

Insurance In Construction – Are You Really Covered?

Construction entails many risks to a builder by virtue of its occupation, control and/or ownership of the site. The risks include personal injury or death to persons and damage or destruction of property (including the contract works itself).

Obtaining insurance is a means by which such risks are transferred to a professional risk bearer (that is, an insurance company). Building contracts contain a standard term requiring the builder to obtain insurance for the contract works, public liability and workers compensation. Subcontracts also normally contain an obligation for insurance to be obtained to indemnify the builder in relation to the work performed by the subcontractor.

Every project is different with varying risks. A prudent builder or developer would firstly identify all likely areas of risk and review its policy to consider the following:

1. Is the type of risk covered under by policy?
2. Is the limit of liability sufficient in the circumstances?
3. Are there special conditions or exclusions that may apply to exclude or limit a claim?
4. Is product liability insurance required for any key elements to be used in the works?
5. A Directors and Officers policy for directors and officers of the company.

The following are some of the considerations which builders should be mindful of:

- Professional services – if the contract works involve the provision of professional services (for example, designing, engineering or architecture through a ‘design and construct’ contract), then professional indemnity (PI) insurance should be considered.
- Hot works – some public liability policies excludes damage caused by ‘hot works’ (involving flame cutting, flame heating, arc or gas welding, metal grinding, etc). It may be a blanket exclusion or may be conditional on the works being carried out by a licensed/qualified person and/or in accordance with all relevant statutes and Australian Standards 1674.1 and 1674.2.
- Asbestos removal – part of the works may involve the removal of asbestos material. Most standard public liability policies have limited or no cover for damage caused by asbestos. Whilst a subcontractor may be licensed to undertake asbestos work, they may not be adequately insured. There are specialist environmental policies which will cover asbestos removal.
- Fines and penalties – civil penalties can easily ruin a business with work health and safety fines as high as \$550,000 and environmental fines as high as \$5.5 million. Existing policies may exclude cover for fines and

penalties and consideration should be given to extending cover for this risk, including cover under a Directors and Officers policy.

- Adequate 'run-off' cover – professional indemnity policies are usually 'claims made' rather than 'occurrence based' and accordingly, companies or individuals ceasing business may still have exposure to claims arising from their work made after their business ceases. For example, an accident may result from a negligently designed balustrade several years after the completion of the works. The retired designer may have had professional indemnity insurance at the time of the design, but no longer have insurance at the time of the accident. Run off cover generally protects a professional for the same risks that the professional indemnity insurance policy protected it against for the amount of time it purchases run off cover.
- Scaffolding – due to the nature of scaffolding, when something goes wrong, it can easily end very badly. Builders should be aware that most mainstream insurers impose a height limit of between 10 metres and 15 metres (or some other limit/condition) when working externally with scaffolding. Hence, it is important to review the policy to see if a limitation or condition is present and notify the insurer or broker if necessary.
- Machinery and Equipment – damage or theft of machinery and equipment on site can result in significant delays to works and cost substantial amounts to replace/repair. Machinery and Equipment insurance can be obtained to cover machinery for accidental damage, vandalism or theft. Policies can be tailored to include cover for hired in plant, loss of revenue, breakdown, road risk and legal liability.
- Remedial works in an existing strata scheme – construction works policy may only cover new works, and not the existing property. The policy should be reviewed when carrying out remedial works on existing property to determine whether there is sufficient cover for any damage caused to existing property.

The matters identified above are non-exhaustive and depend on the circumstances of each individual project. It is only when an incident or accident occurs that the circumstances surrounding the incident in question is thoroughly investigated by an insurer to see if the policy responds. A policy of insurance, like any contract or agreement, contains negotiable terms and conditions and a well considered/negotiated policy can provide an effective means of risk transfer.

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