

2022 ANMF PII Fact Sheet

What is Professional Indemnity Insurance (PII)?

PII refers to protection against claims for loss, injury, or damage to a third party arising from an act, error or omission in the performance of a nurse/midwife's professional services.

PII is a requirement of National Registration for Nurses and Midwives. The Health Practitioner Regulation National Law Act 2009 states that a nurse or midwife must not practice without appropriate professional indemnity cover. Failure to comply with this obligation will not only expose nurses and midwives in the event of negligence but can also result in a breach of the National Law. A nurse is defined as a registered or enrolled nurse (which includes nurse practitioners) and a registered midwife. Failure to have suitable PII could result in cancellation of your registration.

A nurse, midwife or carer working in any sector (public, private, or aged care) may become involved in legal proceedings following an adverse workplace event. They could also be wrongfully accused of unprofessional conduct in both administration and clinical roles. It is important to remember that not having PII may place nurses, midwives, and carers in danger of losing their personal assets if they are involved in a lawsuit.

Although it is not required by law for ECAs/PCAs/carers to have indemnity insurance, as they provide direct care to residents and clients, they may also become involved in legal proceedings following an adverse workplace event. Therefore, it is highly recommended that carers also have PII cover.

What are PII obligations of employers

Employers are often said to be 'vicariously liable' for acts undertaken by employees. This may mean that nurses and other care workers will be protected by the employer insurance policies. However, at times (for example for nurses employed by the Government) there is no assurance that they will be covered as access to cover for legal costs is at the discretion of the employer. In addition, there may be circumstances where it is preferable that an employee can obtain legal advice independent to that of the employer. For many reasons Nurses and midwives need to be certain they are covered for PII no matter what the circumstances.

ANMF PII Cover

The ANMF has provided PII to nurses for over 25 years. Our PII cover has been tailored specifically for nurses. It is comprehensive and tested and provides expert legal representation that protects the employee's interests and not the employer.

PII cover is provided to ANMF members as long as:

- They are full financial members at the time of the incident
- The claim relates to work performed as an employee, or to the paid or voluntary provision of nursing services.

Under our PII ANMF can provide comprehensive, professional, and independent representation which may include:

1. Proceedings before The Australian Health Practitioner Regulation Agency (AHPRA),
2. Appearing before the Health Practitioners Tribunal,
3. Investigations by the Health Complaints Commissioner Tasmania,
4. If representation is required appearing at Coroner's inquests,

The cover that is provided

ANMF PII covers members automatically to \$10,000,000 for any one claim with up to \$50,000,000 in total claims during a 12-month period. Further to this, members are covered for Public Liability for \$10,000,000 in the aggregate in any one year and for legal and inquiry costs amounts up to \$500,000. Coverage extends to members working interstate for up to 3 months so long as membership is maintained. Cover is worldwide except in North America, however international coverage only extends where action against a member is taken under Australian Law.

There are some general conditions which apply (Permission from Insurer to incur costs must be sought before accessing any legal services.). Listed below:

1. Inquiry cost

These are legal expenses for members required to appear before Health Practitioners Tribunals and Coroner's Inquests.

2. Professional Indemnity

This covers:

- Claims against a member resulting from the conduct of their professional services (Malpractice),
- Liability as a result of a negligent act arising from treatment at the scene of a medical emergency, accident or disaster (good Samaritan act). It also covers for Libel & Slander claims and Loss of Documents,
- Claims arising out of the Competition and Consumer Act for misleading or deceptive conduct, or which is likely to mislead or deceive. *NB if a registered nurse does not maintain their registration (including if they work while registration is suspended or cancelled) when working in the capacity of a registered nurse they will not be covered for PII.*

3. Legal defence

The policy excludes cover for costs arising in connection with defence of any criminal legal proceedings. Costs in association with pursuit of the contract of employment, or

employment related legal representation, may be covered at the discretion of the ANMF/Insurer.

4. Public liability

Covers negligence in respect to accidental bodily injury to a person or damage to property which happens in connection with the occupation of premises where the member provides care. An example could be a client/patient's home and the nurse/carer leaves a kettle boiling which could cause a fire.

5. Retroactive coverage

If an incident occurred in the past and a claim is made against a member now, they are covered if the member was unaware of the possible claim or circumstances at the time of joining the ANMF.

6. Run off cover

For practitioners who have ceased the professional practice of nursing and/or midwifery for claims that arose because of activities undertaken by them when they were practicing. Also applies to self-employed nurses and midwives. Members are indemnified for an unlimited period provided the act, error or omission occurred prior to the expiry of their financial membership.

7. It is possible to extend your cover if your circumstances include:

- Nursing services performed in third world countries,
- Nursing services on aircraft up to and including arrival at overseas airport terminals,
- Voluntary work including first aid.

8. Important things to note re your PII

- ANMF is the holder of the policy, for the benefit of its members.
- Claimants must always cooperate with the ANMF and Its legal advisers in defence or pursuit of a claim.
- Claimants must notify the ANMF as soon as they become aware of a potential claim.
- The choice of legal representation rests solely with the ANMF and its Insurers.

9. Exclusions

As with any insurance policy there are some exclusions. Some of these include:

- Damage occurring during ear syringing with fluid is not covered.
- No cover for bodily injury of an employee of the member
- No cover if a member is entitled to seek indemnity under an Act e.g. Worker's Compensation
- Claims as a result of using a motor vehicle
- Claims arising due to insolvency, bankruptcy of the member
- Claims arising from the member giving express warranty or agreement
- Agreement by a member preventing the insurance company claiming back from a third party
- Claims arising from radiation or contamination of any nuclear fuel or waste and asbestos
- Other than as permitted by legislation in effect at the time, claims arising from condoning or committing acts of euthanasia

- Exclusion for any liability to pay fines or penalties
- Claims arising from any act of terrorism

Please contact ANMF if you would like a full list of exclusions

Employees experiencing challenging times are encouraged to access the Employee Assistance Program at their workplace. This is a free and confidential service provided by employers for employees. There is also a free confidential service, available 24 hours a day/7 days a week at the Nurses and Midwives Support on 1800 667 887.

If you would like to discuss your issue or require further information, please contact the Member Support Team via email MemberSupport@anmftas.org.au; or on (03) 6223 6777 or 1800 001 241 (outside Hobart area) during office hours.