



FAQs for Architects

Professional indemnity insurance: May 2005

What is professional indemnity insurance?

Professional indemnity insurance is intended to *protect a professional against financial loss resultant 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 – that is where there was no negligence or mistake.

A professional indemnity policy is *claims made and notified policy* which means that generally the policy that will respond to any notification or claim is the policy in place at the time the claim is made against the insured. Retroactive cover varies but where continuity of professional indemnity insurance has been maintained it is usually provided without additional premium.

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 and sub-consultants.

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 – eg 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, the type and size of work from which fees were earned. For advice relating to individual circumstances contact an insurance broker.

Do architects in NSW have to hold professional indemnity insurance?

Under the provisions of the Architects Act 2003 all architects in NSW are now required to maintain professional indemnity insurance appropriate to the levels of architectural services provided by them, unless they are in the non-practising category of the Register.

Why do architects have to have professional indemnity insurance?

Like others providing professional services in the construction industry 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.

What happens if an architect does not have insurance?

If an architect does not have professional indemnity insurance cover appropriate to the level of services provided, nor is eligible for an exemption they are not able to renew their registration as an architect in NSW. This means that an individual in this situation does not appear on the NSW Register of Architects and may not use the title *architect* nor provide *architectural services* in NSW. If you have not renewed your registration because you do not have professional indemnity insurance, but are still providing architectural services please contact the Board immediately.

Do I have to show the Board a copy of my policy?

Architects have to declare at annual renewal that they have appropriate professional indemnity insurance cover unless they have been granted an exemption from this provision. Currently, the Board does not require architects to provide a copy of their policy. However, where a complaint against the architect's professional conduct has been made, evidence of cover may be required by the Board.



Who is eligible for exemption from maintaining professional indemnity insurance?

The overwhelming majority of architects in NSW already have appropriate professional indemnity cover, or are employed by an architect corporation or firm. Exemptions from the requirement to maintain appropriate professional indemnity insurance cover for the 2005 registration period have been granted to architects who have recently commenced practice and in cases where the Board considers that the particular circumstances warrants an exemption. Examples of the most common grounds for exemptions include where an architect is providing services on a consultancy basis to another architect firm and is covered by their insurance and where an architect is their own client.

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 potential 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 to community groups, churches, schools etc on a pro bono basis 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 and 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 NSW Architects Code of Professional Conduct requires an architect to ...provide each client of the architect with information relating to the insurance maintained by the architect for the architectural services to be provided to the client. The extent of the

information an architect provides to their client regarding the details of cover would be negotiated between the parties.

Is there a minimum indemnity level stipulated by the Board?

The Board does not stipulate a minimum indemnity level of professional indemnity insurance. Architects should maintain sufficient cover to enable them to meet claims arising from their professional practice.

How do I choose an insurance provider?

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.

The Board does not recommend any particular broker but is aware of a number active in the market.

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

Firstly, if an architect does not have appropriate professional indemnity cover nor is eligible for an exemption then they cannot renew their registration as an architect in NSW. Secondly, 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 the non-practising category in the Register. Advice should also 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.

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