

Professional Indemnity Insurance (PII) Policy 2016/17

When reading this Policy, please note the use of specially defined words that appear in **bold** type. There is a list of these words in clause 43. Although the Policy defines the word “we” this word does not appear in bold type.

Who Is Insured

1. We insure the **law practice**, being:
 - (a) a sole practitioner providing **legal services** on his or her own account;
 - (b) a partnership of **lawyers**;
 - (c) an incorporated legal practice;
 - (d) a **multi-disciplinary partnership**; or
 - (e) an **unincorporated legal practice**.
2. We also insure:
 - (a) a person who is or was a **principal** or **employee** of the **law practice**;
 - (b) a **lawyer** who is or was a shareholder of the **law practice**;
 - (c) a body corporate related to the **law practice** that provides or provided clerical, administrative or management services to the **law practice**; or
 - (d) the estate of each person referred to in clauses 2(a) and 2(b).
3. We do not insure a body corporate that is, or is required to be, a **responsible entity**.

What We Insure

4. We agree to indemnify the **insured** against civil liability for a **claim** that:
 - (a) arises from the provision of **legal services** by the **law practice** in Australia or elsewhere; and
 - (b) is first made against the **insured** during the period of insurance.
5. However, we will not indemnify the **insured** if the **claim** relates to a circumstance to which this Policy would otherwise respond which an **insured** notified to us, any other insurer or any other indemnity provider, before the period of insurance.
6. When we agree to indemnify the **insured** for a **claim**, our indemnity also extends to **claimant's costs** and **defence costs**.

Amount Of Indemnity

7. Item 5 of the Schedule sets out the maximum amount of our indemnity for each **claim** for all **insureds**. The maximum amount includes **claimant's costs** and **defence costs**, and is over and above the **excess**. The **excess** is the amount paid or payable by the **law practice** and is not indemnified under this Policy.

For the purposes of this clause, a single **claim** means:

- (a) all **claims** by one or more claimants that arise from the same act or omission;
- (b) all **claims** by one or more claimants that arise from one or more related acts or omissions;
- (c) all **claims** by one or more claimants that arise from one or more acts or omissions in a number of related matters or transactions; or
- (d) all **claims** by one or more claimants that arise from one matter or transaction.

What We Exclude From The Insurance

8. We will not indemnify the **insured** under this Policy when:
 - (a) the **claim** arises from:
 - (i) a dispute between **principals** or proposed **principals** or between shareholders or directors of an incorporated legal practice;
 - (ii) the **insured's** activities that constitute auditing of financial reports under the *Corporations Act 2001* (Cth) Chapter 2M (Financial Reports & Audit);
 - (iii) any activity that constitutes the provision of a financial service under the *Corporations Act 2001* (Cth) Chapter 7 (other than an activity that constitutes a referral under the *Corporations Regulations 2001* Regulation 7.6.01(e)) or that constitutes the provision of a credit facility, as defined in the *Corporations Regulations 2001*;
 - (iv) the **insured**, or a **principal**, **employee** or contractor of the **law practice**, being a director or officer of a body corporate (other than a **claim** arising from the **law practice's** provision of **legal services** through any of its directors or officers who are **lawyers**);
 - (v) failure to pay trust money or deliver trust property, or a fraudulent dealing with trust property, where the **law practice** received the money or property on trust in the course of providing **legal services** and where the failure or fraudulent dealing arises from a dishonest act of an associate of the **law practice** (as defined in the *Legal Profession Uniform Law* (NSW) section 6(1));

- (vi) a contract other than a contract to provide **legal services**, unless liability would have attached in the absence of such contract;
 - (vii) a contract to the extent that it:
 - (A) extends the **insured's** duty beyond exercising the standard of care and skill to be reasonably expected of a **lawyer** in the circumstances; or
 - (B) increases the compensation or damages for which the **insured** are liable for breach of duty beyond the amount payable in tort or under any applicable statute;
 - (viii) physical loss of, or damage to, property, unless the **claim** relates to property (other than cash, negotiable securities, jewellery, art works or antiques) in the **insured's** care, custody and control for which the **law practice** is responsible to a third party in connection with the provision of **legal services**;
 - (ix) death or personal injury unless the **claim** is for psychological or psychiatric injury caused by act, error or omission of the **insured** in providing **legal services**;
 - (x) the consequences outside the control of the **insured** of a terrorist act (as defined in the *Criminal Code Act 1995* (Cth) section 100.1(1));
 - (xi) **war** except to the extent that the **insured's** liability arises, whether directly or indirectly, from an order of any government or public or local authority;
- (b) the **claim** is made against the **insured** by a person because, and only because, the person is or was the **insured's** **employee** or because the **insured** did not employ the person;
- (c) the **claim** is for:
- (i) a refund of any fee or disbursement the **insured** charge a client;
 - (ii) damages or compensation calculated by reference to any fee or disbursement the **insured** charge a client;
 - (iii) payment of costs relating to a dispute about fees or disbursements the **insured** charge a client;
 - (iv) payment of a fine or civil penalty or punitive or exemplary damages;
 - (v) payment of a trading debt.
- For the purposes of this paragraph, 'disbursement' does not include any amount paid to a barrister or expert;
- (d) the **claim** is by a **responsible entity** in relation to which the **law practice**, or any **principal** in the **law practice**, is a related entity within the meaning of the *Corporations Act 2001* (Cth);
- (e) the **claim** is by a corporation that has issued or proposes to issue securities (within the meaning of the *Corporations Act 2001* (Cth) section 92(2)) to the public, and the **law practice**, or one or more of its directors or partners, controls the corporation;
- (f) the **claim** is by a **principal**, officer or **employee** of the **law practice** or by a corporation controlled by a **principal**, officer or **employee** of the **law practice** and the **claim** is in connection with the provision of **legal services** by the **law practice** to that person or corporation and that person handled or supervised any part of the provision of those **legal services**.

For the purposes of sub-clauses (e) and (f) 'control' means that the entity, or one of its directors or partners, has the capacity to determine the outcome of decisions about the other entity's financial or operating policies, where:

- (i) the practical influence that can be exerted (rather than the rights that can be enforced) is the issue to be considered; and
 - (ii) any practice or pattern of behaviour affecting the entity's financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust);
- (g) to do so would or would potentially expose us to or put us in breach or potential breach of any legal, economic, political or trade sanction, prohibition or restriction.

We Will Reject Fraudulent Claims

9. We will reject a fraudulent claim for indemnity or any part of a claim for indemnity that is fraudulent.

Claims Involving Dishonesty Or Fraud

10. We will not indemnify an **insured** under this Policy when the **claim** arises, whether directly or indirectly, from any dishonest or fraudulent act or omission of that **insured**.
11. We will not indemnify an **insured** under this Policy when the **claim** arises, whether directly or indirectly, from any dishonest or fraudulent act or omission of another **insured** and the first **insured** was knowingly connected with that dishonesty or fraud.
12. In establishing whether an incorporated legal practice has engaged in dishonest or fraudulent conduct for the purpose of clause 10 each director of the incorporated legal practice must have the requisite state of mind.
13. If we make a payment under this Policy for a **claim** which arises, whether directly or indirectly, from a dishonest or fraudulent act or omission of an **insured**, we have the right to recover payment from that **insured** and from any other **insured** knowingly connected with the dishonesty or fraud.

When The Insured Has To Notify Us

14. The **insured** must notify us in writing as soon as practicable of any **claim** made against them, even if the **claim** is for less than the **excess**.

The Insured Must Not Admit Liability Or Incur Costs

15. The **insured** agree that they will not, without our consent:
- (a) admit liability for a **claim**;
 - (b) settle a **claim**;
 - (c) incur any costs or expenses in connection with a **claim**.

We Have Conduct Of The Claim

16. The **insured** agree that:
- (a) we have the conduct of a **claim** against the **insured**, including its investigation, defence, avoidance, reduction, or, subject to clauses 20 to 23, settlement or any appeal;
 - (b) we have the right to appoint **lawyers** to act in the conduct of the **claim**;
 - (c) we have the right to refer a **claim** to any dispute resolution process and, subject to clause 20, to settle it as part of that process; and
 - (d) we have the right to conduct the **claim** in the name of the **insured**.

17. If the **claim** is for less than the **excess** the **law practice**:
- (a) may assume the conduct of the **claim** with our prior written consent and must do so within 14 days of receiving written notice from us requiring it to do so; and
 - (b) may settle the **claim** with our prior written consent.

Duty To Co-Operate

18. The **insured** agree, at their expense, to:
- (a) give us and any investigators and **lawyers** employed or appointed by us all information, documents and assistance we reasonably require; and
 - (b) co-operate fully with us, and any investigators and **lawyers** employed or appointed by us.
19. The **insured** further agree to waive any claim for legal professional privilege or confidentiality to the extent only that the privilege or confidentiality would otherwise prevent **lawyers** employed or appointed by us from disclosing information to us.

Deciding Whether To Settle

20. We will not settle any **claim** against any **insured** without seeking the prior consent of that **insured**. However if that **insured** does not accept or does not respond to our recommendation for settlement, then, at our option, either:
- (a) the entitlement of all **insureds** to **defence costs** will cease and our liability to all **insureds** for that **claim** will be limited to the amount of the recommended settlement plus **defence costs** up to the date 14 days after the date on which the recommendation was made or, in case of urgency, a date less than 14 days after the date on which the recommendation was made specified by us in writing at the time of making the recommendation; or
 - (b) in our absolute discretion we may notify the **insured** that the **insured** have 14 days (or in case of urgency, a period less than 14 days) to request that an opinion be obtained from a **lawyer** under clause 33. If a request for an opinion is not made, or if an opinion is obtained and the **lawyer's** opinion is that the **claim** should be settled, in either case the **insured** will be deemed to have consented to settlement and we may settle the **claim**.

Deciding Whether To Appeal

21. We will seek the **insured's** consent before deciding whether or not to pursue an appeal.
22. If the **insured** do not consent to our decision as to whether or not to pursue an appeal, the **insured** have 14 days within which to notify us that they require an opinion from a **lawyer** under clause 33. However, in case of urgency, we may require the **insured** to notify us within a shorter period specified by us in writing.
23. If the **insured** do not notify us under clause 22 they will be deemed to have consented.

Payment Of Excess

24. The **law practice** agrees to pay the **excess** to us or as we direct.
25. The **excess** becomes due and payable:
- (a) if the amount shown in Item 4 of the Schedule does not refer to **defence costs**, on settlement, judgment or compensation order; or

- (b) if the amount shown in Item 4 of the Schedule refers to **defence costs**, progressively within 28 days of receipt of a valid tax invoice for **defence costs** and the balance on judgment, compensation order or settlement if **defence costs** are less than the amount shown in the schedule.
26. The **law practice** as constituted at the time of inception of the Policy is responsible as between us and the **insured** for the payment of the **excess**.

We May Reduce Indemnity For Costs

27. When a **claim** is in relation to a mix of matters, and we indemnify the **insured** for some but not for others, we may reduce the amount of **defence costs** and **claimant's costs** we pay to a proportion that reflects an amount fairly attributable to the matters we indemnify the **insured** for. We may determine that proportion in our absolute discretion. However, we will have regard to the value of the proportion of the matters we indemnify the **insured** for and those we do not.
28. If the **insured** disagree with our determination under clause 27, the **insured** have 14 days to notify us that they require an opinion from a **lawyer** under clause 33. If the **insured** do not notify us under this clause, they will be deemed to have agreed with our determination.

Breach

29. If an **insured's** breach of this Policy substantially prejudices our conduct or settlement of a **claim**, that **insured** will indemnify us to the extent that the breach has prejudiced our interests.

Subrogation

30. If we make a payment under this Policy, we are subrogated to all the **insureds'** rights of contribution, indemnity or recovery, without their consent. However, we will not exercise our right of subrogation against an **employee** except in the case of that person's dishonesty or criminal act or omission.
31. The **insured** agree not to surrender any right to, or settle any claim for, contribution, indemnity or recovery without our prior written consent.

Dispute With Another Insured

32. If there is a dispute between the **law practice** or an **insured** and another person or entity for whom we issued a policy of insurance, including a Run Off Policy, or for whom Lawcover Pty Limited arranged a Certificate of Insurance or Run Off Policy, and the dispute relates to a **claim**, including the notification of a **claim** or the conduct of a **claim**, the following procedure applies:
- (a) we will notify the relevant persons or entities that the dispute exists;
 - (b) we will request an opinion from a **lawyer** under clause 33.

Lawyer's Opinion

33. The procedure for obtaining a **lawyer's** opinion is as follows:
- (a) we are both to agree on the choice of a **lawyer**; if we cannot, the President for the time being of a **law society** is to appoint a **lawyer**;
 - (b) we may each make written submissions, but not oral submissions;
 - (c) the **lawyer** will provide an opinion as an expert, not as an arbitrator;

- (d) in the case of **defence costs**, the **lawyer** will have regard to clause 27;
 - (e) in the case of an opinion as to whether a **claim** should be settled or an appeal should be pursued the **lawyer** must take into account the legal issues in the **claim** and the future **defence costs**;
 - (f) in the case of a dispute between the **insured** and another person or entity for whom we issued a policy of insurance, including a Run Off Policy or for whom Lawcover Pty Limited arranged a Certificate of Insurance or Run Off Policy:
 - (i) the **lawyer's** opinion must state:
 - (A) which, if any, of those persons or entities is likely to be held liable to the claimant (whether or not a **claim** is made against all of them by the claimant); and
 - (B) if more than one person is likely to be held liable, the proportional liability of each of them;
 - (ii) the **lawyer** is to base the opinion on what the **lawyer** believes, in their professional judgment, to be equitable and appropriate in the circumstances;
 - (g) we share the **lawyer's** fee for the opinion equally.
34. We both agree to be bound by the **lawyer's** opinion.

No Right To Avoid Or Cancel The Policy

35. We will not cancel or avoid the Policy.

Set Off

36. We may not set off any amount the **insured** owe us against our liability under the Policy.

Prior Practice Determination

37. The **insured** agree that:

- (a) we may determine whether the **law practice** is the successor to a prior practice; and
- (b) our determination is final and binding.

38. In so determining, we may have regard to one or more of the following:

- (a) the **law practice** holding itself out as the successor of the prior practice or as incorporating it where:
 - (i) the holding out can be express or implied;
 - (ii) the holding out can be contained in notepaper, business cards, form of electronic communications, publications, promotional material or otherwise, or is contained in any statement or declaration the **law practice** makes to any regulatory or taxation authority;
- (b) the **law practice** employing, or taking on as **principals**, all or a majority of the **principals** of the prior practice;
- (c) the **law practice** employing a majority of the **employees** previously employed by the prior practice;
- (d) the **law practice** acquiring the goodwill, the assets, or the majority of client files of the prior practice; or assuming its liabilities;
- (e) the **law practice** adopting the name formerly used by the prior practice, or a name which substantially incorporates that name;
- (f) the **law practice** carrying on business from the premises of the prior practice.

Power To Charge Additional Premium

39. If the Australian Prudential Regulatory Authority (APRA) requires us to increase our capital during the period of insurance, we may require the **law practice** to pay an additional premium. Any additional premium payable by the **law practice** will be calculated only to the extent that the increase in capital is related to **law practices** whose principal place of practice is in the same State or Territory as your principal place of practice. We will calculate the additional premium in the proportion the **law practice's** premium bears to the total of all premiums payable by **law practices** we insure in the period of insurance in the same State or Territory as the principal place of practice of the **law practice**. The total of all additional premiums payable by **law practices** will not exceed the increase in capital required by APRA.

Address For Notices To Insurer

40. The **insured** may serve any summons, notice, or process on us at the address specified in the Schedule.

Jurisdiction For Dispute With Insurer

41. Any dispute that arises under this Policy will be subject to the laws of the State of New South Wales and the Commonwealth of Australia and to the jurisdiction of the Courts of New South Wales and any Courts of Appeal therefrom.

Interpretation

42. In this Policy, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) the male gender includes the female and vice versa;
- (c) where an expression is defined for the purpose of this Policy, any other grammatical form of the expression has the same meaning;
- (d) headings are merely descriptive and not an aid to interpretation;
- (e) references to an amount of money are references to that amount in Australian dollars;
- (f) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and also any subordinate legislation issued under, that legislation or legislative provision.

Definitions

43. In this Policy, unless the context otherwise requires:

- (a) **claim** means:
 - (i) a demand for, or an assertion of a right to, compensation or damages; or
 - (ii) an intimation of an intention to seek compensation or damages; or
 - (iii) an order for costs made against an **insured** in proceedings to which that **insured** is not a party, or an application for such an order;
- (b) **claimant's costs** means legal costs the **insured** has to pay to the person making a **claim** against them;

- (c) **defence costs** means legal costs, disbursements and related expenses we reasonably and necessarily incur or the **law practice** incurs, with our consent, in satisfaction of its obligation to pay an **excess** in relation to a **claim** it reports to us, but does not include reimbursement of any time the **insured** spend in relation to the **claim**. (When we calculate **defence costs** we will deduct an amount equivalent to the amount of any input tax credit that the **insured** or we are entitled to claim for the GST component of those **defence costs**);
- (d) **employee** means a person who, at any time, is or was:
- (i) employed or similarly engaged by the **law practice** (such as a solicitor, **lawyer**, articled clerk, paralegal, overseas qualified legal practitioner, special counsel, office or clerical staff); or
 - (ii) seconded to work in the **law practice** or seconded by the **law practice** to work elsewhere; or
 - (iii) a **lawyer** engaged by the **law practice** as a locum on a short term or fixed term basis;
- but does not mean any independent contractor who provides legal or other services (such as auditing, advisory or consulting) to the **law practice** or to its clients;
- (e) **excess** means the amount specified in Item 4 of the Schedule and is the amount payable by the **law practice** including, if so specified in the Schedule, for **defence costs** and **claimant's costs**;
- (f) **insured** means the **law practice** and the other parties referred to in clause 2 or where the context requires any one or more of the **law practice** and the other parties referred to in clause 2;
- (g) **law practice** means the person or entity named in Item 2 of the Schedule and includes:
- (i) any person or entity referred to in clause 1;
 - (ii) a prior practice as we determine under clause 37;
- (h) **law society** means a body representing solicitors, or barristers and solicitors, in a State or Territory where proceedings have been commenced against the **insured**;
- (i) **lawyer** means a person who is admitted to the legal profession in Australia and includes an Australian registered foreign lawyer;
- (j) **legal services** means work done, or business transacted, in the ordinary course of carrying on the business of a **lawyer** in private practice in Australia and includes:
- (i) services provided to clients in Australia or outside Australia; and
 - (ii) 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;
- (k) **multi-disciplinary partnership** means a partnership between one or more **lawyers** and one or more other persons who are not **lawyers**, where the business of the partnership includes the provision of **legal services** as well as other services that are not otherwise prohibited by State or Territory law;
- (l) **principal** means:
- (i) a sole practitioner (in the case of a **law practice** constituted by the practitioner); or
 - (ii) a partner in the **law practice** (in the case of a partnership of **lawyers**, a **multi-disciplinary partnership** or an **unincorporated legal practice** which is a partnership); or
 - (iii) a legal practitioner director in the **law practice** (in the case of an incorporated legal practice); or
 - (iv) a person who otherwise falls within the definition of principal in the *Legal Profession Uniform Law (NSW)* or equivalent legislation in another state or territory (in the case of an **unincorporated legal practice** that is not a partnership);
- (m) **responsible entity** means a responsible entity of a managed investment scheme within the meaning of the *Corporations Act 2001* (Cth);
- (n) **unincorporated legal practice** means an unincorporated legal practice as defined in the *Legal Profession Uniform Law (NSW)* or equivalent legislation in another State or Territory;
- (o) **war** means war occasioned by or happening through or in consequence of war, invasion, bombardment, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority;
- (p) **we** means the insurer named in Item 1 of the Schedule except when the context requires 'we' to refer to both the insurer and the **insured**.

PII Schedule

Policy number:	
Item 1: The Insurer:	Lawcover Insurance Pty Limited (ABN 15 095 082 509)
Item 2: The law practice :	
Item 3: Period of insurance:	
Item 4: Excess :	
Item 5: Maximum amount of our indemnity:	\$2,000,000 each claim
Item 6: Address for service:	The Claims Department Lawcover Insurance Pty Limited Level 13, 383 Kent Street SYDNEY NSW 2000
SAMPLE	

Signed on behalf of the Insurer
LAWCOVER INSURANCE PTY LIMITED
ABN 15 095 082 509



Michael Halliday Chief Executive Officer