

### Public consultation paper

November 2012

Public consultation on guidelines for professional indemnity insurance arrangements for nurses and nurse practitioners.

Please provide feedback by email to: <a href="mailto:mmbafeedback@ahpra.gov.au">mmbafeedback@ahpra.gov.au</a> by close of business on 10 January 2013.

# Professional indemnity insurance arrangements for nurses and nurse practitioners

#### Introduction

These guidelines have been developed by the Nursing and Midwifery Board of Australia (National Board) under section 39 of the *Health Practitioner Regulation National Law* (the National Law) as in force in each state and territory.

The guidelines provide direction to registered nurses, nurse practitioners, their employers and education providers about the requirements for professional indemnity insurance arrangements (PII) under the National Law.

#### Who needs to use these guidelines?

These guidelines are relevant to:

- registered nurses
- nurse practitioners endorsed under the National Law
- employers of registered nurses and nurse practitioners, and
- education providers.

#### Summary of the guidelines

Under section 129 of the National Law, registered nurses and nurse practitioners (endorsed under the National Law) must not practise their profession unless they are covered in the conduct of their practice by appropriate professional indemnity insurance (PII) arrangements.

#### **Professional indemnity insurance arrangements**

The National Registration and Accreditation Scheme (the National Scheme) for health professionals in Australia commenced on 1 July 2010. Registered nurses and nurse practitioners are two groups

within the nursing profession regulated through the National Scheme under the authority of the National Board.

Registered nurses and nurse practitioners **must** have appropriate professional indemnity insurance (PII) arrangements for practice to meet the requirements of section 129 (1) of the National Law. This provision states:

A registered health practitioner must not practise the health profession in which the practitioner is registered unless appropriate professional indemnity insurance arrangements are in force in relation to the practitioner's practice of the profession.

Section 5 of the National Law defines appropriate professional indemnity insurance arrangements, in relation to a registered health practitioner as:

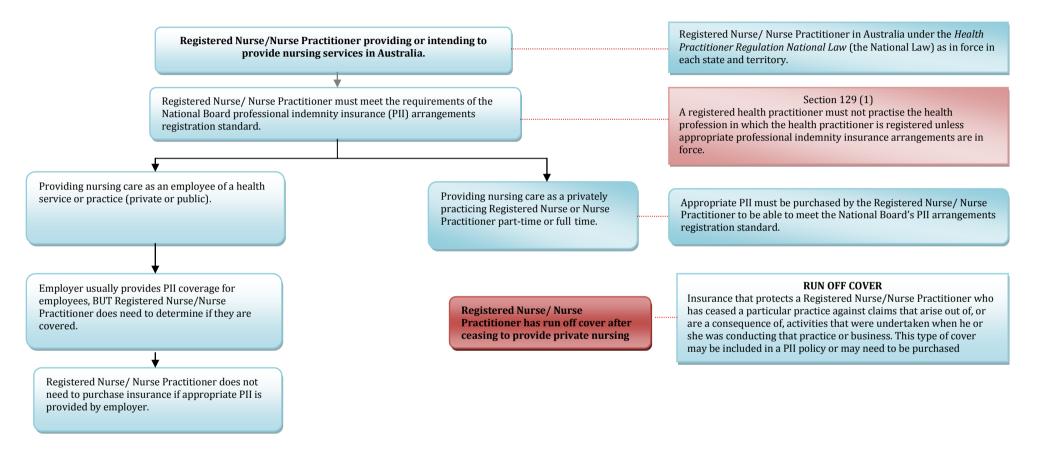
... professional indemnity insurance arrangements that comply with an approved registration standard for the health profession in which the practitioner is registered.

The National Board has developed a number of registration standards under section 38 of the National Law, including the 'Nursing and midwifery professional indemnity insurance arrangements registration standard' which details the requirements relating to PII arrangements.

This standard applies to all nurses and midwives registered by the National Board in Australia, and requires nurses and midwives to apply the relevant Board-approved guidelines for PII arrangements in conjunction with the registration standard. These guidelines outline the requirements in more detail.

Figure 1 overleaf summarises the requirements for registered nurses and nurse practitioners who provide nursing services in Australia. These requirements are discussed in detail in this document.

#### Figure 1: Requirements for registered nurses and nurse practitioners who provide nursing services in Australia



#### Professional indemnity insurance for registered nurses and nurse practitioners

Professional indemnity insurance provides registered nurses and nurse practitioners with insurance from civil liability<sup>1</sup>. This insurance generally includes cover for legal claims for compensation and associated expenses arising from the Registered Nurse's or Nurse Practitioner's practice.

The National Board notes that PII arrangements, particularly those provided by employers, may not provide cover for matters of a disciplinary character, which do not usually lead to awards of compensation to patients, clients or other persons who have suffered detriment as a result of a practitioner's action. However, these matters may involve costs for individual practitioners.

The National Board does not require practitioners to have insurance cover for matters which do not involve potential of compensation against a practitioner. Examples are unlawful or unauthorised, regulatory or disciplinary matters including breaches of professional codes or ethics. However, the National Board recommends that practitioners consider whether they have this cover as part of their PII arrangements – whether as an individual or provided by an employer – and, if not, whether they wish to obtain it.

Professional indemnity arrangements that registered nurses and nurse practitioners should consider include:

- civil liability cover
- unlimited retroactive cover, and
- run-off cover.

#### Scope of the insurance required

The National Board has described the PII arrangements required in the PII arrangements registration standard as:

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.

The National Board requires that registered nurses and nurse practitioners have PII arrangements to cover the full scope of their practice, whether they are employed in public or private health services; or in private medical practices; or self-employed and working in private practice.

The National Board also recognises that registered nurses and nurse practitioners in different types of practice will require different levels of PII cover, according to their individual scope of practice and the risks associated with that practice.

In order to understand what constitutes appropriate professional indemnity insurance arrangements for each Registered Nurse or Nurse Practitioner, the National Board provides the following information that registered nurses and nurse practitioners are required to consider:

- the practice setting and type of services and care delivered;
- the client group
- the volume of clients to whom treatment, advice, guidance or care is provided by the Registered Nurse or Nurse Practitioner;

<sup>&</sup>lt;sup>1</sup> Liability: A person's present or prospective legal responsibility, duty, or obligation – From: Peter Butt (General Editor) (2004) Butterworths Concise Australian Legal Dictionary, 3rd edition, LexisNexis Butterworths, Chatswood (NSW).

- the health status of the Registered Nurse or Nurse Practitioner's client group
- previous history of insurance claims and the type of claim made against the Registered Nurse or Nurse Practitioner in the past, if any
- the professional experience of the Registered Nurse or Nurse Practitioner
- advice from professional indemnity insurers, professional associations and industrial organisations, including advice regarding the history and volume of professional liability claims experience by other members of the profession, provided by a relevant professional association
- advice of an insurance broker
- the Registered Nurse or Nurse Practitioner's current employment status:
  - an employee working exclusively in public or private health services, or in private medical practices
  - working as a sole practitioner (either on a full-time or part-time basis) working in businesses owned solely by the Registered Nurse or Nurse Practitioner, or in a partnership or collective; or where a Registered Nurse or Nurse Practitioner is employed (full-time or part-time) by a company that is owned solely by the Registered Nurse or Nurse Practitioner, or that is owned solely by registered nurses or nurse practitioners where the only directors of that company are registered nurses or nurse practitioners
  - working for part of their time as an employee and for another part of their time as a Registered Nurse or Nurse Practitioner in private practice
  - providing nursing or nurse practitioner services in a voluntary, subsidised or otherwise unpaid capacity.

When applying for registration or renewal of registration, registered nurses and nurse practitioners are required to declare that appropriate PII arrangements are, or will be, in place while they practise.

#### Run-off cover

Registered nurses and nurse practitioners in private practice are also required to have run-off cover.

Run-off cover insures registered nurses and nurse practitioners for claims made in the future that relate to incidents occurring when they were practicing in the past. Registered nurses and nurse practitioners are required by the National Board to maintain run-off cover for the whole time after they have ceased to practise privately to be protected against claims that may arise in the future.

#### Run-off cover scheme

#### Employed registered nurses and nurse practitioners

The majority of registered nurses and nurse practitioners in Australia work as employees. In most cases, this is in public or private health services, or in private medical practices. Most registered nurses and nurse practitioners who are employees are covered by their employers' insurance. Employed registered nurses and nurse practitioners are advised to check their PII arrangements with their employing organisation.

There are situations where a civil claim may be made against a Registered Nurse or Nurse Practitioner as an individual. This includes situations where employer-based liability cover may not apply. For example, the Registered Nurse or Nurse Practitioner may have acted in a way that a court would find was not within the 'course and scope of their employment'. One example would be a Registered Nurse or Nurse Practitioner performing an unlawful or unauthorised act, such as in the course of their employment prescribing medicines for a client that is outside the Registered Nurse or Nurse Practitioner's scope of practice. In such a case, the employer's insurance may not accept liability for the Registered Nurse's or Nurse Practitioner's act, should any formal investigation or legal action ensue.

#### Employed registered nurses and nurse practitioners also working in private practice

Some registered nurses and nurse practitioners may provide services to clients while employed in public or private health services, or in private medical practices; and may also conduct part of their practice in private practice where their employer's indemnity insurance would cover their practice.

This may arise in a formal business arrangement where a Registered Nurse or Nurse Practitioner (generally with the knowledge and agreement of their employers) has established a private practice, but also works as an employee in public or private health services, or in private medical practices. Registered nurses and nurse practitioners working in private practice and working as employees must have their own PII arrangements in place to cover the services they provide for their private clients.

Situations also arise where registered nurses and nurse practitioners, as well as being employed in public or private health services, or in private medical practices, also provide volunteer nursing services or subsidised services for charitable, aid or welfare organisations in Australia In each of these situations registered nurses and nurse practitioners will be working in a professional capacity using their skills, knowledge, judgment and experience as a Registered Nurse or Nurse Practitioner and will require PII.

In some cases, the charitable or welfare organisations may have purchased PII for professionals working with them but this is not always the case, and registered nurses or nurse practitioners may have to purchase their own insurance. Whatever the situation, the responsibility is on the nurse or nurse practitioner to make the necessary enquiries and ensure the appropriate professional indemnity arrangements are in force.

#### Registered nurses and nurse practitioners in private practice

Private nursing or nurse practitioner practice is where a Registered Nurse or Nurse Practitioner is working as a sole practitioner (either on a full-time or part-time basis) in a business owned solely by the Registered Nurse or Nurse Practitioner, or in a partnership or collective; or where a Registered Nurse or Nurse practitioner is employed (full-time or part-time) by a company that is owned solely by the Registered Nurse or Nurse Practitioner, or that is owned solely by practicing registered nurses or nurse practitioners, where the only directors of that company are practicing registered nurses or nurse practitioners.

Registered nurses and nurse practitioners may also be deemed to be working in a private capacity when they provide nursing services in a voluntary capacity as an individual or as part of a program run by a welfare, aid or charitable organisation, where the organisation is not formally an employer and does not have PII for persons working with them as volunteers.

In all the above situations, registered nurses and nurse practitioners are responsible for purchasing the appropriate PII to cover the scope of their nursing practice.

The PII arrangements registration standard requires registered nurses and nurse practitioners who hold insurance cover in their own name to retain documentary evidence of their insurance and to provide it to the National Board on request.

As noted previously, registered nurses and nurse practitioners working in private practice are also required to have run-off cover. This applies to registered nurses and nurse practitioners who work exclusively in private practice and those who may work in private practice for part of their working time and in an employed capacity at other times.

#### Definitions

**Civil liability** - a potential responsibility for the payment of damages for loss or injury, for example arising out of a breach of a duty of care.

**Professional indemnity insurance arrangements** means arrangements that secure for the practitioner professional practice insurance from 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 costs 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** - PII arrangements which cover the insured against claims arising out of, or in consequence of, activities that were undertaken in the course of the practitioner's professional practice, prior to the date of the commencement of the insurance.

**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 undertaken when he or she was conducting that practice or business. This type of cover may be included in a PII policy or may need to be purchased separately.

The National Board means the Nursing and Midwifery Board of Australia.

#### Your feedback

The National Board is seeking general comments on the guidelines for professional indemnity insurance arrangements for nurses and nurse practitioners.

## Please provide feedback by email to: <a href="mailto:mmbafeedback@ahpra.gov.au">mmbafeedback@ahpra.gov.au</a> by close of business on 10 January 2013.

The National Board generally publishes submissions received on the website to encourage discussion and inform the community and stakeholders. Please let us know if you prefer not to have your submission published, or would like the National Board to treat part of your submission as confidential.

We will not place on the National Board website, or make available to the public, submissions that contain offensive or defamatory comments or anything outside the scope of reference. Before publication, we may remove personally-identifying information from submissions, including contact details.

The views expressed in submissions are those of the individuals or organisations who submit them and their publication does not imply any acceptance of, or agreement with, these views by the National Board.

The National Board also accepts submissions made in confidence. These submissions will not be published on the website or elsewhere. Submissions may be confidential because they include personal experiences or other sensitive information. Any request for access to a confidential submission will be determined in accordance with the *Freedom of Information Act 1982* (Cth) which has provisions designed to protect personal information and information given in confidence.