



Building Services Board Policy

Professional indemnity insurance requirements – building engineering contractors and building surveying contractors

OBJECTIVE

The objective of this policy is to guide members of the Building Services Board (Board) and Department of Mines, Industry Regulation and Safety (DMIRS) staff in applying a consistent process to assess applications for registration of building engineering and building surveying contractors.

This policy will also assist applicants for registration to assess the appropriateness of their professional indemnity insurance (PII) policies to satisfy the requirements in the Building Services (Registration) Regulations 2011 (BSR Regulations).

SCOPE

This policy applies to all applications made for registration, and renewal of registration, as a building surveying or building engineering contractor after commencement of regulations 28F (as amended) and 28O of the BSR Regulations, (being 1 July 2024).

CONTEXT

The *Building Services (Registration) Act 2011* (BSR Act) and BSR Regulations require that certain classes of registered building service provider:

- must have appropriate PII to be registered to provide prescribed building services to consumers; and
- commit a disciplinary offence by providing building services without maintaining PII required to be registered.¹

The BSR Regulations require two classes of building service provider to have PII: building surveying contractors and building engineering contractors. Two options are prescribed for applicants in these classes to demonstrate compliance with the requirement to be appropriately insured. To be registered, an applicant must either:

- a) have PII appropriate to manage the risk, type, size and volume of the work the applicant is likely to carry out, taking into account all of the following —
 - i. the nature and risks associated with the work likely to be carried out by the applicant;
 - ii. the volume of the work likely to be carried out by the applicant;
 - iii. the employment or engagement by the applicant of a building engineering practitioner and the length of time the building engineering practitioner has been registered;
 - iv. a reasonable estimate of the quantum of civil claims that might be brought against the applicant given the matters described in paragraphs (a) to (c);
 - v. the financial capacity of the applicant; and

¹ *Building Services (Registration) Act 2011* s.53(1)(b)

vi. the terms of the policy;

or,

b) demonstrate that they are a member of a professional standards scheme operated by a professional body and satisfy the insurance requirements of that scheme.

This policy applies only to applicants using option (a) to demonstrate compliance with the PII requirement.

TERMS USED

Appropriate	A sufficient amount of PII coverage to offset the costs to remedy damage caused by professional negligence, having regard to the circumstances of the contractor. Specifically in the BSR Regulations, that the level of insurance cover has been determined as objectively appropriate by taking into account the factors listed in this Board policy.
Building service provider	Someone who provides a prescribed building service to the public or other business and who is registered under the <i>Building Services (Registration) Act 2011 (WA)</i> .
Certificate of Currency	A document provided by an insurance company that outlines the key details of a particular insurance policy they have with a client.
Exclusion clauses	Areas of building work or building services that are not covered by an insurance policy, often due to the insurance company determining that area of work or service is too risky to cover.
Financial capacity	The ability of a company to meet the cost of damages cause by professional negligence, without the need for insurance cover.
Insurance broker	An entity that works as an intermediary between insurance policy providers and the building service provider.
Professional indemnity insurance (PII)	A form of insurance that covers the entity insured against the cost to remedy damages caused by professional negligence.
Professional indemnity insurance policy (PII policy)	The agreement between the insurance provider and the building service provider that outlines, in detail, what the building services provider is covered for.
Professional negligence	Acting in a manner contrary to peer professional opinion of what constitutes professional conduct and, as a result of which, a person or entity suffered injury, loss or damage.

POLICY PRINCIPLES

Generally

This policy does not constrain the Board's capacity to depart from this policy as appropriate to the circumstances of any particular application for the issue of registration.

Objectives of PII

The objective in mandating PII is to augment a registered building service contractor's capacity to cover damages caused by professional negligence. Professional negligence by a contractor may cause financial loss for the contractor's clients, and also for third parties, such as a building's occupants or adjoining building owners.

Contractors might not have sufficient resources to meet claims arising from these losses. PII provides a mechanism to ensure that funds are likely to be available where the professional negligence of a registered contractor results in loss or damage to another party.

PII is not a mechanism for providing compensation directly to consumers. Rather, it is a means of reducing the risk that a registered contractor cannot pay claims because of insufficient financial resources.

Defining 'appropriate'

An applicant for registration as a building surveying or building engineering contractor must satisfy the Board it has appropriate PII. This is an objective test that considers what a reasonable person in the position of the contractor requires in terms of a PII policy having regard to the circumstances of the contractor's business and the availability in the market of affordable PII.

PII will be appropriate where the compensation arrangements reduce the risk that loss or damage, for which the contractor is found to be responsible, cannot be compensated by the contractor due to lack of financial resources.

PII is designed to protect the contractor against certain risks. It is not designed to protect consumers and is not a guarantee that compensation will be paid. PII is a way of reinforcing a contractor's ability to meet any losses or damages, caused by negligence or a breach of duty by the contractor or its representatives, by making funds available to the contractor under the terms of the insurance policy. Consumers generally have no direct right of access to these insurance policies.

The requirements in the BSR Regulations, for appropriate PII, reflect the fact that each contractor has different business risks, which affect what PII is appropriate for them. Each contractor applicant must therefore ensure their own circumstances are analysed to determine what level of PII is appropriate for their business. This analysis may be undertaken either by the applicant (contractor) or by an expert on their behalf, for example an insurance broker.

An applicant for registration as a building surveying or building engineering contractor must declare to the Board (as part of their application for registration or renewal) that they have properly undertaken their own assessment to determine their PII policy is appropriate. It is not the role of the Board to carry out this assessment on behalf of the contractor.

Determining appropriate PII

Table 1: Determining PII requirements

1. Assess the business	Review your business, taking into account the number of registered practitioners employed, and any planned changes to the business. Review your claims history (if any) and risk management procedures.
2. Assess the potential liability	Determine the maximum liability that has, realistically, some potential to arise, based on the volume and risk level of work undertaken by the business. This should include making a reasonable estimate of: <ul style="list-style-type: none"> • the maximum exposure to a single client ('worst loss scenario' per client); • the number of claims that could arise from a single event (potential for multiple claims); and • the number and value of claims that might be expected during the policy period.
3. Consider financial resources	Consider what financial resources are available to the business. The availability of financial resources to cover damages caused by professional negligence will affect the amount and scope of PII that's appropriate to offset the risk.
4. Approach insurers or brokers	Ask insurers or insurance brokers for a list of policy features, exclusions and available extensions, based on full disclosure of the assessment undertaken in steps 1 to 3.
5. Assess amount of cover available	Consider what amount of cover is actually available and appropriate to mitigate the assessed business risk and potential liability.
6. Assess scope of cover	Consider what scope of cover is appropriate to mitigate the assessed business risk and potential liability.
7. Review policy terms and exclusions	Review the policy terms and conditions. Identify any gaps in cover, such as exclusion clauses, and any additional costs, including excesses and legal costs. Consider and document how any risks presented by these terms will be managed, for example by avoiding certain types of work.

Applicants are responsible for complying with all requirements for registration, including obtaining and maintaining appropriate PII. The appropriateness of PII depends on several factors, including:

- the availability of cover;
- the amount of the cover;
- the scope of the cover;
- the policy terms and conditions; and
- what financial resources the contractor may have.

Based on these factors, each building surveying contractor or building engineering contractor, in conjunction with their insurance broker, must assess what is appropriate PII to manage their business risks in accordance with Table 1.

Applicants must produce and retain records of how they determined what amount of PII was appropriate for their business, including any assessment undertaken by their insurance broker and provide these to the Board upon request.

Amount

To be appropriate overall, a PII policy must have a sufficient amount of cover. That is, the limit of indemnity under the policy should cover a reasonable estimate of liability for consumers' potential losses or damages, calculated in accordance with Table 1.

Scope

The scope of a PII policy must cover claims made against the building surveying or building engineering contractor for loss or damage caused by neglect, error or omission in the provision of building services during the term of the policy. It must cover the work of each registered practitioner employed by the contractor.

If the policy covers claims made for work other than the regulated building service provided by the contractor, they must ensure the amount of cover is appropriate to insure all work.

Financial capacity

A building surveying or building engineering contractor's financial capacity to cover the cost of damages caused by professional negligence is a factor in determining the appropriateness of PII. A well-resourced business presents a lower risk than a less well-funded business, and may therefore be able to demonstrate that a smaller amount or lesser scope of PII is appropriate.

Building surveying or building engineering contractors must assess what financial resources are available to their business to cover damages caused by professional negligence, and ensure that the amount and scope of PII is appropriate to cover the business risk presented.

As PII is generally offered on a 'claims made' basis, a financial capacity assessment should be considered at regular intervals during the period of registration.

Terms and conditions

Terms and conditions may undermine the overall effectiveness of a PII policy, for example by excluding cover for key aspects of the contractor's business. Building surveying or building engineering contractors must consider any gaps and exclusions in the policy terms, and how these could affect the business. Gaps may include excesses, legal costs, and any other gaps in cover relating to specific exclusions.

Exclusions in a PII policy may affect the appropriateness of the cover. Of special concern are exclusions that mean cover is not available for breaches of obligations relating to the provision of the regulated building service(s) for which the contractor is registered.

While appropriate insurance may incorporate some exclusions, applicants are required to consider any gaps and exclusions in their policy, and document as part of their assessment how inherent risks will be managed, for example by avoiding certain types of work.

Ongoing assessment

Building surveying or building engineering contractors are required to ensure their PII is reviewed at least annually to ensure it continues to be appropriate, for example when an existing policy is due for renewal.

The Board also expects that a building surveying or building engineering contractor will consider the appropriateness of PII arrangements when making any major changes in their business, for example if they start providing new services or products, or engage more practitioners. Contractors must discuss any such changes with their insurer.

From time to time, the Board or staff from DMIRS may require building surveying or building engineering contractors to provide a copy of their PII policy, a certificate of currency, or other information demonstrating the appropriateness of their PII.

POLICY IMPLEMENTATION

DMIRS Building Industry Licensing Branch will process applications for registration/renewal in a manner that conforms to this policy.

This policy commences operation on 1 July 2024.

Transitional arrangement

Registered building surveying contractors who comply with the requirements in regulation 28F of the BSR Regulations (unamended) prior to 1 July 2024, will be treated as complying with this policy immediately after 1 July 2024 until they apply for renewal of registration.

Building surveying contractors should however carry out their own review of their PII arrangements after 1 July 2024 to consider if they are appropriate.

GOVERNANCE

Resolved by the BSB	Meeting Date 14 November 2023	Item Number 4.1
Chairperson	Signature 	Date 14 November 2023
Keywords	Building engineering contractor, building surveying contractor, professional indemnity insurance	
Next review	1 July 2027	