

## **WSU Insurance Protections and Policies**

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Essentially, the University's insurance program can be separated into 2 groups –

1. Asset and liability protections. These are offered by Unimutual;
2. Ancillary policies such as vehicle, travel and accident insurances. These are arranged by a broker on behalf of the University.

All policies are in place for a maximum 12-month period.

The various policies are in place to protect the University from significant financial loss. Insurance is a form of financial protection. If a loss cannot be quantified, then it is unlikely to be covered by any type of policy. For instance, many Universities, including our own, are concerned about loss of reputation – reputational risk. This type of risk is not quantifiable and is uninsured.

The asset and liability protections commence on 1 November and expire 31 October. I will be sending out questionnaires in the next week or so seeking data from all Colleges, Schools, Centers and Units for the purpose of renewing the University's protections. The University has an obligation to declare all of its activities to ensure that we have appropriate protection. Based on that information, Unimutual will assess the "riskiness" of the institution and calculate a premium accordingly.

The protections currently in place with Unimutual are

1. Property
2. Public liability (some times referred to as General and Products Liability or Broadform liability);
3. Professional liability;
4. Management Liability (Director's and Officer's liability);
5. Medical Malpractice;
6. Clinical Trials.
7. Environmental Liability
8. Cyber Liability

### ➤ **Property Protection –**

Property Protection provides the University with the right to lodge a claim for **material** loss of assets being real property, including buildings, plant and equipment, machinery, and stock. Insurers aren't interested in covering lower value losses and consequently these losses are borne by Colleges, Schools and Units.

Property Protection also extends to claims for protection for loss of revenue, increased cost of working, loss of rental income and additional expense resulting from interruption or interference to the business.

For instance, a significant fire at Parramatta campus. Not only will the cost of rebuilding physical assets be covered, so will any lost revenue, and additional costs incurred to maintain operations such as additional rental costs for alternative teaching space.

The excess is currently set at \$10,000. This means that the first \$10,000 of each claim is borne by the budget unit.

➤ **General and Products Liability Protection**

General and Product Liability Protection provides the protected entity with the right to claim protection for liabilities arising from personal injury (including death), other injury and property damage. The protection only applies to claims arising from the University's business.

For instance, and the most common example of a liability claim, a student trips and falls on a stairway and sustains an injury. The student lodges a claim against the University seeking compensation for current and future medical costs. As a result of the injury, the student suspends studies for a period of time which in turn delays entry into workforce which affects future income earnings and ultimately affects superannuation.

The University (not the student) is entitled to claim protection from Unimutual for the amount claimed by the student. The financial loss to the University should only be limited to the amount of the excess (currently set at \$10,000).

➤ **Professional Liability Protection**

Professional Liability Protection provides the University with the right to claim protection for its legal liability to pay damages as a result of any claim made against it arising out of any negligent act, error or omission in relation to the University's professional business.

For instance, the University enters into a consulting agreement whereby the University is providing engineering advice. The other party relies on that advice but it is found to be deficient. A claim may be lodged against the University and the individual for the error. The professional liability protection will cover the University and its employee where the employee has acted in good faith.

However, the protection will only apply to claims arising from University business. Therefore, consulting activities undertaken by employees in a private capacity are not covered. Any consulting undertaken by a University employee that has not complied with University policy and procedures will be deemed to be "private consulting".

➤ **Management Liability Protection**

Management Liability (also known as Directors and Officers Liability) Protection provides the University with the right to claim protection on behalf of its Directors/officers for any loss which they are legally liable to pay by reason of any claim made against them (individually or collectively) arising out of their conduct as a director or officer.

In the commercial world, Directors' and Officers' claims are normally lodged by shareholders for wrongful acts of the governing body. In a University context, a scenario that might result in a D&O claim might be where the Board of Trustees resolves to cease offering a course at one campus effective immediately. Affected students might lodge a claim, not against the University, but against the Board for that decision. The financial exposure to the University for that claim will be limited to the excess, however, the loss of reputation may be harder to determine.

➤ **Malpractice Protection**

Malpractice Protection provides the University with the right to claim protection for its legal liability to pay damages as a result of any claim or claims made against them for bodily injury (including death) arising out of any negligent act, error or omission in relation to the provision of medical services.

Historically, med mal protection has been troublesome, controversial and complex. WSU now has med mal protection for medical, nursing and allied health activities – at a considerable cost with a sizeable excess.

A scenario for a med mal claim might be one where there is an adverse incident in a hospital. As a result of the incident, the patient lodges a claim against the hospital, the clinical practitioner who could be a conjoint appointee, the University and student undertaking clinical placement.

The issue of supervision, i.e. who is responsible for supervising students, is perhaps the most critical issue to be clearly determined in all student placements. Whilst there have not been many medical malpractice claims involving students on clinical placement, the issue of supervision or lack thereof may be crucial in determining or apportioning the ultimate liability. In other words, it is the entity responsible for supervising students, whilst providing treatment (or related services) to the patients, that may have to bear the majority of the claim.

Therefore, any student clinical placement agreement should clearly set out who is responsible for supervising students in clinical situations (i.e. when the students are providing health care to patients of the hospital).

➤ **Clinical Trials Protection**

General Clinical Trials Protection provides the University with the right to claim protection for legal liability to pay damages or compensation as a result of any claim or claims made by research subjects for bodily injury caused by any act, error or omission in connection with clinical trials approved by the Ethics Committee. Currently this is not a significant risk for the University. The numbers of clinical trials undertaken by the University are low and the trials are not especially risky.

➤ **Environmental Liability Protection**

Environmental Liability Protection provides protection for any losses arising from gradual release over an extended period, including resulting claims, remediation's and legal defence costs. These include, Pre-Existing Pollution Conditions, Business Interruption, Underground Storage Tanks, Crisis Management, Contractors Pollution Liability Extensions, Asbestos & lead abatement program, Transportation Coverage.

➤ **Cyber Liability**

Cyber Liability provides protection for any claims arising out of: an actual or alleged breach of personal or corporate information held by the member. Including claims arising where the data has been passed to an outsourced provider.

➤ **Ancillary Policies**

The majority of claims lodged are against the University's ancillary policies. They are all fairly self explanatory and these are the main policies-

Vehicle insurance – works in the same way as your personal car insurance. Insurance covers damage to the University's vehicles and third party property damage caused by a University vehicle. The excess is borne by the budget unit and the driver (or their representative) arranges for quotes, repairs etc.

Student Accident and Injury insurance – provides cover to students engaged in campus or course related activities.

Travel insurance – covers staff and students travelling overseas on University business. The primary reason for having travel insurance is for health cover. Travel insurance is a classic and common example of transferring the financial risk to a third party. However, ultimately claims will be added back into the premium paid.

## **CONTRACTS**

Contracts will typically have insurance and indemnity clauses.

A typical insurance clause will require the parties to have relevant liability insurances and workers compensation for employees.

A typical indemnity clause will require the indemnifier to indemnify the other party for claims arising from the indemnifier's negligence. As a general rule, the University should only accept indemnity clauses relating to negligence. Assumed liability is not covered.

Also critical is that the responsibilities of each of the parties should be clearly articulated.

When seeking advice relating to contracts, please allow sufficient time to ensure that the issues and risks are properly considered