

BPB

Building Professionals Board

INFO SHEET 9
Revised August 2007

Insurance required by accredited certifiers

What insurance must accredited certifiers hold?

- The Building Professionals Act 2005 (the Act) and Building Professionals Regulation 2007 require accredited certifiers to be covered by professional indemnity insurance that indemnifies them against their statutory liability.
- The indemnity must be for the whole of the period during which they have been accredited certifiers.
- Statutory liability is defined in the Regulation to mean a person's liability to pay compensatory damages for breach of professional duty as an accredited certifier arising from, among other things, any act or omission of the person which occurs while the person is acting as a certifier.

Do certifiers need to hold insurance on an individual basis?

- No. Certifiers can be covered by an individual insurance contract, a company contract where the certifier is a director or employee of the company, or a partnership contract where the certifier is a partner or employee of the partnership.
- The Regulation requires the indemnity provided by a company/partnership contract to extend to all persons who, at any time during the term of the contract, are or become accredited certifiers and directors or employees of the company (whether or not they cease to be accredited certifiers, or cease to be directors or employees of the company).

How much cover must certifiers have?

- The Regulation requires annual insurance contracts for individuals to contain cover of:
 - at least \$1 million (exclusive of a certifier's legal expenses of defending a claim) or \$2 million (inclusive of defence costs) for any one claim, up to
 - a maximum of \$2 million (exclusive of defence costs) or \$4 million (inclusive of defence costs) for all claims for a year.
- Insurance contracts for companies/partnerships must also contain this cover for each certifier who is a director or employee, but can limit the indemnity to no more than \$20 million in relation to all claims made in any one year.

When are certifiers covered under a partnership's or company's professional indemnity contract?

Employed by a partnership/company

- While you are employed by the partnership or company, you are covered by the partnership's/company's insurance contract as long as the contract complies with the Regulation.
- If you start working for a company/partnership, and you worked for yourself before that and have not worked for that company/partnership or any other company/partnership before, you need to continue to hold separate indemnity insurance for the period before you started working for the company/partnership.
- If you are re-employed by a partnership/company that previously employed you, you will be covered by the partnership's/company's insurance only for those periods that you were so employed.

Stop working for a partnership/company

- If you stop working for a partnership/company, you will continue to be covered by the partnership's/company's contract for all acts or omissions that occurred during the period you were employed by the partnership/company (as long as that partnership/company continues to operate).
- Once you stop working for a partnership/company, you will no longer be covered by the partnership's/company's contract for anything you do whilst you are working as an accredited certifier and are not employed by the partnership/company. You need to take out individual professional indemnity insurance to cover yourself once you stop working for the partnership/company.

Partnership/company ceases to operate

 If your existing or former company/partnership employer ceases to operate at any time, you need to obtain indemnity insurance to cover the period you worked for the company/partnership.

Multiple employment situations

- Many accredited certifiers will, over the course of their career, move between periods where they work for themselves to periods where they work for one or more companies.
- Certifiers need to ensure they are covered by professional indemnity insurance for all periods of employment whilst they are accredited and their insurance must extend from the first date they were accredited by either the Building Professionals Board under the Act, or by a former accreditation body under the Environmental Planning and Assessment Act 1979. A certifier cannot have a 'gap' in their insurance cover from their first date of accreditation.
- For example, an accredited certifier who previously worked for themselves and was covered by an individual insurance contract, then commences work for a company as a certifying authority. The certifier must continue to obtain their own annual insurance for the period of their accreditation that occurred before being employed by the company (and this contract must have a retroactive date that goes back to the start of the certifier's first date of accreditation) and must be covered by the company's insurance contract for the period they are employed by the company as a certifier.
- Figure 1 indicates a number of professional indemnity insurance (PII) scenarios for a certifier who works for various companies during their career as an accredited certifier. As the certifier's career progresses, at every point in time they must be covered by an insurance contract for the current period of employment, as well as by an insurance contract for each previous period of employment while they are accredited. In the figure:

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- When the certifier starts working for company X for the first time, they will be covered by company X's company insurance contract for the current period of employment and must also continue to take out insurance for the previous period they worked for themselves so as to continue to cover their liability for that previous period.
- When the certifier starts working for company Y, the certifier will be covered by company Y's company insurance contract for the time they work for company Y and must continue to have one or more individual insurance contracts to cover the two prior periods that the certifier worked for themselves and must continue to be covered by company X's company insurance contract for the period the certifier worked for that company. If company X ceases to operate for any reason, the certifier must take out an insurance contract that covers the period they worked for company X.

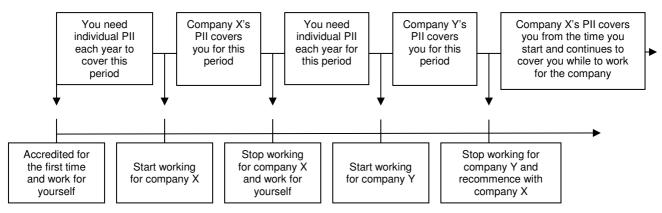


Figure 1: Periods of employment and required insurance for an accredited certifier

What insurance do I need if I only issue compliance certificates?

Anyone who exercises the functions of a certifying authority under the EP&A Act
must hold the insurance required by the Act and Regulation. It does not matter
whether they issue compliance certificates only, issue strata certificates only or
act as a principal certifying authority.

Do subcontractors need to hold professional indemnity insurance?

Under the Act, if a subcontractor is an accredited certifier and works as an accredited certifier for another certifying authority, the subcontractor must hold the required professional indemnity insurance. The subcontractor may be covered by the insurance contract of the accredited certifier's employer where that employer is a company or a partnership.

What are the consequences if I do not hold the required insurance?

- It is an offence under the Act to exercise the functions of an accredited certifier where you are not covered by professional indemnity insurance as required by the Regulation.
- A breach of the Act can also result in a finding of unsatisfactory professional conduct or professional misconduct following a complaint or audit investigation under the Act.

Are certifiers required to have run-off insurance?

• No. Accredited certifiers do not need to hold professional indemnity insurance to cover their run-off liability. Insurers no longer offer this type of insurance.

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- Under section 109ZK the Environmental Planning and Assessment Act 1979, however, certifiers continue to be liable for 10 years after they stop working e.g. on retiring or otherwise leaving the certification profession (the run-off period) for loss or damage arising out of or concerning defective building and/or subdivision work.
- Certifiers are encouraged to plan for and obtain insurance each year for the 10 year period after they cease working as a certifying authority so as to cover this liability.

Do existing certifiers have to change their insurance policies immediately?

- No. Under the transitional provisions in Schedule 2 of the Act, an accredited certifier who holds an insurance policy that was in force immediately before the Act commenced that complied with the previous requirements of the EP&A Act, is taken to comply with the new requirements of the Act while the policy remains in force.
- Insurance policies are generally taken out by certifiers for one year. As a result, once the existing policy of an existing certifier is due to expire, the certifier needs then to obtain a new policy that complies with the requirements of the *Building Professionals Act 2005* and Building Professionals Regulation 2007.

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