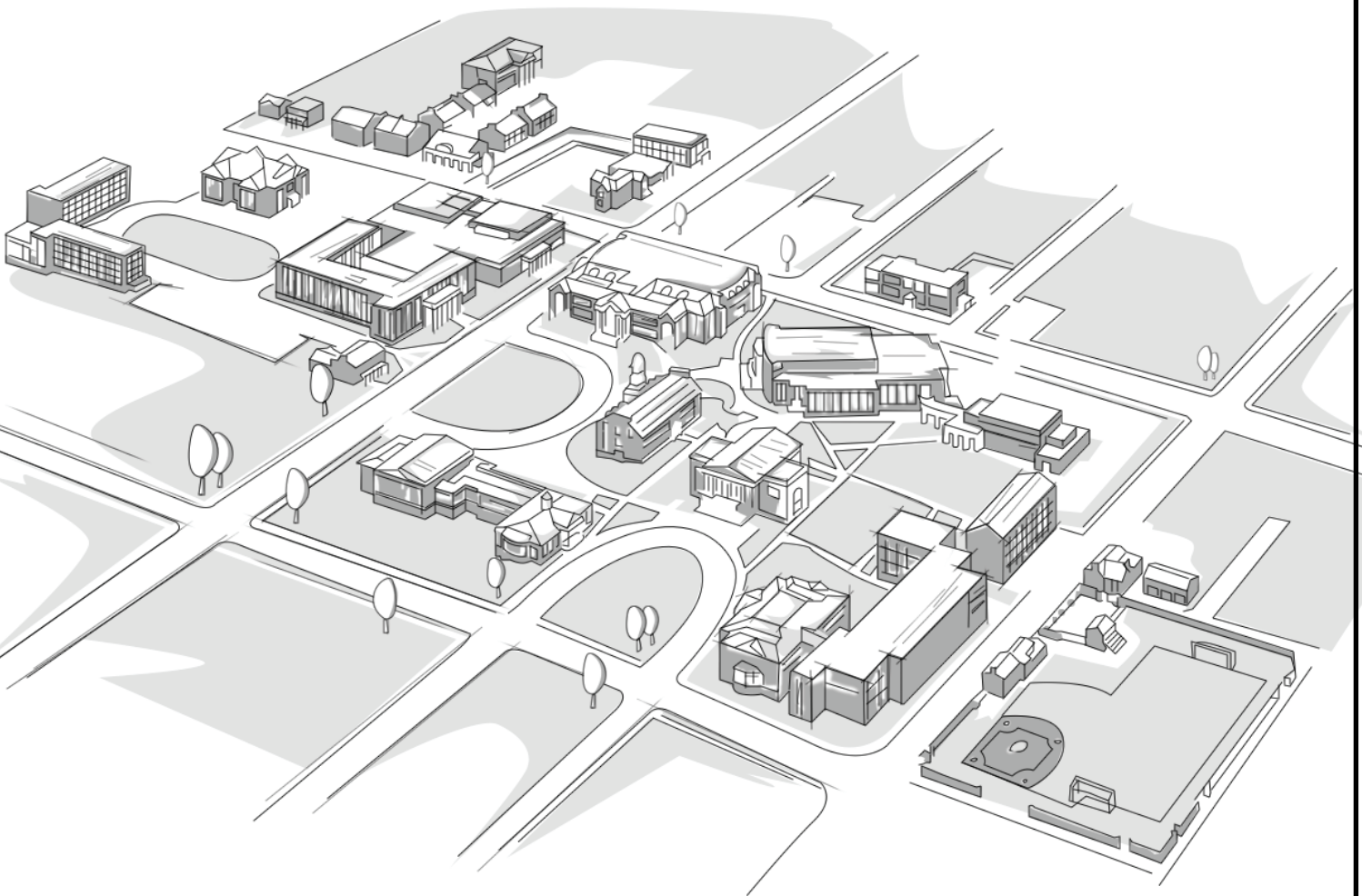


TRAINERS

Lecturer: Madeeha Zali





Registered Training Organisation's

Professional Indemnity

Public Liability

**WHAT ARE REGISTERED
TRAINING ORGANISATION'S?**

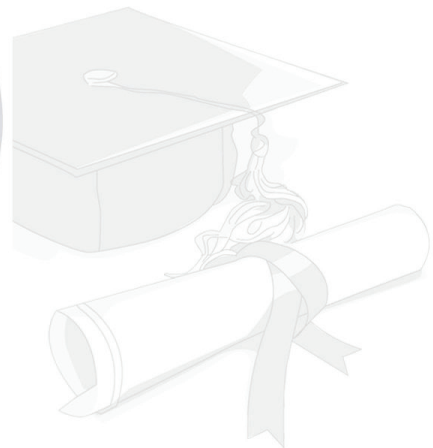
- A registered training organisation (**RTO**) in Australia, is a vocational education provider, offering students training that results in qualifications and/or **SOA's** (statements of attainment) that have national industry-wide recognition and acknowledgment.
- Registered training organisations can be State (government) owned, not for profit or privately owned. All registered training organisations in Australia are listed on the website '**training.gov.au**'. The website provides comprehensive details on all the courses each of the RTO's provide including units and modules.
- In order to officially be deemed a registered training organisation, the company must apply to the State and Territory Registering/Course Accrediting Body (**R/CAB**) in which their primary operations are located or the State in which most of their training courses/services are carried out.

REGISTERED TRAINERS IN AUSTRALIA- THE FACTS **BROOKLYN**

- There are over **4,500** public and private registered training providers in Australia.
- An estimated over 1.5 million Australians participate in vocational education and training each year.
- The Australian Quality Training Framework (**AQTF**) is the national set of compliance Standards and essential conditions that the VET (Vocational education and training) provider must comply with.
- The AQTF was formed in 2007 to provide a national set of standards for consistent quality training and assessment services.



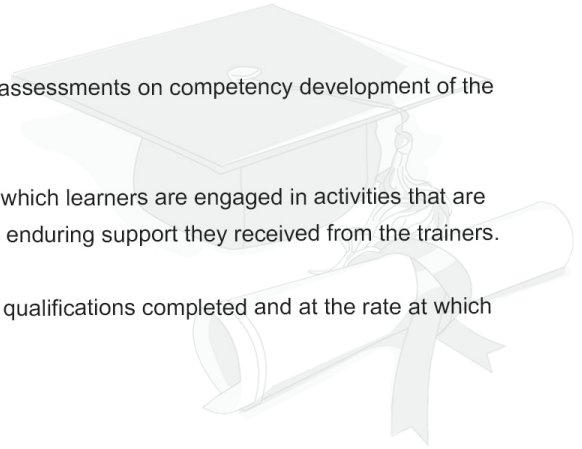
REGISTERED TRAINERS IN AUSTRALIA - THE FRAMEWORK **BROOKLYN**



- Three Quality Indicators form part of the AQTF Standards and are needed for continuing registration and allowing RTO's to focus on continuous improvement and gauge how well they meet the needs of their target market.

These are:

- **Employer satisfaction:** This indicator focuses on employers' assessments on competency development of the learners and the quality and relevance of the training course.
- **Learner engagement:** this indicator focuses on the extent to which learners are engaged in activities that are likely to promote high-quality skills being development and the enduring support they received from the trainers.
- **Competency completion rate.** This calculates the number of qualifications completed and at the rate at which they are done so, compared to the previous year.



BROOKLYN 
UNIVERSITY

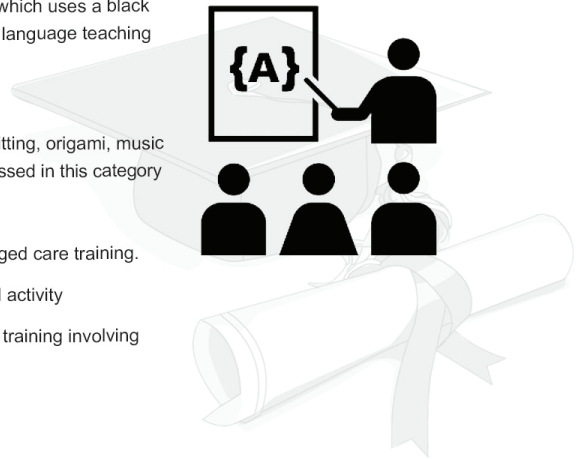
- Fitness institutes
- Massage institutes
- Flight/Aviation training
- Child Care institutes
- Aged Care institutes
- Life/Health coaches
- OH&S and Recruitment training academies
- First Aid training institutes
- Construction industry training
- Language training academies
- Online and offline academic courses/colleges



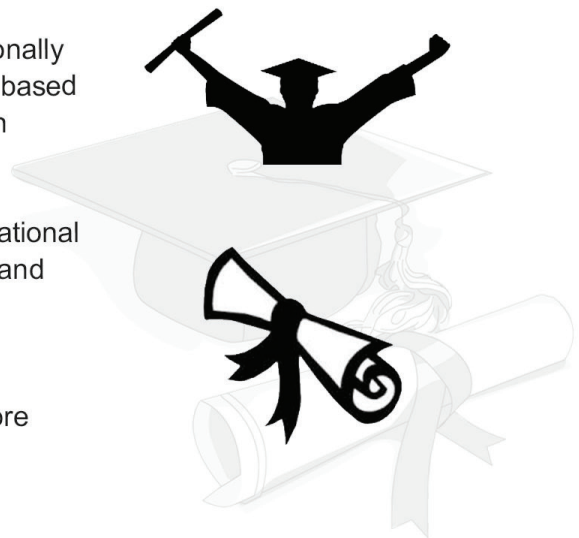
BROOKLYN 
UNIVERSITY

As with many other industries, RTO risks range in terms of the level of exposure each different type of business carries. These can be broadly described as per below.

- **Class A:** classroom & on-line / distance education training – which does not include a physical component.
Example: Trainer provides training in a traditional classroom environment i.e. one in which uses a black board, white board, powerpoint presentations, overhead projector training, reading or language teaching and computer training.
- **Class B:** where a very minor physical component within the training is provided.
Example: Trainer provides training in arts and crafts such as painting, calligraphy, knitting, origami, music teachers, sculpture, pottery, card marking) etc. Any use of machinery should not be classed in this category
- **Class C:** where the training provided includes a physical component
Example: Hairdressing and beauty service training, first aid training, child care and aged care training.
- **Class D:** where majority of the training involved ranges from minor to severe physical activity
Example: Driver training, construction industry training, mining industry training, any training involving operation of machinery and or equipment.



- Accredited Training courses provide an individual with a nationally recognised qualification on accomplishment. It can be referred to as Nationally Recognised Training and has been developed based on the National Training Package for the given industry as per the requirements of the AQTF.
- Non-accredited training courses do not carry national recognition, they seldom require assessment and can be tailored to the needs of that particular participant and/or industry.
- On the whole, Accredited Training is much more closely monitored and audited.



Policies developed especially for RTO's by Insurers' and Underwriting agencies/specialists usually encompass two classes of Insurance in order to cover as many exposures of the business as possible.

These are:

- **Professional Indemnity.**

Professional Indemnity Insurance



- **Public Liability.**



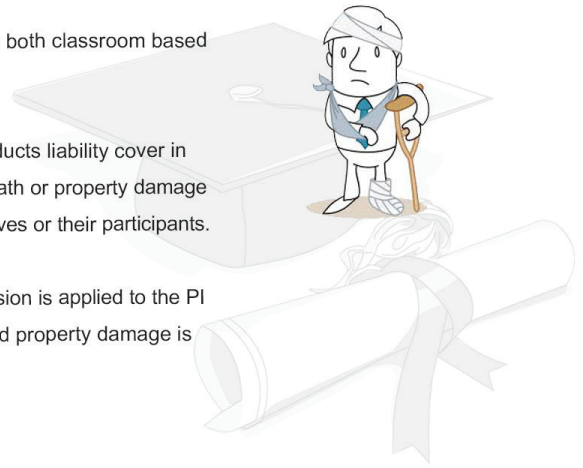
Public Liability Insurance

It is considered best practice to place both the Professional Indemnity and Public Liability with one Insurer. Aside from cost benefits and easy of transactions this decreases the chances of a coverage dispute.

- This policy is a designed to protect the Insured from losses incurred as a result of advice, mistakes or failure in professional duty.
- A professional is any person who exercises a particular skill and therefore owes a duty of care to a client or third party in the performance of their professional work.
- Claims under the professional indemnity policy cover breaches of Professional Duty in respect of any act, error or omission occurring after the Retroactive Date.
- It is imperative for any training organisation, wherein professionals are providing advice and training to participants (on various areas of expertise) to adequately protect themselves with professional indemnity cover
- Retroactive date: This is the date stated on a policy after which acts, errors or omissions of the insured are covered. Any acts, error or omissions occurring before this date are not covered.
- It is therefore vital to seek unlimited retroactive cover whenever possible. If the retroactive cover is unlimited the policy will cover a claim (made and reported during the policy period) irrespective of when the act, error or omission transpired.



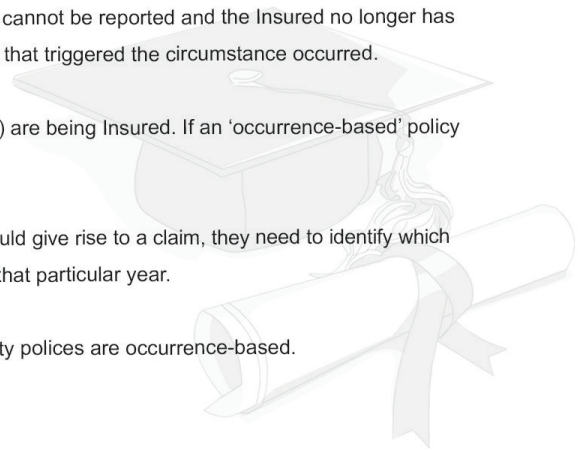
- This policy is designed to protect the Insured from being found liable to a third party for death injury, loss or damage of property or 'pure economic' loss resulting from your negligence or failure of your products to perform.
- For training organisation's it is common for the training components to be both classroom based and physical.
- Therefore it is essential for the Insured to have adequate Public and Products liability cover in place to protect themselves from any claims arising out of injury and/or death or property damage caused to third parties during the course of their training either by themselves or their participants.
- This is even more crucial when a bodily injury and property damage exclusion is applied to the PI portion of the policy. In those cases, if PL is not taken up, bodily injury and property damage is deemed excluded from the policy.



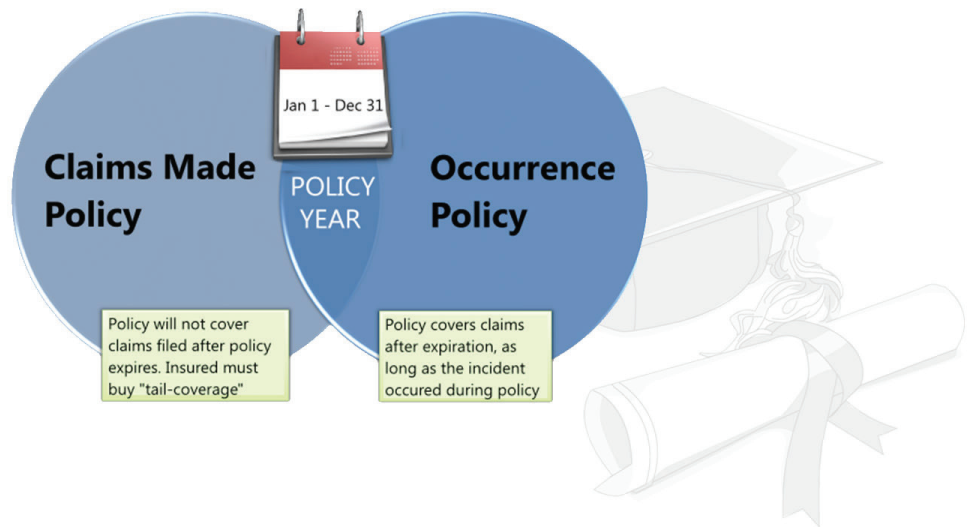
BROOKLYN 
UNIVERSITY

'CLAIMS MADE' VERSUS 'OCCURRENCE' POLICIES

- With 'claims-made' insurance policies, there is a 12 month frame (i.e. the policy period) in which the Insured must notify the Insurer of any circumstance that could give rise to a claim under their policy. This is regardless of what past events/actions triggered the circumstance as long as it is reported within the policy period.
- If a claims made policy is not renewed on expiry, any new circumstances cannot be reported and the Insured no longer has cover for all future circumstances irrespective of when the events/actions that triggered the circumstance occurred.
- For 'occurrence-based' policies, precise periods of time (12 months each) are being Insured. If an 'occurrence-based' policy has not been renewed, the time period that was Insured is still covered.
- For such policies, when an Insured is first aware of a circumstance that could give rise to a claim, they need to identify which year the potential claim relates to and claim under the policy in place for that particular year.
- Professional indemnity policies tend to be claims-made and Public Liability policies are occurrence-based.



BROOKLYN 
UNIVERSITY



BROOKLYN 
UNIVERSITY

CLAIMS EXAMPLE 1- PI

- A company forced an employee to participate in an external course. Upon completion of the course the employee suffered a complete nervous breakdown and is now suing the employer and the training facility. The employee claims that the course precipitated his breakdown and that the training facility failed to conduct an effective pre-screening for vulnerable participants.
- Claim settled for circa \$250,000



BROOKLYN 
UNIVERSITY

- During a classroom training course on management practices, the teacher utilised a projector to display their PowerPoint presentation to the class. At the conclusion of the course, the projector and connecting wires were not put away properly nor were any warning signs where the wires were displayed. In an attempt to exit the class a student tripped over the wire and fell causing them to require 6 stitches. The student put in a bodily injury claim which was paid for \$10,000.

**BROOKLYN **
UNIVERSITY

- The Excess is the policy condition necessitating the insured to pay a share of the loss. Typically this amount represents the first amount which is payable by the insured in respect of any one claim with the insurer paying the balance over that amount up to the limit of Indemnity. Excesses are also often referred to as 'deductibles'.
- The Excess is the policy condition necessitating
- In relation to an Inclusive Excess the excess will apply to both the costs and expenses incurred by the insurer or the insured in defending, researching or settling any claim as well as to the compensation amount payable.
- In relation to an Exclusive Excess the excess does not apply to the costs and expenses incurred by the insurer or the insured in defending, researching or settling any claim. It applies to the compensation amount of the claim only.
- Insured's tend to prefer exclusive or nil excesses although these are rare in today's market.

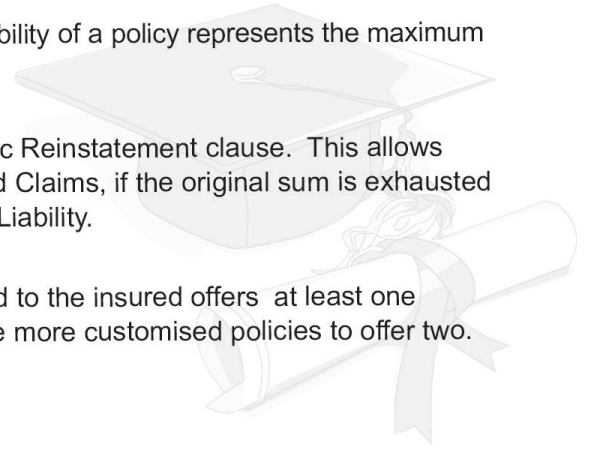
BROOKLYN 
UNIVERSITY

AUTOMATIC REINSTATEMENTS

BROOKLYN 

- An Automatic reinstatement allows the limit to be reinstated 'automatically' (i.e. without asking). If for example the limit is 2M with one reinstatement the maximum aggregate limit (the most that can be claimed in a policy period) is \$4M.
- Unless otherwise specified in the policy, the Limit of Liability of a policy represents the maximum amount that can be paid in any one policy period.
- Some policies, include a clause known as an Automatic Reinstatement clause. This allows the Limit of Liability to be 'reinstated' for new, unrelated Claims, if the original sum is exhausted by a Claim or series of Claims that equals the Limit of Liability.
- It is important to ensure the policy being recommended to the insured offers at least one reinstatement, although it is common nowadays for the more customised policies to offer two.

BROOKLYN 
UNIVERSITY



RUN-OFF COVER

BROOKLYN 

- Run-Off Cover generally protects the Insured from the same risks that their professional indemnity insurance policy protected them against. It provides cover for potential incidents that have happened but are yet to be reported. It will not cover the Insured for any work performed after the expiry date of the original policy.
- Run-Off cover is often not taken up by professionals who would benefit from this. Brokers often advise us that there is a stubborn resistance on the part of their clients to take up this 'extra' cover. Therefore it is imperative clients are better informed of this cover, the scope and the consequences of not being protected.
- Run-Off cover indemnifies an insured for claims first brought against the insured during the period of run off cover, arising from any act, error or omission by an insured, in the course of their former professional services.
- Therefore if a training organisation, ceased trading or sold their business, it'd be beneficial to obtain run-off cover to protect themselves from any claims that may arise from their former professional services.



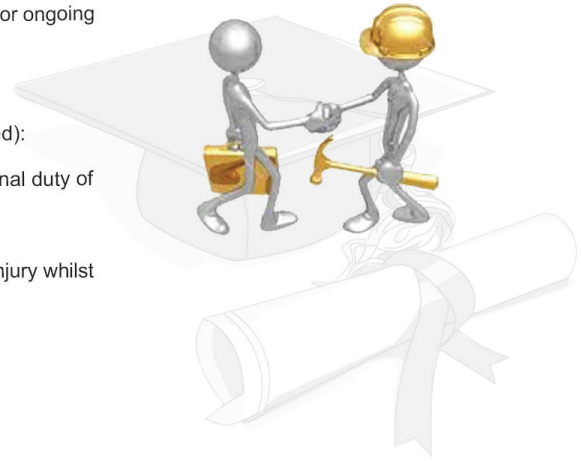
BROOKLYN 
UNIVERSITY



SUBCONTRACTORS - WHO ARE THEY? WHAT DO THEY DO AND WHY THEY NEED COVER?

BROOKLYN 

- Subcontractors are not employee's. Subcontracting arrangements are business relationships/transactions wherein a contractor (an individual, partnership, company or trust) is hired by the principal to complete a certain task, whether one off or ongoing for a certain price and usually within a certain timeframe.
- What are the benefits of extending cover to sub-contractors (for the Insured):
 - **PI:** Protects the Insured from claims arising from the failures in professional duty of the contractors, whilst performing these services on the Insured's behalf.
 - **PL:** Protects the Insured from claims arising from contractors sustaining Injury whilst working on the Insured's behalf.

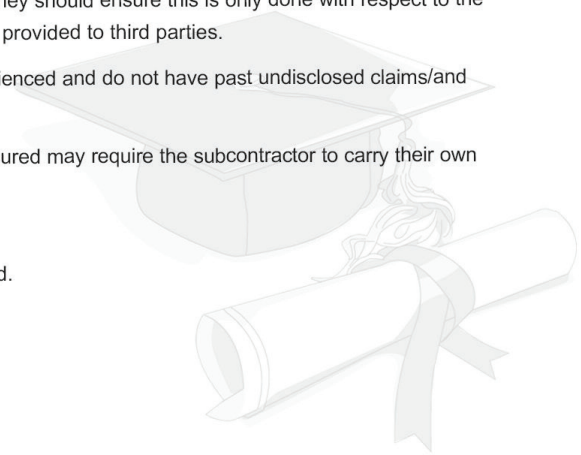


BROOKLYN 
UNIVERSITY

SUBCONTRACTORS - HOW DO THEY AFFECT THE RTO?

BROOKLYN 

- It is quite common for many registered training organisations to utilise subcontractors for tasks such as training course development, administration work and often the training itself.
- However, should the Insured want to extend indemnity to subcontractors they should ensure this is only done with respect to the work the contractors provides for them and not any services that may be provided to third parties.
- They must also ensure the subcontractors are adequately qualified, experienced and do not have past undisclosed claims/and or criminal records.
- In some instances, where a large portion of work is sub-contracted the Insured may require the subcontractor to carry their own insurances. This may allow:
 - Potential reduction in the Insured's premium.
 - Possible reduction in the potential claims brought against the Insured.
 - Subcontractors claims history cannot adversely affect the Insured



BROOKLYN 
UNIVERSITY

COMMON EXCLUSIONS – BODILY INJURY/PROPERTY DAMAGE (PI)

BROOKLYN 

- **What is it?**

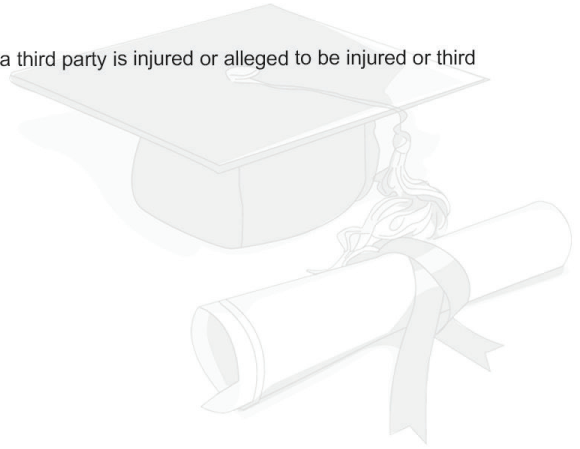
Excludes cover for bodily injury, any form of psychiatric, psychological or mental injury, mental anguish illness, disease or death of any person or loss of or damage to property during the course of the Insured's professional services.

- **What does it do?**

If no cover is provided under your current PI policy, then there is no protection if a third party is injured or alleged to be injured or third party property damage arises during or as a result of your professional services.

Some forms of this limitation:

- a) Absolute Bodily Injury/Property Damage Exclusion
- b) Special Bodily Injury/Property Damage Excess
- c) Partial/specific Bodily Injury/Property Damage Exclusion
- d) Bodily Injury/Property Damage sub-limit.



BROOKLYN 
UNIVERSITY

COMMON EXCLUSIONS – BODILY INJURY/ PROPERTY DAMAGE (PI)- FORMS

BROOKLYN 

Absolute Bodily Injury/Property Damage Exclusion

Total exclusion of all Bodily Injury (mental or physical) and Property Damage claims.

Special Bodily Injury/Property Damage Excess

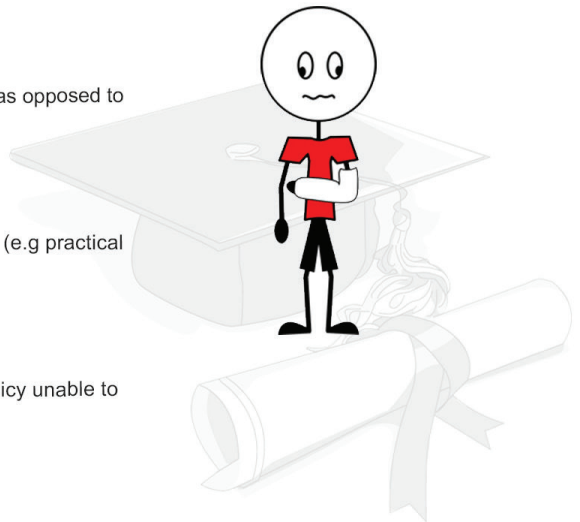
The application of a higher excess for Bodily Injury/Property Damage claims as opposed to all other claims.

Partial/specific Bodily Injury/Property Damage Exclusion

Bodily Injury/Property Damage exclusion only for a certain type of exposure (e.g practical training only).

Bodily Injury/Property Damage sub-limit.

A maximum sum/limit (e.g. \$50,000) which once exceeded, renders the policy unable to provide cover for Bodily Injury/Property Damage claims



BROOKLYN 
UNIVERSITY

COMMON EXCLUSIONS – BODILY INJURY/ PROPERTY DAMAGE- EXAMPLES.

BROOKLYN 

When is it most likely applied?

- Childcare training
- Mine rescue training
- Fitness training
- Construction/Machinery training (elevated work platforms, forklifts etc).
- Security training
- Aged care training
- First aid training
- Aviation training
- Marine training



In these instances it is best to find appropriate cover, that is necessary for such risks. This is commonly provided by a select group of Insurers that compete in this space.

BROOKLYN 
UNIVERSITY

COMMON EXCLUSIONS – PARTICIPATION (PL)

BROOKLYN 

- **What is it?**

Excludes cover for personal injury sustained by participants during a sporting event (e.g. a football game) or other physical activity (e.g bush walking).

- **Why is it applied?**

To mitigate losses resulting from personal injury that is caused when a person is participating in a sporting event and/or other physical activity.

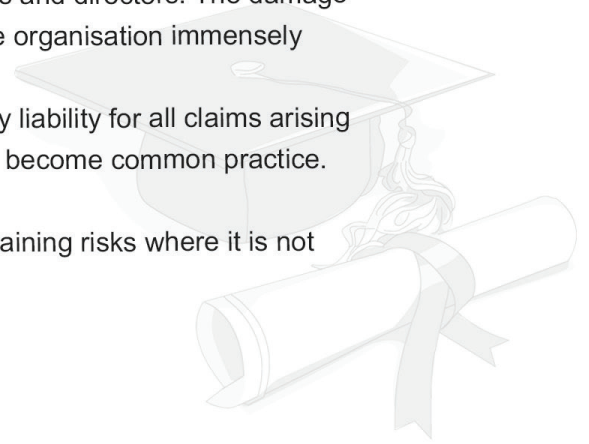
- **What are the different types:**

Participant to participant exclusion: Excludes cover for personal injury and property damage that is inflicted by one participant on another during a sporting event or other physical activity.

Total participation exclusion: Excludes ALL cover for personal injury and property damage that is experienced by one or more participants and/or caused by participants to third parties during a sporting event or other physical activity.

BROOKLYN 
UNIVERSITY

- Sexual molestation claims can be damaging to a company. These often result in litigation processes that name not only the alleged offender but also discredit the organisation, its employees and directors. The damage can affect both the brand and goodwill of the organisation immensely
- In the last few decades, exclusions that deny liability for all claims arising out of molestation (physical or mental) have become common practice.
- These are particularly crucial in relation to training risks where it is not unusual for participants to be under 18.



What does student placement/on-placement mean?

Assignment of students to appropriate organizations to gain workplace skills as a part of a training course.

Why is this done?

- Gaining confidence and motivation
- The chance to test out a career path
- Skill development
- Networking and relationship building.



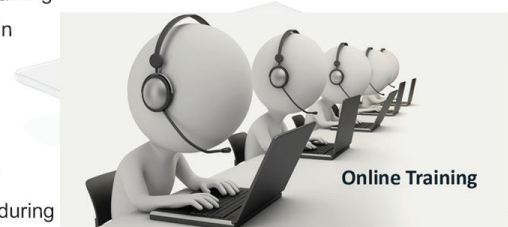
- **How does this relate to RTO's?**

It is becoming an increasingly common part of training courses to require students to gain 'on the job skills'. This is usually done by aligning students with host employers, usually organisations that specialise in the service the student is training in. Students then attend visit the workplace for a specified period of time to gain practical experience as a pre-requisite to obtaining their qualifications.

- **What cover do I need cover for this?**

Public and Products Liability –cover for the legal liability to pay damages or compensation in respect of personal injury and/or property damage occurring during placements.

Professional Indemnity –cover for the civil liability resulting from the conduct of the professional services provided during placements.



- Cyber insurance is insurance designed to alleviate losses caused by an assortment of cyber incidents, including (but not limited to) data breaches, business interruption, and network damage.
- With the increase of training courses delivered solely on online platforms, personal and financial information of participants is also more readily available online.
- Copyright course materials, data, journals and articles are also easily accessible online via the learning portal of online training institutions.
- Therefore it is imperative for such organisations to protect themselves against Cyber-related data breach incidents resulting in financial loss and reputational damage.

THANK YOU

BROOKLYN 



BROOKLYN 
UNIVERSITY