

Medical Radiation Practice Board of Australia

GUIDELINES: PROFESSIONAL INDEMNITY INSURANCE ARRANGEMENTS

1 July 2016

Introduction

The *Health Practitioner Regulation National Law Act* (National Law), as in force in each State and Territory requires the Medical Radiation Practice Board of Australia (Board) to develop a registration standard that describes requirements for professional indemnity insurance arrangements for registered medical radiation practitioners. This requirement has been introduced so that if a health service user is harmed in some way because of the negligence of a registered practitioner, the health service user will be able to recover any compensation they may be entitled to.

The National Law requires that all registered health practitioners hold professional indemnity insurance arrangements.

The Board has developed this guidance document to provide information for registered practitioners relating to their obligations under the Professional Indemnity Insurance (PII) arrangements registration standard.

About this document

We have written this document about the requirement for you to have a professional indemnity arrangement in place as a condition of your registration with us.

It explains what this requirement means for you. This document will also be helpful for individuals applying for registration.

Your responsibility as a registrant

As a registrant, you are personally responsible for maintaining your registration and continuing to meet the Board's standards. Part of your obligations as a registered practitioner include having appropriate PII arrangements in place when you practice.

This document will help you understand those requirements.

How this document is structured

Throughout this document:

- 'we' and 'us' refers to the Medical Radiation Practice Board of Australia and the Australian Health Practitioner Regulation Agency
- 'registrant' refers to a professional on our Register; and
- 'you' or 'your' refers to a registrant or, where we say otherwise, an applicant

Summary: What the PII registration requires you to do

As a registered practitioner you are required to have appropriate professional indemnity insurance arrangements in place when you begin practice.

This could be an arrangement provided:

- through your employer if you are employed
- as part of membership of a professional body, trade union or defence organisation, or
- directly from an insurer.

Or, it could be a combination of the above.

- You must make sure that the professional indemnity arrangement you have in place provides appropriate cover. This means that the cover needs to be appropriate to the risks involved in your practice so that enough compensation will be paid if a successful claim is made against you.
- If you are employed, your employer's indemnity arrangements are very likely to provide appropriate cover for the activities that you perform as part of your job.
- If you are self-employed, you will need to make sure that you have put in place your own arrangements for professional indemnity.
- If you carry out both employed and self-employed work, you need to make sure that you have professional indemnity arrangements in place that provide appropriate cover for all parts of your practice.
- If you are registered with us but are not currently practising, you do not need to have a professional indemnity arrangement in place. However, you will need to make sure that you do have this arrangement when you begin to practise.

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Applicants and those renewing registration

If you are not yet registered with us, we will ask you to complete a declaration when you apply for, or renew your registration. This will confirm that:

- you understand the requirement to have a professional indemnity arrangement in place which provides appropriate cover, and
- you will have an arrangement in place when you begin to practise.

Meeting the requirement

Many registrants will be employed, for example, in public health organisations or in the private healthcare sector, where their employer will indemnify them. Some registrants may already have made their own professional indemnity arrangements.

This means that many registrants will already meet this requirement and will not need to take any further action.

However, you may need to take steps to make sure that you have a professional indemnity arrangement in place which provides appropriate cover. You can do this in one of the following ways:

- a professional indemnity insurance arrangement through your employer
- a professional indemnity insurance arrangement as part of being a member of a professional body, trade union or defence organisation
- a professional indemnity insurance arrangement you purchase through an insurer registered to provide general insurance by the Australian Prudential & Regulatory Authority (APRA)
- a professional indemnity insurance arrangement through Lloyd's Underwriters in accordance with the Insurance Act 1973 (Cth), or
- a professional indemnity insurance arrangement provided by a Commonwealth, State or Territory government employer.

Appropriate cover

You must make sure that the professional indemnity insurance arrangement you have in place provides appropriate cover. This means that you must have an arrangement in place which provides cover appropriate to your practice, taking into account the nature and extent of its risks.

This level of cover needs to be enough to meet any liability (legal responsibility) to pay compensation if a successful claim is made against you. What is appropriate cover for you may depend on a combination of factors, including, for example:

- the practice area or areas you work in
- the service users you work with, and
- the risks involved with your practice.

What might be appropriate cover for one registrant may be inappropriate for another registrant. You need to make sure that you consider the risks which may arise from your own practice and make sure that you have a professional indemnity arrangement in place which provides cover which is appropriate to those risks.

We cannot advise you about the level of cover that you will need.

We consider that you are in the best position, getting advice as appropriate from your professional body, trade union, defence organisation or insurer, to make reasonable, informed decisions about the level of cover appropriate to you and your practice. You need to be able to justify your decisions.

If you are employed

If you only work for an employer, your employer is very likely to have made professional indemnity arrangements which will provide appropriate cover for all the relevant risks related to those activities you carry out as part of your job.

However, the arrangements may vary between different employers, so if you are not sure, you should always check with your employer.

An employer's arrangement will only provide cover for activities you carry out as part of your duties during the course of your employment.

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If you are self-employed

If you are self-employed, you will need to make sure that you have put in place your own arrangements for professional indemnity. Some professional bodies, trade unions and defence organisations offer professional indemnity cover as part of their membership or for an extra fee. Or, you can arrange your own cover direct through an insurer.

If you carry out a combination of employed and self-employed roles

If you are an employee and you also carry out some self-employed work, you will need to make sure that you have arrangements in place for your self-employed work, as this will not be covered by any arrangements put in place by your employer. You should always make sure you have arrangements in place which provide appropriate cover for all parts of your practice.

If you are registered but not practising

Practitioners holding non-practising registration are not required to have professional indemnity insurance arrangements in place – because they are not practising.

The definition of practice

The Board has defined practice to include any role, whether remunerated or not, in which the individual uses their skills and knowledge as a health practitioner in their profession. Practice is not restricted to the provision of direct clinical care. It also includes working 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 and/or use their professional skills.

If you are working as a volunteer or in an unpaid position you are still required to have appropriate professional indemnity insurance arrangements in place.

Some voluntary organisations will have made arrangements which will cover the activities that their volunteers carry out. Any existing professional indemnity arrangements you have in place may also apply to any voluntary work you do.

When you are not practising the profession

The National Law protects professional titles, with very few restrictions on practice. Practice within the context of the National Law generally means that you are using a protected title, or in some cases using a title, which may not be protected, but may in given circumstances indicate that you are working as a registered health profession.

You are not required to have professional indemnity insurance arrangements in a role or position where you are not using a title, or using a title that may indicate in the circumstances that you are a registered health practitioner.

'Good Samaritan' acts

We do not treat actions as a 'good Samaritan' – someone who provides first aid or other emergency help when there is no professional obligation to do so – as professional practice for which you must have a professional indemnity arrangement.

If your practice changes

We recognise that your practice may change. For example, this might be because you specialise, start working with a new client group, or move into a role in management, education or research.

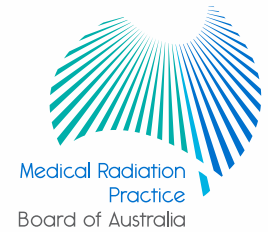
This might mean that the level of cover you need changes or that you need to make other arrangements. You should make sure that you continue to have professional indemnity arrangements in place which provide appropriate cover.

Duty of disclosure

You have a duty to disclose any information to your insurance provider that might affect the decision to provide insurance or to continue providing insurance.

You must advise your insurance provider, employer or third party provider of anything you know, or could

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reasonably be expected to know that is relevant to professional indemnity insurance arrangements. In disclosing all relevant matters you must be honest and answer questions completely and to the best of your knowledge.

For registered health practitioners the duty of disclosure exists whether the insurance is provided under a contract of insurance or any other professional indemnity insurance arrangement.

General duty

As a registered health practitioner, you are required to have appropriate professional indemnity insurance arrangement in place. This requirement also means that you have a duty to ensure that you do not practise in a way that that would cause your professional indemnity insurance arrangements to be refused or withdrawn.

You also have a duty to ensure that you do not practise in a way that is outside of the scope of your insurance or is contrary to the provision of professional indemnity insurance arrangements.

Checking that an arrangement is in place

As a registrant, you are already responsible for maintaining your registration with us and for continuing to meet our standards.

Each year when you renew your registration, you will be asked to make a declaration that you:

- have appropriate professional insurance arrangements, or
- if you are not practising at that time, you understand the requirement and will have an arrangement in place when you begin to practise.

We will not ask you to routinely send us certificates or other evidence of your professional indemnity arrangements.

However, we may ask you for evidence for routine audit purposes or if, for example, there is concern that you may not have a professional indemnity arrangement in place or that it may not provide appropriate cover.

Because having a professional indemnity arrangement in place is a requirement of your registration, if you cannot complete the declaration, you will not be able to renew your registration with us and we would remove you from the Register.

If at any point when you are registered with us you stop having a professional indemnity arrangement in place which provides appropriate cover, you need to write to the Board and tell us immediately. However, you do not need to tell us about routine changes, such as a change of provider or not having an arrangement in place because you are no longer practising.

Applicants for registration

If you are applying to be registered or are renewing registration, we recognise that you may not yet have found a job, or been able to arrange a separate professional indemnity arrangement. You will still be able to register with us, as long as you fill in a declaration.

When you apply for registration, we will ask you to confirm that:

- you understand the requirement to have a professional indemnity arrangement in place which provides appropriate cover, and
- you will have an arrangement in place when you begin to practise.

Because having a professional indemnity arrangement in place is a requirement of registration, if you cannot complete the declaration, you will not be able to register with us.

Professional indemnity and your registration

Most registrants will complete declarations honestly and make sure that they have a professional indemnity arrangement in place which provides appropriate cover. However, we will consider taking action if we believe that you have not met these requirements. For example, we could take action if you:

- make a false declaration that you have a professional indemnity arrangement
- practice without professional indemnity arrangements, or
- your professional indemnity arrangements are not appropriate to your practice.