



# Department of Transport & Main Roads

## Principal Arranged Insurance (PAI) Contractors Claims Manual

October 2022

# Contents

- 1. Contacts ..... 2
- 2. Introduction..... 3
- 3. General Overview ..... 4
- 4. Claims Handling Procedure ..... 7
- 5. Environmental Liability ..... 12
- 6. Insurance Quick Reference ..... 13

## Section 1

# Contacts

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## Section 2

# Introduction

The Department of Transport and Main Roads (TMR) Principal Arranged Insurance Program (PAI) is designed to protect and deliver benefits to all stakeholders involved with department funded road construction contracts.

The benefits of PAI to contractors include insurance coverage that is comprehensive, certain and consistent, while providing competitive terms and conditions which uphold good risk management.

**The PAI program comprises four policies that can be summarised as follows.**

<b>Policy</b>	<b>Coverage</b>
<b>Contract Works (material damage)</b>	Cover for physical loss, damage to the contract works
<b>Professional Indemnity</b>	Cover for any loss incurred as a result of the provision of professional advice, treatment or services
<b>Public Liability</b>	Third party legal liability for personal injury and/or property damage
<b>Environmental Liability</b>	Covers against claims from third parties or the regulator for damage caused by pollution or environmental damage caused by their operations

This claims procedure has been prepared by Marsh to provide guidance in the event of an incident that gives rise, or may give rise, to an insurance claim. It gives advice on claims handling from notification of an incident, through to settlement, and notes on suggested measures to be taken to assist with the processing of a claim, ensuring prompt and proper communications between all parties concerned and efficient claims management. This will result in an immediate response to reported incidents and the swift settlement of valid claims.

Please note that this procedure is a guide only, and nothing contained herein overrides the terms and conditions of an insurance policy which remain paramount in the consideration of any claim.

In addition, claim / incident report forms can be accessed via the following link.

**Policy Documentation and Claim Forms** can be found on TMR's Intranet [here](#).

## Section 3

# General Overview

### 1. Following an Incident

In the event of TMR/Contractor becoming aware of loss or damage to the contract works or other insured property, or damage to property of or injury to any party, which may give rise to a claim under an insurance policy, TMR/Contractor must immediately report the occurrence of such loss or damage to Marsh, as per the contact details indicated in the Directory attached.

It should be noted that where no damage to the insured property has occurred it may still be necessary for the event to be notified in order to comply with the continuing requirement to disclose material facts.

Any Insured Party who notifies an actual or potential insurance claim is required to complete an Incident Report Form. The form should be completed “as soon as possible” and sent to Marsh supported by any relevant documentation. Copies of the form should be sent by e-mail to both Marsh and TMR via the Insurance Services Unit (ISU):

Parties	Email	Phone
Marsh JLT Specialty Services	<a href="mailto:tmrclaims@marsh.com">tmrclaims@marsh.com</a>	07 3246 7507
TMR Insurance Services Unit	<a href="mailto:TMR_Insurance@tmr.qld.gov.au">TMR_Insurance@tmr.qld.gov.au</a>	07 3066 1339

### 2. Emergency Arrangements

If an incident occurs out of office hours, contact should be made by phone direct with either Andy Ward or Andrew Smith, with written notice being sent to Marsh and TMR Insurance Services Unit as soon as possible thereafter.

### 3. Compliance with Policy Conditions

It is a requirement of the Policy conditions that, on the discovery of an event giving rise to, or which may give rise to, a claim under a policy, TMR/Contractor shall give prompt notice thereof to the Insurers. It has been agreed that this condition is met through notification to Marsh. **Failure to notify claims or potential claims as soon as possible may prejudice rights of the claimant to recover costs under the policy.**

### 4. Action to be taken by Marsh

Upon receipt of a completed Incident Report Form from TMR/Contractor, Marsh will immediately liaise with the policy underwriters and/or nominated Loss Adjuster. An adjuster will be selected from those pre-screened providers under TMR’s Service Level Agreement for Loss Adjusting. Marsh will liaise with TMR to determine the most appropriate adjuster and advise TMR/Contractor contact details of the appointed.

Upon receipt of a claim notification, a member of the appointed Loss Adjusting team and, if appropriate, representatives of both Marsh and TMR, will attend site as soon as practically possible and, in any event, will confirm to TMR/Contractor their proposed actions.

## 5. Action to be taken by the Insured

After notifying the incident TMR/Contractor **shall establish a specific cost code to be a focus for all costs**. TMR/Contractor should prepare a detailed event log of activities leading to the incident including history and alarms as appropriate. TMR/Contractor shall check to ensure that a similar event is unlikely to affect parallel activities.

## 6. Claims Negotiation / Payment

The appointed Loss Adjusters will seek to agree the amount of settlement of any claim in respect of loss of or damage to the Insured Property. Evidence of such agreement will be a Form of Acceptance signed by TMR/Contractor.

In anticipation of a decision on the final claim payment, insurers may elect to make an interim payment to the insured at the insureds request. This acts to partially satisfy the financial obligation and would be followed up by another payment that completes the compensation arrangement.

All payments by Insurers will be made less the appropriate retained excess (refer Section 2 of this document).

## 7. Queries

If there are any queries relating to either notified claims or procedures please refer to Marsh who will assist in providing the necessary response.

## 8. Procedures for Immediate Repair Works etc.

In situations where damaged property creates a possibility of injury or further damage then the damaged property must be made safe.

It is recognised that circumstances may exist which require the immediate repair, reinstatement or replacement of damage prior to Insurer's agreement having been obtained. Subject to the approval of the Loss Adjuster, TMR/Contractor may proceed with such emergency repairs to the damaged property but, as far as practicable, they should retain all damaged parts pending later inspection by Insurers and/or their representatives. Wherever possible, photographic records should also be made of any accident situation and damage.

## 9. Injury or damage to Third Party Persons or Property

In the event of damage or injury to a Third Party, TMR/Contractor should **not** undertake the repair of any damage or make any financial payments to a Third Party in respect of which they may seek an indemnity from Insurers, without having first obtained the written consent of the Insurers or the Loss Adjusters.

## 10. Liability not to be admitted

Any admission of liability or offer or promise of payment to a Third Party without the written consent of Insurers or the Loss Adjusters, may forfeit the right to be indemnified under the terms of the policy in respect of any claim from that Third Party. All correspondence and negotiations with the Third Party in respect of claims notified under the terms of a policy should be conducted by the Loss Adjusters.

## 11. Professional Indemnity Insurance

This policy is underwritten on a 'claims made' basis, which means that once an Insured party is aware of a circumstance that may give rise to a claim it **must** be notified to Insurers, failure to do so could enable the Insurer to deny a claim.

This is different from other insurance policies included under the TMR PAI Insurance program.

# Section 4

## Claims Handling Procedure

### Contract Works

#### Incident Report Form

Following damage to the site, the measures listed below should be taken to capture the required information for lodgement of a claim and ensure that no further damage is incurred.



- Take all practical steps to preserve damaged property for inspection by a Loss Adjuster and /or Insurers and to prevent further loss or damage.
- Where possible, preserve all damaged items in-situ or in a secure storage area.
- As far as practicable, refrain from carrying out any repair, reinstatement or replacement, without first obtaining the agreement of the Insurers (or appointed Loss Adjuster).
- Photograph the damage and the event.
- Secure all computer records.
- Initiate an investigation into the root cause of the incident.
- Initiate an inspection to make a basic appraisal of the visible damage, insofar as safety and judicial constraints will allow.
- Ascertain the availability of relevant documents, such as the site plot plan, equipment drawings, specifications, etc.
- Ensure that adequate records are maintained to validate utilisation of labour, materials and plant, with dedicated “claim specific” cost codes.
- Maintain a Daily Work Sheet being a daily record of labour, plant and materials expended on rectification works by reference to location/type of works.

#### Property- Claim Form

The Issue of this form is not an admission of Liability.

PLEASE COMPLETE THIS CLAIM FORM AND ENSURE THAT YOU SIGN THE DECLARATION AT THE END OF THIS FORM			
Marsh contact/ref	Insurer	Policy No.	Excess
<b>INSURED'S DETAILS</b>			
1. Name of Insured			
2. Postal Address			
	Postcode		
3. Contact Name	Telephone No.		
E-mail Address:	Facsimile No.		
4. If more than one named insured is claiming for this loss, please answer this question for each insured on a separate page			
(a) Are you registered for GST purposes? (Tick box applicable)			YES <input type="checkbox"/> NO <input type="checkbox"/>
If YES, what is your Australian Business Number (ABN)?			
(b) Have you claimed or are you entitled to claim an Input Tax Credit (ITC) on your monthly or quarterly Business Activity Statement to the Australian Taxation Office in respect to the GST paid on the insurance policy under which this claim is being made?			YES <input type="checkbox"/> NO <input type="checkbox"/>
If YES, what percentage of the GST did you claim or are you entitled to claim?			%
<small>(if the GST paid and your ITC entitlements are the same amount, the answer to this question is 100%)</small>			
<b>NB: Insurers cannot settle your claim without the above information and, if you fail to advise the availability of an ITC or understate its availability, you may have a liability to pay tax on the claim payment. If you have any queries, please see your tax adviser</b>			
FOLLOWING CLAIM ACCEPTANCE BY YOUR INSURER, PLEASE ADVISE PREFERRED METHOD OF PAYMENT			
Cheque <input type="checkbox"/> Direct Payment <input type="checkbox"/> If you selected Cheque, nominate payee			
If you have selected Direct Payment please supply the following information (alternatively supply a deposit slip noting the following information)			
Bank	Account Name		
Branch Number	Account Number		
LOSS OR DAMAGE DETAILS			
5. Date of event		at	
		a.m.	
		p.m.	
6. Where did event occur?			
7. Description of loss or damage			
8. How did loss or damage occur?			



- Maintain an appropriate diary system e.g. 'Foreman Daily Diaries' which notes the description of the works undertaken, the scope and area where they are undertaken and references the above noted cost codes and resource utilisation.
- Keep all hard-copy documents including time-sheets, purchase invoices, subcontract & plant hire invoices for submission as part of the claim.
- Identify any Third Parties who may be involved and preserve all rights of recovery.
- All remedial costs incurred, whether by way of emergency repairs or otherwise, must be substantiated by the Insured Party.

In the event of theft, vandalism or malicious damage report to police and obtain crime report number.

## Public Liability

### Incident Report Form

The following matters require immediate notification to

Marsh:

- Any claim or incident that may give rise to a claim.
- Any legal proceedings issued where TMR/Contractor is the named defendant.
- Any complaint received by TMR/Contractor, or from any legal or regulatory authority is to be forwarded to Marsh for instructions without delay, and prior to any response being sent.
- Any decision to pursue recovery.

Listed below are the key steps in regard to handling liability incidents, both at the time of damage / injury and on receiving a writ.

Further summary of the claims process is outlined in the Liability Claim Flowchart.

1. **DO NOT** admit liability or offer to make any payments.
2. Whether or not a claim has been made against TMR/Contractor, as soon as you become aware of circumstances which **could** give rise to a claim, forward a written note of the facts or circumstances to Marsh.
3. If you receive a claim/demand from a third party, forward the documents to Marsh as soon as possible together with whatever additional facts are known to you. Except for a



**Liability - Claim Form**  
The issue of this form is not an admission of Liability

**PLEASE COMPLETE THIS CLAIM FORM AND ENSURE THAT YOU SIGN THE DECLARATION AT THE END OF THIS FORM**

Marsh/contact/ref: \_\_\_\_\_ Insurer: \_\_\_\_\_ Policy No.: \_\_\_\_\_ Excess: \_\_\_\_\_

**INSURED'S DETAILS**

1. Name of Insured: \_\_\_\_\_  
 2. Postal Address: \_\_\_\_\_  
 3. Contact Name: \_\_\_\_\_ Postcode: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_ Telephone No.: \_\_\_\_\_  
 Facsimile No.: \_\_\_\_\_

4. If more than one named insured is claiming for this loss, please answer this question for each insured on a separate page  
 (a) Are you registered for GST purposes? (Tick box applicable) YES  NO   
 If YES, what is your Australian Business Number (ABN)? \_\_\_\_\_  
 (b) Have you claimed or are you entitled to claim an Input Tax Credit (ITC) on your monthly or quarterly Business Activity Statement to the Australian Taxation Office in respect to the GST paid on the insurance policy under which this claim is being made? YES  NO   
 If YES, what percentage of the GST did you claim or are you entitled to claim? \_\_\_\_\_ %  
(If the GST paid and your ITC entitlements are the same amount, the answer to this question is 100%)

**NB: Insurers cannot settle your claim without the above information and, if you fail to advise the availability of an ITC or underestimate its availability, you may have a liability to pay tax on the claim payment. If you have any queries, please see your tax adviser.**

**FOLLOWING CLAIM ACCEPTANCE BY YOUR INSURER, PLEASE ADVISE PREFERRED METHOD OF PAYMENT**

Cheque  Direct Payment  If you selected Cheque, nominate payee: \_\_\_\_\_  
 If you have selected Direct Payment please supply the following information (alternatively supply a deposit slip noting the following information)  
 Bank: \_\_\_\_\_ Account Name: \_\_\_\_\_  
 Branch Number: \_\_\_\_\_ Account Number: \_\_\_\_\_

**PARTICULARS OF ACCIDENT / INCIDENT**

5. Date of event: \_\_\_\_\_ at \_\_\_\_\_ a.m. / \_\_\_\_\_ p.m.  
 Date reported to you: \_\_\_\_\_  
 6. Where did event occur? \_\_\_\_\_  
 7. Describe what happened: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

simple acknowledgment, **do not** make any promises or any correspondence with the claimant without the consent of your Insurers.

Where available, copies of the following documents should be provided to Marsh:

- Internal Incident Report
- Internal Investigation Report
- Witness Statements
- Photos of accident scene and damage, if any
- Claim/complaint letter issued by the third parties, if any
- Court documents e.g. writ of summons, if any
- Any other documents which are relevant to the incident



## Professional Indemnity

### Professional Indemnity Notification Form

One of the significant issues facing Insured's, is the determination of when awareness of an incident gives rise to an obligation to notify the Professional Indemnity insurers, particularly when the cause and/or consequences of an identified defect has not yet been identified. TMR/Contractor need to ensure that there is a process, agreed with Insurers and understood within the Insured project that can be followed without concern of prejudice to policy coverage.

To deal with this issue, the Incident Notification Form has been developed which would collect sufficient data to enable notification to Insurers at the date of notification.

### Incident Notification Form

The Incident Notification Form is in two parts. Section 1 is to be completed by TMR/Contractor, Section 2 of the Incident Notification Form is to be completed by Marsh

### Process

Following contact from TMR/Contractor advising of an incident notification, and completion of Section 1 of the Incident Notification Form, appropriate resources from both Marsh (account manager and claims personnel) and TMR/Contractor (e.g. project manager, design team members, legal and insurance representatives) would be appointed to a Claim Management Team. The team may involve external legal advisors depending upon the nature of the claim.

#### Professional Indemnity - Initial Notification Form

PLEASE DO NOT ADMIT LIABILITY TO ANY THIRD PARTY

Please answer all questions and attach any supplementary information and relevant correspondence

1. Full Name of Insured	
<input type="text"/>	
Address:	State: <input type="text"/> Postcode: <input type="text"/>
Phone: <input type="text"/>	Mobile: <input type="text"/>
What is the Insured's ABN? <input type="text"/>	
2. Name of Project / Contract	
<input type="text"/>	
Name of Relevant Entity (if applicable): <input type="text"/>	
3. Relevant Entity Contact Details	
At Site:	<input type="text"/>
Phone: <input type="text"/>	Mobile: <input type="text"/>
Email:	<input type="text"/>
At Head Office / Legal:	<input type="text"/>
Phone: <input type="text"/>	Mobile: <input type="text"/>
Email:	<input type="text"/>
4. Description of circumstances that could give rise to a claim for breach of professional duty, allegation of negligence or demand for compensation for loss:	
<input type="text"/>	
<input type="text"/>	
<input type="text"/>	

## **Coverage Review & Strategy Session**

The first role of the Claims Management Team would be to review the cause and effect of the incident, and review the application of the policy, specifically:

- Whether the incident falls within the insuring clause
- What exclusions and/or conditions, if any may apply
- What limit of liability applies, and are there any relevant sub limits
- What Deductible applies and how many times it could be applied
- What claims procedures need to be complied with
- What subrogation/recovery rights exist and how may these be protected
- Whether loss mitigation expenses need to be expended, and how will mitigation activities impact upon policy coverage
- What delay has the incident caused to the project, and what are the consequences of the delay

## **Insurer notification**

Following the strategy session, the Claims Management Team will consider how best to lodge the claim with insurers, in accordance with policy obligations. The claim submission needs to detail the cause of the loss and provide supporting evidence that the claim falls within the insuring clause of the policy.

An estimate of the loss and a detailed outline of the Insured's contractual obligations will also be provided to the Insurer at this time, as well as a request for Insurer consent to expend specified necessary mitigation expenses.

## **Engage Loss adjusters and other experts**

The Insurer may appoint Loss Adjusters or other representatives to investigate the loss. Representatives of the Claims Management Team from both TMR/Contractor and Marsh should attend the site at the time of the initial Loss Adjuster inspection.

The Claims Management Team may deem it necessary to appoint independent experts to provide supporting evidence of the causation of the loss.

## **Insurer feedback**

Marsh will seek feedback from the Insurer to ensure that the Insurer is satisfied that it has received all information required to enable it to determine indemnity, and to assess the validity of the costs claimed.

Any outstanding information requirements will be confirmed in writing with the Insurer and advised to the Claims Management Team to be addressed.

Feedback will be sought from the Insurer in respect of their requirements of the Insured in terms of pursuing any rights of subrogation that the Insurer may be entitled to.

## **Progress Monitoring & Reporting**

Following the initial Coverage Review & Strategy Session, the Claims Management Team would meet on scheduled regular intervals, to be determined by the team considering the nature and status of the claim.

The regular agenda would include a status update on rectification, mitigation and rectification costs expended to date, outstanding information requirements requested by the Insurer, status of expert reports, avenues of subrogation being pursued, and adequacy and timeliness of Insurer response. Responsibilities would be allocated for all outstanding items.

## Section 5

# Environmental Liability

If you are aware of a circumstance or incident that could give rise to a claim, please contact Marsh immediately and follow the claim procedures outlined in this document.

## Notification

The following list provides examples of Incidents which should be notified immediately but is not exhaustive.

- Physical injury arising from a pollution condition emanating from an insured location
- Damage to property from a pollution condition emanating from an insured location
- Loss of amenity of 3<sup>rd</sup> party property
- Land or water that needs to be cleaned or decontaminated
- Identified seepage / escape of leachate and contaminants
- EPA / Government directed actions for clean-up and remediation of land
- Cost recovery notices
- Clean-up notices that can require a business to:
  - prevent or minimise contamination
  - rehabilitate the environment
  - assess the nature and extent of environmental harm
  - provide information to the administering authority

As a minimum, such occurrences should be reported, however this does not limit the basis on which notification of circumstances that may give rise to a claim can be made to the insurer. If doubt exists, we would encourage a report to be made for the sake of prudence.

## Claims Procedure

On receipt of a notification the insurer and Marsh will consult with TMR/Contractor to: -

- Establish an understanding of the incident and its ramifications to the insured
- Agree an appropriate provisional management plan if applicable
- Identify the most appropriate external advisors for the situation (e.g. Solicitors, Loss Adjusters, Specialist Consultants)

## Section 6

# Insurance Quick Reference

This document is provided as a summary only. Please refer to the Policy Wording for full details of cover.

Policy	Cover / Insurers / Policy Numbers	Limit / Sub-Limits	Excess								
<b>Contract Works</b>	Accidental physical loss or damage the works during construction. <b>Insurer: Lead Great Lakes Insurance SE UK</b>	Contract Works	\$100,000,000	<i>Original Estimated Contract Value</i>							
		Bridgeworks	\$30,000,000								
		Wet works	\$10,000,000	Excess Category	0 to \$5M	>\$5M to \$10M	>\$10M to \$50M	>\$50M to \$200M			
		Tunnels	\$20,000,000	Earthquake subsidence and collapse	\$20,000	\$50,000	\$100,000	\$100,000			
		<b>Sub Limits:</b>		Wet work Contracts	\$20,000	\$100,000	N/A	N/A			
		<b>Cyclone and Flood</b>		Named Cyclone and Tropical Rain Depression	10% of CV to a max of \$200,000	\$250,000	5% VARTOL subject to a minimum of AUD500,000 and a maximum of AUD 1,000,000 for projects over AUD 10,000,000 estimated contract value at award or as endorsed.				
		25% of the estimated contract value at award or as endorsed on the Policy during the Policy Period subject to a minimum of AUD 2,500,000 and a maximum of AUD 20,000,000 each and every loss and in the project aggregate for each insured project.		Flood	10% of CV to a max of \$200,000	\$250,000					
		Removal of Debris \$10,000,000 Professionals' Fees \$10,000,000 Expediting Expenses \$1,000,000 Various other Sub-Limits as per Policy Wording		Storm, Tempest, Rain	10% of CV to a max of \$200,000	\$250,000			VARTOL meaning value of works at risk at the time of the loss		
									Tunnelling Contracts	\$100,000	\$250,000

Policy	Cover / Insurers / Policy Numbers	Limit / Sub-Limits	Excess				
			LEG 2/96 Defects Claims	\$100,000	\$250,000	\$250,000	\$250,000
			LEG 3/06 Defects Claims No LEG 3 claims for Pavement	\$250,000	\$500,000	\$500,000	\$500,000
			All other claims	\$15,000	\$25,000	\$50,000	\$75,000
<b>Public Liability (Construction Liability)</b>	Legal liability to pay compensation in respect of personal injury or property damage caused by an occurrence in connection with the project. <b>Insurer: Lead Liberty Specialty Markets</b>	\$250,000,000 any one occurrence and in the aggregate any one Period of Insurance (12 months) in respect of Products liability and Completed Operations.	<b>Contract Value</b> 0 to \$10,000,000                      \$25,000 \$10,000,000 to \$20,000,000      \$50,000 Greater than \$20,000,000          \$100,000 <b>Worker to Worker</b> 0 to \$10,000,000                      \$50,000 \$10,000,000 to \$20,000,000      \$100,000 Greater than \$20,000,000          \$250,000				

Policy	Cover / Insurers / Policy Numbers	Limit / Sub-Limits	Excess	
<b>Professional Indemnity</b>	Claims made and notified to the insurer during the period of insurance resulting from breach of professional duty by TMR or its Contractors <b>Insurer: Pacific Indemnity Insurance Limited</b>	\$20,000,000 any one Claim and in the aggregate	\$500,000 An organisation will be advised in writing by TMR if they are subject to a higher excess and the value of that excess, as a result of their insurable risk profile.	
<b>Environmental Liability</b>	Indemnifies the Insured for claims made and notified during the policy period in respect of legal liability caused by pollution including associated costs. <b>Insurer: Lead Liberty Specialty Markets</b>	Any one Claim and in the aggregate for all Claims during the Period of Insurance \$25,000,000	<b>Contract Value</b> \$0 to \$10,000,000      \$25,000 (costs inclusive) \$10,000,000 to \$20,000,000      \$50,000 (costs inclusive) Greater than \$20,000,000      \$100,000 (costs inclusive)	





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