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TAX PRACTITIONERS BOARD

Explanatory Paper TPB(EP) 03/2010

Professional Indemnity Insurance

This TPB explanatory paper (TPB(EP)) is intended as information only. It provides a detailed explanation of the Board's professional indemnity insurance (PII) requirement. Further, this TPB(EP) explains the Board's interpretation of subsection 20-30(3) of the *Tax Agent Services Act 2009* (TASA), translating these provisions into practical principles that can be applied by the profession.

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

WRITTEN NOTICE OF THE PII REQUIREMENT

The Board will notify agents of the specific PII requirement by written notice commencing in the first 6 months of 2011. The PII requirement in the first section of this document, is proposed to appear in the written notice and is for the information of readers.

Please note, the proposed written notice contained in Appendix A to this TPB(EP), does not constitute written notice for the purposes of subsection 20-30(3) of the TASA, it is merely the proposed form of the notice. This TPB(EP) also explains the Board's PII requirement in more detail.

CURRENCY OF DETAILS OF THE PII REQUIREMENT

The Board's PII requirement will commence from 1 July 2011. The Board intends to review the details of the PII requirement five years after the commencement of the requirement, with a view to making any necessary refinements for the future. However, the Board reserves the right to amend the requirements at any point, including before any formal review, if it becomes necessary to do so.

Document History

This TPB(EP) was issued on 20 December 2010 and is based on the TASA and the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009* as at 1 March 2010 and the *Tax Agent Services Regulations 2009* as at 29 October 2010.

Following earlier consultations, the Board released this TPB(EP) in the form of an information sheet as an exposure draft on 15 October 2010. The Board invited comments and submissions in relation to the information contained in it. The closing date for submissions was 15 November 2010. The Board has considered the submissions made and now publishes the following TPB(EP).

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A. Overview

The Board's Professional Indemnity Insurance (PII) requirement

The Board will, in March or April 2011, provide written notice to agents, informing them that the Board requires them to have PII cover. The proposed form of the written notice is set out in Appendix A to this document.

Legislative background

The TASA provides the Board with the power to require that registered tax and BAS agents (collectively referred to as agents) maintain PII as specified by the Board.

This power is set out in subsection 20-30(3) of the TASA which provides that:

> If the Board grants your application [for registration], the Board may, by written notice, require you to maintain professional indemnity insurance as specified in the notice. The notice may be given to you at the same time as the notice referred to in subsection (1), or subsequently.

Furthermore, the Code of Professional Conduct (Code) at subsection 30-10(13) of the TASA provides:

> You must maintain the professional indemnity insurance that the Board requires you to maintain.

On 25 February 2010, the Board announced that from 1 July 2011, the Board would require all tax and BAS agents to have PII coverage. It was also announced that this would be a general requirement and would be subject to some exceptions.

Specification of the Board's PII requirement

Subject to the following points, all registered agents must, from 1 July 2011, have PII cover in accordance with the Board's requirements outlined in this document.

- The Board specifically considered whether its PII requirement should apply to registered agents who have a low turnover. While the Board understands that the PII requirement will be an added expense, through external consultation, the Board expects that premiums will be affordable. Moreover, it is important for consumer protection that these agents still be required to maintain adequate PII cover. The Board considers that the PII requirement will assist in the recognition of tax and BAS sectors as a profession. The Board also notes that those agents who have very low turnover levels may not in future be able to satisfy the experience requirements set out in the *Tax Agent Services Regulations 2009* (TASR) which the Board administers.

- If an agent is adequately covered under a policy held by another entity, that agent will not be required to hold their own PII policy. An example of this is an employee agent working for a registered tax agent company that has a PII policy that covers employees.

- If an employee is providing tax agent or BAS services to their own employer, they are not required to be registered and therefore are not required to have PII cover.

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

- Registered agents who do not provide a tax agent or BAS service for a fee or other reward are not required to have PII cover.

Purpose of the PII requirement

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 agent and BAS 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 agent services, including BAS services.

Paragraph 3.54 of the Explanatory Memorandum to the Tax Agent Services Bill 2008 explains the purpose of PII:

> 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.[1]

The Board has developed the Policy Objective for its PII requirement (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.

[1] Explanatory Memorandum to the *Tax Agent Services Bill 2008*, paragraph 3.54

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Policy Objective

The Board's Policy Objective is:

> The Tax Practitioners Board will administer a requirement for registered tax and BAS agents to have professional indemnity insurance coverage to reduce the risk that a client's losses (due to the conduct of the agent in the provision or failure to provide tax agent services) 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.[2] The PII requirement will assist in ensuring that this object is met.

The Board also anticipates that, as a result of the Board's PII requirement, standards and professionalism will be enhanced within the tax and BAS agent professions.

B. The Board's approach to administering the requirement for PII

The Board's general approach

The Board's objective

The Board will administer the PII requirement to maximise its potential to achieve the Policy Objective.

The PII requirement will improve the standard of compensation arrangements in place in the profession by establishing a general requirement for PII cover for all registered agents.

The Board's approach to implementation

To achieve its objective, the Board will take a staged approach to administering these requirements, including a period of implementation. This is because when any new regulatory requirement is introduced, there will necessarily need to be a period of adjustment. The Board understands that insurance policies are generally written for one year periods. Time will be required for existing policies to lapse and new policies or products to be developed and agreed upon.

[2] *Tax Agent Services Act 2009,* section 2-5.

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Table 1: Staged approach	
Implementation **1 July 2011 – 30 June 2012**	**Operation** **From 1 July 2012**
• any new policies taken out by registered agents who are subject to the Board's PII requirement must meet the Board's requirements; • if an agent has a current PII policy that does not meet the Board's requirements, the policy can continue during the implementation period. However, upon lapse of that policy or by 1 July 2012, whichever occurs first, an agent must obtain a policy that complies with the Board's requirements.	• by 1 July 2012 all agents who are required to have PII cover must have PII cover that complies with the Board's requirements.

What this means for agents

Upon commencement of the implementation period, which is 1 July 2011, if an agent already has PII cover, they may maintain that cover until the end date of the policy. After the current policy lapses, the agent will then need to obtain PII cover that meets the Board's requirements, in preparation for complete operation of the requirement.

Any registered agents who are obtaining PII cover for the first time prior to or during the implementation period of 1 July 2011 to 30 June 2012 will be required to obtain PII cover that meets the Board's requirements.

From the commencement of the Boards requirement on 1 July 2011, all registered agents will be required to have PII cover that meets the Board's requirements, unless they are exempted from this requirement by the Board or their existing policy is continuing during the implementation period.

What this means for consumers of tax agent services

The approach the Board has adopted to administering the PII requirement means that all agents will generally need to have some form of PII coverage from 1 July 2011 in respect of the provision of tax agent services including BAS services. A result should be that consumers will have greater protection against losses than they did before the commencement of the PII requirement, to the extent that any agents may not have had such cover.

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It is important to recognise the limitations of PII as a consumer protection mechanism. PII protects consumers indirectly and it is not a guarantee that compensation will in fact be paid. PII protects 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 of 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.[3]

The PII cover required by the Board is not necessarily intended to cover what a client might perceive as a loss in every circumstance. For example, PII cover is not intended to cover what a client thinks is a loss because a tax refund or liability does not meet their expectations, but is the result of the correct application of taxation law to the circumstances.

Providing evidence of PII cover to the Board

Agents may be required to provide evidence that they have PII cover that meets the Board's requirement on an annual basis. Agents may also be required to demonstrate that they have maintained PII cover at the time that they seek renewal of registration or at any other time as required by the Board

The Board is currently considering how such administrative requirements will operate and will announce details of them before commencement of the Board's PII requirement on 1 July 2011.

The Board will also explore with the insurance industry any means by which insurers can play a part in assisting the Board in the administration of the Board's PII requirement.

If an agent cannot or does not comply

If an agent fails to maintain adequate PII cover that meets the Board's requirements, the Board may sanction the agent for a breach of the Code under section 30-10(13) of the TASA. Depending on the circumstances, the sanctions available to the Board range from cautions to suspension or termination of an agent's registration.

[3] While PII 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. For further information please refer to the TPB website at www.tpb.gov.au

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Key principles

Table 2 sets out the key principles that will guide the Board's administration of the PII requirement.

Table 2: Key principles	
Principle 1: Cover should be 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: The agent is responsible for assessing adequacy	It is the basic responsibility of each agent to determine what is 'adequate' PII cover for them having regard to the risks that are associated with the provision by them of tax agents services including BAS services and if what is adequate for them requires insurance cover in addition to the cover which is required by the Board, 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

PII 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 PII policy. PII protects the agent against certain risks; and indirectly protects consumers but is not a guarantee that compensation will be paid to consumers. PII 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 Board's overall requirements for PII for agents. The Board will consider whether PII arrangements are adequate with reference to the Policy Objective – that is, whether the PII arrangement reduces the risk that a client's losses (due to an agent's conduct in the provision, or failure to provide, tax agent or BAS services) are not compensated.

The Board will also consider what is 'adequate' with reference to the minimum requirements, which must at least be satisfied, for the Board to consider PII cover to be adequate.

In Section C, the Board provides further guidance on what it considers to be 'adequate' PII.

Principle 2: Responsibility of agent to assess adequacy

The Board considers that compliance with the PII requirement should form part of the agent's overall risk management processes. It is also one of the central factors in the Board's task of ensuring that tax agent and BAS services are provided to the public in accordance with appropriate standards of professional and ethical conduct.

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

Minimum PII 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 PII requirements of the Board. The Board 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 Board encourages this, provided that the Board's minimum requirements are met.

Principle 3: Practical availability

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

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

The Board has considered these factors in the formulation of its approach to the PII requirement and in the setting of minimum requirements. The Board believes that its minimum requirements are reasonable and should generally be able to be achieved by agents. The Board will continue to monitor and consider what is practically available in the insurance market and how that will affect the Board's approach to the PII requirement.

C. Adequate PII cover

What is 'adequate'

Agents must at all times, when the Board's PII requirement is in force, maintain adequate PII cover, which also complies with the Board's requirements. Adequate cover is cover that will adequately indemnify an agent against any 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.

Without limiting the classes of cover which are otherwise adequate, cover which is approved by the Professional Standards Council (PSC) will generally be considered by the Board to be adequate cover.

The Board requires that agents hold PII that is 'adequate', having regard to the nature of the tax agent or BAS services business carried on by the agent, including:

1. the volume of business in terms of turnover;
2. the number and kind of clients;
3. the kind or types of services provided;
4. the number of employees; and
5. the degree of risk.

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

Amount of cover

To be adequate overall, a PII policy must have a sufficient amount of cover. To be sufficient, the amount of indemnity under the policy should at least meet the Board's minimum requirements and cover a reasonable estimate of clients' potential losses (see step 2 in Table 3 and amount of cover in Table 4 below).

Scope of cover

The PII requirement requires that the insurance must cover civil liability arising from any act, error or omission in the provision of tax agent or BAS services or both.

Terms and exclusions

If exclusions in a PII 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 4 below. 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 business of the agent is a necessary element in assessment of the adequacy of PII cover.

The Board 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 Board if necessary, that they have such financial resources available.

The Board requires that where an agent's sole business is the provision of tax agent and BAS services, then excess for their PII cover should not exceed 4% of their turnover.

Where an agent provides other services in addition to tax agent and BAS services, then the excess may be greater than 4% provided that the agent undertakes an assessment of their financial situation and risk and can demonstrate to the Board, if required, that the level of excess is appropriate unless 4% of that turnover is less than $1,000, in which case the excess cannot exceed $1,000.

Agents should retain records of this assessment. These records should indicate how the financial resources were calculated using capital, cash flow, overdraft or support from a parent company.

Assessing adequacy

As discussed above, whether a particular PII 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 PII cover for them and to obtain the required PII cover, ensuring that it at least meets the minimum requirements of cover of the Board.

Table 3 gives guidance on the processes the Board recognises that agents should go through to determine what is adequate PII cover for them. However, the Board will not generally 'approve' an agent's PII arrangements on a case by case basis unless, in the Board's discretion, there is reason to do so.

Even if agents already have PII cover in place, they should review their operations from time to time to reassess what type and amount of cover they required. This will be particularly relevant to when an agent's existing PII policy ceases and they need to obtain new PII cover. This involves agents both:

1. undertaking an initial assessment of their business; and
2. having a process of ongoing assessment.

Initial assessment

The Board suggests that agents use the assessment process in Table 3 to determine what will be adequate PII cover.

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Table 3: 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 potential to arise'. The Board 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); and • 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, 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 Board's minimum requirements set out in Table 4 below and in the written notice.
Step 5: Assess scope of cover	Consider whether the scope of cover is adequate. It must at least meet the Board's minimum requirements
Step 6: Review policy terms and exclusions	Review the policy features using the questions in Table 4. Identify any gaps in cover.
Step 7: Consider financial resources	Check that you have the financial resources to pay the excess on 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 (e.g. through capital, cash flow, overdraft, support).

Ongoing assessment

The Board expects that agents will review their PII cover at least annually to ensure it continues to be adequate (e.g. when their existing policy is due for renewal). Agents should also review the adequacy of their PII coverage in light of any major changes in their business (e.g. if they start providing new services or engage more employees). Once obtained, agents must maintain PII cover for as long as they are registered as a tax agent or as a BAS agent with the Board, although this need not be done through the same insurer or insurers.

The Board will ask agents to provide a copy or a certificate of currency of their PII policy and other information relating to their PII cover on an annual basis. The Board may also ask for these documents when conducting an investigation or compliance review of an agent.

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Compliance systems

The Board expects the agent to be accountable for ensuring that their PII policy is renewed when required, that premiums are paid on time and that their policy 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 Board 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 PII cover

Table 4 sets out the Board's view on the features a PII 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.

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Please note: Without limiting the classes of cover which are otherwise adequate, cover which is approved by the PSC will generally be considered by the Board to be adequate cover. Therefore, the following table of minimum requirements will apply to agents who are not part of a PSC approved scheme

<table>
<tr><th colspan="2">Table 4: Features of adequate PII cover and minimum requirements</th></tr>
<tr><th>Policy feature</th><th>Minimum requirements and factors to consider</th></tr>
<tr><td>Amount of cover</td><td> Minimum requirement: The minimum amount of cover that needs to be maintained is based on turnover.
Agents who have been in business for at least a complete financial year are required to assess their turnover from the provision of tax agent and BAS services by reference to the turnover for the previous financial year.
The Board 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 from the provision of tax agent and BAS services for the forthcoming financial year, for the purposes of complying with the Board's minimum amount of cover requirement (see below).
The Board requires that agents have a minimum amount of cover as specified below, provided at all times the amount of cover obtained is adequate for the risks associated with the provision of tax agent services and BAS services in the circumstances of the agent.
An agent must assess their own PII requirements by considering their own business and risk circumstances and obtain PII 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 Board encourages agents to discuss their particular business circumstance with an insurance provider to assist in determining what is adequate PII cover for an agent.
<table>
<tr><th>Tier</th><th>Turnover from the provision of tax agent or BAS services</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>Scope of cover</td><td> Minimum requirement: 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>

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Persons covered	**Minimum requirement:** The policy must cover: • the agent, directors, partners and employees; and • contractors, if they do not have their own PII cover, then agents must have cover that includes the work of contractors for which the agent is liable. Note 1: Agents need to take into account all of their employees and representatives (i.e. 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 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 PII 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 an 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 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	**Minimum requirement:** 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	**Minimum requirement:** The Board 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 Board further requires that where an agent's sole business is the provision of tax agent and BAS services, then excess for their PII 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. Where an agent provides other services in addition to tax agent and BAS services, then the excess may be greater than 4% provided that the agent undertakes an assessment of their financial situation and risk and can demonstrate to the Board, if required, that the level of excess is appropriate. 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 Board is aware that available PII policies generally have an excess. Therefore, the Board 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 PII policy is adequate for that agent.

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Insurance provider	**Minimum requirement:** The Board requires that the PII 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*; or • an unauthorised foreign insurer if they are providing insurance in accordance with Part 2 of the *Insurance Regulations 2002*.

Board recommendation on additional features of PII cover and extensions

There are some features of the PII cover and extensions to PII cover which the Board recommends agents obtain. These are set out in Table 5 below.

Table 5: Board recommendations on additional PII features and extensions

Policy feature	Board recommendation
Fraud/dishonesty/fidelity	The Board 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.
Legal/defence costs	The Board recommends that agents obtain PII cover that provides legal and defence 'costs exclusive' or 'costs in addition' amount of cover.
Automatic reinstatement	The Board 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 PII cover is adequate at all times.
Run-off cover	The Board 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.

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D. Applications for exemption to the PII requirement

Application for exemption

The Board will consider applications for exemption from the PII requirement for franchise operations or similar operations 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 document.

How to apply for exemption

Agents who wish to apply for an exemption from the PII requirement will need to lodge an application.

An application to the Board for exemption from the PII requirement should address the following issues:

1. which agents will be covered by the exemption (e.g. will the exemption 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 PII in accordance with the PII requirement (see Section C);
3. any benefits, risks, or costs to clients arising from the agents using alternative arrangements as opposed to PII;
4. any circumstances particular to the agent or the industry sector which make these arrangements more appropriate then PII; and
5. confirm that the agent will advise the Board if the alternative arrangements are cancelled, varied or become unavailable for any reason.

The Board will generally ask for an expert's report (e.g. 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 document.

Agents who wish to maintain arrangements that were already in place before the PII requirement commenced and be exempt from the Board's PII requirement must address the same criteria as for new exemptions.

Applications must be made in writing and sent to the Secretary of the Board.

How the Board will assess applications

The Board will assess each application on its merits. It may do this through a Committee of the Board. The Board may, if appropriate, give priority to group applications (e.g. for an industry sector or sub-sector).

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The Board will only approve an application for exemption from the PII requirement 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 document. The Board recognises that some alternative arrangements may in fact provide a higher level of cover.

In considering applications for exemption, the Board will take into account the factors used to assess adequacy of PII insurance in accordance with the PII requirement. This means that any alternative arrangements must also be adequate having regard to:

1. the volume of business in terms of turnover;
2. the number and kind of clients;
3. the kind or kinds of business;
4. the number of employees and representatives; and
5. the degree of risk.

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

An important feature of PII 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 Board will consider in assessing alternative arrangements is the degree to which the arrangements are provided on arms length terms.

Example: Industry compensation fund
An application for exemption from the PII requirement proposed by an industry body may be approved by the Board. 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 PII (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 PII. 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 Board encourages industry bodies who wish to do so to consider whether an alternative arrangement is appropriate for their members. The Board is prepared to discuss any such arrangements further.

Compensation arrangements during the assessment process

The process for consideration of an application for exemption from the PII requirement may be time consuming to assess. Agents applying for approval of an application for exemption should continue to hold any PII cover they have previously obtained or keep in place any other compensation arrangements they have previously implemented.

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E. Key terms

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

Key terms	Meaning in this document
alternative arrangement	An alternative arrangement is an arrangement that is not a contract of PII, but which the Board may approve as adequate to satisfy the PII requirement.
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	The 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 (eg the Trade Practices Act) 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.

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Code of Professional Conduct (Code)	The Code is contained in section 30-10 of the *Tax Agent Services Act 2009.* It sets out standards of professional and ethical conduct with which agents must comply.
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 PII *cover*. This may mean that they do not actually hold their own PII policy, but rather are covered by the PII 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 PII policy held by the employer registered company agent, therefore the individual would not have to have their own PII policy.
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.
fidelity extension	Indemnity against loss of monies (as defined under the policy) belonging to the insured or for which the insured is legally liable where the loss is sustained in consequence of any dishonest or fraudulent act or omission of any insured.
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.
implementation period	The period from 1 July 2011 to 30 June 2012 during which the Board will allow PII policies that do not comply with the Board's requirements that are in force to continue until they cease, at which point the agent will have to obtain PII cover that complies with the Board's requirements, which ever occurs first.
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 PII policy.

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insurer	The entity providing the PII policy.
legal/defence costs	The costs associated with defending a claim for civil liability.
master policy scheme	A single contract of insurance that is provided to a group. Each individual member of the group is entitled to a specified amount of cover and a consistent policy wording. The group has a specified amount of cover also. Once the amount of cover for the group is exhausted, there is no cover for the group and therefore the individual members.
minimum requirements	Minimum requirements means the amount and terms of cover that the Board requires to be included in the insurance coverage of a registered agent, as specified by the Board from time to time.
PII	Professional indemnity insurance
PII requirement	The overall description of the Board's requirement that all registered tax and BAS agents have PII cover from 1 July 2011, subject to the details set out in this document
Policy Objective	As defined in this document at page 9.
Professional Standards Council (PSC)	The PSCs are responsible for the promotion of consumer protection and excellence in professional standards by encouraging the self-regulation of occupational groups through the implementation of Cover of Excellence® Schemes. These Schemes allow participating members of occupational associations to limit their civil liability, provided that the comply with the PSC's requirements that they carry professional indemnity insurance and/or business assets to the limitation of liability amount, and that they implement robust risk management strategies, to the benefit of consumers of their services. (For more information visit www.psc.gov.au)
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 PII policy arising out of acts, errors or omissions occurring during the period of run-off insurance cover. Some PII 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.

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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 fees received from the provision of tax agent or BAS services or both, excluding GST.

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Appendix A

Written Notice

In accordance with subsection 20-30(3) of the *Tax Agent Services Act 2009 (TASA),* by this written notice, the Tax Practitioners Board requires you to have professional indemnity insurance (PII) cover. If you believe that you should be exempt from this requirement, after consideration of this notice, you should notify the Board by completing the online form.

PII requirement

Subject to the paragraphs below, all registered agents must have PII cover in accordance with the Board's requirements (appropriate PII cover) outlined herein.

- If an agent is adequately covered under a policy held by another entity, that agent is not required to hold their own PII policy. An example of this is an employee agent working for a registered tax agent company that has a PII policy that covers employees.
- If an employee is providing tax agent or BAS services to their own employer, they are not required to be registered, therefore they are not required to have PII cover.
- Agents may have PII cover for their business that covers non-tax agent or BAS services, other aspects of their business or which covers PII requirements set by other regulatory bodies, or both. In those circumstances, provided that PII cover also covers the agent's provision of tax agent or BAS services, or both, the agent does not need to have a separate policy or multiple policies to meet the Board's requirements.
- Registered agents who do not provide a tax agent or BAS service for a fee or other reward are not required to have PII cover.

Commencement date and implementation period

All agents who, or which are subject to the Board's PII requirement must have appropriate PII cover from 1 July 2011, subject to the arrangements which may apply in the implementation period from 1 July 2011 to 1 July 2012.

Any agent who or which is obtaining PII cover for the first time, must have a policy that complies with the Board's requirements from 1 July 2011.

An implementation period of 12 months from 1 July 2011 to 30 June 2012 will operate.

During the implementation period:

- any new policies taken out by registered agents who are subject to the Board's PII requirement must meet the Board's requirements, set out herein;
- if an agent has a current PII policy that does not meet the Board's requirements, the policy can continue during the implementation period. However, upon lapse of that policy or by 1 July 2012, whichever occurs first, an agent must obtain a policy that complies with the Board's requirements.

In any case, by 1 July 2012 all agents who are required to have PII cover must have PII cover that complies with the Board's requirements, set out herein.

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The Board's minimum requirements

Agents are required to assess their own PII requirements by considering their own business and risk circumstances and obtain PII that is appropriate for them. Regardless of the result of an agent's assessment, PII cover must at least meet all the minimum requirements set out below.

Please note: Without limiting the classes of cover which are otherwise adequate, cover which is approved by the PSC will generally be considered by the Board to be adequate cover. Therefore, the following table of minimum requirements will apply to agents who are not part of a PSC approved scheme

Board minimum requirements	
Feature	**Minimum requirement**
Adequacy of cover	The Board's Policy Objective is: The Tax Practitioners Board will administer a requirement for registered tax and BAS agents to have professional indemnity insurance coverage to reduce the risk that a client's losses (due to the conduct of the agent in the provision or failure to provide tax agent services) are not compensated, due to the agent having inadequate financial resources or for any other reason as far as this is practically possible. When the Board's PII requirement is in force, agents must maintain adequate PII cover which complies with the Board's requirements. Adequate cover is cover that will satisfactorily indemnify an agent against any 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. Without limiting the classes of cover which are otherwise adequate, cover which is approved by the Professional Standards Council will generally be considered by the Board to be adequate cover.
Amount of cover	The minimum amount of cover that needs to be maintained is based on turnover. Agents who have been in business for at least a complete financial year are required to assess their turnover from the provision of tax agent and BAS services by reference to the turnover for the previous financial year. The Board 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 from the provision of tax agent and BAS services for the forthcoming financial year, for the purposes of complying with the Board's minimum amount of cover requirement (see below). For agents who are not part of a scheme approved by the Professional Standards Council, the Board requires that they have a minimum amount of cover as specified below, provided at all time the amount of cover obtained is adequate for the risks associated with the provision of tax agent services and BAS services in the circumstances of the agent. An agent must assess their own PII requirements by considering their own business and risk circumstances and obtain PII 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

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	the agent. The Board encourages agents to discuss their particular business circumstance with an insurance provider to assist in determining what is adequate PII cover for an agent.

Tier	Turnover from the provision of tax agent or BAS services	Minimum aggregate amount of cover*
1	Up to $75,000 (excluding GST)	$250,000 cover inclusive of legal and defence costs
2	$75,001 - $500,000 (excluding GST)	$500,000 cover inclusive of legal and defence costs
3	Over $500,000 (excluding GST)	$1,000,000 cover inclusive of legal and defence costs

*** 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.**

Scope of cover

Cover 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.

Persons covered

The policy must cover:

- the agent, directors, partners and employees; and
- if contractors do not have their own PII cover, then agents must have cover that includes the work of contractors for which the agent is liable.

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;

Excess/deductibles

The Board 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 Board further requires that where an agent's sole business is the provision of tax agent and BAS services, then excess for their PII 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.

Where an agent provides other services in addition to tax agent and BAS services, then the excess may be greater than 4% provided that the agent undertakes an assessment of their financial situation and risk and can demonstrate to the Board, if required, that the level of excess is appropriate.

Insurance provider

The Board requires that the PII 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; or
- an unauthorised foreign insurer if they are providing insurance in accordance with Part 2 of the Insurance Regulations 2002.

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Board recommendation on additional features of PII cover and extensions

The following are some features of the PII cover and extensions to PII cover which the Board recommends agents obtain.

Board recommendations on additional PII features and extensions	
Feature	**Board recommendation**
Fraud/dishonesty/fidelity	The Board 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 agents).
Legal/defence costs	The Board recommends that agents obtain PII cover that provides a legal and defence 'costs exclusive' or 'costs in addition' amount of cover.
Automatic reinstatement	The Board recommends agents obtain the benefit of at least one automatic reinstatement, if not multiple or unlimited reinstatements.
Run-off cover	The Board 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.

Application for exemption

The Board will consider applications for exemption from the PII requirement for franchise operations or similar operations 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 document.

To enable Board consideration of them, such applications should be made as soon as is reasonably possible.

Please note that until an agent has received an exemption from the Board, they are subject to the PII requirement.

Administrative requirements

Agents may be required to provide evidence that they have PII cover that meets the Board requirement on an annual basis. The Board is currently considering how this administrative requirement will operate.

Please note: Failure to annually maintain PII cover in accordance with the Board's requirements may constitute a breach of the Code of Professional conduct and may lead to the suspension or termination of your registration, or the imposition of another form of sanction, to be determined by the Board

Currency of Board PII requirements

The Board's PII requirement will commence from 1 July 2011. The Board intends to review the details of the PII requirement five years after the commencement of the requirement, with a view to making any necessary refinements for the future. However, the Board reserves the right to amend the requirements at any point before any formal review if it becomes necessary.

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Right of review

A decision of the Board to require professional indemnity insurance may be reviewed by the Administrative Appeals Tribunal (Tribunal). If your interests are affected by this decision, you may apply, subject to the *Administrative Appeals Tribunal Act 1975*, to the Tribunal for a review. Applications for review should be made within 28 days. Please refer to the enclosed 'Notice of Rights of Review' document for further information.

Further information

For more information on the Board's PII requirement, please refer to the information sheet on the Board's website at www.tpb.gov.au