

Summary of Substantive Changes in 2023/2024 Law Mutual Master Policy compared to 2022/2023 Law Mutual Master Policy

1. All references to the *Legal Profession Act 2008 (WA)* and *Legal Profession Regulations 2009 (WA)* [now repealed] have been updated to any applicable mirroring provisions in the *Legal Profession Uniform Law Application Act 2022 (WA)* and the *Legal Profession Uniform Law (WA)*.

2. The \$6,000,000 aggregate limit on the Insurers' liability for Claims in clause 4.2 of the Master Policy has been removed.

The removal of the wording from clause 4.2 ensures the insurance arrangements are compliant with rule 78(4) of the *Legal Profession Uniform General Rules (LPUL Rules)* which requires cover of \$2 million **each and every claim** under the insurance.

3. Clause 2.1.2 of the Certificate has been removed.

Clause 2.1.2 affected the compliance of the insurance arrangements with the LPUL Rules. Specifically, rules 78(10) and 79(8) stipulate that professional indemnity insurance must provide retroactive cover. Any time limitation to the retroactive cover could be seen to contravene rules 78(10) and 79(8) of the LPUL, therefore, removing clause 2.1.2 ensures legislative compliance.

4. A new Clause 2.1.5 has been inserted in the Certificate.

Clause 2.1.5 excludes cover for liabilities arising from contracts that extend an Insured's duty beyond exercising the standard of care and skill reasonably expected of a legal practitioner or barrister.

5. Clause 2.1.10 of the Certificate has been removed.

Insurance agents are no longer separately regulated. An insurance agent will be providing a financial service and so this deletion removes the duplication arising from the new (and broader) exclusion for financial services (see clause 2.1.20).

6. Clause 2.1.13 has been amended to the following:

"The Insurers will not indemnify the Insured in respect of:

...

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;"

Amended clause 2.1.13 reflects the wording of the endorsement provided by Appendix 1 to the 2022/2023 Law Mutual Master Policy. However, instead of merely referring to clause 1 (as in the endorsement) the exclusion now includes express words repeating the relevant words in clause 1. This makes clear what the exclusion does not apply to.

The replacement of the old clause with the amended wording avoids the need for the endorsement. The additional wording in respect of Related Costs was inserted to make clear that ransom demands following a computer data hack are not covered by the policy.

7. A new Clause 2.1.19 has been inserted in the Certificate.

Clause 2.1.19 excludes cover for Insureds providing a financial service.

8. A new Clause 2.1.20 has been inserted in the Certificate.

Clause 2.1.20 excludes liability arising from an Insured engaging in credit activities.

9. A new Clause 2.1.24 has been inserted in the Certificate.

This clause excludes cover for liability arising from an Insured providing legal services to themselves.

10. A new Clause 17 has been inserted in the Certificate.

Clause 17 reflects Law Mutual's obligations under the LPUL Rules to the extent that it permits Law Mutual to receive a reimbursement commensurate to any prejudice suffered by Law Mutual arising from an Insured's breach of the policy.

11. An amended definition of "Practice" has been included in Clause 19 of the Certificate as follows:

"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."

This amendment was made to avoid the circularity of the existing definition and to clarify the type of work that the policy covers. That is, the reference to the 'practice of law' has been replaced with 'work done, or business transacted, in the ordinary course of the provision of legal services by a Legal Practice'. This additional wording reflects the definition of 'legal services' in the LPUL ('legal services' means work done, or business transacted, in the ordinary course of legal practice).

The amendment in the last part of the definition is to clarify that the policy may respond to a claim where the Insured has retained an overseas lawyer to advise on law in that jurisdiction (but will not cover the foreign lawyer).

12. An amended definition of "Practitioner Guarantee Certificate" has been included in Clause 19 of the Certificate as follows:

"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."

This amendment was required because the existing definition did not sufficiently capture all of the persons to whom a solicitor gives advice that would require the production of a certificate. This change is relevant to the doubling of the Insured's Contribution contemplated by clause 11.3.1.4.

The revised wording reflects the parties referred to in Rule 11 of the *Legal Profession Uniform Legal Practice (Solicitors) Rules* (NSW).

Practitioners should note that Rule 11 sets out the steps that must be followed when a solicitor is engaged to provide advice to a guarantor, etc and is asked to provide evidence of that advice.

13. An amended definition of "Related Costs" has been included in Clause 19 of the Certificate as follows:

"Related Costs:

1. means all costs and expenses incurred by the Insurers, the Law Society as trustee for the Law Mutual Fund or Law Mutual in the investigation, defence or settlement of a Claim; 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."

The definition of Related Costs was amended to expressly exclude the costs of any Insured's time or any internal or overhead expenses of an Insured's legal practice.