

BRISBANE: 11 August 2006

Hon Tom Barton MP
Minister for Employment Training and Industrial Relations
GPO Box 69
BRISBANE QLD 4001

Dear Minister

**RE: Section 30B Workplace Health and Safety Act 1995
New obligations on "Designers of Structures"**

INTRODUCTION

RAIA Professional Risk Services is a wholly owned subsidiary of the Royal Australian Institute of Architects and has been placing professional indemnity insurance for architects for over 30 years. The majority of architectural practices now source their professional indemnity insurance through RAIA Professional Risk Services¹.

RAIA Professional Risk Services also provides insurance and risk management advice to architects insured through its facility. Our risk managers present a series of seminars to practice in house throughout Australia.

Although the new obligations under the Workplace Health and Safety Act 1995 (Qld) ("the Act") impose criminal sanctions upon designers which are outside the ambit of the cover provide by architects' current professional indemnity insurance policies, we have a vested interest as the principal broker for architects placing their professional indemnity insurance to ensure that the obligations imposed on designers pursuant to the Act do not lead to increased civil liability, and an inability to place cover for the increased exposure.

BACKGROUND

RAIA Professional Risk Services is currently represented at a working party established by the Department of Industrial Relations ("the Department") to assist it in gathering industry knowledge and comments in relation to the impact of the new obligations imposed on designers of structures pursuant to Section 30B ("the Section") of the Act. Our understanding to date has been that the working party had been established in order to ensure that all relevant affected industry groups are consulted and to provide them with the opportunity to contribute to the drafting of Implementation Guidelines ("the Guidelines").

We understand that the new obligations were introduced into the Act in November 2005 and are due to be proclaimed in April 2007.

To date the RAIA working party has had two meetings with the Department primarily to gain insight into the ramifications of the section and to further identify the issues that may need to be addressed at future meetings and in the Guidelines.

At the last meeting the RAIA working group was requested to provide comments on new obligations and provide the Department with organizational charts relating to the construction process.

¹ We provide an identical service to engineers through Planned Professional Risk Services.

A further meeting has been proposed.

CONCERNS REGARDING THE AMENDMENTS TO THE ACT

Whilst our research into the obligations imposed by the Section is at an early stage we have serious concerns about the impact of the Section on practitioners. It is our view that the Section, as currently drawn is likely to prove unworkable, fails to appreciate the true nature of the design and construction process and places onerous responsibilities on designers who have very little or no control over how their design is constructed.

We summarise our concerns on the amendments to the Act as follows:

1. The Department has used the National Standard for Construction (April 2005) "the Standard") as an absolute mandate for the introduction of the new section, without consultation with any of the relevant peak industry bodies in Queensland and without the benefit of the National Guidelines drafted to accompany the Standard. (The guidelines are due to be published shortly by the ASCC).
2. Although there is a general expectation that the issues promulgated in the Standard are to be adopted by the States and Territories, the Standard is still only advisory in nature. We are of the view that the amendments to the Act are significantly more onerous than the recommendations of the Standard.
3. The Section fails in our view to appreciate that there are various methods of procurement in the construction industry. The legislation adopts a simplistic approach to concepts of "design" and "control". Currently there is a significant shift away from the traditional methods of procurement towards Design and Construct and Design Develop and Construct methods of procurement, whereby the contractor exercises absolute control over the design, the designer and the construction of the project.
4. The Section also in our view fails to appreciate that the design of a project continues to evolve throughout the construction process. Whilst there are recognisable stages in any given project, a design is always a work in progress which is fine tuned throughout the consultation during the construction process. To assume that there is a specific point when a designer can assess workplace health and safety aspects of its design is unrealistic. The workplace health and safety aspects of any given project will vary as the project progresses.
5. The Section also seems to assume that the designer controls how its design is going to be constructed. Whilst there is no doubt that a designer will have intellectual control and influence over its actual design as it is being prepared; in most cases the reality is that a designer has very little if not no control over the materials used, the systems of work and the methods of actual construction of its design. Such matters are more often than not totally assumed by the client and/or contractor.
6. Construction in itself is inherently risky and the Act appears to be based on the premise that all such risks can be designed out at the initial stages of a project. This in our view fails to appreciate that construction projects are generally driven by time and cost parameters, which are outside the control of the designer.
7. Even in the simplest of projects there will be any number of "designers" engaged², all of whom will be required under the Act to produce assessment reports for the client. Some of these reports may be in conflict. How on a practical basis, does a client deal with and prioritise such reports?
8. The new section, contrary to the majority of the obligations in Act, appears to place absolute obligation on designers without the application of any concept of

² For example: architect, structural engineer, civil engineer, quantity surveyor, landscape architect, hydraulics consultant, disability consultant, interior designer, surveyor

reasonableness. The obligation appears to assume that the primary original designer should bear the full responsibility.

9. Currently there is a significant potential for the obligations under the Act to increase designers' civil liability which in turn will have an impact on their professional indemnity premiums or the availability of insurance for the increased risks.
10. Currently the majority of professional designers do not have the professional expertise to address workplace health and safety issues that may arise out of their designs as it is simply not part of their current formal training or professional development.
11. A recent report on similar provisions in the United Kingdom which have been in place since 1995 has indicated that although safety in design is now seen to be an integral part of the designers function, the obligations as drafted are bureaucratic, complex and cumbersome. We understand that the UK proposes to introduce revised regulations and guidelines in April 2007.

CHANGES REQUIRED

We **attach** a copy of your letter to Aldo Raineri of the Department of Industrial Relations the convenor of the working party discussion group, which set out our proposed changes to the Section.

We are still committed to continue to attend the working party meetings with the Department and other interested professional bodies. We welcome the opportunity that these meetings present to discuss the concerns of architectural professionals with the Department.

Yours faithfully



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