

## **AIBS PROFESSIONAL STANDARDS SCHEME FOR BUILDING SURVEYORS**

### **Preamble**

In accordance with the NSW Government Gazette on 21 May 2021, pursuant to section 13 of the Professional Standards Act 1994, The Australian Institute of Building Surveyors (AIBS) Professional Standards Scheme commenced on 01 July 2021 across all states and territories, except for Victoria where it commenced on 01 September 2021. The AIBS Professional Standards Scheme has been approved for five (5) years.

A Professional Standards Scheme is a legislative instrument that obliges AIBS, as an occupational association, to monitor, enforce and improve the professional standards of members under the Scheme, thereby reducing risk for consumers of professional services.

In recognition, the Scheme limits the civil liability or damages that professionals under the Scheme may incur if a court upholds a claim against them.

The Australian Institute of Building Surveyors Professional Standards Scheme (Scheme) currently provides the following limitation of liability:

- Level 1 Buildings – (can undertake work on all buildings) - \$2 million liability cap.
- Level 2 Buildings – (can only work on buildings less than 2000M2 and 3 storeys or less) - \$1 million liability cap.

The liability caps that have been set are well above the average amount for successful claims for each building category over the last 10 years.

In the development of the Professional Standards Scheme for Building Surveyors, AIBS had two key objectives:

1. Increase the professional standards of building surveyors and;
2. Secure the availability and affordability of Professional Indemnity Insurance for Building Surveyors for the future.

All Practicing Members will be required to become Scheme Members unless they apply for and are granted an exemption from the Scheme.

**Policy****1. Extension of Liability**

The Scheme confers a discretionary authority on AIBS, upon application by a person to whom the Scheme applies (Scheme Member), to specify in relation to that person a higher liability cap than would otherwise apply under the Scheme.

A higher liability cap may be granted for all work undertaken by the person, or to types of work undertaken, or for a class of consumer or for a specific consumer.

A higher liability cap may be granted for a specified period, or from a specified date until the Scheme expires.

AIBS is required to establish a policy and processes for accepting, considering and deciding upon a request for a higher liability cap, which must include, where the request is granted, requiring the Scheme Member to demonstrate that they hold the requisite professional indemnity insurance; advising the Scheme Member in writing of the decision including specifying dates; and noting the Scheme Member's status in the Scheme participant register.

*This section of the policy sets out the requirements for extending the liability cap of a Scheme Member.*

The objective of this Policy is to achieve a balance between securing the availability and affordability of Professional Indemnity Insurance for Building Surveyors in the future and taking into account the current levels of Professional Indemnity Insurance required for major projects and the likelihood of Scheme Members successfully tendering for this work within the Scheme specified liability caps.

The AIBS Professional Standards Scheme allows for the extension of the liability cap for Scheme members up to a maximum of \$10M.

Under the Policy a Panel will be established on behalf of the Board, to consider applications for the extension of the liability cap under the Scheme.

The Policy provides guidelines for considering and deciding on extending a Scheme Member's liability cap under the Scheme.

A Scheme Member may apply to AIBS for a higher liability cap and subject to AIBS being satisfied that sufficient professional indemnity insurance is and will be in place for the duration of the project, that increased liability cap may be allowed.

Where a higher liability cap is approved, the Scheme Member will be required to maintain professional indemnity insurance that meets the requirements of the

AIBS Insurance Standards at a level of indemnity which is not less than the approved higher liability cap from the date of approval of the higher liability cap for a period of not less than 6 years from the last date the member operated in reliance on that higher limit.

AIBS will only approve an increase in the liability cap where it considers that to not allow such an increase would severely inhibit the Scheme Member's commercial opportunities. Examples include requirements by government departments for professional indemnity limits higher than the standard liability cap under the Scheme and major commercial projects where the client requires professional indemnity liability higher than the standard liability cap under the Scheme.

In approving any increase to the liability cap for a Scheme Member, AIBS must take into consideration the key objective of securing greater availability and stability in the Professional Indemnity Insurance market for building surveyors. Simply increasing the liability cap to the highest level will not achieve this. Limiting liability to the level of the standard cap will create a level base for all building surveyors and increasing the cap should be the exception and not the rule.

Because the liability caps set under the Scheme are well above the average for successful claims for each building category over the last 10 years, careful consideration must be given to extending liability caps to ensure that any extension is representative of the risk for the Scheme Member. Accordingly, the extended liability cap should be set at a level that is reflective of the level of risk and not just an arbitrary limit that may be well in excess of what may actually be required. If the approval of extended liability caps is not administered properly, the objective of securing greater availability and stability in the Professional Indemnity Insurance market for building surveyors will not be achieved, and certain clients will continue to set unrealistic arbitrary requirements for Professional Indemnity Insurance that will perpetuate the current status of the Professional Indemnity Insurance market.

There are 2 main categories that extensions will fall under:

1. Government Tenders
2. Commercial Projects

### **Government Tenders:**

The way Governments set procurement policies means that there is little opportunity to vary compliance with or change required Professional Indemnity requirements. AIBS identified in establishing the Scheme, that Government Tenders would be one of the areas where consideration would be given to extending the liability cap to meet the requirement of a government tender.

Notwithstanding this, AIBS will advocate to Governments across the country that Government should not be considered differently from other consumers the Scheme is designed to protect through the Scheme's specified capped liability. AIBS has adopted this position on the basis that Governments approve Schemes under the Professional Standards legislation in order to protect consumers and to provide confidence in the community at large, and for that reason, Government projects should prescribe the same standards as those that apply to other consumers the Scheme is designed to protect.

This means that when a building surveyor who is a Scheme Member tenders for a specified Government project, they should be able to rely on the liability cap required under the Scheme to meet Professional Indemnity Insurance requirements of the project.

### **Commercial Projects:**

Extending the liability cap for commercial projects can be more complex due to the variation in Professional Indemnity Insurance requirements by different project owners and the broad range in the total costs of projects.

Currently project owners are requiring anywhere from \$5M to \$20M Professional Indemnity Insurance cover before a building surveying firm is awarded a tender. While \$20M is becoming rare because of the unavailability and unaffordability of such insurance, several Building Surveying firms have \$10M PI policies that cover the work they do.

Because the current liability caps under the Scheme are well above the average for successful claims for each building category over the last 10 years, AIBS is of the view that the requirement for building surveying firms to hold expensive and difficult to obtain \$10M policies in the future will be unnecessary. There will however be instances where increased liability caps will be appropriate for these types of projects.

AIBS also acknowledges that many building surveyors and building surveying firms may be required to maintain higher levels of Professional Indemnity Insurance than those provided for under the Scheme under current statutes. There is an understanding that there will be a period of transition (possibly over several years) before some Scheme Members will be able to reduce their liability to the levels provided for under the Scheme.

Notwithstanding the above, if there is not a focus on reducing the liability of building surveyors in accordance with the liability caps under the Scheme, then the overall objective of securing the long-term viability and affordability of Professional Indemnity Insurance in the future is unlikely to be achieved.

Accordingly, if applications for extending liability up to the maximum \$10M cap are not carefully managed and are provided extensively to any Scheme Member

who applies for an extension, without a proper assessment of risk and reasonableness, then the Scheme will not be effective in reducing liability.

The guidelines included in this policy are aimed at supporting the Panel to assess applications for extension of liability caps taking into consideration the objectives of the Scheme, this policy, and the requirements for Scheme Members to be able to operate effectively in the current commercial environment.

## **2. Exemption of Practicing Members from the Scheme**

Under the Scheme, AIBS is required to establish a policy and processes for receiving and considering applications for exemption from the Scheme, including the terms of reference of the governing body, or committee which holds a delegation from the governing body, to receive and consider applications for exemption; any forms or information provided to Practicing Members or published on the AIBS website regarding exemption from the Scheme; the grounds on which an application for exemption will be accepted; and the relevant Practicing Member register demonstrating that a member is exempt from the Scheme.

AIBS must have procedures to advise the Practicing Member in writing of the exemption from the Scheme, and the date of its commencement.

Once a Practicing Member has been exempted from the Scheme, the Practicing Member may only revoke the exemption by written application to the AIBS seeking to reverse the exemption and from a specified date. AIBS will need policies and processes to receive and consider requests for exemption revocation.

*This section of the policy sets out the requirements for exempting a Practicing Member from the Scheme and for the revocation of an exemption.*

All Practicing Members will be required to become Scheme Members unless they apply for and are granted an exemption from the Scheme.

Under the Scheme, a Practicing Member may, in certain circumstances, be exempted by AIBS from complying with the Scheme. To be exempted from the Scheme, a Practicing Member must make an application for exemption in accordance with this Policy.

Exemptions from the Scheme may be provided to Practicing Members who are employed by public and/or private entities whose corporate and insurance structures are such as to render them unable to comply with the Scheme Professional Indemnity Insurance requirements.

Practicing Members who work solely for local government or other public entities where the entity employs the Practicing Member and where that entity is not



able to meet the Scheme Professional Indemnity Insurance requirements may apply for an exemption.

Practising Members who are able to prove that they do not and will not engage in, participate in or undertake building surveying work, such as academics, may also apply for an exemption from the Scheme.

There are also Practising Members who are employed by and undertake building surveying work as part of their employment for, a body corporate which is unable to become an AIBS Accredited Body Corporate and is unable to meet the AIBS Insurance Standards and the Professional Indemnity Insurance requirements under the Scheme and whose primary work is not building surveying work. Under these circumstances and provided the Practising Member agrees not to provide building surveying services to any other person or body corporate, the Practising Member may apply for an exemption from the Scheme.

Practising members who are exempt from the Scheme are still subject to all the other requirements of being an AIBS Practising Member.

### **Policy Processes and Guidelines**

#### **1. Establishment of the Panel to Assess Applications for Extension of Liability and Exemptions**

The Board will establish a Panel to assess applications for extension of liability and exemptions from the Scheme in accordance with the AIBS Professional Standards Scheme for Building Surveyors and this policy. The Panel will consist of the following:

1. AIBS CEO – Chair
2. AIBS Business Services Manager
3. AIBS Technical & Policy Manager
4. AIBS Professional Development Manager
5. A consultant and/or Board member appointed by the Board (optional)
6. Members Services Team Secretariat (non-voting)

The Panel may seek legal advice as appropriate in determining any applications.

The Panel will ordinarily meet once per month or as required in the view of the Chair to consider applications.

A quorum will consist of at least three (3) voting members of the panel and a simple majority is required to approve applications. In the event of tied vote, the Chair will have a casting vote in addition to their deliberative vote.

The Chair will oversee the operation and performance of the Panel and where the Chair is unable or unwilling to act as Chair of the Panel in its deliberation on an

application, the Panel will appoint one of its members to be the Chair for the purposes of that deliberation and that person will have all the responsibilities and authorities of the Chair for that deliberation.

This Panel will also receive and consider applications for AIBS Accredited Body Corporates in accordance with the requirements for accreditation as a AIBS Accredited Body Corporate.

## **2. Guidelines to Approve Extension of Liability Cap**

- 2.1. Applications for Practicing Members seeking to extend their liability cap under the AIBS Professional Standards Scheme must be made on the AIBS Professional Standards Scheme Extension of Liability Cap Form available on the AIBS website and must be lodged with the Member Services Team.
- 2.2. Under the Scheme the Panel may approve applications for the extension of liability within the Scheme permitted limit (up to \$10M) for a limit specified in a Government Tender. The application will only be approved if the tender, as contained in the application, is awarded to the Scheme Member.
- 2.3. The extended liability cap will apply only to the project specified in the approved application, while the liability cap as specified in the AIBS PS Scheme will apply for all other projects.
- 2.4. For Commercial Projects, an application for extension of liability will only be considered if the total value of the project is in excess of \$80M and the extension of the limited liability cap is no more than 10% of the total estimated value of the project. **Note:** *From 01 July 2024, extension of the liability cap to be reduced to 5% of the total estimated cost of the project.*
- 2.5. Where an application is not approved by the Panel, the applicant may lodge a request to the AIBS Board for a review of the decision. Any such request must be made in writing to the CEO, within 21 days of notification of the decision by the Panel outlining why the applicant believes the Panel should have approved the application.

## **3. Guidelines to Approve Exemption from the Scheme**

- 3.1. Applications exemption from membership of the AIBS Professional Standards Scheme must be made on the AIBS Professional Standards Scheme Exemption Form available on the AIBS website and lodged with the Member Services Team.
- 3.2. Applications received will be processed by the Panel Secretariat and provided to the Panel at their meetings.

- 3.3. Applicants must address at least one of the following requirements to qualify for exemption from the Scheme:
- a) They work solely for a local, State or Federal Government; or
  - b) They work solely as an Academic; or
  - c) They work solely for a Public Entity and do not undertake building surveying work; or
  - d) They work solely for a Body Corporate whose primary work is not building surveying and that Body Corporate is not able to meet the professional indemnity insurance requirements for the AIBS Professional Standards Scheme.
- 3.4. Practicing Members submitting an exemption application must specify which of the four above criteria they believe applies to them.
- 3.5. Once an exemption is approved, the exemption will remain in place until the Practicing Member advises AIBS of a change in their circumstances. Approved exemptions will be revalidated as part of the Practicing Member's annual membership renewal via a declaration in their renewal.
- 3.6. Where an application is not approved by the Panel, the applicant may lodge a request to the AIBS Board for a review of the decision. Any such request must be made in writing to the GEO within 21 days of notification of the decision by the outlining why the applicant believes the Panel should have approved the application.



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