Berkley Insurance Australia's (BIA) Design and Construct Professionals (Design and Construct) insurance policy is a Professional Indemnity (PI) insurance policy, specifically designed to cater to entities that perform the physical construction or installation but also complete design even if it’s only incidental design. The policy provides protection for an insured against claims for financial loss arising out of a breach of professional duty in the exercise and conduct of the Activities and Duties by the Insured.

Who Needs a Design and Construct Policy

A large proportion of contracts for construction require design and construct entities to maintain their own PI insurance policies.

More importantly, customers are becoming increasingly aware of their rights to pursue construction entities where they believe those entities are responsible for loss they have suffered in relation to poor, or inadequate design. Claims for financial loss can be made against an insured for a number of reasons, including:

- Failure to exercise your professional duty
- Breaching misleading and deceptive conduct provisions of consumer legislation
- Breaches of intellectual property rights
- Breach of contract
- Failure to warn.

Legal costs and expenses can be incurred to a significant level even in cases where the claim made against an insured is unfounded.

Any entity that is involved in design and construction activities, such as the provision of advice, design, physical construction, erection or installation should consider purchasing a Design and Construct policy. Entities that are responsible for “construction only” can be held liable for failure to warn – often, this is exposure is not covered under a public and products liability insurance policy.

A Design and Construct policy includes a number of additional coverage extensions that are not available under a traditional PI policy to ensure design and construct professionals can manage their risks and exposures within an ever increasing and complex industry. We have highlighted a number of these additional coverages below.

Key Coverage Highlights

- Civil Liability Insuring Clause
- Some traditional liability insuring clauses are based upon negligence or a breach of professional duty trigger. These insuring clauses are more restrictive as in order for the policy to respond the Insured must be found to have been negligent or to have breached their professional duty. The BIA Design and Construct policy has a civil liability insuring clause.
Design and Construct Professional Indemnity Insurance
Information Sheet

Activities and Duties
The BIA Design and Construct policy has a broad definition of Activities and Duties including:
- Design
- Specification of the technical requirements including the technical requirements of any products or goods
- Project management
- Inspection
- Feasibility study
- Programming and time flow management
- Surveying
- The provision of advice or technical information, plus such additional services as declared to and expressly agreed by Us.

Implied Warranties and Conditions
The Design and Construct policy extends to include coverage for Claims for civil liability alleging a breach of warranty or condition with respect to fitness for purpose, merchantable quality or due care and skill that are implied into contracts under common law.

Principal’s Indemnity
Cover under BIA’s Design and Construct policy extends to your Principals, where a claim is made directly against them arising from your activities and duties.

Pollution
Coverage is provided under the BIA Design and Construct policy for Claims arising from sudden and accidental pollution. Pollution is generally excluded under a standard PI policy wording.

Defective Products and Goods
The Design and Construct policy provides coverage for defective products and goods where the defect arises from the exercise and conduct of the Activities and Duties of the Insured. This coverage is normally excluded in its entirety.

Principal’s Indemnity
Cover under BIA’s Design and Construct policy extends to your Principals, where a claim is made directly against them arising from your activities and duties.

Pollution
Coverage is provided under the BIA Design and Construct policy for Claims arising from sudden and accidental pollution. Pollution is generally excluded under a standard PI policy wording.

Limitation of Liability Contracts
Express language is included within the BIA Design and Construct policy confirming that coverage will not be excluded solely on the basis of the Insured agreeing to any indemnity or hold-harmless conditions. Without this language, coverage could be excluded under the Contractual or Assumed Liability Exclusion of a policy.

Contractual Liability (optional)
The Insured has the option to extend coverage for Claims made under an indemnity or hold-harmless provision of a contract (where it arises from the Activities and Duties of the Insured). This coverage would normally be excluded under a Contractual or Assumed Liability Exclusion.

Multiple Causes of Loss
Express language is included within the Design and Construct policy confirming that where there is more than one cause giving rise to a Claim under the policy, coverage for the Claim will not be excluded even though one or more other causes that have contributed to the Claim are excluded under the policy. This language overrides the Wayne Tank Principle which if applied, would exclude coverage under the policy.

Novated Contracts (optional)
The Insured has the option to extend coverage to Claims for civil liability assumed by the Insured as a result of them entering into a Novated Contract. This coverage would normally be excluded under a Contractual or Assumed Liability Exclusion.
Proportionate Liability (optional)
The Insured has the option to extend coverage to Claims for civil liability assumed by the Insured as a result of them contracting out of Proportionate Liability Legislation. This coverage would normally be excluded under a Contractual or Assumed Liability Exclusion.

The following standard policy extensions are also included within the Design and Construct policy:
• Breaches of consumer legislation
• Costs, or replacing, or restoring lost or damaged documents owned by the Insured or for which they are responsible
• Cover extends to your vicarious liability arising from your acts or your contractors acts
• Cover can be extended to include individuals who are employed by you as contractors
• Infringement of Copyrights or Patents
• Fines and Penalties Coverage (including privacy legislation)
• Claim Preparation Costs
• Costs of retaining a public relations consultant to design and implement a publicity campaign to prevent or mitigate damage to the Insured’s reputation as a result of a claim
• Court attendance costs where a principal, partner, director or employee is required to attend court in relation to a claim under the policy
• Mitigation Costs
• Fee Recovery
• Emergency Defence Costs
• Representation costs for regulatory inquiries, disciplinary proceedings or other proceedings (including privacy inquiries)
• Access to BIA’s professional indemnity Legal Panel for verbal advice in relation to matters potentially covered under the policy.

Does the Design and Construct policy cover Claims arising from defects or errors in any physical works of construction?
No. The Design and Construct policy is still a Professional Indemnity policy and is not designed to cover trade/blue collar errors, etc – they are excluded.

How much cover can BIA provide?
BIA can provide a limit of liability starting at $1,000,000 up to $20,000,000.

Who is Berkley Insurance Australia?
BIA is a trading company of Berkley Insurance Company. BIA’s parent company is W.R. Berkley Corporation (WRB), a Fortune 500 company listed on the New York Stock Exchange. WRB’s financial strength was given a rating of “A+ (Strong)” by Standard and Poor’s and “A+ (Superior)” by A.M. Best Company. Both WRB and BIA are fully authorised and regulated by the Australian Prudential Regulatory Authority (APRA), the prudential regulator of the Australian Financial Services Industry.

Financial Strength
“A+ (Strong)” by Standard and Poor’s and “A+ (Superior)” by A.M. Best

BIA Claims Team
BIA recognises that people purchase insurance policies to have their claims paid. As a result, BIA’s in-house claims team is comprised of hand-picked, highly trained and experienced claims management professionals. The claims professionals are specialists in managing the risk classes covered under the various policies provided by BIA. The Claims team has a proactive approach in recognising and paying claims that arise under any policy of insurance written by BIA’s specialist underwriting team.

Berkley Insurance Australia is an APRA regulated Company.

Do we still need to purchase a Public and Products Liability Policy?
Yes. It is not the intention of the Design and Construct policy to provide coverage for those exposures covered under a public and products liability insurance policy.
What other Products can BIA provide?

• Association Liability
• Directors’ and Officers’ Liability
• Management Liability
• Professional Indemnity
• Medical Malpractice
• Public and Products Liability Insurance

Please see our separate information sheets for these products.

Contact

Please contact your broker for more information regarding Berkley Insurance Australia and their policies. For full details of cover please refer to the policy wording.