

THE IMPLICATIONS OF 'CLAIMS-MADE COVER' AND RETROACTIVE DATES

This note provides important details on the nature of claims' made cover and how this could affect a claim that is made under your claims'-made insurance policy.

The SACNASP Professional Indemnity Scheme Policy (SPIIS), like all other professional indemnity policies, operates on a claims-made basis, meaning **it covers claims made while the policy is active**, but only from the retroactive date stipulated on the policy schedule or certificate of insurance.

How a claims-made policy works

It is the policy that is in place at the time that the claim is made (or at the time that you become aware of an incident or circumstances that may lead to a claim being made against you and report it to your insurers/brokers) which is expected to respond to cover the claim.

This will not necessarily be the policy that is in place at the time that you render the services which give rise to the claim. It is well known that claims sometimes only arise months or even years after the service has been rendered.

This means that in order to be covered, you will need to have cover in place:

- a. At the time that you render the services which give rise to the claim; and
- b. At the time that you first become aware of the circumstances or incident which could give rise to a claim and notify it through to us in writing; and
- c. Between a. and b. above, i.e. cover should be continuous and there should be no 'gaps' in your cover.

What is a Retroactive Date?

In the context of professional indemnity insurance, a retroactive [backdated cover] date plays a crucial role in determining the period of time to be covered.

A retroactive date is the specific point in time from which services rendered would be covered. Any services rendered before this date would not be covered under the insurance policy.



For instance, if an insurance policy has a retroactive date of 1st January 2015, the policy will only cover claims for services rendered on or after that date, subject to there still being an active policy in place.

The Importance of Maintaining Retroactive Cover

Since the retroactive date plays a key role in determining which incidents are covered, **you need to ensure that you carry over your retroactive date from one policy to the next** if you switch insurance companies or renew a policy (with the same Insurer). In order to carry over retroactive cover, **you need to ensure that there is no gap in cover between the one policy and the next policy.**

If there is a gap in cover you would lose all entitlement to retroactive cover. Only claims already being covered by a policy would be covered. Any new claims for services rendered when you had cover would no longer be covered as you would have lost your backdated cover. Always remember that claims related to services that occurred before the retroactive date will not be covered.

Even if you take a break (e.g., maternity leave or a sabbatical), you should maintain your cover. Claims can arise years later, and without an active policy, they won't be covered. If you are closing your business, please contact us for advice on run-off cover which would protect you against future claims.

If you're struggling financially, reducing your cover amount is a better option than letting your policy lapse. Always report potential claims immediately while insured, insurers will reject claims not disclosed if they were known before coverage started or renewed.

When to Purchase Retroactive Cover

If retroactive cover was lost due to a gap in insurance or if there is no retroactive cover because you have been trading without insurance, we strongly urge you to purchase retroactive cover. Without it, any claims arising from past work, even if the issue is discovered after the policy starts, may not be covered. Securing retroactive cover helps protect you against potential liability for services already rendered.

You are welcome to contact us if you require clarification on any of the content above or if you have any queries and need assistance.

