

Factsheet

PROFESSIONAL INDEMNITY INSURANCE

Professional indemnity (PI) insurance provides financial cover in the event of an architect's error or omission, or failure in the performance of their professional duty.

NSW Architects Code of Professional Conduct

Clause 15 of the [NSW Architects Code of Professional Conduct](#) (the 'Code') requires that:

- (1) Subject to any requirements of the Act or the Regulation, an architect must—
 - (a) maintain a policy of professional indemnity insurance appropriate for the architectural services being provided by the architect, and
 - (b) 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.
- (2) On the application of an architect, the Board may, by order in writing, grant an exemption to the architect from the provisions of subclause (1) if—
 - (a) the Board is satisfied that the architect has commenced practice as an architect only very recently, or
 - (b) the Board is otherwise satisfied that it would not be appropriate in the circumstances for the architect to comply with the provisions of subclause (1).
- (3) Subclause (1) does not apply to—
 - (a) any architect in respect of the provision of architectural services if—
 - (i) the person engaged to provide the architectural services is not the architect, and
 - (ii) the architect is providing the architectural services only as an employee of that person and not on the architect's own account, or
 - (b) any non-practising architect, or
 - (c) any architect who has been granted an exemption by the Board under subclause (2).

Architects who do not satisfy the necessary PI insurance requirements may be removed from the NSW Register of Architects (the 'Register') pursuant to [section 24\(2\)\(h\)](#) of the [Architects Act 2003](#) (the 'Act').

Duty to declare

Architects in the Practising category must, at initial registration, registration renewal, annual reporting and application for reinstatement to the Register provide evidence of appropriate PI insurance held or a completed PI Insurance Exemption or Exclusion Agreement with supporting documentation where required. If an architect holds appropriate PI insurance, they must also provide certain data such as the name of the insurer, class of insurance, name/s of the insured, policy start and end dates, professional services covered (eg. architectural services), limit of liability / indemnity (per claim and in the aggregate), and any other information requested by the NSW Architects Registration Board ('NSW ARB').

Architects in the Non-practising category must, at initial registration and annually, sign an agreement that they will not provide any architectural services in NSW while they are registered in the Non-practising category.

Architects must inform the NSW ARB within 14 days of any change to circumstances relating to their current PI insurance exemption or current PI insurance exclusion.

Expiration of PI insurance

Architects are to provide evidence of their updated PI insurance evidence prior to the policy expiring. The NSW ARB emails reminders to architects who maintain PI insurance to provide the NSW ARB with evidence of their updated PI insurance.

If an architect does not provide evidence of current PI insurance, or does not apply for an exclusion or exemption from the requirement to maintain an appropriate PI insurance policy, they may be removed from the Register or have a complaint made against them by the Board.

Amount and type of cover

All Practising architects must maintain a level of PI insurance that is appropriate to the architectural services they provide. Architects should ensure that they have an appropriate level of cover in terms of:

- minimum dollar amount per claim,
- minimum aggregate cover in any year of insurance, and
- maximum excess or deductible.

The limit of indemnity available is typically listed on the policy schedule. The policy wording will then deal with how the limit is applied. Ideally, the policy should define the professional services insured as or including 'architectural services.'

Architects should seek advice from their insurance broker regarding the appropriate level of cover and the information they must provide to clients.

Policies must be from an approved provider authorised to conduct new or renewal insurance business in Australia.

Information provided to clients

Clause 15(1)(b) of the [Code](#) requires architects to provide each client with information relating to the PI insurance they maintain for the architectural services to be provided to the client. The NSW ARB considers that architects should provide their clients with a certificate of currency of the PI insurance they hold.

Run off insurance

Architects should seek advice from their insurance broker about appropriate run off insurance.

It is recommended that architects who are considering retirement consider run off insurance such that a policy is in place to respond to any claims made after retirement.

It is also recommended that architects who change the business structure through which they provide architectural services consider run off insurance such that a policy is in place to respond to any claims for the former business.

Important things to note

It is very important that architects notify their insurer as soon as they become aware of any facts or circumstances that could result in a claim (regardless of whether a claim has in fact been made) as this will increase the likelihood that a subsequent claim arising from those facts or circumstances will be covered by their insurance policy.

While PI insurance generally covers claims for liabilities arising in the performance of professional services, there are variances in the scope of cover provided by policies available in the market and the scope of cover available under a particular policy will depend on the precise wording used in that policy. The insuring clause of the policy sets out the scope of cover, but is typically limited by the other terms, conditions and exclusions contained in the policy.

It is therefore important that architects read their insurance policy carefully and understand the cover that it provides. Advice should be sought from an insurance broker if the architect has any queries or concerns regarding the scope of cover afforded by their insurance policy.

Generally, the NSW ARB does not accept Errors and Omissions insurance as a substitute for PI insurance.

Statutory duty of care

Part 4 of the [Design and Building Practitioners Act 2020](#) (the 'DBP Act') imposes a statutory duty of care on architects carrying out construction work to avoid causing economic loss to current and future landowners due to defects. Importantly, the duty of care obligations apply retrospectively.

The duty of care provisions have been considered in a recent case [Goodwin Street Developments Pty Ltd atf Jesmond Unit Trust v DSD Builders Pty Ltd \(in liq\)](#) [2022] NSWSC 642 (Goodwin v DSD). The NSW Supreme Court held that the section 37 duty of care is not limited to Class 2 (residential apartment) buildings but instead applies to any building caught by the broad definition of 'building' in the [Environmental Planning and Assessment Act 1979](#) and extends to building work, including (but not limited to) residential building work within the meaning of the [Home Building Act 1989](#).

This means that the duty of care obligation under the DBP Act extends beyond Class 2 buildings and applies to architects preparing regulated designs and other designs for building work for buildings other than Class 2 buildings.

It is also possible, following Goodwin v DSD, that section 37 could allow individual architects to be sued, especially if their role equates to supervision or substantive control of the building work or preparation of regulated designs or other designs for building work.

A typical PI insurance policy would usually cover the section 37 duty of care unless the policy has a specific exclusion for the DBP Act. Architects should consult their insurance broker to confirm their coverage.

Architects should speak to their insurer or seek legal advice if they have any concerns about the DBP Act.

Exemptions

An architect may at any time seek the exercise of the Board's discretion under clause 15(2) of the Code to exempt them from holding PI insurance. Exemptions are only applicable for the current year, and a new application must be made annually if further exemptions are sought in the future.

An architect in the Practising category may seek an exemption from the requirement to hold appropriate PI insurance under clause 15(2) of the Code if they:

- are only providing architectural services outside of NSW or overseas, or
- are unemployed and not providing architectural services, or
- are currently undertaking further studies and not providing architectural services, or
- are only providing architectural services to themselves or their immediate family, or
- are 'very recently' commenced in practice as an architect within the last 2 months, or

- are on parental leave and not providing architectural services, or
- are in ill health and not providing architectural services, or
- request an exemption due to any other extenuating circumstances, or
- submit any relevant circumstances for seeking an exemption under clause 15(2).

Architects who wish to apply for an exemption from the requirement to hold PI insurance must submit to the Registrar a completed PI Insurance Exemption Agreement, tick the relevant circumstance, and provide further information where requested via the online form.

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

All applications will be presented to the Board at its next meeting for consideration and decision. The NSW ARB will advise the architect of the outcome in writing within 14 days of the Board's consideration and decision as to whether it has granted an exemption under clause 15(2) of the Code.

Where an exemption from the requirement to hold PI insurance is granted by the Board pursuant to clause 15(2) of the Code, the architect will be notified and a note to that effect will appear next to the architect's name on the Register.

If an architect's request for PI insurance exemption under clause 15(2) of the Code is not granted by the Board, the architect will be directed to obtain PI insurance within 14 days and to provide a copy of their PI insurance certificate of currency.

Exemptions granted to architects who have 'very recently' commenced architectural practice within the last two months will apply for only two weeks from initial registration.

Important note: Any exemption given by the Board in relation to PI insurance obligations under the [Code](#) in no way affects the architect's obligations under the DBP Act if they are a registered design practitioner under the DBP Act. If an exemption is granted by the Board, the architect must ensure that they still comply with any obligation they have under any other legislation, including without limitation the DBP Act.

Exclusions

An architect may at any time seek the exercise of the Board's discretion under clause 15(3) of the Code to exclude them from the requirement to hold PI insurance. Exclusions are only applicable for the current year, and a new application must be made annually if further exclusions are sought in the future.

Exclusions and certain employees

An architect who is an employee of the person engaged to provide the architectural services is not required to hold their own PI insurance provided that their employer has been engaged to provide those architectural services. For example, if an architect only provides architectural services as an employee of an architect corporation or firm, the architect will not need to take out their own PI insurance for the purposes of clause 15(1) of the [Code](#).

Architects who wish to apply for an exclusion from the requirement to hold PI insurance must submit a completed PI insurance Exclusion Agreement and provide relevant details where requested to the Registrar via the online form.

Architects who declare that their employer does not provide architectural services must upload a letter from their employer, on employer letterhead to the Registrar via the online form.

All applications will be presented to the Board at its next meeting for consideration and decision. The NSW ARB will advise the architect of the outcome in writing within 14 days of the Board's consideration and decision as to whether it has satisfied that an exclusion under clause 15(3) of the Code applies.

Where an architect satisfies an exclusion in clause 15(3) of the Code, the architect will be notified and a note to that effect will appear next to the architect's name on the Register.

If an architect does not satisfy clause 15(3) of the Code, the architect will be directed to obtain PI insurance within 14 days and to provide the NSW ARB with evidence, being a PDF copy of their PI insurance certificate of currency.

Limitation 1

If the architect occasionally provides architectural services on their own behalf, the architect will need PI insurance appropriate for these services. For example, if an architect usually employed by an architect corporation or firm undertakes a small project such as a kitchen renovation on the side, they would need to have their own PI insurance appropriate for this service. They would also need to make the declaration that they have appropriate PI insurance in relation to their current circumstances and submit a copy of the PI insurance certificate of currency and other information in the usual way.

Limitation 2

If an architect is working for an individual or organisation who is not providing architectural services, the architect will either need to obtain PI insurance under clause 15(1) or obtain an exemption from the Board under clause 15(3) of the [Code](#). An example of this situation would be an architect who is working for a developer who builds hotels and also runs the hotels once they are completed. This architect would need to have PI insurance appropriate for this service. They would also need to make the declaration that they have appropriate PI insurance in relation to their current circumstances and submit a copy of the PI insurance certificate of currency and other information in the usual way.

Exclusion for Non-practising architects

Architects registered in the Non-practising category are not required to hold PI insurance because they will not be providing any architectural services. These architects must, at initial registration and annually, sign an agreement that they will not provide any architectural services in NSW while they are registered in the Non-practising category. A breach of this agreement will be considered by the Board to constitute unsatisfactory professional conduct and may attract sanctions under [section 43](#) of the [Act](#).

Non-compliance with PI insurance requirements

As of 1 July 2019, the Board may remove an architect's name from the Register if the architect has failed to comply with any PI insurance requirements, pursuant to section [24\(2\)\(h\)](#) of the [Act](#).

If an architect is found to be possibly non-compliant with PI insurance requirements as provided by the Code, the NSW ARB will send a Notice of PI Insurance Non-Compliance to the architect. The architect is given 28 days to make written submissions to the Board providing evidence of PI insurance compliance or to request an exemption or exclusion from the requirement to maintain PI insurance as provided in the Code. The Architect's submission will be put to the next Board meeting for the Board's consideration and decision. The Board will decide whether to:

1. take no further action
2. remove the architect from the Register pursuant to section 24(2)(h) of the Act, or
3. not remove the architect from the Register but make a complaint against the architect pursuant to section 34 of the Act.

Reinstatement to the Register

An architect who has been removed from the Register for failing to comply with PI insurance requirements may apply for re-registration at any time. However, prior to having their registration restored, the architect is required to provide evidence of PI insurance appropriate for the architectural services being provided by the architect.

Refund of fees

If an architect's name is removed from the Register for non-compliance with PI insurance requirements, the architect's registration will be "suspended" until such time that the PI insurance requirements for re-registration have been satisfied. If registration is reinstated, the duration of the suspension does not affect the duration of the nominated registration period and no refund will be granted.

Disclaimer

The content of this Factsheet is provided for information purposes only. It is based upon the best information available at the date of issue and is subject to change without notice. The NSW Architects Registration 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 2003* or *Architects Regulation 2017* or *Design and Building Practitioners Act 2020* should seek their own advice from a legal practitioner. Architects should seek advice from their insurance broker regarding appropriate insurance cover and the information they must provide to clients.
