

Professional indemnity insurance

Insurance and risk management plays a vital role in ensuring continuity in your business' operations. The purpose of insurance is to transfer and redistribute risks that you have identified in your business onto an insurer in return for the payment of an insurance premium.

It is important for small business owners to consider questions such as:

- What steps do you have in place to minimise risks in the course of your business?
- Can you afford to ignore the real possibility of a claim being brought against you by an unhappy customer?

This fact sheet will highlight the important issues you need to know about professional indemnity insurance and sources of risk to your business' success and profitability.

Do you need professional indemnity insurance?

To determine whether you need professional indemnity insurance, you need to consider the activities that you will engage in during the course of conducting your business. Will you provide your customers with advice on matters such as design work, financial planning, or the management of their businesses or interests? Whilst this list of activities is not exhaustive, you should consider whether the services you will be providing to your customers involves the use of some special skill or ability.

If any of the above apply, you may be providing professional services and therefore required by law to exercise your skill to a particular level or standard expected of that profession. Failure to exercise your skill to that requisite standard may result in your being held liable for any loss or damage suffered as an important consequence of this. This is where professional indemnity insurance is important.

If you are providing professional advice or services to customers, any claims made against you by customers are unlikely to be covered by your other insurance policies, such as your public liability insurance, as this type of insurance generally excludes professional liability claims and often only applies when the customer suffers personal injury or property damage. This is why you need to consider professional indemnity insurance.

What can you be held liable for?

Professional indemnity insurance is designed to respond to claims made against you relating to the provision of professional advice or services. If you provide advice to customers in the conduct of your business, you may be liable if your advice is found to have been given negligently.

For example, an architect who has professional indemnity insurance would be indemnified from liability arising out of any architectural advice provided by him or her that caused someone injury or loss. This type of insurance will cover you, up to the limit of the cover, for your legal defence costs, the third party's legal costs and any court awards made against you.



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How to avoid or minimise the risk of a claim being brought against you

Before agreeing to do work for a customer, you should ensure that you have a retainer, client agreement or contract for service ("agreement") which, among other things, should set out the work that you have agreed to do and the conditions upon which you will do the work.

Because this agreement will be very important in terms of setting out your liability, you should ensure that it provides a detailed description of the work you have been engaged to perform. The agreement may also specify who will be responsible or liable for what. If you are subsequently faced with a claim, the agreement will be closely examined by your professional indemnity insurer to assess whether you acted within the bounds of the activities which your insurer agreed to cover you for.

If you fail to enter into some form of written agreement with your customers, you may find that an "implied" contract will apply to the provision of your services. Such a contract will invariably impose upon you a duty to exercise your skill to a standard expected of your profession.

Claims notification and disclosure

A professional indemnity insurance policy will usually cover you for claims made during the policy's period of coverage, even though the activities you undertook which brought about the claim may have occurred prior to the inception of your current policy. It is therefore critical that you immediately notify your professional indemnity insurer of any claims against you as soon as you become aware of them to avoid the risk of your insurer denying to indemnify your claim because you notified them outside the notice period.

The importance of risk management

Insuring against loss is only the first step in protecting your business against loss and liability. Effective risk management procedures should be implemented to cover all aspects of your business and minimise risks inherent to your business' activities - regardless of whether or not your business activities require you to obtain professional indemnity insurance.

Identifying risks in your day-to-day business operations will be an important process that will also help you understand the types of insurance cover beyond professional indemnity that you may wish to seek. Ensuring that your business adopts appropriate methods to minimise risk will not only lessen the likelihood of a claim being made against you, but may also help to reduce the cost of your insurance premiums.

No matter how big or small your business and its operations are, you should strongly consider seeking further information that is tailored to your business' specific needs to ensure that you obtain the best and most comprehensive coverage you can afford.



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Who can help?

Do you belong to a professional association? If so, you should seek advice from your governing association in relation to the types of insurance coverage offered to its members. Some associations are able to secure discounted insurance coverage for their members. You may also find that the association has documented procedures to follow to minimise risks associated with your profession.

You should also enquire whether your association is considering to adopt a scheme under the *Professional Standards Act 2004* (Qld). Members of such a scheme shall enjoy the benefits of having their liability for property damage and other claims capped according to their association's specific scheme.

Further information

The following fact sheets provide further information on these issues:

- Insurance
- Reduce your exposure to losses
- Risk management

The following may be useful for further general information relating to insurance:

- Insurance Council of Australia www.ica.com.au
- Insurance Ombudsman Service Insurance Council of Australia www.iecltd.com.au
- National Insurance Brokers Association www.niba.com.au