

Managing Agents will now be Required to have Professional Indemnity Insurance

The Property, Stock and Business Agents Amendment (Professional Indemnity Insurance) Regulation 2012 commenced on 1 January 2013. It amends the Property, Stock and Business Agents Regulation 2003, by inserting a clause 13B requiring that:

- A licensee under the Property Stock and Business Agents Act 2002, who is engaged in activities for which a licence is required, be insured under a policy of professional indemnity insurance in force with respect to the licensee or the licensee's employer
- The policy will be effected by 1 July 2013. However, if the licensee already had a policy in place by 1 January 2013, that policy will be regarded as compliant until it expires or 1 January 2014, whichever comes first.
- The policy provides cover of at least \$1 million for any one claim and \$3 million in aggregate, for claims made during the period of insurance, inclusive of the claimant's costs.
- The policy provides cover in relation to specified risks, including
- Liability arising from acts or omissions of the licensee that constitute negligence, misleading or deceptive conduct, breach of professional duty, unintentional defamation or unintentional interference with intellectual property rights; and
- Vicarious liability arising from acts or omissions of an employee, agent or other person engaged in the agency business that constitute negligence, misleading or deceptive conduct, breach of professional duty, defamation (for which the claimant is not at fault), interference with intellectual property rights (for which the claimant is not at fault) or fraud or dishonesty by the employee, agent or another person (for which the claimant is not at fault).

We have some concerns in relation to these requirements. In particular:

- There should be approved insurers or a specification of minimum requirements.
- There should be a policy approval process or required/precluded policy conditions.
- Agents should consider effecting higher cover, given that they may be exposed to risks in excess of that amount and do not have the benefit of a limitation of liability scheme.
- Cover should extend to liability of the licensee's officers, staff and service entities, not just the licensee's vicarious liability for their actions.

There are other risks which would appropriately be covered, such as liability for breach of fiduciary duties, conversion and detainue.

Prepared by Bannermans Lawyers

31 January 2013

