Chapter 14. Professional Indemnification

14.1 Introduction
This chapter details the policy on professional indemnification provided through the Veterans Indemnity and Training Association Inc. (VITA). Users of this Manual must ascertain whether their Veteran Support Centre/Ex-Service Organisation/Younger Veteran Organisation (VSC/ESO/YVO):

- is a Member of VITA and is paying its annual premium, or
- has indemnification insurance through another insurer.

14.2 Purpose of VITA professional indemnification insurance
Indemnification is a fundamental need for professionals in practice because an act, error or omission on the part of an advocate could see the advocate and/or their VSC/ESO/YVO sued in a civil claim. This is a strong incentive for advocates to achieve accreditation and (except for Wellbeing Support Officers) VSC/ESO/YVOs to authorise only accredited advocates.

VITA’s professional indemnity insurance policy covers VITA members and their authorised advocates, whether volunteer or paid employees, in circumstances where:

- they have provided incorrect or inappropriate advice in the course of discussions with, or acting on behalf of, a client, and
- this advice has led to a financial loss by that client.

14.3 Indemnification Stipulations
The VITA Protocols, which stipulate the conditions under which indemnification insurance is provided, are summarised in the VITA brochure; see:


In brief, the Protocols stipulate that, to be indemnified, the advocate’s VSC/ESO/YVO must be a Member of VITA, and the advocate must:

- be in good standing and comply with the ATDP Code of Ethics; and
- hold either a TIP Certificate of Attendance, or a 10620NAT Statement of Attainment; and
- be undertaking continuing professional development, or have undertaken refresher training;
- provide advocacy services free of charge;
- not give legal or financial advice; and
- have their VSC/ESO/YVO’s written authorisation from to act on its behalf.

14.4 Clarifications
A number of queries have arisen that have significance for ATDP. These are clarified next.
14.4.1 VITA Cover of TIP-trained Welfare/Pension Officers
VITA has previously taken the view that it will continue to provide professional indemnity cover until all TIP-trained welfare and pension officers who wish to transfer to ATDP via the Recognition of Prior Learning (RPL) pathway have had ample opportunity to do so.

TIP-trained Level 1 and Level 2 officers have now had opportunities to undertake RPL, and will continue to have the opportunity. Level 3 and 4 advocates will have those opportunities commencing early in 2018.

In light of this, unless an advocate has successfully undertaken RPL (or a full learning pathway), VITA limits the latest date until which TIP-trained welfare and pension officers are covered by indemnification insurance to:

- Levels 1 and 2: 30 June 2019
- Levels 3 and 4: 30 December 2021

14.4.2 VITA Cover of Level 1 Advocates
The evidence is that some VSC/ESO/YVO branches/sub-branches are unsure whether and when Level 1 welfare and compensation candidates and accredited advocates are covered by VITA indemnification. VITA has provided the following clarification.

In addition to the stipulations at para 14.3:

- the VITA Protocols require that the advocate be ‘trained to the level at which they are operating’;
- the VITA Committee has taken the view that:
  - ‘trained’ is defined by what is ‘demonstrable to an insurer’, which means
  - the advocate must hold a Statement of Attainment to be covered.

14.4.3 Implications of Protocols
In the context of the MILADW/C001 Unit of Competency, the VITA clarification indicates that VITA indemnification is not possible until:

- the RTO awards the Statement of Attainment annotated competent at MILADVCo1; and
- the VSC/ESO/YVO, as a VITA Member:
  - has authorised the advocate to practice as a Level 1 Wellbeing or Compensation Advocate; and
  - the authorisation stipulates that the advocate must practice ‘under supervision’.

14.4.4 Ramifications for Practice
In the context of Advocacy practice, this suggests that:

- Compensation Pathway:
  - compensation candidates may complete claim forms as requirements of the training pathway, but their Mentor or OJT Supervisor will submit the claim to DVA; and
consistent with the stipulation that they are accredited to practice ‘under supervision’ accredited Level 1 compensation advocates will obtain their Mentor or OJT Supervisor’s sign-off before they submit claims; and

- this practice should continue until awarded an SoA at MILADVCo2.

- Wellbeing Pathway:
  - Wellbeing Candidates may undertake interviews as requirements of the training pathway, but their Mentor or OJT Supervisor will give or be responsible for the advice the client receives; and
  - consistent with the stipulation that they are accredited to practice ‘under supervision’ accredited Level 1 Wellbeing Advocates will obtain their Mentor or OJT Supervisor’s sign-off before they finalise advice to the client; and
  - this practice should continue until awarded an SoA at MILADVWo2.

14.4.5 Meaning of ‘Supervision’

These considerations also suggest that Mentors, Candidate and Level 1 Advocates must understand what constitutes ‘supervision’. In the wider context of competency-based training and adult-learning principles, the level of supervision:

- is defined by the Mentee’s ability to undertake the required task
- will necessitate:
  - interaction throughout every task at the outset, and
  - thoughtful release from close interaction on a task-by-task basis as the mentee gains experience and confidence, and
  - direction to only seek clearance of the final product/referral at that time/those times during the training pathway when the mentee is performing the task competently.

14.4.6 Level at which Advocates Authorised

During the VITA insurer’s investigation of a claim against an advocate it transpired that the advocate did not hold a VITA Member’s written authorisation to practice. This focused ESORT and ESOs on the level within a VC/ESO at which authorisation should occur.

The ESORT and the SGB considered the rationale that, as the premium is typically paid at the Member organisation’s National level, it is at that level that authorisation should occur. Also, the Member organisation’s duty of care was considered to require it to assure the advocates it is authorising that it can indemnify them. This logic would necessitate that, where VITA membership is taken out at the National level:

- the National level must sight the Advocate’s:
  - Statement of Attainment, and
  - Annual CPD points
- the Advocate must sight a copy of the insurer’s annual Certificate of Currency
The VITA position is that this is not a question for it; though its answer is of interest to the Committee. VITA views this question as an internal one for the Executive of the National VSC/ESO/YVO, which may determine that authorisation to act may be delegated. This suggests that, if at the National-level a VSC/ESO/YVO decides to exercise its right to delegate, it should ensure there is an unambiguous ‘paper trail’ so that it does not leave its local-level advocates in legal jeopardy in event of a claim.

14.5 Future Clarifications

As Regional Managers and Regional Mentors are responsible for engagement with VSC/ESO/YVO leaders, CoP Coordinators, Candidates and Advocates, it is incumbent on them and members of the National Training Team to:

- bring forward to the CFMG queries that are of national significance from VSC/ESO/YVO/CoP/Candidates/Advocates,
- the CFMG Chair consult VITA so that policy clarification occurs authoritatively, and
- the CFMG Chair ensure VITA policy clarifications are disseminated promptly.

ATDP Members have a central role to play in this information exchange process. They also should accept a responsibility to ensure advocates from non-VITA insured VSC/ESO/YVOs also request their VSC/ESO/YVO resolve indemnification concerns as they arise.