

Guideline on professional indemnity insurance for psychologists



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Summary

All persons registered under the Health Practitioner Regulation National Law (the National Law) as in force in each state and territory, and who practise psychology, must have appropriate professional indemnity insurance (PII) arrangements in place, according to the Psychology Board of Australia's (the Board) Professional indemnity insurance arrangements registration standard (the PII standard). This includes psychologists providing direct psychological care, supervisors, managers of clinics, and psychologists who work in management, administration, research, advisory or regulatory or policy development roles. It also includes provisional psychologists who practise under supervision.

In accordance with the National Law, the Board developed and consulted on a PII standard in 2009. The Australian Health Workforce Ministerial Council (the Ministerial Council) approved the registration standard to start on 1 July 2010. The PII standard is published on the Board's website at www.psychologyboard.gov.au.

This *Guideline on professional indemnity insurance for psychologists* has been developed by the Board under section 39 of the National Law. It supplements and explains the requirements set out in the PII standard and developed under section 38 of the National Law. It provides guidance on PII for psychologists, employers of psychologists, higher education providers and insurance providers.

The PII standard and this guideline have been developed with legal and expert advice from the insurance sector, including government insurers.

Under section 41 of the National Law, the PII standard and the PII guideline are admissible in proceedings under the National Law as evidence of what constitutes appropriate professional conduct or practice for psychology.

Background

Under the National Law, all registered psychologists practising in Australia are required to have in place PII arrangements that comply with the PII standard during their period of registration:

38 National board must develop registration standards

- (1) A National Board must develop and recommend to the Ministerial Council one or more registration standards about the following matters for the health profession for which the Board is established –
 - (a) requirements for professional indemnity insurance arrangements for registered health practitioners registered in the profession

Scope

The PII standard applies to all psychologists who hold general, limited and provisional registration, and who practise psychology. The PII standard does not apply to psychologists who hold non-practising registration.

Practitioners only need to be covered for practice as a psychologist. Psychologists who maintain general or provisional registration, but do not practise at all for a block of time during the year do not require cover for that period. However, psychologists who are not currently practising must still have run-off arrangements (or equivalent) in place to cover previous practice.

Section 129 of the National Law states –

(1) A registered health practitioner must not practise the health profession in which the practitioner is registered unless appropriate professional indemnity insurance arrangements are in force in relation to the practitioner's practise of the profession.

Section 129 also states –

(5) In this section –

registered health practitioner does not include a registered health practitioner who holds non-practising registration in the profession.

The particulars of non-practising registration are set out in Part 7, Division 5 of the National Law.

It is recognised that psychologists engaging in different types of practice will have different PII needs. The minimum requirements set out in the PII standard must be met. However, the individual psychologist can make their own assessment of their PII requirements over and above the minimum requirements, taking into account their level of risk.

Voluntary work

Psychologists must have PII for all psychological practice they undertake, whether it is paid or voluntary. Psychologists who undertake voluntary work, in addition to usual paid employment, must take out additional cover if their regular PII arrangements or employer's cover do not cover the voluntary work.

Overseas practitioners

The PII registration standard is intended to apply to a practitioner's Australian practice. Psychologists who maintain non-practising registration in Australia while practising overseas are exempt from the requirement to hold appropriate PII arrangements under the National

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Law. Additionally, psychologists who maintain general registration but do not practise in Australia are not required to be insured for practice in Australia. However, if a practitioner registered by the Board is working overseas, there may be additional or other obligations with which practitioners must comply. Psychologists practising overseas should check the requirements of the local registration authority in the country where they practise, and ensure those requirements are met.

Run-off and retroactive cover

'Run-off' cover means insurance that responds to a claim against a practitioner who has ceased a particular practice or business, when that claim arises out of activities that occurred when the practitioner was conducting that practice or business. Run-off cover should be maintained for at least seven (7) years.

'Retroactive' cover means arrangements that provide cover for all past activities. Psychologists must have retroactive cover for all claims arising from past practice that are not otherwise indemnified.

Both run-off cover and retroactive cover may be components of 'claims made' PII policies; a type of PII cover that indemnifies for claims that are made against the insured and are notified to the insurer during the period of insurance. Run-off and retroactive cover may be included in a PII policy but, if not, they may need to be purchased separately unless there are equivalent arrangements in place under employer-based PII policies.

A psychologist holds the equivalent of unlimited retroactive cover if he or she holds cover for the period of the applicable 'statute of limitation' in the jurisdiction where they practised. Statute of limitation laws vary between the states and territories and psychologists should therefore seek advice on this from their insurer or legal advisor. Retroactive cover must be held for any period for which it is still possible for a claim to be made. Provisions for extensions under the relevant legislation, including extensions allowed for minors and persons with a disability, must therefore be taken into account.

If a psychologist is unable to obtain unlimited retroactive cover due to known claims or other circumstances he or she will be required to declare on their annual renewal that they have not met the full requirements of the PII standard and provide details to the Board. The Board will consider such matters on a case-by-case basis.

Group cover

An individual may be covered by an individual insurance arrangement or by a group insurance arrangement, or a combination. For the purposes of the PII standard, group

cover means cover provided by an employer, membership group such as a union, or an educational institution.

Employer cover

If a psychologist is covered by the PII of an employer, any claims relating to the period of the psychologist's employment with that employer, should be covered by that PII. The PII arrangements should provide sufficient cover for the psychologist's practice. The individual psychologist has a responsibility to check that their employer's cover meets the Board's requirements.

Employers may have different types of PII arrangements, which may provide the same level of cover as individual policies, but in different ways. In particular, Board requirements for run-off cover, retroactive cover and automatic reinstatement may not be relevant to PII arrangements provided by employers, especially for occurrence-based PII arrangements in the public sector. See 'types of PII cover' in this guideline for more information on different types of policies.

If the employed psychologist has practised before his or her current employment, cover for that previous practice will need to be covered by other PII; such as an individual policy, previous employer's policy or other group PII arrangements.

Psychologists with multiple practices or employment must ensure that they have appropriate PII cover for each practice and job. When starting a new position it is the psychologist's responsibility to check with the employer prior to starting practice that adequate PII cover is in place. If an employer does not provide PII, the psychologist must ensure private cover or other arrangements are in place before starting practice.

Educational institution cover

Provisional psychologists who are practising psychology in placements that are part of their degree will usually be covered by their higher education institution. As with employer cover educational institutions may have different types of PII arrangements and should provide sufficient cover for practice on placements or other practice as relevant. PII cover could also be provided under the existing arrangements of the employer providing the placement. It is the responsibility of the provisional psychologist to ensure appropriate PII arrangements are in place and that the cover meets the Board's requirements.

Provisional psychologists undertaking psychological practice in addition to higher degree placements would not generally be covered for the additional practice by their education provider. When applying for approval to work in addition to placements the provisional psychologist must declare that they commit to having appropriate

professional indemnity insurance arrangements in place for the role. It is therefore important to discuss PII arrangements with the supervisor and/or employer when negotiating the terms of the employment. If the employer does not provide appropriate PII cover for the position the provisional psychologist will need to ensure other arrangements, such as a private policy are in place before starting practice under supervision.

Union cover

Unions or other membership organisations may provide PII cover for members and, as with employer cover, may have different types of PII arrangements. Union PII arrangements often supplement employer PII cover and sufficient cover to meet the PII standard may be achieved by a combination of policies.

Types of PII cover

PII cover may be provided on the basis of an 'occurrence' or a 'claims made' policy.

A 'claims made' policy will only respond to claims that are made against the insured and that are notified to the insurer during the period of insurance. As the cover only applies to the period of insurance, retroactive and/or run-off cover may be required to achieve complete coverage for potential claims.

Retroactive cover requires the insurer who is offering cover on a 'claims made' basis to agree to indemnify the practitioner in respect of any claims for civil liability which result from his or her professional activity at any time prior to the start date of the policy. It is only required where cover has previously been, and continues to be, provided on a 'claims made' basis.

It is not uncommon for liability insurance such as PII policies to exclude claims made against the insured arising from circumstances that occurred before a specified date. This approach may be appropriate in some cases where, for example, the insured's practice changed substantially at one point in time and the insurer agrees to bear the risk from a particular point in time onwards, on the basis that the risk from that date is acceptable to it. In this instance, an insurer may include a retroactive date on the schedule of PII policy.

An 'occurrence' policy provides indemnity for any incident which occurs during the coverage period, regardless of when a claim is made, even if the policy is not renewed. As a result, run-off and/or retroactive cover is not relevant or necessary for occurrence-based PII, as long as it has been maintained from the start of practice.

Public sector employers are more likely to have

occurrence-based PII arrangements, or to be covered by self-insurance arrangements. As a result, it may be difficult or impossible for public sector PII arrangements to have PII that includes retroactive and/or run-off cover; although there is no practical difference in the cover provided. Therefore, employer-based PII arrangements may not specifically include retroactive and/or run-off cover, but the occurrence-based policy effectively provides cover that is equivalent to a policy that includes retroactive and run-off cover.

Amount of cover

In principle, the question of how much insurance cover is enough is a risk management issue and will vary according to the size of a practitioner's professional practice and the context in which his or her activities are carried out.

The minimum amount of cover has been set at \$2 million for any one claim and at least one automatic reinstatement or equivalent is required.

The minimum amount may not be sufficient for all psychologists. A higher level of cover may be necessary for psychologists who provide direct clinical services, including secondary consultation and supervision. Practitioners should undertake objective self-assessment to determine whether their individual practice warrants a level of cover that is higher than the minimum amount.

Psychologists may choose to undertake the self-assessment in consultation with a professional indemnity insurance provider operating under a financial services licence, and consider advice from the provider on the appropriate level of cover for their practice. Criteria on which a self-assessment would be based include:

- the practice setting and type of service delivered
- the client group
- the volume of clients
- current employment status
- previous history of insurance claims and the type of claims made against the practitioner in the past
- the practitioner's experience
- requirements of relevant statutory authorities, and
- general advice from professional associations and industrial organisations, including advice about history and volume of professional liability claims experiences by other members of the profession, provided by a relevant professional association.

Automatic reinstatement

Professional indemnity insurance policies are often underwritten subject to an aggregate and may include a costs inclusive limit. This represents the total cover variance in respect of all claims against the policy, during the policy period. The purpose of 'automatic reinstatement' is to restore the limit of the policy, if a claim or claims have exhausted the initial sum insured. A single automatic reinstatement allows the policy's aggregate limit to be doubled and two reinstatements triple it; but the limit for any one claim remains applicable. The effect is to provide more cover in case there are multiple claims against a practitioner.

Automatic reinstatement is not relevant to occurrence-based policies, particularly in the public sector where the policy covers any incident during the period of coverage.

Practitioners who are covered by a single policy that covers a group of employees must ensure that there is sufficient reinstatement to cover all employees. A claims made policy with limited reinstatement could be exhausted by one employee and leave other employees insufficiently insured. An occurrence policy which does not limit the number of claims will ensure all employees are sufficiently insured.

Cover for disciplinary matters

The Board notes that PII arrangements, particularly those provided by employers, may not provide cover for matters of a disciplinary nature, which do not usually lead to awards of compensation to patients, clients or other persons who have suffered loss as a result of a psychologist's actions. However, these matters may involve costs for an individual psychologist and their inability to cover these costs, including legal representation at a disciplinary tribunal, may present legal and evidentiary difficulties for both the practitioner and complainant.

The Board strongly recommends, but does not require, that psychologists have sufficient cover to meet inquiry costs, and to provide adequate levels of insurance for the potential costs including legal representation costs, incurred at professional disciplinary or other hearings.

Professional disciplinary matters could include matters such as breaches of professional codes or ethics, complaints received about professional misconduct, or unprofessional conduct under the National Law.

Exemptions

The nature of psychology practice is associated with a level of risk of mental or physical harm to patients or clients. The community has the right to expect that psychologists will have adequate insurance to cover

compensation if a client suffers a civil liability or loss as a result of an act, error or omission in the conduct of the psychologist.

Under the National Law, a registered health practitioner must not practise the health profession in which they are registered unless appropriate professional indemnity insurance arrangements are in force in relation to their practise of the profession. There is no provision for any person who is a registered health practitioner and who practises the health profession to be exempt from holding appropriate PII.

Individuals who do not practise the profession, including those who hold non-practising registration, are automatically exempt.

Monitoring of PII arrangements

Every year when psychologists and provisional psychologists renew their registration, they are required to make a declaration that in the last renewal period they have only practised the profession while covered by PII that meets the Board's standard. In addition, they are required to declare that if registration is renewed, they commit to only practising the profession in the future while covered by PII arrangements that meet the Board's standard. There are no exemptions to this requirement.

The Board will conduct random audits of psychologists' PII arrangements.

Documentation of PII cover

Practitioners must maintain documentation as evidence of PII cover, as set out in the PII standard, and provide it to the Board if requested by the Board in writing.

Section 129(2) of the National Law specifies that the Board may, at any time by written notice, require a psychologist to give the Board evidence of appropriate PII arrangements.

The documentary evidence of PII must show that the policy has been paid and accepted. An invitation to renew a policy will not be accepted as sufficient evidence of PII.

Action for inadequate PII cover or lapsed PII arrangements

The Board is empowered to ensure that psychologists only practise with appropriate PII arrangements in place.

In accordance with section 129(4) of the National Law, health, conduct or performance action may be taken against psychologists who practise the profession without appropriate PII arrangements in place, or who fail to comply with written notice to provide evidence of appropriate PII to the Board.

Public liability insurance

The PII standard sets out the requirements for professional indemnity insurance. The Board does not provide guidance for psychologists on public liability insurance. However, psychologists should be aware of the importance of public liability insurance to cover injuries to clients or members of the public on their premises.

References

Psychology Board of Australia (2012). *Professional indemnity insurance arrangements registration standard*, Psychology Board of Australia, Melbourne.

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