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2019/20 Professional Indemnity Insurance (PII) Proposal Form Important Notes

For the attention of the person responsible for professional indemnity insurance

Lawcover Insurance Pty Limited (Lawcover) is pleased to be the insurer of your professional indemnity insurance (PII). The proposal form or online application requests information for underwriting purposes from your law practice. The information will be used by us to calculate your primary PII premium and to quote to you a premium for Top Up insurance.

If you do not provide this information, we will not be able to provide you with a quotation for primary PII or Top Up insurance.

Your primary PII policy provides you with a limit of indemnity of \$2 million for each claim, including claimant's costs and defence costs.

We recommend that you review your limit of indemnity each year to ensure it provides your law practice with adequate protection.

It is prudent to consider purchasing Top Up insurance from Lawcover to protect you against under-insurance should a claim exceed the \$2 million limit of the primary PII policy.

Your PII premium will be based on a combination of (actual and estimated) Gross Fee Income (GFI), the risk profile of your law practice and, for most law practices, a choice of excess. In some cases, based on prior years' experience, we may determine that a law practice has under-estimated its GFI. In those cases, we will contact the law practice.

Please ensure that your proposal form or online application is fully completed and submitted to Lawcover by the due date.

Important Notes

Note 1: Prior Practices

You may need to declare a prior practice in question 4 of the proposal form or online application, or supply information about a prior practice's Gross Fee Income (GFI) in question 5, or its claims history in question 13.

Under clauses 38 & 39 of the 2019/20 professional indemnity insurance (PII) policy, Lawcover has the right to determine that your law practice is the successor to a law practice that has ceased.

When making our determination, we may have regard to factors such as your law practice:

- Holding itself out as the successor of another law practice or as incorporating it where:
 - The holding out can be express or implied
 - The holding out can be contained in notepaper, business cards, form of electronic communications, publications, promotional material or otherwise, or can be contained in any statement or declaration you make to any regulatory or taxation authority
- Employing, or taking on as principals (including legal practitioner directors) all or a majority of the principals (including legal practitioner directors) of another law practice
- Employing a majority of the employees previously employed by another law practice
- Acquiring the goodwill, the assets, or the majority of client files of another law practice, or assuming its liabilities
- Adopting the name formerly used by another law practice, or a name which substantially incorporates the name
- Carrying on business from the premises of another law practice

Please note that you should not declare a prior practice in question 4 if that practice will remain open.

If you are uncertain about whether your law practice has a prior practice, please contact a member of Lawcover's Insurance Services team on [1800 650 748](tel:1800650748).

It is important that you tell us if your law practice merges with or acquires another law practice during the period of insurance.

Note 2: Meaning of Gross Fee Income - What you Need to Disclose

Your Gross Fee Income (GFI) is the total fees received or receivable by the law practice or by you (if you are a sole practitioner or independent contractor).

It includes:

- All fees received or receivable by the law practice or you which have been earned from the provision of legal services by partners or legal practitioner directors and employees* of the law practice or by you and
- Internal costs and disbursements charged to clients (for example, photocopying, postage/couriers)

It excludes:

- All payments received by the law practice or you for third party disbursements** or fees for services rendered by independent contractors*** to the law practice (whether or not those persons are providing legal or other services to the law practice)
- All payments received by the law practice or you which are earned from an area of practice where you have a statutory immunity from suit under legislation in force in Australia
- All fees that remain unpaid by your client for more than 18 months
- Any GST or other taxes that the law practice collects and
- All fees generated by an interstate or overseas office that arranges its primary PII through an insurance provider other than Lawcover

Note 2: Meaning of Gross Fee Income - What you Need to Disclose *Continued.*

If you, or the law practice, do not generate any income from legal practice, you must indicate this by entering “0” in the relevant boxes.

- * **Employees** include legally qualified personnel, paralegals, articled clerks, special counsel, secondees, locums, office and clerical staff employed by the law practice or a service entity of the law practice. However, some consultants may be considered to be independent contractors — see *** below.
- ** **Third party disbursements** means amounts paid or payable by you to a third party for goods or services obtained for the benefit of a client, such as barrister’s fees, medical report fees, experts’ fees, court filing fees, mediators’ fees, search fees and investigators’ fees. They do not include amounts paid or payable for goods or services obtained for the benefit of the law practice, such as referral fees.
- *** **An independent contractor** is a person who is not a principal or employee of the law practice or you, but who is engaged to provide certain services to you or your clients, and can include barristers, surveyors, auditors, accountants and investigators. Independent contractors are not covered by your law practice’s PII policy and are responsible for making their own insurance arrangements. If you require confirmation as to whether someone is an independent contractor for the purposes of stating your Gross Fee Income, visit Lawcover’s Insurance menu at lawcover.com.au and complete the information required in the Consultant Checklist, then contact a member of Lawcover’s Insurance Services team who will provide you with confirmation.

Validation of Gross Fee Income

Lawcover may ask you to provide financial evidence, at the law practice’s own cost, to verify the Gross Fee Income information provided on your proposal form or online application.

Financial evidence may include any one or more of the following:

- Verified detailed profit & loss statements
- Balance sheets
- Cash flow statements
- Other statements prepared by an accountant
- Statutory declarations

Additional Premium

Lawcover may determine that the law practice has under-estimated its Gross Fee Income. In this event, Lawcover will contact the law practice and advise the revised Gross Fee Income on which Lawcover will base its premium. An additional premium may then be charged.

In-house and other special law practices

In-house law practices and other practices that do not charge their clients fees for the legal services they provide should not declare nil fees as this does not accurately reflect the risk profile of the law practice.

Such law practices should provide Lawcover with an estimate of fees that would have been earned if the practice did not provide free legal services, but instead charged an hourly rate.

Law practices receiving government grants or charitable donations as well as, or instead of, fees charged to clients, should also declare these amounts to Lawcover.

Note 3: Gross Fee Income by Office Location

In order for Lawcover to apply the correct stamp duty to your premium, you must provide us with the percentage of fees that your NSW, interstate and overseas offices generate*.

If your law practice does not generate any fee income and you declare that your law practice is based solely in NSW in question 6(a), you should declare 100% NSW in question 8(a).

Stamp duty calculations differ between states and Lawcover will calculate this for your law practice based upon the percentage of fees generated by each of your law practice’s offices.

Note 3: Gross Fee Income by Office Location *Continued.*

If you do not generate fees from interstate or overseas offices, your Gross Fee Income will be 100% in NSW.

* You should not include any fees generated by an interstate or overseas office that arranges its primary PII through an insurance provider other than Lawcover.

If your law practice generates fees from an office overseas (outside Australia), you must provide us with the percentage of your total Gross Fee Income generated from the practice of Australian law and the percentage of fees generated from the practice of non-Australian law.

Note 4: Criminal Law Practice Premium Discounts

You do not need to read this note if your law practice does not practice in the area of criminal law

Law practices specialising in criminal law may be entitled to a premium discount provided that 100% of their 2018/19 Gross Fee Income (GFI), as declared, will be derived from:

- Matters which, if litigated, would be litigated in the criminal jurisdiction of any court
- Appellate work that flows from such litigation
- Any other advice or litigation that directly flows from such litigation or
- Matters which are the subject of Commissions of Inquiry which may result in a recommendation for criminal prosecution

New law practices that did not earn fees in 2018/19 are not entitled to a criminal law discount in 2019/20.

Note 5: Risk Management Premium Discounts

Australian & International Risk Management Certifications

For the year commencing 1 July 2019, Lawcover will provide a premium discount for law practices if the law practice is certified to the Australian Standard LAW 9000 – Legal Best Practice or ISO 9001 – Quality Management Systems.

Certification will only be recognised where it is current for the full insurance year, being 1 July 2019 to 30 June 2020, and attained by 30 June 2019 for all offices of the law practice.

You should only answer YES to question 10 of the proposal form or online application if your law practice is certified to the LAW 9000 – Legal Best Practice or ISO 9001 – Quality Management Systems. Please attach your **current** certificate to your proposal form or online application.

Lawcover Risk Management Education Program (RMEP)

If by 30 June 2019, all principals of a law practice have successfully completed at least three Principals Workshops and any required Maintenance Events within the last three policy years, a 7.5% discount may be applied to the law practice's 2019/20 PII premium.

If by 30 June 2019, all principals of a law practice have successfully completed all five Principals Workshops and any required Maintenance Events within the last three policy years, a 10% discount may be applied to the law practice's 2019/20 PII premium.

Lawcover will determine from its own records whether all current principals or legal practitioner directors of your law practice have completed the necessary Lawcover Risk Management Education Program workshops or events in order to qualify for a discount. You do not need to confirm this on your proposal form or online application.

For full details of Lawcover's Risk Management Education Program, please visit Lawcover's Practice Support Services menu at lawcover.com.au or contact a member of Lawcover's Practice Support Services team on (02) 9286 8877 to discuss your law practice's requirements for eligibility.

Please note that risk management premium discounts are **NOT** cumulative. The maximum risk management premium discount achievable for any law practice is 12.5%.

Note 6: Claims History

When answering question 13 of the proposal form or online application, please complete the information on behalf of your law practice, its principals or legal practitioner directors, former principals or legal practitioner directors and any prior practices.

If your law practice or a prior practice has, at any time, arranged its professional indemnity insurance (PII) through a provider other than Lawcover, you must contact that PII provider or their authorised claims handling agent and ask them for a **current** copy of your law practice's claims experience record. This record should include confirmation that you have not notified any claims, should this be the case. You must attach a copy of your law practice's **current** claims experience record to your proposal form or online application.

Note 7: Top Up Insurance

Duty of Disclosure — Top Up Insurance

Before you enter into a contract for Top Up insurance, you have a duty, under the *Insurance Contracts Act 1984* (C'th), to disclose to Lawcover every matter that you know, or could reasonably be expected to know, is relevant to Lawcover's decision whether to accept the risk of the insurance and, if so, on what terms.

You have the same duty to disclose those matters to Lawcover before you renew, extend, vary or reinstate a contract for Top Up insurance.

Your duty, however, does not require disclosure of a matter:

- That diminishes the risk to be undertaken by Lawcover
- That is of common knowledge
- That Lawcover knows or, in the ordinary course of its business, ought to know, or
- As to which compliance with your duty is waived by Lawcover

Non-Disclosure

If you fail to comply with your duty of disclosure, Lawcover may be entitled to reduce its liability under the contract of insurance in respect of a claim or may cancel the contract.

If your non-disclosure is fraudulent, Lawcover may also have the option of avoiding the contract from its beginning.

For More Information

To assist you in understanding the information we require, detailed information is available on our website at lawcover.com.au. Alternatively, you can contact a member of Lawcover's Insurance Services team on **1800 650 748** if you are unsure about what information is required.