

The Australian Psychological Society Ltd

**The Australian Psychological Society's submission
on**

**Psychology Board of Australia's
Consultation paper 8:
Professional Indemnity Insurance Arrangements
Registration Standard**

APS contacts:

Professor Lyn Littlefield, Executive Director
l.littlefield@psychology.org.au

Mick Symons, Manager Member Services
m.symons@psychology.org.au

28 February 2011

The Australian Psychological Society's submission on Psychology Board of Australia's Consultation paper 8: Professional Indemnity Insurance Arrangements Registration Standard

Executive Summary

The Australian Psychological Society (APS) welcomes the opportunity offered by the Psychology Board of Australia (PBA) to provide comment on this Consultation paper regarding the proposed revisions to the professional indemnity insurance (PII) arrangement registration standard. The APS supports the overall tenor of the mandatory requirement for registered psychologists to hold professional indemnity insurance.

The APS notes in the proposed revisions the PBA's introduction of a *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 APS endorses this proposal as supporting the objectives of the National Law, and is particularly supportive of the principle that practitioners are adequately protected.

Consistent with the above PBA guiding principle, the APS has made a number of recommendations to amend the proposed revisions to the registration standard. These recommendations refer to policy wording relating to the scope and amount of cover – particularly the inclusion of and extent of cover for professional disciplinary board hearings (Inquiry Costs), objective self-assessment, and penalties for not meeting the PII standard.

The APS has been assisting its members to obtain appropriate insurance cover for their practice as psychologists for an extended period of time. Over the years the APS has consulted and worked closely with different insurance brokers to ensure that the best possible professional indemnity cover is available for members. Most recently the APS has worked closely with Aon insurance services. In preparing our response to this Consultation paper we have sourced some relevant details from Aon.

Summary of Recommendations (refer to pp 4-6 for full details):

Scope of cover

Recommendation 1. That the PBA uses the term “acts, errors or omissions” in the new professional indemnity arrangements, and omits the use of the term, “negligent act”.

Recommendation 2. That the PBA withdraws its proposal to remove the requirement for cover for disciplinary matters from the PII standard, and instead, requires professional indemnity insurance policies to have sufficient level of Inquiry Costs cover to provide adequate levels of insurance for the potential costs incurred at professional disciplinary board hearings.

Amount of cover

Recommendation 3. That the PBA seeks input from the insurance industry as to the minimum level of cover to be set under the registration standard to cover likely costs incurred in both disciplinary proceedings and civil court hearings.

Objective self-assessment

Recommendation 4. That the PBA requires each individual psychologist to select the level of cover suitable to their circumstances after consultation with people who are credentialed to provide financial advice.

Mandatory PII requirement for registrants

Request for PBA clarification. The APS is concerned about the potential situation that may arise where a psychologist is unable to obtain PII cover through no fault of their own. The APS would appreciate clarification from the PBA as to the likely procedure to be followed to support the continued practice of a psychologist in such a situation.

Introduction

The APS is largely supportive of the registration standard published by the PBA and the amendments now proposed. The APS has provided commentary, and recommendations are set out following the order of headings and related sections set out in the “*Proposed professional indemnity insurance arrangements registration standard*” where appropriate.

1 Scope of cover

a) The APS notes the proposed wording that refers to “*a claim that is made as a result of a **negligent act**, error or omission in the conduct of the practitioner.*” We understand that the use of the term “negligent act” is unusual in the field of professional indemnity insurance. It is much more common to refer to “acts, errors or omissions”.

The APS does not support the proposal to include the term “negligent act”. By including a definition of “negligent act”, it is possible that an insurer may deny a claim if the act can be shown not to be negligent.

Recommendation 1. That the PBA uses the term “acts, errors or omissions” in the new professional indemnity arrangements, and omits the use of the term, “negligent act”.

b) The PBA has recommended that cover for disciplinary matters be removed from the PII standard.

The APS does not support this proposal.

After consulting Aon staff, the APS has been informed that very few civil claims are made against psychologists – perhaps as little as ten civil claims in the past ten years. The vast number of claims (> 95%) made against the insurance policies held by psychologists relate to Inquiry Costs arising from disciplinary matters. The Inquiry Costs feature of an insurance policy covers psychologists for legal costs and other related expenses incurred when responding to a professional disciplinary board investigation, such as those conducted by the PBA.

Alarming, several recent professional indemnity insurance policies made available to psychologists make no mention of cover for Inquiry Costs.

If the proposal to withdraw cover for disciplinary matters came into effect, it is quite possible that insurance policies would be developed which were limited to covering psychologists for civil damages claims only, yet the policy would still be consistent with the PBA PII standard. As there are very few civil claims for compensation against psychologists, it is quite possible that the premium level for such cover would be quite low and attractive to psychologists.

Psychologists who took out just civil claims cover would be left deeply financially exposed if they had to defend themselves in a professional disciplinary board hearing, impacting their ability to provide psychological services. This appears to be contrary to the PBA's proposed guiding principle of ensuring that "... practitioners are adequately protected by having appropriate professional indemnity insurance cover".

Recommendation 2. That the PBA withdraws its proposal to remove the requirement for cover for disciplinary matters from the PII standard, and instead, requires professional indemnity insurance policies to have sufficient level of Inquiry Costs cover to provide adequate levels of insurance for the potential costs incurred at professional disciplinary board hearings.

2 Amount of cover

The PBA proposes a minimum level of cover of \$5 million for any one claim for those earning under \$40,000 per annum and a minimum level of cover of \$10 million for any one claim for those earning over \$40,000 per annum.

The APS supports this proposal in part. Our concern is that if the minimum level of cover is set too high, psychologists may be unnecessarily forced to pay a high premium, where as if a minimum level of cover is not set, a psychologist may be under-insured.

The level of cover purchased by psychologists relates directly to the amount of money that could be provided for damages claimed against a psychologist in a civil court.

As the experts in the field, insurers and insurance brokers routinely review the level of cover offered to policy holders to make sure that it is sufficient to cover the types of damages claims that may be lodged. For example, for the Aon facility in 2000 the \$500,000 level of cover was removed from offer, and in 2007 the \$1m level of cover was removed. The current minimum level of cover available through the Aon facility is \$2m.

Recommendation 3. That the PBA seek input from the insurance industry as to the minimum level of cover to be set under the registration standard to cover likely costs incurred in both disciplinary proceedings and civil court hearings.

3 Objective self-assessment

As part of the objective self-assessment process, psychologists are recommended to seek advice from professional associations and industrial organisations. It is important to be aware that the Financial Services Reform Act (2001) allows only suitably credentialed staff to provide financial advice. This tends to be staff employed by companies working in the finance industry such as insurers and insurance brokers, not staff working at professional associations and industrial organisations.

Recommendation 4. That the PBA requires each individual psychologist to select the level of cover suitable to their circumstances after consultation with people who are credentialed to provide such financial advice.

4 Mandatory PII requirement for registrants

The PBA proposes that if a

“...psychologist has failed to meet the requirements for the registration standard, the Board may:

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

Although the APS supports mandatory professional indemnity insurance for practising psychologists, our concern is that in rare circumstances (following the successful but expensive defense of a vexatious or otherwise unmerited claim) a psychologist may not be able to obtain insurance through no fault of his or her own, yet still be a competent and capable psychologist otherwise able to practice.

An insurer may refuse cover to a practitioner for reasons unrelated to their professional practice. The APS would appreciate comment from the PBA as to the likely procedure to be followed in such circumstances to support the continued practice of psychology by such a practitioner.

The APS notes that the National Law regulations have made provision for the continued practice of midwifery in circumstances where insurance cannot be obtained (home births) provided that informed consent has been given by the woman giving birth and other reporting requirements have been complied with.

Request for PBA clarification. The APS is concerned about the potential situation that may arise where a psychologist is unable to obtain PII cover through no fault of their own. The APS would appreciate clarification from the PBA as to the likely procedure to be followed to support the continued practice of a psychologist in such a situation.

The Australian Psychological Society
28 February 2011