



# A guide to Professional Indemnity (PI) insurance

Design and Construct



**Gallagher**

Insurance | Risk Management | Consulting

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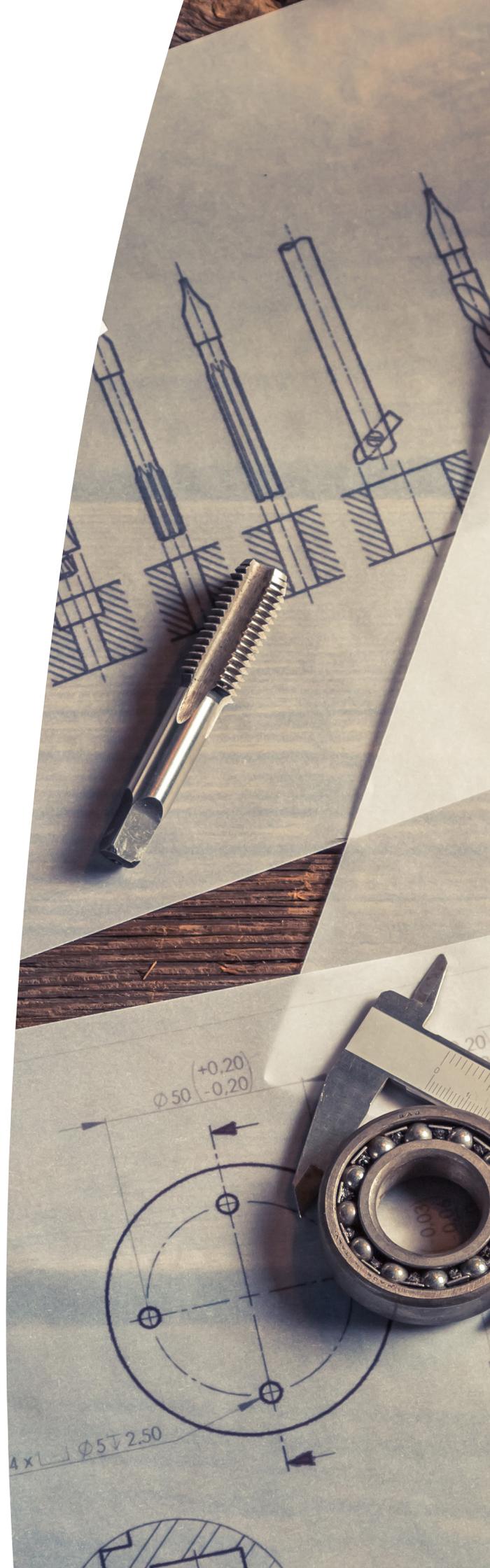
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## About Gallagher

Gallagher is one of Australia's – and the world's – largest insurance broking and risk management companies. We're the broker of choice for more than 100,000 Australian businesses – from micro-SMEs through to multinational corporations and iconic brands.

With 25+ regional and metropolitan branches across Australia, we understand local business communities because we're part of them ourselves.

Globally, the Gallagher network of 600+ offices in over 30 countries, enables us to leverage relationships with international insurance partners to create programs that achieve claims outcomes beyond the scope of many smaller brokers.



Professional Indemnity (PI) [insurance](#) is essential for anyone who provides advice or consultancy services to clients. It can protect your business against legal costs and damage claims resulting from alleged malpractice or professional misconduct.

### **But do contractors and subcontractors in the construction industry need it?**

Many design and construct contractors and subcontractors feel they need PI insurance, but they often don't know whether they have a professional indemnity exposure that qualifies for PI Cover. That's why we've written this guide.

## Do you need PI insurance?

### Here's how you can find out

The requirements for PI cover differ between states in Australia, with some states applying a mandatory requirement before an operating license can be granted.

Another thing that varies is **premiums**. These can vary depending on the level of cover required, so it's important that you fully understand your risk exposure to ensure the insurance solution you purchase protects your business and your reputation.

In this guide, we'll help you understand:

- **What** is considered a professional service; and
- **If** you have a PI exposure, and what you can do about it.

You can use the **checklists** in the guide to help you understand whether you qualify for PI insurance, but remember: this information is just a guide.

**Talk to your insurance broker for more information before making a decision about your insurance.**

### What is a 'professional service'?

In the legal and insurance spheres, the term 'professional service' has a broad meaning. Indeed, the courts generally give a wide interpretation of what is 'professional' with respect to PI policies:

"The term 'professional' in the context of Professional Indemnity insurance today is very broad...The term involves, in the context of a policy written for a local government authority, no more than advice and services of a skilful character according to an established discipline."

- ([GIO General Ltd. v Newcastle City Council \[1996\] NSWSC 322](#))

Basically, if you provide advice or a service to a client in your capacity as an industry professional, then you're providing a professional service.





### Case study: Engineers are professionals too

A consulting engineer was engaged to design internal roads and a hardstand area for a client to load and unload cargo onto trains. During use the underpinnings to the hardstand began to collapse and further subsidence ensued.

It was alleged the consulting engineer's design was defective in that it failed to adequately address what types of vehicles would be using the hardstand area and how they would access the area to load and unload cargo. The materials for the structure were changed during design from concrete to compacted gravel, which saved costs – in the short term. Also the equipment actually used for loading and unloading was heavier than advised to the design engineer.

Rectification costs were quantified at \$750,000 but given the allegations of contributory negligence, the claim was settled with the client for \$200,000.

### Checklist: How many of these professional services do you provide?

Not sure whether your activities are considered professional services? Complete this checklist to find out.

Service description	Do you (or your contractor /subcontractor) provide this service? (Yes/No)	If yes, outline the scope of work requiring this service
Design, including advice in relation to design, in accordance with all relevant laws, regulations and industry codes of practice		
Drafting		
Technical calculation		
Technical specification		
Project management		
Construction management		
Feasibility studies		
Programming and time flow management		
Quantity surveying		
Surveying		
Technical advice		
Inspection		
Training in respect of any of the services above <sup>1</sup>		

<sup>1</sup> Provided always that it is performed only by, or under the direct supervision of, a properly registered engineer, architect or surveyor, a quantity surveyor who is a member of the Australian Institute of Quantity Surveyors or any other person providing a professional service of a skilful character according to an established discipline appropriate to the Professional Services being performed or supervised.



# Do you qualify for Professional Indemnity insurance?

Before you obtain a full quote for PI insurance, you should take the time to assess whether you actually have any professional indemnity exposures as a contractor or subcontractor.

## Checklist: Assess your PI risk exposures

The table below contains some common professional indemnity risk exposures. Review the descriptions and, where appropriate, list the total turnover and professional fees you expect to earn from these services of the next twelve months.

If you don't charge fees for any of these services, then you should note your outgoing expenses for any of these services, particularly what you pay for the services of any subcontractors that do provide these services on your behalf. You will not be able to get a quote for PI Insurance cover without fees (or outgoings for these services) being declared first.

Risk exposure	Next 12 months (estimate)	
	Total turnover	Professional fees earned
Contracts in which you provide professional services in addition to construction / manufacture / sale of goods and undertake the Professional Services yourself	\$	\$
Contracts in which you provide professional services in addition to construction / manufacture / sale of goods, but subcontract these services to other parties <sup>2</sup>	\$	\$
Contracts where you are employed for a fee in a professional capacity to provide design only services (you are not undertaking construction / manufacture / sale of goods)	\$	\$
Contracts where you are employed for a fee to provide project management or construction management services (professional services only - you are not undertaking construction / manufacture / sale of goods)	\$	\$
Contracts where you only undertake construction / manufacture / sale of goods and do not provide any professional services	\$	\$
Other turnover or fee income not specified above (please provide a description of these activities)	\$	\$
Total of all contracts undertaken by you	\$	\$

<sup>2</sup> This includes outsourcing professional services such as design and planning. If you do this, note how much you pay your subcontractors for these services.

# Professional Indemnity Design & Construct insurance

If you've determined that you provide professional services and have professional risk exposures, then you qualify for **Professional Indemnity – Design & Construct insurance**.

Similar to other PI policies, this product provides financial protection for businesses (including contractors) in the construction industry against financial losses arising from liability, including liability assumed from subcontractors. It protects you against common exposures like:

- Design failure
- Inappropriate, incorrect or inadequate advice
- Inadequate project management
- Incorrect certifications

## Case study: Building surveyor

A building surveyor was engaged to issue a building permit and the required certificates, including the final Certificate of Occupancy for a residential construction.

Some years after completion of the house, the owners noticed significant movement and cracking. The owners sued the contracted builder and the home warranty insurer. The contracted builder joined the builder to whom it had sub-contracted the works. The sub-contracted builder then joined engineers, the manufacturer of the footing system, the installer of the footings and the building surveyor.

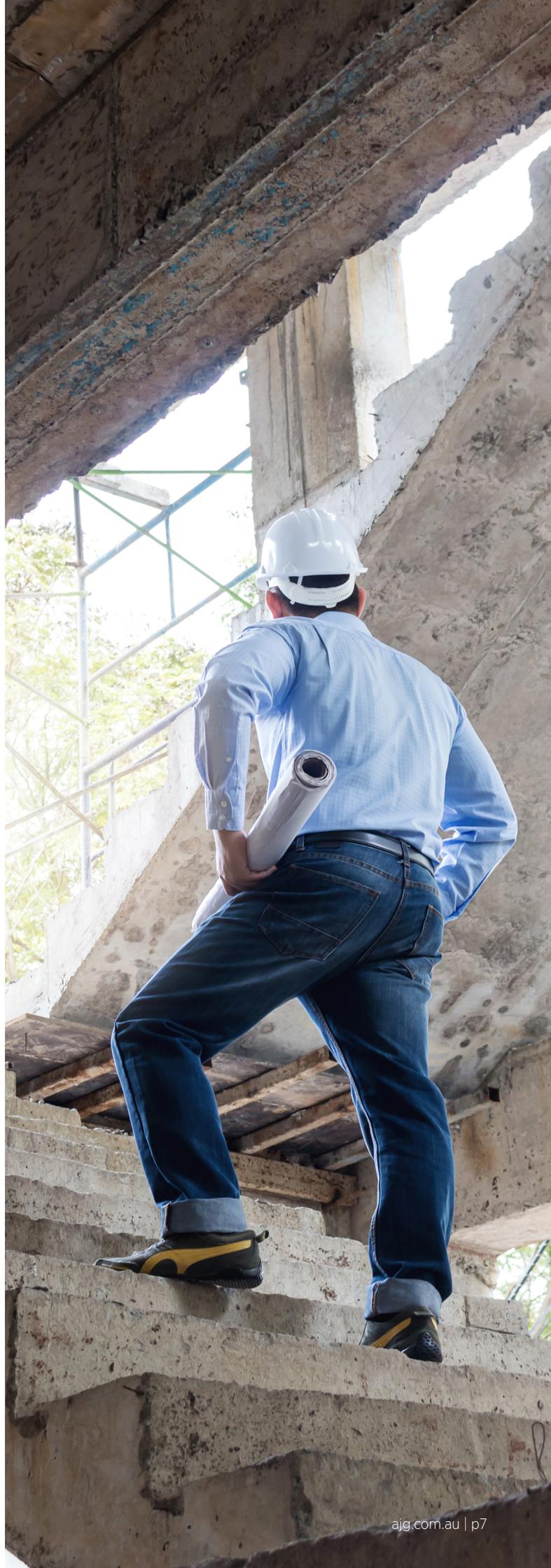
The allegations against the building surveyor were that he was negligent in issuing the permit and certificates because he should have recognised the deficiencies in the various engineering plans, designs and computations. He asserted that it was not the role of a building surveyor to check such documentation, rather, his duty was to certify that the steps required under the Building Act had been carried out by the appropriate registered building professionals.

The other parties alleged that because the deficiencies were obvious on the face of the design documents and certificates, the building surveyor was liable. After four years of litigation (and significant legal costs) the claim settled for over \$1million with the building surveyor contributing a proportion of that sum. Unfortunately, it is common for building surveyors to be dragged into such disputes.

### Talk to your insurance broker today

Placing this kind of cover takes considerable skill and care, so it's best to consult your insurance broker for information about what level of cover you need for your business.

[Read: 7 signs you need help from an insurance broker](#)





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