

# How much Professional Indemnity insurance is enough?

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The compulsory limit of liability for Professional Indemnity Insurance (PII) of non-exempt lawyers in the Northern Territory is \$2 million. This is the limit of liability that is provided under the compulsory policy.

The minimum limit requirements have increased over the last several years from \$500,000 back in 2000 up to the current \$2 million limit introduced in 2008. The limit is determined by the Law Society after consideration of various factors, including historical claims history of the scheme and interstate limit trends, and in this context the \$2 million is considered to be an adequate limit for many firms. But it is important to remember that this is a minimum requirement only, and does not translate to a limitation of your liability, so we recommend that you periodically review your risk exposure to determine whether your practice may require the additional protection of top-up insurance to increase your overall limit.

There are couple of things to note about the application of the primary \$2 million limit.

- The limit operates on a *costs inclusive* basis. This means that it is the total limit available including all defence costs incurred and any damages or

settlement amounts including other party costs.

- The limit under the primary policy applies in most cases to *each and every claim*. This means that you will have \$2 million available for each and every claim irrespective of how many claims you may have made against you. There is however, an aggregation of the limit that applies for certain types of claims where they have arisen out of the same or related acts or omissions, and in these circumstances the limit becomes the total limit available for all such claims. An example is if the act that has resulted in a claim was repeated for multiple parties and they all end up claiming against you, or if a single client has relied on the same incorrect advice for multiple transactions, then the insurer may treat these matters as a single claim and apply a single \$2 million limit in total for all of these claims. The full extent of this aggregation clause is detailed within section 6 of your Certificate of Insurance.

In considering the adequacy of the limit for your practice there are several other factors we recommend you consider.

## Area of Practice

Some practice specialties by their nature will govern the adequacy of the \$2 million limit.

Criminal and family law may be viewed as lower risk from a financial perspective, but you do need to watch out for that client outside of the normal profile that may increase this risk. A family law or estate matter involving high net worth assets may end up being quite an expensive exercise for you should things go wrong.

Several of the larger claims against the scheme have arisen out of services in the property sector through conveyances, property and business transfers, leasing and construction transactions. If you are involved in these types of matters you should carefully assess your risks to determine whether the \$2 million limit is adequate.

If you are involved in any complex or lengthy briefs, or those that require involvement of other experts, these should also be red flags to an increased risk and the possible need for a higher limit.

We recommend you consider the specific areas of work you are involved in within your practice to assist in determining the level of

risk in your firm.

## Client Profile and Value of Transactions

Think of the worst case scenario. Your largest client with a high dollar value transaction and it goes completely wrong. Even for a claim well under \$2 million, it is very easy for investigation and defence costs to escalate, and it is not unusual in complex claims for the all up defence costs of both parties to exceed the value of the claim being made.

If you are even occasionally involved in providing advice or services on high value transactions for your clients, you need to carefully consider the level of cover you require.

You may wish to ask yourself these questions.

- What is the value of the transactions you are advising on?
- Do you have one client that meets this risk profile or many?
- How complex is the advice provided?
- Do you have an ongoing retainer with a client or group of clients?

- How long will the brief continue for?

Simply put, if you are regularly dealing in multi-million dollar transactions, you most definitely should increase your limit of your PII. If you are advising on these types of transaction irregularly, you should still consider an increase to your limit, and not just for the period of the retainer. Remember PII operates as a claims made contract so you must have that top-up policy in place at the time the claim is made against you as it is often years after the initial advice was provided before an actual claim manifests.

## Competitive Advantage

There are many clients, including financiers, insurers and Government, that may require you to confirm a higher limit of indemnity for PII in order to do business with them, so increasing your limit of indemnity may provide you with greater business opportunities.

## Cost of Top-up Insurance

The cost of your top-up insurance will depend upon various risk factors individually assessed by the insurer, including the level of your annual fees, number of

practitioners and area of practice. You should always include top-up cover across the entire practice and not limit it to a specific contract, but if you are only working on one high risk / value account, it is worth disclosing this to assist us to negotiate a more competitive premium.

Generally the cost of top-up will be a fraction of the cost of your primary policy and many firms are often surprised at how inexpensive it is compared to the primary layer.

Whilst most matters in the Northern Territory have been settled within the policy limits of the primary policy over the past 10 years or so, there have been several that have exceeded this limit. Fortunately for the firms involved they have had top-up insurance in place so were fully indemnified for their loss.

Should you require a quotation for top-up insurance or would like to discuss the risk factors in your practice please contact Cheryl Richardson at Marsh Pty Ltd on 8943 4417 or by email [cheryl.richardson@marsh.com](mailto:cheryl.richardson@marsh.com). You can also access the top-up declaration form required to obtain a quote directly from the Law Society website. ●



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