

## **Consultant and contractor public liability and professional indemnity Insurance**

Where a consultant, contractor or sub-contractor is engaged by the University, they should have the following insurances:

- Public/Products Liability to a minimum of \$10M
- Professional Indemnity to a minimum of \$10M any one occurrence and \$20m in the aggregate
- Workers Compensation as required by state or territory law

They should also be requested to provide a Certificate of Currency for each insurance policy, setting out the name of the insurer, the period of insurance, the amount of any excess and the limit of liability.

Note: In some instances not all of these insurances may be necessary. If in doubt please contact the Insurance Office for advice.

### **Public Liability Insurance**

For the purpose of construction and/or maintenance contracts, this class of insurance can be named either Public Liability insurance or General & Products Liability insurance.

The primary consideration in setting an appropriate limit of liability under a contractors' Public Liability insurance is not the size of the contract but the potential cost of a large claim. For instance, a tradesperson who is performing minor maintenance work involving, say, welding could conceivably cause a fire that results in both significant property damage and multiple deaths and/or personal injury in exactly the same way as a contractor engaged in a major construction project. The exposure relative to consequences is just as great for both entities although, generally speaking, the frequency exposure will be variable commensurate with the nature, value and duration of the work being done.

Ideally, the limit of liability under a contractors' Public Liability insurance will be sufficient to meet all claims emanating out of any one occurrence. On the other hand, it is simply not practical to demand a limit of liability that is not readily commercially available or for which the cost is too high for some contractors to bear. **Thus, it is recommended that, in other than exceptional circumstances, the limit of liability required under a contractors' Public Liability insurance should be \$10,000,000 any one occurrence.**

It is important to recognise that the contractor's liability is not capped at the limit of liability required under a contractors' Public Liability insurance and, if the specified limit does not meet all claims arising out of an occurrence, the contractor may well be liable to indemnify the University for any excess sum in the terms of the relevant Indemnity clause in the contract.

The University itself is likely to be the entity that sustains the greatest property damage. Accordingly our Property insurers' ability to exercise its right of subrogation against the contractor involved must not be diminished or prevented by any hold harmless or waiver of

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subrogation clause in the contract.

If a contract is to be performed under the Australian Standard General Conditions of Contract AS 4000-1997, the Public Liability insurance is required to be in the joint names of the parties and to contain a Cross Liability clause. Although AS 4000-1997 does not specify that contractors ensure that their sub-contractors carry equivalent insurance, it is recommended that they be obliged to do so.

### **Professional Indemnity Insurance**

Unlike Public Liability insurance, there are three aspects of Professional Indemnity insurance that make it possible to calculate a reasonable limit of liability for any given consultancy.

The first is that it is highly probable that the only entity that could conceivably claim against the consultant concerned is, in fact, the University.

The second is that Professional Indemnity insurance is essentially financial loss coverage and it is relatively easy to develop a worst case scenario from which a maximum possible loss can be discerned.

The third is that the amount of insurance does not cap a consultant's liability – if a consultant's negligence causes a loss in excess of the amount of insurance and if the consultant has sufficient financial resources, the University can recover the balance in the terms of the Indemnity clause in the contract.

There are a couple of caveats.

1. Professional Indemnity insurance is underwritten on a "claims made" basis which means that the policy must be current when the claim is made. Accordingly we need to ensure that the insurance remains current for a period of time after the performance of the consultancy. This is commonly six years although this is clearly excessive for some consultancies.
2. The policy limit has to be enough to cater for all claims made during the policy period and, if the University wishes to lodge a claim against a particular consultant, there is always the chance that other principals will have claims and/or that the University will have multiple claims against the same consultant. It is, therefore, recommended that if, for example, a consultant's policy has a limit of liability of \$10,000,000 any one claim that it also contains an amount of double that, i.e.: \$20,000,000 for all claims arising during the period of insurance.

**For this reason, it is recommended that the University asks for \$10,000,000 any one claim and \$20,000,000 for all claims arising during the period of insurance.**