



### **Professional Indemnity Insurance**

Professional indemnity insurance is insurance that protects professionals from claims arising from legal liability for breach of their professional duty by reason of negligent act, error or omission.

Professional indemnity insurance also protects a professional where the claim proves incorrect i.e. where there was no negligence or mistake.

Architects have a professional duty to many including their clients, contractors and consultants, current and subsequent owners and occupiers of the building and adjoining properties, and the general public. Depending upon the particular circumstances and contractual arrangements, architects may be held responsible for the actions of themselves, their employees, partners, contractors and sub-contractors.

Professional indemnity policies are written on either a 'claims made' or a 'claims-made and notified' basis. This means that the policy that will cover any notification or claim is the policy that is in place at the time the claim is made against the insured, even though the events leading to the claims may have occurred long ago. Consequently, continuity of cover beyond a project needs to be considered. Some policies may restrict cover of past events by imposing a retroactive date.

Claims that commonly arise in professional indemnity matters include those involving cost of remedial work or disputes regarding additional cost of construction, bodily injury claims both during construction and post completion, third party property claims from adjoining premises, consequential claims (e.g. delayed completion), and contribution claims from other participants in the project.

Professional indemnity insurance is sold on an annual basis not on a project basis. Premiums are determined taking into account a number of factors including gross annual fees, the architectural services provided, and the type and size of work

from which fees were earned. Please contact an insurance broker for advice about policies that are appropriate for your circumstances.

### **Architects in Western Australia**

#### ***Practising Architects***

Professional indemnity insurance is now required for all practising architects, either as an individual or through an employer's policy. Practising architects that provide their services as sub-contractors to other architects or licensed corporations need to be covered by professional indemnity insurance. Practising architects in this situation should establish if they are covered by the professional indemnity insurance policy of the architect contracting their services. If not, alternative professional indemnity insurance cover must be arranged.

#### ***Architects Based Overseas***

Practising architects that are overseas are required to have professional indemnity insurance in place for any work undertaken in Western Australia. If no work is being undertaken in Western Australia, overseas architects can apply for an exemption from maintaining professional indemnity insurance (see below). Under these circumstances, the architect must source professional indemnity insurance upon their return to Western Australia. Overseas architects should seek advice from their insurer as to whether they require on-going or 'run-off' professional indemnity insurance for past projects undertaken in Western Australia.

#### ***Non Practising Architects***

Professional indemnity insurance is not a requirement for renewal of registration for non-practising architects; however, advice should be obtained from insurers as to whether 'run-off' insurance is required in order to meet any on-going obligations from previous projects.

## Licensed Corporations in Western Australia

Professional indemnity insurance is required for all licensed corporations in Western Australia.

## Amount of Insurance Cover

The minimum amount of professional indemnity insurance cover required is \$1 000 000.

## Insurance Information to be Provided

Information about insurance cover is to be provided to the Board on application for registration or licensing, and for renewal of registration and licences. A copy of the insurance Certificate of Currency is to be provided to the Board as part of the registration, licensing or renewal process. Employees can submit a letter from their employer naming them as an insured employee, and stating the name of the insurer, period of insurance cover and amount of insurance cover.

## Exemptions

The Board will consider providing an exemption to the requirement for practising architects to have professional indemnity insurance, if they can demonstrate that 'special circumstances' apply. Examples of special circumstances include, where a project involves dangerous goods and insurers will not provide insurance, working overseas and insurance market failure such as the HIH collapse.

To apply for an exemption, architects should submit a written explanation to the Board outlining their circumstances and why they cannot source insurance cover. After considering each case on its merits, the Board may grant an exemption on the condition that the architect informs their clients they do not have professional indemnity insurance cover.

## Frequently Asked Questions

### Why do architects have to have professional indemnity insurance?

Architects must have appropriate professional indemnity insurance to protect the public and their own professional interest. Allegations of professional negligence often involve complex and detailed issues, and litigation is expensive and traumatic. Professional indemnity insurance is important in safeguarding the architect, the public and the consumer.

### Why do I need to maintain professional indemnity insurance when I only undertake small jobs?

The widening of contractual liability in recent years means that even a small job can give rise to a significant claim. There is not necessarily a link between the level of gross fee income and the size of the claim. The key issue is the extent of the loss that might result from any mistake. Brokers will advise on the realistic minimum levels of indemnity relevant to particular situations.

### Do architects who give advice on an honorary basis to community groups, family or friends need cover?

Regardless of whether a professional person provides advice at no charge, or for an exchange of services or other benefit, they still have the same duty of care to their client, are exposed to the same liabilities and can be sued for negligence. Architects in this situation should seek advice from an insurance broker.

### Do I need cover for private jobs outside my employment?

Yes, your employer's cover does not cover you for work carried out on your own behalf. If you provide architectural services on your own behalf you need to seek appropriate cover.

### Do I have to show clients a copy of my professional indemnity insurance policy?

The amount of information an architect provides to clients regarding professional indemnity insurance cover should be negotiated between the parties. However, it is strongly recommended that architects advise their clients of the extent of their insurance and ensure that the amount of cover meets their client's minimum expectations.

### Can I self insure?

Self insurance is only acceptable if information about insurance cover can be provided as prescribed in the *Architects Regulations 2005* (sections 18 and 19) i.e. provision of a document from the insurer or broker showing the period of insurance cover, the amount of the insurance cover and the categories of persons to whom the insurance cover applies. Self insurance is usually undertaken by a captive insurance company in which the captive insurance company underwrites the business risk of other subsidiaries of the parent company or owner.

### How do I choose an insurance provider?

Insurance brokers can provide advice on insurance companies and comparisons of their products. The terms and conditions of professional indemnity insurance policies differ and an architect should satisfy himself/herself that the policy on offer matches all their requirements. Issues to consider include the limits of indemnity to be selected, levels of excess, exclusions, definitions, the insurer's attitude to alternative dispute resolution, how the insurer handles claims and their track record in honouring obligations to policy holders.

### What happens if my professional indemnity insurance policy lapses or expires?

If an architect does not have appropriate professional indemnity cover, nor is eligible for an exemption, they cannot renew their registration as a practising architect in Western Australia. Once a policy expires, all cover ceases except for those matters that have been reported while the policy was current. The need to maintain cover for previous work done should be considered by architects who change from the practising to non-practising division in the Register. Advice should be sought from your insurance broker regarding the level of 'run-off' cover and the length of time it should be maintained once you cease to practise.

## Relevant Sections from the *Architects Act 2004* and *Architects Regulations 2005*

### *Architects Act 2004*

#### 30. Conditions on registration or renewal of registration

- (1) The registration or renewal of the registration of a natural person is not to be subject to conditions except to the extent that conditions may be imposed —
  - (a) under subsection (2);
  - (b) under section 51 (6); and
  - (c) by way of taking disciplinary action.
- (2) The Board may impose as a condition of registration or renewal of registration of a natural person —
  - (a) that insurance cover be in effect in respect of the person's civil liability for anything done or omitted by the person as an architect; and
  - (c) that the insurance cover be of a standard or for an amount prescribed by the regulations.

#### 32. Conditions on grant of licences or renewal of licences

- (1) The Board may grant a licence or renew a licence subject to the conditions that the Board specifies.
- (2) Without limiting subsection (1), the Board may impose as a condition of the grant of a licence or the renewal of a licence —
  - (a) a requirement to give the Board advice or information about the registered person who has ultimate responsibility for the architectural work done by the corporation;
  - (b) that insurance cover be in effect in respect of the corporation's civil liability for anything done or omitted by the corporation as an architect; and
  - (c) that the insurance cover be of a standard or for an amount prescribed by the regulations.

**54. Information about insurance**

- (1) A registered person or a licensed corporation must give the Board the information that is prescribed by the regulations in relation to the insurance cover that is in effect in respect of the person or corporation.
- (2) The information referred to in subsection (1) must be given by the time that is prescribed by the regulations.

**Architects Regulations 2005****17. Amount of insurance cover**

For the purposes of sections 30(2)(b) and 32(2)(c), the minimum amount of insurance cover is \$1 000 000.

**18. Information about insurance cover — registered persons**

- (1) For the purposes of section 54(1), the information in relation to the insurance cover that is in effect in respect of a registered person is a document from the insurer or a broker showing —
  - (a) the period in respect of which the insurance cover is in effect;
  - (b) the amount of the insurance cover; and
  - (c) the categories of persons in respect of whose acts and omissions the insurance cover applies.
- (2) The time for giving the Board information mentioned in subregulation (1) is —
  - (a) in the case of the initial registration, 28 days after the day on which the registered person is advised of registration;
  - (b) in the case of a renewal of registration, 14 days after the day on which the registered person is advised of the renewal; and
  - (c) in any case where the insurer, the period of insurance or the amount or type of cover is changed after the period mentioned in paragraph (a) or (b), 14 days after the change occurs.

**19. Information about insurance cover — licensed corporations**

- (1) For the purposes of section 54(1), the information in relation to the insurance cover that is in effect in respect of a licensed corporation is a document from the insurer or a broker showing —
  - (a) the period in respect of which the insurance cover is in effect;
  - (b) the amount of the insurance cover; and
  - (c) the categories of persons in respect of whose acts and omissions the insurance cover applies.
- (2) The time for giving the Board information mentioned in subregulation (1) is —
  - (a) in the case of the initial grant of the licence, 28 days after the day on which the licensed corporation is advised of the grant of the licence;
  - (b) in the case of a renewal of a licence, 14 days after the day on which the licensed corporation is advised of the renewal; and
  - (c) in any case where the insurer, the period of insurance or the amount or type of cover is changed after the period mentioned in paragraph (a) or (b), 14 days after the change occurs.

**Disclaimer**

*The content of this information sheet is based upon the best information available at the date of issue and is subject to change without notice. The Board does not accept any liability to any person for the information or the use of this information. Persons requiring an interpretation of the meaning of the Architects Act or Regulations should seek their own legal advice. Persons requiring advice on their professional indemnity insurance needs should contact an insurance broker.*