

NORTHERN TERRITORY OF AUSTRALIA

LEGAL PRACTITIONERS (PROFESSIONAL INDEMNITY) REGULATIONS

As in force at 1 October 1982

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 October 1982

LEGAL PRACTITIONERS (PROFESSIONAL INDEMNITY) REGULATIONS

Regulations under the *Legal Practitioners Act*

1 Citation

These Regulations may be cited as the *Legal Practitioners (Professional Indemnity Insurance) Regulations*.

2 Commencement

These Regulations shall come into operation on 1 October 1982.

3 Definitions

In these Regulations, unless the contrary intention appears:

brokers means Baillieu, Bowring, Marsh and McLennan Pty. Ltd..

certificate of insurance means a certificate issued under regulation 6.

former legal practitioner means a person who has ceased (whether before or after the commencement of the Master Policy) by reason of death, retirement or otherwise to practise as a legal practitioner in private practice and who has, or whose successors in business have, at any time been insured under the Master Policy and includes the estate and legal representatives of such a former legal practitioner.

leading underwriter means C.E. Heath Underwriting Agencies Pty. Ltd.

Master Policy means the arrangement between the Law Society and authorized insurers, a copy of which is set out in Schedule 1.

4 Prescribed classes of practitioners

For the purposes of Part IVA of the Act, the prescribed class of legal practitioners and former legal practitioners is all legal practitioners and former legal practitioners except a legal practitioner employed or previously employed on a continuous full

time basis by the Territory, Commonwealth or an authority of either the Territory or Commonwealth.

5 Legal practitioners to insure

- (1) Subject to subregulation (3), a legal practitioner who is a member of a class of legal practitioners prescribed by regulation 4 shall take out, and at all times maintain, with authorized insurers professional indemnity insurance on the terms and conditions specified in and in accordance with the Master Policy.
- (2) In addition to any other penalty imposed under these Regulations, a legal practitioner who fails to comply with subregulation (1) shall pay interest on an amount which he would be required to pay to the authorized insurers if he had duly complied with that subregulation at the rate of 15% per annum on and after the date on which he would have been required to pay that sum until the date of payment of that sum to the authorized insurers unless the Law Society, as it thinks fit, waives the payment of such interest in whole or in part.
- (3) Subregulation (1) does not apply to a legal practitioner or class of legal practitioners for the time being exempted under subregulation (4).
- (4) The Law Society may, with the prior approval of the Attorney-General:
 - (a) exempt from compliance with these Regulations a legal practitioner or person who is a member of a specified class of legal practitioners;
 - (b) grant an exemption referred to in paragraph (a) indefinitely or for a specified period or subject to any other conditions determined by the Society; and
 - (c) revoke an exemption granted by the Society or vary conditions referred to in paragraph (b).

6 Issue of certificate of insurance

- (1) Where the Master Policy is complied with, the authorized insurers, brokers or Law Society shall issue, as soon as is practicable, to a legal practitioner who takes out professional indemnity insurance in pursuance of these Regulations, a certificate of insurance in accordance with Schedule 2.
- (2) Where the Master Policy is complied with, the authorized insurers, brokers or Law Society may issue to every former legal practitioner, who is, on the date of the commencement of such insurance, entitled to be insured under the Master Policy, a certificate of

insurance in accordance with Schedule 2.

7 Arbitration Act not to apply

The *Arbitration Act, 1891* of the State of South Australia shall not apply to or in relation to a submission or agreement to submit to arbitration under or arising out of the Master Policy or a certificate of insurance.

8 Issue of certificate of insurance on reduced premium

- (1) Before a certificate of insurance is issued to a legal practitioner on the basis of a reduced premium, the Law Society or brokers may require the practitioner to make a statutory declaration setting out such facts and circumstances as entitle that practitioner to receive a certificate of insurance at a reduced premium.
- (2) Where a certificate of insurance has been issued to a legal practitioner under clause 3(b) of the Master Policy, the practitioner shall furnish to the Law Society, within 2 months after the expiration of the period of insurance to which such certificate relates, a statutory declaration setting out the gross fee income earned by that practitioner in the period of insurance and that practitioner shall pay to the authorized insurer, brokers or Law Society an additional amount required to ensure that there is paid in relation to the period of insurance a total premium in accordance with the provisions of the Master Policy based on the actual gross fee income for the applicable period of insurance as disclosed in the statutory declaration.

Penalty: \$500.

- (3) Where:
 - (a) during the currency of the Master Policy, a legal practitioner first becomes a member of a class of legal practitioners prescribed by regulation 4 and is not exempt under regulation 5 from taking out and maintaining professional indemnity insurance; or
 - (b) where a legal practitioner who is exempt under regulation 5 from taking out and maintaining professional indemnity insurance ceases to be so exempt,

the legal practitioner shall as soon as practicable take out and maintain with the authorized insurers professional indemnity insurance on the terms and conditions of the Master Policy.

9 Law Society may require information

- (1) The Law Society may, by notice in writing to a legal practitioner, within a period specified in the notice, require him to furnish to the Society such information as it thinks fit to ascertain in any particular circumstances whether an adjustment of premium under regulation 8 is necessary.
- (2) Where a legal practitioner fails to comply with a notice under subregulation (1), the authorized insurer, brokers or Law Society may refuse to renew his certificate of insurance until he has complied with regulation 8.

10 Interest on premium

A legal practitioner who is liable to pay an amount under regulation 8 shall pay interest on such amount at the rate of 15% per annum on and after the due date of payment until the date of payment, unless the Law Society, as it thinks fit, waives the payment of such interest in whole or in part.

11 Offences and penalties

- (1) A person shall not contravene or fail to comply with a provision of these Regulations.
- (2) A person who contravenes or fails to comply with a provision of these Regulations for which a penalty is not provided by a provision of these Regulations other than this regulation, is punishable upon conviction by a fine of \$1,000.

Schedule 1

THE LAW SOCIETY OF THE NORTHERN TERRITORY

PROFESSIONAL INDEMNITY INSURANCE

MASTER POLICY

1. The Insurers agree with The Law Society of the Northern Territory on behalf of all Legal Practitioners (hereinafter referred to as **Solicitors**) from time to time required to be insured and on behalf of former Solicitors, to provide such Insurance in accordance herewith and in the terms of the Certificate attached hereto. Subject as hereinafter appears in respect of former Solicitors such Certificate will be issued to each Firm or Sole Practitioner which has paid the premium prescribed in Clauses 2 and 3 hereof.
2. This Policy commences on the 1st day of February 1982 providing a Sum Insured of \$500,000 each claim and shall be extended on the 30th day of September 1982 and the 1st day of July 1984 for a further 12 months period.
3. (a) In respect of the twelve months period of insurance commencing on the 30th day of September 1982 the annual premium payable will be \$700 per Solicitor or pro-rata of that annual premium for periods less than twelve months.

(b) For low fee income earning Sole Practitioners the premium will be calculated in accordance with the following scale and will be subject to adjustment based on actual gross fee income for the relevant period of Insurance.

Estimated Gross Fee Income	Premium
\$ 0	-\$ 2,00020%) of the
\$ 2,001	-\$ 5,00040%) relevant
\$ 5,001	-\$10,00060%) annual
\$10,001	-\$15,00080%) premium
\$15,001	-\$20,00090%)

- (c) Where each solicitor of a firm of practitioners or a practising company as defined in the *Legal Practitioners (Incorporation) Act 1974* is insured by the Master Policy the said firm of practitioners or practising company shall on application be

issued with Certificate of Insurance without payment of premium.

4. All claims and notices required to be given by the Assured under the terms of the Certificate attached hereto shall be notified to The Law Society of the Northern Territory which claims and notices will be received on behalf of the Insurers. Claims will be handled in accordance with the following procedure:
- (a) All reasonable assistance and advice as to the Assured's position and professional duty will be given forthwith to the Assured, The Law Society of the Northern Territory having the Insurers' authority in emergency situations to take such immediate steps on the Assured's behalf as The Law Society of the Northern Territory may deem necessary.
 - (b) As soon as practicable brief details (in a form to be agreed with the Leading Underwriters) shall be reported to the Leading Underwriters and further reports will be submitted as and when required by the Insurers.
 - (c) A Claims Committee shall be established to consider and advise on claims and shall be comprised of a representative of the Insurers and other persons agreed between The Law Society of the Northern Territory and the Insurers.
 - (d) The Law Society of the Northern Territory and the Insurers shall establish rules of procedure and conduct as may be necessary for the operation of the Claims Committee.
 - (e) A Panel of Solicitors to conduct the defence of claims will be nominated by the Insurers subject in each case to the approval of The Council of The Law Society of the Northern Territory.
 - (f) In handling claims and potential claims against the Assured and subject to such disclosure as may be necessary to the Insurers or as required by them in accordance with the terms of this Policy and the attached Certificates shall be under a duty of confidence to the Assured and in particular neither the Brokers nor the Claims Committee or any Company handling such claims nor the Insurers shall disclose information about any individual or firm to the Society without his or its consent.
5. (a) A former Solicitor is a person who has ceased by reason of death, retirement or otherwise to practise as a principal in private practice and who has at any time been insured hereunder or whose successors in business have at any time been insured hereunder and includes the estate and legal representatives of such persons.

- (b) A former Solicitor shall be entitled to be indemnified by the Insurers in respect of any claim or claims first made against him during the currency of this Policy, as if a Certificate in the terms attached hereto had been issued to him or his firm hereunder and as if there were specified in the Schedule to such Certificate (i) as the Period of Insurance the period during which this Policy shall be in force and (ii) as the Sum Insured the sum applicable under Clause 2 hereof.
 - (c) In respect of such former Solicitors certificates need not be issued and no premium shall be payable.
- 6. In any proceedings, the liability for which is subject of a claim under this Policy, brought against any Solicitor referred to in Clause 1 hereof, the Insurers agree that should such proceedings necessitate intervention by The Law Society of the Northern Territory or its nominee, The Law Society of the Northern Territory or its nominee shall for the purpose of the proceedings be deemed to be the Assured referred to in the Certificate of Insurance.
- 7. Authority is hereby given by the Insurers to the Brokers and/or the Council of The Law Society of the Northern Territory to issue on behalf of the Insurers Certificates of Insurance in accordance with this Master Policy to Sole Practitioners, Firms and Companies required to be insured in accordance with the *Legal Practitioners (Incorporation) Act 1974* referred to in Clause 1 hereto.

The Insurers agree that if during the currency of a Certificate a Company, Firm or Sole Practitioner changes its name the Schedule of the said Certificate shall be deemed to be amended to substitute a new name(s) for the former name(s).
- 8. Expressions used in the Policy have the meanings given to them by the Certificate attached hereto.
- 9. Subject to a premium adjustment to be determined by the Leading Underwriters the terms of General Exclusions 5(a)(i) and (ii) of the Certificate issued hereunder may be varied by endorsement.
- 10. Profit Commission

It is agreed that Underwriters will allow The Law Society of the Northern Territory profit commission calculated at 15% of profit up to 15% of the gross premium income, and 25% of all profit exceeding 15% of the gross premium income, of the net ascertained profit to underwriters under this Master Policy for the period 1st day of February 1982 to 30th day of September 1983.

The formula for arriving at the net ascertained profit will be as follows:

- | | | |
|-----|--------|---|
| (a) | Income | Gross premium income less brokerage and Australian income tax where applicable. |
| | | LESS |
| (b) | Outgo | (i) Total paid claims including Underwriters costs and expenses paid in relation to claims.

(ii) Estimates for outstanding claims including costs and expenses relating to outstanding income.

(iii) Underwriters expenses calculated at 7.50% of income as described in (a) above. |

An interim profit commission calculation shall be first made and paid (if applicable) on figures compiled at 30th day of June, 1986 for the period 1st day of February, 1982, to 30th day of September, 1983 and shall be adjusted annually thereafter on the figures applicable to the formula at 30th day of June each year for each subsequent year of account, taking into account any deficit from previous years. Subsequently, adjustments will be made at each anniversary until the underwriting account for the entire period stated above is closed.

11. Jurisdiction and Service of Suit

The Insurers agree that:

- (a) In the event of a dispute arising under this Policy between The Law Society of the Northern Territory and the Insurers, the Insurers at the request of The Law Society of the Northern Territory will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- (b) Any summons, notice or process to be served upon the Insurers may be served upon C.E. Heath Underwriting Agencies Pty. Ltd., who has authority to accept service and to enter an appearance on Insurers' behalf, and who is directed at the request of The Law Society of the Northern Territory to give a written undertaking to The Law Society of the Northern Territory that he will enter an appearance on the Insurers'

behalf.

- (c) If suit is instituted against any one of the Insurers, all Insurers will abide by the final decision of any competent Court or any competent appellate Court in the Commonwealth of Australia.

Schedule 2

THE LAW SOCIETY OF THE NORTHERN TERRITORY

CERTIFICATE OF INSURANCE

This is to certify that in accordance with the authorization granted to the undersigned under the Master Policy referred to in the Schedule by the Insurers subscribing such Master Policy (hereinafter called **the Insurers**) insurance is granted by the Insurers in accordance with terms and conditions following, and in consideration of the payment of the premium stated in the Schedule.

1. Interpretation

(a) **The Practitioner** means the legally qualified Practitioner named as such in the Schedule.

(b) **The Assured** means:

- (i) the Practitioner, the Firm and each Partner thereof or the Sole Practitioner or the Company and each legally qualified Director of the Company as the case may be shown in the Schedule;
- (ii) each person employed in connection with the practice (including each articulated clerk);
- (iii) the estate and/or the legal representatives of each of the foregoing;
- (iv) each service or administration company or trust in so far as its activities are carried out in connection with the practice;

to the extent that each of the foregoing shall be severally insured hereunder.

(c) **the Practice** means the business of practising as a legal practitioner, including the acceptance of obligations as Trustee, Executor, Attorney-under-Power, Tax Agent, or Company Director, undertaken by the Assured or the Assured's predecessors in business alone or with others, provided always that wherever any fees or other income accrue therefrom they inure to the benefit of the Firm, the Company or the Employer, and provided that practice does not include practice by the Assured in the course of or in connection with or in relation to the Assured's employment under a contract of service by an employer not being a legal

practitioner or a practising Company as defined in the *Legal Practitioners (Incorporation) Act 1974* in private practice or held out by the public to be practising the profession of the law.

- (d) **the Period of Insurance** means the period specified in the Schedule.
- (e) **the Firm** means the firm as from time to time constituted in which the Practitioner is practising, **the Company** means the incorporated practice as from time to time constituted in which the Practitioner is practising.

Wherever the words **the Firm** or **Partner** or **Partners** appear in the wording of this Certificate they are respectively understood to mean where applicable **the Company** or **Director** or **Directors**; the words **employee** or **employees** are understood to mean where applicable employee or employees other than Directors of **the Company**.

- (f) **Partner** means any legal practitioner held out by the Firm as a partner in the Firm.
- (g) **The Relevant Date** means the date when a claim the subject of the Insuring Clauses hereof is first made against the Assured or the date, if earlier, when circumstances which may give rise thereto first came to the notice of the Assured.
- (h) **Related Costs** means all costs and expenses incurred with the Insurers' consent (such consent not to be unreasonably withheld) in the defence or settlement of any claim against the Assured provided that if a payment in excess of the Sum Insured is made to dispose of any such claim the **Related Costs** shall mean only such proportion of such costs and expenses so incurred as the Sum Insured bears to the amount of the payment so made.
- (i) **Sole Practitioner** means a practice consisting of not more than one practitioner.
- (j) **Sum Insured** means the sum insured shown in the Schedule.

2. Insuring Clauses

On the terms and conditions herein contained the Insurers shall indemnify the Assured up to an amount not exceeding the Sum Insured and Related Costs against all loss to the Assured (including claimants' costs) whensoever occurring arising from any claim or claims first made against the Assured during the Period of Insurance in respect of any description of civil liability whatsoever

incurred in connection with the Practice other than loss arising out of any circumstances or occurrence which has been notified under any other insurance attaching prior to the inception of this Certificate.

Provided that:

- (a) For the purposes hereof all claims arising from the same act or omission, whether made against one or more Assured, shall be regarded as one claim;
- (b) The liability of the Insurers under this Certificate and all other Certificates issued under the Master Policy in respect of all claims arising from the same act or omission shall not exceed the Sum Insured and Related Costs.

3. Special Conditions

- (a) Subject to General Condition (g) the Insurers will not seek to avoid, repudiate or rescind this Insurance upon any ground whatsoever, including in particular non-disclosure or misrepresentation.
- (b) Where the Assured's breach of or non-compliance with any condition of this insurance has resulted in substantial prejudice to the handling or settlement of any claim against the Assured in respect of which the Assured is insured hereunder the Assured shall reimburse to the Insurers the difference between the sum payable by the Insurers in respect of that claim and the sum which would have been payable in the absence of such prejudice. Provided always that it shall be a condition precedent to the right of the Insurers to seek such reimbursement that they shall have fully indemnified the Assured in accordance with the terms hereof.

4. General Conditions

- (a) The Assured shall give notice in writing to the Insurers as soon as practicable of any claim the subject of the Insuring Clauses hereof made during the Period of Insurance against the Assured or of the receipt of notice from any person of any intention to make a claim against the Assured. The Assured shall also give notice in writing to the Insurers of any circumstances of which the Assured shall become aware during the Period of Insurance which may give rise to such a claim. If a notice is given to the Insurers under this paragraph any claim subsequently made (whether before or after the expiration of the Period of Insurance) pursuant to such any intention to claim or arising from circumstances so notified

shall be deemed to have been made at the date when such notice was given.

- (b) Notices to the Insurers to be given hereunder shall be deemed to be properly made if given to Baillieu, Bowring, Marsh & McLennan Pty. Ltd., 3 Whitfield Street, Darwin.
- (c)
 - (i) The Assured shall not admit liability for, or settle, any claim falling within the Insuring Clauses hereof or incur any costs or expenses in connection therewith without the consent of the Insurers (such consent not to be unreasonably withheld), and subject to (ii) below the Insurers shall be entitled at their own expense at any time to take over the conduct in the name of the Assured of the defence or settlement of any such claim.
 - (ii) The Assured and the Insurers shall not be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed upon by the Assured and the Insurers or failing agreement to be appointed by the President of The Law Society of the Northern Territory for the time being) shall advise that such proceedings should be contested.
- (d) Upon request, the Assured shall give all such information and assistance as the Insurers may reasonably require.
- (e) The Insurers waive any rights of subrogation against any employee of the Assured save where those rights arise in connection with a dishonest or criminal act by that employee.
- (f) Save as provided in General Condition (c)(ii) above any dispute or disagreement between the Assured and the Insurers arising out of or in connection with this insurance shall at the request of either of them be referred to the sole arbitrament of a person to be appointed (failing agreement between them) by the President of The Law Society of the Northern Territory for the time being whose decision shall be final and binding upon both parties.
- (g) If the Assured shall prefer any claim hereunder knowing the same to be false or fraudulent as regards amount or otherwise this insurance shall become void only in respect of such fraudulent claim or that fraudulent part of an otherwise valid claim.

5. General Exclusions

A. This insurance shall not indemnify the Assured in respect of that first part of any one claim (hereinafter called **the deductible**) calculated in the manner following:

- (a) (i) This insurance shall not indemnify a Sole Practitioner in respect of the first \$2,000 or where a Practitioner is a member of a Firm or Company at the Relevant Date the sum of \$1,500 multiplied by the number of Partners in the Firm or Company at the Relevant Date.
- (ii) This insurance shall not indemnify the Firm or the Company in respect of the sum of \$1,500 multiplied by the number of Partners in the Firm or the Company at the Relevant Date.
- (iii) Notwithstanding (i) or (ii) above when two or more Practitioners who are liable to be the claimant are in practice but there is no one Firm or Company in which all of them are members at the Relevant Date this insurance shall not indemnify them in respect of the sum of \$1,500 multiplied by the number of Practitioners liable at the Relevant Date.
- (iv) A former Solicitor shall not be indemnified by the Insurers in respect of the first \$2,000 of any one claim where the former Solicitor was in practice as a Sole Practitioner at the time that the liability giving rise to the claim was incurred, or \$1,500 of any one claim where the former Solicitor was in practice as a partner at the time that the liability giving rise to the claim was incurred.
- (b) Provided that the deductible so calculated shall not exceed the first \$10,000 of any one claim.

B. This insurance shall not indemnify the Assured in respect of any loss arising out of any claim;

- (i) for death, bodily injury, physical loss or physical damage to property of any kind whatsoever (other than property in the care, custody and control of the Assured in connection with the Practice for which they are responsible, not being property occupied or used by the Assured for the purposes of the Practice);
- (ii) for the payment of a trading debt incurred by the Assured;

- (iii) brought about by the dishonesty or fraudulent act or omission of the Assured. Save that this exclusion shall not apply for liability arising out of any claim brought about by the dishonesty or fraudulent act or omission of any person employed in connection with the practice (other than a Director) including any articulated clerk;
- (iv) directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, the radioactive toxic explosive or other hazardous properties of any nuclear assembly or nuclear component thereof; directly occasioned by pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds, or from war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, insurrection, military or usurped power;
- (v) in respect of any liability incurred in connection with a practice which is conducted wholly outside the Northern Territory of Australia.

6. Jurisdiction and Service of Suit

Notwithstanding anything contained in General Conditions 4(f) above Insurers agree that:

- (a) In the event of a dispute arising under this insurance the Insurers at the request of the Assured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- (b) Any summons notice or process to be served upon the Insurers may be served upon Baillieu, Bowring, Marsh & McLennan Pty. Ltd. of Darwin who has authority to accept service and to have entered an appearance on Insurers' behalf, and who is directed at the request of the Assured to give a written undertaking to the Assured that he will enter an appearance on Insurers' behalf.
- (c) If suit is instituted against any one of the Insurers, all Insurers will abide by the final decision of any competent Court or any competent appellate Court in the Commonwealth of Australia.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = *Gazette*
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

Legal Practitioners (Professional Indemnity Insurance) Regulations (SL No. 55, 1982)

Notified	30 September 1982
Commenced	1 October 1982 (r 1)