



Mr Dale Boucher
Chair
Tax Practitioners Board

Attention: Ms Larissa Evans
larissa.evans@ato.gov.au

24 September 2010

Dear Mr Boucher

PROFESSIONAL INDEMNITY INSURANCE (PII) REQUIREMENTS FOR REGISTERED TAX AGENTS AND BAS AGENTS

The Insurance Council of Australia¹ (Insurance Council) appreciates the opportunity provided in your email of 7 September 2010 to comment on the Tax Practitioners' Board's draft requirements for PII for registered tax agents and BAS agents. After consulting the members of the Insurance Council's PII Committee, we would suggest that further attention be given to the following issues.

Minimum Cover

In evaluating compliance with the minimum amounts of cover, the Board needs to be aware that insurers may only offer policy limits that are "inclusive of costs". This is normally done by stipulating a minimum with an additional percentage for costs. For example, if the minimum limit is \$250,000 for "costs in addition cover", it may be \$300,000 for "costs inclusive" cover. This approach is quite common in some Professional Standards schemes. Consequently, the cover obtained by an agent may not explicitly be in the format of cover for possible compensation awards plus cover for legal and defence costs.

Fidelity Cover

Concerning the question posed under "scope of cover", fidelity insurance covers a first party loss (i.e. by the Insured) from fraud or dishonesty, while fraud and dishonesty cover within the PII policy relates to fraudulent or dishonest acts committed by a principal or employee of the Insured that leads to a financial loss to an unrelated third party.

It should be noted that some insurers exclude loss of a third party's money or negotiable instruments from fraud and dishonesty cover. The insurers that do not provide this cover as part of PII may endorse their policy to provide this cover with a "Fidelity Extension or

¹ The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent more than 90 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system. June 2010 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross premium revenue of \$33.2 billion per annum and has total assets of \$99.2 billion. The industry employs approx 60,000 people and on average pays out about \$95 million in claims each working day.

Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

Endorsement". These endorsements usually go further and also cover the Insured for the loss of their own money or negotiable instruments as well as that of a third party.

Many insurers are prepared to include fidelity cover in PII but it is usually sub-limited to a modest amount (\$250,000 to \$500,000 at the most, usually lower). It is likely that for a firm with \$500,000 in fees it would be difficult to get a PII policy that included \$2 million in fidelity cover, as required by the proposed standards.

The fidelity exposure for tax agents is relatively modest given our understanding that most ATO payments are now made direct to the taxpayer's account. Consequently, as the scope of a fidelity type loss is more limited than previously, we would suggest that the requirements reflect this and allow a sub-limit for fidelity to be limited to 10% of the policy limit or \$50,000 whichever is the greater.

Retroactive cover

Tax and BAS agents who are currently uninsured may find it difficult to obtain retroactive cover when they first purchase PII. The Insurance Council suggests that it may be worthwhile explicitly stating that previously uninsured agents may hold PII that does not provide cover for acts/errors/omissions committed prior to the first date on which they effected a PII policy.

Automatic reinstatement

In evaluating compliance with the automatic reinstatement provision, the Board needs to be aware that some policies refer to a Limit of Indemnity and a Maximum Aggregate Limit of Indemnity. This is the equivalent of an automatic reinstatement. It would be helpful if this section clarified that the maximum aggregate limit for all claims must be at least twice the per claim limit.

If you require further information, please contact Mr John Anning, Insurance Council's General Manager Policy – Regulation Directorate at janning@insurancecouncil.com.au

Yours sincerely



Robert Whelan
Executive Director & CEO