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## Guidance Note 1

# Professional Indemnity Insurance

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### Compulsory Professional Indemnity Insurance

Professional indemnity insurance protects professionals from claims arising from legal liability for breach of their professional duty by reason of negligent act, error or omission. The policy ordinarily covers an architect whether or not there has in fact been any negligence. By providing this protection for architects, professional indemnity insurance also protects the consumer and the public at large.

Many registered architects in South Australia already have professional indemnity insurance. The purpose of this note is to inform those who do not have insurance that the Architectural Practice Act 2009 (which came into force on 1 January 2011), now makes it compulsory for anyone in South Australia wishing to register as an architect, or to continue to provide services as a registered architect to either have this insurance in place themselves, or to make sure that they are covered by their employer's policy.

Sections 28(1) (a) to (d) of the Act deal with the requirements for registration as an architect, and Section 28(1)(c) states that, unless the Board gives an exemption, any person applying for registration must satisfy the Board that they are:

“...insured against civil liabilities that might be incurred by the person in connection with the provision of services as a registered architect.”

Section 59 of the Act prohibits any registered architect from providing services as a registered architect unless insured or indemnified against civil liabilities that might be incurred by the person in connection with the provision of architectural services.

Any architect who provides architectural services without having professional indemnity insurance in place could be subject to disciplinary proceedings for unprofessional conduct.

### Amount of Insurance Cover

The Act does not specify a minimum amount of professional indemnity insurance cover. An architect must be insured against civil liabilities “...in a manner and to an extent approved by the Board...”. The Board considers that any architect

applying for registration should have in place as a minimum requirement, professional indemnity insurance cover:

- with a limit of indemnity of \$1 million for any one claim and in the aggregate for all claims during any one period of insurance. The limit of indemnity must not include the costs of the defence of claims (Defence Costs);
- that provides for at least one automatic reinstatement of the aggregate limit or limit of indemnity where the aggregate limit or limit of indemnity purchased is less than or equal to \$2 million for any one claim and in the aggregate for all claims during any one period of insurance (excluding Defence Costs).

However, each architect will have to form their own view and, if necessary, seek advice about whether that amount is sufficient to meet the civil liabilities in respect of any particular practice, project and/or professional service undertaken.

Architects should also obtain advice about the effect of any exclusions applicable to any particular professional indemnity insurance policy. It is not uncommon, for example, for cover to be excluded in circumstances where an architect has assumed a liability under a contract that is greater than the liability that would be imposed by the common law. Or, cover may not apply where an architect is performing cost consultancy services or if there is a close relationship between the entity designing a building and the entity constructing the same building or for whom the building is being constructed.

### Insurance Information to be provided

Information about professional indemnity insurance cover is to be provided to the Board on the first application for registration and for each renewal of registration. Verification that insurance continues to meet these requirements must be declared at each renewal of registration. A copy of a Certificate of Currency is to be provided with every application. The Certificate of Currency must provide details of all exclusions to the professional indemnity policy. Employees, including public sector employees, can submit a letter from their employer naming them as an insured employee and attaching the applicable Certificate of Currency. When investigating any complaint concerning the professional conduct of any architect, the Board will also require the

architect to produce evidence of current professional indemnity insurance cover.

### Exemptions

The Board may grant exemptions from the requirement for professional indemnity insurance. The Act does not specify any particular circumstances when exemptions apply but leaves it to the discretion of the Board to decide if and when exemptions are appropriate. The starting point must be that there will be very limited circumstances in which an exemption will be allowed where the person intends to provide architectural services. That person will have to satisfy the Board that there are exceptional reasons for an exemption to apply.

For those categories of persons who wish to be registered as an architect but do not provide architectural services in South Australia such as:

- retired architects
- architects practising exclusively outside of South Australia (overseas or interstate)
- architects taking time off from work for personal reasons such as maternity, paternity or carers leave

an exemption from the requirement to obtain professional indemnity insurance is more likely. However, advice should be obtained from your insurance broker as to whether 'run off' insurance is required in order to meet any on-going obligations from previous projects, advice or professional services undertaken before seeking the exemption.

An exemption granted in any circumstances will be limited in time to the date of the next renewal and may be subject to conditions, such as the architect having to inform their clients about the absence of any professional indemnity insurance cover or that it is noted on the registration certificate that the architect is exempt from having professional indemnity insurance cover. A statutory declaration accompanied by substantiating documentation will be required the first and each subsequent time the exemption is sought (including on each renewal application) stating that the person making the application will not provide any architectural services whilst exempt.

An exemption will not be granted when the application for exemption is based solely on the cost of insurance.

### Frequently Asked Questions

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

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The widening of contractual liability in recent years has meant that even a small job can give rise to a significant claim.

There is not necessarily a link between the level of fee income and the size of a claim. The key issue is the extent of the loss that might result from any mistake. Reputable insurance brokers experienced in providing professional indemnity insurance can advise on realistic minimum levels of cover relevant to your particular situation or circumstances.

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

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

#### Do I need cover when I am giving advice on a pro bono basis for community groups, family or friends?

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 a reputable insurance broker experienced in providing professional indemnity insurance.

#### 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 dispute or uncertainty can be avoided or minimised if architects advise their clients of the extent of their insurance to ensure that the amount of cover meets their client's minimum expectations.

It is not uncommon for an architect to provide a Certificate of Currency for professional indemnity insurance to a client as evidence of cover.

#### Please contact the Board if you require further information.

#### 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 Architectural Practice Act 2009 should seek their own legal

advice. Persons requiring advice on their professional indemnity insurance needs should contact an insurance broker.