

Western Australia

**Legal Practice (Professional Indemnity
Insurance) Regulations 1995**

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Western Australia

Legal Practice (Professional Indemnity Insurance) Regulations 1995

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Western Australia

Legal Practice Act 2003²

Legal Practice (Professional Indemnity Insurance) Regulations 1995

1. Citation

These regulations may be cited as the *Legal Practice (Professional Indemnity Insurance) Regulations 1995*¹.
[Regulation 1 amended in Gazette 2 Apr 2004 p. 1108.]

2. Commencement

These regulations come into operation on the day on which they are published in the *Gazette*¹.

3. Interpretation

In these regulations unless the contrary intention appears —

“barrister” means a practitioner who practises on his or her own account exclusively as a barrister taking instructions only from one or more of the Attorney General of the Commonwealth or of a State or Territory of the Commonwealth, the Australian Government Solicitor, the State Solicitor, a practitioner holding a current annual practice certificate or a solicitor holding a current practising certificate in any State or Territory of the Commonwealth and who is a member of —

- (a) The Western Australian Bar Association (Inc.); or

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- (b) if the practitioner principally practises in another State or Territory, the Bar Association of that State or Territory;

“exempt practitioner” means a practitioner who is entitled to exemption under regulation 11 from the requirement to have in force with respect to him or her a certificate of insurance under the arrangements and to pay an annual contribution to the Indemnity Fund under regulation 7;

“firm” means —

- (a) a practitioner who practises on his or her own account alone;
 - (b) 2 or more practitioners who practise on their own account in partnership;
 - (c) a multi-disciplinary partnership; or
 - (d) an incorporated legal practice,
- but does not include —
- (e) an exempt practitioner;
 - (f) a partnership of exempt practitioners;
 - (g) a multi-disciplinary partnership if all of the partners who are practitioners are exempt practitioners; or
 - (h) an incorporated legal practice if all of the officers and employees of the practice who are practitioners are exempt practitioners;

“insurance” means professional indemnity insurance;

“Law Society Council” means the Council of The Law Society of Western Australia (Inc.);

“the arrangements” means the arrangements made and in force for the time being under regulation 4(1).

[Regulation 3 amended in Gazette 2 Apr 2004 p. 1108.]

4. Law Society to make arrangements for insurance

- (1) The Law Society shall make arrangements from time to time with one or more insurers for the provision of insurance to practitioners, incorporated legal practices, former practitioners and former incorporated legal practices and the Law Society may do such acts and things as may be necessary or expedient for giving effect to the arrangements.
- (2) The Law Society shall publish, make available and distribute details of the arrangements by any means that it considers appropriate in order to bring those details to the attention of all practitioners and incorporated legal practices.

[Regulation 4 amended in Gazette 2 Apr 2004 p. 1108-9.]

5. Certificate of insurance required

On and from 1 July 1995 —

- (a) every practitioner who is not an exempt practitioner; and
- (b) every incorporated legal practice, unless all of the officers and employees of the practice who are practitioners are exempt practitioners,

is required to have in force with respect to him, her or it a valid current certificate of insurance under the arrangements.

[Regulation 5 amended in Gazette 2 Apr 2004 p. 1109.]

6. Insurance required before annual practice certificate issued

- (1) The Board may refuse to issue an annual practice certificate to a practitioner unless it is satisfied that there is or will be in force with respect to the practitioner a valid current certificate of insurance under the arrangements or the practitioner is an exempt practitioner.
- (2) For the purposes of subregulation (1) the Board shall be satisfied that there is or will be in force with respect to a practitioner a valid current certificate of insurance under the

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arrangements if it receives notice to that effect from the Law Society.

[Regulation 6 amended in Gazette 19 Apr 2005 p. 1297.]

7. Annual contribution for the purposes of the arrangements

- (1) Each firm is liable to pay an annual contribution to the Law Society for the purposes of the arrangements.
- (2) The annual contribution shall accompany the firm's application to take out and maintain insurance under the arrangements.
- (3) The Law Society Council shall determine a method of assessment of annual contributions of firms.
- (4) The method of assessment determined under subregulation (3) may take into account any relevant matters including the following —
 - (a) gross fee income of a firm;
 - (b) claims history of a firm;
 - (c) area of practice of a firm;
 - (d) the business structure of the firm;
 - (e) if the firm is a practitioner who practises on his or her own account, the number of persons employed by the firm;
 - (f) if the firm is a partnership other than a multi-disciplinary partnership —
 - (i) the number of partners in the firm;
 - (ii) the number of persons employed by the firm;
 - (g) if the firm is a multi-disciplinary partnership —
 - (i) the number of partners in the firm and how many of them are practitioners;
 - (ii) the number of persons employed by the firm and how many of them are employed in the provision of legal services;

- (iii) the types of non-legal services provided by the firm;
 - (iv) the proportions of the services provided by the firm that are, and are not, legal services;
 - (h) if the firm is an incorporated legal practice —
 - (i) the number of directors and how many of them are legal practitioner directors;
 - (ii) the number of officers and employees of the firm and how many of them are engaged in the provision of legal services;
 - (iii) whether the firm provides non-legal services, and if so —
 - (I) the types of services provided;
 - (II) the proportions of the services provided by the firm that are, and are not, legal services.
- (5) The annual contribution of a firm shall be the amount assessed by the Law Society in respect of that firm in accordance with the method of assessment determined under subregulation (3).
- (6) If a firm applies to take out and maintain insurance under the arrangements for part only of a year commencing on 1 July, the annual contribution payable by the firm for that year shall be assessed on a pro rata basis.
- (7) A firm that is not satisfied with the assessment of its annual contribution under subregulation (5) or (6) may apply to the Law Society Council for a review of the assessment and the Law Society Council shall review the assessment.
- (8) If after a review under subregulation (7) the firm is still not satisfied with the assessment, the firm may appeal against the assessment to a person nominated for that purpose by the Attorney General.

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- (9) On an appeal under subregulation (8) the nominated person may either confirm the assessment or revoke it and make another assessment of the annual contribution which shall have effect for the purposes of this regulation.
- (10) The fact that the assessment of an annual contribution is under review or appeal does not affect the firm's obligation to pay the annual contribution, but if the annual contribution is reduced on review or appeal the amount of the reduction shall be refunded to the firm together with interest at the rate referred to in regulation 18.
- (11) A firm cannot apply for a review of, or appeal against, a determination under subregulation (3).

[Regulation 7 amended in Gazette 2 Apr 2004 p. 1109-10.]

8. Levy may be imposed in case of insufficiency of assets

- (1) If the Law Society Council is at any time of the opinion that the assets available for the purposes of the arrangements may be insufficient to meet liabilities under the arrangements, the Law Society Council may impose on each firm a levy payable to the Law Society for the purposes of the arrangements.
- (2) A levy imposed on a firm shall be of such amount as the Law Society Council determines and the Law Society Council may determine different levies according to any relevant matters including those mentioned in regulation 7(4).
- (3) A levy is payable at the time, and in the manner, fixed by the Law Society Council which may, in a special case, allow time for payment.

[Regulation 8 amended in Gazette 2 Apr 2004 p. 1110.]

9. Application for insurance under the arrangements

- (1) In this regulation —
 “**renewal day**” means 15 May or such other day as is fixed by the Law Society Council in respect of a particular year by

notice published in the *Gazette* not later than 15 April in that year.

- (2) Not later than the renewal day in each year, each firm shall make application to take and maintain insurance under the arrangements for —
 - (a) if the firm is a practitioner who practises on his or her own account, the practitioner and all practitioners employed by the firm;
 - (b) if the firm is a partnership —
 - (i) the partners in the firm who are practitioners; and
 - (ii) all practitioners employed by the firm;
 - or
 - (c) if the firm is an incorporated legal practice —
 - (i) all the officers and employees of the firm who are practitioners; and
 - (ii) the firm itself as a corporate entity.
- (3) The application shall be on the form provided by the Law Society and shall be accompanied by —
 - (a) the contribution payable under regulation 7; and
 - (b) the amount of any administration levy fixed by the Law Society Council under regulation 10.
- (4) Any firm that fails to make application under subregulation (2) and payment of the amounts payable under subregulation (3) on or before the renewal day shall pay in addition to those amounts a late lodgment fee being 10% of the total of such amounts, but the Law Society Council in its discretion may waive payment of the late lodgment fee either in whole or in part.
- (5) When an application has been made by a firm under subregulation (2) and all amounts payable under these regulations in relation to the application and in relation to any previous period of insurance have been paid, the Law Society

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shall issue to the firm a certificate of insurance under the arrangements.

[Regulation 9 amended in Gazette 2 Apr 2004 p. 1110.]

10. Administration levy

- (1) The Law Society Council may from time to time, by resolution, fix an administration levy to be paid to the Law Society by a firm or practitioner —
 - (a) applying to take and maintain insurance under the arrangements;
 - (b) applying claiming to be an exempt practitioner; or
 - (c) giving notification under regulation 14.
- (2) For the purposes of subregulation (1)(a) the Law Society Council may fix different administration levies according to the number of practitioners in or employed by a firm and according to whether those practitioners are, or are not, members of the Law Society.
- (3) For the purposes of subregulation (1)(b) and (c) the Law Society Council may fix different administration levies according to whether practitioners are, or are not, members of the Law Society.
- (4) The Law Society Council may impose an additional administration levy on a firm or practitioner if it or he or she has failed to supply information as required under regulation 16.

11. Exempt practitioners

- (1) The following practitioners shall be exempt from the requirement to have in force with respect to them a certificate of insurance under the arrangements and to pay an annual contribution under regulation 7 —
 - (a) barristers who are the holders of a policy of indemnity insurance in a form approved by resolution of the Council of The Western Australian Bar Association

(Inc.) providing indemnity for claims made against them for breach of professional duty arising out of or by reason of any negligent act, error or omission which policy provides cover up to a limit which, in the aggregate, is not less than that provided under a certificate of insurance under the arrangements for the period in respect of which exemption is claimed;

- (b) practitioners who practise as such as employees under a contract of service with an employer that is not a firm and who do not otherwise practise on their own account either alone or in partnership;
- (c) practitioners who practise as such as officers or employees of the State or any department or instrumentality of the State and who do not otherwise practise on their own account either alone or in partnership;
- (d) practitioners who practise as such as employees of —
 - (i) the Legal Aid Commission or the Aboriginal Legal Service; or
 - (ii) any other body or organization providing legal aid in respect of which the Law Society Council has resolved the employees of that body or organization should be entitled to exemption,and who do not otherwise practise on their own account either alone or in partnership;
- [(e) deleted]*
- (f) practitioners who do not engage in any conduct or activity that would result in them being required under section 123 of the Act to be certificated practitioners;
- (g) practitioners who practise as such as partners or employees of a national partnership which —
 - (i) not later than 1 December in any year, gives an undertaking to the Law Society Council that the partnership will take out national insurance, and

provide evidence satisfactory to the Law Society Council that the insurance has been taken out, not later than the renewal day in the following year;

- (ii) complies with the undertaking referred to in subparagraph (i); and
 - (iii) maintains that insurance;
- (h) practitioners who practise as such as legal practitioner directors, officers, or employees, of a national incorporated legal practice which —
- (i) not later than 1 December in any year, gives an undertaking to the Law Society Council that the incorporated legal practice will take out national insurance, and provide evidence satisfactory to the Law Society Council that the insurance has been taken out, not later than the renewal day in the following year;
 - (ii) complies with the undertaking referred to in subparagraph (i); and
 - (iii) maintains that insurance.

(2) In this regulation —

“national incorporated legal practice” means an incorporated legal practice —

- (a) the business of which is primarily conducted in a State or States other than this State; and
- (b) all or the majority of whose directors are based in a State other than this State;

“national insurance” means a policy of insurance —

- (a) that provides the same or a higher minimum level of indemnity as a policy of insurance under the arrangements; and
- (b) the terms of which are —

- (i) broadly equivalent to a policy of insurance under the arrangements; and
- (ii) approved by the Law Society Council as being so;

“national partnership” means a partnership —

- (a) the business of which is primarily conducted in a State or States other than this State; and
- (b) all or the majority of whose partners are based in a State other than this State;

“renewal day” has the meaning given to that term in regulation 9(1).

[Regulation 11 amended in Gazette 2 Apr 2004 p. 1110-11; 10 May 2005 p. 2055-7.]

12. Application for exemption

- (1) A practitioner who claims to be an exempt practitioner under regulation 11 and who is required or wishes to be the holder of an annual practice certificate shall apply to the Law Society not later than 15 May in each year on the form provided by the Law Society setting out the grounds upon which the claim to be exempt is made and shall accompany the application with the amount of any administration levy fixed by the Law Society Council under regulation 10.
- (2) After 15 May in each year the Law Society shall send notice to the Board informing the Board of the practitioners who —
 - (a) have made applications under this regulation since the last previous notice was sent under this subregulation; and
 - (b) are exempt practitioners under regulation 11.
- (3) For the purposes of regulation 6(1) the Board shall be satisfied that a practitioner is an exempt practitioner under regulation 11 if it receives notice to that effect from the Law Society.

13. Application for insurance by new firm etc.

- (1) If—
- (a) a practitioner commences practice on his or her own account;
 - (b) 2 or more practitioners become a partnership;
 - (c) 2 or more firms combine to form a single firm;
 - (d) a firm becomes a multi-disciplinary partnership;
 - (e) a firm becomes an incorporated legal practice; or
 - (f) a firm otherwise changes its business structure,
- the resulting firm must immediately make application to take and maintain insurance under the arrangements.
- (2) The application shall be on the form provided by the Law Society and shall be accompanied by—
- (a) subject to subregulation (3), the annual contribution payable under regulation 7(6); and
 - (b) the amount of any administration levy fixed by the Law Society Council under regulation 10.
- (3) If, immediately before the occurrence of the event referred to in subregulation (1), all of the practitioners, firms and incorporated legal practices involved had valid and current certificates of insurance under the arrangements, the Law Society may reduce or waive the annual contribution payable by the resulting firm under subregulation (2)(a).
- (4) When an application has been made by a firm under subregulation (1) and all amounts payable under these regulations in relation to the application have been paid, the Law Society shall issue to the firm a certificate of insurance under the arrangements.

[Regulation 13 amended in Gazette 2 Apr 2004 p. 1111.]

14. Employee practitioners

Every practitioner who practises as such as an employee under a contract of service with a firm and who does not otherwise practise on his or her own account either alone or in partnership shall notify the Law Society on the form provided by the Law Society of his or her status as such forthwith upon acquiring that status and in any event not later than 15 May in each year and shall accompany the notification with the amount of the administration levy fixed by the Law Society Council under regulation 10.

15. Undertakings may be required

- (1) Every firm or practitioner —
- (a) applying to take and maintain insurance under the arrangements;
 - (b) applying claiming to be an exempt practitioner; or
 - (c) giving notification under regulation 14,

shall provide to the Law Society such undertakings as the Law Society may require with respect to that application or notification.

- (2) A firm or practitioner shall comply with any undertaking given under subregulation (1), unless previously released from that undertaking by the Law Society Council.

16. Supply of information

- (1) The Law Society may require a firm or practitioner to supply the Law Society with any information that it needs for the purposes of performing its functions under these regulations or of administering the arrangements.
- (2) Without limiting subregulation (1) the Law Society may at any time require —
- (a) a firm claiming any matter affecting the assessment of its annual contribution under regulation 7;

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- (b) a practitioner claiming to be or to have been an exempt practitioner; or
- (c) a practitioner or practitioners claiming, for any reason, not to be or to have been a firm,

to set out the facts and circumstances in support of that claim by statutory declaration.

- (3) A requirement under this regulation may specify a time within which the requirement is to be complied with.
- (4) A firm or practitioner shall comply with a requirement under this regulation and, if a time for compliance is specified, shall do so within the specified time.

17. Incorrect information

If the assessment of the annual contribution of a firm is made under regulation 7 on the basis of information supplied by the firm which is found to be incorrect, the firm shall pay to the Law Society any additional amount that would have been payable if the annual contribution had been assessed on the basis of the correct information.

18. Recovery of moneys payable

- (1) The Law Society is entitled to demand payment of any moneys payable under these regulations and to recover them from the person liable to make such payment in any Court of competent jurisdiction.
- (2) Any person liable to make a payment under these regulations shall pay interest on the sum required to be paid at the rate applicable from time to time in respect of a judgment of the Supreme Court of Western Australia from the last date upon which the person could have made the payment in due compliance with these regulations until the date of payment, but the Law Society Council in its discretion may waive payment of that interest either in whole or in part.

19. Repeal

The *Legal Practitioners (Professional Indemnity Insurance) Regulations 1988* are repealed.

20. Transitional

- (1) Despite regulation 19, insurance taken out and maintained in accordance with the arrangements made under the *Legal Practitioners (Professional Indemnity Insurance) Regulations 1988* continues to have effect with respect to any matter or thing occurring before 1 July 1995.
- (2) Without limiting the operation of sections 36 and 37 of the *Interpretation Act 1984*, regulation 19 does not affect the power of the Law Society under regulation 16 of the *Legal Practitioners (Professional Indemnity Insurance) Regulations 1988* to demand payment of, and recover, any moneys payable under those regulations.
- (3) In respect of 1995, the references in regulations 9, 12 and 14 to “15 May” shall be read as references to “31 May”.

Notes

- ¹ This is a compilation of the *Legal Practice (Professional Indemnity Insurance) Regulations 1995* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Citation	Gazettal	Commencement
<i>Legal Practitioners (Professional Indemnity Insurance) Regulations 1995</i> ³	12 May 1995 p. 1781-7	12 May 1995 (see r. 2)
<i>Legal Practice (Professional Indemnity Insurance) Amendment Regulations 2004</i>	2 Apr 2004 p. 1107-11	2 Apr 2004
Reprint 1: The <i>Legal Practice (Professional Indemnity Insurance) Regulations 1995</i> as at 27 Aug 2004 (includes amendments listed above)		
<i>Courts and Legal Practice (Consequential Amendments) Regulations 2005</i> r. 7	19 Apr 2005 p. 1294-302	19 Apr 2005
<i>Legal Practice (Professional Indemnity Insurance) Amendment Regulations 2005</i>	10 May 2005 p. 2053-7	10 May 2005

- ² These regulations were originally made under the *Legal Practitioners Act 1893*. By virtue of the *Interpretation Act 1984* s. 38, these regulations now have effect as if made under the *Legal Practice Act 2003* so far as they are consistent with it.
- ³ Now known as the *Legal Practice (Professional Indemnity Insurance) Regulations 1995*; citation changed (see note under r. 1).