

PROFESSIONAL INDEMNITY INSURANCE

The AIC NSW holds a policy of Professional Indemnity Insurance which is available to all licensed conveyancers who are, or intend to, conduct a conveyancing practice.

The Policy is an approved policy under the Conveyancers Licensing Act and it is compulsory for all licensed conveyancers to be covered by an approved Professional Indemnity Insurance policy.

When applying for a licence or when renewing a licence the applicant will be asked to confirm that the applicant will be covered by an approved policy of Professional Indemnity Insurance. Employed conveyancers will be covered by their employer's policy and those conveyancers employed in a solicitor's office will be covered by the policy provided by Law Cover, which is an approved policy under the Conveyancers Licensing Act.

The Division's Professional Indemnity Insurance is underwritten by Vero Insurance and Allianz.

Inquiries about the Division's Professional Indemnity Insurance policy can be made to the Division Chief Executive Officer either by telephone, fax or e-mail.

Office of Fair Trading Professional Indemnity Insurance requirements:

Licensed conveyancers must hold an approved policy of professional indemnity insurance. An approved policy is a policy approved by the Minister under the Conveyancers Licensing Act. A policy must be specifically approved each year by the Minister.

The requirement for licensees to hold professional indemnity insurance is primarily aimed at protecting from loss those consumers who engage a licensed conveyancer. For this reason certain criteria for policies have been established. These are that the policy must:

1. provide run-off cover for former licensees;
2. provide cover for claims of at least \$2 million;
3. cover those licensees who have maintained insurance up to the time they are insured, ie, must cover claims on matters arising before the commencement of the new policy;
4. provide for claims to be covered irrespective of whether the insured made false statements on or omitted necessary information from an application form;
5. provide for claims to be covered irrespective of whether the licensee discloses the existence of an event that may give rise to a claim;
6. include terms which comprehend the possibility of cross claims among licensees participating in group insurances; and
7. provide for retroactive fidelity cover in relation to any transitional licensee relating to the licensee's failure to account prior to 1 February 1996. (From 1 February 1996 the Property Stock and Business Agents Act Compensation Fund covers such claims).

The requirement for run-off cover is of importance because it provides protection for former licensees and their clients.

What coverage is provided by AIC PI Insurance policy?

This is a brief outline only of the coverage.

Limit of Indemnity: \$3,000,000 any one claim \$6,000,000 in the aggregate in any financial year.

Premiums and Excess: The premium is negotiated each year and is determined by the performance of the scheme. For the current premium and excess please contact the Institute on 9633 1355.

Run-off Cover: This covers conveyancers who have ceased to practice. If a claim is made following a conveyancer's retirement, closure of business or some other reason the conveyancer is no longer practising in their own right, they are still covered by the policy. There is no requirement to contribute to the scheme once the conveyancer ceases to conduct a business.

This is only possible while the scheme is conducted under a master policy and the policy continues. With continuity of the policy the run-off cover continues.

Why is Run-off cover so important?

A claim on Professional Indemnity Insurance is made following the realisation that an omission or error has occurred. This may not be for several years after completion of the transaction and may be several years after closure of a business. In order to protect the consumer insurance has to cover the situation when a claim is made after closure of the business. A policy must be in place that covers these situations that does not require continual payments of annual premiums.

Non-cancellable contract:

Once initiated the policy is non-cancellable. This means that, for the period of the insurance (financial year) the insurance cannot be cancelled and no refund will be applied. This is due to the nature of the Institute's master policy which guarantees run-off cover whilst ever the master policy is in existence.

Premium Funding:

There is in place a scheme for funding the payment of premiums on the AIC policy. Premiums can be paid by 10 installments commencing on the first of July each year. It must be appreciated that as the policy is "non cancellable" all premium funding installments must be paid on the required dates.

The benefits of a Master Policy:

- provides the broadest form of guarantee to licensed conveyancers, their clients and the public
- Should a conveyancer leave the profession there is an entity in place through which proceedings can be commenced.
- Guarantee run-off: as long as the current policy is able to continue or be replaced in the name of the AIC
- Non avoidance provisions: provides a failsafe in the event that an individual conveyancer or practice has misstated facts in their application or renewal.
- Unlimited costs: this provides for unlimited costs protection in the event of a claim. The indemnity limit relates to actual awards or claims. Note: an individual policy cannot provide unlimited costs cover.
- Enquiry costs: are covered to a limit of \$5,000.00 with no excess. This serves to protect conveyancers where there is no immediate claim against a conveyancer but costs are incurred in relation to enquiries, Boards and Tribunals.

Competition:

Everyone, including Government, is concerned with competition. Comments are often made that by having only one policy approved for conveyancing businesses there is no competition for PI Insurance cover.

Competition in the case of the AIC policy exists through remarketing the scheme on a regular basis. The scheme is remarketed every three years by going to the open market for quotes. The offer that provides the best cover and value for money is accepted. Each and every year we re-negotiate the policy and terms (with the then insurer if it is not the year we go to the open market) and if the terms offered are not acceptable we will then look elsewhere for a better offer. In this way competition exists. We only go to the open market every three years because the market for the type of policy we require is limited and to 'shop around' every year would indicate to the insurers that our scheme is only short term and insurance companies will not be interested in short term proposals. An annual shop around would weaken our bargaining position and probably have the effect of increasing the premiums.

It has been proven that one strong master policy to negotiate with insurers guarantees a much more competitive market than to have several smaller policies negotiating within the limited number of insurers that will tender for a PI policy.

No-Claim Bonus:

We are regularly asked why there is no no-claim bonus available for those businesses that have never had a claim after a certain period of time, say five years. Premiums are based on the fact that all firms pay the same premium rate, however, firms that have a claims history pay a loading determined by the claims history. This way all firms are given the benefit of a lower rate of premium while ever they have a clear claims history. This benefits new firms and also those firms who have demonstrated a clear claims history.

Commencing a New Conveyancing Practice:

A new conveyancing practice is one which is not a continuation or purchase of an existing practice and is:

- Sole Licensee
- A new partnership
- A new incorporated conveyancing business

Office of Fair Trading issues all conveyancers' licences. You will need to apply for an unconditional licence in order that you can practice in your own right. If you are forming a partnership at least one licensee must hold an unconditional licence. If you intend to operate under a corporate licence at least one director of the company must hold an unconditional licence.

Before you can commence operating your new business you must have a current policy of Professional Indemnity Insurance in place. To obtain that insurance your first contact will be with the Institute and we will arrange for a proposal form to be sent to you from our Insurance Broker. All contact after that will be direct with the Broker.

As all Professional Indemnity Insurance under this scheme expires at the end of each financial year, to coincide with licence renewals, the calculation of premium for the first year is made from the date of commencement until the end of that financial year.

If a conveyancing business is purchased the history of the former firm may be taken into account when calculating the insurance premium for the new practice.

What you should look for when taking over an Existing Conveyancing Practice:

When you take over the conduct of the majority of an existing firm's files or purchasing an existing firm the claims history of that firm may well attach to your claims history affecting your PI Insurance premium.

In these circumstances you should make inquiries into the claims history of that firm. Check the standing of the firm by speaking to others; (clients, other conveyancers and people they may have done business with). Check to see if they have a complaints history, this may be available from the "Conveyancer's Licence Check" found on the web site of the Office of Fair Trading.

How are claims dealt with when made on the purchased practice?

If the principals of the new firm operate under a new ABN then the practice purchased is treated as a former practice and claims are made on the former practice under the run-off provisions of the insurance policy.

Changing the structure of a conveyancing business:

If it is decided to change the structure of a conveyancing business it may not be necessary to arrange new PI Insurance. However; if changing from a sole licensee to a partnership or from either a sole licensee or partnership to an incorporated practice or any combination thereof you will need to advise our Insurance Broker, the AIC and Office of Fair Trading. The PI Insurance will continue to cover the business, employees, partners and or directors depending on the change.

It is important however, that the insurer be notified (through our broker) so that the new details can be noted so that if for any reason other adjustments or details need to be made they can be made immediately.

Claims made under the Institute's PI Policy

The Institute will provide members with assistance in handling claims if the member so requires (this is entirely up to the member)

The insurer will provide the institute with as much information about all claims made without disclosing those matters covered by privacy provisions - no member details will be disclosed to the Institute by the insurer or our broker.

The Institute will keep a record of the claims so that a history can be developed in order to identify any recurring problems that may be addressed in order to minimise claims

The Institute will conduct regular meetings with the insurer and their claims department to discuss claims and the best ways of managing the minimisation of claims

Generally:

The Australian Institute of Conveyancers NSW Division has maintained a master policy of PI Insurance since 1993 when the Conveyancers Licensing Act 1992 commenced. Some years ago AIC took the progressive step of implementing a Risk Management Program known as "Search". This program was initially voluntary, however, it became necessary to make the program compulsory and all conveyancing businesses must now participate in the Risk Management Program.

See Risk Management Self Assessments on the following pages

RISK MANAGEMENT SELF ASSESSMENTS

The Division introduced a Risk Management Program called "SEARCH" in the year 2000. When introduced it was not mandatory for all members to participate in the program. The program has since been updated and it is now mandatory for all members who conduct a business to participate in the scheme.

Members should read the "Search" Guidance Manual which forms the basis of the Division's Risk Management Program.

The important factor in the Risk Management Program is that once you have implemented the program's systems in your office, you are less likely to have a claim, and if you do you will be better equipped to defend that claim. This is an important initiative of the Institute and we hope that the updated program will lead to fewer claims being made against conveyancers.

Everyone should take advantage of the program and in doing so your practice and the profession will benefit.

The Scheme

Some members will be aware that PI insurance premiums increased for the 2005/6 year and this was as a direct result of the value of claims made on the policy. While we canvassed other Insurance Companies for PI cover the best result we were able to negotiate was with Vero Insurances, who along with Allianz are our current insurers. In our negotiations it was apparent that unless the claims history was improved, premiums would continue to increase and a program had to be put into place that would assist with the reduction of claims.

In co-operation with PI Insurers we agreed to implement a risk management program that all members conducting a business would be required to participate in. The promise of the introduction of such a plan encouraged the insurer, at that time, to reduce the premiums that had originally been provided.

The principals of the scheme are:

Conveyancers files should be conducted in the manner set out in the Risk Management Manual (provided it is practical to do so)- this does not prevent members from putting further risk management procedures in place and the manual guidelines will set out minimum risk management guidelines and procedures. If you have a procedure in place that is different to that suggested in the manual and you consider it to be as good or better risk management then provided that procedure is followed it is acceptable. The manual is a guide, it is not intended to set procedures in concrete that cannot be altered or enhanced.

- It is appreciated that where time limits or procedures are suggested in the Guidance Manual that are not practical in certain cases or areas then there will be exceptions to the suggestions in the manual.

The risk management program must be shown to be in place and that all staff is familiar with the procedures and are following the procedures, or those set in place for the office where it is impractical to follow the procedures or meet time limits suggested in the manual.

Each conveyancer and other employees who are conducting conveyancing transactions should have access to the risk management manual

Self Assessment – Existing members (business owners)

Each year those members who conduct a conveyancing business must satisfactorily complete the online risk management self assessment. The assessment is not considered satisfactorily completed until such time as an 85% pass mark is obtained. The assessment is to be completed during the period of 60 days following 31 March each year.

The self assessment is only available to financial members.

A financial member is a member who has paid their annual membership fee by 31 March each year for membership in the following year.

Anyone who is not a financial member of the Institute is not eligible to complete the self assessment and is therefore not eligible for the premium rate negotiated with the insurers on member's behalf. The premium rate recommended when the risk management program is not completed is the negotiated rate plus 50%.

Unfinancial members may make a request to complete the assessment immediately following payment of membership fees for the relevant year by contacting the Institute office. Such request will not be unreasonably refused provided all matters considered necessary by the Institute to complete membership have been complied with, including clearance of all cheques used to pay membership fees.

The self assessment is not satisfactorily completed if the 85% pass mark is not achieved within three attempts. If the self assessment is not satisfactorily completed the member is not entitled to the premium rate negotiated for members on their Professional Indemnity Insurance and a loading will be added to their premium. The loading will be determined by the insurance company but is recommended to be 50% of the negotiated premium rate.

If the member considers that the conduct or result of the assessment was not fair or reasonable they may lodge an appeal with the NSW Division Council. The decision of the NSW Division Council in regard to any appeal is final.

The assessment is intended to be a tool to assist members with risk management procedures and a guide as to the members understanding of risk management.

If the assessment is failed the following may also apply:

A physical assessment of files may need to be carried out by a person appointed by the Institute's Risk Management Committee. If the physical assessment is not satisfactory the matter will be referred to the Institutes Risk Management Committee for consideration and any or all of the following actions may be taken:

- A meeting with the member and the committee to discuss any problems
- Attendance at a seminar may be required
- A senior conveyancer may be appointed to attend on the member for tuition and mentoring
- All of the above
- Withdrawal of membership (last resort, only where there appears to be no way to remedy or assist the members lack of risk management procedures) also a report to the Institute's insurer for their consideration of: - renewal of insurance, further loading of premiums or whatever action they may deem necessary.

Regardless of the outcome of the remedies following failure of the self assessment the loading applied by the insurance company will apply. The member will need to pass the assessment the following year in order for the loading to be removed on the premium for the following year.

Assessment Cost

Each business owner will be required to cover the cost of the self assessment. \$82.50 incl. of GST

If a physical assessment of files has to be carried out the member will be required to pay for the cost of that assessment in the amount of \$660.00 incl. of GST. (This only applies when there is a failure of the self assessment)

Physical assessments

Each year a number of members will be chosen, at random, to have their files assessed. This assessment will take place at the member's office and a physical assessment of files will be undertaken. The assessment will take place at a time convenient to the member and the assessor some time during the 12 months following 31 March each year. This assessment will be compulsory and refusal to participate with the assessment will be an automatic failure.

The assessment of files will be carried out at no cost to the member, and will be conducted by a person appointed by the Institute's council as competent to conduct such assessments.

INTERPRETATION: The above is an outline of the risk management program conducted by the Institute. All matters that need to be determined or ruled on will be done by the Risk Management Committee and or the Council of the NSW Division of the Institute. The decisions of the Council and or Risk Management committee shall be final and binding on all members.

Self Assessment – New Members (New Businesses)

New business members must have their files assessed by our risk management assessor. This assessment will take place before the expiration of 12 months from opening the business but no earlier than 6 months from opening the business.

The online self assessment does not need to be done during the initial membership year (year ending 31 March next).

An online self assessment must be completed on renewal of membership regardless of when the first year membership commenced.

Purposes of the Guidance Manual

- To assist conveyancers with a risk management tool, the use of which will help reduce the number of possible professional indemnity claims.
 - To introduce a continuous and measurable improvement system to our businesses.
 - To help members provide top quality professional advice and service to clients.
 - To assist in the identification and improvement of member firm's internal procedures, systems and corporate policies.
 - To assist in the provision of a system of minimum standards maintenance and compliance.
 - To provide a structured framework for on-the-job-training in a helpful, constructive way enabling maximum return for dollars spent on training and continuous professional development.
-