



Information Paper

Superannuation – Trustee Liability Insurance

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Objective

This Paper sets out the findings from an APRA survey of trustee indemnity insurance for trustees of superannuation entities. APRA undertook this survey to gain an understanding of the availability of trustee indemnity and professional indemnity insurance in the marketplace and the level of cover recommended to or purchased by trustees of superannuation entities.

Introduction

This Paper updates the information published on APRA's web site concerning the findings from *APRA's Professional Indemnity Insurance Survey 2002*. The 2002 survey sought information from Approved Trustees. The latest survey was undertaken in the latter part of 2005 and focussed on insurance brokers who arrange trustee indemnity and professional indemnity insurance for trustees of superannuation entities. APRA obtained feedback from five of the major insurance brokers who agreed to participate in *APRA's Survey of Trustee Liability Insurance in 2005*.

This Paper is provided for the information of Registrable Superannuation Entity (RSE) licensees and does not prescribe the level of professional indemnity cover that should be held.

Adequacy of resources – operating standard

Prior to the licensing of all superannuation trustees, only Approved Trustees of public offer superannuation funds were subject to a condition¹ requiring them to maintain adequate levels of insurance against liabilities incurred as a result of a breach of professional duty as trustee.

All RSE licensees are now required to meet the requirements of the Adequacy of Resources operating standard set out in r. 4.15 of the *Superannuation Industry (Supervision) Regulations 1994*. APRA has outlined a number of matters it will consider in respect of this operating standard in *Superannuation Guidance Note – 140.1 Adequacy of Resources*.

In particular, paragraph 16(g) states:

16. In satisfying itself that there are reasonable grounds to believe that a licence applicant has adequate financial resources to enable it to comply with the requirements of the standard, and that an RSE licensee has complied with those requirements, APRA will take into account the particular circumstances of the applicant's superannuation operations and will consider factors such as:

...

(g) scope and level of insurance cover

– whether the trustee maintains adequate levels of insurance against liabilities incurred as a result of a breach of its professional duty as trustee of an entity, and adequate levels of business insurance in respect of its business or undertaking as trustee of an entity. 'Adequate levels of insurance' means levels of insurance that are prudent and reasonable in all the circumstances, taking into account the assets (if any) of the trustee, the assets of the entities for which it is trustee, and all circumstances of the trustee and its business or undertakings that are reasonably relevant to the risk for which the insurance concerned provides indemnity. RSE licensees of public offer entities are expected to have an adequate level of professional indemnity insurance.

In APRA's view, the level and terms of insurance cover which an RSE licensee has in place should reflect the nature, scale and complexity of the RSE licensee's operations. Whilst APRA does not prescribe a minimum level of trustee liability insurance, RSE licensees are expected to be able to demonstrate that the level and terms of insurance cover are prudent and reasonable in the light of their ongoing obligations to meet the adequacy of resources operating standard. APRA also expects that RSE licensees would monitor and review their insurance arrangements to ensure that they remain appropriate to their circumstances.

In this regard APRA expects that an RSE licensee would have a good understanding of:

- the process undertaken to assess, monitor and review their insurance needs;
- how the level and terms of cover assist the RSE licensee in meeting the adequacy of resources operating standard and its general fiduciary obligations under the *Superannuation Industry (Supervision) Act 1993* and general law;
- the terms of the insurance arrangements in place, including:
 - the class of insurance (i.e. trustee liability, Directors and Officers insurance, professional indemnity);
 - details/name of the insurer;
 - details/name of the insured;
 - the period of insurance;
 - any exclusions;
 - whether the policy covers fidelity and fraudulent acts;
 - any limits to the indemnity (monetary or other limits);
 - whether the policy includes cover for legal defence costs;
 - whether there are any deductibles and how this is funded;
 - how many reinstatements the policy provides for and the cost of reinstatement; and

¹ Under their Instrument of Approval issued under s. 26(3) of the SIS Act.

- where the cover is provided as part of a wider group cover, the implications of the group arrangement in terms of:
 - how claims by other entities in the group impact the cover for the RSE licensee in their capacity as a trustee;
 - the systems for monitoring usage across the group; and
 - whether the level and type of cover is specific enough to provide cover for the RSE licensee in its capacity as a trustee for the purposes of the SIS legislation.

The Association of Superannuation Funds of Australia (ASFA) has published *Best Practice Paper No. 1 – Liability Insurance for Superannuation Trustees and Funds* to assist trustees when considering the types and amount of insurance required for the trustee and fund operations.

Summary of results of trustee liability insurance survey

The survey was aimed at gaining an insight from insurance brokers who arrange trustee liability insurance for trustees (i.e. RSE licensees).

The key points to note from the results of the APRA survey are:

- Insurance brokers advised that they provided either no advice or only limited advice to a trustee seeking insurance cover. Generally, the insurance brokers do not provide a recommendation on the level of the cover a trustee should take. Rather, the brokers tend to approach a number of underwriters seeking quotes for various levels of cover and leave the final decision on the level of cover to the trustee.
- Trustees need to properly assess the risks/likelihood of claims in order to select the appropriate cover for their operations. Insurance brokers noted the following factors as being considerations for trustees when determining the appropriate level of trustee liability insurance:
 - the level of fund assets;
 - the number of members;
 - the worst loss scenario;
 - whether or not the administration and investment management were outsourced and the level of cover held by the administrator or investment manager;
 - overall competency and experience of trustees;
 - the premium and other terms;
 - the insured’s own claims experience; and
 - industry claims experience.
- Trustee liability insurance claims have been very infrequent to date.
- Insurance brokers suggested that, in their view, trustees (irrespective of amount of funds under trusteeship) should have a minimum level of cover of between \$1 million to \$5 million.
- In general, insurance brokers noted that trustees are becoming more aware of, and are adopting a more professional approach to, their trustee duties and have a better understanding of the type and level of insurance required.
- Insurance brokers viewed the current state of the trustee liability market as mature with premiums reducing following a period of high premiums resulting from the collapse of HIH Insurance Ltd. There had also been a reduction in the number of insurers prepared to accept trustee liability business. However, more insurers are accepting this class of business resulting in higher limits being made available for trustees seeking adequate levels of cover. Overall from a buyers perspective the market for professional indemnity and trustee liability insurance has improved with reduced premiums and greater availability since the 2002 APRA Survey of Approved Trustees.



Telephone
1300 13 10 60

Email
contactapra@apra.gov.au

Website
www.apra.gov.au

Mail
GPO Box 9836
in all capital cities
(except Hobart and Darwin)