

## Professional Indemnity Insurance Update

12 June 2019

The situation around Professional Indemnity (PI) Insurance has reached crisis point. There is a real possibility that without government intervention in the next two weeks, private building surveyors may be forced out of work and the construction industry across Australia will be significantly impacted.

AIBS understands that the last remaining provider of exclusion free PI insurance policies will no longer guarantee this coverage from 2 July 2019. As a result, building surveyors in NSW, QLD & Victoria who are unable to obtain an exclusion free PI policy will not meet requirements for registration in those States. We are aware there are hundreds of building surveyors across these jurisdictions whose registration is due for renewal in the following months and, if the PI insurance situation remains unchanged, these building surveyors will not be able to be registered. If this occurs, it is likely building projects they are working on will come to a standstill.

AIBS is dismayed and frustrated that the situation has reached this point. For several years, we have warned governments and regulators in all jurisdictions that without a joint industry and government intervention, this outcome was predictable.

The issue intensified 12 months ago, and a crisis was only narrowly averted when new PI insurance providers were sourced to offer exclusion-free policies. But they too have now exited the market. Since last June, we have increased our efforts to alert authorities in all jurisdictions that this crisis was indeed now within plain sight and it is scandalous that to date no meaningful action has been taken.

In August last year, the Building Minister's Forum committed to a national strategy led by the Victorian Government to address this matter. However, nothing useful happened until just two weeks ago when realisation of the severity of the situation finally seemed to hit those tasked with finding a solution. Although this has led to talks between BMF representatives and industry, there is still no real solution on the table.

Despite the lack of government action, AIBS has continued to fight for our members and for the profession. Over the past six weeks, we met with authorities in every jurisdiction, with the exception of Tasmania and Northern Territory, in an attempt to identify a workable resolution. We have received varying responses. One jurisdiction acknowledged government intervention was the only option. At the other end of the scale, a senior bureaucrat in one major jurisdiction said the crisis is "just a business problem" and that "good operators will get PI while the bad ones won't." As we know this issue is affecting all building surveyors including those with no claims whatsoever against them in the past, such blatantly stupid and unhelpful comments demonstrate yet another example of the poor understanding of the industry that pervades the bureaucracy in this country.

Where to from here?

**We are very concerned that governments may now resort to kneejerk stop gap measures to solve a crisis problem they have been warned about for years and have had all that time to prepare for. Accepting policies with exclusions to enable registration of practitioners is not a long-term workable solution because it leaves practitioners and consumers without appropriate protection.**

To find an appropriate solution, government must instigate the following:

- A funding model (previously suggested by AIBS) to alleviate the pressure on insurers who are currently exposed for the cost of rectification by owners of buildings with external combustible cladding.;
- Develop legislation with assurances that private building surveyors acting as a public statutory authority are afforded the same level of protection of their personal assets as those operating in the local government system;
- Develop a legislated statutory engagement agreement between building surveyors operating as a public statutory authority and applicants to ensure the building surveyor can operate in the best interests of the public to whom they are accountable; and
- Accept and promote the AIBS Code of Conduct, Mandatory Continuing Professional Development and a legislated terms of appointment for the Statutory Building Surveyor supported by a system of annual auditing across all jurisdictions.

NOTE: In the meantime, AIBS has been working on a long-term solution of our own. Over the past three years, we have undertaken considerable work to develop a more robust professional accreditation scheme for building surveyors that provides greater rigour around the ongoing professional management and development of the building surveying profession. To date, this has not been supported by governments across the board but, given the current situation, we intend to continue to push for government support.

There are a number of other key elements that also must be taken into account in addressing this crisis –

- **If there are no insurance policies without cladding exclusions, who is going to undertake the rectification of buildings identified by the respective cladding taskforces across the country or any other building with external cladding?**
- It is this likely cost for owners seeking compensation for rectification that is being passed onto building surveyors through PI insurance with reductions in cover, increases in premiums, increases in excesses and lack of availability of compliant insurance that is currently threatening the viability of building surveying and the entire building regulatory system.
- Why should government intervene? The external combustible cladding crisis is a shared responsibility between industry and governments because it is a symptom of regulatory failure. While industry has acknowledged responsibility for our role in how combustible cladding came to be used on so many buildings throughout Australia, it was also the lack of government oversight over their own building regulatory systems, which included the private certification system, that contributed to the combustible cladding scenario we now have.
- Governments will have no choice but to intervene given there will be hundreds, if not thousands of legacy projects requiring remediation and ongoing management and consumer protection.
- There remains a continued lack of accountability throughout the building supply chain with disproportionate responsibility imposed on building surveyors.
- Government education of the industry that consultant agreements and appointments by the builder are unacceptable and, in many instances, are a conflict of interest and a breach of the law.

#### PI Policies with External Cladding & NCBP Exclusions

In recent weeks, we have become aware jurisdictions are considering allowing exclusions in PI policies to be accepted for the purpose of registration. This has already happened in SA. AIBS believes that PI policies with NCBP and external cladding exclusions should not be accepted by governments. This further exposes the building surveyor professionally and personally and greatly diminishes consumer protection.

Not all jurisdictions have the same registration requirements as NSW, Qld and Victoria but there are also serious concerns in all other jurisdictions about the ongoing viability of PI insurance and suitable cover for those who work with external cladding or may be involved in the remediation of buildings identified as having combustible cladding.

PI policies with NCBP and external cladding exclusions can only be considered a stop gap solution to the current crisis, but even this will only be for a limited number of building surveying professionals. Nevertheless, AIBS advises those members who have little other option but to accept policies with exclusions to be diligent and give due consideration to the exclusion clauses in negotiating the appropriate policies given that some of these clauses AIBS has seen are very broad and provide very little protection to the building surveyor, and consumer, for issues that we may not even be aware of yet.

Obviously, the likelihood of building surveyors not being available to work on projects where governments have ordered owners to undertake cladding remediation of buildings is very real. Further to this, what we are likely to find is that building surveyors will look to reduce their risk and exposure and therefore a number of areas of the building regulatory system will most certainly fail.

Over the past week we were notified that in one State, building surveyors have disengaged a number of their projects due to no insurance and, as a consequence, local government has had to take over. However, local government agencies are saying they cannot cope with the workload and they are not adequately resourced to take on this work, especially if the situation continues to escalate.

#### Advice to Members

AIBS, in consultation with BRIC, provides the following advice to members when considering your circumstances in relation to PI policies:

- Protecting an entitlement to indemnity for claims that may arise – If you are facing the imposition of a policy exclusion, it is critical for members to notify circumstances that may give rise to a claim prior to the expiry of your current policy;  
*Please note: BRIC has created a form to assist members how best to notify circumstances that may give rise to a claim. This can be found [here](#).*
- The scope of exclusions varies significantly: some are limited to combustible cladding on high rise buildings whereas others relate to non-compliant building products generally. Firms should consider their exposure as well as current statutory requirements. If possible, seek to secure a policy without an exclusion of this type, alternatively seek to obtain a policy with the least onerous exclusion in context of the nature of your business;
- If policy makers/regulators are to allow some form of exclusion, it remains unclear what will be allowed. Members are strongly advised to be cautious about what exclusions you accept;
- Members should ensure that policies adequately cover you for the work you undertake; and
- Members should ensure your businesses and personal assets, including staff entitlements are suitably protected.

AIBS has been contacted by members all over Australia who are facing having to close their businesses due to inability to obtain compliant insurance or because of massive and unaffordable hikes in insurance costs. Many say they are facing financial ruin. Not only are they concerned about their own futures but also for loyal staff, some who have been working with them for many years. They are also very worried about the

faithful customers with whom they have forged long term and trusting working relationships and what will happen to their building projects currently in progress.

We promise all members that we will not give up advocating on your behalf and we will work relentlessly towards finding a solution.

In the meantime, we know many of you are experiencing considerable stress brought on by this crisis. If you find that you are struggling to deal with the pressure of your current situation, please reach out for support to your family, friends or one of the mental health services in your area or nationally. Some contacts are below.

Beyond Blue – 1300 22 4636     <https://www.beyondblue.org.au/get-support/get-immediate-support>  
Lifeline – 13 11 14             <https://www.lifeline.org.au/>  
Black Dog Institute – 13 11 14     <https://www.blackdoginstitute.org.au/>

We will stay in touch and keep you informed of any updates as they come to hand and please do not hesitate to contact us if we can assist you through this crisis.

Kind regards,

**Troy Olds**  
AIBS President

**Brett Mace**  
Chief Executive Officer

<b>Queensland Legislative Assembly</b>	
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