



## Consultation paper 8

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**Proposed revisions —**

# **Professional Indemnity Insurance Arrangements Registration Standard**

Issued by the Psychology Board of Australia under the authority of Professor Brin Grenyer, Chair, on 21 December 2010.

If you wish to provide comments on this paper, please lodge a written submission in electronic form, marked 'Attention: Chair, Psychology Board of Australia' to [psychconsultation@ahpra.gov.au](mailto:psychconsultation@ahpra.gov.au) by close of business on Monday 28 February 2011. Please note that your submission will be placed on the Board's website unless you indicate otherwise.

**Psychology Board of Australia**

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## Overview of the consultation

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In accordance with the National Law<sup>1</sup> the Psychology Board of Australia developed and consulted on a professional indemnity insurance arrangements registration standard (the PII standard) in 2009. The Australian Health Workforce Ministerial Council (the Ministerial Council) approved the registration standard for commencement on 1 July 2010 (see Attachment A).

Following Ministerial Council approval and publication of the PII registration standard on the Board's website, the Psychology Board of Australia has received significant feedback about the implementation of the new PII requirements from government employers, insurance providers and brokers, and individual practitioners. The Board has developed a communiqué about some of the issues raised (see Attachment B).

At its meetings in August and October 2010 Board agreed to revise its PII registration standard to address these issues.

Section 40(1) of the National Law provides that, if a National Board develops a registration standard or a code or guideline, it must ensure there is wide-ranging consultation about its content.

Legal advice and expert advice from the insurance sector (particularly government insurers) will be considered in finalising the revised PII standards.

The Psychology Board of Australia welcomes feedback and peer review of the issues raised regarding the current PII standard and the proposed changes to the PII standard from the profession, stakeholders and the public.

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<sup>1</sup> The *Health Practitioner Regulation National Law Act* (the National Law) as in force in each state and territory.

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## Issues around professional indemnity insurance arrangements

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Several issues have been raised in relation to the current PII arrangements registration standard, as follows:

### *Employer cover*

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 or retroactive cover may not be relevant to PII arrangements provided by employers, especially in the public sector.

### *Run-off and retroactive cover*

Run-off cover means insurance that protects a practitioner who has ceased a particular practice or business against claims that arise out of activities that occurred when the practitioner was conducting that practice or business. Retroactive cover means arrangements that provide cover for all past activities. Both may be components of 'claims made' PII policies which are discussed in this consultation paper.

### *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 made against the insured and notified to the insurer during the period of insurance. As the cover only applies to the period of insurance, retroactive and/or runoff cover may be required to achieve complete coverage for potential claims.

Unlimited retroactive cover requires the insurer which 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 date of commencement 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 commencement of practice. Professional indemnity cover is, however, almost invariably written on a claims made basis in Australia.

Public sector employers are more likely to have occurrence-based PII arrangements, or to self-insure, which has the same effect. As a result, it may be difficult or impossible for public sector PII arrangements to comply with requirements for PII to include retroactive and/or run-off cover, although there is no practical difference in the cover provided.

### *Amount of cover*

A number of Boards have specified a minimum amount of cover in their PII arrangements registration standard. Others have asked individual practitioners to determine the level of cover that they require. Specifying a minimum amount of cover provides some guidance to practitioners about the minimum amount of cover required. The Board may also require practitioners to ensure that they are covered for their particular practice, in case the minimum amount of cover is not sufficient in individual cases.

In 2009, the National Boards received advice that specifying a minimum amount of cover could artificially inflate premiums. However, on balance, AHPRA's Senior Legal Counsel recommends that all Boards consider specifying a minimum amount of cover to provide guidance to practitioners.

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. It is proposed to specify a two tiered minimum amount in accordance with the practitioner's category of practice and to also require an objective self assessment by the practitioner to determine whether their practice warrants a level of cover that is higher than the minimum.

It is proposed that the minimum amounts to be set by the Board be based on the size and nature of the professional practice as follows:

Minimum amount of \$5 million for any one claim for:

1. Independent private practitioners with a gross income less than \$40,000 per annum
2. Practitioners with no independent private practice who practise psychology as an employee
3. Practitioners with no independent private practice who do not provide direct clinical care and practise psychology as an academic, administrator, manager, advisor, researcher or other non-clinical role.

Minimum amount of \$10 million for any one claim for independent private practitioners with a gross income more than \$40,000 per annum.

These minimums are in line with those offered by insurers.

The Board seeks feedback from stakeholders regarding whether these amounts are considered appropriate.

Practitioners will also be required to undertake self assessment to determine whether a level of cover higher than the minimum amount is necessary for their individual 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 age and experience of the practitioner
- Advice received from professional indemnity insurers, professional associations and industrial organisations, including advice regarding 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 generally underwritten subject to an aggregate, often costs inclusive, limit, which represents the total cover variance in respect of all claims against the policy, in 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 triples it, but the limit for any one claim remains specified in the policy's schedule. The effect is to provide more cover in case there are multiple claims against a practitioner.

Two issues arise in relation to automatic reinstatement:

1. Any requirement for automatic reinstatement is not meaningful unless the PII registration standard specifies a minimum amount of cover. Clearly, it is possible to have a higher amount of aggregate cover, with one or no reinstatements, and achieve a similar amount of coverage to that of a lower amount of aggregate cover with one or more automatic reinstatements.
2. A requirement for 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.

### **Documentation of PII cover**

The PII standard often includes requirements about the evidence of cover that a practitioner must provide on the Board's request. It is important that documentation requirements take into account the different insurance arrangements that often apply to public sector employees. For example, it will not be possible for a public sector employee to obtain a copy of a policy or certificate of currency if their government employer self-insures. In this case, AHPRA has taken the view that it would be sufficient to accept evidence of public sector employment as evidence of PII cover.

### **Cover for disciplinary matters**

Consistent with the National Law, the fundamental purpose of PII cover is to protect the public by ensuring access to compensation if required. Some National Boards have extended the cover required under their PII registration standard to include matters which are not usually covered by PII, such as disciplinary matters. These matters do not involve an award of compensation to an individual. Accordingly, a practitioner may benefit from having this type of cover but it does not affect the public. This cover is for the benefit of the practitioner only.

Any requirement for all practitioners to hold cover for additional matters, such as notifications matters, will mean that practitioners covered by their employer's PII arrangements must purchase this cover separately in most instances. In contrast, individual policies may provide this cover as a package.

As there is no reduction in public protection whether or not a practitioner holds this cover, the Psychology Board of Australia has received advice that the provision of additional cover should only be a matter for the employer and the employee/s. The recommendation is that cover for disciplinary matters be removed from the PII standard.

### **Definition of Practice**

The current PII standard states that:

*A registered psychologist must not practise as a psychologist unless Professional Indemnity Insurance (PII) arrangements are in place consistent with this standard. A registered psychologist must be covered by either an individual insurance arrangement or an employer's or education provider's insurance arrangement, or both. However, if covered by another party, the cover must meet this standard. If an employer's or education provider's insurance arrangement does not meet this standard, the individual must take out additional cover to ensure he or she meets the standard.*

AHPRA's definition of practice states that:

**Practice** means any role, whether remunerated or not, in which the individual uses their skills and knowledge as a psychologist in their profession. In accordance with the recency of practice standard, practice is not restricted to the provision of direct clinical care. It also includes using professional knowledge in a direct non-clinical relationship with clients, working in management, administration, education, research, advisory, regulatory or policy development roles, and any other roles that impact on safe, effective delivery of services in the profession.

All practising psychologists are required to have PII. 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. However it is recognised that psychologists engaging in different types of practice will have different PII needs.

### **Proposed changes to the PII Standard**

The Board is considering advice from legal advisers, insurance representatives (private and government sector) and psychologists about issues with the current PII standard. The Board's proposed changes to the PII standard are outlined in this consultation paper. The Board welcomes comments on these issues. After the consultation process, the revised standard will be provided to Ministerial Council for approval.

# Proposed professional indemnity insurance arrangements registration standard

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## **Summary**

A registered psychologist must not practise as a psychologist unless PII arrangements are in place, consistent with this registration standard.

A registered psychologist must be covered by either an individual insurance arrangement or an employer's or education provider's insurance arrangement, or both.

However, if covered by another party, the cover must meet this registration standard. If the insurance arrangement of an employer or education provider does not meet this registration standard, the practitioner must take out additional cover to ensure he or she meets the standard.

## **Scope of application**

This registration standard applies to all registered psychologists including those with provisional registration. It does not apply to psychologists who have non-practising registration.

## **Guiding principle**

The Board's guiding principle for this registration standard is to ensure that the public have access to compensation when required, and that practitioners are adequately protected, by having appropriate professional indemnity insurance cover.

The registration standard recognises that the PII arrangements provided by employers, particularly public sector and other large employers, may meet this principle in different ways to PII arrangements established by an individual psychologist (such as a self-employed psychologist).

## **Requirements for individual (not employer) PII arrangements**

PII arrangements must include:

1. civil liability cover that is sufficient to cover the psychologist's practice, including automatic reinstatements where appropriate to achieve an adequate level of cover
2. unlimited retroactive cover
3. run-off cover.

## **Requirements for employer PII arrangements**

PII arrangements must include:

1. civil liability cover
2. unlimited retroactive cover and
3. run-off cover

or the equivalent under employer-based PII arrangements such as self-insurance by public sector employers or occurrence-based cover.



### **Scope of cover**

PII arrangements must provide cover for civil liability incurred by, or loss arising from, a claim that is made as a result of a negligent act, error or omission in the conduct of the practitioner. PII cover should include legal defence costs and claimant's legal costs that a psychologist may be ordered to pay.

The Board notes that PII arrangements, particularly those provided by employers, may not provide cover for matters of a disciplinary character, which do not usually lead to awards of compensation to patients, clients or other persons who have suffered detrimentally as a result of a psychologist's actions. However, these matters may involve costs for individual psychologists. The Board does not require psychologists to have insurance cover for matters which do not involve potential awards of compensation against a psychologist. This could include breaches of professional codes or ethics, complaints received about professional misconduct or unprofessional conduct under the National Law. However, the Board strongly recommends that each psychologist considers whether he or she has this cover under current PII arrangements, whether as an individual or provided by an employer, and if not, whether individual psychologists wish to obtain such cover to protect themselves.

### **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.

Psychologists are required to comply with the minimum levels of PII cover set out below. Psychologists are also required to undertake an objective self assessment to determine whether their practice warrants a level of cover that is higher than the minimum.

### **Level of cover**

Minimum amount of \$5 million for any one claim for:

1. independent private practitioners with a gross income less than \$40,000 per annum
2. practitioners with no independent private practice who practise psychology as an employee
3. practitioners with no independent private practice who do not provide direct clinical care and practise psychology as an academic, administrator, manager, advisor, researcher or other non-clinical role.

Minimum amount of \$10 million for any one claim for independent private practitioners with a gross income more than \$40,000 per annum.

### **Objective self-assessment**

Psychologists must make an objective self-assessment of PII needs taking into account the following criteria:

- 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 age and experience of the practitioner
- advice received from professional indemnity insurers, professional associations and industrial organisations, including advice regarding history and volume of professional liability claims experiences by other members of the profession, provided by a relevant professional association.

Psychologists must have adequate cover for their individual practice therefore when a self-assessment indicates a level higher than the minimum specified is appropriate, the onus is on the practitioner to ensure they take out PII cover at an appropriate level.

### **Employer cover**

An individual may be covered by either an individual insurance arrangement or that of an employer or education provider, or both. In relation to employers and education providers, the Board's intention is that, if a psychologist is covered by the PII of an employer or an education provider, any claims relating to the period of the psychologist's employment will be covered by that PII. The PII arrangements of the employer or education provider should provide sufficient cover for the psychologist's practice. The Board recognises that this may occur in various ways; for example, occurrence-based arrangements in the public sector.

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 – either an individual policy or PII arrangements of another employer or education provider. Psychologists with multiple practices or employment must ensure that they have appropriate PII cover for each practice and job.

### **Mandatory PII requirement for registrants**

An applicant seeking registration must declare that he or she will not practise the profession unless PII arrangements are in force and consistent with this registration standard. Provision of psychological services is not limited to full-time paid employment. Therefore, any person practising as a registered psychologist, including those working as an independent practitioner, in part-time practice, or undertaking voluntary work, must be covered by PII arrangements in accordance with this registration standard.

An applicant for renewal of registration must make a declaration that he or she has not practised as a psychologist during the preceding period of registration without PII arrangements in force and in accordance with this registration standard.

Random audits of registered psychologists will be conducted annually to ensure that psychologists comply with this registration standard. The Board will notify registered psychologists in writing if selected for audit. The psychologist will be required to provide evidence of PII arrangements for the period requested by the Board.

A registered psychologist is required to maintain certificates of currency for the duration of his or her registration as a psychologist. The Board may request to see evidence of PII arrangements for any period of registration.

Alternately, if a PII arrangement is provided by another party such as an employer, the psychologist, upon request, must provide a copy of the certificate of currency certified as a true copy by a person who can witness statutory declarations, or a letter from the employer declaring that the PII arrangement of the organisation covers the psychologist and states the period of cover and that the cover meets this registration standard. In the case of a public sector employee, evidence that the psychologist was a permanent public sector employee for the relevant period will suffice as evidence of PII arrangements for that employment.

In the event that a registered psychologist has failed to meet the requirements of the registration standard, the Board may:

1. refuse to renew registration or endorsement or
2. instigate disciplinary proceedings under to the National Law, Part 8, or the relevant legislation applying to that jurisdiction.

**DISCLAIMER:** This standard sets out the minimum requirements for PII arrangements. An individual must ensure that he or she has appropriate arrangements in place that cover the particular type of practice. Practitioners should consult an insurance broker or provider for further advice.

## **Definitions**

**Professional indemnity insurance arrangements** means arrangements that secure for the practitioner's professional business, insurance against civil liability incurred by, or loss arising from, a claim that is made as a result of a negligent act, error or omission in the conduct of the practitioner. This type of insurance is available to practitioners and organisations across a range of industries and covers the costs and expenses of defending a legal claim, as well as any damages payable. Some government organisations under policies of the owning government are self-insured for the same range of matters.

**Run-off cover** means insurance that protects a practitioner who has ceased a particular practice or business against claims that arise out of or are a consequence of activities that were undertaken when he or she was conducting that practice or business. This type of cover may be included in a PII policy or may need to be purchased separately.

**Retroactive cover** means PII arrangements which cover the insured against claims arising out of or in consequence of activities that were undertaken in the course of the practitioner's professional business prior to the date of the commencement of the insurance.

## **Review**

This standard will commence on 1 July 2010. The Board will review this standard at least every three years.

### **Authority**

The Consultation Paper version 8: Proposed revisions - professional indemnity insurance arrangements registration standard is issued by the Psychology Board of Australia under the authority of Professor Brin Grenyer, Chair, 21 December 2010.

If you wish to provide comments on this paper, please lodge a written submission in electronic form, marked 'Attention: Chair, Psychology Board of Australia' to [psychconsultation@ahpra.gov.au](mailto:psychconsultation@ahpra.gov.au) by close of business on Monday 28 February 2010. Please note that your submission will be placed on the Board's website unless you indicate otherwise.



### Authority

This standard has been approved by the Australian Health Workforce Ministerial Council on 31 March 2010 pursuant to the *Health Practitioner Regulation National Law (2009)* (the National Law) with approval taking effect from 1 July 2010.

### Summary

A registered psychologist must not practice as a psychologist unless Professional Indemnity Insurance (PII) arrangements are in force in accordance with this standard.

A registered psychologist must be covered by either an individual insurance arrangement or an employer's or education provider's insurance arrangement, or both. However, if covered by another party, the cover must meet this standard. If an employer's or education provider's insurance arrangement does not meet this standard, the individual must take out additional cover to ensure he or she meets the standard.

### Scope of application

This standard applies to all registered psychologists including registered provisional psychologists. It does not apply to registered students and practitioners who have non-practising registration.

### Requirements

1. Professional indemnity arrangements must include:
  - a) civil liability cover
  - b) unlimited retroactive cover
  - c) run-off cover; and
  - d) two automatic reinstatements during the period of cover.
2. PII arrangements must include, but are not limited to, cover for any breach or alleged breach of professional duty of care, any breach of professional codes or ethics, complaints received in relation to professional misconduct or unprofessional conduct pursuant to the Health Practitioner Regulation National Law Act 2009 (Qld) (National Law), or relevant regulatory laws in the State or Territory, and complaints received in relation to any privacy laws.
3. An individual may be covered by either an individual insurance arrangement or an employer's or education provider's insurance arrangement, or both. However, if covered by another party, the cover must meet this standard. If an employer's or education provider's insurance arrangement does not meet this standard, the individual must take out additional cover to ensure he or she meets the standard.
4. An applicant for registration must declare that he or she will not practice the profession unless PII arrangements are in force in accordance with this standard.
5. An applicant for renewal of registration must make a declaration that he or she has not practised as a psychologist during the preceding period of registration without PII arrangements in force in accordance with this standard.
6. Provision of psychological services is not limited to full-time paid employment. Therefore, any person practising as a registered psychologist, including those working as an independent practitioner, in part-time practice, or undertaking voluntary work, must be covered by PII arrangements in accordance with this standard.
7. Random audits of registered psychologists will be conducted on an annual basis to ensure that psychologists are in compliance with this standard. The Board will notify registered psychologists in writing if selected for audit. The registered psychologist will be required to provide evidence of PII arrangements for the period requested by the Board.
8. A registered psychologist is required to maintain certificates of currency for the duration of his or her registration as a psychologist. The Board may request to see evidence of PII arrangements for any period of registration.
9. Alternatively, if a PII arrangement is provided by another party such as an employer, the registered psychologist upon request must provide a copy of the certificate of currency certified as a true copy by a person who can witness statutory declarations or a letter from the employer declaring that the organisation's PII arrangement covers the registered psychologist, states the period of cover, and that the cover meets this standard.
10. In the event that a registered psychologist has failed to meet the requirements of the standard the Board may:
  - a) refuse to renew registration or endorsement; or
  - b) instigate disciplinary proceedings pursuant to the National Law, Part 8, or the relevant legislation applying to that jurisdiction.

DISCLAIMER: This standard sets out the minimum requirements for PII arrangements. An individual must ensure that he or she has appropriate arrangements in place that cover his or her particular type of practice.

## **Attachment B: Clarification Statement for Employees and Employers**

### **Psychology Board of Australia Professional Indemnity Insurance requirements for employed psychologists and their employers**

The Psychology Board of Australia has become aware of the need to clarify its Professional Indemnity Insurance (PII) Registration Standard in relation to PII coverage by employers.

In providing this clarification, the Board is guided by the fundamental principle that the purpose of PII is to protect the public by ensuring that indemnity cover is in place to meet valid claims.

The Board's approved PII registration standard includes the following requirements.

- a) civil liability cover
- b) unlimited retroactive cover
- c) run-off cover; and
- d) two automatic reinstatements during the period of cover.

The Registration Standard states that PII cover provided by an employer or education provider must meet these requirements. In this paper, a reference to an "employer" includes an education provider.

Requirements (b) to (d) are directed towards coverage for individuals, who must also ensure that their PII is adequate for the type of practice they are undertaking.

The fundamental principle of the PII standard is that all psychologists have adequate PII coverage for their practice. The Board recognises that employers may meet this principle and address the above requirements in slightly different ways than individuals. This is due to the different characteristics of the employment relationship and may also be influenced by the employer's particular insurance arrangement, for example, there may be various arrangements, including self-insurance, for government employers.

In particular, the requirement for unlimited retroactive cover if applied to employers, could require them to provide cover for employees before they commenced employment. In relation to employers, the Board's intention is that if a psychologist is covered by their employer's PII, that any claims relating to the period of their employment will be covered by that PII. The Board recognises that this may occur in various ways. If the employed psychologist has practised before their current employment, cover for their previous practice will need to be covered by other PII – either an individual policy or another employer's PII arrangements.

The definition of run off cover in the PII Registration Standard is similarly directed towards individual practitioners. Similarly, the Board recognises that claims relating to the period of employment may be covered in various ways by employers.

The requirement for two automatic reinstatements during the period of cover is intended to ensure that the PII cover is adequate to cover any claims during the relevant period. Clearly it is possible to have a higher amount of aggregate cover, with one or no reinstatements, and achieve a similar amount of coverage. Accordingly,

provided an employer's PII provides adequate coverage for the type of practice, the Board will not require two automatic reinstatements.

Paragraph 2 of the Board's Registration Standard provides a list of incidents that must be covered. Some of these incidents would not usually be covered by an employer's PII arrangements. Accordingly, an employer's PII arrangements may not cover psychologists for complaints received in relation to professional misconduct or unprofessional conduct pursuant to the Health Practitioner Regulation National Law and individual psychologists may need to obtain their own cover for these matters if their employers do not provide such cover.

In making this clarification, the Board highlights that individual psychologists need to ensure that they have PII cover that meets the requirements of the PII Registration Standard. Psychologists who are employed, and currently practise or have previously practised independently, are likely to require their own PII as well as their coverage by their employer.

This information is provided pending the Board's clarification of these matters in its Registration Standard.