



Properties Directorate
Development and Major Projects
PROJECT INSURANCE
GUIDELINES *

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1. Introduction

Insurance is an integral part of the overall risk management strategy for the University when engaging with external service providers. These Project Insurance Guidelines have been prepared by the Office of General Counsel as guidance to internal and external project managers in determining the appropriate type and level of coverage to be required from consultants and contractors engaged by the University for the delivery of construction projects as well as review of the evidence of any such insurance required.

2. Application of these Guidelines

These Guidelines apply to all staff and, any contractors or consultants engaged to act on the University's behalf, involved in the procurement of building, maintenance, construction and development activity. These Guidelines are to be adhered to in all circumstances and for all engagements, unless the written authority of the Director of Properties has been obtained.

The staff member who is responsible for the project or procurement of the contractor or consultant is responsible for ensuring that the contractor or consultant procures and produces satisfactory evidence of the required project insurances in accordance with these Guidelines.

3. ACU's standard contractual requirements for insurance

ACU requires the following insurances under its various standard form construction and consultancy contracts:

Figure 1: Required insurances for ACU engagements under ACU's standard contract terms

Type of insurance	Contractor short form - RFQ Minor Works	Contractor long form – AS4905- 2002, AS2124-1992 & others	Consultants – RFQ Consultancy Agreement	Consultants – ACU Long form consultancy Agreement
Public Liability insurance	✓ (clause 7)	✓ (clause 12 – AS4905, AS4906; clause 19 AS2124)	✓ (clause 5(a)(i))	✓ (clause 13.2)
Professional indemnity insurance	✗ (except when design forms part of the scope of engagement)	✗ (except when design forms part of the scope of engagement)	✓ (clause 5(a)(iii))	✓ (clause 13.1)

Works insurance	x	✓ (clause 12 – AS4905, AS4906; clause 18 AS2124)	x	x
Workers compensation insurance	✓ (not explicitly required)	✓ (clause 13 – AS4905, AS4906; clause 20 AS2124)	✓ (clause 5(a)(ii))	✓ (clause 13.3)

For construction and maintenance contracts less than \$100,000, ACU's insurance arrangements will provide limited coverage for damage to property identifiable as forming part of the 'works'.

4. Public Liability Insurance

4.1. Introduction

Public liability insurance covers an insured's legal liability to third parties for death, personal injury or physical property damage resulting from the negligence of that insured. In the context of a construction project, public liability insurance will ordinarily cover the negligent acts or omissions of a contractor or consultant which causes reasonably foreseeable harm to a third party (namely ACU) including:

- property damage to a neighbouring property including ACU's property not forming part of the works under contract by something arising from the construction site or the contractors such as negligently caused fire or from defective works damaging a neighbouring property;
- injury to University students or staff where a site has not been isolated by the contractor or where students and staff must traverse a work zone where students and staff must traverse a work zone;
- injury to University students or staff or injury to other consultants or contractors caused by a consultant such as surveyor's pegs negligently placed or other equipment left unsecured on site by a consultant;
- nervous shock, such as emotional distress or a recognised psychiatric illnesses (usually resultant from or related to a physical injury);
- injury to persons or property damage arising during the defects liability period caused by defective construction or tradesmen entering on site;
- pure economic loss, which occurs in certain circumstances where a negligent act or omission causes a business to lose expected revenue.

Public liability insurance does not cover liability in relation to:

- property damage or bodily injury caused by a motor vehicle where the motor vehicle is insured, as bodily injury in this case is covered by compulsory motor vehicle (CTP) third party insurance;
- injury to the insured's employees which, is to be covered by workers compensation insurance;

- loss arising from the professional services provided by the insured;
- risks associated with asbestos;
- product liability (however, product liability and public liability insurance are often sold together).

Public liability insurance is appropriate on all construction and maintenance engagements for both contractors and consultants, except in rare circumstances where the consultant does not attend the ACU's premises in any circumstance.

The eligibility of claims is based on the time of the incident, not on the time of the claim, with incidents during the period of the insurance being covered. Claims are also subject to an excess.

4.2. ACU requirements for public liability insurance coverage

All contractors and consultants (except where the consultant does not attend the ACU's premises in any circumstance) must maintain public liability insurance with the following requirements:

1. minimum insured amount in accordance with Figure 2 (see paragraph 4.3);
2. minimum period of coverage until expiry of defects liability period (see paragraph 4.4);
3. maximum excess of \$50,000 (see paragraph 8.6)
4. for contracts above \$100,000, a contractor's public liability policy must:
 - a. name Australian Catholic University Limited as an insured party; or
 - b. state "the Principal" as an insured party (see paragraph 8.1);
5. for contracts above \$100,000, a contractor's public liability policy must:
 - a. state "the Owner" as an insured party (see paragraph 8.1);
6. cover ACU's respective rights and interests as an insured party;
7. cover liabilities of the insured parties to third parties;
8. contain a cross-liability clause, under which the insurer agrees that the term 'insured' applies to each of the persons covered as if a separate insurance policy had been issued to each of them (see paragraph 8.2)*;
9. contain a waiver of subrogation clause, under which the insurer agrees to waive all rights of subrogation or action against any of the persons covered (see paragraph 4.7)*;
10. cover 'worker to worker' liability (see paragraph 8.2)*;
11. cover the use of any construction plan not covered under a comprehensive or third party motor vehicle insurance policy;
12. cover legal and investigation costs (see paragraph 8.5).

*For small contracts (works contracts and consultancy services engagements under \$100,000) ACU may accept the risk of not having cross-liability, waiver of subrogation or 'worker to worker' coverage provisions in the contractor's or consultant's public liability policy and if the contractor submits a certificate of currency or other proof of insurance that does

not mention cross liability or subrogation, the project manager may refrain from following up this requirement.

4.3. Level of Cover

The minimum acceptable public liability insurance cover for ACU contractors and consultants is set out in Figure 2 below. In exceptional circumstances, a project manager should consider whether an increase in coverage is required. Factors increasing the cover level required include site related work, contract value and size, the risks of the activity to others, contractor size, and type of firm.

The limit is to the cover the value of each claim, no matter how many claims are made in one year.

Figure 2: ACU requisite minimum amount of Public Liability insurance coverage for construction contractors and consultants providing on-site services for construction and construction related projects.

Construction/Consultancy type and risk	Minimum level of public liability coverage
For a construction contract	\$20m
For consultancy and project management services engagement not involving any unusual risks	\$5m

4.4. Period of coverage

The contractor or consultant is to maintain a public liability insurance from the commencement of work until ACU, or any person representing ACU, agrees with the contractor that:

1. in the case of contractors, the contractual defects liability period has expired;
2. in the case of consultants, the services performed are completed.

5. Professional Indemnity Insurance

5.1. Introduction

Professional indemnity insurance covers professionals, such as architects, engineers and other consultants, and claims against them arising from the professional services they provide. A consultant will be legally liable for a breach of professional duty causing injury, loss or property damage. In some cases, a contractor will perform professional services such as provide design or construction management services and therefore it will be appropriate that they obtain professional indemnity insurance. However, the ability of a contractor to procure professional indemnity insurance is often dependent on the staff qualifications of the contractor. Therefore, most contractors engaged in minor works will unable to procure professional indemnity insurance notwithstanding their engagement involves minor design.

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Typically, professional indemnity insurance will cover claims arising from the services involved where they include:

- bodily injury and property damage arising from a breach of professional duty and/or negligence such as defective design;
- fraud/dishonesty other than a company director's dishonesty;
- infringement of intellectual property;
- breach of duty/confidentiality;
- defamation;
- loss of documents; and
- legal costs and investigation costs associated with defending.

It is also important to ensure that consultants or contractors who procure high-risk sub-consultant services have an appropriate level of professional indemnity insurance to cover the sub-consultant's exposure as well as ensure that the sub-consultant has a level of professional indemnity insurance coverage equivalent to the amount required under the head consultancy agreement.

5.2. ACU requirements for professional indemnity insurance coverage

All consultants and relevant contractors must maintain professional indemnity insurance with the following requirements:

1. minimum insured amount in accordance with Figure 3 (see paragraph 5.3);
2. personal injury coverage;
3. maximum excess of \$50,000 (see paragraph 8.6);
4. continuity of coverage for a period of no less than 6 years after the completion of the provision of the services (see paragraph 5.4);
5. must not contain the following exclusions,
 - a. loss of documents and electronic data;
 - b. dishonesty of employees;
 - c. unintentional use of intellectual property;
 - d. limits in the cost of a legal defence;
 - e. territorial limits;
 - f. bodily injury and property damage; and
 - g. acts of sub-consultants.
6. provide for automatic reinstatement of the policy limit (see paragraph 8.7);
7. cover sub-consultants' liability by identifying sub-consultants as either an 'insured' or 'named insured' on the policy (see paragraph 8.8);
8. cover legal and investigation costs (see paragraph 8.5).

5.3. Level of cover

The required minimum insured amount for professional indemnity insurance for consultants engaged by ACU will vary between \$1 million and \$20 million depending on the project size and the service risk of the consultancy service provided. The requisite minimum professional

indemnity insurance levels of coverage required by ACU are specified in Figure 2 below based on the *Australian Procurement and Construction Council Professional Indemnity Insurance Guidelines*.

The required coverage may be stipulated by the consultant or contractor as an amount for “a single claim or in the aggregate as it relates to the project”. This does not negate the requirement that the consultant’s or contractor’s professional indemnity insurance coverage contain provision for automatic reinstatement of the policy limit as it pertains to other claims not related to the engagement with ACU.

Figure 3: ACU requisite minimum amount of Professional Indemnity Insurance coverage for consultants providing services for construction and construction related projects.

Service Risk	Project Value				
	\$0-\$5m	\$5-10m	\$10-\$50m	Over \$50m	Over \$100m
<p><u>Low</u></p> <ul style="list-style-type: none"> - Architects (Concept planning stage only) - Planning consultants (concept planning stage) - Project management for fitouts and internal works - Traffic consultants - Other consultants undertaking pre-construction phase studies - Audio visual consultants - Wayfinding and signage consultants - Consultants providing asbestos and other hazardous materials audits - Acoustic design consultants - Maintenance and cleaning contract - Asset management contractors - Planning studies - Landscape and interior design - Training manuals 	\$1m	\$2m	\$5m	\$10m	\$20m

Figure 3 (continued): ACU requisite minimum amount of Professional Indemnity Insurance coverage for consultants providing services for construction and construction related projects.

Service Risk	Project Value				
	\$0-\$5m	\$5-10m	\$10-\$50m	Over \$50m	Over \$100m
<p><u>Moderate</u></p> <ul style="list-style-type: none"> - Civil, structural and mechanical engineers - Architects and design consultants providing design documentation - Project management involving construction works and construction planning - Building surveyors - Quantity assessors - Consultants preparing fabrication schedules - Green star rating consultants 	\$2m	\$2m	\$5m	\$10m	\$20m
<p><u>High</u></p> <ul style="list-style-type: none"> - Geotechnical engineering - Cost estimating - Construction management contractors 	\$2	\$5m	\$5m	\$10m	\$20m
<p><u>Extreme</u></p> <ul style="list-style-type: none"> - Fire protection engineers - Asbestos removal 	\$5	\$5m	\$10m	\$10m	\$20m

5.4. Period of cover

ACU requires consultants to maintain professional indemnity insurance coverages for a period of at **least 6 years** following the completion of the provision of the services to ensure that it can make a claim within the statutory period to do so.

This is because negligent fault in design may not be discoverable until several years after the end of the provision of the services. Professional indemnity insurance policies are “claims made” policies meaning that they cover claims made or taken to be made during the period that the policy is current. Therefore, it is essential that ACU requires the maintenance of the coverage for the prescribed period after the provision of the service is completed.

6. Works Insurance

6.1. Introduction

“Works” are the whole of the work required under the contract to be performed by a contractor. The works under construction will generally not be covered by the contractor’s public liability insurance nor ACU’s public and property insurances. When the contractor takes out works insurance, ACU is able to recover moneys for loss or damage to property forming part of the contractually defined ‘works’ during the construction phase of a contract occurring as a result of theft, malicious damage, wind, storm, flood and other water damage, cyclone, tsunami, subsidence and landslips, fire including bush fire, and earthquake.

Works insurance is particularly important in circumstances where the contractor or other negligent party either refuses or does not have the financial resources to pay for the rectification of the damage to the works and other property. Insurance of the works is not generally required for repair or maintenance contracts.

This insurance usually covers:

1. damage to materials, goods, equipment and supplies forming a permanent part of the works;
2. damage to temporary work required to construct the works, including props and slipforms;
3. formwork, falsework, scaffolding, sheds and on-site amenities;
4. consumables such as oil, petrol and first aid equipment;
5. associated legal defence costs;
6. removal of debris;
7. consultants fees in rectifying damage;
8. government charges associated with rebuilding and rectification;
9. preparing plans, files, records and specifications pertaining to the works rectification, including computer software; and
10. damage to buildings used for construction purposes.

The insurance usually has a range of exclusions, including:

1. defective design or damage as a result of defective design;
2. defective workmanship or damage as a result of defective workmanship;
3. damage to mobile plant and equipment;
4. damage to leased equipment;
5. damage to vehicles on site;
6. damage to water borne craft exceeding 8 metres in length;
7. *product liability;
8. *asbestos liability;
9. personal injury;
10. breaches of professional duty;
11. high risk civil engineering works;
12. levee bank and coffer dam construction; and
13. workers compensation.

In the event that works contain a particular high risk, such as the removal of asbestos, the project manager should consider insurance arrangements to cover that risk. Contact OGC if further advice is required.

6.2. ACU requirements for Works insurance coverage

ACU requires a contractor to obtain works insurance coverage for all engagements except those engagements using ACU's standard short form contract (RFQ Minor Works) for engagements below the value of \$100,000. ACU's insurance arrangements will cover works of a value below \$100,000. All contractors engaged for a contract value of over \$100,000 must obtain works insurance with the following requirements:

1. Minimum insured coverage of 120% of the contract sum (see paragraph 6.3);
2. Must name Australian Catholic University Limited as an insured party or stipulate "the Principal" as an insured party (see paragraph 8.1);
3. Must stipulate the "owner" as an "insured party" (see paragraph 8.1);
4. Must contain a waiver of subrogation clause (see paragraph 8.3)
5. cover legal and investigation costs (see paragraph 8.5).

6.3. Level of cover

The minimum level of cover for any works insurance required by ACU is to be **120% of the contract sum** for any one occurrence. The amount of coverage for works insurance should be sufficient to fund the demolition and reinstatement of the works in the event of destruction or damage. It should not be less than the total of:

- The contract price;
- Costs of demolition and removal of debris;
- Fees of consultants in assessing damage and remedial measures and redesigning and managing, where necessary, the reinstatement of the works;
- The value of any materials stated in the contract to be provided by ACU;
- A margin for contingencies.

A works insurance policy usually stipulates separate limits of coverage for particular types of occurrence or loss. For example, there may be limitations on plant and equipment. These individual loss limitations should be assessed in the context of the construction engagement.

6.4. Period of cover

The contractor must procure works insurance coverage from the date of commencement of works until a date 6 months after the scheduled date of practical completion to ensure there is adequate coverage in the event of a delay to the program.

Once, ACU takes over possession or uses the works or a portion of the works prior to the certification of practical completion, then the works insurance coverage will cease on the date possession was taken over in relation to the whole or portion of the works.

7. Workers Compensation insurances

7.1. Introduction

Workers compensation insurance cover the direct employer for claims against them made by their own employees and hired labour who are injured at work, whether or not it is the fault of the employer, with:

- weekly payments to cover loss of earnings whilst injured;
- payment of medical expenses and vocational rehabilitation expenses, where necessary, to assist them to return to work; and
- lump sum payments for permanent incapacities and fatalities made to workers (or their families) injured or made ill in the course of their work.

Each state and both Australian territories have developed their own workers' compensation laws which are largely similar. Workers compensation insurance is compulsory for all consultants and contractors in Victoria, NSW, Queensland and the ACT except those who operate as a sole trader without employees or hired labour¹ or, in NSW and Queensland only, those who pay an employee less than the statutory prescribed minimum in annual wages of \$7,500 per year.

Under all jurisdictions, if a contractor (or consultant) does not hold legally required workers compensation insurance then ACU may become liable to pay outstanding workers compensation insurance premiums or to meet financial obligations of the contractor to its employees who suffer work related injuries.

Workers compensation policies only cover the injured worker's employer. It does not protect ACU against claims for contribution from the workers compensation insurer of the employer of the injured worker. For this reason it is essential that ACU also ensures that it is covered

¹ See section 4(1) of *Workplace Injury Management and Workers Compensation Act 1998* (NSW); section 11 of the *Workers' Compensation and Rehabilitation Act 2003* (Qld); section 3 of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic); and section 8(1) of *Workers' Compensation Act 1951* (ACT)

under the contractor's or consultant's public liability insurance policy where appropriate (see below at paragraph 8.1 and 8.4).

7.2. ACU requirements for workers compensation insurance

ACU requires all contractors and consultants to have workers compensation insurance and provide evidence of that insurance prior to commencing work. This applies to any value engagement.

A current certificate of insurance is generally sufficient evidence that appropriate insurance is held as the terms of the policy are determined by statute. As workers compensation insurance is obtained on a year by year basis, new certificates of currency should be obtained from the contractor or consultant on a periodic basis.

7.3. Statement regarding Workers Compensation (NSW only)

In NSW, ACU requires the contractor to provide a completed statement declaring that it has paid all workers compensation insurance premiums together with the workers compensation certificate of currency, accompanied by a copy of a relevant workers compensation certificate of currency. This is to be provided prior to any commencement of work on site. The statement regarding workers compensation is a prescribed form available at www.workcover.nsw.gov.au and is attached to the ACU's standard form contracts.

Under the NSW workers compensation legislation, ACU can be liable if it does not receive the statement. This legislation treats ACU as the *principal contractor* and the contractor is a *subcontractor* until a statement has been provided. Until such time as the statement is provided, ACU can be liable for all workers compensation premiums and any work related injuries of the contractor. The statement must declare whether the *subcontractor* assumes the responsibilities of a *principal contractor* and, if so, state whether it has been given a similar statement by its subcontractors. ACU can withhold any payment due until the written statement is provided.

8. Insurance policy requirements

8.1. Coverage of ACU under the policy (applicable to public liability and works insurance)

ACU requires that a contractor's policy of insurance for public liability or works insurance must:

1. name ACU among the entities listed in the policy as "the insured", either by its name as Australian Catholic University Limited or by descriptive references to either "client" or "principal"; and
2. list the "owner of the land/site" among the entities listed in the policy as "the insured"; and
3. cover the respective rights and interests of ACU/the Principal and the Owner as an insureds; and
4. cover liabilities to third parties of ACU/the Principal and the Owner as insureds.

It is not necessary that ACU be a “joint insured” or “co-insured”.

It is inadequate for the contractor’s public liability insurance to extend coverage by means of:

1. to note ACU or “the Principal” as an “interested party” on the policy;
2. to obtain a policy extension to include “principal’s liability”;
3. to note the interests of ACU or “the Principal” on the policy;
4. to otherwise note ACU or “the Principal” as a beneficiary on the policy.

It is essential to list the **owner of the land** among the entities listed in the policy as “the insured” by either descriptive reference to the “owner of the land/site” or similar description. This is because ACU is often not the registered owner of the land on which construction works occur and therefore loss or damage may not be covered under the policy even if it is the named as “the insured”. In such circumstances, ACU will not suffer loss if property is damaged as, strictly speaking, it does not own the property including any buildings on the land. Generally, the owner of the improvements on the land is the registered owner. Therefore it is essential that the coverage under the policy extends to the owner.

These requirements are not necessary for consultancy engagements. Consultancy engagements may note the interests of the Principal as an interested party.

8.2. Cross-liability (public liability and works insurance)

Public liability and works insurance cover must contain a cross-liability clause. This ensures the policy covers both ACU’s and the contractor’s respective liability to each other for loss or damage to property or claims for death or injury and not just loss or damage or personal injury claims are caused by third parties.

If the policy does not have this clause, then it is possible that the policy will not respond to a claim brought by ACU because insurance policies generally do not respond if the loss suffered by the “Insured” was caused by the “Insured”, albeit in circumstances where the named “Insured” comprises more than one person.

8.3. Waiver of subrogation (public liability and works insurance)

Subrogation refers to the right of an insurer who has paid a claim to step into the shoes of an insured and recover that money from another party, including parties named as insured or intended to be covered by the policy.

For this reason, ACU requires works insurance and public liability insurance policies of contractors to include a waiver of subrogation clause to prevent the insurer seeking contribution to the payment of a claim from ACU given that it is intended by the parties that ACU is to be covered by the policy of insurance.

8.4. 'Worker to worker' liability (public liability)

The public liability insurance coverage must include 'worker to worker' liability to cover ACU and the other insured parties on site when joined in any claims arising from injuries to workers.

At any one time, there is may be a large number of parties engaged to work a construction project including the head contractor, subcontractors, sub subcontractors consultants and hired labour. If a worker is injured on site and is able to demonstrate that another contractors, subcontractors or even ACU were connected or contributed to the injury, then the workers compensation insurer is able recover a proportion of the compensation payments from those parties found negligent.

ACU therefore requires the head contractor's public liability insurance coverage to respond to worker-to-worker claims brought by the workers compensation insurer of an injured worker of the contractor, sub-contractors or hired labour so that there is no disruption to the programme or risk to the project that the head contractor may not covered for injuries of third parties. Similarly, ACU wish to rely on the head contractor's public liability policy to respond to a claim brought against it by the workers compensation insurer of any injured workers including that of the head contractor itself. This is essential as ACU's public liability policy may not respond in circumstances where it has handed control of the site to the head contractor.

8.5. Costs of responding to and defending claims (public liability, professional indemnity and works insurance)

Public liability, professional indemnity and works insurance policies should cover costs, including legal costs, of responding to, investigating and defending claims against the Principal or contractor, and payment for these costs should be in addition to the amount insured, so as not to diminish the amount available to meet claims if the defence is unsuccessful.

8.6. Maximum excess of \$50,000 (public liability, professional indemnity and works insurance)

The policy must not contain an excess of more than \$50,000. A policy of insurance normally requires an excess to be paid by a Contractor before a claim can be made. If the contractor or consultant refuses or does not have the financial resources to pay an excess in the event that loss is suffered, then ACU may be forced to pay the excess itself. It is essential that the excess amount is not too high as to negate any moneys received from the insurer or otherwise warrant a claim on the insurer uncommercial.

8.7. Automatic reinstatement (professional indemnity)

ACU requires that consultants must have professional indemnity insurance policies which allow for one automatic reinstatement of the policy limit in the policy period. This is because the professional indemnity insurance coverage of a consultant or contractor generally provides a limit of coverage in respect of any and all claims for all of its engagements. Thus,

the policy limit for any one year may be depleted by claims in relation to other projects of that consultant or contractor before a claim is made by ACU leaving ACU with no coverage. Coverage for one automatic reinstatement requires the Insurer to reinstate the policy limit if moneys have been previous paid out in response to an unrelated claim.

8.8. Coverage of sub-consultants (professional indemnity)

It is imperative that the professional indemnity insurance of a contracted consultant's covers the liability of any sub-consultant that it procures. If ACU suffers loss or damage as a result of a negligent act or omission of a sub-consultant, it may not be covered for the loss unless the head consultant's professional indemnity insurance includes specific coverage for sub-consultants. A policy will usually cover sub-consultants' liability by identifying sub-consultants as either an 'insured' or 'named insured' on the policy or otherwise as persons to whom the insurance cover provided by the policy extends, usually by descriptive reference (as opposed to recording the names of the sub-consultants).

9. Evidence of Insurances

9.1. Introduction

It is important that project managers check that the required insurances have been obtained before work commences, and at other appropriate times, to ensure that the specified insurance is in place. Project managers must be prepared to act decisively if insurance arrangements are unsatisfactory because lack of insurance can put at risk the whole value of the works, or expose ACU to large claims for personal injury or death. Contract actions in response to unsatisfactory insurance may include:

- terminating contracts,
- denying contractors' access to sites,
- suspending work, and
- withholding payment of contractors' claims

The project manager must check that the contactor or consultant has obtained the requisite insurance in accordance with these Guidelines by reference to graduated approach in Figure 4 below:

Figure 4: Graduated insurance checking methods

Construction/ Consultancy type and value	Checking insurances			
	Public Liability	Professional Indemnity	Works Insurance	Workers Compensation
Large contracts Construction works contracts over \$10m	Enhanced certificate of currency, confirming the insurance complies with the requirement of the contract and stating any unusual terms	(for D&C or managing contractor) Enhanced certificate of currency, confirming the insurance complies with the requirement of the contract and stating any unusual terms (for managing contractor where design not included) Current basic certificate of currency	Detailed check of policy wordings (particularly exclusions)	Current certificate of currency
Consultant engagements over \$1m	Current basic certificate of currency	Enhanced certificate of currency, confirming the insurance complies with the requirement of the contract and stating any unusual terms	*	Current certificate of currency
Medium contracts Construction works contracts between \$100,000 and \$10m.	Enhanced certificate of currency, confirming the insurance complies with the requirement of the contract and stating any unusual terms	(for D&C or managing contractor) Enhanced certificate of currency, confirming the insurance complies with the requirement of the contract and stating any unusual terms (for managing contractor where design not included) Current basic certificate of currency	Enhanced certificate of currency, confirming the insurance complies with the requirement of the contract and stating any unusual terms	Current certificate of currency
Consultant engagements between \$100,000 and \$1m.	Current basic certificate of currency	Enhanced certificate of currency, confirming the insurance complies with the requirement of the contract and stating any unusual terms	*	Current certificate of currency
Small contracts Minor works contracts under \$100,000	Current certificate of currency	*	Enhanced certificate of currency, confirming the insurance complies with the requirement of the contract and stating any unusual terms	Current certificate of currency
Consultant engagements under \$100,000	Current certificate of currency	Current certificate of currency	*	Current certificate of currency

9.2. Certificates of currency

Project managers should ensure that certificates of currency provided by contractors or consultants include the following information:

1. the date of issue of the certificates of currency;
2. the identity of the insurer(s) of the policy;
3. a description of the cover the policy provides;
4. the limit(s) of liability of the policy (including all applicable sub-limits);
5. the policy period;
6. the person(s) insured under the policy;
7. the territorial and jurisdictional limits of the policy.

When an **enhanced certificate of currency** is required to evidence that the insurance complies with the requirement of the contract and stating any unusual terms, the additional information on the certificate of currency should provide:

1. any applicable excess, self-insured retention or deductible;
2. relevant exclusions;
3. the insurer's financial security rating;
4. the policyholder;
5. the policy number;
6. confirmation that any particular coverage requirements required by the contract are included.

9.3. When insurances should be checked

Insurance should be checked for compliance with contract requirements:

1. before giving a contractor access to the site or before contract work commences, or, for consultancy services, without undue delay after the award of a contract;
2. whenever there is reason to believe that a contractor is failing to comply with the insurance requirements;
3. in the case of professional indemnity and public liability insurance, on each anniversary of the commencement date of coverage provided on the certificate of currency if the project goes beyond that date;
4. in the case of workers compensation insurance, where contractors are required to submit certificates of currency with claims for payment, or otherwise, whenever contractors are required to submit certificates of currency.

Annexure A - Definitions

Certificate of Currency or confirmation of coverage is a written confirmation, usually provided by the contractor's or consultant's insurance broker, that an insurance contract exists and usually provides some details of the extent of cover and the parties to the insurance contract.

Construction includes all activities concerned with demolition, maintenance, building, fit-outs and minor works, landscaping, civil engineering, process engineering, \ and heavy engineering.

Consultant refers to entities or persons engaged to give professional or expert advice in a construction project and include architects, engineers, surveyors and specialists such as environmental experts.

Contract works insurance is insurance cover for the constructed asset or the works, and associated temporary work and other affected property, against loss or damage resulting from defined events under a contract until handover of the works to the users/owners.

Contractor refers to builder who carries out the construction work under a contract. A contractor may engage subcontractors under separate subcontracts to carry out portions of the work, in which case the contractor is commonly known as the main contractor.

Cross-liability refers to liability of one person covered by an insurance policy for losses or damages suffered by another person also covered by the same insurance. In the absence of an appropriate cross-liability provision, the insurance might not respond to the loss.

D&C refers to a design and construct contract between a contractor and the Principal for both the design and construction of a project. The principal supplies an elementary brief to the contractor, who then provides the design and documentation, secures all the necessary approvals, and constructs the project as per drawings and specifications. Alternately, the principal engages consultants for preliminary design who are then novated to the contractor.

Date for practical completion refers to the date set in a construction contract by which the contractor is obliged to bring the works to practical completion.

Defects liability period refers to a period of time prescribed in a construction contract commencing at practical completion and ending on final completion, during which any defects that arise are to be rectified by the Contractor at the Contractor's cost (except defects caused by the Principal or the occupier).

Excess is the amount of cost or loss set under a policy of insurance by the insurer for the insured to pay with any claim being paid by the insurer. This is also known as a deductible.

Indemnity is a contractual promise by one party to compensate another party for expense or loss incurred as a result of an act by the promisor party.

Insurance or policy of insurance or an insurance policy is a contract whereby one party (insurer) agrees to indemnify or guarantee another (insured) against loss caused by a specified cause or future contingency in return for the earlier payment of a premium.

Insurance broker is a registered party specialised in providing insurance advice and the placement of insurance with insurers on behalf of the insured, acting on behalf of the insured.

Limit of indemnity is the sum insured under a policy of insurance, and constitutes the insurer's maximum liability in respect of any one event or series of events insured against which usually determines the amount of the premium.

Managing contractor contract refers to a contracting methodology whereby the contractor is engaged on an open book and cost plus basis, whereby the contractor engages the subcontractors and is paid the costs of the respective subcontractors plus a set management fee usually paid on a percentage basis. This may or may not involve the managing contractor being responsible for design.

Negligence is a cause of action in Tort that must consist of three elements namely: a Duty of Care; a breach or contravention of that duty; and a measurable loss or material damage flowing from or as a consequence of the breach of the duty.

Policy is the document prepared by an insurer or a broker as evidence of the existence of an insurance contract. Section 11(1) of the *Insurance Contracts Act 1984* defines a "policy" as also including a document known as a cover note.

Practical completion refers to the stage in the carrying out of work under a construction Contract when the Works are substantially complete (save for minor Defects or omissions) and reasonably capable of being used for their intended purpose.

Principal refers to the party for whose benefit the project is to be constructed.

Principal contractor refers to person or company appointed to be responsible for meeting certain occupational health and safety requirements of a construction site, as required by the relevant State or Territory OHS Law although under NSW workers compensation law the principal contractor shall be the principal until such time it has obtained the statutory prescribed statement from the contractor regarding workers compensation.

Professional indemnity insurance refers to a policy of insurance taken out in relation to loss or damage caused by a person or persons acting in a professional capacity.

Project manager refers to either a staff member of ACU responsible for administering the principal's responsibilities under the contract or the person or company engaged by ACU to administer a number of the principal's responsibilities under the contract.

Public liability insurance is insurance for claims against the insured by members of the public and other third parties for personal injury or damage to property for which the insured is legally responsible.

Subrogation refers to the right of an insurer that has paid a claim to take over the rights of the insured (including court action) to recover the loss from whoever caused it.

Waiver is the decision of a party not to enforce a legal right or require the other party to perform an obligation, eg waiver of a term of the contract.

Works is the whole of the work to be executed in accordance with a Contract by the Contractor for the Principal which shall be handed over to the Principal.

Annexure B – Example Certificate of Currency for Works Insurance

Principal:

Contractor:

General Description of the Works:

Contract Period:

Commencement of the Contract:

Policy No.

This is to certify this Policy covers the Insured for work undertaken for and on behalf of the Principal/Australian Catholic University Limited and others as described below.

Specifically the Policy (subject to the attached standard policy terms and conditions):

1. Covers the Works for:
 - Material Damage - includes perils of loss, damage or destruction by earthquake, fire, explosion, flood lightning, storm and tempest, accidental damage, burglary/theft, malicious damage and transit;
 - Maintenance of the Works; and
 - Third Party Liability.
2. Protects the interests of the Contractor and Subcontractors involved in carrying out the Works.
3. Includes the Principal/Australian Catholic University Limited as an additional named Insured for liability arising out of the activities of the Principal/Australian Catholic University Limited. This extension includes liability:
 - for injury to any he Principal/Australian Catholic University Limited employee;
 - arising from work undertaken at and away from the site of the Works; and
 - for damage to the he Principal/Australian Catholic University Limited property not in the Contractor's physical or legal control.
4. Covers loss &/or damage or destruction of the following for an amount not less than the following amounts:

The Works	\$.....
Temporary Work	\$.....
Equipment and material on site	\$.....
Constructional plant	\$.....
Removal of debris	\$.....
Architects/Engineers fees	\$.....
5. Location anywhere in Australia.
6. Includes a Cross Liability Clause and operates as if there was a separate policy of insurance covering each of the Insured.
7. Agrees to waiver of subrogation clause against any Insured where they are indemnified by the policy.
8. Covers liability arising out of the use of hoists, cranes unregistered vehicles, boilers and pressure vessels.
9. Is subject to excess/deductible \$..... which the Contractor is required to pay.
10. Is current for the period toplus a maintenance or post Works completion period ofmonths.

Signed: Insurance Company Stamp Dated:

Annexure C – Form of Certificate of Currency for Professional Indemnity Insurance

Principal:
Contractor:
General Description of the Contract:
Contract Period:
Commencement of the Contract:
Policy No.

This is to certify this Policy covers the Insured for work undertaken for and on behalf of the Principal/Australian Catholic University Limited and others as described below. Specifically the policy:

1. Covers the Contractor's liability arising from a breach of professional duty, whether owed in contract or otherwise, caused by any act or omission of the Contractor, its employees and vicarious liability for its subcontractors, consultants or agents subject to the attached standard policy terms and conditions.
2. Provides a limit of indemnity of not less than \$.....
3. Is current from..... to
4. Protects the interests of the Contractor for the business activity of:
.....
.....
.....
5. Includes one automatic reinstatement provision.
6. Is subject to the following excess. \$..... each and every occurrence or series of occurrences arising out of the one event which the Contractor is required to pay.
7. Retroactive date is unlimited.

Signed:..... Insurance Company Stamp Dated:.....

Annexure D – Example of Public Liability Insurance

Contract Number:
Principal:
Contractor:
General Description of the Works:
Contract Period:
Commencement of the Contract:
Policy No.

This is to certify this Policy covers the Insured for work undertaken for and on behalf of Principal, Australian Catholic University Limited and others as described below.

Specifically the Policy (subject to the attached standard policy terms and conditions):

1. Covers the Contractor's liability arising from bodily injury or damage caused by any act or omission of the Contractor, its employees and vicarious liability for its subcontractors or agents;
2. Indemnifies the Contractor's subcontractors Yes/No (# see note below);
3. Includes the Principal/ Australian Catholic University Limited as an additional named insured for liability arising out of the Contractor's activities. This extension includes liability:
 - for injury to any Principal/Australian Catholic University Limited employee;
 - arising from work undertaken at and away from the Contractor's premises;
 - For damage to the Principal/Australian Catholic University Limited's property not in the Contractor's physical or legal control
4. Includes a cross liability clause operates as if there was a separate policy of insurance covering each of the Insured;
5. Covers liability arising out of the use of hoists, cranes unregistered vehicles, boilers and pressure vessels;
6. Covers property of the Principal/Australian Catholic University Limited whilst in the Contractor's legal and physical control limited to \$......any one occurrence;
7. Agrees to waiver of subrogation clause against any Insured where they are indemnified by the policy;
8. Provides a limit of indemnity of not less than:
 - Public Liability - \$20,000,000 for any single occurrence and unlimited in the aggregate and the number of occurrences; and
 - Products Liability - \$20,000,000 for any single occurrence and total aggregate liability during any one period of insurance for all claims arising out of the Contractor's products.
9. Is subject to the following excess: \$...... each and every occurrence or series of occurrences arising out of the one event which the Contractor is required to pay.
10. Is current for the period to.....
11. Protects the interest of the Contractor for the business activity of:
.....
.....

Signed:..... Insurance Company Stamp Dated:

Annexure E – Summary of insurance policy requirements

Insurance Requirements	Public Liability Insurance		Professional Indemnity	Works Insurance
	Contractors	Consultants	Consultants and sum contractors	Contractors Only
Name the ACU or the Principal as an Insured	✓	x	x	✓
Name the Owner as an Insured	✓	x	x	✓
Note the interest of ACU as Principal	x	✓	x	x
Cross liability insurance	✓	✓	x	x
Waiver of subrogation clause	✓	✓	x	✓
'Worker to worker' clause	✓	x	x	x
Coverage of sub-consultants	x	x	✓	x
Automatic reinstatement of coverage	x	x	✓	x
Limit for one occurrence and in the aggregate	✓	✓	x	x
Amount of coverage	\$20m	\$5m	See Figure 3	120% of the contract sum
Period of Coverage	Until expiry of the defects liability period	Until expiry of the defects liability period	Continuous coverage for a period of 6 years after completion of the services	For six months after the expected date for practical completion