



Professional Indemnity Insurance

(PII) Information Sheet

What is Professional Indemnity Insurance (PII)

Professional Indemnity Insurance (PII) is a class of insurance that is taken up by professionals, such as engineers, that provides cover against negligence and/or breach of professional duty claims made by a client. Currently one of the most pressing issues facing the engineering profession is the affordability and availability of PII, particularly across the building and construction industries.

Availability and Affordability of PII for Engineers

The availability and affordability of PII fluctuates with market conditions and the risk profile of the professional group and individual consultant providing the service. The current PII availability and affordability issues being experienced by the engineering profession are not unique to Australia but are a global problem brought about by a convergence of a range of conditions over the past few years related to economic market conditions and an upsurge in litigation and claims. As these conditions are predicted not to change overnight it is important more than ever that you understand the PII policy you are buying.

PII Policies

The standards of cover of different PII policies vary. A PII policy is underwritten and issued on a “claims made” basis. This means that it will only respond to claims made

or circumstances notified during the current and in-force policy period. The claims can relate to circumstances or events that have occurred during or prior to the inception of a current in-force policy. However, some policies may limit the retroactive operation of the policy. Professional Indemnity Insurance is purchased as a new contract of insurance annually covering the engineer’s current and retrospective services provided as a whole as distinct from a specific project.

What are the Solutions to the Current PII Crisis?

There is no single solution to the current PII crisis. Risk management and risk mitigation are core to addressing the current PII market conditions for engineering in the longer-term. The solutions also lie in the insurance industry and associations like Engineers Australia working collaboratively to find solutions to effect long-term improvement in market conditions for the profession.

In association with these activities, there are, however, things you can do to effect change in the short term. The first is don’t accept your PII Policy at face value – you should know whether the insurance policy you are buying is the right policy for your business and whether it adequately covers you and your business for the work you are actually doing and not necessarily for the work you are capable of doing. The wrong PII policy could be as bad for your business as having no cover at all. It is better to do the due diligence up front than to find out when a claim arises that your PII policy won’t respond.

Annual PII policy check list

The following checklist is by no means exhaustive but sets out some of the key considerations to take into account when buying/renewing your annual PII policy.

PII Policy Feature	Questions To Be Answered	Comments
THE BROKER	<p>What experience has your broker had with the engineering profession and the placement of PII?</p> <p>Does your broker understand the engineering profession and the nature of engineering business?</p> <p>Does your broker understand the nature of the work your firm does and your risk profile sufficiently well enough to be able to convey it to the insurance market?</p> <p>Does your broker provide you with a copy of your full PII Policy Schedule and not just a Certificate of Currency?</p>	<p>The Insurance Broker is your representative and is the 'go between' between you and the insurance industry.</p> <p>A specialist PII insurance broker with an understanding of engineering can be instrumental in negotiating the best possible terms and conditions for your PII insurance, including for the best price.</p> <p>All insurance brokers in Australia are required to be licensed under the Financial Services Reform Act 2001</p> <p>You should familiarise yourself with the full Policy Schedule, and not just be satisfied to accept a Certificate of Currency from your broker.</p>
MINIMUM SUM INSURED	<p>Do you have sufficient PII to cover your work?</p> <p>When purchasing new cover, ensure its terms are consistent with your existing contractual obligations to your clients, e.g., in relation to policy limits.</p>	<p>The level of cover required will need to take into consideration the potential risks based on the type of work your business performs as well as what you envisage will be the highest fee for a service provided to a client in any one year.</p>
DEFENCE COSTS	<p>Does the policy provide cover for costs and expenses in defending or settling a claim?</p> <p>Does the policy provide legal costs "in addition" to the limit of indemnity or is the limit "inclusive of costs"?</p>	<p>Whether your policy is 'costs inclusive' or 'costs exclusive' can have significant financial consequences in terms of the indemnifiable cost of defending a claim.</p>

Annual PII policy check list (Continued)

PII Policy Feature	Questions To Be Answered	Comments
EXCESS	What is the excess on your insurance policy?	<p>A PII policy will be subject to an excess or deductible (this will differ from policy to policy). The excess/deductible will either include the defence costs (costs inclusive) or be exclusive of defence costs (costs exclusive).</p> <p>Check with your insurance broker whether your policy is costs inclusive or costs exclusive. A costs inclusive excess means that you will pay the amount of the excess towards the legal and defence costs whenever your insurer investigates/defends a claim against you irrespective of the outcome.</p>
COVER FOR ALL WORK	Does the policy cover the business activities of your firm? Take into consideration past contracts and cover which may be required retrospectively.	<p>The Policy insuring clause must have the effect of providing cover for claims arising from an actual or alleged breach of professional duty by an insured acting in the performance of his or her occupation.</p> <p>This includes:</p> <ul style="list-style-type: none"> (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 Australian consumer law; and (iii) Fraud and dishonesty of employees, consultants, and sub-consultants (cover may exclude indemnity for each employee, consultant, and sub-consultant).
EXCLUSIONS OR UNUSUAL POLICY CONDITIONS	<p>Are there any activities/ unusual policy conditions that are not covered by the policy?</p> <p>If there are exclusions in the policy, what liability is created in any proposed terms of engagement that are excluded or are not covered by the policy</p>	<p>An acceptable PII policy must indemnify the consultant against any liability for breach of professional duty and provide general cover for liability arising out of the conduct of the professional business under Australian consumer law.</p>

Annual PII policy check list (Continued)

PII Policy Feature	Questions To Be Answered	Comments
RISK MANAGEMENT AND RISK MITIGATION	<p>Have you identified the risks associated with your engineering practice?</p> <p>What risk mitigation strategies do you have in place to manage the risks in your business?</p> <p>Have you reviewed your claims history and risk management strategies?</p> <p>Does your insurance broker understand your business' risk profile and convey it to the insurance market?</p> <p>Does your business have contract review procedures in place?</p> <p>Does your business have/require cyber exposure coverage?</p> <p>If your directors and/or a percentage of your key staff member have credentials such as chartership and EngExec from Engineers Australia or equivalent from other associations, have you made your insurer aware that engineering practice credentials are a marker of having been assessed as competent to practice independently?</p>	<p>PII is not and should not be the only mechanism for managing risk. One of the keys to being properly insured is to understand the risks in your business. Risk management and risk mitigation in engineering businesses are key strategies in any medium to longer term solution to the PII crisis. Before buying any insurance policy consider whether your business gives advice in higher risk areas for which a higher premium may apply, your claims history and whether there are any weaknesses in your compliance systems.</p> <p>The interplay between contractual obligations and PII policies is a critical issue that must be considered before signing a contract. Refer to the Joint Contracts Guideline published in July 2021 by Engineers Australia, Consult Australia and the Institute of Architects. Although the document was written within the context of New South Wales Design and Building Practitioners Act/Regulation, you may find the main principles relevant to your business. Document available at: https://engineersaustralia.org.au/sites/default/files/resource-files/2021-07/guide-for-design-practitioners-and-engineers.pdf</p> <p>All businesses are now reliant on the internet and the cloud. PII Policies will generally only provide limited Cyber cover. If you believe your business has a material cyber exposure to a cyber security or cloud issue, seek advice from your insurance broker about cyber exposure coverage.</p>

Note: The information contained in this PII checklist is intended as a general guide only and no part is intended to be advice, whether financial, legal or professional. You should seek independent professional advice from your insurance broker and/or lawyer when making decisions regarding PII for your practice. Engineers Australia makes no warranties or representations as to the accuracy or completeness of any of the information provided in this checklist and excludes to the maximum extent permitted by law any liability which may arise as a result of its use.

We would like to hear from you about your experience with PII. To provide your feedback or become involved, please email policy@engineersaustralia.org.au.