

Professional Indemnity Insurance Requirements

Effective from: 12 February 2024

Introduction

The Veterinary Surgeons Board of South Australia ('**VSBSA**') is an independent statutory authority which regulates the provision of veterinary treatment to protect the public interest and animal health, safety, and welfare.

We work to ensure those in the profession achieve and maintain high professional standards of competence and conduct in their provision of veterinary treatment. We receive, investigate, and act on complaints from the public about veterinary surgeons and one of our key roles includes developing standards, codes, and guidelines. Our statutory functions are exercised under the *Veterinary Practice Act 2003* ('**Act**').

Section 44(1) of the Act provides:

A veterinary surgeon must not, unless exempted by the Board, provide veterinary treatment for fee or reward unless insured in a manner and to an extent approved by the Board against civil liabilities that might be incurred by him or her while providing veterinary treatment.

Maximum penalty: \$10,000

All veterinary surgeons providing veterinary treatment for fee or reward in South Australia (including those practising under the deemed registration provisions of the Act) must ensure that they are covered by a policy which meets the VSBSA's professional indemnity insurance requirements unless they have been granted an exemption from this requirement by the VSBSA.

Summary

This document sets out the requirements of the VSBSA for the professional indemnity insurance (PII) arrangements of registered veterinary surgeons.

Definitions

Automatic reinstatement is a provision in policies which allows for the limit of indemnity (amount insured) to be reinstated for new, unrelated claims, after one or more claims has been paid to the limit of the indemnity.

Civil liability insurance means insurance that covers the costs of liability incurred by the insured arising from civil claims seeking compensation for personal injury, harm or loss incurred, where the claim arises directly from an alleged act, error or omission committed in the conduct of the practitioner's practice or professional business during the policy period. Civil liability cover includes cover for legal expenses incurred in defence or settlement of a civil claim and for damages payable.

Practice means any role, whether remunerated or not, in which an individual uses his or her skills and knowledge as a veterinary surgeon. For the purpose of these requirements, practice is not restricted to the provision of direct clinical care. It also includes using professional knowledge in a direct non-clinical relationship with clients and/or patients, working in management, administration, education, research, advisory, regulatory or policy development roles, and any other roles that impact on safe, effective delivery of services in the profession.

Professional indemnity insurance arrangements mean arrangements that secure for the practitioner's professional practice insurance against civil liability incurred by, or loss arising from, a claim that is made because 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.

Retroactive cover means PII arrangements which cover the insured against claims arising out of or in consequence of activities that were undertaken during the practitioner's professional practice, prior to the date of the commencement of the insurance.

Third party cover means the cover that an individual holds through a third party's insurance arrangement, such as through an employer, education provider or union.

Do these requirements apply to me?

The PII requirements apply to all registered veterinary surgeons who have not been exempted by the Board from complying with these requirements.

What must I do?

1. When you practise as a veterinary surgeon, you must be covered by your own or third party PII arrangements:
 - a. for all aspects of your practice.
 - b. that cover all locations where you practice.
 - c. that provide cover for you whether you are working in the private, non-government and/or public sector; and
 - d. that provide cover for you whether you are practising full-time, part-time, self-employed, employed, or in an unpaid or volunteer capacity, or any combination of these capacities.
2. Your PII cover must include:
 - a. civil liability cover.
 - b. appropriate retroactive cover for otherwise uncovered matters arising from prior practice; and
 - c. automatic reinstatement

or

 - d. the equivalent of 2a to 2c above under third party PII arrangements.
3. If you are covered by a third party PII arrangement, it must meet these requirements. If you are in any doubt about whether the third-party cover meets these requirements, you are responsible for asking what is covered by the third party PII arrangement.

If the third-party cover does not meet these requirements, you must take out additional cover to ensure these requirements are met.
4. If any area of your practice is specifically excluded from your PII cover, you must not practise in that area.

5. If your PII arrangements are provided by your employer, and you intend to practise outside your stated employment, you must have individual PII arrangements in place to cover that practice. This may include cover for undertaking:
- practical components of continuing professional development
 - study involving patient treatment
 - volunteer work (unless already separately covered in that capacity such as by a volunteering organisation)
 - non-practising/full retiree registration (if you are registered but not practising for part of the registration period (e.g. take a leave of absence or fully retire) you do not need to have PII arrangements for that period. However, if you decide to fully cease practice, you must take out appropriate run-off cover for matters that would otherwise be uncovered arising from your premises practice as a veterinarian.

What does run-off cover mean?

Run-off cover is a type of cover that practitioners may need when they stop practising, depending on the type of PII arrangements they have held while practising. It protects a veterinarian who has ceased practice, against claims that arise out of or are a consequence of activities that were undertaken when the veterinarian was conducting that practice.

If you have held a PII policy that is a 'claims made' policy, this only covers you for claims made during the period of cover, and you would need to have run-off cover to deal with any claims made after you stop practising and your claim's made cover has ended.

If you held a PII policy covered you for any incidents which occurred during a period of cover, known as 'occurrence-based' cover (either through an individual policy or other arrangements), you will not need run-off cover to deal with any claims arising from when you finish practice.

Amount of cover

If you are taking out your own PII, you must ensure that your level of cover is adequate and appropriate. Your PII arrangements must provide cover appropriate to the nature, context, and risks of your professional practice.

The amount of cover needs to be enough to meet any liability (that is legal responsibility) to pay compensation if a successful claim is made against you. The appropriate amount of cover for you may depend on a combination of factors including for example:

- the practice area or areas you work in
- the service users you work with
- the risks involved with your practice
- your previous history insurance claims of the type of claim made against you if any; and
- your professional experience.

What might be appropriate cover for one registered veterinarian may not be appropriate for another. You need to make sure that you consider the risks which may arise from your own practice and make sure that your PII arrangements provide adequate cover appropriate for those risks.

You are in the best position to seek advice from your insurer or insurance broker and/or employer, to make reasonable, informed decisions about the level of cover appropriate to you and your practice. You need to be able to justify your decision.

Are there exemptions to these requirements?

The Board may, subject to such conditions as it thinks fit, exempt a person or class of persons, from these requirements (section 44(2) of the *Veterinary Practice Act 2003*).

What does this mean for me?

You must not, unless exempted by the Board, provide veterinary treatment for fee or reward unless you have PII arrangements in place that meet these requirements (section 44(1) of the *Veterinary Practice Act 2003*).

When you apply for registration or reinstatement of registration

When you apply for registration or reinstatement of registration you must declare that you will not provide veterinary treatment for fee or reward unless you have PII arrangements in place that meet these requirements.

At renewal of registration

You will be required to declare annually at renewal of registration that:

- a. during the preceding period of registration, you provided veterinary treatment for fee or reward in accordance with these requirements; and
- b. you will not provide veterinary treatment for fee or reward unless you have PII arrangements in place that meet these requirements.

When you cease practice

When you decide to cease practice, you must take out appropriate run-off cover for matters that would otherwise be uncovered arising from previous practice as a veterinary surgeon.

Evidence

The Board may, at any time, require you to provide evidence that you have PII arrangements in place that meet these requirements.

If you hold private insurance in your own name, you should retain documentary evidence of your insurance for at least seven years.

If you are covered by a third-party insurance arrangement, you are not required to obtain documentary evidence of the insurance policy unless the Board requests it. However, there may be circumstances when you are required to seek the documentation from that third party. If requested by the Board, you must provide a certified copy of the certificate of currency or a letter from the third party declaring that you are covered.

What happens if I don't meet these requirements?

If you do not meet the requirements, the following consequences may apply:

- the Board can refuse your application for registration, reinstatement of registration or renewal of registration (section 32(b) of the *Veterinary Practice Act 2003*)

- the provision of veterinary treatment for fee or reward without PII arrangements that meet these requirements is an offence for which you may be prosecuted by the Board. The maximum penalty upon conviction is \$10,000 (section 44(1) of the *Veterinary Practice Act 2003*)

What happens if I make a false declaration when applying for registration?

If you procure your registration or reinstatement of registration by fraud or other dishonest means, such as by making a false declaration about your PII arrangements at the time of applying for registration, reinstatement of registration or renewal of registration, you will commit an offence for which you may be prosecuted by the Board. The maximum penalty upon conviction is \$20,000 or imprisonment for 6 months (section 69 of the *Veterinary Practice Act 2003*).

Revised Arrangements

The Board may consider applications for Veterinary surgeons to be covered by revised arrangements including where consideration has been given to self-insure for costs of claims resulting from professional liability in place of professional indemnity insurance policies. The Board must be satisfied that any revised arrangements reach a standard that, in the opinion of the VSBSA, must be achieved before considered and that in all the circumstances it is appropriate to do so.

Self-Insured

The Board considers that only fit and proper practices of significant size and the very highest levels of financial strength and resilience are positioned to deliver on the objects of the Act with revised arrangements for provisioning for the costs of claims resulting from professional liability of clinics including individual employees in relation to being self-insured.

The Board reserves the right to consider matters it deems relevant and the matters specifically to in this policy are not exclusive.

Applications for revised arrangements will require that professional services being offered at clinics, hospitals, and by veterinarians and veterinary professionals can provide assurance that they are able to provide the same level of indemnity against civil liabilities to that if an industry cover professional indemnity insurance policy was in place.

A practice will be financially robust beyond being able to meet its immediate liabilities in the most trying of economic circumstances, (i.e. able to absorb shocks without the potential for compromised delivery). This includes but is not limited to the capacity to fund the lump sum payments payable for civil liability claims.

The Board will consider any applications for self-insurance with a business case to be presented. The business case must include the following information:

- Evidence that the practice is financially robust to be able to meet liabilities in addition to be having capacity to fund lump sum civil liability claims
- Why the practice is seeking exemption or varying of conditions under section 44(2) of the *Veterinary Practice Act 2003*
- Details of the practice, including number of staff (veterinarians and others), services undertaken at each practice, including confirmation that individuals employed by practices/clinics etc. are covered by any revised arrangements.
- Details of the proposed self-insurance including compliance with the legislative requirements of the Act

- Evidence of sufficient governance, procedures, and processes that the practice has in place to meet specified standards and quality to ensure the requirements that are set out under any Codes of Conduct and legislation
- Processes for review of civil claims and risk assessments for claims
- The practices' ability to meet corporate social responsibilities
- Confirmation that the practice can source the required bank guarantees if required

The above list is not exclusive, and the Board reserves the right to consider other such matters it considers relevant in determining if a practice is considered suitable for exemption under section 44(2) of the Act.

A veterinary surgeon is responsible if employed by an entity, to ensure that if there is revised insurance arrangements in place that they are indemnified against loss as required by the Act.

Review

These requirements will be reviewed by the Board from time to time as required. This will generally be at least every three years.

Last reviewed: 12 February 2024

Next review: 12 February 2027