

PROFESSIONAL INDEMNITY INSURANCE INFORMATION SHEET

Property and Stock Agents Regulation 2022

Under section 22 of the Property and Stock Agents Act 2002 (the Act), it is a condition of every licence that the holder be insured under a policy of professional indemnity insurance.

Clause 12 of the Property and Stock Agents Regulation 2022 (the Regulation) sets out the requirements that the professional indemnity insurance policy must comply with.

1. Which classes of licensee are required to have insurance?

The requirement for mandatory professional indemnity insurance applies to all licensees under the Act – including real estate agents, stock and station agents and strata managing agents.

However, a licensee will be required to be insured only if the licensee engages in activities for which a licence is required under the Act. This means licence holders who are not currently engaged in activities that require a licence – such as trainers/educators, unemployed licensees, or licensees employed in other industries – do not need to be insured under a policy of professional indemnity insurance.

Licensees that do engage in activities requiring a licence must be covered under a complying policy that is in force with respect to themselves or their employer.

An ‘employer’, for the purposes of the clause, means a person (including a corporation) who employs or otherwise engages the licensee to perform services for which a licence is required under the Act.

2. What are the requirements in the Regulation that the professional indemnity insurance policy must comply with?

The Regulation requires policies to provide a minimum level of indemnity coverage of not less than \$1 million for any one claim; and not less than \$3 million in the aggregate, for all claims made during the period of insurance. These indemnity amounts are inclusive of costs incurred or payable by the claimant in connection with any claim.

Policies must provide cover for civil liability (including for personal injury) of the following types that arise in the conduct of an agency business:

- liability arising from any acts or omissions of the licensee that constitute:
 - negligence, or
 - misleading or deceptive conduct, or
 - breach of professional duty, or
 - unintentional defamation, or
 - unintentional interference with intellectual property rights;
- vicarious liability arising from any acts or omissions of an employee, agent or other person engaged in the agency business that constitute:

- negligence, or
- misleading or deceptive conduct, or
- breach of professional duty, or
- defamation (for which the claimant is not at fault), or
- interference with intellectual property rights (for which the claimant is not at fault), or
- fraud or dishonesty by the employee, agent or other person (for which the claimant is not at fault).

‘Agency business’ means a business referred to in section 8(1) of the Act.

The required types of coverage and level of cover are only minimum requirements.

Licensees may obtain a higher level of cover if they consider it necessary. Licensees are also free to obtain a policy for a range of other insurance events that can be covered by professional indemnity insurance, provided the policy they obtain has coverage that meets the mandatory requirements.

Licensees should also note that providers of professional indemnity insurance must be authorised to provide insurance under the Commonwealth *Insurance Act 1973*.

3. Which activities are excluded from the professional indemnity insurance requirements?

A licensee is not required to be insured under a policy of professional indemnity insurance if they are involved in the conduct of either of the following activities:

- (a) commercial property agency work with respect to any property that exceeds \$10 million in value, or
- (b) if the licensee is a corporation - commercial property agency work carried out by the licensee on behalf of an affiliate that has indemnified the licensee against claims in accordance with the professional indemnity insurance policy requirements in the regulations.

Commercial property agency work means selling, purchasing, exchanging, leasing, managing or otherwise dealing with property that is not residential property or rural land.

An **affiliate**, in relation to a corporation, means:

- (a) a body corporate that is related (by virtue of section 50 of the Corporations Act) to the corporation, or
- (b) an entity that is controlled (within the meaning of section 50AA of the Corporations Act) by the corporation.

NOTE: The requirement for licensees to be insured under a policy of professional indemnity insurance does not change the entitlement of consumers to lodge a claim on the Property Services Compensation Fund if the consumer suffers a pecuniary loss because of a failure to account for trust funds held by a licensee.

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