LEGAL PRACTITIONERS' LIABILITY COMMITTEE

2021–22 INSURANCE RENEWAL INFORMATION

for law practices with gross fee income up to $25m

Please read carefully before completing your insurance renewal

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FOR INSURANCE RENEWAL ENQUIRIES CONTACT
renewals@lplc.com.au

1. Cover

LPLC continues to provide cover of $2m per loss (inclusive of defence costs), with unlimited reinstatements and free run-off cover for former practitioners.

For information about the availability of top-up insurance beyond LPLC's cover, see section 12.

2. Gross fee income premium assessment

Change for law practices with gross fee income of less than $2m

For the 2021–22 insurance renewal there is an important change in the method of premium assessment for law practices whose gross fee income (GFI) is less than $2m.

Whereas last year premiums for these practices were calculated by a fixed rate per principal and employee practitioner ('headcount method'), this year LPLC has moved to an assessment method using the law practice's GFI as the primary rating factor.

Other law practices with gross fee income above $2m have already moved to this method of premium assessment in recent years as part of a phased implementation by LPLC, and this year now completes that transition to GFI assessment for all law practices.

Why has LPLC changed to GFI assessment?

GFI assessment produces a fairer allocation of premiums across the pool of insured practices because of the clearer correlation between GFI and claims costs, than between practitioner headcount and claims costs.

It is also a more contemporary method of premium assessment, in that the business structure used by a law practice (e.g. partnerships, incorporated legal practices, part-time law practice, practice engaging contract lawyers or flexi-lawyers) does not impact the insurance premium payable for that practice.

GFI rating is a widely used proxy for risk within the insurance industry and is the assessment method adopted by other interstate legal profession insurers.

What is GFI and how does GFI assessment work?

GFI refers to fees rendered by the law practice. It does not include disbursements or GST.

Base premiums are calculated as a percentage of a law practice's GFI for a specified financial year.

For 2021–22 insurance premiums, the specified financial year is:

- For <u>established</u> law practices – the financial year ending 30 June 2020.

  Past GFI is used for established law practices as it is a known figure and provides a reasonable proxy for risk exposure to claims in the upcoming year.

- For <u>newer</u> law practices (i.e. those which commenced after 1 July 2019) – estimated GFI for the financial year ending 30 June 2022.

  Estimated GFI is used for newer practices and will be reconciled against their actual GFI at the conclusion of the 2021–22 insurance year, and adjusted if there is a significant variation in GFI.

Transitional impact of move to GFI

In the initial transition from headcount assessment to GFI assessment, many law practices will experience significant premium changes – some premiums are increasing and some are decreasing.

LPLC manages these transitional impacts by using caps (for increases) and collars (for decreases) to limit base premium movements to no more than 30% of base premiums paid by the law practice in the previous insurance year under the headcount method.

Once the transition is achieved, variability in a law practice's premium from year to year will reflect movement in that law practice's GFI, rather than changes in practitioner headcount.

How does changing the assessment method affect LPLC's aggregate premium pool?

The aggregate premium pool LPLC will collect from the law practices transitioning to GFI assessment in 2021–22 is estimated to be 2% higher than last year under the headcount method.

This is based on the GFI declarations LPLC has received from law practices and solely represents an adjustment in the premium pool for natural claims inflation.

It is important to note that LPLC operates as a statutory mutual fund, and premiums to law practices are already significantly reduced via the premium subsidy LPLC provides from accumulated capital reserves and investment earnings.

In 2021–22 this premium subsidy is approximately 20% of the required premium pool.

3. Premium rates for 2021–22

3.1 Law practices with assessed GFI under $100,000

Base premiums for law practices with assessed GFI of less than $100,000 are in accordance with Table 1 below:

Table 1 – Premium rates for firms with assessed GFI under $100,000

Assessed FY20 GFI	Base premium	Premium (including stamp duty and GST)
Nil	$161	$194.81
$1 to $19,999	$271	$327.91
$20,000 to $39,999	$643	$778.03
$40,000 to $59,999	$1,229	$1,487.09
$60,000 to $79,999	$2,022	$2,446.62
$80,000 to $99,999	$3,022	$3,656.62

3.2 Law practices with assessed GFI of $100,000 or more

Base premium rates are calculated as a percentage of a law practice's GFI and provide a smooth progression of premiums as GFI increases.

These rates are determined on advice from LPLC's actuary and reflect the claims experience of law practices insured by LPLC for particular GFI ranges.

For illustrative purposes, some example premiums are shown in Table 2.

Table 2 – Example premium rates for law practices with assessed GFI of $100,000 or more

Assessed GFI (examples)	Rate	Base premium	Premium including stamp duty and GST
$100,000	3.27%	$3,435	$4,156.82
$200,000	2.69%	$5,518	$6,677.15
$350,000	2.08%	$7,401	$8,954.89
$500,000	1.78%	$8,984	$10,870.35
$1,000,000	1.31%	$13,152	$15,913.70
$1,500,000	1.08%	$16,272	$19,688.94

3.3 New law practices commencing on and after 1 July 2021

Base premiums for new law practices commencing after 1 July 2021 are calculated in accordance with their estimated GFI for the financial year ended 30 June 2022.

Premiums will be in accordance with section 3.1 or section 3.2 above according to the estimated GFI.

4. Payment details

Your practice's insurance renewal with LPLC must be completed before practising certificates will be issued by the Victorian Legal Services Board to principals and employee practitioners.

Please complete and submit your online renewal and select your payment option by Monday, 31 May 2021.

There are a variety of payment options.

Credit card or BPAY

Online payment can be made by credit card or BPAY.

Premium funding

We also accept payment by premium funding.

To make a payment by premium funding, complete your renewal online, select premium funding in the payment section and follow the prompts.

For more information about premium funding payments see section 5.

5. Premium funding - instalment payment option

The premium can also be paid by instalments if you enter into arrangements with a premium funder. The premium funder will pay the full premium to LPLC and you will then pay the funder in instalments. Interest is payable to the funder.

You can download a premium funding application form once you get to LPLC's online payment section, or go directly to different premium funder websites via links on the payment screen.

Premium funding applications for a 12-month period must be made directly to the premium funder (not to LPLC) by no later than 3 May 2021, to enable the funder to process your application in a timely manner.

6. Concessional premiums

Concessional premium rates are offered to law practices that conduct their legal practice exclusively in one or more of the following areas:

- criminal advocates
- legal costs consultants
- mediators
- arbitrators with express statutory immunity
- matters in the Children's Court of Victoria

These concessional rates are not available to law practices who are subject to a claims loading (see section 10) arising from prior claims experience.

Concessional premium rates have previously been assessed at a fixed rate per principal and employee practitioner, but in 2021–22 have also been moved to GFI assessment.

The method of assessment is the same as for non-concessional law practices (see sections 3.1, 3.2 and 3.3 above), but at a substantial discount from the full premium rate. This reflects the lower risk for these law practices.

Because concessional premiums are much lower than the full premium rate, caps and collars in the transition from headcount assessment to GFI assessment do not apply to concessional premiums.

Concessional premium rates for established law practices conducting legal practice exclusively in these specified practices areas are in accordance with Table 3 below.

Table 3 – Concessional premium rates

Assessed FY20 GFI	Base premium (per law practice)	Premium (including stamp duty and GST)
Nil	$161	$194.81
$1 to $99,999	$275	$332.75
$100,000 or more	7.5% of the full premium rate, calculated as per section 3.2.	

Concessional premium rates for newer law practices (i.e. those commencing after 1 July 2019) which conduct legal practice exclusively in these specified practices areas are also in accordance with Table 3, but based on estimated GFI for the financial year ended 30 June 2022 (FY22).

7. Refunds and upgrades

Because GFI-based assessment is calculated in accordance with actual GFI for a prior period there is no need for any refund or upgrade of premiums during the year.

Where premiums are calculated in accordance with estimated GFI, refunds and upgrades are only undertaken when estimated FY22 GFI differs from actual FY22 GFI by:

(a) 20% or more; and
(b) $50,000 or more

Any required final adjustment of premiums based on estimated FY22 GFI will be made following receipt by LPLC of the law practice's declaration of actual FY22 GFI.

8. New locum practitioners

Those intending to commence legal practice in 2021–22 as a locum solicitor need to hold a principal's practising certificate.

Premium rates are calculated in accordance with section 3.3.

9. Excesses

The standard policy excess is specified in the certificate of insurance issued to each law practice, in accordance with the second column in Table 4.

The excess is exclusive of defence costs and is calculated with reference to the law practice's GFI for the year ended 30 June 2020.

Table 4 – Specified excesses

Law practice gross fee income	Standard Excess	Excess (for higher claims frequency law practices)
$0 - $99,999	$2,000	$7,500
$100,000 - $499,999	$5,000	$7,500
$500,000 - $999,999	$7,500	$11,250
$1,000,000 - $1,999,999	$10,000	$15,000
$2,000,000 - $2,999,999	$15,000	$22,500
$3,000,000 - $4,999,999	$20,000	$30,000
$5,000,000 - $9,999,999	$25,000	$37,500
$10,000,000 - $19,999,999	$40,000	$60,000
$20,000,000 - $34,999,999	$60,000	$80,000 (inclusive of costs)
$35,000,000 - $49,999,999	$80,000	$115,000 (inclusive of costs)

10. Risk rating – claims loadings

Law practices may be subject to a claims loading on the premium based on their claims experience.

The calculation of loadings has not changed for 2021–22 and is explained below.

Calculation of loss ratio

An individual loss ratio (expressed as a percentage) will continue to be calculated for each law practice by dividing the practice's incurred claims[1] over the past five completed insurance years, with the net premium paid by the law practice in the same period or $125,000 (whichever is the greater).

Calculation of claims loading

A claims loading of 1% of the base premium applies once a law practice's loss ratio exceeds 125%. The loading rises by 1% for each 5% increase in loss ratio.

There is a maximum claims loading of either 20%, 40% or 80% of the base premium – the maximum percentage depends upon the GFI of the law practice and number of claims incurred in the five-year period as explained below. This ensures that practices with more claims frequency are potentially subject to higher loadings.

Maximum loadings for law practices with gross fee income up to $3m

- if one claim in the five-year period – maximum loading is 20%
- if more than one claim in the five-year period (higher claims frequency) – maximum loading is 80%

Maximum loadings for law practices with gross fee income between $3m - $25m

- if one claim in the five-year period – maximum loading is 20%
- if two claims in the five-year period – maximum loading is 40%
- if three or more claims in the five-year period (higher claims frequency) – maximum loading is 80%

Increased excess for law practices with higher claims frequency and high loss ratio

Law practices with higher claims frequency and a loss ratio above 175% are also subject to a higher frequency excess for any claims in the forthcoming insurance year.

The higher frequency excess will be in accordance with the third column in Table 4.

Note, claims where LPLC has made no payment and holds no reserve, are excluded from the calculation of claims frequency for risk rating purposes.

11. Changes to LPLC's insurance policy wording for 2021–22

Solicitors (defence costs exclusive excess) policy wording

The policy wording for 2021–22 has been approved by the Victorian Legal Services Board and a copy is available for viewing and downloading from the renewal portal and/or the LPLC website.

[1] Incurred claims include payments made by LPLC for settlement and defence costs on finalised matters and outstanding reserves on unresolved claims.
Estimates on notifications are excluded from the calculation, as are amounts paid where the law practice was exonerated or defence costs only were incurred.
The value of any single claim is also capped in the calculation at not more than $1.25m to give a better balance between claim frequency and claim size risk drivers.
Claims of 'prior practices' merged into the practice are also included in the calculation.

There are two amendments to the policy wording for 2021–22.

1. <u>Costs orders against practitioners</u>

There is an amendment to the deterrent excess (clause 5.4) and indemnity-back (clause 15) which were previously limited to costs orders made against an Insured as a non-party to a proceeding.

Practitioners are increasingly being joined under the *Civil Procedure Act* 2010 as a party to proceedings for the making of costs orders arising from breaches of overarching obligations in litigation, and LPLC believes they should attract the same policy response as other similar types of applications under other legislation or the Court's inherent jurisdiction where an order is made against an Insured as a non-party.

The amendment therefore extends the operation of clause 5.4 and clause 15 to costs orders made against an Insured, whether as a party or as a non-party to a proceeding.

2. <u>Clarification of defence costs for reported circumstances</u>

The definition of 'defence costs' (in clause 28) is amended to clarify the cover provided for payment of defence costs of reported circumstances, as opposed to defence costs for claims. A reported circumstance is an incident, occurrence, fact or matter notified to LPLC that may give rise to a claim in the future.

A new sub-paragraph (d) is inserted into the definition dealing expressly with defence costs for reported circumstances, and leaves sub-paragraphs (a), (b) and (c) dealing with defence costs for claims.

The amendment clarifies that the defence costs payable for reported circumstances, is limited to costs reasonably and necessarily incurred with LPLC's consent to avoid a reported circumstance subsequently becoming a claim, or for reducing any such subsequent claim. This is the way LPLC has previously administered the policy, but the amendment more clearly expresses this policy intent.

12. Top-up insurance

All law practices should consider whether the nature of their work might expose them to potential claims beyond the $2m (inclusive of defence costs) limit of cover available under LPLC's policy.

For top-up insurance in excess of the LPLC compulsory primary professional indemnity insurance of $2m per claim, you should make enquiries through a broker of your choice in the commercial market.

Marsh Insurance Brokers provide a top-up policy with wording drafted specifically to sit over LPLC's wording. For more information go to https://www.marsh.com/au/services/financial-professional-liability/professional-indemnity-top-up-insurance.html

13. Law Institute of Victoria Professional Standards Scheme

LPLC does not administer the Law Institute of Victoria Professional Standards Scheme (PSS), but this year we are asking law practices to indicate (via a question on the insurance renewal portal) whether all practitioners engaged in the law practice will be a member of the PSS for the 2021–22 insurance year.

We are collecting this information to assist with managing any claims that might be made during the year, and to improve data capture to help the LIV with its reporting obligations under the Professional Standards Act.

Any enquiries in relation to membership and operation of the LIV's Professional Standards Scheme should be directed to the Law Institute of Victoria, or via the PSS information accessible on the LIV website.

14. Cyber insurance

Cyber incidents are a growing threat to law practices.

LPLC's professional indemnity policy covers claims made by clients against the law practice for compensation or damages arising from a cyber incident, but it does not cover the practice for its own costs to investigate a cyber incident, remediate its own IT systems or cover losses due to business interruption, loss of profits, regulatory fines, penalties or ransom payments.

A range of cyber insurance options are available in the commercial market, including one from Marsh/Chubb which has been designed for law practices whose professional indemnity insurance is with LPLC, and whose policy wording sits neatly with LPLC's PI policy. For more information go to https://www.marsh.com/au/industries/solicitors/cyber-insurance-solutions-for-victorian-legal-practitioners.html.

15. Further enquiries

For all further queries about insurance premiums or insurance renewal please contact us via renewals@lplc.com.au and we will respond promptly.

Legal Practitioners' Liability Committee
April 2021

LEGAL PRACTITIONERS' LIABILITY COMMITTEE

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