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Contractors are increasingly faced with growing project complexity, tighter timeframes and lower budgets

Design & Construct Professional Indemnity insurance (01-21)

Technical specifications

Faced with ever-increasing project complexity, tight budgets and even tighter timeframes, the last thing a Design & Construct (D&C) Contractor wants to spend time worrying about is the quality of their insurance coverage.

The Liberty Professional Indemnity Insurance for D&C Contractors (01-21) policy wording recognises the complexity of modern design and construction activities.

It is designed specifically to help D&C Contractors manage the unique risks involved in combining design and construction services, and features some of the broadest cover for contractual liabilities available in the market.

What is covered?

- **Professional Liability – Single Cause of Loss – Insuring Clause** - indemnifies the insured against civil liability incurred in respect of a claim arising solely out of their performance of professional services, without being conditional upon establishing negligence or a breach of a professional duty.
- **Professional Liability – Multiple Causes of Loss** - where there are a number of causes which contribute to the loss, the insured will be indemnified against civil liability in respect of that proportion of the loss which is attributable to the performance of professional services. Furthermore, the insured will be indemnified against the insured civil liability irrespective of whether one or more of the other causes of the loss is excluded or otherwise not covered, but only in proportion to the covered causes.
- **Advancement of Defence Costs** – will be paid prior to final resolution of a claim. However, these Defence Costs must be repaid to Liberty if it is later established that the Defence Costs are not insured under the policy.
- **Automatic Novated Contracts** - this extension provides cover for civil liability, in respect of a claim arising out of the performance of professional services, which the insured has assumed only by reason of novation of a contract in specified circumstances.
- **Collateral Warranties (optional)** - this new optional extension, if included provides cover, subject to certain criteria, for civil liability the insured incurs in respect of a claim pursuant to a collateral warranty to the extent such civil liability arises out of the performance of professional services.
- **Compensatory Civil Penalties** – this new extension provides cover, subject to a sub-limit of liability, for compensatory civil penalties awarded pursuant to a court order in Australian or New Zealand civil penalty proceedings, arising out of the performance of professional services.

- **Contractors and Consultants** – includes cover for contractors or consultants who are “deemed workers” under the applicable workers’ compensation laws and have a written contract with an insured entity to perform professional services, but only in relation to the performance of professional services for or on behalf of an insured entity.
- **Court Attendance Costs** - this new extension provides cover, subject to a sub-limit of liability, for the reasonable costs and expenses incurred by an insured person who is legally compelled to personally attend a civil proceeding as a witness in a covered claim.
- **Fidelity** - this new extension provides cover, subject to a sub-limit of liability, for loss of money belonging to an insured entity or for which such insured entity is legally responsible, resulting from fraud by an employee.
- **Fitness for Purpose Terms (optional)** - this optional extension provides cover for civil liability the insured incurs in respect of a claim alleging a breach of any express fitness for purpose term in a contract to the extent such civil liability arises out of the performance of professional services by an insured or an agent. Cover is excluded for any management of projects or contracts.
- **Hold Harmless Contractual Liability** – this extension provides cover for the insured’s civil liability in respect of a claim under an indemnity and/or hold harmless term of a contract to the extent that such civil liability arises out of the insured’s performance of professional services.
- **Implied Warranties and Conditions** – provides cover for the insured’s civil liability in respect of claims alleging breach of warranty or condition as to merchantable quality, due skill and care or fitness for purpose implied in a contract under common law or any Australian legislation, arising out of the performance of professional services.
- **Joint Ventures** – this extension provides cover for civil liability the insured incurs (however, limited to the insured’s own liability only) in respect of a claim arising out of the performance of professional services by the insured in its capacity as a joint venture partner.
- **Joint Venture Partner’s Liability (optional)** - this optional extension, if included, provides cover for civil liability the insured incurs in respect of a claim arising out of the performance of professional services by a joint venture partner where the insured has assumed such liability under a joint venture contract with the joint venture partner.
- **Limitation of Liability Contracts** – affirms that the insured’s right to indemnity under the policy will not be prejudiced by contracts entered into with other parties that exclude or limit their liability.
- **Loss Mitigation and Rectification** - this extension provides cover subject to certain criteria, for the reasonable direct costs and expenses incurred by the insured in taking action necessary to rectify, or mitigate the effects of, any error or omission of the insured or an agent in the performance of professional services that would otherwise result in a claim covered under the policy. Cover is excluded for indirect costs and expenses and for costs and expenses of materials or professional services which result in an increased quality or standard from that agreed.
- **Period of Grace** - if the policy is not renewed or replaced with any policy providing similar cover, then the named insured is entitled to an extended reporting period of 30-days following the end of the policy period to notify a claim arising out of the performance of professional services prior to the end of the policy period.
- **Proportionate Liability** – now offered as an extension, it indemnifies the insured against civil liability assumed under a contract for professional services by reason of having contracted out of the operation of proportionate liability legislation.
- **Reduced Excess – additional insurance** – where this policy responds in excess of a scheduled additional insurance policy, this new extension reduces the applicable excess in respect of a claim, by the amounts paid by such additional insurance policy in respect of that claim.
- **Reduced Excess – Non Litigated Claims** - this new extension halves the applicable excess in respect of a claim, if that excess is less than \$50,000 and none of the parties to the claim have retained legal representation in respect of that claim.
- **Reputation Expenses** – provides cover, subject to a sub-limit of liability, for 50% of the reasonable costs and expenses incurred by the insured in seeking advice from a public relations consultant to protect the insured’s professional reputation where their performance of professional services has or could reasonably lead to a claim.

- **Technology Services** - this new extension provides cover for the civil liability the insured incurs in respect of a claim arising out of technology services, where such services form part of the performance of professional services.

Other extensions include:

- Breach of Confidentiality and Interference with Privacy
- Competition and Consumer Act
- Continuous Cover
- Defamation
- Extended Policy Period
- Fraud and Dishonesty
- Intellectual Property Rights
- Loss of Documents
- New Subsidiaries
- Principal's Indemnity (optional)
- Professional Inquiries
- Reinstatement (optional)
- Spouses, Estates and Representatives
- Vicarious Liability

Other conditions and extensions

- **Allocation** – this condition has been expanded to cover defence costs directly attributable to a claim covered under the policy, even where a matter or party not insured under the policy benefits from Liberty's payment of such defence costs.
- **Change in Control** – if a change in control occurs during the policy period, the policy will continue to provide cover until the end of the policy period, for claims arising out of the performance of professional services prior to the effective date of the change in control.
- **Severability of Proposal and Non-Imputation** – both of these conditions offer protection for innocent insureds, in the event of another insured's non-disclosure, misrepresentation or conduct.
- **Insured** – this definition includes the named insured and its subsidiaries, prior to or at the commencement of the policy period, in respect of the performance of professional services whilst a subsidiary of the named insured, and past, present and future directors, partners and employees of the named insured and its subsidiaries.
- **Notification of Claims and Co-operation** – in the event that the insured is legally prohibited from making a notification in accordance with the claims conditions, this condition allows for notification of a claim within 30 days of the insured being legally able to do so.
- **Contesting a Claim and Settling a Claim** – both of these conditions clarify what happens in the event of a dispute.

What did we leave out?

Liberty's policy does not automatically exclude cover in relation to asbestos or pollution, and the insuring clause has no restrictive negligence or breach of professional duty requirement. Sometimes what is missing is just as important as what is included.

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Liberty offers a breadth of world-class insurance and reinsurance services to brokers and insured clients. We bring value and solutions to business and government organisations across Australia – helping protect what they earn, build and own.