



Guide to understanding professional Indemnity insurance for Financial Planners

In conjunction with Smart Compliance, Acuity Risk Solutions have put together a document that is written for clients of Smart Compliance and leverages the fact that you're a client of Smart Compliance and are using the Smart compliance tool. If you're not a client feel free to look at their tool at www.fsi.net.au.

This document is intended to provide with the skills and knowledge to get PI insurance and understand that it is both a risk management tool as well as an asset of your firm.

We urge you to contact Acuity Risk Solutions P/L for more information regarding this document or any information contained therein.

What Is Professional Indemnity Insurance (PI)

PI is policy written to cover claims against your firm alleging that you or the firm have breached a professional duty to the client. The breach of duty can arise from an act error or omission on your part in regard to the provision of professional services to the client.

Put simply, if you make an error it covers you for the costs and expense of successfully defending such a matter and damages if you don't.

The cover has existed for many years and evolved with the changing legal landscape around the world. A PI policy here will look similar to the Us or Britain but will have a number of key differences depending upon the local laws and the local insurance market.

Claims Made

The policy is fairly unique in that it is written on a "claims made" basis. This means that to have claim indemnified a policy must be in place at the time the claim or matters that may give rise to claim are made against or notified to you. That policy also needs to have a retroactive liability date adequate to include the point in time when the advice or service that gave rise to the claim was provided.

If a business has been operating for 10 years but only has 4 years' retroactive cover then a claim brought against the business arising out of work undertaken 6 years ago, is not covered. Even though it may be within that legal statue of limitations and the rest of the particulars of the claim are covered, there is no cover as the policy only responds to claims against the firm for matters occurring within the previous five years. This is a very important issue to note. In this case 6 years of work would not be covered.

The policy has many key aspects that every firm taking it out should note.

- The Profession- as the policy is designed to cover beaches of professional duty, the way the profession is described must be correct. It also must be inclusive. Don't leave anything out.



- Territorial Limits- This dictates where services can be provided in terms of its geographical location as well as provision of services to other countries from another country. ie Australia to Singapore
- Jurisdictional Limits: this aspect dictates the places where the insured can be sued and have the policy respond, quite often this is limited to Australian/ New Zealand jurisdictions even though the work was done overseas. This is because the insurer only has the resources to deal with matters in Australia and New Zealand. It is vital that the firm is careful to understand where it is exposed and how the policy responds.
- Policy extensions: These add cover and should be reviewed and considered before dismissing them as not vital. Not all policies provide coverage in the same manner.

Why do I need it?

A Financial Planner that hold a Financial services licence is required to have mechanism to protect their customers under the terms of the licence These are regulatory requirements designed to offer protection to consumers or provide a mechanism for the consumer to take action for a loss due to an error or poor advice on the part of the adviser.

In short, your firm needs to buy it and you should think of it as a mechanism for the ultimate management of risk for your firm, which will only be called upon when all other professional risk management tools have failed.

How do I get it cheap?

“Cheap” is a word that should not be thought of in terms of the policy. “Value for money” is and can you make a value judgement based upon your own knowledge of the product? There are a couple of reasons for this.

1. Not all policies are the same.
2. Not all covers provide the same level of cover in dollar terms
3. Your firm is different to every other firm.

What do we mean here?

1. Each and every policy is worded differently and has different clauses and different methods of providing cover.
2. Every policy covers legal expenses BUT are these expenses included within the limit of indemnity or in addition to the limit of indemnity. What does your license require?
3. Despite what you may think every single financial planner is different. The Approved products might be the same or have the same dealer group, but every adviser is different and every client is different. This means that the risk profile is different for every firm.

That being the case, it follows logically that every PI policy should be considered in terms of value for money. Value is measured differently and each firm should be looking for value for its premium spend but not sacrifice vital cover in doing so. Unless that is they have taken conscious decision and professional advice that a particular cover is not required.



Engage an Insurance Broker.

Naturally we are thinking about ourselves when we make this point however a good professional insurance broker can not only smooth this process but should also make the process of getting cover easier and simpler. You should be given advice on the policy and a good broker will also have spoken to range of insurers about your firm and or similar firms and will know the best markets for your business.

What do I need to tell insurers? Can I just leave things out?

In brief, you need to tell them everything! No doubt as a financial planner you will be familiar with the duty of disclosure. Insurance terms this is very specific as to what needs to be declared and more importantly when things don't. This doesn't mean you can leave things out of your proposal but it does mean that you can rely on what the insurer should know for matters of disclosure, however it is good practice to disclose all relevant facts and detail any mitigating circumstances that reduce the firm's exposure or improve the risk profile of the firm in the eyes of the insured. A good insurance broker will be able to advise on this.

The Proposal form

First and foremost, this document is a presentation of your business in the insurance market. Take time and care to prepare the information to answer the questions and don't handwrite unless it necessary. If you do need to hand write it, take time or give a draft to one of your staff with good handwriting. What the insure sees in the form and the way it is presented to insurers makes a statement about your firm.

Each question on the proposal form tells the insurer something important about the firm and provides the insurer with answers to questions that provide an important perspective about the firm and its activities. The activities of the firm and its governance are its risk profile. These aspects show an important view of the way the company behaves towards its clients and the advice they receive.

As part of the process of preparing this advice document both Brett and myself met with an insurance underwriter to get inside the thought process of an experienced underwriter. The underwriter is senior underwriter who has been in the PI industry since the late 80's with whom Acuity's main director has worked both as a broker and recently as his in-house Risk Management Compliance Partner with one of Australia's largest insurers. Both roles have given an unrivalled view of his risk appetite and as such how he views a wide range of professions and how insurers can be profitable in each profession underwriting their Professional indemnity insurance.

If insurers are making a loss on a given profession, then the ability to buy cover becomes not only problematic but can become impossible which in turn affects the ability of the firm to continue to trade. The reason, the 'ticket to ride' is reliant upon being able to satisfy the compensation arrangements of the FSL. Financial Planners need to satisfy the license requirements therefore "no



ticket no ride” or no PI no license unless the requirement can be satisfied in an alternative manner acceptable to ASIC.

The information received from the underwriter was not unexpected and confirmed that the industry, financial planning has been the cause of significant insurance payouts. Further the insurance claims causing the payouts, were from a specific list of activities and investment types.

The results provide an insight into the risk profile of the industry and a professional service and hopefully provides you with some areas of business to focus upon from the risk perspective and concentrate upon when dealing with clients.

As part of this document we have taken a proposal form from the insurer we interviewed and we have included some detail around questions that it is hoped assist you in the process of completing the form.

[My Approved Products List](#)

There were quite a lot of points raised by the underwriter during this process. The highlighted investment and advice were as follows.

Every firm has an approved products list that is under constant review.

A copy of these lists is requested and provided to insurers. The purpose of this is to understand the range of product being recommended to the clients of the firm. Over time however these lists have grown enormously to the point where insurers are not able to judge the investment strategy for the firm’s clients. Highlight and list the top 15-20 investments and then comment on the investment strategy and the client segment you sell this product too.

[My compliance processes.](#)

Clients of SMART compliance benefit from a market leading compliance process. However, from an insurance perspective, do not take for granted the importance of good compliance process and a solid understanding of the importance of the process as the firms “ticket to ride”. Understand, not only the steps taken, but the improvements and risks that are controlled by the process. Compliance is a risk mitigation and management process in addition to being the firms ticket to ride. Good compliance process should not only mitigate the risk of losing your AFSL but improve the client outcomes in terms of confidence in your firm.

Insurers have always assumed a level of compliance equal to the minimum standards required by legislation. As a broker, it is always surprising to hear from underwriters that issues of fraud and noncompliance are a surprise to them regarding their insureds. The benefit of hindsight is often the test applied to the advice after the fact but it can be an equally good judge of investments really too good to be true, drawing in naïve clients to less than scrupulous operators. As a consequence insurers are very cautious about many of the activities that have caused claims in the past.



Areas of comfort for Insurers.

If we accept that insurers need to be profitable then we need to understand the areas of the business that cause claims. Insurers need to strike a balance between the acceptance of zero risk and assuming real risks on behalf of insureds that are guaranteed to bring claims.

Each insurer has different appetite based upon a range of factors that are not clear and frankly change frequently depending upon trends and economic factors. The following are examples of investment types that insurers dislike and quite possibly will refuse to cover.

- Tax effective Agribusiness.
- Multiple strategy hedge funds
- Multi leveraged investments. (borrowing against assets already leveraged)
- Highly geared SMSF investments.
- Illegal SMSF investments (cars, artworks etc.) unless managed compliantly.

These types of investments over time have proven to be problematic and the source of many claims against the insurers.

Insurers understand they are in the business of paying claims however they are obliged to limit their exposure to claims that are foreseeable based upon the information available to them. The benefit of hindsight offers little comfort to insurers where they have become embroiled in claims.

Proposal Form Questions (and how to answer them correctly.)

Attached to this document is a sample professional indemnity proposal form. Read the comments in conjunction with the attached form.

Each insurer has their own proposal form. Most questions are similar or the same, some may include additional questions based upon internal underwriting standards, however when in doubt talk to us about the answers. We have provided guidance on the answers that result in the most questions to us.

Question 1

Make sure you include every entity and be prepared to include all fees or income earned through that entity for providing Financial Planning services.

Question 4

If there is any doubt describe the class of employee in your own language.

Question 6

If in doubt include the information for all AR's and provide an additional comment about the status of the AR.



Question 7

The question is looking for three figures for 12 month periods. The date for the current period is for the financial period (your firm's) that is currently in. The prior and next are based on that current period i.e. the last full period and an estimate for the next full period.

Question 8

Again this question is best answered with additional explanatory notes if there's is any doubt about what categories the information belongs to. Be specific and concise when providing this information.

Question 9

For the investment type be very accurate and expansive in terms of the investment types. Try not to estimate or provide answers in a collective manner. Don't roll up the similar investment types into a single category if there is any doubt.

Question 11

As we commented previously the Approved products list a critical piece of information about the types of investments the firm is selling is indicative of the skills the advisors have when advising clients Naturally advisor will be stronger ion products that have been sold many times before.

Question 12

In regard to any guidelines provide the latest and provide an indication of the timing of refresher trainer or similar.

Question 13,14.15

Be as comprehensive as possible to provide insurers and the broker with the best chance of being able to argue reduced risk and exposure for additional cover or reduced premium pricing.

Question 18

It is imperative that for an existing firm that you take time to ensure that any and all matters which MAY become a claims are notified toy our current insurer prior to expiry. So, if during reasonable (if you need to consider if you need to report it) enquiries a matter is discovered then you probably report it. As such you advise your current insurer before renewal as well as part of the submission to go to market. If there is any doubt about the claim being paid do not change insurers. See also claims made section of this document.

Other points

- There is no need to advise insurers of your current premium. You can perhaps share the information with your new broker to make the job of changing easier.
- Refer to:" claims made" i



Pacific Indemnity Underwriting Solutions Pty Ltd

ABN 14 606 511 639

Financial Planners Professional Indemnity Insurance Proposal Form

1. Details of Proposer

(a) Name each incorporated body to be insured	
(b) Trading Name	
(c) ABN #	
(d) AFSL #	
(e) Contact Person	
(f) Commencement Date of business	
(g) Has the business operated under any legal entity other than the one in answer to Q1(a)	

2. Address

(a) Street Address	
(b) Suburb	
(c) State	
(d) Postcode	
(e) Telephone	
(f) Email Address	
(g) Website	
(h) Other office locations	

3. Details of Principals

Name	Qualifications	Years as a principal of this business	Years as a principal of prior business	Name of prior business in which you were a principal

4. Number of full-time equivalent staff in the following categories:

Category	Number of staff	Number
Partners/principals/directors		

Acuity Risk Solutions-.Level 8, 350 Collins Street Melbourne 3000
Phone (03) 8605 4870
An authorised representative of Fenton Green AFSL 247258



Technical staff	
Employee ARs	
Non-employed ARs	
Administration/support & other staff	
Total staff & ARs	

5. Firm History & Staff Details:

Has the Firm, Company or Practice ever changed their Name?	YES	NO
If 'Yes', please provide or attach details		
Has any other Practice or Business amalgamated or merged with the Firm, Company or Practice?	YES	NO
If 'Yes', please provide or attach details		
Has the Firm, Company or Practice purchased any other Practice or Business?	YES	NO
If 'Yes', please provide or attach details		

6. Non-Employed Authorised Representatives:

Do You have non-employed Authorised Representatives (ARs)?	YES	NO
If 'Yes', please attach a copy of the checklist you use before you appoint your ARs		ATTACHED?
Please attach an AR application form		ATTACHED?
Please note that no cover is provided for claims arising from the activities of non-employed ARs relating to their services under a prior AFS Licensee.		

7. Fee Income

Total amount of the Proposed Insured's turnover for the following periods:

(a) Previous 12 months	\$
(b) Current 12 months	\$
(c) Coming 12 months (estimate)	\$

8. Details of the Business

Details of Professional Services undertaken	Gross Fees	% of Annual Gross Income
Wealth Management	\$	%
Risk Business (life)	\$	%
Risk Business (non Life)	\$	%
Other (Please specify)	\$	%
TOTAL	\$	100 %

9. Investment Allocation Profile

Investment type	\$FUM	% of total FUM
------------------------	--------------	-----------------------



Cash & Fixed Interest	\$	%
Bonds	\$	%
Securitised Investments e.g. RMBS	\$	%
Mortgage funds	\$	%
Shares through Managed funds	\$	%
Shares on direct basis	\$	%
Shares unlisted	\$	%
Property trusts through managed funds or listed trusts	\$	%
Property trusts through unlisted vehicle	\$	%
Property on direct basis	\$	%
Hedge funds on multi strategy managed funds	\$	%
Hedge funds on single strategy fund	\$	%
Hybrid securities	\$	%
Structured products/ capital protected products	\$	%
Tax effective agriculture/aquaculture investments	\$	%
Alternative investment (other than investments not enumerated above eg commodities, private equity, infrastructure, art)	\$	%

10. Client Profile

Value of investments	Total FUM in this band	Income from this band
Less than \$100K	\$	\$
\$100 to \$500K	\$	\$
\$500K to \$1M	\$	\$
Greater than \$1m	\$	\$

11. Approved Product List

Please **attach** the following material

Your APL- Please divide your APL list to current APL, closed investments in the APL, any funds where product suspended distribution of funds, products included at the insistence of investors and with appropriate sign off by investors; change from current APL list from last year.	ATTACHED?	
Your Investment philosophy	ATTACHED?	
Member of Investment Committee and short information about the members' qualification and experience	ATTACHED?	
Explanation of how your APL is created, managed and reviewed	ATTACHED?	
Details of internal mechanism for approving new products or funds outside APL	ATTACHED?	
Have you had any funds that are or were frozen?	YES	NO
If so, please attach details of funds, amount and whether such funds have been settled?	ATTACHED?	
Do you advise on or deal in direct shares?	YES	NO



If so, please attach guidelines relating triggers for buying and selling; investor profile; profile of acceptable shares eg ASX top 50	ATTACHED?	
Do you advise on or deal in unlisted property trusts or direct property?	YES	NO
If so, please attach investment guidelines which include the following: a short description of investment including usage (eg commercial mainly offices), valuation on acquisition, LVR, percentage leased and current LVR	ATTACHED?	
Do you advise on or deal in Hedge funds, hybrid or alternative investments?	YES	NO
If so, please attach guidelines which includes limit for such type of investments, list of funds, investor profile for such investments, etc.	ATTACHED?	
Do you advise on or deal in unlisted MIS?	YES	NO
If so, please attach a short description of the unlisted investments, guidelines or copy of the investment offer	ATTACHED?	

12. Gearing and Margin Lending

Do you advise on or deal in margin lending?	YES	NO
If "Yes" please attach your gearing guidelines	ATTACHED?	

13. Training and Risk Management

Please **attach** the following material

Attach details of your training and development program	ATTACHED?	
Attach details of your program for regular reviews and internal licensing/assessment of your authorised representatives	ATTACHED?	
Please attach most recent external audit report and remedial actions taken on key concerns		
Please attach your latest complaint register		
Please attach your switching/replacement policy guidelines		
Are all investment statements mailed directly to investors not through the ARs?	YES	NO
Are you financially connected to or have ownership in any unlisted managed investment schemes listed in the APL?	YES	NO
Please attach a copy of your LRBA guidelines		

14. Risk Products

Do you monitor your lapse rate for life risks products?	YES	NO
Do you enquire if lapse rate is higher than your target rate?	YES	NO
What is your last 12 months' average retention rate for life risk products?	%	
Do you offer takeover terms to life product portfolio?	YES	NO
If answer is yes, please attach details of the terms of such offer?	ATTACHED?	
Do you sell non life insurance products?	YES	NO



15. Managed Discretionary Account (includes IMA and SMA)

Do you offer MDA service?	YES	NO
If 'yes' please confirm the scope of your MDA. (Pick from the options below):		
Is there an external custodian	YES	NO
If 'yes' Please identify custodian:		
Are external MDA advisors utilised	YES	NO
If 'yes' Please identify the advisors:		
Is external administration support provided	YES	NO
If 'yes' identify who provides you administration support		
Are services limited to regulated platform(s) only	YES	NO
If 'yes' please identify the platforms		
Others - please specify (this could be limited to family only or where the ownership of portfolio remains with client)	YES	NO
Please provide (or attach) details:		
Are the MDA services you provide:	Limited	Unlimited
If the MDA services you provide unlimited, please attach your guidelines for the scope of service you offer. Also attach a sample MDA service report	Attached?	
How many staff and ARs have authority to provide MDA Services		
What % of the FUM that is invested through MDA service?	%	
How do you monitor that the mandate in the MDA agreement is adhered to?		

16. Stamp Duty

For the purpose of calculating Stamp Duty please state the percentage of your gross income/fees that was earned in each state in the previous financial period:

NSW	VIC	QLD	SA	WA	TAS	ACT	NT	Overseas *	Total
%	%	%	%	%	%	%	%	%	100%

17. Overseas work/exposure

**If "Yes" to overseas income in answer to 16 above, please give details of the overseas work including countries where work is performed and details of any overseas office locations*

18. Claims Information

After enquiry of the Partners/Principals/Directors and employees, has there been or is there now pending a claim against the Proposed Insured, its Subsidiaries, it's predecessors in business or it's current or former Partners/ Principals/Directors or employees for a Civil Liability in the performance of the Proposed Insured's Professional Services?	YES	NO
--	------------	-----------

If "Yes", please give details (if insufficient room below, provide details on a page of your letterhead).



--

After enquiry of the Partners/Principals/Directors and employees is the Proposed Insured or any of its Subsidiaries aware of any circumstance or incident which may give rise to a claim against the Proposed Insured, its Subsidiaries or it's Partners/ Principals/ Directors or employees?	YES	NO
---	------------	-----------

If "Yes", please give details (if insufficient room below, provide details on a page of your letterhead).

--

After enquiry of the Partners/Principals/Directors and employees is the Proposed Insured or any of its Subsidiaries aware of any prosecution or investigation (actual or pending) of the Proposed Insured, any Subsidiary, or any Partner / Principal/Director or employees under any International, Commonwealth, State or Local statute, legislation, regulation or By Law?	YES	NO
---	------------	-----------

If "Yes", please give details (if insufficient room below, provide details on a page of your letterhead).

--

After enquiry of the Partners/Principals/Directors and employees, has the Proposed Insured, any Subsidiary or any Partner/Principal/Director or employee ever been subject to any disciplinary action, been fined or penalised, or been the subject of an inquiry investigating or alleging professional misconduct?	YES	NO
--	------------	-----------

If "Yes", please give details (if insufficient room below, provide details on a page of your letterhead).

--

Has the Proposed Insured, or any of the authorised representatives, had any enforceable undertakings imposed by ASIC?	YES	NO
---	------------	-----------

If "Yes", please give details (if insufficient room below, provide details on a page of your letterhead).

--

Please attach a copy of your " Complaints Register "	ATTACHED?
--	------------------

19. Details of Current Insurance

Please state

(a) Insurer	
(b) Indemnity Limit	
(c) Excess	
(d) Expiry Date	

Has the Proposed Insured ever had any Insurer decline a proposal, imposed any special terms, cancelled or refused to renew a Professional Indemnity Insurance Policy?	YES	NO
---	------------	-----------

If "Yes", please give details (if insufficient room below, provide details on a piece of your letterhead).

--

20. Required Insurance

What limit of PI cover do you require?

\$



21 Required Excess

What Excess do you require?

\$

Declaration

I/We hereby declare that:

My/Our attention has been drawn to the Important Notice accompanying this Proposal form and further I/we have read these notices carefully and acknowledge my/our understanding of their content by my/our signature/s below.

The above statements are true, and I/we have not suppressed or mis-stated any facts and should any information given by me/us alter between the date of this Proposal form and the inception date of the insurance to which this Proposal relates I/we shall give immediately notice thereof.

I/we agree that, by submitting this form, the personal information I/we provide to Pacific Indemnity Underwriting Solutions Pty Ltd in this form or otherwise may be collected, held, used and disclosed in the manner set out in the Pacific Indemnity Privacy Policy including for processing this application and providing me/us with cover.

I/We also confirm that the undersigned is/are authorised to act for and on behalf of all persons who may be entitled to indemnity under any policy which may be issued pursuant to this Proposal form and I/we complete this Proposal form on their behalf.

To be signed by the Chairman/President/Managing Partner/Managing Director/Principal of the association/partnership/ company/practice/business.

Name:	
Title:	
Signature:	
Date:	

It is important the signatory/signatories to the Declaration is/are fully aware of the scope of this insurance so that all questions can be answered. If in doubt, please contact your insurance broker since non-disclosure may affect an Insured's right of recovery under the policy or lead to it being avoided.