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RECOGNISED ENGINEERS LIABILITY CONSIDERATIONS SUPPLEMENTARY INFORMATION

Disclaimer – this is general commentary on the possible issues a Recognised Engineer may face in carrying out their duties. It is not specific legal advice and should not be relied upon. You should seek advice from your own legal advisor.

Engineering New Zealand posted a paper on liability considerations for Recognised Engineers on 18 July 2023. Since that date, Recognised Engineers have raised the following questions:

- Do they have increased liability as Recognised Engineers (Dam Safety) under the new regulations?
- What do Recognised Engineers (Dam Safety) need to do to cover their professional liability when auditing and certifying potential impact classifications and dam safety assurance programmes?

This paper provides further considerations in response to those questions. It is developed to be read in conjunction with the 18 July 2023 paper.

Statutory duty as a Recognised Engineer (Dam Safety)

Recognised Engineers (Dam Safety) are registered to audit and certify potential impact classifications (PIC) and/or dam safety assurance programmes (DSAP) for dam owners. PIC's and DSAP's are provided to Regional Authorities.

There is a single statutory obligation that falls on a Recognised Engineer for which they have not been previously liable. The obligation is on the Recognised Engineer who is engaged to provide a certificate for a PIC, DSAP, or DCC to inform the regional authority and the dam owner if they become aware that a dam may be dangerous (section 135A of the Building Act 2004). The Act however expressly provides that the Recognised Engineer is not required to act outside the terms of their engagement by investigating whether or not the dam is dangerous and a breach of the duty to notify does not give rise to any civil liability in damages (section 135A(3)).

A Recognised Engineer's (Dam Safety) key legal liability will arise from allegations of professional negligence and/or breach of contract. The risk of a claim is not limited to technical skill. The most common reason for claims is a breakdown in communication between the engineering firm and the client or a contractor.

Professional Indemnity Insurance

Professional Indemnity Insurance protects firms and individuals within the firm, against the financial effects of civil claims and legal defence costs when a client alleges that you've made a mistake, overlooked or misstated something or they have misinterpreted you in the course of your work when issuing a PIC or DSAP.

Public Liability Insurance

Public Liability Insurance protects firms and individuals within the firm from claims that they are liable for property damage and personal injury to third parties as a result of your engineering practice. It also covers any legal defence costs you incur as a result of defending yourself.

How can Recognised Engineers (Dam Safety) reduce the risk?

Recognised Engineers should have Professional Indemnity and Public Liability Insurances in place for all dam safety work for when there is a problem. But insurance does not stop problems from happening, quality professional practice does. Recognised Engineers should know potential risks in projects and apply quality professional practice to prevent problems from happening.

- Do you have robust quality assurance and quality control practice processes?
- Have you considered independent peer reviewer for higher-risk or more complex projects?
- Is there a risk of bias, impartiality?
- Have you adhered to the Code of Ethics?

In conclusion

Recognised Dam Safety Engineers should have Public Liability and Professional Indemnity Insurances in place for all dam safety work. Public Liability and Professional Indemnity Insurance protects the engineering firm against financial and legal defence costs.

Insurance is used when things go wrong – engaging in good communication with clients, robust quality assurance and quality control processes, independent peer review of complex or high-risk projects are good ways to manage risk and reduce insurance claims.

Contact

If you have any general questions, please contact hello@engineeringnz.org. If you have specific questions about your own liability, you should seek advice from your own legal advisor.



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