

**BARRISTERS' PI INSURANCE: RULE 79 REQUIREMENTS & DISCIPLINARY PROCEEDINGS**

<b>CGU (Aon)</b>	<b>Arch Underwriting on behalf of certain Lloyd's underwriters (Marsh)</b>	<b>Suncorp</b>	<b>Pacific Indemnity (Austbrokers)</b>
<b>79(2): Professional indemnity insurance must indemnify the barrister against civil liability incurred while engaging in legal practice as a barrister within Australia</b>			
Clause 3.1: the policy covers the insured for civil liability incurred in the conduct of the 'Professional Services', which is defined in clause 8.17 to mean the provision of professional services as a barrister. Cover extends throughout Australia (cl 7.18).	Clause 1.3: the policy covers the insured for civil liability incurred in connection with the 'Practice', which is defined in clause 3.1(n) to mean the business of practising as a barrister in Australia.	Clause 1: the policy covers the insured for civil liability incurred in the conduct of the 'Business', which is defined in clause 8.3 to mean the provision of professional services of a barrister. Cover extends throughout Australia (cl 6.8).	Insuring Clauses (p2): the policy covers the insured for civil liability incurred while engaging in legal practice as a barrister within Australia.
<b>79(3): Professional indemnity insurance must provide indemnity for claims actually made and notified during the period of insurance</b>			
Clause 3.1: the cover applies in relation to claims made against the insured while the policy is in force and notified to the insurer as soon as reasonably possible while the policy is in force (see also: cl 2.3).	Clause 1.3.1: the cover applies in relation to claims first made against the insured and reported to the insurer during the period of insurance.	Clause 1: the cover applies in relation to claims first made against the insured and reported to the insurer during the period of insurance.	Insuring Clauses (p2): the cover applies in relation to claims made against the insured during the period of insurance and reported to the insurer as soon as reasonably possible during the period of insurance.

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<b>79(4): Professional indemnity insurance must provide minimum coverage of \$1.5 million for each and every claim, or each and every loss, inclusive of the claimant's costs and defence costs, up to a minimum aggregate limit of \$4.5 million</b>			
<p>Clause 3.1 says the insured is covered up to the Policy Limit (see also: cl 5). The Policy Limit is as specified in the schedule. The Policy Limit would need to be at least \$1.5 million in order to comply with rule 79(4).</p> <p>There is no aggregate limit.</p>	<p>Clause 1.3 says the insured is indemnified against each Loss up to the Sum Insured. The Sum Insured is as specified in the schedule: cl 3.1(p). The Sum Insured would need to be at least \$1.5 million in order to comply with rule 79(4).</p> <p>There is no aggregate limit.</p>	<p>Clause 1 says the Insured is indemnified up to the Limit of Indemnity (see also: cl 6.1). The limit of indemnity for each claim is as specified in the certificate of insurance. The limit of indemnity would need to be at least \$1.5 million in order to comply with rule 79(4).</p> <p>Clause 4.2: there are unlimited reinstatements of the limit of indemnity (ie, there is no aggregate limit).</p>	<p>The Limits &amp; GST clause (p5) says the insured is covered up to the Policy Limit. The Policy Limit is as specified in the schedule. The Policy Limit would need to be at least \$1.5 million in order to comply with rule 79(4).</p> <p>There is no aggregate limit.</p>

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<p><b>79(5): Professional indemnity insurance must provide indemnity for a minimum of 7 years for run-off liabilities in the event that the insured dies or ceases to engage in legal practice as a barrister for any reason, other than having the insured's Australian practising certificate cancelled as a result of disciplinary action.</b></p>			
<p>Clause 4.6: there is 7 years' run-off cover if, during the period of insurance, the insured ceases to practice as a barrister and ceases to hold a practising certificate.</p> <p>The run-off cover is subject to a limit of \$1.5 million per claim and an aggregate limit of \$4.5 million.</p>	<p>Clause 7: there is 7 years' run-off cover if, during the period of insurance, the insured ceases to practice as a barrister and ceases to hold a practising certificate.</p> <p>The run-off cover is subject to a limit of \$1.5 million per claim and an aggregate limit of \$4.5 million.</p>	<p>Clause 4.7: there is 7 years' run-off cover if, during the period of insurance, the insured ceases to practice as a barrister and ceases to hold a practising certificate.</p> <p>The run-off cover is not subject to an aggregate limit.</p>	<p>Run Off Cover clause (p3): there is 7 years' run-off cover if, during the period of insurance, the insured ceases to practice as a barrister and ceases to hold a practising certificate.</p> <p>The run-off cover is not subject to an aggregate limit.</p>

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<p><b>79(6): In the case of a claim arising from dishonesty or fraud, professional indemnity insurance must not exclude indemnity of a barrister who was not knowingly involved in or party to the dishonesty or fraud.</b></p>			
<p>Clause 6.17: the fraud and dishonesty exclusion applies only where the insured is a party to the fraudulent or dishonest conduct.</p>	<p>Clause 5.1(g): the fraud and dishonesty exclusion applies only where the insured is a party to the fraudulent or dishonest conduct.</p>	<p>Clause 5.2: the fraud and dishonesty exclusion applies only where the insured is a party to the fraudulent or dishonest conduct.</p>	<p>Intentional or Dishonest Damage or Loss clause (p5): the fraud and dishonesty exclusion applies only where the insured is a party to the fraudulent or dishonest conduct.</p>
<p><b>79(8): Professional indemnity insurance must provide retroactive cover, except for claims arising out of fraud or dishonesty. However, it is permissible for the insurance to impose a retroactive limitation on cover:</b></p> <ul style="list-style-type: none"> <li>a) if the retroactive date is the date the barrister commenced to engage in legal practice as a barrister, or</li> <li>b) if: (i) the barrister has previously ceased to engage in legal practice as a barrister and is covered for run-off liabilities arising from that prior practice under another insurance policy, and (ii) the retroactive date is the date the barrister resumed legal practice as a barrister</li> </ul>			
<p>The cover is not limited by a retroactive date.</p>	<p>Retroactive liability clause (p16): the cover may be limited by a retroactive date, if one is specified in the schedule.</p> <p>If there is a retroactive date, it would need to be the date the insured commenced/resumed practice as a barrister in order to comply with rule 79(8).</p>	<p>Claims made basis and retroactive date clause (p12): the cover may be limited by a retroactive date, if one is specified in the schedule.</p> <p>If there is a retroactive date, it would need to be the date the insured commenced/resumed practice as a barrister in order to comply with rule 79(8).</p>	<p>The cover is not limited by a retroactive date.</p>

Disciplinary proceedings			
<p>Clause 4.1 says the insured is covered (subject to the specific cover limit set out in the schedule) for reasonable and necessary legal costs and expenses (incurred with the insurer's consent) for the representation of the insured at a Disciplinary Enquiry.</p> <p>Disciplinary Enquiry is defined as any legal or quasi legal enquiry, by a body (including a regulatory, licensing or statutory body) which has jurisdiction over the insured, which enquires whether the insured has breached any relevant professional code of conduct or standard.</p>	<p>Clause 2.1 says the insured is covered for the costs and expenses incurred by or on behalf of the insured (with the insurer's consent) in the defence of any Disciplinary Proceedings.</p> <p>Disciplinary Proceedings is defined as:</p> <p>(i) any investigation of the insured by an authorised body which has the responsibility for the supervision of barristers or legal practitioners in relation to the insured's conduct as a barrister or suitability to practice as a barrister;</p> <p>(ii) any proceedings of a disciplinary nature against the insured before a tribunal, court or authorised body which has jurisdiction to hear proceedings of that type against barristers.</p>	<p>Clause 2 says the insured is covered for reasonable defence costs (incurred with the insurer's consent) in connection with a Claim.</p> <p>Claim is defined to include, among other things, a notification to the insured of Statutory Proceedings.</p> <p>Statutory Proceedings is defined as proceedings of a disciplinary nature against the insured before a tribunal, court or other body which has jurisdiction under the Act to hear proceedings of that type against a barrister.</p> <p>Act is defined as the Legal Profession Act 2006 (ACT), Legal Profession Uniform Law (NSW), Legal Profession Act 2007 (QLD), the Legal Profession Uniform Law (VIC), the Legal Profession Act 2007 (Tas), Legal Profession Act 2008 (WA) or similar legislation regulating the provision of professional services as a barrister enacted by any State or Territory of Australia, including the Legal Profession Uniform Law and any subsequent legislation which operates in lieu of such legislation.</p>	<p>The 'Enquiries – legal costs cover – including for regulatory, licensing, disciplinary or coronial enquiries' clause (p3) says the insured is covered up to \$250,000 in the aggregate in respect of the reasonable and necessary costs (incurred with the insurer's consent) for the insured's representation at an Enquiry.</p> <p>Enquiry is defined as a legal or quasi legal enquiry including coronial enquiry (into a matter arising out of the provision of Professional Services and not otherwise excluded under the policy) in respect of which the insured is legally required to participate by reason of the fact that the body conducting the enquiry (including a regulatory, licensing or statutory body) has legal jurisdiction over the insured (either by reason of a statutory power or by reason of the insured's membership of a professional association which has the power to discipline its members).</p>