

## PROFESSIONAL STANDARDS SCHEME - INSURANCE STANDARDS

**These standards dated 16<sup>th</sup> March 2021 are approved by the Professional Standards Council (PSC) and cannot be amended without further approval of the PSC.**

### A. APPLICATION OF STANDARDS

The obligation to maintain the required insurance is applicable to all Practicing Members, (PSS member) of the Australian Institute of Building Surveyors (AIBS).

- 1.1. The following standards established by the AIBS are the minimum standards to apply and must not be considered advice as to how a member should arrange their insurance protection. It is strongly recommended each member seek the assistance of a specialist insurance broker to identify their exposure to risk and arrange their own appropriate insurance protection. The AIBS disclaim all liability relating to reliance upon these standards.
- 1.2. Each PSS member must, as a minimum, be provided with cover for the duration of their membership, by professional indemnity and public liability insurance policies (The Policies) in accordance with these standards.
- 1.3. A member is deemed to have The Policies if they are a principal, partner, director or employee of a firm that has The Policies of insurance in accordance with these standards
- 1.4. To ensure compliance with these standards the AIBS recommends the PSS Member engage with a specialist insurance broker experienced in the negotiation and placement of insurance policies typical of this profession. The AIBS can provide the PSS member with contact details of a recommended specialist insurance broker if required.
- 1.5. These Insurance Standards are the insurance standards presented to, and considered by, the Professional Standards Councils (the Councils) in connection with the Councils' approval of the Scheme (subject to any amendment to such Insurance Standards as are subsequently presented to the Councils and approved or endorsed by the Councils in writing).

### B. STIPULATIONS AND GUIDANCE

#### 2. The Insurer

- 2.1. The Policies must be issued by:-
  - (i) APRA regulated or, in the case of an offshore insurer or underwriter, authorised by APRA to write insurance for the PSS member; or
  - (ii) an Unauthorised Foreign Insurer(s)<sup>1</sup> ("UFI") subject to the requirement that the PSS member submit to AIBS a copy of their Australian Insurance Broker's Certificate which is required to be prepared in accordance with Part 4D of the *Insurance Regulations 2002*(Cth) dealing with the placement of insurance with a UFI; and provide to the AIBS a written confirmation from the UFI that insurance and claims information as required by the AIBS upon each renewal of membership will be provided by the UFI to AIBS for the purposes of submission to the Professional Standards Council.
- 2.2 The insurer should be financially stable and able to meet the claim(s) in full

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<sup>1</sup> Unauthorised Foreign Insurer as defined in Part 2 of the Insurance Regulations 2002 (Cth)

### **3. The Period of Cover**

- 3.1. The Policies must provide for a period of insurance that covers the 12-month period of the PSS member's membership of the AIBS Professional Standards Scheme.
- 3.2. The PSS member may produce multiple replacement insurance policies to satisfy the requirement in 3.1 above upon the expiry of any policy during the currency of the membership period.

## **PROFESSIONAL INDEMNITY INSURANCE**

### **4. Who Is Covered**

- 4.1. The policy must provide indemnity to PSS members and their relevant trading entity(ies) including any Directors, Partners, Principals and all employees past, present and including those who join the firm<sup>2</sup> during the period of insurance.
- 4.2. The policy insuring clause must have the effect of providing compensation for a PSS Member's legal liability to pay claims arising from an actual or alleged breach of professional duty by the PSS member acting in the performance of their occupation.

This includes:

- (i) Indemnity for claims arising from work performed by consultants and sub-consultants engaged by the firm (cover may exclude indemnity for each consultant/sub-consultant);
  - (ii) Misleading and deceptive conduct under the:-
    - Competition and Consumer Act and similar State/Territory fair trading legislation; and
    - Corporations Act and the Australian Securities and Investments Commission Act where relevant and where insurance is typically available<sup>3</sup>.
  - (iii) Fraud and dishonesty of employees, consultants and sub-consultants (cover may exclude indemnity for each employee, consultant and sub-consultant).
- 4.3. Where the Policy does not cover consultants and sub-consultants referred to in stipulation 4.2 (i) above, the PSS member should take reasonable steps to satisfy itself that the consultants and sub-consultants have their own professional indemnity policy which provides cover in respect of the consultants and sub-consultants' performance of the occupational activities which policy would be compliant with the AIBS's Insurance Standards.

### **5 Claims Made**

- 5.1 The policy must be a "claims made" or "claims made and notified" policy;
- 5.2 The policy should have a continuous cover extension.

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<sup>2</sup> The term "firm" means a member operating a business as a sole trader or as an employee, director or partner of a partnership or corporate body.

<sup>3</sup> The term "typically available" is taken to mean where the cover is a common characteristic of the insurance generally provided to the PSS member's profession.

## 6 Scope Of Insuring Clause

6.1 The policy must:

- (i) provide cover in respect of occupational liability arising from the professional activities carried out by the PSS member which fall within the scope of the occupational activities to which the AIBS PSS applies; and/or
- (ii) provide cover in respect of occupational liability arising out of an act, error or omission in the conduct of the professional activities carried out by the PSS member which fall within the scope of the occupational activities to which the AIBS PSS applies; and
- (iii) encompass all of the occupational liability of the firm referred to above, which the member has undertaken since first becoming a PSS member.

## 7 Limit Of Liability

7.1 The Policy must include a limit of liability that is equal to or exceeds the amounts specified in the table below:

Building Levels	Categories	Limit of Liability where Defence Costs are included:-	
		within the Limit	in addition to the Limit
Level 1	Unlimited	\$ 2,500,000	\$ 2,000,000
Level 2	Limited	\$ 1,500,000	\$ 1,000,000
Discretionary Limits		The Limit + \$500,000	The Limit

7.2 The Policy must either:

- (i) Provide at least one automatic reinstatement of the limit of liability; or
- (ii) Have an aggregate limit of liability at least twice the any one claim limit of liability

7.3 The Policy must provide cover for investigation and defence costs in addition to the limit of indemnity, alternatively where a policy includes legal costs within the limit of indemnity available, the limit of indemnity must be as specified as required by these Insurance Standards.

## 8 Excess Or Deductible

8.1 The deductible or excess under the policy should be set at a level which, having regard to the financial position of the professional member at the time the policy is entered into, can reasonably be expected to be able to be paid by the PSS member at least twice in any 12 month period.

8.2 The AIBS may require the PSS member to demonstrate that their firm has the necessary financial resources to fund an excess that the PSS member has accepted which the AIBS may consider higher than those typically available<sup>4</sup>

<sup>4</sup> The term "typically available" is taken to mean where the excess is twice or more of the excess that is typically provided to the PSS member's profession

8.3 The Policy should contain an aggregation clause which provides that, for the purposes of calculating the number of excess payable:

- (i) all causally connected or interrelated acts, errors or omissions shall jointly constitute a single act, error or omission under this Policy; and
- (ii) where a single act, error, or omission gives rise to more than one claim, all such claim(s) shall jointly constitute one claim.

The Policy must not contain an excess provision which is expressed to apply on a per claimant basis.

## **9 Retroactive Date**

9.1 Where the policy contains a retroactive date, that date must be no later than the latter of:

- (i) the date on which the PSS member first commenced carrying out the occupational activities; or
- (ii) the date on which the PSS member first took out insurance in respect of its occupational liability; or
- (iii) the date on which the contracting insured took out a new insurance policy as a result of a merger or acquisition of a business, where past liabilities are covered under a separate policy.

## **10 Consumer Protection Legislation**

10.1 The Policy should preferably contain an extension or clarification clause specifying that the cover provided by the policy includes cover for any unintentional breach of the misleading and deceptive conduct provisions of consumer protection legislation applicable to the occupational activities to which the AIBS PSS applies

## **11 Run Off Cover**

11.1 The Policy must provide run-off cover, if typically available at the time that the policy was last renewed. For the purpose of this clause the term "run off" refers to a policy extension that provides ongoing cover upon cessation of trading of a business without the need to continue to purchase a replacement policy.

11.2 Where a Policy of the type referred to in stipulation 11.1 is not reasonably available, the PSS member must arrange and maintain cover for a period of 7 years following cessation of the business of the firm or cessation of their membership of the AIBS PSS where this is possible.

## **12 Maintaining Continuity Of Cover**

12.1 The PSS member should maintain continuous PI insurance cover for the duration of their membership of the AIBS PSS and in accordance with the Run Off Cover in clause 11 above.

## **13 Exclusions**

13.1 The Policy must not contain any exclusion, or combination of exclusions, which would have the effect that any mandatory requirement of the AIBS PSS Insurance Standards is wholly or substantially negated.

13.2 The Policy should not contain any exclusion or combination of exclusions which would have the effect that any mandatory requirement of the AIBS PSS Insurance Standards is or may be negated in a material proportion of claims to be made against the PSS member.

13.3 The Policy may contain exclusions that are:

- (i) permitted by the relevant government or regulatory authority responsible for the oversight, management or regulation of the PSS Members; and/or
- (ii) not otherwise inconsistent with the professional activities of the PSS Member;

#### **14 Excess Layer Insurance**

14.1 PSS members should preferably seek to obtain a single policy which complies with these PSS Insurance Standards.

14.2 PSS members may take out an insurance program consisting of two or more policies (being primary and excess layer policies) which, taken together, comply with these Insurance Standards provided that all policies comply individually with these PSS Insurance Standards otherwise than as to limit of liability and excess.

14.3 In this case, of an insurance program consisting of two or more policies (being primary and excess layer policies), any excess policy(s) should preferably follow the form of the primary insurance.

#### **PUBLIC LIABILITY INSURANCE**

14.4 The Policy must provide indemnity to the PSS member against claims for bodily injury and/or property damage to third parties or persons arising from an occurrence happening in connection with the member's business activities.

14.5 The Policy must:

- (i) cover the business activities of the firm;
- (ii) provide a limitation of indemnity of no less than \$10,000,000 on any one claim;
- (iii) include a Cross Liability clause;
- (iii) provide indemnity in respect of Principals.

#### **15 MECHANISMS FOR ENSURING COMPLIANCE**

15.1 Each year with their annual membership renewal PSS members will be required to attest to the currency and compliance of their professional indemnity and public liability insurance policies, together with any unusual or specific endorsements and/or exclusions imposed by the insurer, using the checklist provided by AIBS as a guide.

15.2 AIBS has access to a specialist insurance resource who will assist with identifying more complex compliance issues with these insurances on a referral basis.

- 15.3 The PSS member will be required to submit to the AIBS upon each renewal a copy of the actual policy wording for Professional Indemnity for scrutiny as to its compliance with these standards.
- 15.4 AIBS has the discretion to grant an exemption to a specific professional member or group of professional members, from the requirements of the Insurance Standards providing that:-
- (i) the specific member or group make a formal request of the AIBS for such discretion setting out clearly the alternative compensatory mechanisms that will apply and how such mechanisms will be administered;
  - (ii) the specific member or group can provide evidence of the alternative compensatory mechanism that will provide the necessary financial resources to satisfy the member's occupational liability;
  - (iii) That such evidence will satisfy the financial prudence requirements of the AIBS for such alternative compensatory mechanisms.
- 15.5 AIBS has the discretion to approve a policy provision or a policy even though that provision or policy may not strictly comply with these insurance standards where, in the reasonable assessment of the association:
- (i) the provision or policy is not inconsistent with the objectives of the Insurance Standards; and
  - (ii) in the absence of such approval, the standards would operate unfairly and/or cause undue hardship to a member.
- 15.6 Where a policy provision has been approved by the association, the policy shall not be non-compliant by reason only of the fact that it contains that provision or that the policy does not comply.
- 15.7 Where a policy has been approved by the association it shall be recorded in writing in the records of the association and shall constitute binding evidence that the policy complies with the association's Insurance Standards.
- 15.8 Notwithstanding clauses 15.5, 15.6 and 15.7 the association may not grant an approval of a provision, where the grant of such approval would have the effect that the policy does not comply with the following clauses: 2.1; 4; 5.1 and 7.

## **16 ONGOING REVIEW**

- 16.1 The AIBS will continually review the adequacy of the limitations of liability established for its PSS members, their insurance requirements and their claims performances.