

MEMORANDUM

TO: All ordinary members of the Western Australian Bar
FROM: Martin Cuerden SC, President
DATE: 13 May 2021
RE: **Professional Indemnity Insurance and
Renewal of Practising Certificates for 2021-2022**

Bar Council's approval of professional indemnity insurance policies

Regulation 97(1)(a) of the *Legal Profession Regulations 2009* (WA) (the Regulations) provides that a barrister who is covered by a policy of professional indemnity insurance that:

- (i) is in a form approved by resolution of the Council of The Western Australian Bar Association (Inc); and
- (ii) provides cover up to a limit which, in the aggregate, is not less than that provided under a certificate of insurance under the PII arrangement for the period in respect of which exemption is claimed

is exempt from the requirements to comply with reg 96(a) and (b) thereof.

The minimum limit of indemnity required by reg 97(1)(a)(ii) is \$2 million each claim inclusive of claimant's costs.

This year, Bar Council has considered the following 4 policies of professional indemnity insurance which have been provided for consideration:

- AAI Limited trading as Suncorp '*Professional Indemnity Insurance Policy for Barristers 2021-2022*' (**the Suncorp Policy**)
- Arch Underwriting at Lloyd's (Australia) Pty Ltd acting on behalf of Arch Syndicate 2012 at Lloyd's '*Western Australian Barristers Approved Indemnity Insurance with Optional Public Liability Extension*' offered through Marsh Pty Ltd (**the Arch Underwriting Policy**)
- Berkley Insurance Australia '*Barristers Professional Indemnity Policy Wording – PIUS WA BAR 21_22*' offered through Pacific Indemnity Underwriting Solutions Pty Ltd (**the Berkley Policy**)
- Insurance Australia Limited trading as CGU Insurance '*CGU Barristers Civil Liability Professional Insurance Policy*' offered through AON (**the CGU Policy**).

Each policy was assessed for compliance with the Regulations, *The Western Australian Bar Association Professional Standards Scheme* (**the Scheme**) and compared against the standards to be applied by Bar Council under the *Professional Standards Act 1997* (WA).

Further, as it is expected the *Legal Profession Uniform Law* will come into effect in Western Australia this financial year, the policies were also assessed for compliance with the *Legal Profession Uniform General Rules 2015*.

Subject to what is said below, Bar Council considered that each policy complies with the requirements of each of the above.

Each of the Suncorp Policy, the Arch Underwriting Policy and the Berkley Policy will be issued with a minimum limit of indemnity of \$2 million inclusive of claimant's costs (exclusive of defence costs).

The CGU Policy is offered with a minimum limit of indemnity of \$1.5 million (which does **not** comply with reg 97(1)(a)(ii) or the Scheme).

Both the Suncorp Policy and the Arch Underwriting Policy expressly extend cover to barristers acting as arbitrators and mediators (see clause 8.3 of the Suncorp Policy and clause 3.1(n) of the Arch Underwriting Policy).

Neither the Berkley Policy nor the CGU Policy expressly provide that cover extends to work as an arbitrator or mediator.

Pacific Indemnity Underwriting Solutions Pty Ltd have confirmed in writing that this is included in the cover provided by the Berkley Policy. However, AON have confirmed in writing that if a member wishes to act as a mediator or arbitrator, they will need to note it on the Proposal form for the CGU Policy.

Accordingly, Bar Council has resolved, pursuant to reg 97(1)(a)(i), to:

1. unconditionally approve each of the Suncorp Policy, the Arch Underwriting Policy and the Berkley Policy; and
2. approve the CGU Policy on the following conditions:
 - (1) a member takes out cover with a minimum limit of indemnity of \$2 million inclusive of claimant's costs; and
 - (2) if a member wishes to act as an arbitrator or mediator, they note that intention on the Proposal form and take out any necessary cover.

Members may also take out cover through the Law Mutual Professional Indemnity Insurance arrangements.

Bar Council approves but does not give advice as to policies

Please note that Bar Council approves policies of professional indemnity insurance, but does not give any advice or make any recommendations as to their commercial terms. Bar Council is unable to provide recommendations or any advice as to the merits of the policies

It is the responsibility of each member to satisfy themselves as to the content of the approved policies, the terms and conditions, and the premium applicable to them. All inquiries about the policies, including premium information, should be directed to the relevant broker/insurer.

Insurance providers' details

Set out below are the contact details for each insurance provider:

- **AAI Limited** (Suncorp)
Suncorp Professional Risks
GPO Box 3999
SYDNEY NSW 2001
Phone: 1300 308 950
Email: sunprorisk@suncorp.com.au
- **Arch Underwriting at Lloyd's (Australia) Pty Ltd** (through Marsh Pty Ltd)
Ms Leanne Hodgins
Principal FPP Affinity
Marsh Pty Ltd
Level 13, 111 Eagle Street
BRISBANE QLD 4000
Phone: (07) 3115 4584
Email: Leanne.Hodgins@marsh.com
- **Berkley Insurance Australia** (through Pacific Indemnity Underwriting Solutions Pty Ltd)
Mr Brett Piggott
Willis Temby Insurance Brokers Pty Ltd
PO Box 20
MT LAWLEY WA 6929
Phone: (08) 9227 8233
Email: brettp@willistemby.com.au
- **CGU Insurance Australia Limited** (through AON Risk Solutions Ltd)
Mr William Phanthana
Client Executive
Affinity | Professions
Aon
130 George Street
PARRAMATTA NSW 2124
Phone: (02) 8623 4198
Email: william.phanthana1@aon.com

Importance of the minimum limit of indemnity of \$2 million

The minimum limit of indemnity of \$2 million inclusive of claimant's costs (exclusive of defence costs) is the minimum required to comply with both reg 97(1)(a)(ii) and the Scheme. (Although the Scheme limits liability for 'damages' to \$2 million, 'damages' is defined to include legal costs and expenses ordered to be paid in connection with an award of damages, so that a minimum limit of indemnity of \$2 million inclusive of claimant's costs is compliant).

It should be noted that a member who did not have a minimum limit of indemnity of \$2 million would not only be non-compliant with reg 97(1)(a)(ii) and the Scheme, but by reason of their non-compliance with the Scheme would no longer have the protection of its limitation of liability to \$2 million inclusive of claimant's costs.

Consideration of limit of indemnity greater than \$2 million

All members are advised to carefully consider their own position and whether they wish to take out insurance with a limit of indemnity greater than \$2 million, so as to hold more than the minimum level of cover.

One particular issue which members should consider is that the Scheme commenced on 1 July 2014. Each of the approved policies is a claims-made policy. Accordingly, if a claim relates to conduct prior to 1 July 2014, the member concerned may not have the protection of the limitation of liability under the Scheme in respect of that claim.

Consideration of other insurance

Members should also carefully consider whether they wish to take out other insurance including indemnity insurance such public liability insurance.

Renewal of Practising Certificates

Under rule 5 of the *Legal Profession Rules 2009* the **standard renewal period is from 1 May to 31 May.**

Applications for renewal of a practising certificate made after 31 May 2021 will attract late fees.

The Legal Practice Board has issued a Notice on Fees in relation to payment of fees for the 2021-2022 renewal period.

Notification Requirements

In order to ensure there is no delay in the issue of practising certificates, the insurers/brokers have been requested, upon providing professional indemnity insurance cover to a member of The WA Bar, to notify each of the following **by email**:

1. the barrister concerned;
2. the WA Bar (ExecutiveOfficer@wabar.asn.au)
3. the Legal Practice Board (general@lpbwa.com)

To facilitate this process it is essential that you include your email address in your application for professional indemnity insurance.