



## Public consultation

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March 2018

### Consultation on proposed registration standard: Professional indemnity insurance

#### Public consultation

The Psychology Board of Australia ('the Board') is releasing this public consultation paper seeking feedback on the draft revised registration standard for professional indemnity insurance arrangements. This document will be published on the Board's website.

#### Your feedback

You are invited to provide your feedback in a word document to [psychconsultation@ahpra.gov.au](mailto:psychconsultation@ahpra.gov.au) by **close of business Friday 04 May 2018**.

You are welcome to supply a PDF file of your feedback in addition to the Word (or equivalent) file however, we request that you do supply a text or Word file. As part of an effort to meet international website accessibility guidelines, AHPRA and the Board are striving to publish documents in accessible formats (such as Word), in addition to PDFs. More information about this is available at [www.ahpra.gov.au/About-AHPRA/Accessibility.aspx](http://www.ahpra.gov.au/About-AHPRA/Accessibility.aspx).

#### How your submission will be treated

Submissions will generally be published unless you request otherwise. The Board publishes submissions on its website to encourage discussion and inform stakeholders and the community. However, the Board retains the right not to publish submissions at its discretion, and will not place on its website, or make available to the public, submissions that contain offensive or defamatory comments or which are outside the scope of the consultation.

Before publication, the Board will make reasonable effort to remove information that personally identifies individuals making submissions, as well as individuals referred to in submissions, including their contact details.

The views expressed in submissions are those of the individuals or organisations who submit them and publication does not imply any acceptance of, or agreement with, those views by the Board.

The Board will also accept submissions made in confidence. These submissions will not be published on the website or elsewhere. Submissions may be confidential because they include personal experiences or other sensitive information. Whilst the Board and AHPRA will take reasonable steps to preserve the confidentiality of these submissions, these may be disclosed if this is required by law or by a committee of a parliament. Usually, requests for access to a confidential submission will be determined in accordance with the Freedom of Information Act 1982 (Cth), which has provisions designed to protect personal information and information given in confidence.

**Please let the Board know if you do not want your submission published, or want all or part of it treated as confidential**

**Psychology Board of Australia**

G.P.O. Box 9958 | Melbourne VIC 3001 | [www.psychologyboard.gov.au](http://www.psychologyboard.gov.au) | 1300 419 495

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# Overview of consultation

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March 2018

## Registration standard: Professional indemnity insurance

### Summary

1. The [Health Practitioner Regulation National Law](#) as in force in each state and territory (the National Law) requires Boards to develop registration standards about certain matters including the requirements for professional indemnity insurance arrangements for practitioners registered in the profession.

### Background

2. At the commencement of the [National Registration and Accreditation Scheme](#) (the National Scheme), the Psychology Board of Australia (the Board) developed a professional indemnity insurance arrangements registration standard (the PII registration standard) that was approved by the Australian Health Workforce Ministerial Council (AHWMC) and took effect on 1 July 2010.
3. This initial standard was reviewed in 2012 in response to feedback from the profession and insurers highlighting issues with implementation of the requirements and a need for clarity about the different types of professional indemnity insurance arrangements.
4. Following a wide-ranging consultation process, a proposed revised PII registration standard was submitted to the AHWMC and was approved and came into effect on 1 June 2012. The revised PII standard was scheduled for review at least every three years, in keeping with good regulatory practice. Therefore further review of the standard commenced on 1 June 2015.
5. Since 2012, the Board has not received advice of any significant concerns about the PII arrangements registration standard. This may indicate that the current requirements are working well and there is no need for significant change.

### Current review

6. The Board has carefully considered the objectives and guiding principles of the National Law and the [regulatory principles for the National Scheme](#) in deciding whether it should propose changes to the existing registration standard. The Board has also adopted a risk-based approach to the review, drawing on its experience with the current and previous registration standards and other sources of information, including research and other published documents and the approach of other National Boards and comparable regulators.
7. The Board supports greater convergence of National Boards' registration standards where appropriate and is undertaking this review of the PII registration standard together with five other National Boards<sup>1</sup>. Some National Boards are reviewing multiple core<sup>2</sup> registration standards in this review; the Psychology Board is reviewing the PII registration standard only. The Board is inviting general comments on its draft revised PII registration standard. There is an overview before the draft that explains and discusses the proposed changes. There are also specific questions about the registration standard that you may wish to address in your response.

### Context

8. National Boards for health professions that entered the National Scheme in 2010 completed reviews of core profession-specific registration standards in August 2015; this review builds upon the experience of those Boards.

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<sup>1</sup> Aboriginal and Torres Strait Islander Health Practice Board of Australia, Chinese Medicine Board of Australia, Chiropractic Board of Australia, Occupational Therapy Board of Australia, and Optometry Board of Australia.

<sup>2</sup> Registration standards required by section 38(1)(a)-(e) of the National Law.

9. The [National Registration and Accreditation Scheme review](#) outcomes recognise opportunities for multi-profession collaboration within the National Scheme.
10. Governments expect National Boards to develop consistent approaches across professions rather than maintaining historic profession-specific approaches unless there are clear and robust reasons to support them, such as differentiated evidence of risk. This expectation was reinforced in correspondence from the Ministerial Council regarding approval of other core registration standards (continuing professional development (CPD) and recency of practice (ROP)).
11. The National Boards have agreed to use standard requirements, definitions and evidence provisions in their registration standards. As a result, there is a high level of consistency across revised registration standards with a few minor profession-specific variances. This review builds upon the experiences of other Boards. In order to maintain consistency and promote efficiency, the six National Boards participating in this review are using the registration standards developed in the previous review as a basis for their draft revised registration standards.
12. Additionally, as outlined below, some key opportunities for increased consistency – including common timeframes for record keeping requirements and review timeframes – have been identified.

#### **Common timeframes for record keeping**

13. The Australian Health Practitioner Regulation Agency (AHPRA) has continued to work with National Boards towards consistency in relation to record keeping requirements. Agreement has been reached across most professions to establish a standard five-year requirement for record keeping. This consistent approach is informed by:
  - a. consideration of other regulatory authorities' requirements (e.g. Income Tax Assessment Act, Corporations Act, Fair Work Act, Occupational Health and Safety Act, Australian Charities and Not for Profit Commission Act, New Zealand Health (Retention of Health Information) Regulations) which vary from 5–10 years, and
  - b. being able to support an effective cross-professional audit process. For example, an audit may consider a declaration from the previous year which relates to recency of practice in the three years before the declaration.
14. The move to a consistent record-keeping timeframe was supported by government in the context of the review of registration standards by the 2010 health professions that included the Board's CPD standard.

#### **Common timeframes for future reviews**

15. The draft revised PII standard includes a five-year review period, with an option for earlier review if required. The move from a three-year period for scheduled review (in the initial standards) to a five-year review period reflects the maturity of the National Scheme and the registration standards.
16. The move to a longer review period was supported by governments in the context of the review of registration standards by the 2010 health professions, which included the Board's CPD and ROP standards.

#### **Next steps**

17. The Board will consider the consultation feedback on the draft revised registration standard before finalising the proposed document to recommend to the AHWMC for approval.

# Review of Registration standard: Professional indemnity insurance arrangements

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## Background

18. The National Law requires National Boards to develop a registration standard about the requirements for professional indemnity insurance (PII) arrangements for health practitioners registered in the profession.
19. Section 129 of the National Law provides that a registered health practitioner must not practise unless they have appropriate PII arrangements in force.
20. Section 109 of the National Law requires a practitioner applying to renew their registration to make a declaration that they have not practised during the previous registration period without having appropriate PII arrangements in place. It also requires the practitioner to declare that if their registration is renewed, they will not practise without appropriate PII arrangements in place.
21. Section 130 (3)(iii) requires that a registered health practitioner must notify the National Board within seven days if appropriate PII arrangements are no longer in place.
22. The Board's current PII registration standard requires psychologists to have appropriate PII arrangements in place for each context in which they practise. The Board is reviewing the standard to ensure it meets the objectives of the National Law and is worded as simply and clearly as possible.

## Options statement – Registration standard: Professional indemnity insurance arrangements

### Option 1 – Status quo

23. Option 1 would continue with the existing PII registration standard.
  - a. The current registration standard establishes the Board's requirements for PII arrangements, including a minimum level of \$2 million for any one claim and an objective self-assessment requirement. The current PII standard is available at [www.psychologyboard.gov.au/Standards-and-Guidelines/Registration-Standards.aspx](http://www.psychologyboard.gov.au/Standards-and-Guidelines/Registration-Standards.aspx).
  - b. Option 1 would also involve retaining the current *Guideline on professional indemnity insurance for psychologists* without any changes, or with minor changes. The current guideline is available at [www.psychologyboard.gov.au/Standards-and-Guidelines/Codes-Guidelines-Policies.aspx](http://www.psychologyboard.gov.au/Standards-and-Guidelines/Codes-Guidelines-Policies.aspx).
  - c. Feedback on the current standard indicates it is working well. However, the Board wishes to review the requirements for a minimum amount of cover, and has also identified some opportunities to update the language and structure of the PII standard to align it more closely with the PII registration standards of other National Boards.

### Option 2 – Proposed revised standard

24. Option 2 would involve the Board recommending a revised registration standard to the Ministerial Council for approval. It is proposed that the revised registration standard would continue to outline the Board's requirements for PII arrangements, with some changes to the requirements including:
  - a. The proposed revised PII standard would continue to require practitioners who are taking out their own insurance to do an objective self-assessment of their practice, but it would no longer set a minimum amount of cover. Additionally, the proposed revised standard would require practitioners to seek advice from their insurer on the level of cover that is adequate and appropriate for their practice. In order to enable an insurer to make this judgement, practitioners would be required to provide their insurer or indemnifier with accurate and up to date information about the scope and nature of their practice. The current standard states that practitioners should consult an insurance broker or licensed provider of financial advice for additional guidance, but does not explicitly require it or specify disclosure requirements.

This flexible approach acknowledges that appropriate cover may vary between practitioners according to the nature and context of their professional practice and minimises regulatory burden on practitioners who practice in low risk areas while continuing to protect the public by ensuring that practitioners have adequate cover.

- b. The proposed revised PII standard would continue to clarify that run-off cover is required for matters that are not already covered, but would change to require 'appropriate' run-off cover, rather than run-off cover for at least seven (7) years. This means the standard would continue to apply appropriately to policies whether they are on a claims-made or an occurrence (claims-incurred) basis; Occurrence based policies cover the incident as long as it occurred during the period of cover, in effect providing run-off cover.
- c. The proposed revised PII standard would introduce information about the circumstances in which a practitioner is not required to have PII arrangements. This includes information about exemptions that could apply to psychologists whose work does not involve the provision of psychological services to clients as a practitioner or supervisor that may impact the physical or mental health of any person. The Board's current PII standard does not provide any exemptions for psychologists who practise the profession in Australia.
- d. The proposed revised PII standard clarifies that – in accordance with the *Medical Indemnity (Prudential Supervision and Products Standards) Act 2003* (Cth) - insurers must generally be registered with the Australian Prudential Regulation Agency (APRA), or be a Lloyd's underwriter (unless exempt from application of the Act - such as state government employers that self-insure).

Health practitioners who take out their own professional indemnity insurance are advised to ensure that their PII provider is registered with APRA as a general insurer or is a Lloyd's underwriter, and that their professional indemnity insurance is provided through a contract of insurance, in accordance with the Act. This is intended to ensure the use of reputable insurers who are subject to Australian regulation.

25. The draft revised standard also introduces some new terminology, consistent with that used by other National Boards, which may improve the overall clarity and workability of current requirements. The new terminology would improve cross-profession consistency with minimal but relevant and appropriate profession-specific variation, and would continue to ensure that public protection remains paramount.
26. AHPRA, together with the National Boards, will provide a fact sheet similar to that developed for the [2010 health professions](#) to support practitioners' understanding of the proposed revised standard.
27. It is proposed that the fact sheet would replace the profession-specific guidance that is currently provided. Therefore Option 2 would include retiring the Board's *Guidelines on professional indemnity insurance for psychologists* and adopting the PII fact sheet used by other National Boards, with additional guidance on any issues specific to the psychology profession.
28. The current PII fact sheet is available at [www.ahpra.gov.au/Registration/Registration-Standards/PII.aspx](http://www.ahpra.gov.au/Registration/Registration-Standards/PII.aspx).
29. It is proposed that the current PII fact sheet will be revised to provide extra guidance on requirements for professional indemnity insurance arrangements such as:
  - run-off cover and equivalent arrangements
  - circumstances when practitioners may be exempt from the PII registration standard
  - self-insurance arrangements by state government employers
  - determining an adequate and appropriate level for one's practice
  - non-mandatory PII arrangements – such as cover for disciplinary hearings.

### **Preferred option**

30. The Board prefers Option 2.

## Issues for discussion

### Potential benefits of consistent standards

31. Adopting a PII registration standard that is consistent with other National Boards' would reflect the best available information and good practice, as well as facilitate the efficiency and effectiveness of the Board's regulation and contribute to the efficiency and effectiveness of the National Scheme.
32. Consistency in requirements across National Boards would also be expected to benefit and provide greater clarity for government, insurance providers, and multi-disciplinary employers who provide PII cover for a range of health professionals.

### Minimum amount of cover

33. A particular issue to be determined in this review is whether to continue to specify a minimum level of PII cover for psychologists. The current PII standard specifies a minimum level of \$2 million for any one claim with at least one automatic reinstatement, or equivalent under occurrence-based policies.
34. The two main options are:
  - a. to continue to specify a minimum level, or
  - b. to remove the minimum level, but otherwise maintain the current requirements.
35. Based on current evidence, expert advice and feedback from Ministers, the recommended approach is not to specify a minimum amount of cover in a registration standard, but to continue to specify that practitioners have a responsibility to ensure that their cover is appropriate for their individual practice.
36. Previous consultation and research<sup>3</sup> found that no specific minimum amount would be appropriate for all, or even most, psychologists given significant variation in the types of work undertaken and the associated levels and types of risks. Factors such as income level and whether or not the psychologist works in independent private practice were found to not be reliable indicators of risk and appropriate PII levels.
37. The current minimum may be insufficient for psychologists working in high risk areas but was adopted to ensure that PII requirements would not become a barrier to practice for psychologists who work in low risk areas. The current requirement to undertake an objective self-assessment was adopted to ensure that practitioners determine the level of cover warranted by their individual practice and do not under-insure.
38. During other National Boards' review of their PII standards in 2012-2015 the issue of minimum levels of cover was carefully considered. It was determined that the issue of how much insurance cover is enough is a technical issue which will vary according to a practitioner's scope of practice, and the context in which the activities are carried out. Research findings and advice reflected the Board's previous findings, and National Boards concluded that for most professions it is difficult to identify an appropriate minimum level of cover which would apply uniformly across the broad range of practice settings and levels of risk within the profession. The outcome was that most National Boards removed specified minimum levels from their PII arrangements registration standards and the Psychology Board now proposes to do the same.
39. The proposal to remove the minimum level would, in practice, not have a significant impact as psychologists are already required to take out an appropriate level of cover based on their scope of practice. Most registered psychologists would not need to alter their existing policy if the minimum was removed. Employers who provide group PII arrangements for psychologists are also unlikely to be affected.

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<sup>3</sup> Refer to Consultation Paper 1 - Registration Standards and Related Matters, Consultation paper 8 - Proposed revisions to the Professional Indemnity Insurance Arrangements Registration Standard, and Consultation paper 11 - Exposure draft - revised standard and guidelines on professional indemnity insurance for psychologists at [www.psychologyboard.gov.au/News/Past-Consultations.aspx](http://www.psychologyboard.gov.au/News/Past-Consultations.aspx).

## Exemptions

40. The Board is seeking feedback on options for exemptions from the PII registration standard.

### Current standard

41. The current PII arrangements registration standard does not provide any exemptions from the requirements of the National Law; all psychologists who fall within the scope of application of the standard must meet the requirements.
42. There are groups of registrants who are not required to have PII because they do not practise psychology in Australia (for example, those taking parental leave, or practising exclusively overseas). The current standard does not present these groups as exempt from the standard, but rather the standard does not apply to them in the first place; however the Board has identified an opportunity to make this clearer.

### Proposed revised standard

43. If the Board proposes to adopt a revised PII registration standard there are two main options with regard to exemptions:
- a. retain the current position on exemptions within the proposed new format for the registration standard by explicitly stating that there are no exemptions
- or**
- b. adopt up to three specific exemptions that are offered by other National Boards in their PII standards, as set out in the proposed revised standard.
44. Both options would involve continuing to include information about the scope of application of the standard, but would use clearer language and structure to improve understanding. In particular the proposed revised standard would make it clearer that PII is only required for practising the profession in Australia.
45. Both options would also include a new '*Exemptions*' section as set out in the proposed revised standard; the Board is seeking feedback on specific information to be included in the new section.

### Option a. do not introduce any exemptions

46. Adding a specific statement that there are no exemptions would make this requirement clearer than it is in the current standard which only specifies who the standard doesn't apply to in the '*Scope of application*' section.

### Option b. introduce exemptions in line with other National Boards

47. The first proposed exemption would apply to practitioners whose practice does not include the provision of psychological services to clients that may impact the physical or mental health of any person. Services that may impact the physical or mental health of any person include any direct client contact and supervision of others who have direct client contact.
48. The second proposed exemption would be included on the basis that the standard should not impose an obligation on practitioners to hold PII if other legislation exempts them from the obligation.
49. No statutory exemptions from liability applicable to the psychology profession have been identified. Including information that refers to legislation that may not exist could be confusing. However including the information could also reduce risk by future-proofing the standard against the possibility of such legislation being introduced in the future with insufficient notice for the PII arrangements standard to be updated.
50. The third proposed exemption would reinforce that the standard only applies to registered psychologists with general registration or provisional registration who practise the profession in Australia, and not those practising overseas. It could either be included exactly as shown in the



proposed revised standard, or reworded to apply to all psychologists who are not required to have PII because they do not practise at all in Australia (e.g. while taking parental or carer's leave).

51. Option b would also include adding the following note:

52. *Note: appropriate run-off cover is required for past practice in Australia that would otherwise be uncovered.*

53. This would remind practitioners that even if they are currently exempt from PII, all past practice must be covered. Therefore if previous practice is not otherwise covered, run-off cover from a claims made policy must be in place.

#### **Run off cover**

54. Run-off cover is a type of cover relating to PII policies with a claims made basis that enables claims relating to practice under a current policy to be made in the future when the current policy is no longer in place. Run-off cover is taken out when ceasing a particular practice and discontinuing the PII policy for that practice, e.g. at retirement, when changing from private practice to employment where the employer provides PII, or a significant change in scope of practice that requires a new PII policy. It may also apply when ceasing practice temporarily – such as taking parental or carer's leave – with the intention of returning to practice in the future.

55. All past practice in Australia must be covered by run-off cover, if not already covered by an occurrence based policy or retroactive cover in a current policy. The proposed standard aims to make this requirement clearer.

56. Currently, run-off cover, or equivalent, is a requirement of PII arrangements under the standard. The revised standard proposes a more nuanced approach which would continue to require cover for claims relating to past practice that would otherwise be uncovered. While the practitioner continues to practise, the proposed standard would require appropriate retroactive cover for otherwise uncovered matters arising from prior practice; whereas the current standard requires unlimited retroactive cover, or equivalent under employer-based arrangements.

57. When the practitioner ceases practice, rather than requiring run off cover for seven years, the proposed revised standard would require appropriate run-off cover for matters that would otherwise be uncovered arising from the practitioner's previous psychological practice.

#### **Potential benefits and costs of the proposed option**

58. The benefits of the preferred option are that the draft revised standard:

- is user-friendly; it uses plain English and is likely to be easily understood by psychologists, employers and consumers of psychology services
- strikes a balance between protecting the public and impact on registrants and applicants for registration, and
- is likely to benefit government, insurance providers, and multi-disciplinary employers who provide PII cover for a range of health professionals due to the high level of consistency with other Boards' PII standards.

59. The potential costs of the preferred option are that registrants, applicants, other stakeholders, AHPRA and National Boards will need to become familiar with the revised standard (if approved), noting that the changes to the requirements are minor.

#### **Estimated impacts of the draft revised registration standard**

60. The changes proposed in the draft revised registration standard are minor, although more significant changes may be identified through this public consultation. The proposed revised standard would make changes to how the Board's PII requirements are presented by introducing a new structure and some new terminology. If adopted, psychologists would need to review their PII to ensure it continues to meet the standard. However, there would be relatively minor impact on practitioners, business and other stakeholders.

61. The Board anticipates that the proposed changes will have a relatively minor impact on practitioners, business and other stakeholders. Many of the proposed changes have already been adopted by other National Boards<sup>4</sup> so it is understood that insurers are already responding to the changes. However, there may be some further impacts on the insurance industry.
62. The proposal to add an exemption for psychologists who do not provide psychological services to clients, either directly or as a supervisor or manager of those providing direct services, would impact some psychologists. It would not affect the public as all psychologists providing services that may impact the physical or mental health of any person would still be required to be insured and the public would continue to have access to compensation when required.
63. The Board recognises that PII is a complex area and will continue to work on materials to support practitioners' understanding of the changes. If changes to the PII arrangements registration standard are made, implementation will be supported by appropriate transition arrangements.
64. Public consultation will help ensure that any unintended consequences are identified and addressed.

### Relevant sections of the National Law

65. Relevant sections of the National Law relating to PII are sections 38, 109, 129 and 130.

#### Questions for consideration

- 1) Which is the best option for reviewing the PII standard? (Option 1 – status quo or Option 2 – revised standard)
- 2) Are there specific areas of the current standard that are not working well and would the proposed revised standard address the issues?
- 3) What is the best option for exemptions from the PII standard? (Option 1 – no exemptions, Option 2 – introduce exemptions)
- 4) Are there other specific impacts (positive or negative) for practitioners, employers, PII providers, clients/consumers, the Boards and AHPRA that have not been identified in this paper?
- 5) Is the content and structure of the proposed revised PII arrangements registration standard helpful, clear, relevant and workable?
- 6) Is there any content that should be changed or deleted in the proposed revised PII arrangements registration standard?
- 7) Is there anything missing that needs to be added to the revised draft PII arrangements registration standard?
- 8) Is there anything else the National Board should take into account in its review of the PII arrangements registration standard, such as impacts on workforce or access to health services?
- 9) It is proposed that the draft revised PII registration standard will be reviewed every five years (or earlier if required) as the content is likely to be reasonably settled and stable after this review. Do you have any feedback about this proposal?
- 10) Do you have any other comments on the revised draft PII arrangements registration standard?
- 11) Do you have any feedback on the proposal to retire the PII guideline and adopt a common PII fact sheet used by other National Boards?

<sup>4</sup> In their recent review, the Chiropractic Board of Australia, Medical Radiation Practice Board of Australia, Osteopathy Board of Australia and Podiatry Board of Australia have moved from specifying a minimum amount of cover to not stipulating a minimum amount. The Dental Board of Australia, Medical Board of Australia, Nursing and Midwifery Board of Australia, Optometry Board of Australia and Physiotherapy Board of Australia have never specified a minimum amount of cover.

12) Do you have suggestions for guidance that should be included in a common PII fact sheet, in addition to guidance already included or proposed to be included in this paper?

66. The Board's *Statement of assessment against AHPRA's Procedures for development of registration standards* and *COAG principles for best practice regulation* is included in this public consultation paper.

The current PII arrangements registration standard is published on the Board's website, accessible from [www.psychologyboard.gov.au/Standards-and-Guidelines.aspx](http://www.psychologyboard.gov.au/Standards-and-Guidelines.aspx).

## Registration standard

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### Professional indemnity insurance arrangements **(DRAFT)**

**Effective from:** <<Date>>

67. This registration standard sets out the Psychology Board of Australia's (the Board's) requirements for professional indemnity insurance (PII) arrangements for psychologists. Registrants can be covered by their own PII arrangements or third-party PII arrangements.

#### Does this standard apply to me?

68. This standard applies to all registered psychologists and provisional psychologists. It does not apply to psychologists with non-practising registration.

#### What must I do?

69. When you practise as a psychologist or provisional psychologist in Australia, you must be covered by your own or third-party PII arrangements that meet this registration standard:
- a. for all aspects of your practice
  - b. in all locations where you practise
  - c. whether you are working in the private, non-government and/or public sector, and
  - d. whether you are practising full-time, part-time, are self-employed, employed, or in an unpaid or volunteer capacity, or any combination of these factors.
70. Your PII cover must include:
- a. adequate and appropriate civil liability cover
  - b. appropriate retroactive cover for otherwise uncovered matters arising from prior practice
  - c. automatic reinstatement, or an equivalent approach which ensures that the amount of cover will not be exhausted by a single claim,  
**or** the equivalent of 2a to 2c above under third-party PII arrangements.
71. If you are covered by a third-party PII arrangement, it must meet this registration standard. If you are in any doubt about whether the third-party cover meets this registration standard, you should always ask what is covered by the third-party PII arrangement.
72. If the third-party cover does not meet this registration standard you must take out additional cover to ensure this standard is met.
73. If any area of your practice is specifically excluded from your PII cover, you must not practise in that area.
74. If your PII cover is provided by your employer, and you intend to practise outside your stated employment, you must have individual PII arrangements in place to cover that practice. This may include cover for undertaking:
- practical components of continuing professional development
  - study involving client contact or
  - volunteer work (unless you are covered separately for this work, for example, by the volunteering organisation).

### Amount of cover

75. If you are arranging your own professional indemnity insurance, you should ensure that you take out adequate and appropriate insurance or professional indemnity cover. Professional indemnity insurers provide these policies. Insurance brokers or providers are best placed to advise you on what level of cover is adequate and appropriate for your practice. To enable them to make this judgement, you must provide your broker, insurer or indemnifier with accurate and up-to-date information about the scope and nature of your practice. You need to be able to demonstrate that you fully disclosed your scope of practice to the provider of cover and justify your decisions about PII if asked to do so by the Board or AHPRA.

### Are there exemptions to this standard?

76. Practitioners are exempt from requiring PII:
- when the scope of practice of an individual practitioner does not include the provision of psychological services or opinion in respect of the physical or mental health of any person
  - when a practitioner has statutory exemption from liability. That is, they are employed as a practitioner or are in another arrangement and are exempted from liability under state or Commonwealth legislation, or
  - when practitioners are registered in Australia but are practising exclusively overseas.

Note: appropriate run-off cover is required for past practice in Australia that would otherwise be uncovered.

### What does this mean for me?

77. The National Law states that a registered health practitioner must not practise their profession unless appropriate professional indemnity insurance arrangements are in force in relation to the practitioner's practice of the profession (section 129 of the National Law).

### When you apply for registration

78. When you apply for registration you must declare that you will not practise the profession unless you have professional indemnity insurance arrangements in place that meet this standard. This is a requirement under the National Law.

### At renewal of registration

79. You will be required to declare annually at renewal that:
- during the preceding period of registration, you practised the profession in accordance with the requirements of this registration standard, and
  - you will not practise the profession unless you have professional indemnity insurance arrangements in place that meet this standard.

### During the registration period

80. You must notify the Board within seven days if you no longer have appropriate professional indemnity insurance arrangements in place in relation to your practice that meet the requirements of this standard (section 130 of the National Law).
81. Your compliance with this standard may be audited from time to time.

### When you cease practice

82. When you decide to cease practice, you must take out appropriate run-off cover for matters that would otherwise be uncovered arising from your previous practice as a registered psychologist.

## Evidence

83. The Board may, at any time, require you to provide evidence that you have appropriate professional indemnity insurance arrangements in place.
84. If you hold private insurance in your own name, you must retain documentary evidence of your insurance for at least five years.
85. If you are covered by a third-party insurance arrangement, you are not required to obtain documentary evidence of the insurance policy unless the Board requests it. However, there may be circumstances when you are required to seek the documentation from that third party. If requested by the Board, you must provide a certified copy of the certificate of currency or a letter from the third party declaring that you are covered.

## What happens if I don't meet this standard?

86. The National Law establishes possible consequences if you don't meet this standard, including that:
  - the Board can impose a condition or conditions on your registration or can refuse your application for registration or renewal of registration when you don't meet a requirement in an approved registration standard for the profession (sections 82, 83 and 112 of the National Law)
  - practising without appropriate PII arrangements, or failing to notify the Board within seven days that appropriate PII arrangements are no longer in place, is not an offence but may be behaviour for which health, conduct or performance action may be taken (sections 129 and 130 of the National Law), and

registration standards, codes or guidelines may be used in disciplinary proceedings against you as evidence of what constitutes appropriate practice for the profession (section 41 of the National Law).

## More information

87. Health practitioners should be aware that the provision of professional indemnity insurance (PII) to health professionals is generally governed by the Medical Indemnity (Prudential Supervision and Products Standards) Act 2003 (Cth), with some exceptions.
88. An insurer providing PII to health professionals must generally be registered with the Australian Prudential Regulation Agency (APRA). Health practitioners who are taking out their own professional indemnity insurance are advised to ensure that:
  - their PII provider is registered with APRA as a general insurer or that it is a Lloyd's underwriter (APRA's website contains a list of registered general insurers), and
  - their professional indemnity insurance is provided through a contract of insurance.

## Authority

89. This registration standard was approved by the Ministerial Council on <<date>>.
90. Registration standards are developed under section 38 of the National Law and are subject to wide-ranging consultation.

## Definitions

91. **Automatic reinstatement** is a provision in insurance policies that allows for the limit of indemnity (amount insured) to be reinstated for new, unrelated claims, after one or more claims have been paid to the limit of the indemnity.
92. **Civil liability insurance** means insurance that covers the costs of liability incurred by the insured arising from civil claims seeking compensation for personal injury, harm or loss incurred, where the claim arises directly from an alleged act, error or omission committed in the conduct of the

practitioner's practice or professional business during the period covered by the insurance policy. Civil liability cover includes cover for legal expenses incurred in defence or settlement of a civil claim and for damages payable.

93. **National Law** means the Health Practitioner Regulation National Law as in force in each state and territory.
94. **Occurrence-based policy** means an insurance policy that is in place when the event that is the subject of the claim occurred, even if the policy has not been renewed.
95. **Practice** means any role, whether remunerated or not, in which an individual uses their skills and knowledge as a registered psychologist in their profession. Practice in this context 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.
96. **Professional indemnity insurance arrangements** means arrangements that secure, for the practitioner's professional practice, 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 cost 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.
97. **Retroactive cover** means PII arrangements that cover the insured person against claims arising out of, or in consequence of, activities that were carried out in the course of that person's professional practice, before the date the insurance started.
98. **Run-off cover** means insurance that protects a practitioner who has ceased a particular practice against claims that arise out of, or are a consequence of, activities that were carried out when the person was conducting that practice. This type of cover may be included in a PII policy or may need to be purchased separately.
99. **Scope of practice** means the professional role and services that an individual practitioner is educated and competent to perform.
100. **Third-party cover** means the cover that an individual holds through a third party's insurance arrangement, such as through an employer, education provider or union.

#### Review

101. This registration standard will be reviewed from time to time as required. This will generally be at least every five years.
102. Last reviewed: <<Date>>
103. This standard replaces the previously published registration standard dated 1 June 2012.

## Statement of assessment

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The Board's statement of assessment against the AHPRA's Procedures for development of registration standards, codes and guidelines and COAG principles for best practice regulation

### Registration standard: Professional indemnity insurance

The Australian Health Practitioner Regulation Agency (AHPRA) has *Procedures for the development of registration standards, codes and guidelines* which are available at <https://www.ahpra.gov.au/Publications/Procedures.aspx>.

These procedures have been developed by AHPRA in accordance with section 25 of the Health Practitioner Regulation National Law, as in force in each state and territory (the National Law), which requires AHPRA to establish procedures for the purpose of ensuring that the National Registration and Accreditation Scheme (the National Scheme) operates in accordance with good regulatory practice.

Below is the Board's assessment of its proposal for its draft revised registration standard and guidelines against the three elements outlined in the AHPRA procedures.

#### **1. The proposal takes into account the National Scheme's objectives and guiding principles set out in section 3 of the National Law**

##### **Board assessment**

The Board considers that the draft revised registration standard meets the objectives and guiding principles of the National Law.

The proposal takes into account the National Scheme's key objective of protecting the public. The draft revised *Registration standard: Professional indemnity insurance arrangements*, if approved, will provide for the protection of the public by ensuring that practitioners have appropriate professional indemnity insurance (PII) arrangements in place when they practise.

The proposed revised registration standard also supports the National Scheme to operate in a transparent, accountable, efficient and fair way.

#### **2. The consultation requirements of the National Law are met**

##### **Board assessment**

The National Law requires wide-ranging consultation on proposed registration standards. The National Law also requires the Board to consult other boards on matters of shared interest.

The Board will ensure that there is public exposure of its proposals and opportunity for public comment by undertaking an eight-week public consultation process. This process includes the publication of the consultation paper on the Board's website, notifying stakeholders and inviting feedback.

The Board has drawn this paper to the attention of key stakeholders.

The Board will take into account the feedback it receives when finalising its proposals for submission to the Ministerial Council for approval.

#### **3. The proposal takes into account the COAG Principles of Best Practice Regulation**

##### **Board assessment**

In developing the revised draft registration standards and guidelines for consultation, the Board has taken into account the Council of Australian Governments (COAG) Principles of Best Practice Regulation.



As an overall statement, the Board has taken care not to propose unnecessary regulatory burdens that would create unjustified costs for the profession or the community.

The Board makes the following assessment specific to each of the COAG principles expressed in the AHPRA procedures.

**The Board makes the following assessment specific to each of the COAG principles expressed in the AHPRA procedures.**

### **COAG principles**

#### **a. Whether the proposal is the best option for achieving the proposal's stated purpose and protection of the public**

##### **Board assessment**

The Board considers that its proposal is the best option for achieving the stated purposes. It is expected the proposals may affect some practitioners.

The Board considers that the revised standard would have a minor impact on the psychology profession, if adopted. Any negative impacts would be significantly outweighed by the benefits of protecting the public and providing clear, simple information about PII requirements, in the public interest.

The Board has taken research and its regulatory experience into account for this review. It has also considered research by other National Boards and feedback provided by key stakeholders in relation to the review of PII standards by other National Boards.

The Board has also applied the regulatory principles for the National Scheme, including proportionality, and its assessment of risk in relation to the profession it regulates in the context of the registration standard.

#### **b. Whether the proposal results in an unnecessary restriction of competition among health practitioners**

##### **Board assessment**

The Board considered whether its proposals could result in an unnecessary restriction of competition among health practitioners. Because the proposals apply in the same way to all registered practitioners, and update the requirements in the current registration standards and guidelines, they are not expected to impact on the current levels of competition among health practitioners.

#### **c. Whether the proposal results in an unnecessary restriction of consumer choice**

##### **Board assessment**

The Board considers that the revised draft registration standards and guidelines will support consumer choice by continuing and clarifying requirements for PII arrangements that practitioners must meet when they practise, in accordance with the National Law.

Having clear registration standard with requirements appropriate to the risk and practice of the particular professions helps consumers understand what to expect from registered practitioners and supports consumer choice. The knowledge that all registered psychologists are required to have appropriate PII when practising also helps to improve consumer confidence when choosing a practitioner.

#### **d. Whether the overall costs of the proposal to members of the public and/or registrants and/or governments are reasonable about the benefits to be achieved**

##### **Board assessment**

The Board considered the overall costs of the revised registration standard to members of the public, registrants and governments and concluded that the likely costs are appropriate when offset against the benefits that a revised standard could contribute to the National Scheme.

Subject to stakeholder feedback on the proposed revisions, and if approved by the Ministerial Council, the revised standard would have a minimal effect on the costs to applicants and registrants as there would be relatively minor changes to the registration standard.

For most practitioners their current PII policy or third party arrangements would continue to meet the proposed revised standard so there are unlikely to be significant changes in cost. The proposal to remove a minimum amount of cover may reduce the cost of PII for some practitioners by enabling them to take out a lower level of cover.

The proposal to introduce exemptions from PII for some practitioners would remove the cost of PII for affected practitioners, if adopted.

None of the proposed revisions to the PII standard would impact psychology registration fees as there would be no significant impact on the cost of managing and auditing the requirements of the standard.

**e. Whether the requirements are clearly stated using 'plain language' to reduce uncertainty, enable the public to understand the requirements, and enable understanding and compliance by registrants**

**Board assessment**

The Board considers the draft revised registration standard has been written in plain English that will help practitioners and employers and consumers to understand and comply with the requirements of the standard. The Board has changed the structure of the standard and reviewed the wording to make it highly consistent with other National Boards; which helps make it easy to understand, particularly for employers, insurers and consumers who may need to understand the PII requirements of multiple professions.

**f. Whether the Board has procedures in place to ensure that the proposed registration standard, code or guideline remains relevant and effective over time**

**Board assessment**

If approved, the Board will review the revised registration standard as required, which would generally be at least every five years, including an assessment against the objectives and guiding principles in the National Law and the COAG principles for best practice regulation.

However, the Board may choose to review the standards and guidelines earlier, in response to any issues that arise or new evidence which emerges to ensure the standard's continued relevance and workability.