Do you need Top-up Insurance?

by Gianna Di Stefano, PII Risk Manager

The Legal Practitioners’ Professional Indemnity Insurance Scheme, established pursuant to Section 52 of the Legal Practitioners’ Act, is the sole provider of the compulsory level of professional indemnity insurance for legal practitioners in South Australia (“the Scheme”).

It is compulsory for all practitioners (except those of a class excluded by regulation) to be insured by the Scheme against liabilities that may arise with respect to their legal practices.

At present the compulsory level of cover is $2 million for each and every claim inclusive of defence costs. There is no limit on the number of claims against an individual in each year to which the Scheme will respond. However, the amount of cover available for an actual claims payment will depend on the amount of defence costs incurred in dealing with that claim.

Many practitioners also decide to take separate “top-up” insurance in order to be insured above the limit of indemnity provided by the Scheme ($2 million).

It is often difficult to know in advance what exposures your practice may face.

Consideration of whether or not to obtain additional professional indemnity insurance cover over and above the compulsory level will depend on a number of factors including, but not limited to, the following:-

- areas of law in which you practice;
- the type and size of your client;
- the fee income of the firm;
- undertaking work for international clients;
- working in high risk areas;
- where the financial value of the transaction or claim being managed is substantial; and/or
- any contractual requirements of the client.

Having regard to some of the above considerations there are many practitioners and firms that will take the view that the compulsory level of cover is inadequate for their requirements and top-up insurance is in fact required.
Both the Scheme and top-up professional indemnity insurance operates on a “claims made” basis.

This means that it is the cover in force at the time when a claim arises which responds to the claim, not the cover that was in place when the alleged error or omission giving rise to the claim occurred. Accordingly, a policy in force today may be required to respond to a claim arising out of a mistake made several months or even several years before the policy commenced.

The Scheme also provides “run off” cover for former practitioners. However, they may also consider it prudent to maintain ongoing top-up cover for some years given the “claims made” nature of these policies.

In order for your policy to respond you must notify your insurer of any claim or circumstances that may give rise to a claim during the current policy period. If you are faced with a claim that is above the limit of compulsory indemnity you must not only notify Law Claims but also your top-up insurer, assuming you have one.

The decision to take top-up insurance is a commercial one for individual law practices. Make your own judgment about the level of insurance protection cover and whether you are comfortable with the compulsory limit of indemnity ($2 million) or whether you would benefit from some “top-up”.

For any queries about this or other Risk Management Services offered by Law Claims, please contact the PII Risk Manager, Gianna Di Stefano on 8410 7677.