



What does 'Claim Made' it mean & how can it lead to a claim being denied?

Professional Indemnity policies respond to claims in a different way compared to most other insurance policies (such car insurance).

With car insurance, if you have an accident and for some reason you don't renew your policy (which for the purpose of this exercise we will assume the renewal falls due a few weeks after the accident) then it doesn't matter. You still get to lodge a claim against the policy that was in-force at the time the event / accident happened and, within reason, it doesn't matter how long you take to notify the insurer of the claim.

Professional indemnity on the other hand is quite different, as it's a claims made policy.

The policy expires each year (and even if you're renewing it with the same insurer) the renewal is treated as a new & separate policy.

Let's say that the policy expiry date is the 31st of December 2010.

If you have an unhappy client that you've been dealing with for the last 6 months & on the 2nd January 2011 they decide to make a claim against you, then you may find yourself uninsured.

This is because, during the term of the 2010 policy, the circumstance that lead to the claim was known to you (& or your staff) & it could be reasonably expected that the situation may lead to a claim.

Any claim arising from a known circumstance must be lodged with the policy that was inforce when the circumstance first became known. For this reason, at the end of each policy year you need to advise your insurer of all circumstances that may lead to a claim. The circumstance could be a client complaint, a billing dispute or an error that you are aware that you have made but it has not been picked up by the client or become an issue yet.

If you were not aware of the circumstance prior to the demand being served on you, you're your current policy will respond to it. For clarity, 'not aware' doesn't mean that you were not aware solely because you didn't make an enquiry with your staff before the last policy expired.

For businesses with staff, making a full enquiry of any known circumstances can be an onerous task. Some businesses actually offer an amnesty period to allow staff the opportunity to reveal any slip-up's made during the year, without fear of reprimand.

The exception to this deadline for notification of known circumstances is when you have a Continuous cover clause (see Overview – Continuous Cover). This aside, it's still better to use

caution and make a full enquiry with all the directors & staff with sufficient time to notify the insurer of any potential claim circumstances before the expiry date.

How can you manage this exposure?

Before expiry contact all staff (who deal with clients) & ask them to confirm if they are aware of any circumstances that may lead to a claim. The following template may assist.

Staff Notice - Professional Indemnity – Notification of Circumstances

Prior to expiry of the current policy it is a requirement that we notify the insurer of any circumstances that may reasonably be expected to lead to a claim.

Please provide your confirmation by return email before DD / MM / YYYY.

Are you aware of any circumstances that may be reasonably expected to lead to a claim?	YES / NO
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Circumstances include but are not limited to;

- i) Complaints
- ii) Billing disputes or
- iii) Errors (whether discovered yet by the client or not)

Office Use:

☐ Reply retained in the insurance file

☐ Any affirmative answer has been notified to the insurer before expiry.