

W+K APIG SCHOLARSHIP

2019 WINNER'S SUBMISSION

Kelvin Hui – Senior Account Manager, Professional Risks, Proclaim



Kelvin Hui (Proclaim) and Andrew Brennan (Partner, Wotton + Kearney).

BACKGROUND & CONTRIBUTION

My name is Kelvin Hui and I am a Senior Account Manager, Professional Risks at Proclaim. Proclaim acts as a claims manager for a number of Lloyds syndicates. In particular, my team manages a large volume of construction professional indemnity claims insured by Lloyds syndicates.

I have worked as a professional indemnity/financial lines claims manager for coming up to three years now. Previously, I was a private practice solicitor working on a number of different lines of insurance.

Further, while I have been either a solicitor or claims manager throughout my career, I have obtained a Diploma of Risk Management through ANZIF, as I believe that in order to properly address insurance claims, one needs to not look only at the claim (which is effectively the end of the cycle), but also look at the risk at the start of the cycle.

In relation to contributions to professional indemnity insurance, I have facilitated a number of seminars as secretary of the Construction Engineering and Technology Forum. These seminars include, among others, a discussion on the cladding crisis between the various stakeholders in the process.

DOMESTIC CONSTRUCTION CRISIS

As is now almost daily tabloid fodder, the construction industry, particularly the domestic construction industry, is in crisis. Aside from the headline grabbing cladding crisis and related inability for building surveyors and certifiers to obtain compliant professional indemnity insurance (PI insurance), I have noticed an increase in claims volumes across all states.

Moreover, the Insurance Council of Australia recently noted that PI insurers had been “losing \$3.40 for every \$1 collected in premiums this decade for professional indemnity insurance for building professionals.”¹ Given these loss ratios, it is unsurprising that a number of capacity providers are pulling out of the market or increasing premiums to a level that are unaffordable to most practitioners.

SO WHAT CAN BE DONE TO MAKE PI INSURANCE MORE VIABLE?

I think the solution comes in requiring all domestic construction practitioners (including “non-traditional” professionals) to register with professional bodies in the same way that solicitors in all states are required to. If this were to occur, the following are likely to result in better results for PI insurers:

- The professional body would then be able to negotiate insurance arrangements as a group. This will enlarge the premium pool collectable by an insurer, which is likely to make the risk more attractive;
- The body could register as an occupational association under the various Professional Standards Acts across the country. This would allow among other things, the capping of damages against a profession. The most prominent example of this is barristers’ liability, which is capped at \$2m;
- The group buying of insurance allows the insurers and the professional body to more quickly detect claim trends. This would allow them to work together to ascertain whether the policy needs to change to discourage such behavior (through the use of exclusions, for example), or whether greater training is required for practitioners.²;
- If membership of the professional body was mandated as a condition to practice, then it would also allow the weeding out of riskier practitioners; and
- Assuming a single policy wording is used and developed in conjunction with the professional

¹ <https://insurancenews.com.au/daily/insurers-should-help-pay-for-flammablecladding-fix>

² See the studies undertaken by John K Morgan and Pamela Hanrahan in their article Professional Indemnity Insurance: Protecting clients and regulating professionals (2017) 40(1) NSWLR 353, particularly in relation to the conflict of interest exclusion for American legal practitioners.

body, it is likely that overall claim costs would be reduced as there are less likely to be indemnity disputes requiring the incurring of legal fees.

Combined with further government scrutiny and regulation of the industry overall, I think that the above steps will allow construction PI insurance to return to viability and at the same time greatly increase consumer confidence in this area.

Kelvin Hui