

Property, Stock and Business Agents Amendment (Professional Indemnity Insurance)  
Regulation Review  
Fair Trading Policy  
PO Box 972  
PARRAMATTA NSW 2124

email: [policy@services.nsw.gov.au](mailto:policy@services.nsw.gov.au)

5 October 2012

Dear Sir/Madam

**PROPERTY, STOCK AND BUSINESS AGENTS AMENDMENT (PROFESSIONAL  
INDEMNITY INSURANCE) REGULATION 2012**

The Insurance Council of Australia<sup>1</sup> (Insurance Council) appreciates the opportunity to comment on the Property, Stock and Business Agents Amendment (Professional Indemnity Insurance) Regulation 2012.

The Insurance Council supports the proposed reforms and considers that the requirements appear broadly appropriate. We understand from our members that in NSW, property, stock and business agents generally already purchase professional indemnity (PI) insurance and it would be unusual for any of these practitioners not to purchase it. Often having current PI insurance is a requirement of their professional associations.

We would like to raise the following points for clarification:

**Civil Liability**

The proposed Clause 13B(2) states:

***13B Professional indemnity insurance***

*(2) The policy must provide cover for civil liability (including liability for personal injury) arising from any of the following:*

- (a) negligence,*
- (b) misleading or deceptive conduct,*
- (c) fraud or dishonesty,*
- (d) breach of contract,*

---

<sup>1</sup> 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 2012 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$37.5 billion per annum and has total assets of \$118.2 billion. The industry employs approx 60,000 people and on average pays out about \$115 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).

- (e) *defamation,*
- (f) *interference with intellectual property rights,*
- (g) *vicarious liability for the acts or omissions of others.*

We suggest the Regulation should stipulate that the PI policy only relates to liability in respect of the insured's conduct of the respective licensed property occupation. This is consistent with what most PI policies cover, that is, PI policies cover professional/occupational liability and not general or purely commercial liabilities. Clause 13B(2) could be amended as follows:

*“The policy must provide cover for civil liability (including liability for personal injury) arising **out of the conduct of the respective licensed property occupation** from any of the following: ...”*

Furthermore, some PI policies currently in place for these occupations cover legal liability for breach of professional duty rather than 'civil liability' but would still respond in relation to the specific areas highlighted by the proposed 13B regulation. PI insurers would appreciate clarification that the words 'civil liability' are not required to be contained in the policy.

#### **Breach of Contract**

The draft Regulation does not provide any guidance on the extent of cover required for breach of contract. While most policies in the market respond to breach of contract where a liability would have arisen in the absence of the contract, they do not respond to pure contractual breach e.g. a breach of a guarantee or warranty.

#### **Fraud, Dishonesty and Fidelity Cover**

We wish to draw attention to the fact that cover for fraud and dishonesty under a PI policy will not cover the party actually committing the fraudulent/dishonest act, meaning there is unlikely to be any cover where the insured is a sole trader or single principal firm. The Insurance Council also seeks clarification whether the policy is expected to provide fidelity cover. This is a separate issue to fraud and dishonesty. Most insurers are unlikely to offer the proposed limits for fidelity cover on smaller firms or firms with unacceptable risk management in respect of fraud.

#### **Reinstatement**

The proposed Clause 13B(3) states:

##### **13B Professional indemnity insurance**

- (3) *The policy must provide cover of not less than \$1 million for any one claim and not less than \$3 million in the aggregate for all claims made during the period of insurance.*

The Insurance Council does not support the need for two reinstatements of the limit of indemnity. We believe that practitioners' businesses would be better protected with a higher per claim limit but with an aggregate of twice the per claim limit. It also reflects how most PI policies are currently written.

**General comment**

Given that all PI policies contain a range of exclusions, it would avoid confusion if the Regulation clearly stated that the application of an insurer's usual exclusions and limitations would not affect the acceptability of a policy.

If you require further information, please contact Mr John Anning, Insurance Council's General Manager Policy- Regulation Directorate at [janning@insurancecouncil.com.au](mailto:janning@insurancecouncil.com.au).

Yours sincerely



Robert Whelan  
Executive Director & CEO