Australian Government

TAX PRACTITIONERS BOARD

Professional indemnity insurance

Presented by Debra Anderson, Board Member, Tax Practitioners Board

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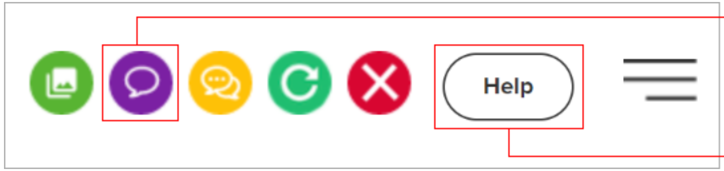

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What we will cover today

- What is PI insurance
- Do you need Pi insurance
- What your policy should cover and include
- How to assess adequate cover
- How to notify us of changes
- Reviewing the TPB’s PI insurance policy
- Questions

Meet your presenter

- Debra Anderson
- Board Member
- Tax Practitioners Board

What is PI insurance?

Defining PI insurance

- PI insurance protects businesses, and individuals who provide professional services to clients, from the legal costs and claims for damages that may arise from an act, omission or breach of duty in the course of their business.
- A professional indemnity claim could result from:
  - negligence in providing professional services
  - legal costs of defending actions related to professional services.
- APRA-regulated insurers paid a total of $2 billion for PI and public and product liability claim payouts, up 24% from the previous year ($1.6 billion).

The purpose of PI insurance

Tax agents and BAS agents are professionals who hold themselves out as having a special skill on which members of the community are entitled to rely. As they are agents for the client, they can be liable for any financial loss or damage which their clients suffer through failure or mistake. The requirement to be insured ensures that those people who are exposed to the risks of financial loss resulting from the agent's conduct are adequately compensated.

- Explanatory Memorandum to the *Tax Agent Services Bill 2008*

Certainty and consumer protection would be enhanced under this model, as there is a proposed requirement that financial advisers ensure that their PI insurance will cover them not only for the financial advice that they provide, but also for their tax advice.

- Explanatory Memorandum to the *Tax Laws Amendments (2013 Measures No. 3) Bill 2013*

Relevant legislation

- Section 20-5 of the *Tax Agent Services Act 2009* (TASA) provides that, for registrations and renewals, applicants must ‘maintain, or will be able to maintain, PI insurance that meets the Board requirements’.
- Subsection 30-10(13) of the Code of Professional Conduct in the TASA provides that: ‘you must maintain professional indemnity insurance that meets the Board requirements’.

Differences between TPB and ASIC requirements

Our requirements are generally consistent with the Australian Securities and Investments Commission's (ASIC's) requirements for Australian financial services (AFS) licensees. There are two key differences:

- we require PI insurance coverage to include tax advice
- our PI insurance requirements apply to all representatives who are registered with us (including authorised representatives) and not just AFS licensees.

Do you need your own policy?

Do you need your own policy?

- If you **charge a fee or receive a reward** for the provision of tax practitioner services, you will need to have a PI insurance policy or cover that meets our requirements.
- If you **do not charge a fee or receive a reward**, you will not need to have your own PI insurance policy in order to meet our requirements. If you are an employee or contractor, you will need to provide us with the name of your employer or principal and their registration number.

What should a policy cover and include?

1. Amount of cover

BAS and tax agents

Tier	Turnover of your business	Minimum aggregate amount of cover*
1	Up to $75,000	$250,000
2	$75,001 - $500,000	$500,000
3	Over $500,000	$1,000,000

Tax (financial) advisers

Tier	Turnover of your business	Minimum aggregate amount of cover* (inclusive of legal and defence costs)
1	$2,000,000 or less	$2,000,000
2	Over $2,000,000	Equal to actual or expected revenue from services (up to a maximum of $20,000,000)

* What is an appropriate amount of cover for you may be more than the minimum requirement.

2. Scope of cover

- Policies can differ significantly in scope of cover between insurers.
- The policy must include civil liability arising from any act, error or omission in the provision of tax practitioner services as defined in the TASA.

3. Persons covered

The policy must also cover certain persons, including:

- you (or the tax practitioner taking out the policy)
- directors, principals, partners and employees who provide tax practitioner services on behalf of you (or the tax practitioner taking out the policy)
- contractors, if they do not have their own PI insurance cover, then you (or the tax practitioner taking out the policy) must have cover that includes the work of contractors for which you (or the tax practitioner) are liable
- any other individuals or entities that provide tax practitioner services on behalf of you (or the tax practitioner taking out the policy).

4. Legal/defence costs

- For BAS and tax agents, the policy must provide legal and defence ‘costs exclusive’ or ‘costs in addition’ amount of cover.
- For tax (financial) advisers, the policy must provide legal and defence costs ‘in addition’ to the minimum limit, or the level of cover must be sufficiently increased to take into account these costs.

5. Exclusions

- The policy must not have the effect of excluding cover for the work of contractors, if the result is that there is no cover for the tax practitioner services that are provided to the client.
- If exclusions in a PI insurance policy undermine the policy objective or remove a minimum requirement, the cover will not be adequate.

6. Excess/deductibles

- BAS and tax agents must undertake an assessment of their financial situation and ensure that the excess is not set at a level which they cannot meet.
- Tax (financial) advisers must ensure that any excess under the PI insurance policy is at a level that the business can confidently sustain as an uninsured loss, taking into account the tax (financial) adviser financial resources.
- For tax and BAS agents, the excess for your PI insurance cover should not exceed 4% of your turnover, unless 4% of your turnover is less than $1,000, in which case the excess cannot exceed $1,000.

7. Retroactive cover

Your new policy must cover you to the earlier of the:

- retroactive date specified in the current policy you are renewing, or
- start date of your first policy, if you have had a series of continuous policies.

8. Insurance provider

The PI insurance cover must be provided by:

- an APRA approved insurer
- an insurer who is not APRA approved but otherwise permitted to provide insurance in Australia under the *Insurance Act 1973*
- an unauthorised foreign insurer if they are providing insurance in accordance with Part 2 of the *Insurance Regulations 2002*, or
- other insurance providers approved by us.

Additional recommended features

Fraud/dishonesty/fidelity

We recommend that tax practitioners have:

- innocent party fidelity cover in respect of the actions of employees or partners/directors (except sole tax practitioners), and
- innocent party fraud/dishonesty cover in respect of the actions of employees or partners/directors (except sole tax practitioners).

Automatic reinstatement and run off cover

We recommend that tax practitioners obtain:

- the benefit of at least one automatic reinstatement, if not multiple or unlimited reinstatements
- run-off cover, in case you cease providing services during your period of registration.

Cyber insurance cover

- Once you have assessed your risk of a cyber-attack, we recommend you consider if you require additional protection against cyber threats.
- PI insurance policies generally cover liability for cyber-related incidents if the liability arises in relation to the provision of tax practitioner services.
- Cyber insurance cover generally covers for events such as third-party cyber liability, first party hacker damage, cyber extortion, data breach notification costs and public relations costs.

Assessing what is adequate

Steps 1 & 2

- Step 1: Review the business, taking into account any proposed changes to the business. Be sure to review the claims history and risk management procedures.
- Step 2: Determine the maximum liability that has some liability potential to arise. You can make a reasonable estimation of the following factors:
    - the maximum exposure to any single client ('worst case scenario' per client)
    - the number of claims that could arise from a single event (potential for multiple claims)
    - the number of claims that might be expected during the policy period.

Steps 3, 4 & 5

- Step 3: Ask insurers or insurance brokers for a list of key policy features, insurers/brokers exclusions, and available extensions (based on full disclosure of your assessment in steps 1 and 2).
- Step 4: Consider if the amount of cover is adequate. It should at least meet the TPB's minimum requirements we set our earlier.
- Step 5: Consider if the scope of cover is adequate – this must also meet our minimum requirements.

Steps 6 & 7

- Step 6: Review the policy features, having regard to our minimum requirements. Make sure you identify any exclusions and gaps in cover.
- Step 7: Check that you have the financial resources to pay the excess, the estimated number of claims, and cover any gaps and legal costs. Consider how these claims will be covered and retain records of the assessment.

Notify us of your PI insurance details

Notifying us

- You must advise us how you meet our PI insurance requirements within 14 days of receiving notification of your registration.
- You must provide us the details of your PI insurance policy or cover, or the details of the tax practitioner who holds a PI insurance policy covering you.
- To advise us of your PI insurance arrangements, visit My Profile at tpb.gov.au/MyProfile

Updating your details

- You must update your details whenever there is a change in your policy, including every time the policy is renewed.
- You can update your policy details via My Profile or provide details on your online renewal application or annual declaration form.
- We are in the process of contacting tax practitioners whose records indicate that their PI insurance details are not up to date.
- If you don’t update your PI insurance details within 14 days of us contacting you, you will not be meeting your ongoing registration requirements.

Case study

Tax agent delays passing on tax refunds and fails to maintain PI insurance

- A tax agent failed to pass on tax refunds promptly to 19 clients relating to the 2017, 2018 and 2019 financial years.
- The agent also held the refunds in her personal account instead of a trust account.
- Our investigations into clients' complaints confirmed the agent failed to properly communicate receipt of tax refunds to her clients. She remained inaccessible to clients and failed to properly respond to our enquiries regarding these complaints.
- The agent also failed to maintain PI insurance that met our requirements. Her PI insurance lapsed on 5 May 2020 and she failed to update the Board of her PI insurance details despite our repeated requests.
- The Board Conduct Committee terminated the tax agent's registration.

PI insurance review

PI insurance review

- The review found that requirements still achieve the key policy objective of ensuring that there is a mechanism in place to compensate clients in the event they suffer loss due to an act, error or omission as a result of services provided by a tax practitioner.
- Our updated policies do not substantially alter existing requirements and obligations on tax practitioners to have adequate cover for the services they provide.
- Generally, tax practitioners should not need to make changes to their current arrangements or take additional steps to ensure they continue to meet those requirements going forward.

Questions

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