



## Summary

Architects want to work with their clients to deliver successful projects. The Australian Institute of Architects (Institute) believes project success is most likely when architects work under balanced, equitable and insurable terms of engagement. Too often, terms of engagement put forward by clients, both Government and private, fall short of this.

The Institute has identified key principles that provide the foundation for balanced, equitable and insurable client/architect agreements.

## Background

Successful projects share a common characteristic - the existence of fair and reasonable contractual arrangements between clients and architects, avoiding distracting disputes along the way. To enable successful projects, the Institute encourages its members to work for their clients with balanced, equitable and insurable agreements for delivery of their services.

Experience of Institute members, and others in related professions, shows that contracts put forward by clients which are:

- Are unduly prescriptive
- Provide for inappropriate risk transfer rather than appropriate responsibilities each party has to the project, and
- Promote an adversarial culture between the client and architect, almost never result in a successfully completed project but simply engender a spirit of distrust and dispute.



The Institute has identified five key principles to provide the foundation for the establishment of balanced, equitable and insurable client/architect agreements.

- (i) Clauses should not unfairly extend the scope of the architect's service, or their legal duties.
- (ii) Clauses should not unreasonably increase the architect's liability for the services provided beyond that required by law.
- (iii) Clauses should not undermine the architect's entitlement to appropriate remuneration for services.
- (iv) Clauses should not attempt to override common law and statutory rights.
- (v) Mutual obligation (should exist/be present between the architect and client).

These principles are set out in the publication produced by the Institute -- ['Guiding Principles for Balanced and Insurable Client/Architect Agreements'](#).

The Principles document provides guidance to architects, their clients, and the authors of agreements between them, on the appropriate roles and responsibilities of architects and clients in the provision of architectural services.

A point of particular concern to Institute members is that when agreements, through warranty and indemnity clauses, create obligations beyond the protection of professional indemnity insurance, there is simply no effective protection for architects or their clients if things go wrong during the life of the project.

Responsible architects will not seek to escape their proper professional obligations and responsibilities, but it is critically important to them (as it ought to be to clients) that the architect's professional obligations be insurable under the architect's professional indemnity policy.



In common with most professional services providers, the nature of an architect's role in construction projects is that the monetary consequences of a negligent mistake may well exceed the architect's fees for the project. Clients and their advisors need to understand that the financial consequences of one inadvertent mistake may exceed the whole of the fee income of the architect's practice over many years, if not in total.

Contractual terms of engagement which place uninsurable obligations on the architect invalidate an essential part of the risk management of an architectural practice.

Contractual terms that rely on the asset base of the architect or their firm for compensation instead of professional indemnity insurance are not effective project risk management on the part of a client, because the asset base may have no substance to deliver the compensation.

It is not realistic to expect an architect obtain insurance which covers such terms. There is not currently nor historically a ready source of such insurance in Australia and if it is available from overseas, and to the individual architectural practice concerned, its costs are more than likely to be prohibitive, needing a substantial increase in the architect's fees to sustain it for the project during construction and thereafter while the architect is potentially liable for building defects.

## **What Governments need to do**

Governments need to become exemplar clients and work with architects to ensure negotiations on projects lead to fair, equitable, insurable agreements.



This will require Government to reduce its reliance on external advice which does not seem to understand the realities of a professional consultant's business and to:

- use the Institute's standard form agreement, or
- use a bespoke agreement which takes into account the "Guiding Principles"

The Institute also calls on Government to engage with the Institute and other professional consultant representative bodies, to develop together, standard forms of consultant contracts tailored to the needs of Government projects.

## **What Institute Members need to do**

Use the Institute's standard form Client and Architect agreement if it suits the project.

If not, negotiate with your client on the basis of the Institute's Guiding Principles for Balanced and Insurable Client /Architect Agreements and in consultation with legal and/or insurance broking advice.

## **What architects' clients need to do**

Consider and be aware that to threaten the financial existence of a professional person for human error is fundamentally inequitable, and that the appropriate solution is to make sure the professional, your architect, is effectively insured to cover the responsibility they have to you as their client.

If the Institute's standard agreement is not suitable for your project, seek well informed advice in your contractual negotiations with your architect so that the rights and obligations of each are fair, appropriate, reasonably able to be met by each party, and clearly expressed. In particular, your adviser should properly understand professional indemnity insurance, its operation and the terms on which it is available to architects.



### Further Information and Links

Published copies of Guiding Principles for Balanced and Insurable Client/Architect Agreement, June 2005, are available through the Institute's Knowledge Services.