

CGU professional risks insurance information



Professional Indemnity Civil Liability Insurance

Practising as a professional in today's financial world can be both exhilarating, and at the same time risky. Exposure to expensive, time-consuming litigation from disgruntled clients is a real threat. It is crucial that every professional ensures his or her activities are covered by a professional indemnity insurance policy.

CGU Professional Risks Insurance is committed to making a difference. As one of Australia's leading professional indemnity insurers for over 20 years, we know that our competitive advantage lies in our ability to maintain a difference in the service that we provide.

Where do we make a difference?

By providing a professional indemnity insurance policy that competitively meets the various needs of today's professional.

How do we do this?

We do this by offering a product with:

1. A broad policy definition of 'who is an insured?'

A CGU Professional Risks Insurance Professional Indemnity policy has a wide definition of 'Who is an insured?':

- All past, present and future (incoming) principals of the insured's business.
- Each and every person, business or company listed as an insured on the schedule.

- All past, present and future employees.
- The insured for any work undertaken by an agent and/or consultant.
- Prior companies under which the insured operated.
- Entities acquired by mergers and/or acquisition during the period of insurance (interim cover).
- Any subsidiary company engaged in the insured's professional business practice created by the insured during the period of insurance.
- Estates, legal representatives or assigns of the (deceased) insured.
- The insured's joint venture liability arising out of their own acts, errors and omissions are automatically covered.
- The insured's joint liability in respect of a joint venture (optional cover).

A professional indemnity policy needs to be broad enough to cover the insured for the mistakes or errors of anyone who has worked for them, whether in the past, present or future, not just services that the insured has actually provided themselves.



2. Special policy features that ensure extensive coverage

A CGU Professional Risks Insurance Professional Indemnity policy has many special features that ensures extensive coverage for the insured. Such features include the following:

- **Full civil liability policy wording** - The policy is a full civil liability wording and is therefore not limited to negligent acts, errors or omissions.
- **Broad policy coverage** - The policy provides cover for claims arising from:
 - Breach of duty.
 - Defamation.
 - Loss of or damage to documents.
 - Dishonest fraudulent criminal or malicious acts by an employee or principal of the insured.
 - Unintentional infringements of any patent, copyright, design and trademark.
 - Breach of the Trade Practices Act/Fair Trading Acts.
- **No bodily injury/property damage** exclusion in the wording.
- **Continuous cover clause** - The policy provides cover for known circumstances arising prior to the period of insurance, as long as the insured was continuously insured with us and was insured with us at the time they first became aware of the known circumstance.
- **Disciplinary proceedings/enquiries** - The policy will pay up to \$100,000 for legal costs and expenses for an insured's representation at any enquiry or hearing of a disciplinary nature before a legally constituted body or for a coronial enquiry.
- **Worldwide territorial limits** - The policy provides cover for a claim or anything giving rise to a claim that arises from anything done anywhere in the world.
- **Claims investigation costs** - The policy will pay, in respect of any claim, up to an amount equal to the policy limit i.e. \$1 million sum insured plus \$1 million claims investigation costs.
Legal costs are in addition to the sum insured and not inclusive in the limit.
- **Employment Practices Liability** - We cover the insured for specific employment practices related claims. (optional extension)

Please refer to CGU Professional Risks Insurance Professional Indemnity policy wording for full details of cover, conditions and exclusions. A copy is available from our website at www.cgu.com.au/prorisk/index2.shtml

3. Market security and experience

- **Security** - As a division of CGU Insurance, CGU Professional Risks Insurance is part of Insurance Australia Group - Australasia's leading general insurance group - which has over \$5.5 billion in gross written premium and almost 12 million active policies throughout Australia. CGU Insurance has the added security of a Standard and Poor's AA Insurer Financial Strength rating. This means that Standard and Poor's believes CGU is in a very strong position to meet both its claims and financial obligations.
- **Expertise** - Over 20 years of experience in providing professional indemnity insurance to the Australian market.
- **Service** - CGU Professional Risks Insurance prides itself on its excellent service and claims reputation and has been voted the No.1 underwriter for PI Insurance by 'middle market' brokers for a sixth year in succession, according to the JP Morgan General Insurance Survey, November 2005.
- **Product range** - In addition to professional indemnity insurance, CGU Professional Risks Insurance offers the following products.
 - Directors & Officers Liability Insurance
 - Corporate Advantage - Management Liability Insurance
 - Employment Practices Liability Insurance
 - Superannuation Trustees Liability Insurance
 - Malpractice Insurance
 - Defamation Insurance
 - Office Bearers Liability Insurance
 - Information Technology Liability Package
 - Associations & Non-Profit Organisations Liability
- **Capacity** - As a long-term insurer of professional risks insurance business, we have consistently provided capacity of \$20m for each class of business. For our target clients, this means that they are able to maintain their policies with CGU without the need to seek excess capacity.

Some common questions asked about PI insurance

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 policy provide?

A professional indemnity 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 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 change 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 wording cover?

A civil liability professional indemnity 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 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.

Some professional indemnity insurance cases

1. Negligent design/advice

Facts: The insured was the design architect for a new warehouse for a scaffolding hire company. The insured's design provided for a suspended floor slab and the insured sub-contracted the design of the slab to an engineer. Because of the weight of the scaffolding in storage, the slab required to be specially strengthened, but was designed by the engineer at the minimum strength provided in the building regulations for a warehouse floor slab. When the error was discovered, the slab had to be re-built at a cost of over \$600,000. The owner sued the architect and the engineer. The claim was compromised for a payment of \$600,000, \$350,000 paid by the engineer and \$250,000 paid by CGU on behalf of the architect.

2. Negligent advice

Facts: The insured real estate agent was engaged to sell a town house in a Sydney suburb. The vendor insisted on a private sale and nominated a high sale price. The agent found several potential buyers at a lower price, but the vendor rejected their bids, insisting he would not sell below his nominated price. After some months, the agent found a buyer at that price and the property was sold. Shortly before settlement, an identical town house in the same development was put up for sale by auction and sold for \$100,000 more.

The vendor threatened to sue the real state agent. The vendor claimed that the agent should have appreciated that in the heated Sydney property market, the vendor was likely to achieve a better result by going to auction than through a private sale and should have recommended an auction to the vendor, notwithstanding the vendor's instruction that he wanted a private sale.

3. Alleged negligent supervision

Facts: The insured was engaged as the project manager of the refurbishment of a double storey office building, which included laying new carpet on the stairway connecting the office floors, with a metal strip with rubber insert on the nosing of each stair.

A visitor fell down the stairs and was badly injured. She claimed that the heel of her shoe had caught on the raised edge of a metal strip which was missing its rubber insert.

The visitor sued the building owner which in turn sued the carpet layer and the insured. The carpet layer was uninsured and without assets. It was alleged the insured, in conducting an inspection of the work, should have detected that the metal strip was raised and did not have a rubber insert.

4. Breach of confidentiality

Facts: The insured was a personnel agency. X lodged his resume with the insured and at the same time disclosed he had a medical condition. The insured sent the resume to prospective employers and disclosed to them the existence of X's medical condition. X sued the insured, claiming he had not authorised them to disclose the medical condition.

5. Breach of copyright

Facts: Unknown to the insured, one of its employees had copied and used an overseas company's product to create a new software system for the insured's range of products. Copyright in the original program was owned and registered by the overseas company. The new product was then marketed and sold under the insured's name. The overseas company, after becoming aware that this derivative version was being sold in the local market, brought a claim against the insured alleging breach of copyright and loss of profits and reputation.

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