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VICTORIAN PSYCHOLOGISTS ASSOCIATION INC

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Psychology Board of Australia Consultation Paper 8

Proposed Revisions
Professional Indemnity Insurance Arrangements Registration Standard

The Victorian Psychologists Association Inc. (VPA) has made a number of submissions to the Psychology Board of Australia in relation to the matter of professional indemnity insurance (PII) cover for psychologists as it affects its members.

The VPA is a component Association of the Health Services Union Victoria No 4 Branch (the Union).

These previous submissions are attached. These submissions largely go to the failure to include Union policies in the Psychologists PII Standard.

The VPA welcomes the opportunity to make further submissions in relation to the proposed revisions to the Professional Indemnity Insurance Arrangements Registration Standard.

Threshold Issue: Union Policies

As has been previously submitted to the Board, the PII Standard is deficient in not explicitly recognising union PII policies covering psychologists.

We note in this context that the Physiotherapy Board of Australia Professional Indemnity Insurance Registration Standard recognises union policies as satisfying the requirements for PII. Implicit in this is an understanding that union policies need to meet all the PII requirements of the Board.

A copy of the Physiotherapy Board of Australia Professional Indemnity Insurance Registration Standard is attached.

> *The VPA considers that union PII policies which meet the requirements of the Psychologists Registration Board in all other respects must be recognised in the Standard as appropriate.*

The proposed Standard must be amended to insert the words 'or a union's insurance policy' after the reference to employer's or education provider's policy, or to employers.

*The VPA considers that a new category of **union policy** needs to be inserted into the PII Standard.*

No justification has been given for not explicitly excluding union policies, and the approach of the Board is inconsistent with that of other Boards.

Run-off and Retroactive Cover

The VPA considers that the PII Standard should require both run-off and retroactive cover, but that there needs to be recognition that there are likely to be limitations on the extent to which this is possible.

Run Off Cover We note that the Board has not specified unlimited run-off cover for incidents which occurred during a particular period of insurance. Many PII policies limit run-off cover, for example, for seven years after ceasing to practice.

The Board should indicate what minimum length of run-off cover is required.

The VPA considers that the Board needs to be more specific in relation to run-off cover, and clearly state whether run-off cover is to be unlimited or not. If it is to be limited the minimum period of run-off cover needs to be specified.

Retroactive cover As PII cover was not required prior to 1 July 2010, it has been difficult for psychologists who did not previously have PII cover to obtain retrospective cover for known incidents which occurred prior to that date.

The Union's policy includes retroactive cover, but this excludes any known claims and circumstances known to the insured prior to the inception of the period of insurance.

We expect that this is a common exclusion in PII policies. We consider that there should be an exception in these terms.

The VPA considers that PII policies should include retroactive cover, but that there should be an exclusion in relation to any known claims and circumstances which occurred prior to 1 July 2010 in circumstances where the psychologist did not have PII cover prior to that date.

We note that the Discussion Paper states that 'it may be difficult or impossible for public sector PII arrangements to include retroactive or run-off cover' but offers no solution to this problem.

Paradoxically, the proposed Standard continues to require that employer PII must include unlimited retroactive cover and run-off cover, 'or the equivalent' – without clarifying what 'or the equivalent' means.

Clearly if a psychologist was employed under an employer policy from the date s/he first practiced until retirement with the same employer then there would be no difficulty in relation to retroactive cover. This is an unlikely scenario. The question of run-off cover would still be an issue, if it is intended that run-off cover be unlimited.

> *The VPA considers that the Board needs to give more consideration to the implications of run-off and retroactive cover aspects of the PII Standard, and that further consultation may be necessary.*

Amount of Cover

The VPA supports the concept of mandatory minimum cover.

However, the VPA questions the setting of a lower minimum amount for independent practitioners with a gross income less than $40,000 per annum, or those who practice psychology as an employee.

We accept that the risk may be lower, but we do not accept the notion that claims might be lower based on fee income or the employment status of the clinician.

> *The VPA considers that the minimum amount for any one claim should be $10 million for all psychologists providing direct clinical care.*
>
> *The VPA considers that this is sufficient cover and that practitioners should not be required to insure for more than this amount based on 'self assessment'.*

The VPA can see no public policy justification for requiring registered psychologists with no independent private practice who do not provide direct clinical care and who practice psychology as an academic, administrator, advisor (apart from those providing clinical advice), researcher or other non-clinical role to have professional indemnity cover.

> *The VPA considers that registered psychologists who do not provide direct clinical care to patients (including secondary consultation and clinical advice to other registered psychologists or health practitioners) should be exempt from having to have PII cover.*

Automatic Reinstatement

> *The VPA agrees with the proposition that the requirement for automatic reinstatement is not relevant to occurrence-based policies such as the group policies offered by the Union to its members and group policies offered by some employers, public and private.*

Documentation of Cover

The VPA sees no reason that where an employer or union takes out a policy, that a certificate of currency and policy statement should not be provided to every psychologist in covered by the policy on request.

Indeed a policy statement needs to be provided to all psychologists who are covered by an employer or union policy.

This enables the individual psychologist to be assured that s/he has sufficient PII cover to meet the Board's requirement.

This should apply to both private sector (profit and not-for-profit) employers as well as public sector employers.

The VPA sees no reason to distinguish between private sector and public sector employers in relation to group policies.

> *The VPA considers that copy of the relevant policy or summary of same and of the certificate of currency should be provided where a psychologist is covered by an employer or union policy.*
>
> *In addition, the psychologist should be required to provide a declaration or evidence that the psychologist is employed by that employer or is a financial member of the relevant Union, and does not practice outside the coverage of the relevant policy.*

Where an employer self-insures, whether that employer is private or public, psychologists employed by the employer should be advised in writing of the fact of self-insurance. The written advice should detail the level of cover, extent of cover and circumstances which will be covered. Psychologists should be able to rely on the employer declaration in relation to meet the requirements of the Board re PII.

Where an employer self insures, the employer should be required to provide a letter to each psychologist that it employs stating that it is self insuring for all claims that might be brought against the psychologist consistent with the Psychologist Registration Board's PII standards, or if not al the requirements are met, to declare what matters are not so covered.

Cover for Disciplinary Matters

Coverage of disciplinary matters has been a feature of the Union's policy covering members

The VPA does not oppose the removal of coverage for disciplinary matters from the mandatory PII standard.

However, we do not see that coverage for disciplinary matters can be characterised as a matter for employers and employees. It is a matter for all psychologists to consider in deciding on the PII cover s/he takes out.

The VPA notes that the current PII requirements go beyond coverage for disciplinary matters and refer to cover for 'any breach of professional codes [undefined] or ethics', as well as complaints received by the Board in relation to professional misconduct or unprofessional conduct.

The VPA doubts that any current PII policy would actually provide cover for 'any breach of professional codes or ethics'.

The VPA does not oppose the removal of mandatory cover for disciplinary matters from the PII Standard.

The VPA considers that the requirement to insure for breach of professional codes or ethics, needs to be removed from the PII Standard, as it is unclear exactly what this means and how it can be insured for.

Definition of Practice

Refer comments re Amount of Cover (above).

The VPA considers that registered psychologists who do not provide direct clinical care to patients (including secondary consultation and clinical advice to other registered psychologists or health practitioners) should be exempt from having to have PII cover.

Education Providers' Insurance Arrangements

The Consultation Paper does not include any discussion of education providers' insurance arrangements. It would appear that many of the issues canvassed in relation to employer policies would apply equally to education providers.

It is unclear how the term 'employer' and 'education provider' interact in the Standard.

Where a University (or other education provider) employs psychologists then it is sufficient for the Standard to simply refer to employer policies.

It is not clear if the intended reach of education providers' policies is limited to Masters and Doctoral students only, in their capacity as provisionally registered psychologists, or also extends to honorary academic staff, who are, by definition, not employees.

This needs to be clarified in the PII Standard.

> *The VPA considers that there needs to be more work done on the questions of the requirements of policies which apply to education providers, and their coverage, as well as the issues that have been raised in relation to employer policies including: run-off cover; retroactive cover; documentation; application to registered psychologists not providing clinical services.*

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Enquires about this Submission may be directed to Dr Rosemary Kelly, Executive Officer, VPA.