

# Exemptions to hold or be covered by an approved insurance policy

Provisions required for Legal Profession Uniform Law (WA)

The *Legal Profession Uniform Law (Uniform Law)* requires legal practitioners to hold or be covered by an approved professional indemnity insurance policy for WA before they engage in legal practice in WA unless exempted.

Under Part 7 of the *Legal Profession Uniform Law Application Act 2022 (WA) (Application Act)* a professional indemnity insurance policy is an approved insurance policy if it is:

- provided under a PII arrangement entered into by the Law Society of Western Australia (**Law Society**);
- a Western Australia Bar Association approved policy or scheme policy;
- approved by the Attorney General in accordance with section 155 of the Application Act; or
- a scheme approved under local regulations.

Section 215 of the Uniform Law and r 82 *Legal Profession Uniform General Rules (Uniform General Rules)* provide categories of exemptions from the requirement to hold or be covered by an approved insurance policy.

From 1 July 2022, being the date of commencement of the Uniform Law, a practitioner's application for an exemption to hold or be covered by an approved insurance policy is made directly to and be determined by the Legal Practice Board (**Board**). The Law Society will no longer have a role in an exemption application. There are no transitional provisions.

Under the Uniform Law, the following categories of legal practitioners can apply to the Board for an exemption to hold or be covered by an approved insurance policy by submitting the approved form:

1. Practising at a multi-state law practice with permanent offices and principals in WA and ONLY ONE other Australian jurisdiction (s 215(2) of the Uniform Law, modified by ss 173(1) and 174 of the Application Act).
2. Practising at a multi-state law practice with permanent offices and principals in WA and AT LEAST TWO other Australian jurisdictions (s 215(3) of the Uniform Law, modified by s 173(2) and 174 of the Application Act).
3. Practising at an incorporated legal practice with permanent offices in WA and ONLY ONE other Australian jurisdiction (s 215(4) of the Uniform Law).
4. Practising at an incorporated legal practice with permanent offices in WA and AT LEAST TWO other Australian jurisdictions (s 215(5) of the Uniform Law).
5. Practising as a corporate (in-house) legal practitioner (r 82(1)(a) of the Uniform General Rules).
6. Practising as a government legal practitioner (r 82(1)(a) of the Uniform General Rules).
7. A holder of a statutory office (r 82(1)(b) of the Uniform General Rules).
8. A person holding an office or position, or acting as, parliamentary counsel, legislative counsel or legislative drafter with the Crown (r 82(1)(c) of the Uniform General Rules).

A legal practitioner who is exempted under one of the above categories will however be required to hold or be covered by an approved insurance policy in the event (and to the extent) they engage in legal practice as a volunteer.

Under s 215(6) of the Uniform Law, the following categories of legal practitioners can also apply to the Board, in the approved form, for an exemption to hold or be covered by an approved insurance policy:

1. Legal practice engaged in by a practitioner in the course of the practitioner's duties as an employee of an individual or body (**entity**), other than an incorporated legal practice, if:
  - (a) the only legal services provided by the practitioner in the course of those duties are to members or employees of the entity; and
  - (b) the entity is covered by professional indemnity insurance approved by the Board for the period in respect of which the exemption is claimed.
2. Legal practice engaged in by a practitioner in the course of the practitioner's duties as an employee of or volunteer in a community legal service that is covered by professional indemnity insurance approved by the Board for the period in respect of which the exemption is claimed. (*Aboriginal Legal Service of Western Australia Limited is a 'community legal service' for the purposes of the Uniform Law*).
3. A legal practitioner employed by Legal Aid WA.
4. Legal practice engaged in by a practitioner that would not result in the practitioner being required under section 10 of the Uniform Law to be an Australian legal practitioner.
5. Legal practice engaged in by a practitioner who:
  - (a) holds a local practising certificate with a condition imposed that the holder only engages in the provision of legal services on a not-for-profit basis and does not charge any person nor seek to recover a fee from any person, except for any fee arrangements that are specified in that condition; and
  - (b) holds or is covered by professional indemnity insurance issued in accordance with the National Pro Bono Resource Centre's professional indemnity insurance arrangement; and
  - (c) does not otherwise engage in legal practice in this jurisdiction.
6. An Australian legal practitioner is exempt from any requirement under these regulations to be covered by professional indemnity insurance during a period in which the practitioner does not engage in legal practice in this jurisdiction.

Under section 177 of the Application Act a practitioner must notify the Board when an exemption no longer applies.

It is expected that the Board will charge a fee for exemption applications. The fee will be determined based on cost recovery principles and reviewed at regular intervals. Notice of the fee amount will be provided to the legal profession prior to the commencement of the Uniform Law.