

# ADVISORY NOTICE BUILDING

03/19

*Advisory Notices are issued to assist in the interpretation of the Development Act 1993*

*April 2019*

## **PROFESSIONAL:**

### **Changes resulting from Limitations and Exclusions on Professional Indemnity Insurance**

This Advisory Notice provides information about limitations and exclusions regarding the use of aluminium composite panels (ACP) being placed by insurers on professional indemnity insurance policies and the South Australian Government's policy response. 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.

#### **BACKGROUND**

Under the *Development Act 1993* (**Development Act**), the government provides consumer protection to the public by ensuring that only suitably qualified persons with the appropriate level of experience are permitted to certify building works against the Building Rules. It is a mandatory requirement for certification under the Development Act that private certifiers hold a policy of PI insurance that is reasonable and adequate taking into account the amount and nature of the work undertaken by the private certifier.

**Effective immediately, private certifiers who have limitations or exclusions on their PI policies will be required to apply for accreditation under the Accredited Professionals Scheme** established by regulations to the *Planning, Development and Infrastructure Act 2016* (**PDI Act**). The new scheme provides for differing levels of accreditation depending on experience and qualifications, and accreditation may be the subject of conditions. It is also a mandatory requirement for registration that accredited professionals hold a policy of PI insurance that is reasonable and adequate taking into account the amount and nature of the work undertaken by the accredited professional.

#### **DISCUSSION**

For some time there have been concerns about the use of ACP in construction in Australia following serious fires involving this product. The recent court ruling on the claims made by apartment owners of the Lacrosse building in Melbourne attributed significant liability to building professionals involved in the development. In response, insurers are reassessing the extent to which they are willing to indemnify building professionals for claims made in relation to use of ACP.

DPTI is concerned to ensure that both private certifiers and the public are aware of the limits of insurance coverage in relation to the certification of the use of ACP in certain building developments.

DPTI has resolved as a matter of public policy and in order to discharge its duties as the administrator of the certification schemes, that a limitation in a private certifier's insurance should be reflected as a limitation on the scope of work covered by the registration of a private certifier.

Whilst it will be possible for conditions to be placed on an accredited professionals registration under the PDI Act there is no means of noting conditions on the scope of practice of private certifiers under the Development Act. This means the public has no way of knowing that a private certifier may not have insurance coverage in relation to decisions made about certifying the use of ACP in certain types of construction. Furthermore in the event that the ACP contributes to losses incurred in a fire and a private certifier is apportioned civil liability the insurer will not indemnify the private certifier against claims made. This is a sub-optimal outcome for both the private certifier and the general public.

Therefore as a necessary consumer protection measure DPTI requires all private certifiers that have qualified or conditional PI insurance to apply to be registered as an accredited professional under the new scheme as soon as possible - the registration process is set out at the bottom of this notice. If you are a private certifier with restricted PI insurance and you do not transition to the Accredited Professionals Scheme, your registration as a private certifier may be cancelled.

There are a number of benefits for private certifiers that transition early to the Accredited Professionals Scheme; firstly you will be publicly listed on the South Australian Planning Portal as having the qualifications and experience required to make assessments in relation to particular developments; secondly you will be in a position to refer your clients to the public listing in the event that you are asked to certify outside the scope of your registration and PI insurance; thirdly DPTI staff will personally case manage your application and assist you to transition to the new Accredited Professionals Scheme.

### **Registration process**

Those private certifiers now subject to limited or conditional PI insurance are required to transition at the commencement of their limited insurance policy to the new Accredited Professional Scheme. Please visit the [SA Planning Portal](#) for details of the registration process.

*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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