

## Submission of Victorian Psychologists Association Inc

### Psychology Board of Australia: Exposure Draft

#### Revised Standard and Guidelines on Professional Indemnity Insurance for Psychologists

##### Overview

The Victorian Psychologists Association Inc (the VPA) welcomes the inclusion of union professional indemnity insurance (PII) policies in the proposed revised Professional Indemnity Insurance Arrangements Registration Standard (the Standard), and the associated Guidelines on Professional Indemnity Insurance for Psychologists (the Guidelines).

The clarification that an employer PII which is occurrence-based (ie covers claims made during the period of insurance) and public sector employer PII (including self insurance), regarding the practice of psychology, is welcomed.

However, employer policies and union PI policies are not interchangeable, and generally union policies act to supplement PII cover obtained through the employer. Union policies may, for example, only provide cover for claims against the psychologist who is working under a contract of employment, in circumstances where the psychologist is unable to obtain indemnity from the employer. Union policies generally provide cover for matters which may go to the Psychology Board of Australia, whereas employer PII does not.

The VPA notes that no guidance is given in relation to the operation of educational providers' PI policies in relation to cover for provisionally registered psychologists. The VPA considers that the matter of the reach and extent of cover provided by educational providers to students and to persons engaged under 'contractual ... or other arrangement' needs to be clarified.

The VPA submits that given the differences between employer, union and education provider, that these different sources of PI cover should not be subsumed under the heading *Employer Cover*.

The VPA suggests that the Standard (and the Guidelines) should distinguish between individual insurance arrangements, on the one hand, and *Group Cover* on the other.

The three types of *Group PI Cover* should be distinguished, and the point made that it may be possible to meet the Standard through a combination of cover.

##### Run Off Cover

The VPA supports a minimum period of seven (7) years run-off cover as proposed.

### **Retroactive Cover**

The VPA considers that 'claims made' policies should be held to meet the requirements of the Standard in circumstances where the insurer excludes known claims and circumstances.

The VPA considers that it will be impossible for psychologists to obtain retroactive cover for *known claims and circumstances* which occurred prior to 1 July 2010, where the psychologists did not have PII cover, and was not required to have PII cover, prior to that date.

This point needs to be included in the Standard ie that retroactive cover does not include cover for known claims and circumstances prior to 1 July 2011.

### **Amount of Cover**

The VPA notes the Board's view that the amount of insurance cover is a risk management issue.

However the VPA suggests that the \$2 million dollar minimum for any one claim and \$4 million in the aggregate is too low.

The VPA's position remains that the minimum cover should be \$10 million and \$20 million respectively for psychologists who provide direct clinical services, including secondary consultation and professional supervision, and that psychologists who do not provide clinical services should be exempt from having to have PII cover.

This should be sufficient cover to meet all circumstances and psychologists would not have to undertake an 'objective self-assessment' (whatever that means and however that can be done) in order to decide the level of cover.

### **Union Professional Indemnity Insurance Policies & Interaction between Union Policies and Employer Policies**

In many case Union policies act to supplement PII cover obtained through the employer.

Because employers are vicariously liable for the actions of employees, employers will generally have PII policies in place, or will self-insure.

Union policies often only provide cover for claims against a psychologist who is working under a contract of employment, in circumstances where the psychologist is unable to obtain indemnity from the employer.

Union policies generally provide cover for matters which may go to the Psychology Board of Australia, whereas employer PII does not.

Under these circumstances, psychologist in employment who are covered by both employer PII and Union PII will have sufficient cover to meet the proposed Standard and Guidelines, including cover for malpractice (through employer PII) as well as the costs of defending matters which go to the Board or other hearings such as Coroner's Court proceedings (through Union PII cover).

The Standard and Guidelines should treat Employer, Union and Educational Provider PII separately.

### **Educational Provider Cover (non-employees)**

The VPA repeats the comments made in its submission to Consultation Paper 8 – ie there needs to be more work done on the requirements of PII cover offered by educational institutions, and the coverage of educational institutions' PII cover as it applies to Provisionally Registered Psychologists.

It is still unclear whether educational providers' PII meets the Standard and little assistance is provided by the Guidelines. The Guidelines provide no information as to how a Provisionally Registered Psychologist can be certain that the educational providers' PII is sufficient.

The statement in the Guidelines that 'provisional psychologists practising psychology in their placements that are part of their degree *may* be covered by the higher educational institution *or the employer* providing the placement' (emphasis added) is unclear and unsatisfactory.

A provisional psychologist undertaking approved supervised practice does not have an employment relationship with the organisation(s) providing the placement. This is clear from the Board's own policies.

And if educational institutions' PII *may* cover students on placement, how can this be established by a provisional psychologist? If a statement that a psychologist is employed by a public sector employer is sufficient to 'prove' that a psychologist has PII cover in the employment situation to meet the Board's requirements regarding cover for civil liability for acts of professional malpractice, should not a statement from an educational institution that a provisional psychologist is enrolled in a Masters or Doctoral program also be sufficient?

### **Suggested Amendments to the Standard and Guidelines follow.**

Inquiries in relation to this submission should be directed to:

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## VPA Inc Suggested Amendment to the Standard and Guidelines

### Attachment A – Proposed PII Standard

#### Amount of Cover

- Increase to \$10 million and \$20 million respectively.
- Delete paragraph re requirement to make an objective self assessment.

#### Employer Cover

- **Rename Group PII Cover**
- Rewrite section on employer cover
- Separate out references to Employer, Union and Educational Provider cover (where Educational Provider cover refers to Provisional Psychologists only; psychologists employed by educational institutions would come under Employer cover.)
- Note in this section that sufficient cover can be obtained from a combination of sources – eg employer plus union cover is likely to cover both malpractice and Board and other hearings
- Make clear that retroactive cover prior to 1 July 2011 may not be possible where there are known circumstances
- Clarify educational provider PII cover for provisional psychologists on placement

#### Mandatory PII Requirement for Registrants

- Delete reference to ‘permanent public sector employee’ insert ‘public sector employee’.

Many psychologists in public sector employment are employed on fixed term contract, for example, in maternity leave replacement positions or on special projects, and are not ‘permanent’ employees. A small number of psychologists in Victorian public sector employment are employed on a sessional or casual basis.

The employer will have a vicarious liability for the acts of all employed psychologists, irrespective of their employment status, and will have PII cover.

The requirement should be evidence of public sector employment, not of *permanent* public sector employment.

## Definitions

### ***Employer insurance arrangement***

- Delete dot point 4 – Union membership that includes *appropriate* PII cover.
- Delete dot point 5 – employment, enrolment or contractual arrangement or *other arrangement* with an education provider

Stating the obvious, union PII cover and education provider cover for students or contractor is not employer PII cover.

- **Insert two new definitions namely**
  - ***Union insurance arrangements***
  - ***Educational Institution insurance arrangements, students/provisionally registered psychologists***
- Insert appropriate definitions

### ***Professional indemnity insurance arrangements***

- Add note: not all such arrangements include cover for Psychology Board of Australia and other hearings

## VPA Inc Suggested Amendment to the Standard and Guidelines

### Attachment C – Proposed Guidelines on Professional Indemnity Insurance for Psychologists

#### Scope

- Add a sentence “provided that psychologists working in management, administration or regulatory or policy development roles without any direct clinical role are not required to have PII arrangements in place although they may chose do so”.
- Add to the end of this section “provided that unlimited retroactive cover will exclude notification and events which were known prior to 1 July 2011’.
- Delete the reference to ‘employer-based PII arrangements” and insert “group PII arrangements including employer and Union arrangements, or in the case of students/provisionally registered psychologists, educational institution arrangements.

#### Run-off and Retroactive Cover

- Add to second paragraph “provided that unlimited retroactive cover arrangements may exclude notification and events which were known prior to 1 July 2011’.
- Add to third paragraph the words ‘or Union or educational provider based policies’.

#### Employer Cover – Delete and Replace with the words Group Cover

- Delete the current wording
- Insert in lieu:

*An individual may be covered by an individual insurance arrangement or by a combination of an individual insurance arrangement plus group cover or more than one group arrangement. Group cover means a PII arrangement of an employer, a Union or of an educational institution, in the case of students/provisionally registered psychologists.*

*Where a psychologist is covered by an employer arrangement, any claims relating to the period of the psychologists employment will be covered by those PII arrangements.*

### **Amount of Cover**

- Delete whole of section.

Insert in lieu thereof:

*The minimum amount of annual cover has been set at \$10 million for any one claim and \$20 million in the aggregate.*

### **Automatic Reinstatement**

- Delete paragraph 2 and insert in lieu:

*The minimum requirement for an individual policy is \$10 million with one automatic reinstatement of \$10 million per annum, which meets the requirement of \$10 million for any one claim and \$10 million in aggregate per annum.*

[Note reference to claims made policy in original]

### **Cover for Disciplinary Matters**

- In the first sentence add after the words 'employers' the words and insert the words 'employers or educational institutions'.
- Add a new sentence 'Union policies may cover the cost of representation at disciplinary hearings at the Board and other hearings.'

### **Exemptions**

- Add a sentence as follows:

*"Provided that psychologists working in management, administration or regulatory or policy development roles without any direct clinical role are not required to have PII arrangements in place"*