

ADVISORY NOTICE BUILDING

06/19

Advisory Notices are issued to assist in the interpretation of the Planning, Development and Infrastructure Act 2016 and the Development Act 1993

September 2019

PROFESSIONAL PRACTICE: Regulation 17 of the *PDI (Accredited Professionals) Regulations 2019* – An Accredited Professional’s responsibility to hold “reasonable and adequate insurance”.

BACKGROUND

This Advisory Notice provides guidance to building professionals who have, or intend to become, accredited under the Accredited Professionals Scheme (APS) under the *Planning, Development and Infrastructure (PDI) Act 2019*. The APS is designed to ensure professionals involved in assessing development maintain minimum standards of practice and produce evidence they are sufficiently qualified to make decisions at certain levels. In this regard, Accredited Professionals are required amongst other things to hold professional indemnity insurance.

Professional indemnity (PI) insurance provides you and your business with protection against civil liability for compensation and costs made by claimants resulting from the conduct of professional services and the giving of professional advice.

This notice provides particular guidance in relation to an Accredited Professional’s obligation to comply with Regulation 17 of the *PDI (Accredited Professionals) Regulations 2019*, in relation to holding a policy for professional indemnity insurance that is ***reasonable and adequate, taking into account the amount and nature of work undertaken by the accredited professional***. This continues the obligation under the Development Act that private certifiers hold such insurance.

This notice should be read in conjunction with the information set out in Building Advisory Notice 03/19 ‘Changes resulting from Limitations and Exclusions on Professional Indemnity Insurance’ issued in April 2019, available for download from the South Australian Planning Portal at www.saplanningportal.sa.gov.au.

DISCUSSION

On 1 April 2019 the APS became operational, and applications are now being received and processed for building professionals wishing to become accredited. Questions have been asked by building professionals regarding the APS, in particular regarding their obligations under the PDI (Accredited Professionals) Regulations 2019 to hold professional indemnity insurance.

In implementing the APS, the Accreditation Authority has given consideration to the challenges within the building and construction industry in relation to professional indemnity insurance. The Accreditation Authority is implementing the APS in the knowledge insurers who previously provided professional indemnity to building surveyors, have taken steps to manage exposure to claims as a result of, for example, the use of Aluminium Composite Cladding.

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Insurers have taken steps to limit their exposure to claims in a number of ways, including:

- in some cases withdrawing from the marketplace in relation to the provision of professional indemnity insurance for building surveyors
- limiting the scope of cover within professional indemnity insurance policies offered to building surveyors by excluding construction work using ACP products
- increasing premiums for building surveyors for professional indemnity insurance, in many cases significantly, depending on the nature and quantity of work.

Reasonable and Adequate Insurance

The Accreditation Authority recognises your level of accreditation under the APS is a reflection of your qualifications, skills and expertise as a building professional. It is further recognised that this may not always correspond with the amount and nature of work you undertake as a professional, which in turn is likely to inform the amount of professional indemnity you seek to take out from your insurer to operate and / or perform building rules assessments.

In this regard, in making your application to become accredited under the scheme, the Accreditation Authority will ask you to supply details of the professional indemnity insurance you hold and to confirm that it is a reasonable and adequate level of insurance taking into account the amount and nature of work you perform.

For example, you may seek accreditation at the highest level (Building Level 1), however the nature and amount of your work is on the assessment of Class 1 buildings, and as such the value of your insurance reflects this.

Individual Responsibility

It is your responsibility as a professional to ensure you do not operate and / or perform building rules assessments and/or provide professional advice outside of the scope and limitations of the professional indemnity insurance that you hold. You are also responsible for updating the Accreditation Authority in respect of any changes to your level of insurance.

For these reasons, the Accreditation Authority will not specify what is an appropriate level of insurance for you to hold, but will however require you to assume responsibility for determining what work you can perform within the level of the insurance you have secured. Notwithstanding this, while professionals operating at the same accreditation level may hold differing PI Insurance, the following is provided as a guide to the level of cover that in many instances will be accepted by the Accreditation Authority as reasonable and adequate for each level of accreditation:

- Building Level 1: \$5,000,000
- Building Level 2: \$2,000,000
- Building Level 3: \$1,000,000
- Building Level 4: \$1,000,000

Please note in some instances the Accreditation Authority may also consider previous work undertaken and/ or the nature of work you expect to undertake in the future and, based on that, consider a different level of cover to be reasonable and adequate.

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In order to maximise public confidence in the Accreditation Scheme and by extension, the building profession itself, the Accreditation Authority will formalise this requirement that you operate responsibly by attaching a condition to your Accreditation requiring you to operate within the scope of your insurance. All accreditations and conditions attached to them will be identified on the Register of Accredited Professionals on the SA Planning Portal.

This Advisory Notice is for general information only and should not be relied upon as legal advice or an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations you should obtain independent legal advice.

Further information

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