Explanatory Paper TPB(EP) 03/2010

Professional indemnity (PI) insurance

Requirements for registered tax and BAS agents from 30 June 2013

This TPB explanatory paper (TPB(EP)) is intended as information only. It provides a detailed explanation of the TPB's professional indemnity (PI) insurance requirements from 30 June 2013. Further, this TPB(EP) explains the TPB's interpretation of the provisions in the *Tax Agent Services Act 2009* (TASA) relating to the PI insurance requirements, translating these provisions into practical principles that can be applied by the profession.

The principles, explanations and examples in this paper do not constitute legal advice.

Currency of details of the PI insurance requirement
The TPB intends to review the details of its PI insurance requirements periodically, with a view to making any necessary refinements for the future. The TPB reserves the right to amend its PI insurance requirements at any point, including before any formal review, if it becomes necessary to do so.

Document history
This TPB(EP) reflects the changes made to the TASA which took effect on 30 June 2013 as a result of the *Tax Laws Amendment (2013 Measures No. 3) Act 2013.*

This TPB(EP) was initially issued on 20 December 2010 and is based on the TASA and the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009* (Transitional Act) and the *Tax Agent Services Regulations 2009* (TASR) as at 30 June 2013.

PI insurance requirements before 30 June 2013
The TPB's PI insurance requirements for registered tax and BAS agents **before 30 June 2013** are contained in the *superseded TPB(EP) 03/2010 Professional indemnity (PI) insurance*. The PI insurance requirements contained in the superseded TPB(EP) no longer apply.

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Table of contents

Overview

The requirement to maintain PI insurance that meets the TPB's requirements from 30 June 2013

On 30 June 2013, section 20-5 of the TASA was amended to include an eligibility requirement for registration and renewal of registration that applicants '*maintain, or will be able to maintain, PI insurance that meets the Board's requirements'*. The TASA now provides that:

- paragraph 20-5(1)(c)
  the individual maintains, or will be able to maintain, professional indemnity insurance that meets the Board's requirements

- paragraph 20-5(2)(d)
  the partnership maintains, or will be able to maintain, professional indemnity insurance that meets the Board's requirements

- paragraph 20-5(3)(e)
  the company maintains, or will be able to maintain, professional indemnity insurance that meets the Board's requirements

- subsection 30-10(13) of the Code of Professional Conduct (Code)
  you must maintain professional indemnity insurance that meets the Board's requirements.

The TPB's PI insurance requirements are outlined in this document. The TPB notes the following:

- The primary purpose of the TPB's PI insurance requirements is to ensure those entities that are registered with the TPB have PI insurance cover for the tax agent and BAS services they provide.

- The TPB specifically considered the application of its PI insurance requirements to registered agents who have a low turnover. Turnover means the total amount of fees received by agents, excluding GST. While the TPB understands (through external consultation) that PI insurance may be an added expense, it understands that premiums are affordable. Moreover, it is important for consumer protection that these agents maintain PI insurance that meets the TPB's requirements.

- An agent will meet the TPB's PI insurance requirements if the agent is adequately covered under a policy held by another registered agent entity, and that agent will not be required to hold their own policy.

- Agents may have a PI insurance policy for their business that covers non-tax agent or non-BAS services, other aspects of their business or which covers PI insurance requirements set by other regulatory bodies. In those circumstances, provided that the policy also covers the agent's provision of any tax agent or BAS service, the agent does not need to have a separate policy or multiple policies to meet the TPB's requirements.

- If an employee is providing in-house tax agent or BAS services to their employer, the employee will not be required to have PI insurance in order to meet the TPB's requirements.

- Agents who do not provide tax agent or BAS services for a fee or other reward will not be required to have PI insurance in order to meet the TPB's requirements.[1]

- In relation to charging or receiving a fee for providing tax agent or BAS services, a tax agent or BAS service is taken to be provided for a fee even if the fee for the service is bundled with other fees for other services (for example, accounting services).

- Agents who only receive an honorarium (or honorary reward) for voluntary tax agent or BAS services will not be required to have PI insurance in order to meet the TPB's requirements.[2]

The legislative framework

What 'maintain' means

The TPB will consider a registered agent who is required to have PI insurance as maintaining PI insurance that meets the TPB's requirements if either:

- the registered agent holds a PI insurance policy that meets the minimum requirements set out in this TPB(EP)
- the registered agent is covered by a PI insurance policy that meets the minimum requirements set out in this TPB(EP), that is held by another registered agent
- the registered agent has an alternative arrangement that has been approved by the TPB, as described in this TPB(EP).

What 'will be able to maintain' means

The purpose of the wording 'will be able to maintain' is to accommodate those new applicants who are applying for registration but who, at the time of applying for registration, do not maintain PI insurance that meets the TPB's requirements.

Example 3.16 in the Explanatory Memorandum to the *Tax Laws Amendment (2013 Measures No.2) Bill 2013*, which amended the PI insurance requirements in the TASA from 30 June 2013, provides the following guidance in respect of the purpose of the wording 'will be able to maintain'.

> Liza applies to the TPB for registration as a registered tax agent. In addition to having to satisfy the TPB that she is a fit and proper person and that she can meet the registration requirements (prescribed by the regulations), Liza will need to satisfy the TPB that she will be able to maintain PI insurance that meets its requirements as soon as she is registered.
>
> Assuming that the TPB grants Liza's application and she becomes a registered tax agent, three years later Liza applies to the TPB to renew her registration.
>
> As Liza already has PI insurance, she need only satisfy the TPB that this insurance meets its requirements.

[1] *Lengyel and Tax Practitioners Board* [2012] AATA 134

[2] An honorarium includes an honorary reward for voluntary services or a fee for professional services voluntarily rendered. For example, the voluntary provision of tax agent services for a not-for-profit entity.

In circumstances where an applicant for registration does not maintain PI insurance that meets the TPB's requirements at the time of applying for registration and indicates to the TPB that they will be able to maintain PI insurance once registered, the TPB will consider the applicant to meet its PI insurance registration requirement.

If the applicant is granted registration, the TPB will generally require the agent to provide details of how they meet the TPB's requirements within 14 days from the date that they receive notification that their application for registration has been granted.

The TPB's requirements for agents who do not receive a fee or other reward

The TPB understands that some registered agents do not receive a fee or other reward for the tax agent or BAS services that they provide, for example:

- employee registered agents who provide tax agent or BAS services on behalf of their employer registered agent
- employee registered agents who provide in-house tax agent or BAS services to their employers
- contractor registered agents who provide tax agent or BAS services on behalf of another registered agent
- registered agents who receive honorary rewards or fees voluntarily rendered for voluntary tax agent or BAS services.

The TPB will consider employee and contractor registered agents in their own right (as described above) as meeting the TPB's requirements if they do not hold their own PI insurance policy, but are covered by another registered agent's policy.

Purpose of the TPB's PI insurance requirements

The TPB has considered the PI insurance requirements that all registered agents will need to meet in order to:

- be eligible for registration under the TASA
- satisfy their ongoing registration eligibility requirements
- comply with subsection 30-10(13) of the Code.

In any industry or profession, from time to time, clients might suffer loss due to an act, error or omission by a service provider. In the tax and BAS agent professions, there needs to be a mechanism to ensure that funds are likely to be available to compensate clients who may suffer loss due to certain conduct on the part of the tax or BAS agent connected with the provision of tax or BAS agent services.

Paragraph 3.54 of the Explanatory Memorandum to the *Tax Agent Services Bill 2008* explains 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.*

The TPB has developed the policy objective for its PI insurance requirements (which is set out below) on the basis of the above principle, as far as it relates to the provision, or failure to provide, tax agent or BAS services by registered agents.

Policy objective

The TPB's policy objective is:

> The Tax Practitioners Board's PI insurance requirements for registered agents are to reduce the risk that a client's losses (due to the conduct of the agent) are not compensated, due to the agent having inadequate financial resources or for any other reason, as far as this is practically possible.

The policy objective complements the object of the TASA which is to ensure that tax agent services are provided to the public in accordance with appropriate standards of professional and ethical conduct.[3]

The TPB's PI insurance requirements

The TPB's objective

The objective of the TPB's PI insurance requirements is to ensure those entities that are registered with the TPB have adequate PI insurance cover for the tax agent and BAS services they provide.

What this means for agents

From 30 June 2013, in order to be eligible for registration and renewal of registration under the TASA, applicants for registration will need to satisfy the TPB that they maintain PI insurance that meets the TPB's requirements, or that they will be able to maintain PI insurance that meets the TPB's requirements once registered or renewed.

The requirement to maintain PI insurance that meets the TPB's requirements is an ongoing registration requirement, and is also an obligation contained in the Code.

[3] Section 2-5 of the *Tax Agent Services Act 2009* (TASA)

What this means for consumers of tax agent services

It is important to recognise the limitations of PI insurance as a consumer protection mechanism. PI insurance protects:

- consumers indirectly and it is not a guarantee that compensation will in fact be paid
- the agent against the risk of financial losses arising from acts, errors, omissions and other misconduct by an agent in the provision, or failure to provide tax agent or BAS services. This might occur where the agent is otherwise unable or unwilling to compensate a client in respect of a loss caused by the agent and there is or would be a liability to do so.[4]

The cover required by the TPB is not necessarily intended to cover what a client might perceive as a loss in every circumstance. For example, it is not intended to cover what a client thinks is a loss because a tax refund or liability does not meet their expectations.

Providing evidence of PI insurance cover to the TPB

When applying for registration (including renewal of registration), applicants will need to satisfy the TPB that they maintain PI insurance or that they will maintain PI insurance that meets the TPB's requirements upon becoming registered or renewed.

Additionally, agents will be required on an annual basis to provide the TPB with evidence that they have maintained PI insurance that meets the TPB's requirements.

Further, the TPB may require an agent to provide a Certificate of Currency (or if unavailable, a Policy Schedule) in relation to their PI insurance at renewal or when requested.

If an agent cannot or does not comply

If an applicant for registration does not satisfy the TPB that they maintain PI insurance, or that they will maintain PI insurance that meets the TPB's requirements once registered, the TPB will not grant the applicant registration.

If an agent fails to maintain PI insurance cover that meets the TPB's requirements during their period of registration, their registration may be terminated on the basis that the agent ceases to meet an ongoing registration requirement, under Part 4 of the TASA.

Alternatively, if an agent fails to maintain adequate PI insurance that meets the TPB's requirements during the period of their registration, the TPB may sanction the agent for a breach of the Code under subsection 30-10(13) of the TASA. Depending on the circumstances, the sanctions available to the TPB range from written cautions to suspension or termination of an agent's registration.

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[4] While PI insurance does not provide direct protection to clients, there are safe harbour provisions, administered by the Australian Taxation Office, which may provide some consumer protection against penalties in some circumstances. Please refer to Safe harbour for further information.

Key principles

Table 1 sets out the key principles the TPB's PI insurance requirements.

Table 1: Key principles

Principle 1: Fit to achieve the policy objective	Adequate cover is cover that will satisfactorily indemnify an agent against civil liability that may arise in the agent's provision of tax agent or BAS services and which meets the policy objective of reducing the risk that client losses are not compensated by the agent due to the agent having inadequate financial resources or for any other reason.
Principle 2: Responsibility of agent to assess adequacy	It is the basic responsibility of each agent to determine what is 'adequate' PI insurance cover for them having regard to the risks that are associated with the provision by them of tax agent or BAS services (and if what is adequate for them requires insurance cover in addition to the cover which is required by the TPB, to obtain such additional adequate cover.
Principle 3: Practical availability	An element of adequacy is what is practically available at any given time.

Principle 1: Fit to achieve the policy objective

PI insurance is a way of reinforcing an agent's ability to meet any client losses caused by an act, error, or omission of an agent or the agent's employees, by making funds available to the agent under the terms of a PI insurance policy. PI insurance:

- protects the agent against certain risks
- indirectly protects consumers but is not a guarantee that compensation will be paid
- is an agreement between an insurance company and an agent; consumers will not be party to these insurance policies.

The concept of what is 'adequate' is an important element of the TPB's overall requirements for PI insurance. The TPB will consider what is 'adequate' with reference to the minimum requirements, set out in Table 3. The TPB provides further guidance on what it considers to be 'adequate' PI insurance. See the Adequate PI insurance cover section.

Principle 2: Responsibility of agent to assess adequacy

The TPB considers that compliance with the PI insurance requirement should form part of the agent's overall risk management processes.

The TPB accepts that different agents will have very different businesses and risks, which will impact on what PI insurance arrangements are adequate for them. Therefore, subject to certain minimum requirements, the TPB considers that agents should undertake their own analysis of what is an adequate level of insurance for them.

PI insurance standards set by relevant industry and professional bodies might also provide a guide for agents in this process. However, compliance with industry standards will not necessarily mean that an agent meets the PI insurance requirements of the TPB. The TPB requires an objective assessment of the adequate level of cover for the business and risks of a particular agent.

Some agents might find it helpful to engage external consultants, actuaries, brokers or advisers to undertake a risk assessment of their business and provide advice on the amount and terms of cover that they should obtain. The TPB encourages this, provided that the minimum requirements are met.

Principle 3: Practical availability

One of the considerations relevant to the assessment of the adequacy of PI insurance cover is what is practically available at any given time.

The TPB is aware that the nature and extent of coverage of PI insurance may be limited from time to time by what the insurance market will provide and that the market is subject to fluctuations. This can have a material impact on the scope and effectiveness of PI insurance cover. There may be times in the future where PI insurance is also less freely available (for example, during a future 'hard' insurance market). These limitations mean that PI insurance cover that achieves the policy objective may sometimes be more difficult to achieve.

The TPB has considered these factors in the formulation of its requirements and in the setting of minimum requirements set out in Table 3. The TPB believes that its minimum requirements are reasonable and should generally be able to be achieved by agents. The TPB will continue to monitor and consider what is practically available in the insurance market and how that will affect requirements.

Adequate PI insurance cover

What is 'adequate'

Agents must at all times maintain adequate PI insurance cover, which also complies with the TPB's requirements. Adequate cover is cover that will both:

- adequately indemnify an agent against any civil liability that may arise in the agent's provision of tax agent or BAS services
- meet the policy objective of reducing the risk that client losses are not compensated by the agent due to the agent having inadequate financial resources or for any other reason.

The TPB requires that agents hold PI insurance that is 'adequate', having regard to the nature of the business carried on by the agent, including:

- the volume of business in terms of turnover (see the Key terms section)
- the number and kind of clients
- the kind or types of services provided
- the number of employees
- the degree of risk.

This is not an exhaustive list of the factors that agents need to take into account in assessing what PI insurance cover is adequate in their circumstances.

Amount of cover

To be adequate overall, a PI insurance policy must have a sufficient amount of cover and at least meet the minimum requirements and cover a reasonable estimate of clients' potential losses (see step 2 in Table 2 and amount of cover in Table 3).

Further, the TPB requires that agents obtain PI insurance cover that provides legal and defence 'costs exclusive' or 'costs in addition' amount of cover.

Scope of cover

The TPB's PI insurance requirements require that the insurance must cover civil liability arising from any act, error or omission in the provision of tax agent or BAS services.

Terms and exclusions

If exclusions in a PI insurance policy undermine the policy objective, the cover may not be adequate. This applies especially to exclusions that directly affect the minimum requirements set out in Table 3. If an exclusion removes a minimum requirement, the cover will not be adequate.

Deductibles, excesses and the agent's financial resources

Consideration of the financial resources of the agent seen through the size of the agent's business is a necessary element in assessment of the adequacy of PI insurance cover.

The TPB is aware that there is generally an excess on insurance policies. All agents who are insured need to consider how they will cover the excess. Agents are required to assess what financial resources are required (to cover the excess and gaps in cover due to various acceptable exclusions) and to ensure they have such financial resources available. Agents should be able to demonstrate to themselves, and to the TPB if necessary, that they have such financial resources available.

The TPB requires that the excess for registered agents' PI insurance cover should not exceed 4% of their turnover unless 4% of that turnover is less than $1,000, in which case the excess cannot exceed $1,000.

Assessing adequacy

As discussed above, whether a particular PI insurance policy or cover is adequate for a particular agent depends on all the facts and circumstances, including the nature, scale and complexity of the agent's business, and their other financial resources. Therefore, it is the responsibility of each agent to determine what is adequate cover for them and to obtain the required cover, ensuring that it at least meets the minimum requirements.

Table 2 gives guidance on the processes the TPB recognises that agents should go through to determine what is adequate cover for them. However, the TPB will not generally 'approve' an agent's PI insurance arrangements on a case by case basis unless, in the TPB's discretion, there is reason to do so.

Initial assessment

The TPB suggests that agents use the assessment process in Table 2 to determine what will be adequate PI insurance cover.

Table 2: Initial assessment process

Step 1: Assess the business	Review the business, taking into account any proposed changes to the business. Review the claims history (if any) and risk management procedures.
Step 2: Assess potential liability	Determine 'the maximum liability that has, realistically, some liability potential to arise'. The TPB suggests an agent does this by making a reasonable estimate 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.
Step 3: Approach insurers/brokers	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: Assess amount of cover	Consider whether the amount of cover is adequate. It should at least meet the TPB's minimum requirements set out in Table 3.
Step 5: Assess scope of cover	Consider whether the scope of cover is adequate. It must at least meet the minimum requirements.
Step 6: Review policy terms and exclusions	Review the policy features using the questions in Table 3 . Identify any exclusions and gaps in cover.
Step 7: Consider financial resources	Check that you have the financial resources to pay the excess on resources, 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, for example, through capital, cash flow, overdraft, support.

Ongoing assessment

The TPB requires agents to review their PI insurance cover at least annually to ensure it continues to be adequate, for example, when their existing policy is due for renewal. Agents are also required to review the adequacy of their PI insurance coverage in light of any major changes in their business, for example, if they start providing new services or engage more employees. Once obtained, agents must maintain PI insurance cover for as long as they are registered as a tax or BAS agent, although this need not be done through the same insurer or insurers.

Compliance systems

The TPB holds agents accountable for ensuring that their PI insurance policies are renewed when required, that premiums are paid on time and that their policies or other compensation arrangements continue to be adequate.

Authorised insurers

Generally, the cover needs to be from an insurer regulated by the Australian Prudential Regulation Authority (APRA), or operating under an exemption within the *Insurance Act 1973* or the *Insurance Regulations 2002*. The TPB will advise agents on a case by case basis if it determines some alternative source of cover is acceptable.

What the policy should cover and include

Minimum requirements for adequate PI insurance cover

Table 3 sets out the TPB's view on the features a PI insurance policy should have in order for it to be 'adequate'. The table includes what is considered to be the minimum requirements for these features. Additional factors agents should consider when determining what is adequate depending on their business and individual circumstances are also suggested in the notes set out in the table.

Table 3: Features of adequate PI insurance cover and minimum requirements

<table>
<tr><th>Policy feature</th><th>Minimum requirements and factors to consider</th></tr>
<tr><td>Amount of cover</td><td>
The minimum amount of cover that needs to be maintained is based on turnover (see the Key terms section).
Agents who have been in business for at least a complete financial year are required to assess their turnover by reference to the turnover for the previous financial year.
The TPB requires that agents who do not have any turnover history or a complete financial year from which to determine their turnover will need to make a reasonable estimate of anticipated turnover for the forthcoming financial year, for the purposes of complying with the minimum amount of cover requirement.
An agent must assess their own PI insurance requirements by considering their own business and risk circumstances and obtain PI insurance that is appropriate for them, factoring in legal or defence costs. If the results of the assessment are that less cover may be required, an agent must nevertheless have cover to at least the minimum amount of cover shown in the table below, by reference to the turnover of the agent. The TPB encourages agents to discuss their particular business circumstance with an insurance provider to assist in determining what is adequate PI insurance cover for them.
<table>
<tr><th>Tier</th><th>Turnover</th><th>Minimum aggregate amount of cover*</th></tr>
<tr><td>1</td><td>Up to $75,000 (excluding GST)</td><td>$250,000 cover inclusive of legal and defence costs</td></tr>
<tr><td>2</td><td>$75,001 - $500,000 (excluding GST)</td><td>$500,000 cover inclusive of legal and defence costs</td></tr>
<tr><td>3</td><td>Over $500,000 (excluding GST)</td><td>$1,000,000 cover inclusive of legal and defence costs</td></tr>
</table>
* Please note that what is an appropriate amount of cover for an agent may in fact be more than what is set as the minimum requirement.
</td></tr>
<tr><td>Legal/defence costs</td><td>The policy must provide legal and defence ‘costs exclusive’ or ‘costs in addition’ amount of cover.</td></tr>
<tr><td>Scope of cover</td><td>The policy must include civil liability arising from any act, error or omission in the provision of tax agent and BAS services as defined in the TASA.</td></tr>
</table>

Persons covered	The policy must cover: • the agent • directors, principals, partners and employees who provide tax agent or BAS services on behalf of the agent • contractors, if they do not have their own PI insurance cover, then agents must have cover that includes the work of contractors for which the agent is liable • any other individuals or entities that provide tax agent or BAS services on behalf of the agent. **Note 1:** Registered agents need to take into account all of their employees and representatives (not just registered agents) who are occupied in the provision of tax agent or BAS services when considering the type and extent of cover that will be adequate. A client will generally have the same remedies against the agent as it has against its employees and representatives of the agent. **Note 2:** The registered agent's policy does not need to indemnify the agent for acts of its contractors if such acts are adequately covered by the contractors own PI insurance cover. **Factors to consider** Are there many employees or representatives geographically dispersed? If so, the limit of indemnity might need to be higher to manage this risk. **Note:** Experience suggests that the greater the number of employees or representatives that are working for a registered agent and the more geographically dispersed they are, the greater may be the potential for client losses to occur. The number and distribution of employees and representatives might affect the registered agent's ability to adequately supervise its employees and representatives and an agent with a greater number of employees and representatives is likely to provide services to a greater number of clients.
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 agent and BAS services that are provided to the client. **Note:** A policy may include a term prohibiting the agent from admitting liability for any claim, loss or demand.

Excess/deductibles	The TPB requires agents to undertake an assessment of their financial situation and ensure that the excess is not set at a level which cannot be met by the agent. The TPB further requires that the excess for agents' PI insurance cover should not exceed 4% of their turnover, unless 4% of that turnover is less than $1,000, in which case the excess cannot exceed $1,000. **Note 1:** A business with a lower cash flow available to meet claims might require a larger amount of cover or cover with a lower excess or both. If there is a limited asset base available to meet claims, a policy with a lower excess might be preferable. The TPB is aware that available PI insurance policies generally have an excess. Therefore, the TPB considers that whether an agent has sufficient cash flow to meet the excess for a reasonable estimate of claims is a relevant consideration in determining whether a PI insurance policy is adequate for that agent.
Insurance provider	The TPB requires that 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* • other insurance providers as approved by the TPB.
Retroactive cover	If the registered agent had an immediately previous PI insurance policy, the policy must provide retroactive cover to the earlier of: • the retroactive date specified in the most recent PI insurance policy, or • the commencement date of the first PI insurance policy in the series of continuous policies. **Note:** From 1 July 2015, retroactive cover is a minimum requirement by the TPB. Therefore, any new PI insurance policies taken out by a registered agent from 1 July 2015 must meet the retroactive cover requirement. However, any existing policies in place on 1 July 2015 that do not include retroactive cover can continue until such time as that policy expires (at which time any new policy will need to include retroactive cover).

TPB recommendation on additional features of PI insurance cover and extensions

There are some features of the PI insurance cover and extensions to PI insurance cover which the TPB recommends agents obtain. These are set out in Table 4 below.

Table 4: TPB recommendations on additional PI insurance features and extensions

Policy feature	Board recommendation
Fraud/dishonesty/fidelity	The TPB recommends that agents have: •innocent party fidelity cover in respect of the actions of employees or partners/directors (except sole practitioner agents), and •innocent party fraud/dishonesty cover in respect of the actions of employees or partners/directors (except sole practitioner agent). Note: A policy may include a term prohibiting the agent from admitting liability for any claim, loss or demand.
Automatic reinstatement	The TPB recommends agents obtain the benefit of at least one automatic reinstatement, if not multiple or unlimited reinstatements. Note 1: Automatic reinstatement means that if the limit of the policy is exhausted before the end of the policy period (by reason of claims being made or paid under insurance), the limit of indemnity is reinstated for the balance of the period to cover any new claims that might arise. This is important, as agents must ensure their PI insurancecover is adequate at all times.
Run-off cover	The TPB recommends that an agent obtain run-off cover if the agent proposes to cease providing tax agent or BAS services during their period of registration.
Cyber insurance cover	Once an agent has assessed the risk of a cyber-attack, the TPB recommends they consider whether they require additional protection against cyber threats, including losses that an agent may suffer from a cyber-attack (first party losses[5])

[5] First party losses resulting from a cyber-attack that an entity may suffer include 'denial of service' attack, costs of rectifying harm done (such as repairing and restoring systems that have been damaged by malicious acts), the costs of improving cyber security, undertaking forensic investigations to identify the source of a cyber-attack, reputational damage and costs of managing a reputational crisis and extortion costs.

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Applications for alternative arrangements to be considered as meeting the TPB's PI insurance requirements

Application regarding alternative arrangements

The TPB will generally grant applications for alternative arrangements to be considered as meeting the TPB's PI insurance requirements where it can be demonstrated that there are satisfactory arrangements for compensation of clients of registered agents, having regard to the policy objective and the requirements set out in this TPB(EP).

How to apply for alternative arrangements to be considered as meeting the TPB's PI insurance requirements

Agents who wish to apply for alternative arrangements to be considered as meeting the TPB's PI insurance requirements will need to lodge an application.

An application to the TPB for alternative arrangements to be considered as meeting the TPB's requirements should address the following issues:

1. Which registered agents will be covered by the alternative arrangements, for example, will the alternative arrangements cover a group of related agents or an industry sector.
2. How the compensation arrangements that the applicant has in place do and do not meet the criteria for assessing adequate PI insurance in accordance with the TPB's requirements (see the Adequate PI insurance cover section).
3. Any benefits, risks, or costs to clients arising from the agents using alternative arrangements as opposed to the TPB's general requirements.
4. Any circumstances particular to the agent or the industry sector which make these arrangements more appropriate than the TPB's general requirements.
5. Confirm that the agent will advise the TPB if the alternative arrangements are cancelled, varied or become unavailable for any reason.

The TPB will generally ask for an expert's report, for example, actuarial report to be submitted with the application to assess whether the alternative arrangements provide a satisfactory level of compensation to the clients of the agent, having regard to the policy objective and the requirements set out in this TPB(EP).

Agents who wish to maintain arrangements that were already in place before 30 June 2013 must address the same criteria as for new applications for alternative arrangements to be considered to meet the TPB's requirements.

Applications must be made in writing and sent to the Secretary of the TPB, either by:

- email to enquirymanagement@tpb.gov.au
- post to:
  Tax Practitioners Board
  GPO Box 1620
  SYDNEY NSW 2001

How the TPB will assess applications

The TPB will assess each application on its merits. The TPB may, if appropriate, give priority to group applications, for example, for an industry sector or sub-sector.

The TPB will only approve an application for alternative arrangements to be considered as meeting the TPB's PI insurance requirements where it can be demonstrated that there are satisfactory arrangements for compensation of clients of agents, having regard to the policy objective and the requirements set out in this TPB(EP). The TPB recognises that some alternative arrangements may in fact provide a higher level of cover.

In considering applications, the TPB will take into account the factors used to assess adequacy of PI insurance in accordance with the TPB's requirements. This means that any alternative arrangements must also be adequate having regard to:

- volume of business in terms of turnover
- number and kind of clients
- kind/s of business
- number of employees and representatives
- degree of risk.

These factors together with any additional factors considered to be relevant should be addressed in the application made to the TPB.

An important feature of PI insurance is that it is provided by a third party, which offers some security that the arrangements will be enforceable in the event of fraud by agents or officers of the agent. Therefore, one factor that the TPB will consider in assessing alternative arrangements is the degree to which the arrangements are provided on arm's length terms.

Example: Industry compensation fund

An application for alternative arrangements to be considered to meet the TPB's PI insurance requirements proposed by an industry body may be approved by the TPB. For example, an industry body's members might wish to set up a compensation fund supported by compulsory levies of members.

This could be in addition to PI insurance (that is, there might be an arrangement to compensate clients where a member's insurance is inadequate or they cease trading or become insolvent) or instead of PI insurance. Approval of a fund would depend on the amount of compensation that would be available for clients and the circumstances in which the fund would compensate clients, as well as the overall financial resource of the fund.

The TPB encourages industry bodies who wish to do so to consider whether an alternative arrangement is appropriate for their members. The TPB is prepared to discuss any such arrangements further.

Compensation arrangements during the assessment process

The process for consideration of an application for alternative arrangements to be considered to meet the TPB's PI insurance requirements may be time consuming to assess. Agents applying for approval of an application should continue to hold any PI insurance cover they have previously obtained or keep in place any other compensation arrangements they have previously implemented.

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Key terms

The following is a list of key terms and their meaning in this document.

Alternative arrangement	An alternative arrangement is an arrangement that is not a contract of PI insurance, but which the TPB may approve as adequate to satisfy the TPB's PI insurance requirements.
Amount of cover	The amount of cover is the maximum amount of money the insurer has agreed to provide for payment of claims made against an agent.
APRA	Australian Prudential Regulation Authority
Automatic reinstatement	In the event that the limit of indemnity (amount of cover) is depleted (reduced) by a claim or series of claims that equal the limit of indemnity under the policy, the limit of indemnity is automatically reinstated. Depending on the number of reinstatements provided by the policy this clause can provide indemnity for multiple claims during the year where the total of these claims exceeds the policy limit of indemnity. It is important to note that no one claim payment by the insurer will exceed the policy limit of indemnity. For example, if an insured entity purchases a policy with a $250,000 limit of indemnity and the policy contains one automatic reinstatement, the policy provides cover for claims aggregating up to $500,000 during the period of insurance, subject to any one claim being no greater than $250,000.
BAS service	Has the meaning given to it in section 90-10 of the *Tax Agent Services Act 2009*
Civil liability	Civil liability is liability of one party to another arising out of civil law, as opposed to criminal law. There are generally four branches of civil law: 1. tort law (the common law torts of negligence, nuisance, and defamation) 2. contract law (breach of contract) 3. statutory law (for example, the *Competition and Consumer Act 2010*) 4. equity - (a system of law based on the principle of 'fairness' designed to furnish remedies for wrongs which were not legally recognised or for which no adequate remedy was provided by the common law). A civil liability wording ordinarily covers all four branches of civil law. However, the policy only responds to civil liability for claims arising from the conduct by the insured of the nominated professional services stated in the policy schedule.

Code of Professional Conduct (Code)	The Code is contained in section 30-10 of the *Tax Agent Services Act 2009* (TASA). It sets out standards of professional and ethical conduct which agents must comply with.
Costs exclusive (or costs in addition)	Legal/defence costs cover does not form part of the amount of cover that is used to pay a claim as opposed to costs inclusive where the legal/defence costs cover forms part of the same amount of cover that is used to pay a claim.
Cover/coverage	Agents are only required to have PI insurance cover to meet the TPB's requirements. This may mean that they do not actually hold their own PI insurance policy, but rather are covered by the PI insurance policy of someone else. For example, an individual registered agent who is an employee of a registered company agent would likely be covered by the PI insurance policy held by the employer registered company agent, therefore the individual would not have to have their own PI insurance policy in order to meet the TPB's PI insurance requirements.
Excess (also known as deductible)	The first part of a loss, which is borne by the insured. The insured is responsible for the loss up to the deductible/excess amount and the insurer pays the remainder of the loss up to the policy limit. The excess can be inclusive or exclusive of costs and expenses.
Exclusion	A provision of an insurance policy that precludes coverage in particular circumstances
Fraud/dishonesty cover	Covering claims made against innocent insured against civil liability for compensation resulting from fraudulent, dishonest or criminal acts. Cover will not extend to the perpetrator of such fraudulent, dishonest or criminal act.
Innocent party	Some cover, such as fidelity and fraud/dishonesty will only extend to the insured agent if they were an innocent party, that is, they were not responsible and had had no prior knowledge of the conduct that led to the claim.
Insured	Any person who is covered by the PI insurance policy
Insurer	The entity providing the PI insurance policy
Legal/defence costs	The costs associated with defending a claim for civil liability
Minimum requirements	Minimum requirements means the amount and terms of cover that the TPB requires to be included in the insurance coverage of a registered agent, as specified by the TPB from time to time.
PI insurance	Professional indemnity insurance
PI insurance requirements	The overall description of the TPB's PI insurance requirements that are set out in this document.

Retroactive cover	A policy feature in 'claims-made' policies which extends cover into the past to cover a period of time before the policy was obtained (up to the retroactive date).
Run-off cover	Professional indemnity policies are usually claims made and notified policies. This means that in order to trigger the policy the claim must be made against the insured and reported to the insurer during the policy period. Agents, companies or individuals ceasing business still have exposure to claims being made after their business ceases arising from their previous business activities. Run off cover provides cover for unknown claims made and reported following expiration of the PI insurance policy arising out of acts, errors or omissions occurring during the period of run-off insurance cover. Some PI insurance policies will provide automatic run-off cover up until the end of the policy period of insurance should the policy be cancelled during the policy period.
Scope of cover	The scope of cover defines the terms and conditions on which indemnity is provided or excluded under the insurance policy.
Sole practitioner agent	A sole practitioner agent is an agent who operates on their own with no partners, employees or contract staff. Certain areas of cover, such as fidelity and fraud/dishonesty cover, are not required of sole practitioner agents, nor would it be available as the insured agent could not be an innocent party if they operate their business on their own.
Turnover	The total amount of business revenue received by the agent excluding GST.