

Professional Indemnity Insurance

Professional Indemnity Insurance provides cover for Professional Persons and their business, from potential threats, such as claims for alleged negligence or breach of duty arising from an act, error or omission in the performance of professional services.

Professional Indemnity Insurance is a form of “liability” insurance. It covers both costs of claims awarded against the Professional, such as financial reimbursement of client, and the cost of defending such claims – ie; legal costs, solicitor’s costs etc.

1. Who is a professional?

Anyone who gives to another person advice and/or services of a skillful character according to an established discipline might be regarded as a professional. That means persons other than those in traditional professions, such as doctors and lawyers, are now considered to be professionals i.e. computer consultants, advertising agents, acoustics consultants and trade associations.

2. What protection will a Professional Indemnity Insurance policy provide?

A professional indemnity insurance policy aims to shield the professional’s assets in the event of a claim, ensuring that he/she is able to carry on their business. Every policy on the market is different. You need to compare each policy.

3. What is a claims made policy? How does it differ from an occurrence policy?

A ‘claims made’ policy requires all claims to be notified to the insurer within the period of professional indemnity insurance. The actual mistake could occur at any time, if there is unlimited retrospective cover, or otherwise it must occur during the period of insurance. The insured must not have had any prior knowledge of a fact, situation or circumstance before the period of insurance, which relates to a claim which may be made against the insured. Claims and claims arising from a ‘known circumstance’, occurring prior to the period of insurance, are normally excluded from a ‘claims made’ policy. In an occurrence wording (as for Public Liability policy wordings), the circumstance must occur during the period of insurance whilst the notification of this event can occur at any time subsequently.

4. What is a ‘known circumstance’?

A ‘known circumstance’ could be defined as any fact, situation or circumstance,

which a reasonable person in the insured's professional position would have thought, might result in someone making a claim against him/her. Therefore, if a claim arises after the policy starts (the policy inception) from a fact, situation or circumstance that the insured knew (or should have known), at the time of the start of the policy might give rise to a claim, it will normally be excluded as it arose from a 'known circumstance'. This is because such claims are not fortuitous at the time of entering into the insurance but, on the contrary, there is a real possibility that a claim may eventuate.

5. Why is it important that an insured notifies all circumstances during the policy period? What fact, situation or circumstance should I notify to an insurer?

By notifying all circumstances that might give rise to a claim, during a policy period, an insured can get the benefit of their statutory rights under Section 40(3) of the Insurance Contracts Act 1984 (the Act). Section 40(3) provides an insured with statutory rights to notify a circumstance or facts that might arise into a claim against an insured, to an insurer, during the currency of the policy. If a claim eventuates against an insured from the notified circumstances, then the insurer cannot deny indemnity, despite the fact that the claim arose outside the period of insurance. Therefore, any fact, situation or circumstance, which a reasonable person in the insured's professional position would have thought might result in someone making a claim against them, should be notified to their current insurer.

6. What should an insured do if they want to swap insurers?

If an insured wants to move insurers, they will need to notify their insurance broker of every conceivable circumstance before going off risk. The insurance broker will need to inform the previous insurer of any circumstances that might amount into a claim, before the policy expires. If this is not done, then when a claim occurs in the future from a circumstance not previously notified, the insured may 'fall between stools', with neither the previous nor the current insurer accepting liability for the claim. The prior insurer may deny the claim as the insured failed to notify the circumstance or claim during the period of insurance and the current insurer may argue that the claim arose from a 'known circumstance'.

7. What does a civil liability professional indemnity insurance wording cover?

A civil liability professional indemnity insurance wording will indemnify the insured for claims arising from any civil award imposed by a civil court, as opposed to criminal liability or penalties enforced by a criminal court. A civil liability professional indemnity wording is broader than a negligence wording, as it will indemnify the insured for claims arising from strict liability, where no negligence is involved.

8. What is the retroactive date? What is the date of inception?

Retroactive date is the date after which acts, errors or omissions of the insured are covered. That is, any act, error or omission arising from work done after the

retroactive date will be covered under the policy. The inception date is the date of the start of the policy period.

9. What is 'run off' cover? How many years should I take out 'run-off' cover for?

'Run Off' cover will indemnify an insured for claims first brought against the insured during the period of run off insurance, arising from mistakes allegedly made by an insured, in the course of their former professional practice. How many years should a professional maintain 'Run Off' cover? There is no 'hard and fast' rule applicable to every professional, however it is suggested that cover should be maintained for at least six years. Although, in some cases the Limitation Period may only be three years, in other situations, it may be considerably longer. For example, the time from which the Limitation Period commences may be delayed until the discovery of damage where the defect or damage is latent. Asbestosis, brick growth and concrete cancer are all examples of latent defect or damage. For this reason, construction professionals e.g. engineers, project managers, builders etc should consider having 'Run Off' cover beyond six years because an injury or damage may occur or be discovered many years after their involvement with the construction of a building has passed. Brokers should ensure that 'Run Off' cover for their clients is written with unlimited retroactive cover so that all unknown acts, errors, omissions, mistakes etc made by a professional throughout his/her working years are covered. Limiting the retroactive period on a 'Run Off' policy severely limits the effectiveness the cover provides.

10. What is automatic reinstatement?

The sum insured of a Professional Indemnity Insurance policy is usually limited so that the limit applies to the aggregate of all claims against the policy in the policy period. Automatic reinstatement allows this aggregate limit to be doubled while the limit for any one claim remains the limit of the sum insured.

11. What is the difference between jurisdiction and territorial limits?

These two terms are sometimes confused. Territorial limits refer to the place where the act, error or omission occurs. Jurisdiction limit refers to the fact that the policy will only cover claims brought within the court system of the nominated country.