

Professional Indemnity Product briefing

Professional duty of care

The term 'profession' is now applied to a great many services, reaching far beyond traditional areas of learning such as accountancy, architecture, engineering, medicine and law. But as the spectrum of professional services widens, so does the number of people who will face litigation for allegedly 'getting it wrong'.

A professional person owes a duty of care to anybody who might reasonably rely on his/her advice or service - regardless of whether a fee is charged or not. This duty of care can derive from:

- tort (negligence);
- contract;
- statute;
- fiduciary duty.

When breach of duty results in financial harm (eg a client or other third party being out of pocket) a legal action will often result.

Whether the breach is justified or not, defending such allegations can be hugely costly, often running into tens or even hundreds of thousands of dollars.

This is why most professionals choose not to operate without the protection of a trusted Professional Indemnity Policy.

Professional Indemnity

Professional Indemnity is a liability insurance designed to pay:

- legal defence costs; and
- any agreed settlements negotiated out of Court; or
- damages or expenses awarded in Court.

With QBE, it also ensures that your professional clients have access to some of the country's leading defence lawyers when they most need it.

Access to New Zealand's leading lawyers

QBE is a market leader in the specialist field of Professional Indemnity and our experienced claims team has long-standing relationships with some of the country's foremost solicitors, barristers and QCs. We carefully select the lawyer best able to represent your clients' interests and work hand-in-hand to devise a defence strategy aimed at finding a swift and fair resolution.

With legal experts focused on managing their claim, your clients can focus on the important task of managing their business.

QBE's Professional Indemnity insurance

QBE's Professional Indemnity Policy offers flexible limits of indemnity and provides up to NZD 1,000,000 additional cover for legal costs and expenses - leaving the full limit available for damages or settlement.

QBE offers a civil liability wording that covers breach of professional duty. It has a wide definition of 'Insured' and includes existing and new principals, partners, directors or employees; subsidiary companies sharing the same professional business practice (ie. description of their business services); and can also include predecessors in business.

It also provides many valuable extensions to cover, as standard.



Automatic extensions	Simply explained
Automatic Reinstatement	Should the 'any one claim' limit be exhausted, the limit of indemnity is reinstated once, at no additional premium.
Consultants, Subcontractors and Agents	Covers the Insured's vicarious liability for the errors, acts and omissions of consultants, subcontractors and agents.
Continuous Cover	A valuable claims condition that means QBE will accept a claim that should have been notified under a previous QBE Professional Indemnity Policy, as long as there has been no break in cover with us. (QBE has the option of deciding which policy will apply.)
Costs of Representation at Registration Board Proceedings	Pays for the cost of defending complaints lodged against the Insured through their professional registration board or regulatory authority. We can pay up to the full 'Costs and Expenses' limit.
Defamation	Covers legal liability relating to unintentional libel or slander, through any medium.
Fair Trading Act 1986	Covers legal liability relating to alleged breaches of sections 9-14 of the Fair Trading Act 1986 or equivalent foreign legislation.
Fraud and Dishonesty of Employees	Covering the Insured's legal liability should a member of staff steal or misappropriate client money, held in trust.
Intellectual Property	Covers unintentional infringement of copyright, trademark, registered design or patent, or plagiarism. It also includes breach of confidentiality.
Internet Liability	Up to NZD250,000 liability protection for damage caused to third party computer systems by the Insured's unintentional transmission of a computer virus.
Joint Venture Liability - Insured's Liability Only	Cover for the Insured's legal liabilities resulting from involvement in a joint venture or partnership. (Cover for the joint venture itself, or the joint venture partners, can be considered upon application.)
Loss of Documents	Indemnification for the loss, damage or destruction of documents physically held in the Insured's care, including computer records. (Excludes bearer bonds, stamps, currency notes, etc.)
Previous Business	Subject to the retroactive date, new partners, directors or principals automatically enjoy civil liability cover for mistakes made before they joined the Insured, as long as such mistakes occurred whilst working in the same profession.

Note: The key policy benefits above have been summarised for your convenience. However, please remember that they always remain subject to full policy terms and conditions.

What is a retroactive date?

QBE's Professional Indemnity Policy will cover claims made and reported during the policy period provided the act that gave rise to the claim occurred after any retroactive date identified in the policy schedule; even if the act was before policy inception.

The retroactive date can be a specific date but usually matches the date cover was originally purchased.

How is it underwritten?

QBE's Professional Indemnity Policy is individually underwritten. Our underwriters consider various factors when assessing the risk:

- type of work undertaken;
- number and experience of key personnel;
- previous practices that may need to be included;
- fee income;
- contractual position;
- risk management procedures;
- claims experience.

What isn't covered?

Some key exclusions include:

- directors liability;
- insolvency;
- fines and penalties;
- fraud and dishonesty;
- pollution;
- refund of fees;
- family members or associated entities;
- any event occurring before the retroactive date.

(Please refer to a copy of the policy wording for full details of exclusions, terms and conditions.)

Claims scenarios

Data handling

A data handling company was asked to sort the contact data of a professional trade association and to mailshot current members who needed to be informed of new regulatory requirements.

The company mailed nine thousand (9,000) retired contacts instead of thirteen thousand (13,000) current members and the mailshot had to be reprinted and mailed again.

The association sued for the wasted cost of the first mailing.

Translator

A Chinese investment syndicate, based in New Zealand, bought land with a view to developing a residential housing complex. Like existing dwellings in the area, the proposed houses were subject to certain restrictions under covenant, which had been translated into Mandarin by a professional translator.

Unfortunately, a very literal translation was given in respect of acceptable roofing material which led to architects plans being redrawn to cater for a heavier roof made out of more expensive, natural materials. When the mistake was discovered, the syndicate sued the translator for the cost of the amended plans plus the additional costs. Including defence costs, the claim came to NZD 257,750.

Copywriter

A freelance copywriter was asked by an international hotel chain to write a brochure for their newest portfolio addition, a refurbished complex of chalet bungalows in Bali.

Upon seeing the brochure a rival hospitality group, based in Australia, accused the chain of plagiarism, claiming the words used to describe the complex were the same as those used in their own material.

The claim was successfully defended on the grounds that the copy was similar but not identical, and was describing location, accommodation and services that were in no way differentiated from each other.

However, because the claim was brought in an overseas jurisdiction, defence costs were high; it cost NZD 143,000 to defend the claim.

Health and safety consultant

A health and safety consultant was contracted by a plastics manufacturer to assess its product systems and advise on improving factory safety. Following his recommendations, the company re-designed its production line only to realise the new set-up was potentially hazardous in a completely different way.

The manufacturer, having lost confidence in the consultant, brought in a second health and safety expert who reconfigured the set up once again and required a week-long compulsory closure period whilst the reconfiguration took place.

The manufacturer successfully sued the original consultant and was awarded NZD 336,400 damages, which included his legal costs.

Advertising agency

An advertising agency was involved in the product launch of a new energy drink aimed at the youth market. Part of the launch strategy was an 'unfolding' TV campaign designed to pique the viewer's interest prior to the main launch.

Unfortunately, the agency mixed the labelling of the ads which were then aired in the wrong order. The client insisted that the agency pay for the extra air time necessary to make sense of the unfolding story line.

The claim was settled for NZD 118,300.

For more information contact your QBE underwriter.

The objective of this Product Briefing is to summarise the purpose of the product, the main market for which the product has been designed and key aspects of cover. For full details of cover, please refer to a copy of the policy wording.