

Master Policy

**Queensland Law Society Incorporated
Solicitors Professional Indemnity Insurance
Master Policy
2006–2007**

- 1 The Insurer agrees with the Queensland Law Society Incorporated (hereinafter and in the attached Certificate called “the law society”) on behalf of all solicitors and former practitioners who may from time to time be required by the *Legal Profession Act 2004* and the *Queensland Law Society Indemnity Rule 2005* to be insured to provide such insurance in accordance with the terms of the Certificate of Insurance attached hereto. Subject as hereinafter appears in respect of former practitioners, such Certificates of Insurance shall be issued to solicitors on receipt by the law society of payment of the appropriate insurance levy and any claims paid loading or penalty levy.
- 2 This Policy commences on 1 July 2006 and shall expire on 30 June 2007. There shall be no cancellation hereof or of any Certificate of Insurance prior to the said expiry date.
- 3 The annual premium payable hereunder shall be as agreed.
- 4 The Sum Insured hereunder shall be \$1,500,000 each claim (inclusive of Related Costs) subject to the amount of the applicable Deductible as stated in the Certificate of Insurance.
- 5 All claims and notices required to be given by the Assured under the terms of the Certificate of Insurance attached hereto shall be notified to the Insurer.
- 6 In respect of former practitioners (which expression in this Policy and in the Certificate of Insurance attached hereto shall include practitioners who have ceased by reason of death, retirement or otherwise, to practise in Queensland as principals in private practice, and their personal representatives) Certificates of Insurance need not be issued and no premium shall be payable. A former practitioner who has at any time been insured hereunder or under any preceding Master Policy (or whose successors in business have at any time been insured thereunder) shall be entitled to be indemnified by the Insurer in respect of any claim or claims first made against him or her during the currency of this Policy, and arising out of the former practitioner’s practice as a principal in Queensland (limited to the period or periods during which the former practitioner was insured under any preceding Master Policy) as if a Certificate of Insurance in the terms attached hereto had been issued to him or her hereunder and as if there were specified therein:
 - (a) as the Period of Insurance the period during which this Policy shall be in force, and
 - (b) as the Sum Insured the amount stated in Clause 4 thereof.
- 7 Authority is hereby given by the Insurer to the Society to issue on behalf of the Insurer to practitioners seeking insurance in accordance with Clause 1 hereof Certificates of Insurance in the form attached hereto.
- 8 Expressions used in this Policy have the meanings given to them by the Certificate of Insurance attached hereto.
- 9 For the payment of an additional premium to be determined by the Insurer the terms of any Certificates of Insurance issued hereunder may be extended by endorsement.

- 10 Where a Certificate of Insurance is inadvertently not issued or the appropriate levy has not been paid, it is agreed that cover will apply as if a Certificate of Insurance had been issued and the appropriate levy had been paid, subject to the Society agreeing that whenever it becomes aware of any such situation, it shall be responsible for the payment of the appropriate levy back to the inception of coverage as required by the *Queensland Law Society Indemnity Rule 2005*.
- 11 The Insurer agrees that:
- (a) In the event of a dispute arising under this Insurance, the Insurer, 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 Insurer may be served upon Lexon Insurance Pte Ltd, level 18, CPA Centre, 307 Queen Street, Brisbane.
 - (c) If a suit is instituted against the Insurer, it will abide by the final decision of any competent Court or any competent appellate Court in the Commonwealth of Australia.

Certificate of Insurance

**Solicitors Professional Indemnity Insurance
Certificate of Insurance
Arranged for the Members of the Queensland Law Society Incorporated
2006–2007**

This is to certify that in accordance with the authorisation granted to the undersigned under the Master Policy referred to in the Schedule by the Insurer subscribing such Master Policy (hereinafter called “the Insurer”) Insurance is granted by the Insurer in accordance with the terms and conditions following, and in consideration of the payment of the premium contribution stated in the Schedule.

1 Interpretation

- (a) Unless otherwise provided, expressions used in this Certificate have the same meaning as in the *Legal Profession Act 2004*;
- (b) “the Assured” means the legal practitioner referred to in the Schedule. The expression includes:
 - (i) any person who is employed in connection with the Practice and who is not a principal of the Practice;
 - (ii) any solicitor who is a consultant to the Practice;
 - (iii) the estate and/or the legal representatives of any person insured under this Certificate;
 - (iv) each service or administration company or trust insofar as its activities are carried out in connection with the Practice;
 - (v) an incorporated legal practice of which the legal practitioner referred to in the Schedule is a legal practitioner director.
- (c) “the Practice” means the legal practice engaged in by the Assured at any time. The activities of the Practice to which this Certificate applies include:
 - (i) acting as trustee, executor, attorney under power, tax agent, company director, secretary, public officer or public notary;
 - (ii) any activity declared by the council to be appropriate to be undertaken by a solicitor as part of engaging in legal practice, which declaration shall be binding on the Insurer,

provided that any fees or other income which accrue from any activities described above inure to the benefit of the Practice at the time of receipt thereof;but the activities of the Practice to which this Certificate does not apply include:
 - (iii) 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 solicitor in private practice or incorporated legal practice, except where the Assured is required to advise or act for a co-employee in matters relating to the private property or affairs of the co-employee;
 - (iv) any activity declared by the council to be inappropriate to be undertaken as part of a legal practice, which declaration shall be binding upon the Assured.
- (d) “the Period of Insurance” means the period specified in the Schedule.

- (e) "Partner" means any principal of the Practice or person held out by the Assured as a principal of the Practice and in the case of a multi-disciplinary partnership, means any partner or person held out as a partner in the Practice.
- (f) "Related Costs" means all costs and expenses incurred:
 - (i) by the Assured with the Insurer's consent (such consent not to be unreasonably withheld); or
 - (ii) by the Insurer for the purpose of avoiding or mitigating any claim; or
 - (iii) by the Insurer, in the investigation, defence or settlement of any claim or circumstances which may give rise to a claim against or notified by the Assured.
- (g) "Sum Insured" means the sum insured shown in the Schedule reduced by Related Costs.
- (h) "Deductible" means the amount payable by the Assured in respect of each claim including claimant's costs and Related Costs.
- (i) The term "client's mortgage loan" means a loan which has been arranged or introduced to the claimant or otherwise promoted by the Assured.
- (j) The term "Fidelity Guarantee Fund" means the Legal Practitioners Fidelity Guarantee Fund referred to in s147 of the *Legal Practitioners Act 2004*.

2 Insuring clauses

On the terms and conditions herein contained the Insurer shall indemnify the Assured up to an amount not exceeding the Sum Insured against all loss to the Assured (including Related Costs incurred by the Assured and claimant's 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.

Provided that for the purposes hereof:

- (a) all claims against all insured parties arising from:
 - (i) one act or omission; or
 - (ii) one series of related acts or omissions; or
 - (iii) the same or similar act or omission in a series of related matters or transactions; or
 - (iv) an act or omission of the same or substantially the same character repeated in more than one matter or transaction
 will be regarded as one claim;
- (b) all claims against all insured parties arising from one matter, transaction or retainer will be regarded as one claim;
- (c) the term "insured parties" includes any party insured under this Certificate of Insurance and all other Certificates of Insurance issued under the Master Policy or any other master policy arranged by the law society at any time.

Provided further that where the Practice is an incorporated legal practice or a multi-disciplinary partnership, the Assured shall be indemnified only against loss arising exclusively from the provision of legal services and shall not be indemnified against loss arising from the provision of advice or other services which consist of or include non-legal advice or services.

The Insurer's maximum liability for a claim under this Certificate of Insurance and all other Certificates of Insurance issued under the Master Policy or any other Master Policy arranged by the Law Society at any time, shall be \$1.5M reduced by Related Costs.

3 Special conditions

- (a) Subject to General Condition (c) the Insurer will not:
 - (i) seek to avoid, repudiate or rescind this insurance upon any ground whatsoever, including in particular nondisclosure or misrepresentation; or
 - (ii) reject or reduce the quantum of any claim because of any nondisclosure or misrepresentation.
- (b) Where the Assured's breach of or noncompliance with any condition of this Certificate of Insurance or of any other Certificate of Insurance issued under the Master Policy or any other master policy arranged by the law society at any time has resulted in substantial prejudice to the investigation, defence or settlement of any claim against the Assured in respect of which the Assured is insured hereunder, the Assured shall reimburse the Insurer the sum by which the sum payable by any person other than the Assured has been increased. Provided always that it shall be a condition precedent of this right of reimbursement that the Assured shall have been indemnified to the extent of the Assured's entitlement under any such policy in accordance with the terms hereof.
- (c) Where a claim is made against the Assured (whether or not the Assured has notified the Insurer of the claim) the Insurer may by notice in writing to the Assured require the Assured within the period specified in the notice, being a period of not less than fourteen (14) days, to notify the Insurer whether or not the Assured elects to claim indemnity under the Certificate of Insurance. In the event that the Assured notifies the Insurer of its election to claim indemnity, the Assured shall not thereafter be entitled to withdraw that claim for indemnity without the consent of the Insurer. In the event that the Assured does not notify the Insurer of its election to claim indemnity, the Assured shall not thereafter be entitled to indemnity in respect of the claim. Provided, however, that the Insurer may, in its absolute discretion, indemnify the Assured either wholly or in part in respect of such claim.

4 General conditions

- (a)
 - (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 Insurer (such consent not to be unreasonably withheld), and subject to (a)(iv) below the Insurer shall be entitled at its own expense at any time to take over the conduct in the name of the Assured of the investigation, defence or settlement of any such claim or circumstances which may give rise to claim.
 - (ii) Subject to General Condition (a)(iv) below if the Assured shall unreasonably refuse to consent to or accept any proposed settlement or recommendation made by the Insurer; the Insurer's liability to indemnify the Assured shall be limited to the amount for which the claim could have been settled plus the costs and expenses incurred up to the date of such refusal.
 - (iii) Subject to General Condition (a)(iv) below if the Assured shall unreasonably refuse to consent to or accept any recommendation made by the Insurer to continue any legal proceedings, the Insurer's liability to indemnify the Assured shall be limited to the amount which but for the unreasonable refusal would have been incurred.
 - (iv) Neither the Assured nor the Insurer shall be required to contest any legal proceedings if a determination is made by the senior solicitor selected pursuant to the Indemnity Rules 2005 that the claim should be settled.

- (v) Upon request the Assured shall give all such information and assistance as the Insurer may reasonably require.
 - (vi) Where the Insurer has elected to take over the conduct in the name of the Assured of the investigation, defence or settlement of any claim or circumstances which may give rise to a claim falling within the Insuring Clause the Assured hereby authorises the Insurer on his or her behalf to enter into such agreements as the Insurer thinks fit with respect to the costs payable for the conduct of the investigation, defence or settlement of the claim or circumstances which may give rise to a claim.
- (b) The Assured shall give notice in writing to the Insurer as soon as is practicable of any claim the subject of the Insuring Clause hereof made during the Period of Insurance against the Assured. The Assured shall also give notice in writing as soon as is practicable to the Insurer of any circumstances of which the Assured is or shall become aware during the Period of Insurance which may give rise to a claim. If the Assured shall give notice to the Insurer during the Period of Insurance of circumstances which may give rise to claim, then any claim subsequently made arising from the circumstances so notified shall be deemed to have been made during the Period of Insurance.
- (c) If a claim is made hereunder which is fraudulent, the Insurer may refuse payment of the claim but where part only of the claim is fraudulent, the Insurer shall not refuse payment in respect of that part of the claim which is not fraudulent.

5 General exclusions

- (a) Subject to General Exclusion (b) this insurance shall be subject to a Deductible of \$15,000 for each claim including claimant's costs and Related Costs. The Assured must pay the Deductible to the Insurer in relation to any claim immediately upon demand by the Insurer, at any time after the Insurer has incurred a liability for a payment in respect of the claim or Related Costs.
- (b) If and when:
- (i) the aggregate of the amounts paid or due and payable by the Insurer for each claim under the Master Policy, plus
 - (ii) the aggregate of the Deductibles paid by the Assured or the Insurer in respect of those claims,
- reaches \$50 million, the Insurer will be subject to no further liability pursuant to this Certificate of Insurance. An amount is due and payable by the Insurer for a claim only when the Insurer is notified of a specific amount payable by it under the terms of this insurance.
- (c) This insurance shall not indemnify the Assured in respect of any liability:
- (i) for damages arising from 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 the Assured is responsible, not being property occupied or used by the Assured for the purposes of the Practice);
 - (ii) arising from a contract other than a contract to provide services within the definition of "The Practice";
 - (iii) in respect of a claim for:
 - (A) a refund of any fee or disbursement charged by the Assured to the client;
 - (B) damages calculated by reference to any fee or disbursement charged by the Assured to the client;

- (C) payment of costs relating to a dispute about fees or disbursements;
- (iv) for the payment of any trading debt incurred by any person within the definition of the Assured, notwithstanding that each such Assured is severally insured;
- (v) directly or indirectly brought about by the dishonest or fraudulent act or omission of the Assured (including any person within that expression as defined in clause 1(b)(i) hereof) or a Partner or former Partner of the Assured;

Where the liability arises from a transaction in which the Assured:

- (A) acted for the purchaser of real property;
- (B) received an introduction to, or referral of, the purchaser, as a client or prospective client, from:
 - (1) the vendor of the property;
 - (2) any person acting for the vendor, including as its agent in respect of, or as a marketer of, the property; or
 - (3) any person acting for the said agent or marketer (together "the Vendor and its Agents"); and
- (C) failed to inform the purchaser of facts, which:
 - (1) were within the Assured's knowledge, as a consequence of the Assured's relationship with, or connection to, the Vendor and its Agents; and
 - (2) the Assured knew, or ought reasonably to have known, would have been material to the purchaser's decision whether to enter upon, or proceed with, the purchase

the Assured shall bear the onus of proving that such failure was neither dishonest nor fraudulent;

- (vi) directly or indirectly caused by or contributed to by, or arising from ionising radiation or contamination by radioactivity 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 explosive 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, revolution, insurrection, military or usurped power;
- (vii) incurred in connection with a Practice conducted exclusively outside the State of Queensland;
- (viii) arising from a client's mortgage loan in which the Assured acted for the client who makes or contributes to the loan, whether directly or through another entity; provided, however, that this exclusion shall not apply to a liability arising solely from a failure by the Assured to attend to the drawing and/or execution and/or registration of any security documentation;
- (ix) to pay exemplary, aggravated or punitive damages;
- (x) arising from an act or omission on the part of a third party to whom the Assured has subcontracted the performance of the whole or part of the legal work which the Assured has undertaken to provide and the performance of which by the third party breaches s24 of the *Legal Profession Act*;
- (xi) arising from an Assured providing a financial service in respect of which the Assured was required to be licensed or authorised under Chapter 7 of the *Corporations Act 2001 (Cth)*.

This exclusion (c) shall also extend to:

- (a) any liability to pay costs to any person; and
- (b) any costs incurred by the Assured,

in connection with any claim for a liability which is hereby excluded.

6 Jurisdiction and service of suit

Notwithstanding anything contained in General Condition (c) above the Insurer agrees that:

- (a) In the event of a dispute arising under this Insurance, the Insurer 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 with the law and practice applicable in such Court.
- (b) Any summons notice or process to be served upon the Insurer may be served upon Lexon Insurance Pte Ltd of level 18 CPA Centre, 307 Queen Street, Brisbane.
- (c) If a suit is instituted against the Insurer, it will abide by the final decision of any competent Court in the Commonwealth of Australia.