

POLICY – APPLICATIONS FOR EXEMPTION FROM PROFESSIONAL INDEMNITY INSURANCE REQUIREMENTS

Section 3.5.2 of the *Legal Profession Act 2004* (“the Act”) requires all law practices to obtain professional indemnity insurance with the Liability Committee, before commencing legal practice in Victoria, and to maintain that insurance at all times while engaged in legal practice in Victoria. It provides:

- (1) *Before commencing to engage in legal practice in this jurisdiction, a law practice must obtain professional indemnity insurance.*
- (2) *At all times while a law practice is engaged in legal practice in this jurisdiction, the law practice must maintain professional indemnity insurance.*
- (3) *The insurance must cover civil liability of—*
 - (a) *the law practice; and*
 - (b) *each person who is or was a principal or an employee of the law practice—*
in connection with the practice's legal practice and administration of trusts in this jurisdiction.
- (4) *The insurance must be with the Liability Committee unless the law practice is a barrister.*
- (5) *A barrister may choose to apply for insurance with the Liability Committee and that Committee may provide, or refuse to provide, the insurance.*
- (6) *If the insurance for a barrister is not with the Liability Committee, the insurance must be on terms and conditions approved by the Legal Services Board.*
- (7) *The Victorian Bar Council may, on or before 28 February 2005, resolve that all barristers are to insure with the Liability Committee and, if the Victorian Bar Council so resolves, the insurance for a barrister must be with that Committee despite sub-section (4).*
- (8) *This section does not apply to the extent that the Legal Services Board exempts the law practice from compliance under section 3.5.7.*

The term “law practice” is defined in s 1.2.1 of the Act to mean:

- (a) *an Australian legal practitioner who is a sole practitioner; or*
- (b) *a law firm; or*
- (c) *a multi-disciplinary partnership; or*
- (d) *an incorporated legal practice; or*
- (e) *a community legal centre;*

The Victorian Bar Council, pursuant to s 3.5.2(7) resolved on 16 December 2004 that, from the year commencing 1 July 2005, all local legal practitioners practising as barristers in Victoria, must also obtain and maintain their professional indemnity insurance with the Liability Committee.

Section 3.5.7 of the Act provides that the Legal Services Board may exempt law practices, or classes of law practices, from the requirement to hold professional indemnity insurance in certain circumstances. It also sets out circumstances in which the Legal Services Board must exempt law practices from the requirement. Section 3.5.7 provides, as relevant:

- (1) *The Legal Services Board may exempt law practices or community legal centres, or classes of law practices or community legal centres, from the requirement to obtain or maintain professional indemnity insurance or to obtain or maintain that insurance with the Liability Committee.*
- (2) *The Legal Services Board may exempt a law practice or class of law practice from the requirement to obtain or maintain professional indemnity insurance with the Liability*

Committee if the Legal Services Board is satisfied that the practice, or each practice that is a member of the class—

- (a) does not have an office located in this jurisdiction; or*
- (b) has an office located in this jurisdiction but no principal of the practice whose home jurisdiction is this jurisdiction engages in legal practice at that office.*

(3) The Legal Services Board must exempt a law practice from the requirement to obtain or maintain professional indemnity insurance with the Liability Committee if the Legal Services Board is satisfied that—

- (a) the practice has an office located in another jurisdiction; and*
- (b) a principal of the practice whose home jurisdiction is that other jurisdiction engages in legal practice at that office; and*
- (c) the practice has professional indemnity insurance in accordance with the requirements of a corresponding law in that other jurisdiction; and*
- (d) the insurance referred to in paragraph (c) covers civil liability of the practice and each person who is or was a principal or an employee of the practice in connection with the legal practice of, and administration of trusts by, the practice in this jurisdiction.*

Policy

1. The Legal Services Board has exempted the following class of law practices from the requirement to obtain or maintain professional indemnity insurance or the requirement to obtain or maintain professional indemnity insurance with the legal practitioners' liability committee ("the liability committee"):
 - (a) Australian legal practitioners who are sole practitioners and who:
 - (i) practice solely overseas as employees; and
 - (ii) do not engage in the practice of Australian law.
2. Where a law practice does not fit within the class above, an application for exemption must be made.
3. In circumstances other than an application made in reliance on s 3.5.7(3) of the Act, the Legal Services Board will consider:
 - (i) whether the requirement to obtain or maintain professional indemnity insurance, or to obtain or maintain professional indemnity insurance with the liability committee, in accordance with the Act is oppressive; and
 - (ii) whether the requirement to obtain or maintain professional indemnity insurance, or to obtain or maintain professional indemnity insurance with the liability committee, in accordance with the Act, is not necessary to give proper protection to the law practice's clients.
 - (iii) the views of the Liability Committee.

Applications

Applications should be in writing and should address the Legal Services Board's policy.

Where professional indemnity insurance is held by a law practice in accordance with the requirements of a corresponding law applicants should enclose a copy of that policy.