

Policy Professional Indemnity Insurance Exemptions

Introduction	1.1	<p>The Exemptions Policy – Professional Indemnity Insurance has been developed to provide practitioners with guidance about how to seek an exemption from Professional Indemnity Insurance requirements.</p> <p>Nothing in this policy diminishes or predetermines the discretion of the Victorian Legal Services Board (the Board) to grant exemption under section 215 of the Legal Profession Uniform Law (the Uniform Law).</p>
Exemptions	2.1	<p>Exemption from Requirement to obtain Professional Indemnity Insurance</p> <p>Section 215 of the Uniform Law and r.82 of the Legal Profession Uniform General Rules (the Uniform General Rules) provides that the Board may exempt lawyers, incorporated legal practices, or community legal services or classes of community legal services, from the requirement to hold professional indemnity insurance in certain circumstances. Section 215 and r.82 also set out circumstances in which certain lawyers and law practices are automatically exempt from the requirement.</p>
	2.2	<p>The Board may exempt lawyers or community legal services, or classes of community legal services, from the requirement to obtain or maintain professional indemnity insurance or to obtain or maintain that insurance with the Legal Practitioners' Liability Committee (the Liability Committee).</p>
	2.3	<p>The Board may exempt a lawyer from the requirement to obtain or maintain professional indemnity insurance with the Liability Committee if the Board is satisfied that:</p> <ol style="list-style-type: none"> a) the lawyer's home jurisdiction is Victoria; and b) the lawyer is a legal practitioner associate of a law practice that: <ol style="list-style-type: none"> i) has a permanent office located in Victoria and only one other jurisdiction; and ii) has at least one principal whose home jurisdiction is that other jurisdiction and who engages solely or principally in legal practice at that permanent office; and c) the lawyer is covered by an approved insurance policy for that other jurisdiction and that policy covers legal practice in Victoria.
	2.4	<p>The Board may exempt an incorporated legal practice from the requirement to obtain an approved insurance policy for Victoria if the practice:</p> <ol style="list-style-type: none"> a) maintains a permanent office in Victoria and only one other jurisdiction; and b) is covered by an approved insurance policy for that other jurisdiction and that policy covers legal practice in Victoria.
	2.5	<p>A lawyer is exempt from the requirement to obtain or maintain professional indemnity insurance with the Liability Committee if the Board is satisfied that:</p> <ol style="list-style-type: none"> a) the lawyer's home jurisdiction is not Victoria; and b) the lawyer has an approved insurance policy for that other jurisdiction; and c) that insurance covers legal practice in Victoria.

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- 2.6 A lawyer is exempt from the requirement to hold or be covered by an approved insurance policy in Victoria if:
- a) the lawyer's home jurisdiction is Victoria; and
 - b) the lawyer is a legal practitioner associate of a law practice that:
 - i) maintains a permanent office in Victoria and at least 2 other jurisdictions; and
 - ii) has at least one principal in each of those other jurisdictions who engages solely or principally in legal practice at the permanent office in that other jurisdiction; and
 - c) the lawyer is covered by an approved insurance policy for one of the other jurisdictions to which paragraph (b) refers and that policy covers legal practice in Victoria.
- 2.7 An incorporated legal practice is exempt from the requirement to obtain an approved insurance policy in Victoria if the practice:
- a) maintains a permanent office in Victoria and at least 2 other jurisdictions; and
 - b) is covered by an approved insurance policy for one of the other jurisdictions to which paragraph (a) refers and that policy covers practice in Victoria.
- 2.8 Also exempt from the requirement to hold or be covered by an approved insurance policy are:
- a) corporate and government lawyers;
 - b) statutory office holders of the Commonwealth or of a jurisdiction; and
 - c) people holding office or positions, or acting as, parliamentary counsel, legislative counsel or legislative drafter (however described) under a contract of service, or contract for services, with the Crown.
- 2.9 The term "approved insurance policy" is defined in s.13 of the *Legal Profession Uniform Law Application Act 2014* (the Application Act) and s.210 of the Uniform Law to mean:
- a) for a non-participating jurisdiction, a policy approved by the Legal Services Council.
 - b) for Victoria:
 - i) a policy issued or provided by the Legal Practitioners' Liability Committee; or
 - ii) a policy the terms and conditions of which are approved by the Board in relation to:
 - a community legal service;
 - a lawyer engaged in practice for or on behalf of a community legal service;
 - a corporate or government lawyer who provides legal services on a pro bono basis (other than as a volunteer at a community legal service); or
 - an Australian-registered foreign lawyer.

2.10 Exercise of Discretion

In both the Application Act and its predecessors (the *Legal Practice Act 1996* and the *Legal Profession Act 2004*), the Victorian Parliament has broadly adopted a monopoly compulsory professional indemnity insurance scheme, requiring all firms engaged in legal practice in Victoria to obtain professional indemnity insurance, and to obtain this insurance from the Liability Committee. This approach is intended to address consumer protection and the needs of the legal profession by ensuring that high quality, comprehensive and universal cover is available at an affordable cost. From the consumer protection perspective, a monopoly scheme (which restricts competition) can ensure that there is a minimum standard of insurance coverage that applies to all Victorian legal practitioners.

2.11 The Legal Services Board can grant exemptions to lawyers, incorporated legal practices, community legal services, or classes of community legal services, from the requirement to hold professional indemnity insurance under section 215(2), (4) and (6) of the Uniform Law and r.82(1)(d) of the Uniform General Rules.

2.12 Prior to granting an application for exemption under s.215(2), (4) or (6) of the Uniform Law or r.82(1)(d) of the Uniform General Rules, the Board must consider the public policy rationale for the requirement in section 211 for all lawyers practising in Victoria to insure with the Liability Committee. The Board will also consider any other relevant considerations, which may include:

- a) whether the insurance requirements are oppressive;
- b) whether the clients of the lawyer, incorporated legal practice or community legal service are already adequately protected; and
- c) the views of the Legal Practitioners' Liability Committee.

2.13 Making Applications

Applications should be in writing, and should:

- a) state the provision of the Uniform Law or Uniform General Rules under which the application is made; and
- b) for applications made under s.215(2), (4), (6) or r.82(1)(d), provide reasons to support the exemption, including, where relevant, the matters outlined at paragraph 2.12 above.

2.14 Applications under s.215(2) should be accompanied by a certified copy of a practising certificate of a principal of the law practice who engages in legal practice outside Victoria.

2.15 Where an application relies on professional indemnity insurance that is held for a jurisdiction other than Victoria, applicants should enclose a copy of that policy.

Management & implementation

3.1 This Policy will be communicated to relevant staff of the Victorian Legal Services Board, Law Institute of Victoria and Victorian Bar, and further training will be available if required.

3.2 The Board and its delegates will ensure that relevant staff have access to current legislation, case law and relevant Board policies and guidelines.