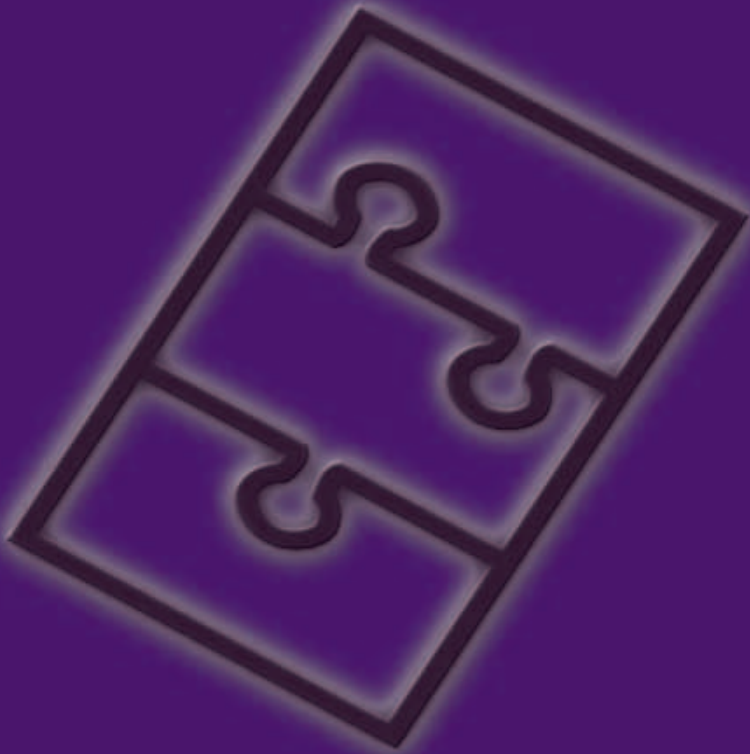


PROTECTING CONSUMERS OF PROFESSIONAL SERVICES

Urgent reform for professions and trades



Blueprint for a nationally consistent approach by the States and Territories to address the market failure in professional indemnity insurance.

KEY SERVICES AT RISK

Listed below are key services vital to the economy and the community. These services are now threatened by market failure in professional indemnity insurance. Market failure is the inability of professionals to access affordable levels of insurance to meet the scale of risk they face in providing the full range of professional services and the inability of consumers to obtain appropriately insured services.

- ▶ Engineers
- ▶ Cooling tower safety
- ▶ Accountants
- ▶ Plumbers
- ▶ Architects
- ▶ Major construction
- ▶ Pre-purchase home inspections
- ▶ Lawyers
- ▶ Electricians
- ▶ Pollution control
- ▶ Super fund audits
- ▶ Surveyors
- ▶ Water quality
- ▶ Actuaries
- ▶ Asbestos removal
- ▶ Company audits
- ▶ Financial planners
- ▶ Environmental cleanup
- ▶ Fairground safety
- ▶ High-tech startups
- ▶ Small business valuations
- ▶ Foundation/slab construction
- ▶ Investment and tax advice

This booklet explains how a nationwide consumer protection package of agreed reforms of professional indemnity insurance will work and it addresses commonly asked questions.

REFORM IS AGREED ... BUT MUST BE PUT IN PLACE URGENTLY

There is serious and accelerating market failure in Australia's insurance market for professionals and tradespeople, similar to the recent turmoil in public liability and medical indemnity insurance.

All consumers of professional and trade services in Australia now face the real risk that services will be carried out by uninsured persons. In the event of a negligence claim for economic loss, there will be no one to sue for damages. Consumer protection will no longer be guaranteed.

Over the last two years the number of insurers offering professional indemnity (PI) insurance has collapsed. Premium increases of 1000% and more are common. But more importantly, availability of insurance has shrunk – policy exclusions have widened, refusals to cover specific categories are increasing, and there have been huge increases in excess amounts and conditions.

As more small business and community health and safety services become uninsurable, consumers throughout Australia risk:

- ▶ Being denied access to professional services to which they should be entitled in a modern, competitive society.
- ▶ Obtaining no compensation for valid claims as service providers go uninsured.
- ▶ Being unaware that service provision may be by unaccredited, uninsured providers and not subject to professional standards.

At the recent joint Ministerial meeting on insurance issues, Commonwealth, State and Territory Ministers agreed that a “package” of reforms – together – will dramatically improve the availability and affordability of PI insurance in Australia.

Having agreed to progress this major reform package, Insurance Ministers are now working without delay towards endorsing a nationally consistent approach to implementation of this much-needed protection for both consumers and service providers. Endorsement by all governments following the next Insurance Ministers meeting in August will make it possible for each Australian Parliament to urgently legislate the nationwide reform package, with commencement from 1 January 2004.

The urgent need for reform is recognised by: all levels of government, all the professions; the union movement; small and medium business and the media. The reform package consists of three inter-related actions – distinct, but all essential:

- ▶ **Professional Standards Legislation (PSL)** protects consumers by mandating insurance and risk management schemes for professionals, backed by the transparency and accountability of legislative oversight and reporting. At the same time, PSL provides the strong incentive for professionals to comply by permitting safety ceilings (caps) on claims. Caps are set high enough to cover all consumer claims and most corporate claims for economic loss. But by eliminating the risk of catastrophic claims, PSL will quickly restore affordability and availability of professional indemnity insurance, once nationally consistent legislation is in place. To be fully effective, PSL needs to be enacted in each State and Territory (as it is already in NSW and WA) and Federal legislation needs to be amended.

- ▶ **Proportionate Liability (PL)** law reform will encourage insurers back into PI insurance as professionals will no longer carry liability rightfully resting with others who have caused economic loss. But factors like delayed claims mean the full benefits could take over 5 years. PL law reform alone assists, but does not resolve, the PI insurance crisis.

- ▶ **Trade Practices Act** The Federal Government has confirmed it will amend the Trade Practices Act (TPA) to give effect to both Proportionate Liability law reform, and to underpin nationally consistent Professional Standards Legislation in each State and Territory. This is essential to prevent 'forum-shopping' by using TPA claims to circumvent State laws.

HOW DOES IT RELATE TO YOUR CONSTITUENCY?

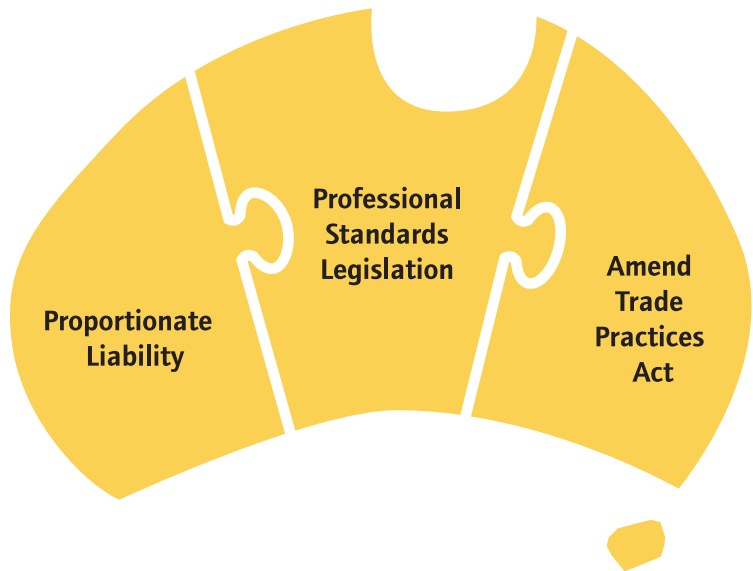
All three parts of the reform package are needed to give consumers of professional services across Australia the certainty that the professionals and tradespeople providing them have adequate insurance cover to meet successful claims for economic loss in the event of negligence.

As an elected representative, your support for these urgent reforms is encouraged in the interests of the general community as these reforms progress through Australia's State, Territory and Federal Parliaments.

It is also important to remember that these reforms relate only to liability claims arising from economic or financial loss. Government has addressed liability issues relating to personal injury claims through other measures.

A NATIONWIDE CONSUMER PROTECTION PACKAGE OF REFORMS

Insurance Ministers are working on a nationally consistent reform package to protect consumers and service providers, consisting of three essential, inter-related measures: PSL, PL and TPA amendments.



HOW WILL PEOPLE SUFFER IF REFORM IS DELAYED OR NOT INTRODUCED?

Without PSL, market failure in professional indemnity insurance will not be corrected. The current problems in the market are structural. They will not correct themselves over time.

The consumer consequences of delaying or not proceeding with PSL are:

- ▶ Consumers will be at greater risk as many service providers may be unaccredited, uninsured and without assets.
- ▶ Pressure will increase on professional associations to abandon compulsory PI insurance regulations or professionals will resign and practise without insurance and self-regulatory rules.
- ▶ More professionals will not practise because the risk will be too high, reducing the pool of service providers and the range of services, reducing competition to the detriment of consumers.

A consumer's prospects of being paid compensation for a negligence claim are illusory when market failure means insurance is unobtainable and unaffordable. In fact, because PSL mandates insurance, the protection for consumers is increased under PSL.

If the agreed reform package is not implemented in total, PI insurance is likely to further decrease in availability and increase in cost to the detriment of consumers.

One in, all in -

The importance of all States and Territories adopting PSL:

If PSL is not nationally consistent, consumers in States without PSL will be disadvantaged through reduced choice of services and service providers and far lower insurance protection.

HOW DOES PSL WORK?

State legislation outlines the structure for PSL. Overall, the structure for PSL is that the representative association of an occupational or professional group may prepare and submit a “scheme” for the scrutiny and approval of the Professional Standards Council (PSC), which is established by the relevant Minister under the legislation. Each scheme must include a range of risk management and other obligations on the members of the occupational group or profession, in exchange for a “safety ceiling”, or cap, on the civil liability of those members, which is set out in the scheme. Once the scheme is approved by the PSC, the scheme is submitted to the Minister for final approval. Once approved, it applies to all members of the occupational group or profession that the association represents, with only limited exceptions.

WHAT ARE THE BENEFITS OF THE PSL SAFETY CEILING?

There are clear links between capped liability and lower insurance premiums. Australia has an extensive range of existing caps including compulsory third party car insurance, workers' compensation, public liability and medical malpractice.

Professional Standards Legislation:

- ▶ Will give consumers certainty that insurance is in place to meet successful claims.
- ▶ Will lower the risk of consumers encountering unaccredited, uninsured service providers without assets.
- ▶ Will provide a major incentive for improved risk management by individual professionals and small partnerships.
- ▶ Will decrease the pressure on professional associations to abandon compulsory PI insurance regulations.
- ▶ Will stem the decline in professionals not willing to practise because the risk is too high, stabilising the pool of service providers and the range of services, thereby maintaining competition, to the benefit of consumers.

Facts about Caps

Under PSL, safety ceilings (caps on liability payouts) are fixed by government at a level to meet all consumer claims and the vast majority (more than 95%) of commercial claims. Actual recovery by plaintiffs is likely to be higher under PSL because there will be adequate insurance to meet valid claims.

RAISING THE BAR ON PROFESSIONAL STANDARDS

The implementation of risk management procedures is linked to PSL safety ceilings (caps) to provide a crucial incentive to members of professions and trade groups to improve and adhere to high standards. This is of great benefit to consumers who will be guaranteed diligent implementation and proper risk management by service providers, with legislative oversight.

Better risk management under PSL will lower premiums by reducing the incidence of liability claims.

The advantages of co-regulatory risk management systems under PSL, versus self-regulation done without PSL, are:

- ▶ Parliament and government oversight
- ▶ Capacity for enforcement and discipline
- ▶ Public reporting of risk management processes
- ▶ Greater accountability
- ▶ Improved transparency
- ▶ Independently evaluated
- ▶ Consistency and simplicity of regulation.



**Proportionate
Liability**

**Professional
Standards
Legislation**

**Amend
Trade
Practices
Act**

Without Professional Standards Legislation (PSL), there is a real risk that more professionals will resign membership of professional bodies and practise uninsured as they cannot comply with mandatory Professional Indemnity requirements. Without PSL, associations will be forced to abandon Professional Indemnity insurance rules to the disadvantage of consumers and the public interest.

Respected actuaries Trowbridge Deloitte have reported that the PSL safety ceiling establishes a high degree of certainty about the potential size of claims and removes the need for high level catastrophe excess cover. This will produce "significant premium savings" – possibly in the order of 30-40%.

Professions Australia looks forward to working with State and Federal parliamentarians to implement this urgently needed reform package.

Professions Australia (www.professions.com.au) is a national organisation of professional associations. It represents a coalition of professions supporting indemnity insurance reform and professional standards legislation.

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