



# Property, Stock and Business Agents Amendment (Professional Indemnity Insurance) Regulation 2012

under the

Property, Stock and Business Agents Act 2002

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Property, Stock and Business Agents Act 2002*.

ANTHONY ROBERTS, MP  
Minister for Fair Trading

## Explanatory note

The object of this Regulation is to require licensees under the *Property, Stock and Business Agents Act 2002* to be insured under a policy of professional indemnity insurance.

The requirement will apply only to licensees who engage in activities for which a licence is required.

This Regulation is made under the *Property, Stock and Business Agents Act 2002*, including sections 22 and 230 (the general regulation-making power).

**2012 No 621**

Clause 1 Property, Stock and Business Agents Amendment (Professional Indemnity Insurance) Regulation 2012

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**Property, Stock and Business Agents Amendment  
(Professional Indemnity Insurance) Regulation 2012**

under the

Property, Stock and Business Agents Act 2002

**1 Name of Regulation**

This Regulation is the *Property, Stock and Business Agents Amendment (Professional Indemnity Insurance) Regulation 2012*.

**2 Commencement**

This Regulation commences on 1 January 2013 and is required to be published on the NSW legislation website.

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## Schedule 1      Amendment of Property, Stock and Business Agents Regulation 2003

### [1]    Clause 13B

Insert after clause 13A:

#### **13B    Professional indemnity insurance**

- (1) A licensee must be insured under a policy of professional indemnity insurance in force with respect to the licensee, or the licensee's employer, that complies with the requirements of this clause.

**Note.** Under section 22 of the Act it is a condition of a licensee's licence that the licensee be insured as required by this clause.

- (2) The policy must provide cover for the following types of civil liability arising in the conduct of an agency business:
- (a) liability arising from any acts or omissions of the licensee that constitute:
    - (i) negligence, or
    - (ii) misleading or deceptive conduct, or
    - (iii) breach of professional duty, or
    - (iv) unintentional defamation, or
    - (v) unintentional interference with intellectual property rights,
  - (b) vicarious liability arising from any acts or omissions of an employee, agent or other person engaged in the agency business that constitute:
    - (i) negligence, or
    - (ii) misleading or deceptive conduct, or
    - (iii) breach of professional duty, or
    - (iv) defamation (for which the claimant is not at fault), or
    - (v) interference with intellectual property rights (for which the claimant is not at fault), or
    - (vi) fraud or dishonesty by the employee, agent or other person (for which the claimant is not at fault).
- (3) To avoid doubt, civil liability includes liability for personal injury.

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Schedule 1 Amendment of Property, Stock and Business Agents Regulation 2003

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- (4) The policy must provide cover of not less than \$1 million for any one claim and not less than \$3 million in the aggregate for all claims made during the period of insurance.
- (5) Amounts referred to in subclause (4) are inclusive of any costs incurred or payable by the claimant in connection with the claim (including legal costs).
- (6) A licensee is required to be insured under this clause only if the licensee engages in activities for which a licence is required under the Act.
- (7) In this clause:  
*agency business* means a business referred to in section 8 (1) of the Act.  
*employer* of a licensee means a person who employs or otherwise engages the licensee to perform services for which a licence is required under the Act.  
**Note.** Insurers must be authorised to provide insurance under the *Insurance Act 1973* of the Commonwealth.

### [2] Clause 50

Insert after clause 49:

#### **50 Transitional arrangements for taking out professional indemnity insurance**

- (1) The requirement imposed on licensees by clause 13B does not take effect until 1 July 2013.
- (2) If a licensee is insured under a policy of professional indemnity insurance issued before 1 January 2013 that is in force with respect to the licensee, or the licensee's employer, the policy is taken to comply with the requirements of clause 13B until 1 January 2014, or the expiry of the policy, whichever first occurs.