

Guideline

August 2013

Professional indemnity insurance arrangements for enrolled nurses, registered nurses and nurse practitioners

Introduction

This guideline has been developed by the Nursing and Midwifery Board of Australia (National Board) under section 39 of the Health Practitioner Regulation National Law, as in force in each state and territory ([the National Law](#)).

The guideline provides direction to enrolled nurses, 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 this guideline?

This guideline is relevant to:

- enrolled nurses
- registered nurses
- nurse practitioners
- employers of registered nurses and nurse practitioners, and
- education providers.

Summary of the guideline

Under section 129 of the National Law, enrolled nurses, registered nurses and nurse practitioners (endorsed under section 94 of the National Law) must not practice their profession unless they are covered in the conduct of their practice by appropriate professional indemnity insurance (PII) arrangements.

Professional indemnity insurance

The National Registration and Accreditation Scheme (the [National Scheme](#)) for health professionals in Australia commenced on 1 July 2010. Enrolled nurses, registered nurses and nurse practitioners are three of the professional groups regulated through the National Scheme under the authority of the National Board.

Enrolled nurses, registered nurses and nurse practitioners **must** have appropriate professional indemnity insurance (PII) 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.

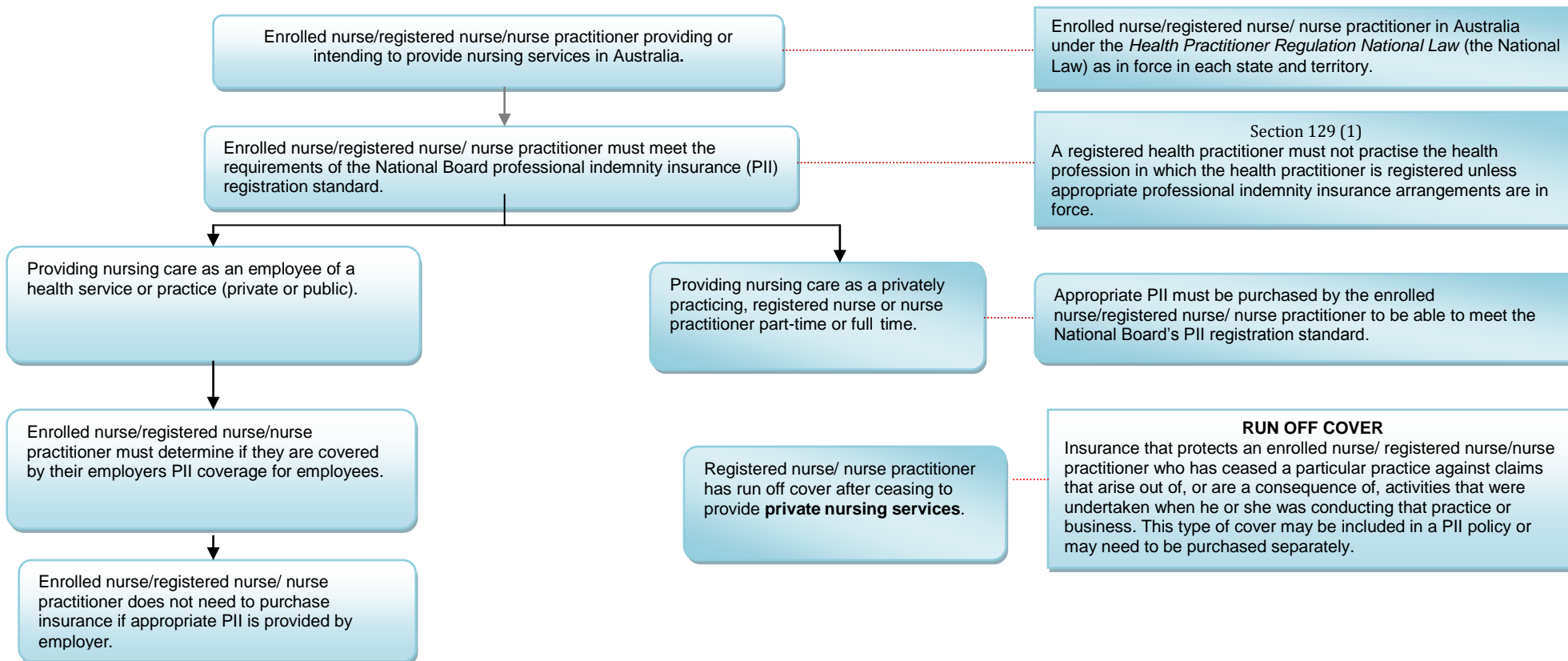
Section 5 of the National Law defines appropriate professional indemnity insurance arrangements, in relation to a registered health practitioner, as:

... 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 *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. This guideline outlines the requirements in more detail.

[Figure 1](#) overleaf summarises the requirements for enrolled nurses, registered nurses and nurse practitioners who provide nursing services in Australia. These requirements are discussed in detail in this document.

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



PII for enrolled nurses, registered nurses and nurse practitioners

Professional indemnity insurance provides enrolled nurses, registered nurses and nurse practitioners with insurance from civil liability¹. This insurance generally includes cover for legal claims for compensation and associated expenses arising from the enrolled nurse, registered nurse 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 health practitioner's action. However, the matters may involve costs for the individual health practitioner.

The National Board does not require health practitioners to have insurance cover for matters that do not involve potential of compensation against a health practitioner. Examples are unlawful or unauthorised, regulatory or disciplinary matters including breaches of professional codes or ethics. However, the National Board recommends that health 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.

Each enrolled nurse, registered nurse and nurse practitioner should make an assessment to determine what PII they require. Professional indemnity arrangements that enrolled nurses, 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 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 enrolled nurses, registered nurses and nurse practitioners have PII to cover the full scope of their practice, whether they are employed in:

- public or private health services
- private medical practices, or
- self-employed and working in private practice.

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

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

- the practice setting and type of services and care delivered

¹ 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 client group
- the volume of clients to whom treatment, advice, guidance or care is provided by the enrolled nurse, registered nurse and nurse practitioner
- the health status of the enrolled nurse's, registered nurse's or nurse practitioner's client group
- previous history of insurance claims and the type of claim made against the enrolled nurse, registered nurse or nurse practitioner in the past, if any
- the professional experience of the enrolled nurse, 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 enrolled nurse, registered nurse or nurse practitioner current employment status:
 - working exclusively as an employee in public or private health services, or in private medical practices
 - working as a sole health practitioner (either on a full-time or part-time basis) in businesses owned solely by the enrolled nurse, registered nurse or nurse practitioner, or in a partnership or collective
 - employed (full-time or part-time) by a company that is owned solely by the enrolled nurse, registered nurse or nurse practitioner, or that is owned solely by enrolled nurses, registered nurses or nurse practitioners where the only directors of that company are enrolled nurses, registered nurses or nurse practitioners
 - working as an employee for part of their time and in private practice for another part of their time
 - providing nursing or nurse practitioner services in a voluntary, subsidised or otherwise unpaid capacity.

When applying for registration or renewal of registration, enrolled nurses, 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

Enrolled nurses registered nurses and nurse practitioners in private practice who have ceased their practice are also required to have run-off cover.

Run-off cover insures enrolled nurses, registered nurses and nurse practitioners for claims made in the future that relate to incidents occurring when they were practicing in the past. Enrolled nurses 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. There is no definitive recommended time period for run-off cover and each enrolled nurse, registered nurse and nurse practitioner should discuss this with their insurer.

Employed enrolled nurses, registered nurses and nurse practitioners

The majority of enrolled nurses, 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. Enrolled nurses, registered nurses and nurse practitioners who are employees may be covered by their employer's insurance. However, as there is no obligation for employers to provide PII for their

employees, enrolled nurses, registered nurses and nurse practitioners should carefully check their PII arrangements with their employing organisation.

There are situations where a civil claim may be made against an enrolled nurse, registered nurse or nurse practitioner as an individual. This includes situations where employer-based liability cover may not apply. For example, the enrolled nurse, 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 an enrolled nurse, registered nurse or nurse practitioner performing an unlawful or unauthorised act, such as in the course of their employment supplying medicines for a client that is outside the enrolled nurse's, registered nurse's or nurse practitioner's scope of practice. In such a case, the employer's insurance may not accept liability for the enrolled nurse, registered nurse or nurse practitioner act, should any formal investigation or legal action ensue.

Employed enrolled nurses, registered nurses nurse practitioners and also working in private practice

Some enrolled nurses, 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 an enrolled nurse, 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. Enrolled nurses, registered nurses and nurse practitioners working in private practice and working as employees must have their own PII in place to cover the services they provide for their private clients.

Situations also arise where enrolled nurses, 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 enrolled nurses, registered nurses and nurse practitioners will be working in a professional capacity using their skills, knowledge, judgment and experience as an enrolled nurse, a registered nurse or a 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; enrolled nurses, registered nurses or nurse practitioners may have to purchase their own insurance. Whatever the situation, the responsibility is on the enrolled nurse, registered or nurse practitioner to make the necessary enquiries and ensure the appropriate professional indemnity arrangements are in force.

Enrolled nurses, registered nurses and nurse practitioners working in private practice

Private nursing or nurse practitioner practice is where a registered nurse or nurse practitioner is working as a sole health practitioner (either on a full-time or part-time basis) in a business or in a partnership or collective. The NMBA *National competency standards for the enrolled nurse* require the enrolled nurse to work under the direction and supervision of the registered nurse and therefore the enrolled nurse is unable to work as a sole health practitioner.

Enrolled nurses, 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, enrolled nurses, registered nurses and nurse practitioners are responsible for purchasing the appropriate PII to cover the scope of their nursing practice.

The PII registration standard requires enrolled nurses, 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, enrolled nurses, registered nurses and nurse practitioners working in private practice are also required to have run-off cover. This applies to enrolled nurses, 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 health practitioner's 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 health practitioner. This type of insurance is available to health 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 health practitioner's professional practice, prior to the date of the commencement of the insurance.

Run-off cover means insurance that protects a health 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.