3.1.6 the Legal Practice's GFI is more than \$25,000,000 and before the commencement of the Period of Insurance, Law Mutual agreed to the Legal Practice's prior request in writing for its Insured's Contribution to be doubled for any Claim the subject of this Certificate.

11.3.2 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 or a Predecessor of the Legal Practice or a combination of them during the five year period from 1 July 2017 to 30 June 2022 (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.

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 \$125,000 if the Legal Practice's GFI is less than \$6,000,000;

11.6.2 \$250,000 if the Legal Practice's GFI is \$6,000,000 or more.

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 first made during the Period of Insurance, or first made after the Period of Insurance but covered by this Certificate pursuant to section 40(3) of the Insurance Contracts Act 1984 (Cth), 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 deemed to be 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:

- delivered by hand;
- sent by pre-paid post;
- sent by facsimile; or
- 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:

- if delivered by hand, when delivered to the address of the receiving party;
- if sent by post, the day which is 3 business days from and including the date of postage;
- if sent by facsimile, when transmitted; and
- 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 Claim 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 person who Law Mutual reasonably requires to assist in the collection and use of Claim Information, will have access to Claim 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 Additional Benefit

- 16.1** 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 Indemnity for any amount paid by the Insured in excess of the Insured's Contribution to replenish or reconstitute a deficiency in Trust Money brought about by fraud or dishonesty if:
- 16.1.1 such fraud or dishonesty did not constitute a Default;
 - 16.1.2 no Insured was engaged or knowingly concerned or connected with such fraud or dishonesty;
 - 16.1.3 such deficiency was a result of the Insured failing to take reasonable care to prevent a deficiency in Trust Money brought about by fraud or dishonesty; and
 - 16.1.4 such deficiency was:
 - 16.1.4.1 first discovered by the Insured; and
 - 16.1.4.2 first notified to the Insurers by the Insured, during the Period of Insurance.
- 16.2** All claims for indemnity under this clause brought about by:
- 16.2.1 the one dishonest or fraudulent act or omission;
 - 16.2.2 a series of related dishonest or fraudulent acts or omissions;
 - 16.2.3 the same or similar dishonest or fraudulent acts or omissions by the same third party,
- will be the subject of only one Limit of Indemnity and only one application of the Insured's Contribution.
- 16.3** This Additional Benefit is not subject to exclusion 2.1.13

17 Breach

If an Insured's breach of the Master Policy or this Certificate (including but not limited to a failure to give notice of a Claim as soon as reasonably practicable in accordance with clause 5) prejudices the Insurer's conduct or settlement of a Claim, that Insured will indemnify the Insurer to the extent that the breach has prejudiced the Insurer's interests.

18 Interpretation

In this Certificate, unless the context requires otherwise, a reference to any legislation or legislative provision includes:

- any subordinate legislation issued under that legislation or legislative provision, and
- any statutory modification, re-enactment or replacement of, or legislative provision substituted for that legislation, legislative provision or subordinate legislation.

19 Definitions

In this Certificate:

Act means the *Legal Profession Uniform Law Application Act 2022* (WA).

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 section 169 of the Act.

Annual Contribution means the annual contribution each Legal Practice is liable to pay the Law Society pursuant to section 163 of the Act.

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 Legal 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 such Legal 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.

Claim 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.

Computer System means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.

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.

Cyber Act means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.

Cyber Incident means any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.

Data means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.

Data Protection Law means all applicable data protection and privacy legislation, regulations in any country, province, state, territory or jurisdiction which governs the use, confidentiality, integrity, security and protection of personal data, and any guidance or codes of practice issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).

Default has the meaning given to it in section 334 of the Act.

Exempt Practitioner means a Practitioner exempted for the Period of Insurance pursuant to section 215 of the Uniform Law.

Exempted Firm(s) means a Legal Practice that is an exempt law practice for the Period of Insurance pursuant to section 215 of the Uniform Law.

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:

- a Law Cover Policy; or
- 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:

- has ceased to practice in private practice; or
- 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:

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

GFI means the gross professional fees (not including disbursements):

1. invoiced or received (as usually accounted for in the Legal Practice's income tax returns) by the Legal Practice during the period 1 January 2022 to 31 December 2022 if the Legal Practice is not a Ceased Practice; or
2. declared by a Ceased Practice to Law Mutual in its last successful Application for insurance.

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

Guarantee Fund has the meaning given in section 3(1) of the Act.

Incorporated Legal Practice has the meaning given in section 6 of the Uniform Law.

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, or a practical legal trainee, 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 a 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:

1. 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; or
2. in relation to losses under clause 16 (Additional Benefit), the first part of any amount paid by the Insured to replenish or reconstitute a deficiency in Trust Money brought about by fraud or dishonesty as provided in clause 11.

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 NSW 6;
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 to effect compulsory insurance for the Insureds and is continued pursuant to section 178 of the Act.

Law Mutual Fund is the Law Mutual Fund described in section 179 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;
 3. a Multi-disciplinary partnership, to the extent that it; or
 4. an Incorporated Legal Practice that,
- is or was engaged in the practice of law.

Limit of Indemnity means the difference between:

1. \$2,000,000 inclusive of Claimant's Costs, Related Costs and other amounts covered by the Certificate, and
2. the Fund's Contribution,

in excess of the Insured's Contribution.

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

1. the total of all monies, as at 31 December 2022, 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
2. 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 means a partnership between one or more Practitioners and one or more other persons who are not Australian legal practitioners, where the business of the partnership includes the provision of legal services in Western Australia as well as other services.

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 work done, or business transacted, in the ordinary course of the provision of legal services by a Legal Practice which:

1. as at the date of commencement of the Period of Insurance, was carried on by the Legal Practice or any Predecessor of the Legal Practice; and
2. was carried on by a Ceased Practice; and

subject to 1 and 2, includes retaining a legal practitioner entitled to practice law in a foreign jurisdiction to advise on the law in that jurisdiction and services related to that advice, provided such retained legal practitioner will not be indemnified by this Certificate.

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 an actual or proposed borrower, grantor of a security trust, security provider, third party mortgagor, guarantor, surety mortgagor, or indemnifier 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:

1. holds itself out as the successor of, or as incorporating, the predecessor practice;
2. 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;
3. employs all or a majority of the Practitioners employed by the predecessor practice immediately prior to the predecessor practice ceasing to carry on business;
4. employs, or has as a Partner, a Practitioner who was the subject of an outstanding Claim against the predecessor practice immediately prior to the predecessor practice ceasing to carry on business;
5. uses the name or a name which incorporates all or part of the name used by the predecessor practice;
6. 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;

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7. acquired the goodwill, assets, or a majority of client files of the predecessor practice;
8. 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 section 184 of the Act.

Professional Misconduct has the meaning given to 'professional misconduct' in section 297 of the Uniform Law.

Receiving Party has the meaning given in clause 14 above.

Related Costs means:

1. 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; and
2. such costs and expenses reasonably and necessarily incurred by the Insured with the Insurers' consent, such consent not to be unreasonably withheld,

in each case net of any Input Tax Credit any such party is entitled to claim in respect of the costs and expenses.

Related Costs do not include the cost of any Insured's time nor any internal or overhead expenses of the Legal Practice.

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

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).

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.

Trust Account has the meaning given to it in section 128 of the Uniform Law.

Trust Money has the meaning given to it in section 129 of the Uniform Law.

Uniform Law means the *Legal Profession Uniform Law (WA)*.

Unsatisfactory Professional Conduct has the meaning given to 'unsatisfactory professional conduct' in section 296 of the Uniform Law.



Law  Mutual (WA)[®]

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

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The voice of the legal profession in Western Australia