

The Australian Psychological Society Ltd

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

**Psychology Board of Australia
Consultation paper 11**

**Exposure Draft:
Revised standard and guidelines on professional
indemnity insurance for psychologists**

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Exposure Draft: Revised standard and guidelines on professional indemnity insurance for psychologists

Executive Summary

The Australian Psychological Society (APS) welcomes the opportunity offered by the Psychology Board of Australia to provide comment on this Consultation paper regarding the revised standard and guidelines on professional indemnity insurance for psychologists. The APS supports the changes made by the Psychology Board to the standard and guidelines in response to the submissions to consultation paper 8. Aside from a few minor recommendations detailed below, the APS endorses the proposed revised standard and guidelines on professional indemnity insurance for psychologists.

The APS strongly supports the Psychology Board stance on cover for disciplinary matters which in part states, "*The Board strongly recommends that psychologists have sufficient level of cover to meet inquiry costs, and to provide adequate levels of insurance for the potential costs incurred at professional disciplinary board or other hearings.*"

The APS has made two recommendations to clarify the revised standard and guidelines. These recommendations refer to clarification of policy wording relating to the scope and amount of cover.

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 Psychology Board uses the term “acts, errors or omissions” in the new professional indemnity arrangements when referring to the criteria for how a claim is made, omits the use of the term, “negligent act”, and subsequently amends the relevant Definition section to read as “acts, errors or omissions”.

Amount of cover

Recommendation 2.

That the Psychology Board specifies the exact minimum level of cover required by psychologists. In particular, the Psychology Board clarifies whether a reinstatement clause is mandatory, and whether the existence of a reinstatement clause or otherwise affects the minimum level of cover required by a psychologist. And, the Psychology Board clarifies whether the existence of shared indemnity limits affects the minimum level of cover required by a psychologist.

Mandatory PII requirement for registrants

Request for Psychology Board clarification.

The APS is concerned about the potential situation that may arise where a psychologist is unable to obtain professional indemnity insurance cover. The APS would appreciate clarification from the Psychology Board 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 revised standards and guidelines proposed by the Psychology Board. The APS has provided commentary, and our recommendations are set out following the order of headings and related sections set out in the “*Revised standard and guidelines on professional indemnity insurance for psychologists*” where appropriate.

1 Scope of cover

The APS notes the revised proposed wording refers to “*a claim that is made as a result of an act, error or omission in the conduct of the practitioner.*” We support this definition.

However, in the Definitions section of Attachment A there is a reference 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 inclusion of the term “negligent act” which may have been included in the Definitions section by error. 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 Psychology Board uses the term “acts, errors or omissions” in the new professional indemnity arrangements when referring to the criteria for how a claim is made, omits the use of the term, “negligent act”, and subsequently amends the relevant Definition section to read as “acts, errors or omissions”.

2 Amount of cover

The APS supports the proposal for a minimum level of cover of \$2 million for any one claim. However we think there needs to be clarification around the exact minimum requirements for level of cover.

In the Requirements for individual (not employer) PII arrangements, point 1 states, “Pii arrangements must include civil liability cover that is sufficient to cover the psychologist’s practice including automatic reinstatements *where appropriate* to achieve an adequate level of cover”.

Under the Requirements for employer PII arrangements, point 1 is expanded to state, “Pii arrangements must include civil liability cover that is sufficient to cover the psychologist’s practice including automatic reinstatement or *the equivalent* under employer-based pii arrangements to achieve an adequate level of cover”.

The proposed wording under Amount of cover in Attachment A states, “All practising psychologists must have a minimum level of \$2 million for any one claim and \$4 million on aggregate”.

Later in Attachment C under Automatic reinstatement, it states, “A psychologist whose policy does not include automatic reinstatement must have at least \$4 million for any one claim to meet the minimum requirement on aggregate.”

The combination of these statements suggests that one reinstatement appears to be required rather than optional as implied by the terms, “where appropriate” and “or equivalent” referred to above.

In addition, some professional indemnity insurance policies, particularly those arranged through employers which are occurrence-based facilities and have a group or shared limit, do not have reinstatement options.

Further, if a single professional indemnity insurance policy is purchased by an employer to cover a group of employees, how can the employer be assured that an individual psychologist employee has the minimum level of cover required by the pii standard.

Recommendation 2.

That the Psychology Board specifies the exact minimum level of cover required by psychologists. In particular, the Psychology Board clarifies whether a reinstatement clause is mandatory, and whether the existence of a reinstatement clause or otherwise affects the minimum level of cover required by a psychologist. And, the Psychology Board clarifies whether the existence of shared indemnity limits affects the minimum level of cover required by a psychologist.

3 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 (e.g., following the successful but expensive defense of a vexatious or otherwise unmerited claim) a psychologist may not be able to obtain insurance, yet still be a competent and capable psychologist otherwise able to practise. Other relevant contexts can include psychologists returning to full registration as a psychologist after a period of being either de-registered or suspended.

An insurer may refuse to offer professional indemnity 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 Psychology Board clarification.

The APS is concerned about the potential situation that may arise where a psychologist is unable to obtain professional indemnity insurance cover. The APS would appreciate clarification from the Psychology Board as to the likely procedure to be followed to support the continued practice of a psychologist in such a situation.

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