

# Annual Information Booklet

for the Law Mutual (WA) Professional Indemnity Insurance  
Arrangements 2023/2024

[lawmutualwa.com.au](http://lawmutualwa.com.au)



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*This Booklet outlines the arrangements made by the Law Society for the provision of professional indemnity insurance for the period 1 July 2023 to 30 June 2024.*

## Definitions

A term used in this Booklet (the **AIB**) has the same meaning as that same term in Clause 19 of the Certificate unless it is otherwise defined in the AIB.

## Requirement for Professional Indemnity Insurance

1. Pursuant to Section 211 of the Uniform Law, an Australian Legal Practitioner (as that term is defined in Section 6 of the Uniform Law) must not engage in legal practice in WA unless they hold or are covered by an approved insurance policy.
2. Pursuant to Section 212 of the Uniform Law, an Incorporated Legal Practice (**ILP**) must not engage in legal practice in WA unless it holds an approved insurance policy.

## The PII Arrangement

3. In accordance with Section 156 of the Act, the Law Society has entered into an arrangement with Insurers to provide professional indemnity insurance to Legal Practices to whom a certificate of insurance is issued (the **PII arrangement**).
4. The PII arrangement is recorded in the Master Policy.
5. The terms and conditions of the provided insurance are set out in the Certificate which is Schedule 1 to the Master Policy.
6. By and subject to the Master Policy and the terms and conditions in the Certificate, the Insurers agree to indemnify the Insured up to the limit of indemnity for any amount payable by the Insured in respect of any kind of civil liability incurred in connection with the Practice for Claims first made during the Period of Insurance.
7. The Insured are defined to include, inter alia, all Partners and employees of the Legal Practice and its Predecessors.
8. Each Legal Practice to which insurance has been provided receives a document referred to as the Schedule. This evidences that coverage is in effect but does not include all the terms and conditions; those are set out in the Certificate.
9. A Certificate issued to a Legal Practice cannot be cancelled or transferred to another Legal Practice.
10. The provided insurance extends to Ceased Practices and Former Practitioners for a Claim arising from their practice of law while covered under a previous PII arrangement.
11. Ceased Practices and Former Practitioners do not receive a copy of the Master Policy, Certificate or Schedule.
12. The cover provided by the PII arrangement is \$2 million each and every Claim in excess of the Insured's Contribution (which is the 'first' part of a claim that is paid by an insured). The \$2 million includes Claimant's Costs and Related Costs and other amounts covered by the Certificate.
13. The first \$250,000 of the \$2 million for each Claim will be paid by the Law Society from the Law Mutual Fund (this is referred to as the **Fund's Contribution**). The Insurers will pay the balance of \$1.75 million.
14. The Law Society's payments out of the Law Mutual Fund will not exceed \$6 million in aggregate for all Claims covered by the Master Policy. Once the Law Society has paid that amount, the Insurers will also pay the first \$250,000 of each Claim in excess of the Insured's Contribution.

15. The payments to be made are set out diagrammatically below:

<b>Insurers</b>	
Up to \$1,750,000 each & every Claim (costs inclusive), in excess of the Fund's Contribution of \$250,000 (costs inclusive) and the Insured's Contribution (if applicable)	
<b>Fund Contribution</b>	<b>Additional Cover (Insurers)</b>
\$250,000 each & every Claim (costs inclusive) in excess of the Insured's Contribution (if applicable) up to an aggregate of \$6,000,000 for all Claims covered by the Master Policy	\$250,000 each & every Claim, in excess of the Insured's Contribution (if applicable) after payment out of the Law Mutual Fund of the aggregate of \$6,000,000 for all Claims covered by the Master Policy
<b>Insured's Contribution</b>	
\$7,500 to \$55,000 each & every Claim (Related Costs exclusive), subject to certain multipliers and aggregation	

16. Practitioners must read the Master Policy, including the Certificate, to be aware of the full extent and scope, limitations of, exclusions from, and conditions of the PII arrangements.

### Insured's Contribution

17. Sub-clause 11.2 of the Certificate describes how the Insured's Contribution is calculated.
18. 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.
19. Sub-clause 11.6 of the Certificate describes the maximum aggregate of the Insured's Contribution in respect of all Claims indemnified under the Certificate.
20. 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 (as that term is set out in sub-clause 11.4 of the Certificate) 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; and
    - 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 insured Legal Practices;
  - c. a comparison during the Five year period between the average cost of Claims per Practitioner:
    - i. in the Legal Practice and in any other Legal Practice substantially constituted by the same Partners and employer Practitioners; and
    - ii. in all insured Legal Practices.

## Aggregation of Claims

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

## Application for Insurance (Existing Legal Practices)

22. An existing Legal Practice that requires coverage under the PII arrangement for the Period of Insurance should submit its Annual Insurance Application (**Application**) by Friday, 31 March 2023.

## The Annual Contribution

23. The Law Society assesses the Annual Contribution for a Legal Practice by reference to the Legal Practice's GFI (including any Predecessor of the Legal Practice's\* GFI), as declared in its Application, subject to certain discounts and loadings described below.

\*To determine if there is a Predecessor of the Legal Practice refer to points 1 to 8 in Clause 19 (Definitions) of the Certificate to the Master Policy.

If in any doubt as to whether there is a Predecessor to the Legal Practice, contact Law Mutual.

## Base Annual Contribution

24. The primary assessment, referred to as the "Base Annual Contribution", will be in accordance with the following table:

Band No.	GFI Band	Rate	Maximum Amount for Band	Cumulative Amount**
1	Nil		\$188*	N/A
2	\$1 - \$50,000	3.40%	\$1,700	\$1,888
3	\$50,001 - \$100,000	2.89%	\$1,445	\$3,333
4	\$100,001 - \$250,000	0.96%	\$1,440	\$4,773
5	\$250,001 - \$500,000	0.92%	\$2,300	\$7,073
6	\$500,001 - \$2,000,000	0.87%	\$13,050	\$20,123
7	\$2,000,001 - \$5,000,000	0.83%	\$24,900	\$45,023
8	\$5,000,001 - \$10,000,000	0.65%	\$32,500	\$77,523
9	\$10,000,001 +	0.40%	No max	N/A

\*This is a fixed fee that must be paid by all insured Legal Practices.

\*\*This is the total of the Maximum Amounts of this Band and all lower bands.

The assessment will be the total of:

- The Cumulative Amount for the Band below; and
- The calculated amount for the 'relevant' Band

For example, a Legal Practice with a declared GFI of \$165,000 (Band 4) will be assessed as having a Base Annual Contribution as follows: \$3,333 + (\$65,000 x 0.96%) = \$3,957

## Discounts and Loadings

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

## Criminal Law Discount

28. 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 2022 is entitled to a 30% discount (**Criminal Law Discount**).
29. To be eligible for the Criminal Law Discount, a Legal Practice must apply by declaring its entitlement to it in its Application.
30. The declaration may be subject to audit by the Law Society. If the audit determines that the Legal Practice was not entitled to the Criminal Law Discount, the Legal Practice will:
- repay to Law Mutual the equivalent of the discount it received together with the GST payable thereon;
  - not be eligible for the Criminal Law Discount for the next three insurance years.
31. The Law Society may, if it believes the incorrect declaration was made deliberately or without any proper basis, refer the Application to the Legal Services and Complaints Committee pursuant to Chapter 5 of the Uniform Law as a complaint against the Practitioner who made the declaration.
32. A Legal Practice that is entitled to a Criminal Law Discount is not entitled to any other discount.

## Risk Management Discount

33. A Legal Practice is entitled to a 5% discount (**Risk Management Discount**) if all of the Partners and at least 80% of the employed Practitioners of the Legal Practice have each 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 2022 to 28 February 2023.

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

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

## QPS Discount

37. A Legal Practice that has achieved QPS accreditation\* is entitled to a discount (**QPS Discount**) of:
- 7% in its first year of accreditation;
  - 5% in its second and subsequent years of accreditation.
38. Law Mutual has on record details of QPS accredited Legal Practices and will use this to determine a Legal Practice's entitlement to the QPS Discount.

*\*for more information regarding QPS accreditation, please see the Law Society website – [lawsocietywa.asn.au](http://lawsocietywa.asn.au)*

## Claims Loadings

39. A Legal Practice will pay a claims loading of between:
- 20%, if the loss ratio is 100%; and
  - 50%, if the loss ratio is 400% or more
- with the claims loading increasing incrementally pro rata as the loss ratio increases,
- if two or more Claims are made during the Five year period (as that term is defined in the Master Policy).
40. A Legal Practice will pay a claims loading of 200% if:
- the loss ratio is in excess of 300%; and
  - three or more Claims are made during the Five year period.
- (High Risk Claims Loading)**
41. The Law Society may, in its sole discretion, reduce the High Risk Claims Loading taking into account the same matters as are described in clause 20 above.
42. A Legal Practice will pay an equivalent claims loading to the existing claims loading in the following circumstances:
- it is formed from the merger of other Legal Practices, any of which had an existing claims loading at the time of the merger; or
  - a Sole Practitioner or a firm of Practitioners with an existing claims loading become an Incorporated Legal Practice; or
  - a Predecessor of the Legal Practice would have had a claims loading (existing claims loading) applied.
43. The greater of a High Risk Claims Loading and a claims loading under clauses 39 or 40 will apply.
44. For the purposes of determining if a claims loading applies, Claims where:
- a. there is no incurred amount for damages (incurred includes paid and reserved amounts); or
  - b. any incurred amount for damages is for the purpose of settling a Claim with little, if any, merit but an amount can be paid to settle the Claim expeditiously; or
  - c. the Claim is settled by the Legal Practice without the Law Society paying any Related Costs.
- will not be taken into account.
45. For the purposes of calculating any claims loading, the loss ratio means, the ratio (expressed as a percentage) between:
- a. 75% of the total of all monies, as at 31 December 2022, reserved by Law Mutual in respect of Claims first made or arising from Notifications given against:
    - i. a Legal Practice; or
    - ii. a Predecessor of the Legal Practice; or
    - iii. a Partner or employed Practitioner of the Legal Practice for a liability which arises directly or indirectly out of an act or omission by the Partner or employed Practitioner before they joined the Legal Practice; or
    - iv. a Practitioner for a liability which arises directly or indirectly out of an act or omission by the Practitioner before they commenced conducting the Legal Practice as a Sole Practitioner

plus all monies paid out of the Law Mutual Fund in respect of those Claims\*;

during the Five year period, on the one hand; and
  - b. the total of the Annual Contributions and any Administration Levies paid by the Legal Practice for the Five year period which total shall not be less than \$100,000, on the other hand.

*\*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*

46. The following is an example of a claims loading calculation:

*A Legal Practice had two relevant Claims in the Five year period. During that period, it had paid a total of \$160,000 (net of GST) in Annual Contributions and Administration Levies.*

*The total amounts paid (net of GST) and reserved for those Claims are:*

- A. *Paid Related (defence) Costs - \$88,000*
- B. *Paid damages - \$175,000*
- C. *Remaining reserves - \$50,000*

*The total incurred will be calculated as A + B + (75% of C) i.e., \$88,000 + \$175,000 + (75% x \$50,000) = \$300,500.*

*The loss ratio is calculated by dividing the incurred amount (\$300,500) by the paid Annual Contributions and Administration Levies (\$160,000) i.e., 187.81%*

*The claims loading is calculated as the total of 20% + (87.81/10) = 28.78%; which will apply to the 2023/2024 Base Annual Contribution.*

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

## **Capping and Capping**

48. The change to GFI as the primary assessment factor for the Annual Contribution from the 2021/2022 insurance year meant some Legal Practices would pay more and some would pay less on a like for like basis i.e., all other things being equal. To mitigate the cost impact of the change, a process known as 'capping and capping' has been applied. This process will be applied for the last time for the 2023/2024 insurance year. It will limit the increase or decrease from the Legal Practice's Base Annual Contribution for the previous (2022/2023) insurance year to no more than 20%, all other things being equal and before the impact of any changes in the structure of the Legal Practice are taken into account.

## **Verification of GFI Declaration**

49. The declaration of a Legal Practice's GFI may be subject to verification by the Law Society as set out in Appendix A.
50. If the declaration understates the GFI, the Legal Practice must pay to the Law Society any further Annual Contribution that would have been payable if the Annual Contribution had been assessed on the basis of the correct information together with any GST and an Administration Levy as set out in Appendix A.
51. If a Legal Practice fails to provide any or adequate documentation that would reasonably be available to verify the GFI or understates its GFI on two consecutive Applications:
- a. the Legal Practice will be required to provide documentation and pay penalty loadings as set out in Appendix A; and
  - b. any authorised Practitioners who made the relevant declarations may be made the subject of a complaint
- as set out in Appendix A.
52. The Law Society may, if it considers that an incorrect declaration has been made deliberately or without any proper basis, refer the Application to the Legal Services and Complaints Committee pursuant to Chapter 5 of the Uniform Law as a complaint against the Practitioner who made the declaration.

## **Payment of the Annual Contribution**



53. Based on the information provided in the Application and the calculation of any discounts or loadings, a Legal Practice will receive a tax invoice for payment of its Annual Contribution and any Administration Levy (**Tax Invoice**).
54. The Tax Invoice must be paid by Monday 15<sup>th</sup> May 2023. If it is not paid by that date, the Legal Practice must pay a late fee equivalent to 10% of the Annual Contribution (**Late Fee**). The Law Society will issue a further tax invoice for the Late Fee.
55. If a Legal Practice does not pay its Annual Contribution and any Late Fee by Friday 30<sup>th</sup> June 2023, the Law Society may cancel the Tax Invoice and the Late Fee invoice and not issue a Certificate to the Legal Practice. This will mean that any Practitioner or an Incorporated Legal Practice that would have been covered under that Certificate will not be covered by an approved insurance policy as required by Sections 211 and 212 of the Uniform Law.
56. The Law Society may, at its absolute discretion, accept payment of the Tax Invoice and the Late Fee after the 30<sup>th</sup> June 2023 on whatever conditions it considers appropriate, including that the Period of Insurance may commence on the date on which payment is made.

### **Application to Review the Annual Contribution**

57. Pursuant to Section 165 of the Act, the Law Society will review the assessment of a Legal Practice's Annual Contribution following receipt of an application by the Legal Practice for a review. Following the review, the Law Society may:
  - a. confirm the assessment; or
  - b. revoke the assessment and make another assessment.
58. By way of guidance:
  - a. the review will consider whether Law Mutual has correctly assessed the Annual Contribution having regard to the assessment factors set out in clauses 23 to 48 above.
  - b. the application must be in writing and fully set out the reasons why the Legal Practice considers the assessment to be unsatisfactory, including copies of any relevant documentation.
  - c. reasons that are not relevant to the assessment factors, such as the financial circumstances of the Legal Practice, will not be considered.

### **Law Society may Waive or Reduce a Late Fee**

59. Following an application in writing by an Insured Practice, the Law Society may waive or reduce a Late Fee.
60. A decision to waive or reduce a Late Fee will only be made if the failure to pay the Annual Contribution as required is due to circumstances outside the control of the Legal Practice.
61. By way of guidance, the following will not be such circumstances:
  - a. Insufficient funds to pay the Annual Contribution as required.
  - b. An administrative oversight.
  - c. The non-receipt of invoices or reminder notices unless there is substantive forensic evidence that is the fact and that it would have been unreasonable for the Legal Practice to contact Law Mutual to request an invoice.

62. An extended absence from the Legal Practice over the application and payment period (mid-March to mid-May) due to circumstances outside of the control of the responsible Practitioner (e.g., unexpected hospitalisation or debilitating illness) may be circumstances outside the control of the Legal Practice subject to adequate proof of the absence and the reasons for it.
63. The decision as to whether the failure to pay the Annual Contribution is due to circumstances outside the control of the Legal Practice and waive or reduce a Late Fee is entirely at the discretion of the Chief Executive Officer of Law Mutual for Late Fees up to \$1000. Thereafter, the decision will be made by the Council of the Law Society.
64. Notwithstanding the above, in considering any application, the following will be noted:
- a. It is the duty of a Legal Practice and responsible Practitioner to comply with the timeframes for making an Application and paying an Annual Contribution in accordance with the relevant legislation.
  - b. It is assumed, as with all legislation, that the Practitioner is aware of the provisions of the Act and Uniform Law.
  - c. It is not the duty of the Law Society to remind a Legal Practice or responsible Practitioner of the need to apply for coverage under the PII arrangement or pay the Annual Contribution. However, by way of assistance, Law Mutual's processes for applications do include reminders that are usually sent by electronic communication to the responsible Practitioner's (or nominated contact's) email address.
65. A Legal Practice's obligation to pay its Annual Contribution is not affected because it has applied for a review.
66. The Law Society will not waive or reduce a Late Fee simply because a Legal Practice has applied for a review of its Annual Contribution.
67. If the Law Society reduces the assessed Annual Contribution or waives or reduces a Late Fee, it will refund the relevant amount to the Legal Practice together with interest (see Section 167 of the Act).
68. If a Legal Practice is still not satisfied with the assessment of its Annual Contribution after review, it may appeal to a person nominated by the Attorney General (see Section 166 of the Act).

## **Use of the Annual Contribution**

69. The Law Society will:
- a. use the Annual Contributions and the proceeds of the investment of the Annual Contributions to pay:
    - i. the premium to the Insurers as required by the Master Policy;
    - ii. the Fund's Contribution;
    - iii. the costs and expenses incurred in managing the Law Mutual Fund and the PII arrangement;
  - b. manage and apply any surplus funds as it considers appropriate (see Section 181 of the Act).

## **Refunds**

70. A refund of the Annual Contribution and any Administration Levy will only be paid if, after payment of them, but prior to the commencement of the Period of Insurance an Insured gives notice in writing that it will be ceasing practice or not commencing practice by the commencement of the Period of Insurance.
71. A refund of the paid Annual Contribution, Late Fee and any Administration Levy or any part thereof will not be payable if a Legal Practice ceases practice during the Period of Insurance.

## Claims' Notification and Management

72. An Insured must give written notice of a Claim first made against them during the Period of Insurance as soon as reasonably practicable.
73. While the Certificate does not cover Claims first made after the Period of Insurance, if an Insured gives written notice of facts that might give rise to a Claim as soon as reasonably practicable after becoming aware of those facts (**Notification**), the Insured may be entitled, pursuant to Section 40(3) of *the Insurance Contracts Act 1984 (Cth)*, to be indemnified in respect of a Claim subsequently arising from those facts, notwithstanding that the Claim is made after the Period of Insurance.
74. Subject to the Master Policy, Law Mutual will manage all Claims and Notifications with a view to resolving every Claim on its merits.
75. The sooner Law Mutual is notified of them, the sooner steps can be taken to resolve or limit any exposure that may be presented by a Claim or Notification.
76. An Insured must promptly provide Law Mutual and the appointed panel solicitor with any information and other assistance reasonably requested by them in relation to investigation and conduct of a claim. This includes providing all relevant documents, meeting with Law Mutual and the panel solicitor, and providing witness statements.
77. Law Mutual may use any information it receives in accordance with and for the purposes set out in Clause 15 of the Certificate.
78. Information in documents compulsorily produced by a party (other than an Insured) to a court action will not be used for the compilation of claims' management information. That is because those documents cannot be used for any purpose other than the court action.

## Risk Management

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

## Miscellaneous

### Practising Without Insurance

86. In the rare situation where an existing Legal Practice continues to practice in the Period of Insurance without having applied for or paid for coverage under the PII arrangement then:
- a. until a Certificate is issued, the Legal Practice and its Practitioners may be practising in contravention of the Uniform Law;
  - b. the Legal Practice, its Partners and those employed or engaged by it will be uninsured; and
  - c. the Legal Practice may not be able to recover its professional fees from its clients.
87. The Law Society is obliged to grant an application for coverage under the PII arrangement for part of the Period of Insurance if a proper Application and payment of all required amounts have been made (see Section 159 of the Act). However, there is no obligation on it to do so with retrospective effect. Whether coverage will be granted retrospectively is a matter for the Law Society and will depend on the facts of each case.

### Recommencing Practice

88. A Legal Practice that ceases practice in one insurance year but recommences practice during the next insurance year will have its Annual Contribution assessed as of the day it recommenced practice. The Legal Practice and its Practitioners will not be covered for a Claim arising from any legal services provided in the period from the date it ceased practice to the date on which it recommenced practice.

### Practitioner Changes during the Period of Insurance

89. A Legal Practice must inform the Law Society as soon as reasonably practicable if, during the Period of Insurance:
- a. a law graduate is admitted to practice; or
  - b. a Practitioner joins the Legal Practice; or
  - c. an employed Practitioner becomes a Partner of the Legal Practice
- by submitting an Additional Practitioner Form\*. There will be no further Annual Contribution payable in any of these circumstances.

\*This Form can be downloaded from the Law Mutual website

### ILP Shareholders

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

### Coverage for part of the Period of Insurance

91. If a Legal Practice applies for coverage for part only of the Period of Insurance (e.g., when it intends to cease practice during the Period of Insurance), the Annual Contribution will be assessed on a pro rata basis (see Section 163(2) of the Act).
92. If a Legal Practice that has coverage for part only of the Period of Insurance wishes to extend the coverage period, in addition to a further pro rata Annual Contribution, it will have to pay an Administration Levy of 10% of the further Annual Contribution.
93. There is no coverage under the PII arrangement for any legal services provided after the date on which the pro rata period expires.

94. Practitioners of the ceased Legal Practice must obtain other coverage under the PII arrangement before re-commencing providing legal services in any capacity that is not exempted under the Uniform Law.
95. A Legal Practice that commences providing legal services during the Period of Insurance will have its Annual Contribution assessed on a pro rata basis from the date it commences to the end of the Period of Insurance. The coverage will only take effect when payment of the relevant invoice has been received.

## **Restructure of Legal Practices**

96. Where it is intended to restructure the whole or part of the business of a Legal Practice and it is to be conducted by a new Legal Practice, the new Legal Practice must apply and pay for coverage under the PII arrangement before it commences to provide legal services (see Section 160 of the Act). Examples of this would be:
  - a. a Sole Practitioner or firm of Practitioners intends to provide legal services as an ILP.
  - b. two or more Legal Practices intend to combine into a single Legal Practice.
97. The Law Society may reduce or waive the Annual Contribution in the circumstances described in Section 160 (3) of the Act to reflect the amount of annual contributions already paid by the restructured Legal Practice(s). Examples of when the Law Society may waive payment of an Annual Contribution by the new Legal Practice are:
  - a. the new Legal Practice continues the business previously conducted by another type of Legal Practice.
  - b. two or more Legal Practices (covered under the PII arrangements) combine into a new Legal Practice which continues the businesses previously conducted by those Legal Practices.
  - c. The Partners (or some of them) of a Legal Practice separately commence new Legal Practices that continue parts of the business previously conducted by the Legal Practice.
98. When you considering a restructure of your Legal Practice, such as joining or merging with another Legal Practice, you should consider the definition of "Predecessor Legal Practice" in the Definitions section (Clause 19) of the Certificate and the impact that may have on the new Legal Practice.
99. Importantly, a Predecessor of the Legal Practice, as determined by the Law Society, and any Partner or employee of it, will be an Insured under the Certificate in place at the time a Claimant makes a Claim (or facts are notified). This means a Claim made arising from legal services provided by a Predecessor will be a Claim under the Certificate issued to the successor Legal practice at the time the Claim is made (or the time that the facts that gave rise to the Claim were notified (and not under a previous Certificate issued to the Predecessor). Accordingly, all of the provisions of the Master Policy and the AIB, including the calculation of any claims loading or Insured's Contribution, will apply to a Claim arising from the Predecessor's provision of legal services.

## **Consultants**

100. Subject to the terms and conditions of the Certificate, independent consultants who work exclusively for a Legal Practice will be indemnified under the Certificate issued to that Legal Practice, provided they are listed as a Practitioner on the Application or an Additional Practitioner Form as applicable.
101. A consultant who is not listed or provides legal services to more than one Legal Practice, including as or to a Sole Practitioner or a Partner, or as an employed Practitioner, should ensure they have appropriate professional indemnity insurance coverage in place.

## **Seconded Practitioners**

102. Subject to the terms and conditions of the Certificate, a Legal Practice will be indemnified for a Claim arising from legal services provided by a secondee if:
- a. the relevant engagement 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.

## **Volunteer Practitioners**

103. Subject to the terms and conditions of the Certificate, a Practitioner providing legal services on a pro bono (volunteer) basis will be indemnified under the relevant Certificate for any Claim arising from those legal services provided that the Legal Practice to which the Certificate is issued acknowledges in writing that the Practitioner is providing those services in that capacity on behalf of the Legal Practice.
104. Sole Practitioners holding a practising certificate with a Volunteer of Pro Bono condition will pay the minimum Annual Contribution i.e., the fixed fee for Legal Practices declaring 'nil' GFI.
105. As a matter of good risk management, Practitioners should keep adequate records of the legal services they provide pro bono.

## **Providing Legal Services outside Western Australia**

106. An Insured will not be indemnified for any liability that arises out of an act or omission which occurred outside of WA if a law, other than the law of WA requires the Insured to be indemnified against that liability other than by the Certificate (see clause 2.1.28).
107. The Certificate is issued to the Legal Practice and covers Partners and Employees of that Legal Practice. If a Partner or Employee leaves that Legal Practice and commences providing legal services with an interstate law practice, that Partner or Employee will no longer be covered under the Certificate or the PII arrangement and must ensure that PII coverage is obtained from the relevant State or Territory Scheme.

## Appendix A

### Verification of GFI

#### Selection of Legal Practices

There are two categories of selection.

1. Based on certain information provided in the Application as follows:
  - 1.1 a Legal Practice that declares a 'rounded' GFI (e.g., \$150k) will be requested to confirm this was its actual GFI. If it is confirmed, the Legal Practice will be required to provide the documentation it relied on to calculate the declared GFI. If it is not confirmed and a different GFI is provided, an invoice will be issued using the different GFI.
  - 1.2 A Legal Practice that declares a 25% or greater decrease in GFI from the previous year without a comparative decrease in the number of Practitioners will be requested to provide reasons for the decrease. If the Law Society considers that reasons are not satisfactory, the Legal Practice will be required to provide the documentation it relied on to calculate the declared GFI.
  - 1.3 A Legal Practice that declares a 25% or greater increase in the number of Practitioners from the previous year without a comparative increase in GFI will be requested to provide reasons for the lack of a comparative increase. If the Law Society considers that reasons are not satisfactory, the Legal Practice will be required to provide the documentation it relied on to calculate the declared GFI.

2. Based on Random Selection

Approximately 1% of Legal Practices will be randomly selected and will be requested to provide an explanation of the basis for the calculation of the declared GFI, noting that the Law Society may require to inspect or be provided with copies of any base documentation:

- where the Law Society considers the explanation is inadequate; or
- randomly

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

Legal Practices that have been selected:

- in that year under 1. above; or
- in the previous three years

will not be included in this category.

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

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

#### Consequences

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

- it is satisfied that the declared GFI is accurate and no further action is required; or
- it considers the GFI has been understated, what it considers to be the accurate GFI, and that an invoice based on any further Annual Contribution that would have been payable if the Annual Contribution had been assessed on the basis of the correct information together with any GST and an Administration Levy of 10% of the total Annual Contribution will be issued within seven days.

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

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

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





Law  Mutual (WA)<sup>®</sup>

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

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