

Occupational Therapy Board of Australia

REGISTRATION STANDARD: PROFESSIONAL INDEMNITY INSURANCE ARRANGEMENTS

1 December 2019

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Summary

This registration standard sets out the Occupational Therapy Board of Australia's (the Board) requirements for professional indemnity insurance (PII) arrangements for occupational therapists. Registrants can be covered by their own PII arrangements or third-party PII arrangements.

Does this standard apply to me?

This standard applies to all registered occupational therapists except those with student or non-practising registration.

What must I do?

When you practise as an occupational therapist, you must be covered by your own or third-party PII arrangements that meet this standard:

- a. for all aspects of your practice
- b. in all locations where you practise
- c. whether you are working in the private, non-government and/or public sector, and
- d. whether you are practising full-time, part-time, are self-employed, employed, or in an unpaid or volunteer capacity, or any combination of these factors.

Your PII cover must include:

- a. civil liability cover
- b. appropriate retroactive cover for otherwise uncovered matters arising from prior practice
- c. automatic reinstatement, or an equivalent approach, which ensures that the amount of cover will not be exhausted by a single claim, or
- d. the equivalent of a to c above under third-party PII arrangements.

If you are covered by a third-party PII arrangement, it must meet this registration standard. If you are in any doubt about whether the third-party cover meets this

registration standard, you should always ask what is covered by the third-party PII arrangement.

If the third-party cover does not meet this registration standard you must take out additional cover to ensure this standard is met.

If any area of your practice is specifically excluded from your PII cover, you must not practise in that area.

If your PII cover is provided by your employer, and you intend to practise outside your stated employment, you must have individual PII arrangements in place to cover that practice. This may include cover for undertaking:

- practical components of continuing professional development
- study involving patient treatment, or
- volunteer work (unless you are covered separately for this work, for example, by the volunteering organisation).

Amount of cover

If you are arranging your own PII, you should ensure that you take out adequate and appropriate insurance or professional indemnity cover. Professional indemnity insurers provide these policies. Insurance brokers or providers are best-placed to advise you on what level of cover is adequate and appropriate for your practice. To enable them to make this judgement, you must provide your broker, insurer or indemnifier with accurate and up-to-date information about the scope and nature of your practice. You need to be able to demonstrate that you fully disclosed your scope of practice to the provider of cover and justify your decisions about PII if asked to do so by the Board or AHPRA.

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Are there exemptions to this standard?

Practitioners are exempt from requiring PII:

- when the scope of practice of an individual practitioner does not include the provision of healthcare or opinion in respect of the physical or mental health of any person
- when a practitioner has statutory exemption from liability. That is, they are employed as a practitioner or are in another arrangement and are exempted from liability under state or Commonwealth legislation, or
- when practitioners are registered in Australia but are practising exclusively overseas.

Note: run-off cover is required for past practice in Australia.

What does this mean for me?

The Health Practitioner Regulation National Law, as in force in each state and territory (the National Law) states that a registered health practitioner must not practise their profession unless appropriate PII arrangements are in force in relation to the practitioner's practice of the profession (section 129 of the National Law).

When you apply for registration

When you apply for registration you must declare that you will not practise the profession unless you have PII arrangements in place that meet this standard. This is a requirement under the National Law.

At renewal of registration

You will be required to declare annually at renewal that:

- during the preceding period of registration, you practised the profession in accordance with the requirements of this registration standard, and
- you will not practise the profession unless you have PII arrangements in place that meet this standard.

During the registration period

You must notify the Board within seven days if you no longer have appropriate PII arrangements in place in relation to your practice that meet the requirements of this standard (section 130 of the National Law).

Your compliance with this standard may be audited from time to time.

When you cease practice

When you decide to cease practice, you must take out appropriate run-off cover for matters that would otherwise be uncovered arising from your previous practice as a registered health practitioner.

Evidence

The Board may, at any time, require you to provide evidence that you have appropriate PII arrangements in place.

If you hold private insurance in your own name, you must retain documentary evidence of your insurance for at least five years.

If you are covered by a third-party insurance arrangement, you are not required to obtain documentary evidence of the insurance policy unless the Board requests it. However, there may be circumstances when you are required to seek the documentation from that third party. If requested by the Board, you must provide a certified copy of the certificate of currency or a letter from the third party declaring that you are covered.

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What happens if I don't meet this standard?

The National Law establishes possible consequences if you don't meet this standard, including that:

- the Board can impose a condition or conditions on your registration or can refuse your application for registration or renewal of registration when you don't meet a requirement in an approved registration standard for the occupational therapist (sections 82, 83 and 112 of the National Law)
- practising without appropriate PII arrangements, or failing to notify the Board within seven days that appropriate PII arrangements are no longer in place, is not an offence but may be behaviour for which health, conduct or performance action may be taken (sections 129 and 130 of the National Law), and
- registration standards, codes or guidelines may be used in disciplinary proceedings against you as evidence of what constitutes appropriate practice for the occupational therapist (section 41 of the National Law).

More information

You should be aware that the provision of PII to health professionals is generally governed by the *Medical Indemnity (Prudential Supervision and Products Standards) Act 2003 (Cth)*, with some exceptions.

An insurer providing PII to health professionals must generally be registered with the Australian Prudential Regulation Agency (APRA). Health practitioners who are taking out their own PII are advised to ensure that:

- their PII provider is registered with APRA as a general insurer or that it is a Lloyd's underwriter (APRA's website contains a list of registered general insurers), and
- their PII is provided through a contract of insurance.

Authority

This registration standard was approved by the Ministerial Council on 30 June 2019.

Registration standards are developed under section 38 of the National Law and are subject to wide-ranging consultation.

Definitions

Automatic reinstatement is a provision in insurance policies that allows for the limit of indemnity (amount insured) to be reinstated for new, unrelated claims, after one or more claims have been paid to the limit of the indemnity.

Civil liability insurance means insurance that covers the costs of liability incurred by the insured arising from civil claims seeking compensation for personal injury, harm or loss incurred, where the claim arises directly from an alleged act, error or omission committed in the conduct of the practitioner's practice or professional business during the period covered by the insurance policy. Civil liability cover includes cover for legal expenses incurred in defence or settlement of a civil claim and for damages payable.

Occurrence-based policy means an insurance policy that is in place when the event that is the subject of the claim occurred, even if the policy has not been renewed.

Practice means any role, whether remunerated or not, in which an individual uses their skills and knowledge as a health practitioner in their profession. For the purpose of this registration standard, practice is not restricted to the provision of direct clinical care. It also includes using professional knowledge in a direct non-clinical relationship with clients, working in management, administration, education, research, advisory, regulatory or policy development roles, and any other roles that impact on safe, effective delivery of services in the profession.

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Professional indemnity insurance (PII) arrangements means arrangements that secure, for the practitioner's professional practice, insurance against civil liability incurred by, or loss arising from, a claim that is made as a result of a negligent act, error or omission in the conduct of the practitioner. This type of insurance is available to practitioners and organisations across a range of industries and covers the cost and expenses of defending a legal claim, as well as any damages payable. Some government organisations under policies of the owning government are self-insured for the same range of matters.

Retroactive cover means PII arrangements that cover the insured person against claims arising out of, or in consequence of, activities that were carried out in the course of that person's professional practice, before the date the insurance started.

Run-off cover means insurance that protects a practitioner who has ceased a particular practice against claims that arise out of, or are a consequence of, activities that were carried out when the person was conducting that practice. This type of cover may be included in a PII policy or may need to be purchased separately.

Scope of practice means the professional role and services that an individual health practitioner is educated and competent to perform.

Third-party cover means the cover that an individual holds through a third party's insurance arrangement, such as through an employer, education provider or union.

Review

This registration standard will be reviewed from time to time as required. This will generally be at least every five years.

Last reviewed: 30 June 2019.

This standard replaces the previously published registration standard dated 1 June 2012.