

CR 2A – Professional Indemnity Insurance

Issued 8 October 2019



2A.1 Purpose

- (a) This Regulation requires compulsory professional indemnity insurance for applicants for and holders of Certificates of Public Practice issued by CA ANZ (**CPPs**), Affiliate memberships and Practice Entity memberships. Members holding CPPs, Affiliate Members and Practice Entity Members are participating members in the CA ANZ Professional Standards Scheme (**Scheme**) which provides a limitation on the amount of damages depending on the nature of the engagement.
- (b) These requirements are consistent with the minimum standards of professional indemnity insurance set by the Professional Standards Council (**PSC**) for participants in professional standards schemes limiting liability, including the Scheme, and are a requirement of participation in these schemes. The minimum compulsory insurance may not be adequate for many applicants, Members and their firms. Where services are offered outside the occupational activities of accountants, each applicant, Member and firm should take professional advice from insurance brokers or other advisers so that each can consider what is an adequate type and level of cover. Consideration should also be given to the impact of the statutory limitation period where there has been a high risk or high fee engagement, when determining the adequacy of professional indemnity insurance cover.
- (c) CA ANZ shall not be under any liability to any Member or any other person arising out of any steps it takes or omits to take to ensure that Members have complied with this Regulation, and in particular shall not be under any such liability in relation to verifying the existence of the insurance required by the Regulation.

Commentary

This Regulation does not apply to Chartered Accountants resident in New Zealand.

2A.2 Definitions

Unless expressly defined in this Regulation, capitalised terms used in this Regulation are defined in By-Law 2 and By-Law 39.

2A.3 In this Regulation:

- (a) **Member** means any applicant for or holder of:
 - (i) a CPP; or
 - (ii) Affiliate membership; or
 - (iii) Practice Entity membership.
- (b) References to the term **Practice** has the meaning given to that term in CR 9;
- (c) References to the term **Principal** has the same meaning given to that term in in By-Law 39(r), namely it means any person, who is a principal of a Practice Entity or a principal, partner, director, officer or trustee of a Related Entity of the Practice Entity and includes:
 - (i) in the case of a Practice Entity or a Related Entity of the Practice Entity which is a partnership, a partner of that partnership;
 - (ii) in the case of a Practice Entity or a Related Entity of the Practice Entity which is a body corporate, a director of that body corporate;
 - (iii) in the case of a Practice Entity or a Related Entity of the Practice Entity that is conducted as a trust, an individual who, as an officer or employee of the

trustee of that trust, or otherwise, provides or participates as a Principal in the provision of the services provided by the Practice Entity; and

- (iv) in the case of a Practice Entity or a Related Entity of the Practice Entity, an individual who, as an officer or employee or otherwise, of the Practice Entity or Related Entity of the Practice Entity, provides or participates as a Principal in the provision of the services provided by the Practice Entity.

- (d) **Related Entity** means any partnership, company, corporation or trust carrying on the whole or any part of a Practice.

2A.4 Each Member must have, or must ensure that each Practice has, a valid and binding contract of professional indemnity insurance which complies with the minimum requirements set out in CR 2A.5. The insurance may have cover greater than those requirements.

2A.5 The requirements for the professional indemnity insurance in CR 2A.4 are as follows.

(a) **Parties – Insured**

The insured must include:

- (i) each Principal;
- (ii) each Related Entity;
- (iii) any person who is, or becomes, or ceases to be during the period of insurance a Principal or employee of the Practice or Related Entity;
- (iv) any person who has ever been a Principal or employee of the Practice or Related Entity; and
- (v) in the event of the death or incapacity of any person in the above paragraphs, the legal personal representatives of that person.

(b) **Parties – Insurer**

The insurer must be:

- (i) authorised to carry on the insurance business under the *Insurance Act 1973* (Cth); or
- (ii) an unauthorised foreign insurer (**UFI**) where:
 - A. the insurance policy is to be arranged through an insurance broker or agent licensed in Australia.
 - B. the UFI is to be domiciled in a member country of the International Association of Insurance Supervisors (**IAIS**) or other international organisation similarly reputed by the Australian Prudential Regulation Authority (**APRA**) or similar relevant Australian Authority.
 - C. the UFI must have a minimum rating of "A" from AM Best, Moody's, Fitch Worldwide or Standard and Poor's or equivalent rating agencies.
 - D. the proper law of the contract is Australian law.
 - E. the legal system of the domicile country is subject to the treaty arrangements with Australia.
 - F. the UFI has capacity for providing claims data of the type and standard generally available from the APRA in respect of domestic insurers.
 - G. the insured also has an agreement with the insurer or broker, requiring the insurer or broker to provide claims data of the type and standard collected by APRA in respect of domestic insurers. The agreement must enable the data to be passed to the PSC; or

- H. a captive or mutual which is duly authorized to carry on business in a foreign country.

(c) **The Insured's Profession and Business**

The insurance must cover all services offered by an insured referred to in CR 2A.5(a).

Commentary

It is important that Members ensure that all services provided by their Practice are covered by insurance. Some professional indemnity policies offered to accountants do not automatically include financial services as defined in Chapter 7 of the Corporations Act 2001 (Cth), others may specifically exclude these services. Members who provide these types of services to their clients should take professional advice from insurance brokers or other advisers to ensure all their services are covered by insurance.

(d) **The Period of Insurance**

The insurance must be either:

- (i) for a period of not less than one year; or
- (ii) for a period expiring on the next common expiry date for insurance placed under a scheme which requires all insurances under it to expire on a common expiry date.

(e) **The Limit of Indemnity**

- (i) The sum insured for the Practice must be:
 - A. For jurisdictions where there is a Professional Standards (Limitation of Liability) scheme in place not less than the monetary ceiling set out in the Scheme applicable to Members of CA ANZ current at the time of professional indemnity insurance policy renewal being:
 - i. For audit services provided after 8 October 2014 not less than:
 1. \$2 million, where the engagement fee is less than \$100,000; or
 2. \$5 million, where the engagement fee is \$100,000 or more, but less than \$300,000; or
 3. \$10 million where the engagement fee is \$300,000 or more, but less than \$500,000; or
 4. \$20 million, where the engagement fee is \$500,000 or more, but less than \$1,000,000;
 5. \$50 million, where the engagement fee is \$1 million or more, but less than \$2.5 million; or
 6. \$75 million, where the engagement fee is \$2.5 million or more;
 - ii. For insolvency services provided after 8 October 2014 not less than:
 1. \$2 million, where the relevant fee is less than \$100,000; or
 2. \$5 million, where the relevant fee is \$100,000 or more, but less than \$300,000; or
 3. \$10 million where the relevant fee is \$300,000 or more, but less than \$500,000; or
 4. \$20 million, where the relevant fee is \$500,000 or more.

- iii. For insolvency services the relevant fee is the highest fee for an insolvency service provided in any single financial year of the 3 prior years.
 - iv. For other services, being non-audit, non-insolvency services, provided after 8 October 2014 not less than:
 - 1. \$2 million, where the engagement fee is less than \$100,000; or
 - 2. \$5 million, where the engagement fee is \$100,000 or more, but less than \$300,000; or
 - 3. \$10 million where the engagement fee is \$300,000 or more, but less than \$500,000; or
 - 4. \$20 million, where the engagement fee is \$500,000 or more.
 - (ii) There may be an excess for each and every claim, but any such excess should not exceed either of the following two amounts:
 - A. whichever is the greater of
 - i. the amount calculated by multiplying the number of Principals of the Practice as at the beginning of the period of insurance, by \$10,000, for each and every claim, or
 - ii. 3% of the total of the gross fee income of the Member and every Related Entity for the financial year immediately preceding the beginning of the period of insurance, whichever is the greater; and
 - B. 5% of the indemnity cover required in CR 2A.5(e)(i).
 - (iii) There must be cover for the costs and expenses, including legal costs and expenses, of investigating, defending and settling claims against the insured. Cost in addition cover is preferred. Where cost-in-addition cover is in place, the limit of indemnity will be the sum insured for the Practice as set out in CR 2A.5(e)(i).
 - (iv) Where cost-in-addition cover is not in place, cost-inclusive cover must be for an indemnity limit not less than 25% greater than the amount of the required level of cover set out in CR 2A.5(e)(i) e.g. \$2,500,000 where no engagement fee is greater than or equal to \$100,000.
- (f) **Cover**
- (i) The insurance must cover either any civil legal liability or any act, error or omission of an insured who is providing the services for which a CPP is required, but the insurance may be subject to exceptions that are reasonably common for insurance of that type.
 - (ii) The insurance must not be cancellable by the insurer for innocent non- disclosure or misrepresentation, or by the insured at all.
 - (iii) The insurance must cover the insured against claims arising out of a dishonest act or omission of an insured (notwithstanding any misrepresentation or non-disclosure of such acts or omissions when effecting the insurance) but the insurer need not promise to indemnify any person committing, making or condoning any such dishonest act or omission or misrepresentation or non-disclosure in relation to it.
 - (iv) If the insurance has a retroactive date, it must be no earlier than 7 years before the beginning of the period of insurance.
 - (v) At least one automatic re-instatement is preferred.

2A.6

- (a) The Member may be requested to obtain a written statement of an insurance broker registered under the *Financial Services Reform Act 2001* (Cth) or the insurer under the insurance, certifying that on the basis of written information supplied to the broker in a proposal or otherwise by or on behalf of the Member insurance of the Practice complies with the requirements of this Regulation.
- (b) The Member must ensure that any Practice Entity/ies relying on such professional indemnity insurance maintain the financial capacity and ability to meet the excess obligations under the contract of professional indemnity insurance, both at the time of renewal and throughout the course of the renewal period.
- (c) The Member must provide to the Board, or its appointed delegate:
 - (i) such information and documents about or in evidence of the Practice's professional indemnity insurance as it requests;
 - (ii) notification of any circumstance notified to the Member's insurer;
 - (iii) such information and documents about claims made against the Member or Practice entity as it requests.

Provided that such information, documents and notification will not comprise or include legal advice from the Member's lawyer or documents prepared for the dominant purpose of a lawyer's providing legal advice to the Member, or the Member's being provided with legal services in connection with Australian or overseas litigation or anticipated litigation, in which the Member is or may be a party.

Information, documents and notifications required by this Regulation will be provided by the Member, and received by the Board and CA ANZ, on a confidential basis, and will be provided to the PSC on a de-identified basis.

- (d) The Member must inform CA ANZ in writing within 7 days of becoming aware that his/her professional indemnity insurance, including the insurance referred to in this Regulation, has expired, been cancelled, avoided or otherwise become ineffective, such as potential exhaustion through notification of claims, unless within that period:
 - (i) it has been renewed, or
 - (ii) s/he has concluded a valid and binding contract of professional indemnity insurance complying with this Regulation.

If, for a period of 30 days, the Individual Member does not have insurance as required by this Regulation such Member's CPP shall automatically be suspended until s/he arranges new insurance complying with this Regulation. Where an application has been made to the Board in accordance with CR 2A.7 this period may be extended up to 90 days.

2A.7 The Board shall have discretion to issue a CPP or Affiliate or Practice Entity membership to an applicant or Member even if the applicant's or Member's insurance does not comply with the requirements in CR 2A.4 Without limiting the generality of this discretion, the Board may:

- (a) issue CPPs or Affiliate or Practice Entity memberships to applicants or Members who have the required insurance in the form of a cover note or interim contract of insurance; or
- (b) set criteria on the Individual, Affiliate or Practice Entity Member and every Related Entity during the relevant period of insurance on which such exercise of discretion is conditional.

2A.8 Run-off Cover

After:

- (a) the Member ceases to be a participating member of the Scheme; or
- (b) the Member ceases to practice; or

- (c) the Member retires; or
- (d) the Member's Practice Entity merges with another Practice,

the Member must ensure that a valid and binding contract of professional indemnity insurance is maintained, through a period of not less than 7 years, where the Member's liability for services previously provided will not otherwise be covered by future policies.