

# *Department of Housing and Public Works*

Strengthening the professional indemnity  
insurance environment for building  
industry professionals in Queensland

Interim report

24 June 2019



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# 1

## Introduction

# Background

*DHPW is seeking to understand the current PI insurance market for building industry professionals, including opportunities to improve PI insurance outcomes for these professionals*

## CONTEXT

Building industry professionals, including architects, fire engineers and building certifiers play a pivotal role in the construction of safe, fit-for-purpose and compliant buildings in Queensland.

Professional indemnity (PI) insurance is a fundamental part of ensuring building industry professionals are suitably covered for claims against professional services provided. Building certifiers are required to have PI insurance without exclusions to obtain a Licence from the Queensland Building and Construction Commission (QBCC).<sup>1</sup> Architects, fire engineers and fire safety engineers must also maintain PI insurance to register with their professional boards.

Since mid-2018, there has been a significant tightening in the PI insurance market and increasing difficulty in obtaining exclusion-free PI insurance by building industry professionals, particularly building certifiers. This has occurred against the backdrop of significant events, including the fires at the Lacrosse Tower in 2014, Grenfell Tower in 2017 and the Neo 200 fire in early 2019.

The Department of Housing and Public Works (DHPW) is being advised of significant increases in insurance premiums and excesses, and reduced levels of coverage, across policies for all building industry professionals. These issues are not limited to Queensland, with other jurisdictions (both nationally and internationally) reporting that professionals are experiencing similar difficulties.

Each jurisdiction is unique in their approach to requiring insurance for building industry professionals, with Queensland arguably having the most strict requirements.

DHPW is seeking to ensure that there is clear and evidence-based understanding of the reasons for both the increases in costs and the limited availability of exclusion-free PI insurance, for building certifiers as well as other building industry professionals. This is to develop a shared understanding of the real risks affecting both the building and construction industry, and the insurance industry.

This work will inform to discussions within the state as well as nationally, and will be considered by the Building Ministers' Forum.

# Objectives and approach

*This report outlines our findings of our review of PI market for building industry professionals in Queensland*

## OBJECTIVES

PricewaterhouseCoopers Consulting (Australia) Pty Ltd (PwC) was engaged by the Department of Housing and Public Works (DHPW) to examine the current PI insurance market for building industry professionals, specifically architects, building certifiers and fire engineers and fire safety engineers.

The objectives of this review were to:

discover from building industry professionals, the insurance industry and key building industry stakeholders what risks, real and perceived, are influencing the current building and construction PI insurance environment

review Queensland specific reforms, together with national reforms, to strengthen the building and construction industry, to identify the extent to which these reforms may mitigate the risks that are influencing the current PI insurance environment

This report presents our findings of our work to date. We understand this report will form the basis of further industry consultation.

## APPROACH

Our review has been undertaken on a desktop basis and utilising a number of methods to obtain and analyse information and develop findings. Our approach has broadly involved:



A desktop review of publicly available information, both domestically and internationally, to inform our understanding of factors driving the PI market for building industry professionals



Detailed analysis of data provided by building industry professional bodies and government departments to identify trends and themes, and form a preliminary view of driving factors



Stakeholder consultation with stakeholders from across the insurance industry, the building and construction industry and governments and regulators (across jurisdictions)



Analysis of survey results, distributed to all registered building certifiers, institutes and fire and fire safety engineers that are registered with their professional registration body in Queensland



Discussion with insurance industry experts to gain further information on factors influencing the PI insurance market globally, nationally and within Queensland.

# Limitations

*We highlight that there are some limitations to the data and information provided in this report*

## LIMITATIONS

### Data limitations

We have relied on a range of publicly available and subscription sources to obtain data for this review, including from (but not limited to) the Australian Prudential Regulatory Authority (APRA)<sup>5</sup> and Global Data Financial Services. We did not independently verify this data.

We also obtained data in relation to changes in PI insurance policies via a survey of relevant industry professionals. There are likely to be some biases in survey results as responses are unlikely to have come from a representative sample of professionals. As such, we have only relied on this data to provide an indication of trends and issues in relation to PI insurance. Further, we did not independently confirm or verify the accuracy of any data collected as survey responses were provided confidentially.

More generally, we sought to obtain and report using the most current data available, however, this was not possible in all circumstances.

### Legal advice

This report provides some commentary and analysis of the recent Victorian Civil and Administrative Tribunal (VCAT) decision in relation to the Lacrosse Tower fire. Further, we provide some commentary as to the potential liability of building industry professionals who have provided advice in relation to building projects involving the use of combustible aluminium composite panels (ACPs).

This commentary and analysis does not form legal advice.

### Stakeholder consultation

We spoke to a wide range of stakeholders from across government, the building and construction industry and the insurance industry to obtain views and insights which have been incorporated into the findings of this report.

The Insurance Council of Australia declined to participate in the consultation for this report, as did a number of insurers. While we spoke to insurance brokers and one medium sized insurer, our ability to gain the perspectives of the insurance industry and to present their views has been limited.

### Update to PI insurance market information - June 2019

A large amount of the PI insurance market information presented in this report was collected in May 2019 and formed the basis for a presentation to the Ministerial Construction Council on 18 June 2019.

Given the dynamic and fluid nature of the market, a subsequent market scan was completed from 19 - 20 June 2019. The results of this market scan are presented separately in Chapter 5.

2

Professional  
indemnity insurance  
requirements



# Understanding professional indemnity insurance

*PI insurance is provided on a 'claims made' basis, placing responsibility on the professionals to declare past errors, and requiring insurers to make complex assessments of insurance risks*

## PURPOSE OF PI INSURANCE

PI insurance covers liability for claims made against a legal person arising from a breach of their professional duty. Common issues covered by PI insurance include, negligence, misrepresentation, inaccurate advice, or failure to perform ('errors'). The insurance will generally cover legal costs and expenses, as well as any damages or costs awarded against the defendant.

PI insurance is provided on a 'claims made' basis. The protection is for legal liability claims made during the period of the policy, not at the time the error was made. Therefore, an error made five years ago is covered under the policy in place at the time the claim is made against the insured. It is for this reason that building contracts require insurance to be maintained for the period of post-completion liability.

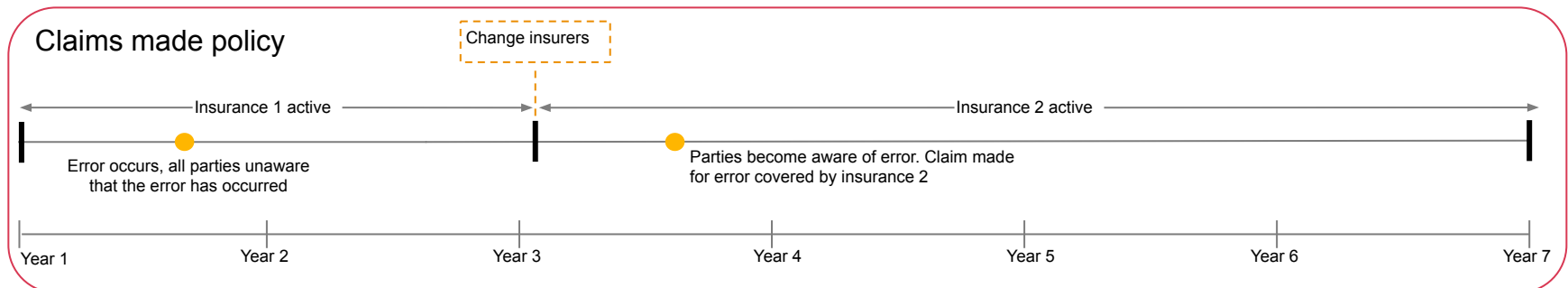
The retroactive date is the date after which any errors of the insured are covered under the policy. The retroactive date can be specified as either unlimited, or as a set date. It is common for insurers to carry forward the retroactive date of an expiring policy – providing continuous cover for the past work of the insured.

A critical element of a claims made policy is the requirement for notifications to be made of any circumstances which may lead to a claim. These notifications must be made as soon as possible during the period of insurance. PI policies generally exclude claims arising from facts/circumstances known to the insured prior to the start of the policy period.

In addition to prejudicing claims, failing to notify matters on time can cause insurers to challenge whether the insured's risk profile has been fairly disclosed as part of the renewal or application process. If successfully argued, this could allow the insurer to deny liability for a claim, or possibly even to invalidate the entire policy.

The requirement for notifications to be made places significant onus on the insured to disclose known risks. Insurers use this information to assess risk and determine policy premiums, both for individual policyholders and across their portfolios.

At present, most insurers require Building Industry Professionals to declare any exposure they may have as a result of non-conforming building products (often combustible cladding). If this exposure is not correctly declared, the professional may not be covered by their policy.



# Understanding professional indemnity insurance

*A range of exclusions and limitations typically apply to PI insurance which can impact both on the 'effective' scope of cover provided, and the likelihood of any claim being accepted and paid*

## SCOPE OF COVER

PI insurance covers legal liabilities that arise from professional acts. PI insurance policies therefore provide cover for claims arising out of an actual or alleged breach of professional duty. Some policies are triggered by claims arising out of acts, error or omissions of the insured, while other policies are triggered by claims arising out of the insured civil liability. Notwithstanding, there are a range of terms, conditions, limitation and exclusions which may apply to PI insurance policies which effectively limit the scope of cover provided, and are used to insurers to manage claims.

The significance of these exclusions and limitations becomes apparent in the event that a claim, such as for non-compliant use of combustible ACPs, is made.

Contractual liability	Proportionate liability	Prior knowledge	Exclusions
<p>Most PI policies contain exclusions in relation to liabilities assumed by the insured under contract unless those liabilities would have existed in the absence of the contract. These clauses mean that insurers will limit cover for any claim arising under the contract to the level of liability that arises from common law or statute. The insured would be exposed for any additional liability arising.</p> <p>Professional services contracts commonly contain clauses that require the professionals to assume liabilities beyond those that would exist under common law. These liabilities may arise through guarantees, hold harmless agreements or indemnity clauses in contracts.</p>	<p>Proportionate liability legislation apportion's liability between respondents according to their degree of fault. Proportionate liability is particularly important in building matters whereby litigation often involves multiple respondents.</p> <p>In some states (but not Queensland) parties are able to contract out of proportionate liability legislation and by doing so a party may be 100% liable for a matter, irrespective of their contribution to it. Most PI policies contain clauses that exclude cover for liability assumed under contract such as through the contracting out of proportionate liability legislation.</p>	<p>Most PI policies contain requirements that the insured must not have had any prior knowledge of a fact, situation or circumstance that has led to a claim before the period of insurance. This is linked to requirements for the insured to 'declare' this knowledge prior to the policy commencing.</p> <p>This requirement can be interpreted quite broadly by insurers and can result in a claim being denied.</p>	<p>The scope of cover may be broadened or restricted by extension and exclusions in the policy wording. For example, a policy that excludes non-compliant or non-conforming building products may state:</p> <p><i>'Underwriters shall not be liable under this Policy to provide indemnity in respect of any Claim, Costs, Criminal Prosecution Defence Costs, Inquiry Costs, costs, expenses or loss directly or indirectly based upon, attributable to, or in consequence of a Non-Compliant or Non-Conforming Building Product.'</i></p>

# Understanding professional indemnity insurance

*The level of cover provided by PI insurance policies is limited and steps must be taken to ensure continuity of cover*

## LIMIT OF COVER

Building Industry Professionals are covered for a claim made against them up to the limit of indemnity. This limit is the maximum amount that an insurer will pay to cover the professional for an individual claim. The policy is also capped by an aggregate amount that a professional is covered.

PI policies also commonly include clauses that allow the limit of indemnity to be reinstated (automatic reinstatement clause) to its primary amount for subsequent and unrelated claims made during the policy period. The limit of indemnity may vary for different claims, for example, the limit may be lower for a claim brought in relation to non-compliant use of combustible ACPs.

The excess is that part of a claim that remains uninsured and is achieved by a policy condition requiring the insured to pay the first portion of a loss in respect of any one claim, with the insurer settling the balance above the excess up to the limit of indemnity.

## CONTINUITY OF COVER

Claims made policies generally exclude claims arising from facts and circumstances known to the insured before the start of the policy period. Continuous cover clauses address this situation by extending cover under the policy to a claim arising out of a fact or circumstance which could have been notified under a previous PI insurance policy but the insured failed to do so.

For a continuous cover clause to apply, usually the insured must have been insured under a PI insurance policy issued by the insurer at the time they first became aware of the fact or circumstance that gives rise to the claim. The claim must have been covered under the previous policy and the insured must have been continuously covered, without interruption, by a PI insurance policy with the insurer until the time when they notify the claim to the insurer.

Not all policies contain continuous cover clauses.

## CESSATION OF COVER

Companies or individuals ceasing business still have exposure to claims being made after their business ceases arising from their previous business activities. Even though they may have had insurance at the time that services were provided, they are not eligible to rely on the benefits of the insurance policy because notifications of claims can only be made during an active policy period.

Professionals who contemplate retirement or wish to cease their business often purchase run-off cover. This cover typically protects the insured against the same risks that the PI insurance policy protected against while it was active. It provides cover for potential incidents which have happened but are yet to become apparent.

Run-off cover does not insure for work performed after the run-off policy commenced. Some PI insurance policies will provide automatic run-off cover up until the end of the policy period should the policy be cancelled during the policy period. Run-off cover is generally purchased for multiple years thereafter.

# PI insurance requirements for building certifiers

*Requirements for PI insurance vary between jurisdictions which creates a complex PI insurance environment*

The licensing and PI insurance requirements vary slightly from state to state. Queensland, South Australia and the ACT are the only states that require registration with the Australian institute of Building Surveyors (AIBS) or the Royal Institute of Chartered Surveyors (RICS). Queensland legislation requires that building certifiers are required to hold exclusion free PI insurance. Victoria explicitly requires that policies must not exclude liability for loss or damage arising out of building work.

Minimum limits of indemnity vary from state to state with NSW imposing the highest minimums. Particularly for companies, NSW requires a minimum indemnity amount per building certifier up to \$20 million in cover. South Australia recently made changes to their licencing requirements. These changes required building certifiers that have policies with exclusions to be assessed against the work that they carry out to determine if their cover is "appropriate". This approach reflects that different levels of building certifiers attract different levels of risk, and allows PI insurance exclusions to vary accordingly.

	Licence required?	Licence requirements	Level of PI insurance required	Exclusions allowed?
Queensland	<b>Yes</b> <i>Building Act 1975</i> <i>Building Regulation 2006</i>	AIBS or RICS Registration, complete relevant course, PI insurance	Minimum limit of indemnity of \$1m (excluding costs) for any one claim, indemnity for breaches of professional duty the day after the surveyor started practising, indemnity for negligence. Indemnity for breaches of professional duty as a private building certifier arising from an act, error or omission of the private building certifier.	Queensland legislation requires that private certifiers hold PI insurance for a claim that may arise from the performance of private certifying functions (Section 52 of the Building Regulation 2006). The functions of a private certifier are set-out by Chapter 4, Part 2, division 2 of the <i>Building Act 1975</i> and notably do not preclude work involving combustible cladding
SA	<b>Yes</b> <i>Development Act 1993</i> <i>And Regulation 2008</i>	Graduate Diploma in Surveying, 2 years experience, assessment project, PI insurance, AIBS registration	Minimum limit of indemnity of, \$1m for any one claim and \$2m in aggregate claims, indemnity for legal costs, indemnity for breach of professional duty from the date the surveyor started practising. "It is also a mandatory requirement for registration that accredited professionals hold a policy of PI insurance that is reasonable and adequate taking into account the amount and nature of the work undertaken by the accredited professional."	No requirement that PI insurance is exclusion free. The SA planning website states that upon application for a Licence, a copy of the insurance policy must be attached including policy wording with any exclusions
Victoria	<b>Yes</b> <i>Building Practitioners' Insurance Ministerial Order</i>	Complete relevant degree Practical training Pass Examinations, PI insurance	Must indemnify surveyor against civil liability arising from a breach of professional duty, must not exclude liability arising out of building work, min limit of indemnity of \$1.5m (including costs). If a building surveyor enters into an agreement under s 215 of the <i>Building Act 1993</i> they must have a min limit of indemnity of \$5 million.	Must not exclude liability for loss or damage arising out of or concerning building work as defined in the <i>Building Act 1993</i> .
NSW	<b>Yes</b> <i>Building Professionals Act 2005</i> and <i>Regulation 2007</i>	Complete relevant degree Practical training Pass Examinations, PI insurance	Indemnity against surveyor's statutory liability (breach of professional duty) for all acts and omissions, minimum limit of indemnity of \$1m (excluding costs) for any 1 claim, max. of \$2m for all yearly claims, per surveyor. In a company, the maximum amount is to be multiplied by the number of building certifiers in the company (max. of \$20 million)	Can exclude claims made where no occupation certificate has been issued. PI policy may contain exclusions but must not be inconsistent with the regulation
WA	<b>Yes</b> <i>Building Services (Registration) Act 2011</i>	Have the required qualifications and experience be a fit and proper person, comply with any other requirements.	The Building Services (Registration) Regulations 2011 outlines the insurance requirement for registration as a building surveying contractor. The applicant must have professional indemnity insurance with a minimum level of indemnity of \$1m for any one claim; and \$2m in aggregate during any one period of insurance.	Building surveyor contractors are required to have professional indemnity insurance appropriate to the size and/or number of buildings certified noting minimum levels of liability.
England	<b>Yes</b> <i>Building and Buildings, England and Wales 2010</i>	Building control qualification or member of RICS, 5 years experience, PI insurance.	Building certifiers must have one of four approved insurance schemes, with mandatory run-off cover.	The policies have been pre approved by the UK government.

# PI insurance requirements for architects

*The requirements for PI insurance for architects working within Queensland are not as prescriptive as other jurisdictions*

Architects in Queensland are not required by legislation to obtain PI insurance. However, to be an 'architect' registration is required with the Board of Architects of Queensland (BOAQ). BOAQ maintain a Code of practice which requires PI insurance of any level. This is different to the other states and to England. In England, insurance is not required but is expected to be held. In South Australia, the Architectural Practice Board of South Australian requires every architect's PI policy on registration to determine if it is appropriate for the work being completed by the architect. In Queensland architects can operate without PI Insurance provided they advise the client of this and agree before entering into an agreement. The regulatory environment in Queensland has resulted in many architects not having issues obtaining insurance.

	Licence required?	Registration requirements	Level of PI insurance required	Exclusions allowed?
Queensland	<b>No, however, registration is required</b> <i>BOAQ Code of practice</i>	Qualifications from accredited course, PI Insurance, Industry experience	Architects are required to maintain a policy of PI Insurance during each FY appropriate for the services being provided. Evidence of PI insurance must be provided to clients if requested.	If insurance is unavailable or economically unviable, the architect can advise the client that he or she does not maintain professional indemnity insurance, providing this occurs before entry into an agreement with the client
SA	<b>No, however, registration is required</b> <i>Architectural Practice Act 2009</i>	Qualifications from accredited course, PI Insurance, Industry experience	Architects are required to be insured against civil liabilities in a manner and to an extent approved by APBSA. Insurance must be adequate to meet a claim when it is made. The Board may, subject to such conditions as it thinks fit, exempt a person, from the requirement of PI insurance. Recommended minimum limit of indemnity of \$1 million. Evidence of insurance must be provided to the Board.	Exclusions are allowed to the extent that the Board determines appropriate.
Victoria	<b>No, however, registration is required</b> <i>Architects Act 1991</i>	Qualifications from accredited course, PI Insurance, Industry experience	It is a Victorian government requirement for architects to be covered by PI Insurance. Cover must be for a breach of professional duty up to \$1m (ex. costs) for any one claim.	The Minister may specify any requirements, however, it is currently the individual (or company) that decided if they wish to gain exclusion free cover.
NSW	<b>No, however, registration is required</b> <i>Architects regulation 2017</i>	Qualifications from accredited course, PI Insurance, Industry experience	The NSW Architects code of conduct requires PI Insurance. It requires the architect to maintain PI Insurance that is appropriate for the architectural services being provided by the architect. Evidence of PI insurance must be provided to clients.	The practising architect can decide if they wish to have exclusions in their policies.
WA	<b>No, however, registration is required</b> <i>Architects Act 2004</i>	Qualification from accredited course, industry experience, PI insurance is a licence condition	The Board may impose as a condition of registration or renewal of registration that an architect holds professional indemnity insurance. The Western Australian Board has imposed this requirement for both individuals and corporations. The Regulations state that the minimum amount of insurance cover is \$1 million. An architect must provide evidence to the Board that insurance is in effect.	All practising architects must have appropriate professional indemnity insurance to protect the public and their own professional interest.
England	<b>No, however, registration is required</b> <i>Architects Code ARB</i>	Completion of prescribed qualifications part 1, part 2 and part 3.	You are expected to have adequate and appropriate insurance cover for you, your practice and your employees. You should ensure that your insurance is adequate to meet a claim, whenever it is made. You are expected to maintain a minimum level of cover, including run-off cover, in accordance with the Board's guidance. The Board recommends the min limit of indemnity to be £250,000 for each and every claim.	PI insurance is not a requirement but an expectation, this means that the architect can decide what level of cover they have and which exclusions apply.

# PI insurance requirements for engineers

*Queensland does not have different requirements for fire engineers and fire safety engineers in regard to PI insurance as the boards that manage the professions are either national or international*

Queensland does not require PI insurance to practice as a Fire Safety Engineer, although, many professionals choose to have PI insurance due to the nature of the work. If a professional elects to become a “fire engineer” they must register with the Institute of Fire Engineers (IFE) and are required to hold adequate PI insurance. Requirements for PI insurance are the same nationwide, except for fire safety engineers operating in NSW, completing specific types of fire protection work.

Proposed reforms in NSW will require these professionals to register as ‘competent fire safety engineers’ and to hold PI insurance with a minimum limit of indemnity of \$2 million.

	Registration requirements	Level of PI insurance required	Exclusions allowed?
Fire Safety Engineer	Qualifications and competencies assessed by Engineers Australia relevant scheme, fit to practice.	PI Insurance is not required. However, due to the nature of the work many Fire Safety Engineers choose to obtain cover. It is an expectation Fire Safety Engineers that carry insurance, however, it is not formally expressed in the Engineers Australia Code of Ethics.	PI insurance is not a requirement or mandatory and therefore exclusions on policy can be in place if the engineer chooses to have PI insurance.
Fire Engineering	An accredited bachelor's degree or an accredited MEng degree, two referees, professional review report	The Institute of Fire Engineers (IFE) have a code of conduct that states that members of the IFE, of all grades, shall: ‘ <i>hold adequate professional indemnity insurance, where required.</i> ’	The code of conduct section requires insurance ‘where required’ exclusions can be in place as long as they are not required for the work that is completed by the fire engineer.
Fire Protection Association Australia And NSW government	The NSW reforms require some types of fire protection work in NSW to be completed by a ‘competent fire safety engineer’ which is an FSA or FSD accreditation	The competent fire safety engineer required to be accredited with a Fire safety assessment (FSA) or a Fire Safety Design (FSD) class, must hold professional indemnity insurance. The individual must be have PI insurance cover with a minimum limit of indemnity of \$2 million. The insurance must cover all past work of an accredited individual while accredited with Fire Protection Association Australia (FPA Australia) up to a maximum of 10 years.	Professional Indemnity insurance held by an accredited individual must include in the list of business activities, all work activities relevant to the accreditation class and category held.

# 3

Factors influencing  
the PI insurance  
environment





*“Changes in the PI insurance market globally are the backdrop to pressures in the market locally, but the current crisis is being driven by cladding exclusions”*

Australian insurance broker



“

**A: Insurance market factors**

# Insurance market cycles

*Global insurance markets swing between profitable and unprofitable periods and they are currently experiencing a 'hard market' driven by high claims activity and large losses*

## PI insurance in Australia accesses both the local market and Lloyds of London

In Australia, PI insurance is heavily “backed” by Lloyd’s of London (Lloyd’s) which is not an insurance brand but a partially mutualised market where members of Lloyd’s join together as syndicates to insure risks. Together, these syndicates form the world’s largest insurance market. Australia is the fourth largest market for Lloyd’s, and writes business either by coverholders (including syndicate service companies based in Australia who operate as an underwriting agent), or syndicates directly in London.

## All insurance markets are known to fluctuate through cycles

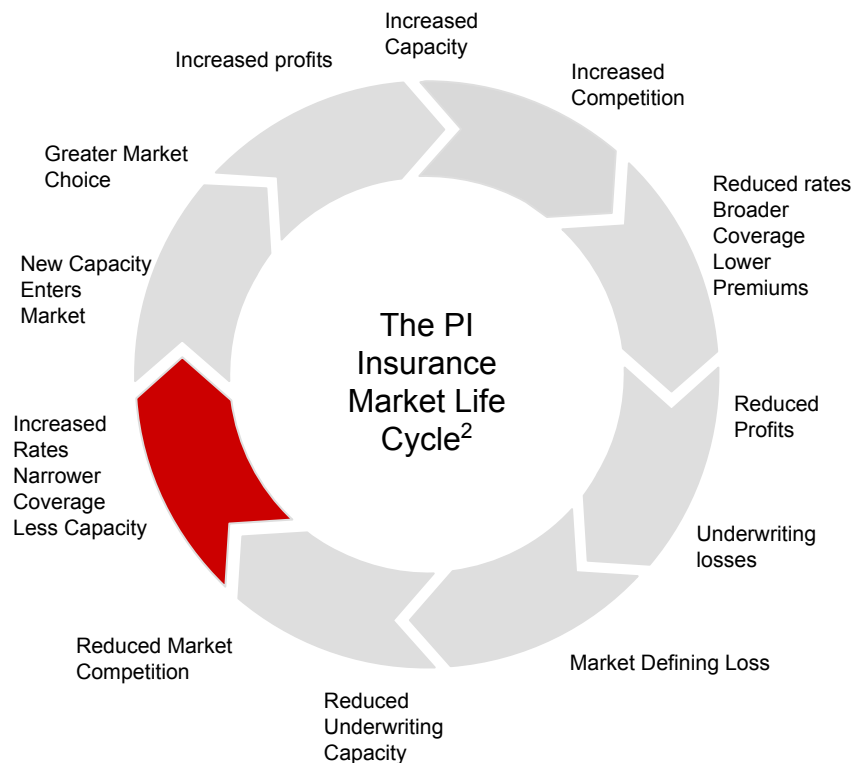
A buoyant, or buyer’s market – also known as a soft market – is signified by plentiful capacity (finance), lower prices, and broader coverage. However, this competitive marketplace eventually takes its toll on insurers, as business starts to become unprofitable. This is exacerbated by wide policy wordings.

As insurers incur more claims of increasing value, underwriting losses start to emerge and eventually capacity withdraws from the market. This is often catalysed by a market-defining event, such as a significant man-made or natural catastrophe or a terrorist attack. These periods of reduced coverage and more difficult terms are known as a hard market.

As capacity withdraws, competition lessens. The remaining players can increase premium prices, narrow their terms, and increase excesses. For some distressed risks, they might withdraw coverage altogether. These steps will reduce losses and gradually improve profitability and, as additional capacity is attracted to the market, soft market conditions will return.

## The PI market is not immune to factors affecting global insurance markets

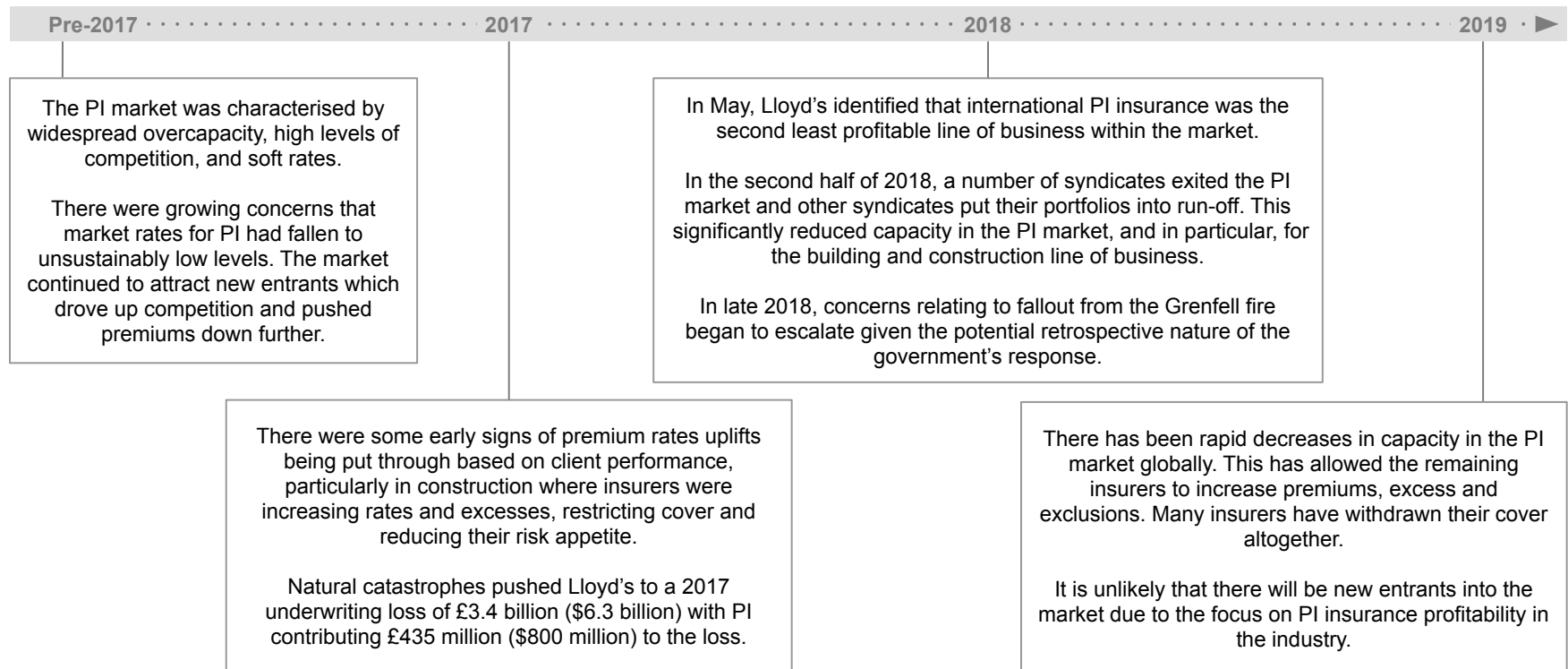
While the global insurance market is generally tending into a hard market, particular segments of that market are seeing particular fluctuations in availability, price and terms. PI insurance is not immune to this cycle, with the issue compounded by the exit of Lloyd’s PI insurance syndicates particularly outside of the US. Cladding aside, this significant reduction in capacity is seeing significant movement in PI pricing and restriction, which has not been observed in the last 15 years.



# Global PI insurance markets

*Poor profitability has resulted in a significant reduction in capacity in the international PI insurance market, particularly for the building and construction market segment*

The Australian PI market is directly connected to the UK market, which remains one of the biggest suppliers of insurance capacity globally. Market trends in the UK often directly impact the Australian market. UK insurers have been responding to the impact of the Grenfell fire, however, these concerns should not displace the fact that the PI insurance market was performing poorly for a number of years.



***“Non-US PI insurance was the second worst performing class of business for Lloyd’s between 2011 and 2016.  
Some 62% of Lloyd’s syndicates that write non-US PI insurance are reported to have made an aggregate loss over the last six years.  
It is believed that no syndicate made a profit on its PI insurance book in 2017.”<sup>3</sup>***

# Australian PI insurance market

*The Australian PI market has experienced a downturn in performance consistent with Lloyd's of London which has seen the market tighten across all professions*

The PI Insurance market in Australia and Queensland can be seen on the graphs provided. This market includes PI Insurance for all occupations. The data sourced from APRA, extends from 31 December 2003 through to 31 December 2017.<sup>5</sup>

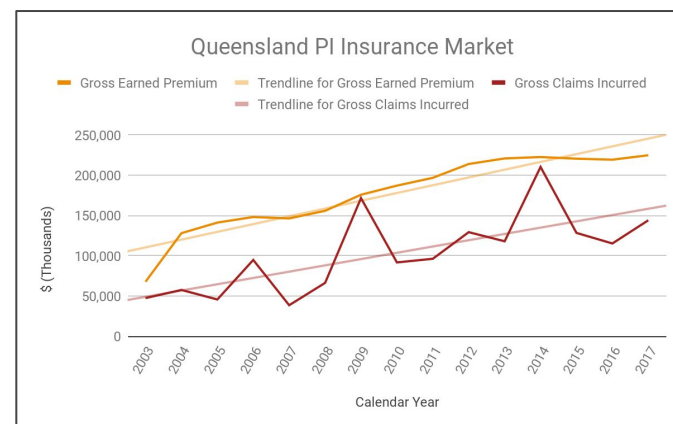
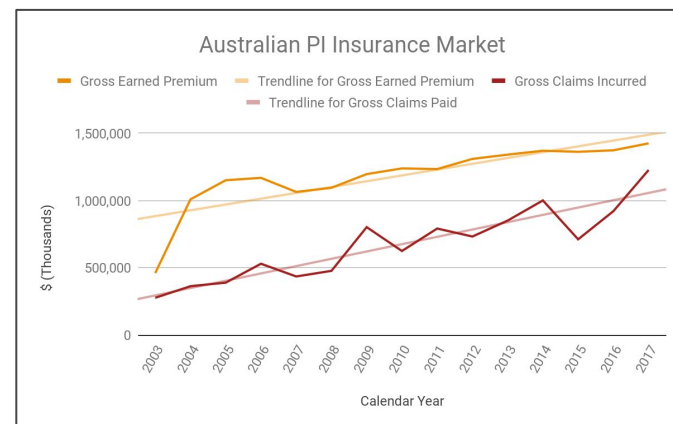
## Australian PI insurance market

It is understood that through 2018 the market tightened significantly, although APRA has not yet finalised this data. The Australian PI market has been strongly impacted in this period, and the first quarter of 2019, by external events. These include, the commencement of the Royal Commission into the aged care sector and reforms from the banking, finance and insurance Royal Commission. Other events negatively impacting the market are; the Australian property market downturn, accountants providing SMSF advice and the use of non compliant construction materials. These factors also heavily influence the Directors and Officers (D&O) insurance market, which is often linked to the PI market.

- The total amount of premiums earned in Australia at 31<sup>st</sup> of December 2017 was nearing \$1.5 billion. This was a small percentage of the global PI insurance market. Australia does not have a large influence on the external market due to its relatively small size.
- Gross claims incurred was \$1.25 billion at the end of 2017. This value was 86% of total premiums earned in the Australian market. An insurance agency needs to earn approximately \$1 for every 70 cents of claims incurred to breakeven.<sup>4</sup> Therefore, according to the general trends displayed, in the Australian PI insurance market the average insurer lost 16 cents for every dollar earned. As a result of this declining profitability, the market has tightened in the years following 2017.
- There has been rapid withdrawal from the market, increased premiums and increased exclusions. Withdrawal from the market is due to sustained losses over several years as opposed to major events causing insurers to no longer offer policies.
- Claims incurred general trend is increasing 25% more than premiums earned.

## Queensland PI insurance market

- Approximately 16% of the total Australian PI insurance market, and the Queensland market generally follows a similar trend to the Australian market.
- Premiums are increasing 24% more than claims incurred each year. This indicates that the gap between premiums earned and claims incurred is increasing.



# PI insurance market for building professionals (1)

*The performance of the PI insurance market for building and construction in Australia has deteriorated with many insurers experiencing losses<sup>4</sup>*

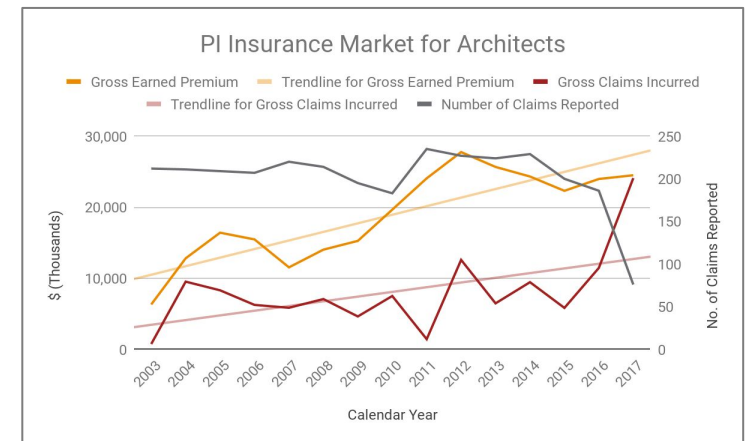
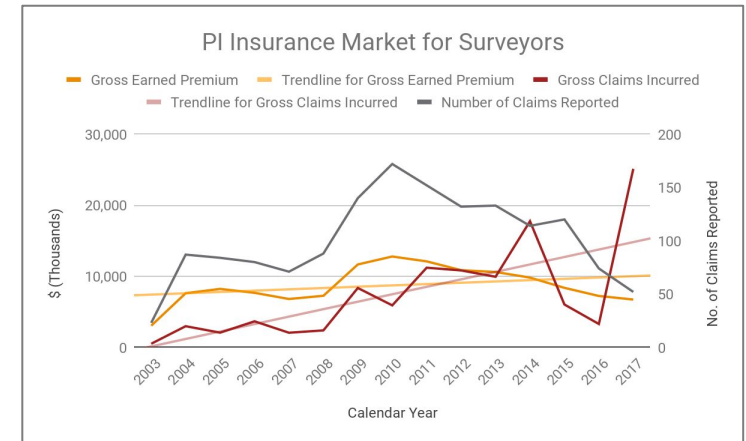
PI insurance premiums, claims incurred, and number of claims reported for surveyors, architects and engineers are displayed.

## PI insurance market for surveyors

- The total premiums earned at 31 December 2017 was \$6.7m. This is 0.5% of the total PI insurance market in Australia. The surveyors market is not influential on the wider PI market due to its extremely small size.
- The small premium pool creates a high risk scenario for insurers as the entire pool may be smaller than one large claim.
- For every dollar earned in premiums in 2017, \$3.73 in claims were incurred. This causes a large loss for insurers offering policies in the occupation and is not sustainable for insurers.
- The number of total individual claims has decreased since 2015 whereas, the amount in dollars of gross claims incurred has increased by 760% in 2017.
- The claims incurred general trend is increasing at 567% more than the trend in premiums which has been relatively stable over the past 14 years. The market has not been profitable irrespective of recent external events since 2011 (excluding 2016).

## PI insurance market for architects

- For every dollar earned in premiums in 2017, \$0.98 in claims were incurred.
- Individual claim amounts drastically increased in 2017. Claim amounts averaged \$61,000 in 2016 and increased to \$317,000 in 2017.
- The general trend shows that gross premiums are increasing faster than claims incurred, resulting in a more profitable environment. However, the trend line does not accurately depict the steep increase in claims through 2016 and 2017.



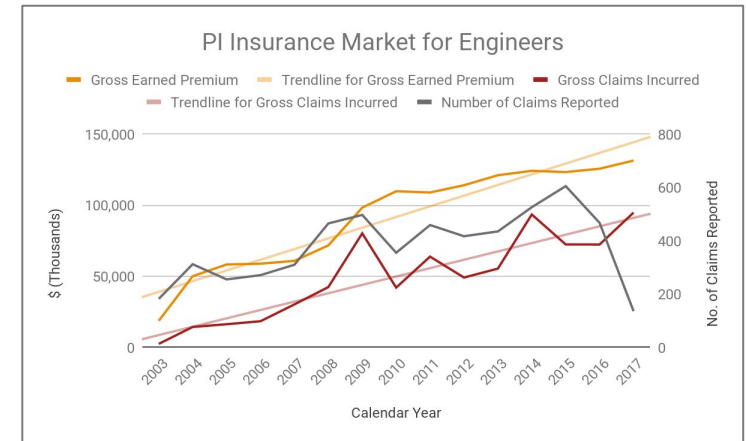
# PI insurance market for building professionals (2)

*The performance of the PI insurance market for building and construction in Australia has deteriorated with many insurers experiencing losses<sup>4</sup>*

## PI insurance market for engineers

- The PI insurance market for engineers had a total earned premium of \$131m significantly larger than surveyors and architects. This is because the data includes all engineering occupations.
- The occupation was almost profitable in 2017 as total claims incurred were at 72% of premiums earned in 2017 and the general trend between premiums and claims is widening, likely becoming more profitable on average each year.
- The PI insurance market for engineers contributes approximately 10% to the overall Australian PI market.

Note: The data provided by APRA does not specify categories of engineers. Therefore, the graph “PI Insurance Market for Engineers” includes all engineers.<sup>6</sup>



# PI insurance providers in the market

*The number of providers of PI insurance has decreased dramatically over the past 12 months, with the landscape continuing to change rapidly and showing no sign of recovery in the short term*

## There is limited funds and capacity available globally for PI insurance

A reduction in capacity in both the global and Australian insurance markets has been evident for several years, and has been causing significant concern across both industry and government.

Across the building and construction industry, there is consensus amongst insurance brokers we consulted that the PI insurance market has been under-priced for a number of years, and that 10-15 per cent increases in premiums would be justified and expected. However, premium increases experienced by PI insurance professionals, which happens to coincide with a number of cladding-related issues globally, would suggest that insurers have simply exhausted their ability to meet claims. This has been accompanied by reductions in the overall aggregate limit of insurance policies, limits on specific claims, and large increases in premiums.

More recently, the determination by insurers that PI insurance as a market and building and construction PI insurance as a segment within that market is no longer profitable, is seeing insurers running off their business and exiting the market altogether, particularly noticeable through a 40% reduction in capacity from the Lloyd's market. A revolving cycle of new insurers replacing existing insurers has been a common occurrence over the past 20 years in Australia but this is no longer occurring. While the local market has attempted to absorb this loss in capacity from Lloyd's, this is no longer sustainable. Hence, a number of Australian insurers have recently left the market, signalling an increasingly hard market for Australian PI insurance.

Insurer/underwriting	Active in PI market?	Exclusions
AIG	Yes, within last 6 months	Yes
Allianz	Yes, within last 3 months	No
AON	Yes, within last 6 months	Yes
ArchiTeam	Yes, within last 3 months	Yes
Besso	Yes, within last 6 months	No
Berkley Insurance	Yes, up to 3 months ago, but has since stopped	N/A
Brooklyn / Catlin	Yes, within last 3 months	Yes
CGU	Yes, within last 6 months	Yes
Chubb Insurance	Yes, within last 3 months	No
DUAL Australia	Yes, within last 3 months	Yes
HDI Global SE	Yes, within last 3 months	Yes
HIA Insurance	Unknown	Unknown
JUA Underwriting	Yes, within last 3 months, but has since stopped	N/A
Landmark Underwriting	Yes, within last 3 months, but has since stopped	No
Liberty Underwriters	Yes	Unknown
Lloyds of London	Yes, within last 6 months	Yes
Nova Underwriting	Unknown	Unknown
NZ Insurance / IAG	Yes, within last 9 months	No
Pacific Indemnity	Yes, within last 3 months	Yes
PEN Underwriting	Yes, within last 6 months, but has since stopped	N/A
Solutions Underwriting	Yes, within last 9 months	No
Vero Insurance	Yes, within last 3 months	Yes
Woodina Underwriting	Unknown	Unknown
Zurich	Yes, within last 3 months	Yes

## Update to PI insurance market information - June 2019

The table to the right lists providers of PI insurance to building industry professionals that were mentioned through consultation with brokers and industry and through our survey. This information was collected in May 2019.

Given the dynamic and fluid nature of the market, a subsequent market scan was completed from 19 - 20 June 2019 for building certifiers. The results of this market scan are presented separately in **Chapter 5**.

“

## **B: Risks arising from combustible ACPs**



# Fire risks associated with combustible ACPs

*The Lacrosse and Grenfell fires exposed the possible fire risks associated with combustible ACPs; triggering a range of regulatory responses and highlighting the potential liabilities that could exist*

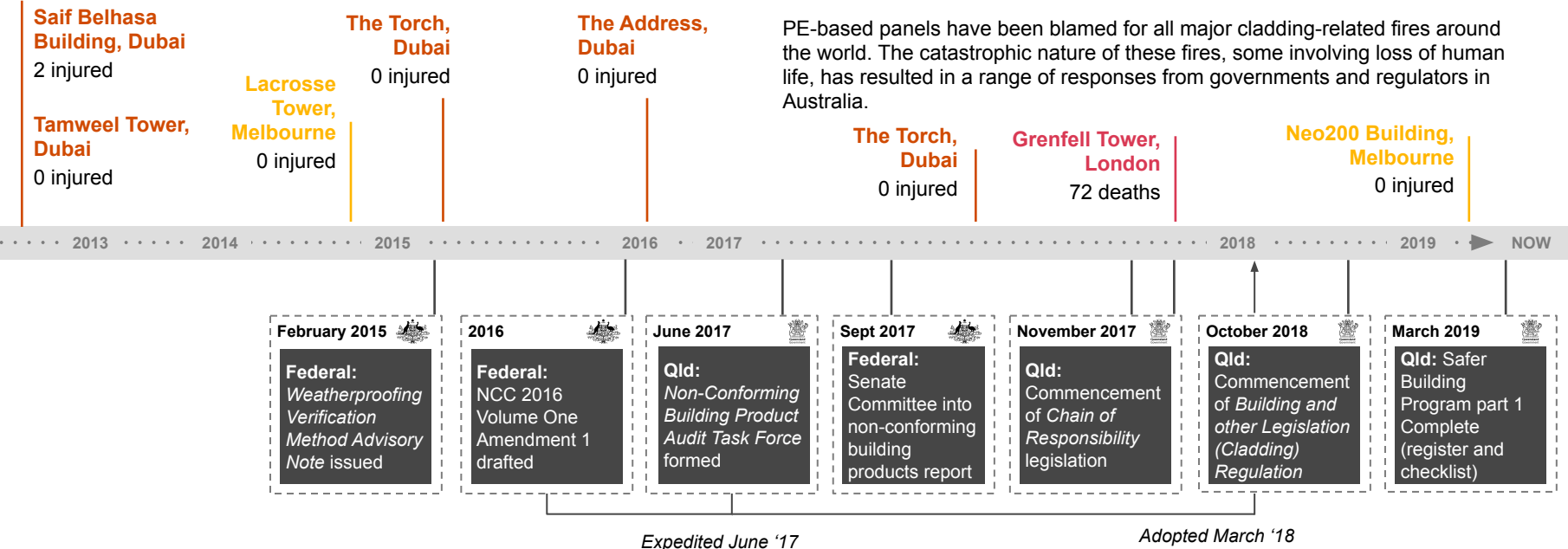
## BACKGROUND TO REGULATORY RESPONSES

Recent multi-level building fires in Australia and overseas have resulted in Federal and State governments examining the potential risks caused by inappropriate use of some types of aluminium composite panels (ACPs) and other combustible façade materials.

The main problems relating to combustibility lie specifically with panels containing a high percentage of polyethylene (PE) materials. Other types of combustible ACPs, including panels containing aluminium cores, are not considered to be hazardous when used in approved non-combustible walling systems.

Fire risks associated with the use of combustible ACPs were first hypothesised in Australia in the early 2000s. In 2010, the Australian Building Codes Regulatory Board was actively considering whether combustible ACPs complied with the Deemed-to-Satisfy (DTS) provisions of the Building Code of Australia. At this time, investigations indicated that many ACP products did not comply with the BCA DTS requirements for combustibility. In 2011, the ABCB invited individual jurisdictions to use a draft advisory note relating to external wall cladding, with the Victorian Building Commission issuing a “fact sheet” (in the form of the draft advisory note) in October 2011. Despite these early warnings, His Honour in Lacrosse agreed with the proposition that the “obvious thing for a builder to do in 2010 or 2011 was to use a product indicative to Alucobond”.<sup>7</sup>

PE-based panels have been blamed for all major cladding-related fires around the world. The catastrophic nature of these fires, some involving loss of human life, has resulted in a range of responses from governments and regulators in Australia.



# Regulatory responses to combustible ACPs

*Regulatory responses and building audits are resulting in the materialisation of what would otherwise be a 'latent risk' for building owners, building industry professionals and the insurance industry*

## Queensland: Over 20,000 buildings registered

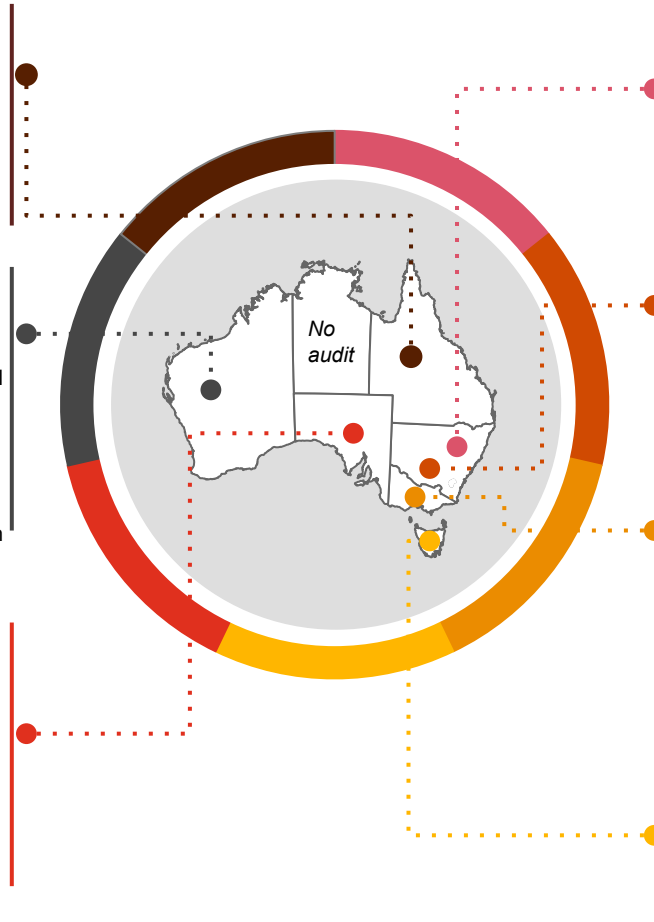
The *Safer Buildings Program* was established in 2018, and will be conducted in three parts by the Department of Housing and Public Works. 17 buildings have been identified to date as requiring possible further action.

## WA: 3,649 buildings in audit

Initially established as a small-scale audit into combustible ACPs in 2016, the WA Building Commissioner announced in July 2017 it would be extended into a three-phased, state-wide audit of all high-risk, high-rise buildings. Unlike other jurisdictions, phase 1 included only planning, with all identification and assessment occurring in 6 stages throughout a prolonged phase 2. Data is published fortnightly; there are currently 1,736 private buildings and 1,913 public buildings within in the audit scope.

## South Australia: 1,117 buildings in audit

The *Aluminium Composite Panel Building Audits* was established in 2017, and like Qld is being conducted in three phases by the Dept of Transport and Infrastructure (DPTI). Phase 1 (identify) was delivered in collaboration with councils; and accessed 1,117 buildings across SA. Of those, 47 required further work to improve fire safety. Phase 2 (investigate) commenced in Adelaide in Aug 2017, and in early 2018 for remaining councils.



## New South Wales: 435 identified as high risk

An initial 'desktop' audit looked at more than 178,000 building records. A subsequent detailed audit identified 1,184 buildings that may have dangerous cladding. Since then, 2,300 building inspections have been completed, and 435 have been identified as potentially high-risk.

## ACT: Unknown

Similar to NSW, an initial review of ACT government buildings was conducted in the wake of Grenfell, with the *Building Cladding Review Group* established to extend the review to privately owned buildings. No information has been released on recent audits but an initial audit found 50 Canberra schools and seven housing ACT sites with some form of ACP.

## Victoria: 1,065 buildings in audit

The *Victorian Building Authority* was the first of all jurisdictions to initiate an audit in 2015, identifying a number of buildings in inner Melbourne with non-compliant building. As of 6 March 2019, there were 681 privately owned buildings and 384 government buildings that have been identified with cladding.

## Tasmania: 1 building in audit

Results of the *Tasmanian Aluminium Composite Panel Audit* were released on January 2018; 42 of the 43 buildings where ACP is in use were classified as low risk (no additional risk to fire safety), with one building requiring detailed review by a fire safety engineer, determining that likely deterioration of the product would require remediation.

# VCAT judgement on the Lacrosse building fire

*This judgement has crystallised the potential liabilities facing building industry professionals who have provided advice in relation to the non-compliant use of combustible ACPs<sup>6</sup>*

In February 2019, his Honour Judge Woodward, Vice-President of VCAT, handed down the first major decision in Australia in relation to the respective liabilities of parties involved in the design and construction of a building which included combustible cladding.

## The facts

On 24 November 2014, a resident of the 21 storey Lacrosse Apartment Tower in Melbourne left his smouldering cigarette butt in a plastic food container on the balcony on the eighth floor. This sparked a fire that spread up the aluminium-clad building facade, and the 21st floor within 11 minutes.

## Overview of the judgement

211 applicants (representing the relevant owners corporations and owners of individual apartments) bought a damages claim in VCAT against a range of respondents, including:

- 1) the builder and 2) the consultants; including building surveyors and his employer, the architect, the fire engineer, 3) the occupier of the apartment, 4) the resident who lit the cigarette and 5) the Superintendent.

The primary focus of the proceeding concerned the selection, approval and installation of the combustible ACPs that carried the fire and the attribution of responsibility among the eight respondents for the damage caused.

Judge Woodward found that:

1. The external cladding specified in the original design and the substitute **failed to comply with the BCA and Building Regulations**
2. Upon installation, the builder **breached the implied warranties** of suitability of materials, fitness for purpose and compliance with the law; and therefore was liable to pay damages to the owner;
3. Each consultant **breached their obligation to the builder** by failing to exercise **reasonable care** in the construction of the tower.

Specifically, the:

- **building surveyor** issued a Building Permit for the relevant state of the building, approving the specification by the architect of the ACP, and failed to notice and query the incomplete description of the cladding system in a report by the fire engineer ;
- **architect** failed to remedy defects in its design (specification of ACP and design drawings), causing the design to be non-compliant with BCA, and to ensure the ACP sample was compliant with the design;
- **fire engineer** failed to conduct a full engineering assessment in accordance with international guidelines, and recognise the ACP did not comply with the BCA, and hence warn the builders.

## Apportionment of liability

The builder was liable to pay damages to owners, but his Honour determined this was to be reimbursed by the respondents as 'concurrent wrongdoers' in the following proportions:

1. **The building surveyor:** 33 percent
2. **The architect:** 25 percent
3. **The fire engineer:** 39 percent
4. **The lighter of the cigarette:** 3 percent.

## Conclusion

While there are some broad lessons to draw for professions involved in the use of combustible ACPs, his Honour noted that the decision turned on its facts. The purpose of VCAT was to engage in an exercise of consideration of proportionate liability, contract interpretation and assessment of loss and damage; rather than establishing precedent. Given this is the first major cladding decision, the weight of this particular decision is unknown, and it is likely that courts and tribunals of other jurisdictions within Australia will be able to distinguish the judgement, based on the facts.

# Scope of liabilities arising from combustible ACPs

*PI insurers are exposed to both the potential 'historical' liabilities of building industry professionals, along with liabilities emerging from building remediation works and new projects*

The claims made basis of PI insurance means that insurers are potentially liable for the past errors of building industry professionals. As PI insurance policies often roll-forward, insurers must consider not only the historic liabilities that may arise from past bodies of work, but also new liabilities which may emerge from current and future work.

At present, the insurance industry perceives there are a range of risks and potential liabilities which may arise from the advice provided by building industry professionals in relation to combustible ACPs, and which may give rise to future claims, including:

- Historical advice provided by building industry professionals which has resulted in buildings which have a residual fire risk, and which may require remediation works to ensure the building is compliant.
- Current and future advice provided by building industry professionals in relation to building audits and subsequent remediations, and also new projects involving the use of combustible ACPs.

These distinctions become important when considering opportunities to strengthen the PI insurance environment in Queensland.

## Scope of future PI insurance claims

### Liabilities arising from past advice

**Residual fire risks associated with non-compliant use of combustible ACPs**

Potential claims which could arise from buildings containing combustible ACPs (i.e. fire and associated water damage). These risks could reduce as buildings are remediated.

Building industry professionals could be 'in scope' for liability where they are shown to have acted negligently in providing their advice on the original use of combustible ACPs (similar to the Lacrosse judgement).

**Potential liabilities arising from historic advice provided in relation to combustible ACPs**

Potential claims which arise where building owners remediate buildings containing combustible ACPs, and seek to recover the associated costs from building industry professionals who advised on the buildings original design and construction.

Building industry professionals could be 'in scope' for this liability where they are shown to have acted negligently in providing their advice on the original use of combustible ACPs.

### Liabilities arising from current and future work

**Potential liabilities arising from new advice provided in relation to building audits, and building remediations**

Potential claims arising against building industry professionals who provide advice in relation to current building audits, including preparation of strategies to remediate buildings.

These risks sit with in particular with fire engineers involved in part 3 audit work, and all building industry professionals involved in any remediation works.

**Potential liabilities arising from advice provided on new projects involving combustible ACPs**

Potential claims against building industry professionals who provide advice on new projects involving the use of combustible ACPs, including potentially any building refits (not related to building remediations).

# Extent of liabilities from past advice

*The potential liability facing building industry professionals for past advice is uncertain and PI insurers appear to be making ‘worst case’ assessments of their exposure*

The potential of liabilities arising from past advice facing building industry professionals relates to the historic advice they provided in relation to non-compliant use of combustible ACPs. These liabilities arise in relation to:

- residual fire risks associated with buildings which are not remediated (creating the possibility for a potential claim if a fire were to occur)
- buildings which are remediated and there is a subsequent claim from building owners to recover costs where negligent advice was provided in relation to the original use of combustible ACPs.

At present, the extent to which building industry professionals, and consequently insurers, are exposed to these potential liabilities arising from past advice is uncertain due to a range of factors:

## **1. The number of buildings affected and the extent of non-compliant use of combustible ACPs is unknown (although becoming clearer)**

Building audits are providing some clarity as to the number of affected buildings and extent to which they are not compliant. Notwithstanding, this information is not readily available to PI insurers.

PI insurers are requiring building industry professionals to declare past work relating to combustible ACPs part of policy renewal/application processes, and notify of circumstances which give rise to a claim. Notwithstanding, this only provides PI insurers with a partial and fractured picture of the potential liabilities associated with past work.

## **2. The extent of building remediation works, and likely costs, is unknown**

Building audits have not fully identified the extent to which buildings identified as having non-compliant use of combustible ACPs will require remediation works. In Queensland, this picture will emerge after completion of part 3 of audits in 2021. Even then, the remediation works required to achieve acceptable use of combustible ACPs and building compliance will vary between buildings.

Until more information is available, insurers will not have a full understanding of the potential costs and liabilities they face (both as PI insurers and general building insurers). In some situations, insurers may require different level of remediation, beyond what is required in the building code, which may also affect the costs associated with remediations.

## **3. The extent to which building owners will draw on contractual and statutory protections to recover costs is unclear**

The liability arising in the Lacrosse judgement illustrated the potential for legal action against building industry professionals who can be shown have provided ‘negligent’ advice. The broader question as to whether building industry professionals may be liable for advice provided on buildings which require remediation works depends on the circumstances of the claim.

Building defects discovered after the purchase of a building, or lot in a building, are typically rectified by way of defects liability clauses or other warranties contained contracts, or through statutory warranties. Building industry professionals may face liable in these situations where they have a contract directly with the building owner, or their contract with the builder would allow pass through of liability.

# Extent of liabilities from past advice

*The uncertainty that the insurance industry faces in relation to combustible ACPs extends into other forms of insurance*

### **3. The extent to which building owners will draw on contractual and statutory protections to recover costs in unclear (continued)**

We understand that there are a number of PI insurance claims for combustible ACPs arising from the contractual liabilities of building industry professionals. For example, Lendlease is currently suing the building surveying consultancy that approved the cladding for Melbourne's Royal Women's Hospital for breach of contract (Lendlease was compelled to remove this cladding).

In general, the Australian courts have been reluctant to recognise any broader duty of care of builders to first owners of buildings for pure economic loss arising from remediation works to remedy latent defects in the absence of contractual protections. Subsequent owners of properties have little by way of contractual or statutory protections.

The ability of parties to make claims against building industry professionals after contractual and statutory protections have expired would likely turn on questions of negligence. At present there is limited precedence for apartment building owners to make successful negligence claims against builders in respect of defective works causing economic loss. Notwithstanding, new precedents may be set in relation to combustible cladding.

### **4. The extent to which building owners may pursue other avenues of legal recourse is unclear**

There are indications that building owners will seek to recover remediation costs from other parties involved in the manufacture, selection and use of combustible ACPs. This includes a class action against builders on behalf of apartment owners for remediation and compensation for the losses caused by the defective cladding (Victoria). The extent to which building industry professionals may become respondents to this class action is unknown.

Of relevance, there is also a class action against the manufacturer of Alucobond Combustible Cladding which is a product liability claim (NSW).

### **Insurance risks extend beyond just PI insurance**

The insurance risks associated with the non-compliant use of combustible ACPs extends into other forms of insurance. In this sense, the insurance industry has multiple 'exposures' which it is evaluating.

Property and public liability insurance for high rise towers is ordinarily provided in a package of "body corporate insurance". This cover is issued to the strata/owners' corporations in respect of the common property.

The presence of combustible cladding is likely to increase the amount of first party property loss and third party damage or injury in the event of a fire. Many owners of multi-unit buildings and their property and public liability insurers are currently conducting audits to establish whether there is non-compliant ACP or other external cladding on their buildings.

Public liability insurers are concerned about the risks posed to occupants and their property in the event of a fire involving non-compliant cladding, particularly where the building owners may be aware of the non-compliance. To our knowledge, there have not yet been any cases in Australia where a body corporate has been sued by occupants for loss, damage or injury arising from non-compliant use of ACP or a failure to remediate known non-compliance. However, there is a risk of those claims arising in the foreseeable future.

# Liabilities from current and future work

*PI insurers are risk managing against all future claims and consequently policies are largely being written to limit any new exposure which might arise*

## Insurance risks of future advice

The potential 'emerging liabilities' facing building industry professionals arise from current and future advice provided in relation to building audits and subsequent remediations, and also new projects involving the use of combustible ACPs.

Insurers appear to view the risks of past and potential future work holistically when writing policies. As such, some insurers are insuring past work relating to combustible ACPs but not future work (and vice versa), while some insurers are applying the some exclusions or conditions to all past, current and future work. Ultimately, these responses are being driven by a need to manage potential future claims.

The extent to which current and future advice on combustible ACPs could have a different risk profile, for example given new regulations and standards in place and the high levels of conservatism of building industry professionals, does not yet appear to be an area of consideration by the insurance industry.

## Residual building risks

Some buildings will likely continue to contain types of combustible ACPs even after remediation occur (i.e. full removal was not necessary, or other engineering solutions were identified). These buildings will continue to have some level of residual fire risk associated with the combustible ACPs.

The insurance industry has recognised that risks associated with remediated buildings are different. The Residual Hazard Identification Protocol (RHIP) is designed to help identify whether a particular type of ACP should be used in construction, and also to provide a consistent risk assessment methodology for builders and underwriters where ACP materials are thought to be present.

This protocol would be used by insurers in providing policy cover for buildings and set premiums (for general **property and public liability insurance**) according to the residual risk (after any effective risk mitigations present are considered) of damage occurring and a claim being made against the policy.

The extent to which these residual risks could present a liability to building industry professionals, for example if negligence occurs, is unclear.

# Implications for building industry professionals

*The PI insurance industry is limiting its exposure to all liabilities arising from non-compliant use of combustible ACPs through a range of ‘blunt’ responses in both the policy and claims spaces*

## Impact on PI insurance policies

At present, PI insurers are risk managing against all future claims relating to combustible ACPs and consequently policies are largely being written to limit their exposure for past, current and future advice provided by building industry professionals. Common responses by the PI insurers include:

- declining to provide PI insurance cover for building professionals who have advised on the use of combustible ACPs in the past, along with certain professionals whose scope of services will involve advising on combustible ACPs in the future
- placing explicit and broad exclusions relating to combustible ACPs on PI insurance policies exclusions on policies, with these applied retrospectively and/or prospectively
- significant increases in premiums for policyholders who require cover for claims relating to combustible ACPs; and in some cases differential limits of liability and excesses for these claims
- significant increases in requirements for disclosure of past projects involving the use of combustible ACPs, and with disclosure forming the basis of risk assessments and decisions to not insure or restrict/limit cover
- changes in requirements to notify of potential claims (i.e. timeliness, circumstances)
- general tightening of other policy limitations, such as removing cover previously provided for liabilities assumed under contract.

More broadly, insurers are seeking to use policy limitations and exclusions to limit and deny claims relating to combustible ACPs (such as through prior knowledge clauses).

***“The regulator rejected a lower cost remediation option for Lacrosse ... this seems to have ‘emboldened’ property owners to pursue total removal of cladding rather than cheaper remediation options ... this trend is of very significant concern to the insurance industry”***

Insurance industry stakeholder



“

## **C: Past and current reforms in Queensland**

# Qld building and construction industry reforms

*Queensland reforms seek to strengthen the building and construction sector, but key reforms to certification industry do not appear to be well understood by the insurance sector*

## Queensland reforms

Queensland has implemented a range of reforms seeking to strengthen its regulatory framework, improve independence and enhance regulatory oversight of the building and construction industry, including:

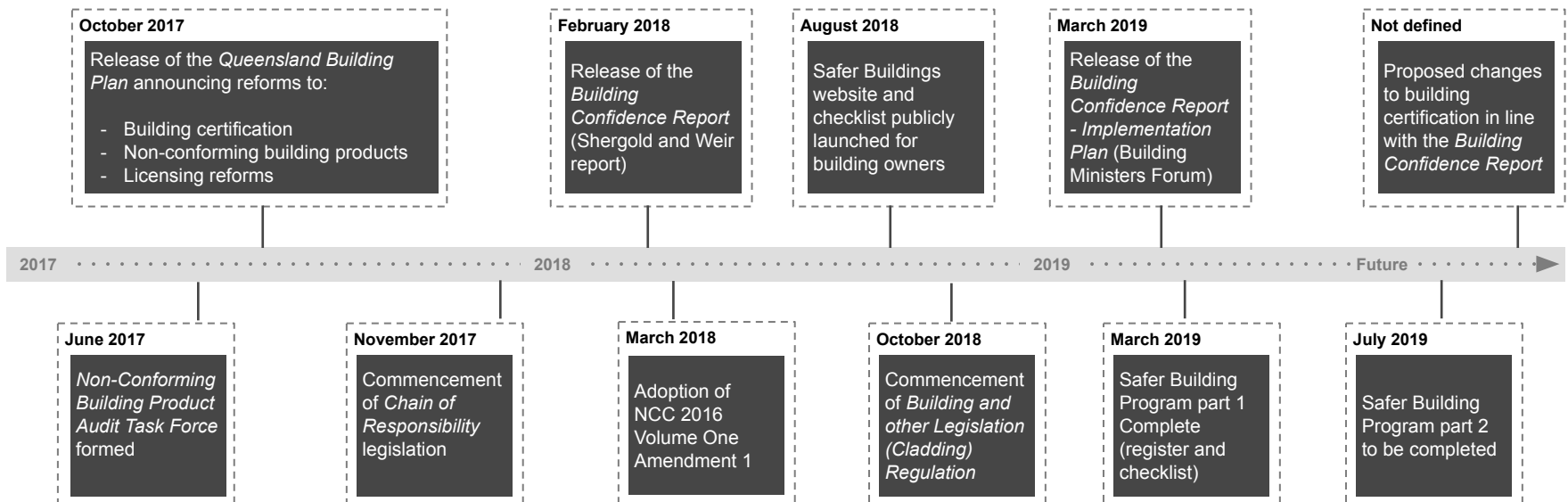
- ensuring building products are safe and fit for their intended use
- enhancing the strength of the certification and inspection processes
- strengthening licensing and improving professional standards.

A high-level summary of Queensland reforms are provided below.

## Understanding by the insurance sector

Our consultations revealed that the insurance industry is aware of regulatory developments in relation to non-conforming building products, and it actively re-assesses its risk in response to these changes. However, the absence of nationally consistent approaches to building audits and remediations was identified as a source of confusion and uncertainty for insurers.

The insurance industry did not appear to be aware of Queensland-specific requirements for licensing in Queensland, or of reforms designed to strengthen the certification industry. Given that certification has been traditionally viewed as higher risk by insurers, there would be benefit to continuing dialogue with insurers to discuss these reforms.



# 4

Impacts of the  
current PI insurance  
environment

“

**A: Impacts on professional indemnity insurance**

# Impacts on PI insurance

*Changes in the PI insurance market are resulting in a range of adverse outcomes for building industry professionals when seeking to renew their insurance*

## **The availability of insurers is limited**

The number of insurers present in the market has rapidly declined over the past year. The reduction in competition means the few remaining insurers are imposing their ability to dictate policy terms given the limited alternatives available to insureds and their brokers. The decrease in competition also has made it difficult for insureds and their brokers to obtain exclusion-free policies with affordable premiums.

## **The availability of policies is finite**

The number of policies offered has decreased at a similar rate that insurers have left the market. The number of exclusion free policies has declined to the point where multiple professionals have reported they will not be able to renew their insurance at the completion of their current policy.

## **Premiums are increasing**

The cost of premiums are increasing for many building industry professionals. Building industry professionals who have not worked with cladding or are not involved with Type A or Type B buildings are also experiencing increased premiums. Increased premiums have caused professionals to, increase their fees to clients, reduce their level of cover and in some circumstances exit the industry.

## **Excesses are increasing**

Excesses have increased for the majority of professionals. Building certifiers, on average, have experienced the biggest increase in their excesses, with some noting that one claim could cause their practice to be insolvent. A number of policies have also specified a higher excess for claims relating to cladding. This cladding specific excess is often over five times the amount of their current excess.

## **The level of cover is reducing**

This has meant that some professionals have had to take out multiple policies to get a sufficient level of cover.

## **A wider range of exclusions - cladding and others - are being applied**

Broadly, the industry is witnessing the introduction of three types of exclusions.

1. Some are very broad and exclude “any building material that is non-conforming or non-compliant with the National Construction Code, the Building Code of Australia, the Australian Standards or any other applicable laws or regulations”, which extend beyond non-compliant cladding
2. The others are more moderate that seek to exclude claims arising from the use of non-compliant aluminium composite panels
3. Some are quite narrow, and exclude aluminium composite panels with a polyethylene core.

Regardless how narrow the exclusion, exclusions identified within the market will apply to all projects, potentially even to both past and future, unless the new policy specifically states it only applies to future work or work after a certain date.

## **Disclosure and notification requirements are broadening**

Insurers require many building industry professionals to complete a disclosure addendum relating to any projects that may have involved external cladding. If professionals have any incomplete projects involving non-compliant aluminium composite panels they are often required to make a notification under their current policy before the expiring date to protect their interests.

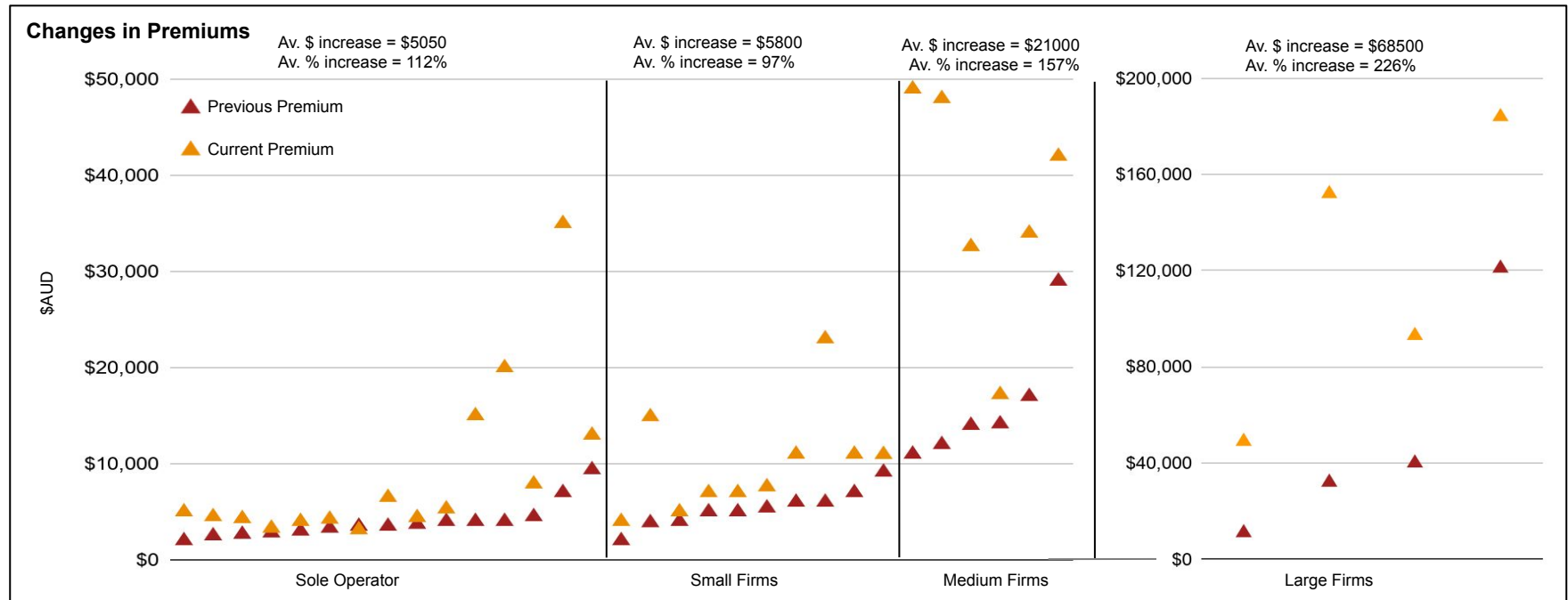
# Impacts for building certifiers (1)

*Survey results show that almost 90 per cent of building certifiers who responded had significant changes to their PI policy upon their last renewal*

## Changes to premiums and levels of coverage

Premiums steadily began to increase following the Grenfell fire in 2017 and continued in 2018. Across all operators and size firms, increases in policy premium increases have ranged anywhere from 33 per cent to 345 per cent, with the largest policy premium observed being \$184K for a large firm (up from \$120K).

This highlighted another issue consistent across the data and of particular relevance to building certifiers: insureds beginning the renewal process three to six months before renewal, yet only being offered renewal 24-48 hours before the policy will expire, or up to two weeks after the policy has expired, resulting in sole operators losing work. While some building certifiers have been able to obtain an 'exclusion-free' policy, levels of coverage have been reduced by limiting any cladding-related claims (e.g. a \$4m aggregate limit, but a \$2m cladding sub-limit).



Note. Survey respondents self-nominated their business size

# Impacts for building certifiers (2)

*The building certification profession has traditionally been considered higher risk by the PI insurance market, and insurers are actively and aggressively reducing their exposure to this market segment*

## Professional indemnity insurance market for building certifiers

Given the broad knowledge and independence required to work as a building certifier, including understanding of building law related engineering, design and construction practices, the inherent risk associated with the profession is high. The PI insurance market has always considered these additional risks when pricing policies, and are inherently more conservative in insuring this profession.

Since the shift towards private certification in Australia in 1993, the majority of building certifiers work privately as either sole operators or within small firms. The boom of the Australian building economy and the need for building certifiers, combined with a soft insurance market, has meant that building certifiers have been able to easily absorb the cost of insurance. However, the market has now hardened especially for building certifiers, and this cost is becoming too much to bear for some building certifiers.

A large portion of insurance for Queensland building certifiers is brokered by one broker; which has been in operation for 18 years and arrange 550 PI policies for building certifiers nationwide. There had previously been upwards of 20 insurers providing policies to this profession, but the information gained from brokers and insureds suggest that many have left the segment and the availability of policies fluctuates daily.

Two large insurers were reported to still be providing exclusion-free policies recently; one of which was actively writing business for all building certifiers, and the other being more selective and insuring on a limited, case-by-case basis (providing policies for approximately one in every 10 firms). However, both insurers have reportedly stopped providing policies period within the last month.

***“The goal posts of available PI insurance are changing daily; brokers no longer have a plan B to provide to insureds. We can’t even get a return phone call from the insurers.”***

Australian Insurance Broker.

Insurer/underwriter	Active in PI market?	Cladding exclusions?
Besso	Yes, within last 3 months	No
Berkley Insurance	Yes, up to 9 months ago, but has since stopped	N/A
Brooklyn / Catlin	Yes, within last 3 months	Yes
HDI Global SE	Yes, within last 3 months	Yes
JUA Underwriting	Yes, within last 3 months, but has since stopped	N/A
Landmark Underwriting	Yes, within last 3 months, but has since stopped	Yes
PEN Underwriting	Yes, within last 6 months, but has since stopped	N/A
Zurich	Yes, within last 3 months	Yes

## Options for building certifiers in obtain PI insurance

There is reportedly some instances of insuring on a case-by-case basis with 'calibrating' of insurance policies depending on the individual level of risk of the professional. Public articles by the Insurance Council of Australia (ICA) have suggested the insured's use an experienced broker to shop-around for the product that best suits them, and source an offshore policy where one is unavailable in the Australian market.

### Update to PI insurance market information - June 2019

The table above lists providers of PI insurance to building industry professionals. This information was collected in May 2019.

Given the dynamic and fluid nature of the market, a subsequent market scan was completed from 19 - 20 June 2019. The results of this market scan are presented separately in **Chapter 5**.

# Impacts for building certifiers (3)

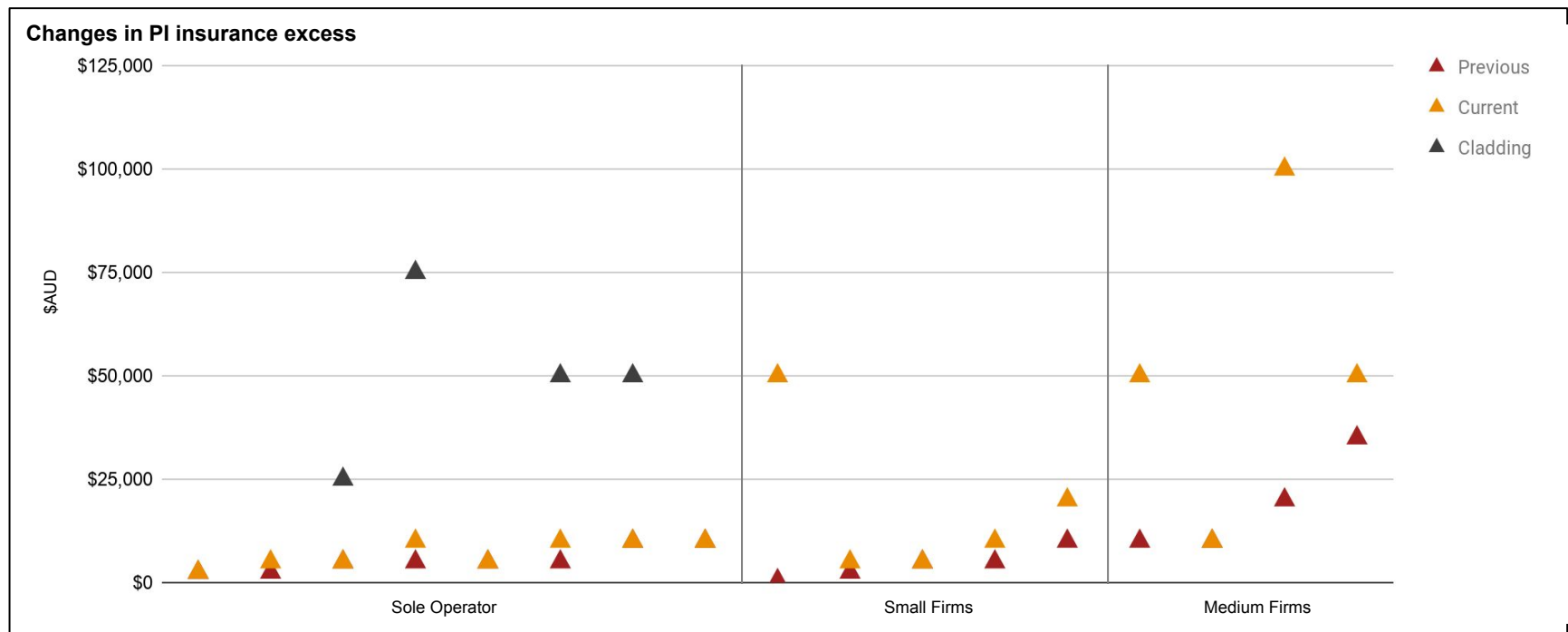
*There have been some instances of significant increases in excesses specified for ACP related claims, with these excesses likely to be unaffordable if a claim were to arise*

## Changes to excesses

Similarly, increases to excesses and the introduction of sub-excesses for cladding-related claims have been seen across the profession (e.g. an increase of \$5k to \$10k excess for all non-cladding relating claims, and between \$50k to 100k for cladding related). The increase to all building certifiers is to recover the loss seen right across the industry, while increases for cladding related claims has been predominantly for those building certifiers working within the commercial sector, rather than residential sector.

*“I wouldn’t be able to afford the excess on a cladding claim - if a claim was made against me for cladding, I’d probably have to fold my business.”*

Queensland Building Certifier.



Note. Survey respondents self-nominated their business size



# Impacts for building certifiers (4)

*Policy exclusions for any future cladding related issues are being imposed on all policies in the first instance, but are being successfully negotiated on a case-by-case basis*

## Changes to policy exclusions

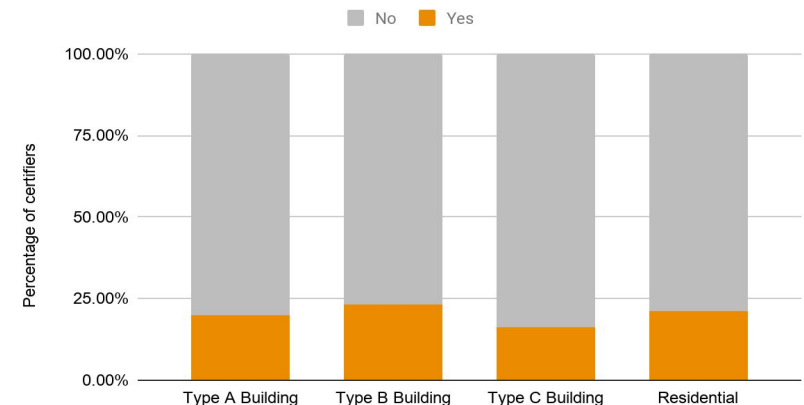
Prior to 2018, should an insurer decide to impose an exclusion in relation to cladding, brokers would take their insureds' business elsewhere and successfully negotiate a policy with no exclusions. Over the past 6 months, insureds are increasingly faced with no other option than to attempt to negotiate out of the exclusion, or accept the cladding exclusion. Additionally, exclusions relating to the use of non-conforming building products are being included in PI policies across all building industry professions. Brokers have suggested that \$100k is the average price for an exclusion-free policy, versus \$20k for a policy with exclusions.

The imposition of exclusions are of particular issue to building certifiers, given that the current interpretation of Section 52 of the Building Regulation requires building certifiers that are seeking to have a private certification endorsement have a PI policy with no exclusions. The policy must state that non-compliant building products are not excluded from cover, meaning there can be no exclusions relating to cladding. Upon renewal, building certifiers are currently being provided with 20 days to submit their exclusion-free policy documentation to QBCC, but will be issued with a show-cause notice if documentation is not provided within this time. This is of particular and immediate issue to the industry, given that approximately 40 endorsed building certifiers have PI renewals occurring by the end of May.

Building certifiers have reported that some are being insured for past cladding work, provided that they have notified their insurer of potential exposure, but not for any future work. However, others have reported they are not being covered for any cladding related work, past or future. Brokers have reported that most new policies (not renewals with the same policy) will have full exclusions for cladding work.

*Note: The survey participants include both licensed certifiers and other industry participants.*

Cladding Exclusions in policy



## Example of cladding systems exclusion

The Insurer will not be liable to indemnify the Insured for any Claim, ... in connection with... an external wall system that is:

- not compliant with or does not conform to any relevant legislation, ...
- installed, applied, specified or utilised in such a manner that is not compliant with or does not conform to any relevant legislation, regulation, standard, instructions or building codes.
- (iv) ... any external cladding or continuous insulation product comprised of thermoplastic or thermoset polymers, having a core comprised of any combustible material constituent that is greater than 7%.

# Impacts for building certifiers (5)

*Insurers are taking a 'one size fits all' approach to providing PI insurance which is resulting in some building certifiers bringing forward business succession and retirement plans*

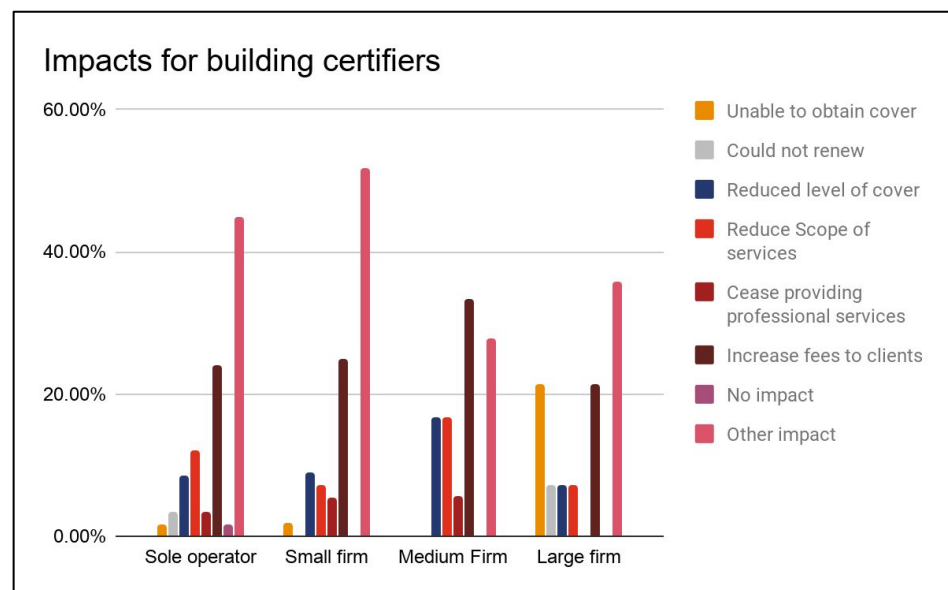
## Responses by building certifiers

The response and current policy offerings from the PI insurance market has been uniform across building certifiers irrespective of certification levels, or potential exposure to ACP-related claims. In particular, there has been limited differentiation in the availability, pricing and terms of PI insurance for insurers who are not working with combustible ACPs.

As highlighted within survey results, passing on the increased PI premium costs to clients and consumers was the most frequent response for those building certifiers on Type A, Type B, Type C and residential buildings. Given the ageing workforce profile of Queensland's building certifiers, and that the majority typically operate as sole operators, prices may increase quite dramatically given this reduced supply and limited choice in the market. The impact of this cost to client and consumers requires further detailed, economic modelling.

A few building certifiers reported that ceasing of some services is a likely outcomes, and many are considering leaving the profession. Some building certifiers are 'unsure' of what they and their business will do, and cannot adequately plan and prepare given the uncertainty of remediation works following Phase 3 of the Safer Buildings Program. As discussed above, the 'one size fits all' approach of insurers to providing PI is a major pain point for those wanting to continue within the industry, and obtain PI that is priced on individual risk.

Professionals reported some positive outcomes as a result of changes to PI insurance, such as increases in risk management procedures and peer review. Notwithstanding, the majority of sentiments relate to continuing business uncertainty and worry.



Note: survey participants may have selected multiple choices and survey respondents self-nominated their business size

# Impacts for fire and fire safety engineers (1)

*Engineers are facing the same immediate impacts as building certifiers in terms of their policies, and the uncertainty faced by engineers will increase as the Safer Building Program progresses*

## Professional indemnity insurance market for fire and fire safety engineers

A large portion of insurance for Queensland engineers is also brokered through the same national firm which provides services for the majority of building certifiers, with the remaining services provided by small Brisbane-based brokers. Sitting in between building certifiers and architects on the spectrum of insurance availability, engineers are progressively experiencing the same challenges currently felt by building certifiers.

Engineers still enjoy a pool of available insurers and the potential to gain a cladding-free policy, however, the challenges will begin to flow through the industry as more policies are periodically renewed. Nonetheless, engineers are being heavily scrutinised for projects completed over the past 10 years, and in some instances firms are being required to audit over 2,000 projects in a matter of weeks. This has sparked notification to insurers, given that many engineers are being advised by their broker that they will most likely be unable to obtain an exclusive-free policy upon their next renewal.

## Impact of Safer Buildings Program

RPEQs registered in fire engineering and/or fire safety engineers will be required under Part 3 of the Safer Buildings Program to make a determination as to whether the building is or is not affected by cladding. As engineers will be required to issue a building fire safety risk assessment report and statement, desire by the profession to participate in this process is being tainted by uncertainty in the process itself and in their risk exposure.

Given the limited number of RPEQs that can undertake these services, the demand is expected to be large. However, many have reported they may be unable to unwilling to take on this work. The adopt and endorsement of a nationally recognised fire risk assessment methodologies for RPEQs undertaking these assessments may provide certainty to engineers, and allow insurers to price future risk appropriately, reducing premiums for engineers.

Insurer/Underwriter	Active in PI market?	Cladding exclusions?
American Int. Group	Yes, within last 6 months	Yes
AON	Yes, within last 9 months.	Unknown
CGU	Yes, within last 12 months	No
JUA Underwriting	Yes, within last 12 months, but has since stopped	N/A
Landmark Underwriting	Yes, within last 3 months, but has since stopped	N/A
Lloyd's of London	Yes, within last 12 months	No
NZ Insurance / IAG	Yes, within last 9 months	No
Pen Underwriting	Yes, within last 9 months, but has since stopped	N/A
Solutions Underwriting	Yes, within last 9 months	No
Vero Insurance	Yes, within last 12 months	Yes

# Impacts for fire and fire safety engineers (2)

*Engineers have experienced large increases in premiums for PI insurance, in particular for small and medium sized firms*

## Changes to premiums, excesses and levels of coverage

The lack of reconciliation between what the BCA currently allows as an acceptable building and what insurers are prepared to accept as an acceptable standard into the future is causing volatility in the pricing of PI premiums for engineers. Premium increases have ranged from 40 per cent to 436 per cent, with larger firms reporting the ability to negotiate their premium due on their size. One example of a small firm with two fire safety engineers working in SEQ (a typical firm), who lacked the ability to negotiate their change in policy, were offered a premium increasing from \$22k to \$58k, a \$10K excess for general claims and \$25K for cladding related claims, and a level of coverage of \$5m, in addition to being asked to describe their intention to work on cladding audits in the next 12 months.

Engineers reported that they are experiencing difficulties obtaining quotes. The time taken to find quotes, and completing different proposal forms for different companies is time consuming and resource intensive. Many have reported to have completely removed themselves from providing any advice, directions or assessment on any form of combustible ACPs given concerns as to whether or not their PI policy would actually respond if an issue arose, regardless of whether they have a exclusion-free policy or not.



***“The perception of professional risk has greatly increased, which may lead fire safety engineers to become more conservative and unwilling to provide solutions not done before and hinder innovation.”***  
Fire Safety Engineer.

# Impacts for fire and fire safety engineers (3)

*Coverage sub-limits are being applied for cladding related claims, and exclusion-free policies are still able to be obtained in some instances*

## Changes to cladding exclusions

Exclusion free policies for cladding related works are still able to be obtained for engineers. If a cladding exclusion has been imposed, many have been able to gain a re-endorsement in their policy for cladding related works (see right, an example provided by a forensic engineer). However still, the re-endorsement does not apply for any new building projects or developments; only for forensic investigations of existing cladding systems. While this would not allow them to work on the Safer Buildings Program audit, it illustrates how insurers are continuing to offer PI policies on a case-by-case basis, depending on the level of risk and exposure. Consultation also revealed for the engineering profession that some insurers will continue to cover for cladding related works into the future, if the insured has held continuous coverage for a number of years. This is expected to change throughout this year, with many brokers warning of changes if renewing in the second half of 2019.

## Responses by engineers

As outlined above, smaller firms are feeling the impact more heavily than others. In the immediate term, many have mentioned they will examine their business offerings, with some reporting that they are losing projects to larger firms, given that increasing fees to clients was the most prominent cause of action by sole operators. For those seeking to enter the profession, the start-up costs and PI premiums are the main barrier to successfully enter the profession.

### Example of re-endorsement for cladding works

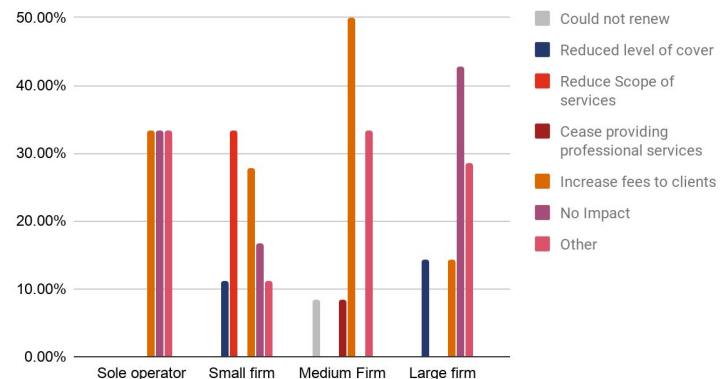
#### ENDORSEMENT - DELETION OF EXCLUSION - CLADDING (FORENSIC & INVESTIGATION)

Clause 3.2 (Cladding Systems Exclusion) of this policy, will not apply in respect of any investigative or forensic consulting contract for any investigative or forensic consulting contract.

For the purpose of this Endorsement, investigative or forensic consulting contract means professional services undertaken by the Insured where the insured is engaged specifically in respect of investigation or forensic services in respect of existing cladding system forming part of an existing building.

This endorsement will not apply in respect of any new building projects or developments.

### Impacts for fire and fire safety engineers



Note: survey participants may have selected multiple choices and survey respondents self-nominated their business size

# Impacts for architects (1)

*The architectural profession remains steadily cautious about the impending impact of the PI insurance market and potential claims following the Lacrosse judgement*

## Professional indemnity insurance market for architects

A large portion of insurance for Queensland architects are brokered by Planned Cover (formerly Architects Professional Risk Services), a wholly owned subsidiary of the *Australian Institute of Architects*.

Unlike the experiences of both building certifiers and engineers, the PI market for architects is still within the tail-end of a 'soft' insurance market with reasonable capacity. However, consultation with brokers and insureds suggests that while the market is expected to soon harden, the impact will not be to the same extent as that felt in other professions. For architects in particular, there remains a higher degree of flexibility in 'calibrating' insurance policies based on the nature of business the firm completes. Hence, there has not been a uniform response across all architectural clients seeking PI insurance, although this is a clear indication of an impending hard market for architects.

The Lacrosse judgement and its implications for architects remains a prominent issue for architectural firms who have worked with, or advised on the use of combustible ACPs. Additionally, the chain of responsibility obligations under Pt 6AA of the *QBCC Act 1991* with respect to non-conforming building products were extended to apply to architects (and engineers) in September 2018.<sup>7</sup> These two events are expected to influence the PI market for architects over the next 12 months as policies gradually are renewed, in comparison to the immediate impacts currently being felt by building certifiers, whose policies typically renew from May to July.

Going forward, there is likely to be more scrutiny on the professionals involved in the design of buildings, including architects and consultants. Many architects have already reported they are conducting audits of prior work, and have been contacted by construction partners of which they completed architectural designs for.

Insurer/Underwriter	Active in PI market?	Cladding exclusions?
Allianz	Yes, within last 3 months	No
AON	Yes, within last 6 months	Yes
ArchiTeam	Yes, within last 3 months	Yes
Berkley Insurance	Yes, within last 3 months	Yes
Catlin Australia	Yes, within last 12 months	Yes
CGU Insurance	Yes, within last 6 months	Yes
Chubb Insurance	Yes, within last 3 months	No
DUAL Australia	Yes, within last 3 months	Yes
Lloyds of London	Yes, within last 6 months	Yes
Pacific Indemnity	Yes, within last 3 months	Yes
Vero Insurance	Yes, within last 3 months	Yes

## Design and construct model limits architectural knowledge

The issue that an architect may not be privy to whether a substitution was made, given that architects are effectively 'locked out' during the construction phase, was raised as a concern during consultation. This may impact an architect's ability to be absolute as to whether they have exposure to ACP; a consequence of the 'design and construct' model. The Lacrosse judgement has crystallised this concern for the profession, the result of which has been a mass audit exercise and documentation identification for firms.

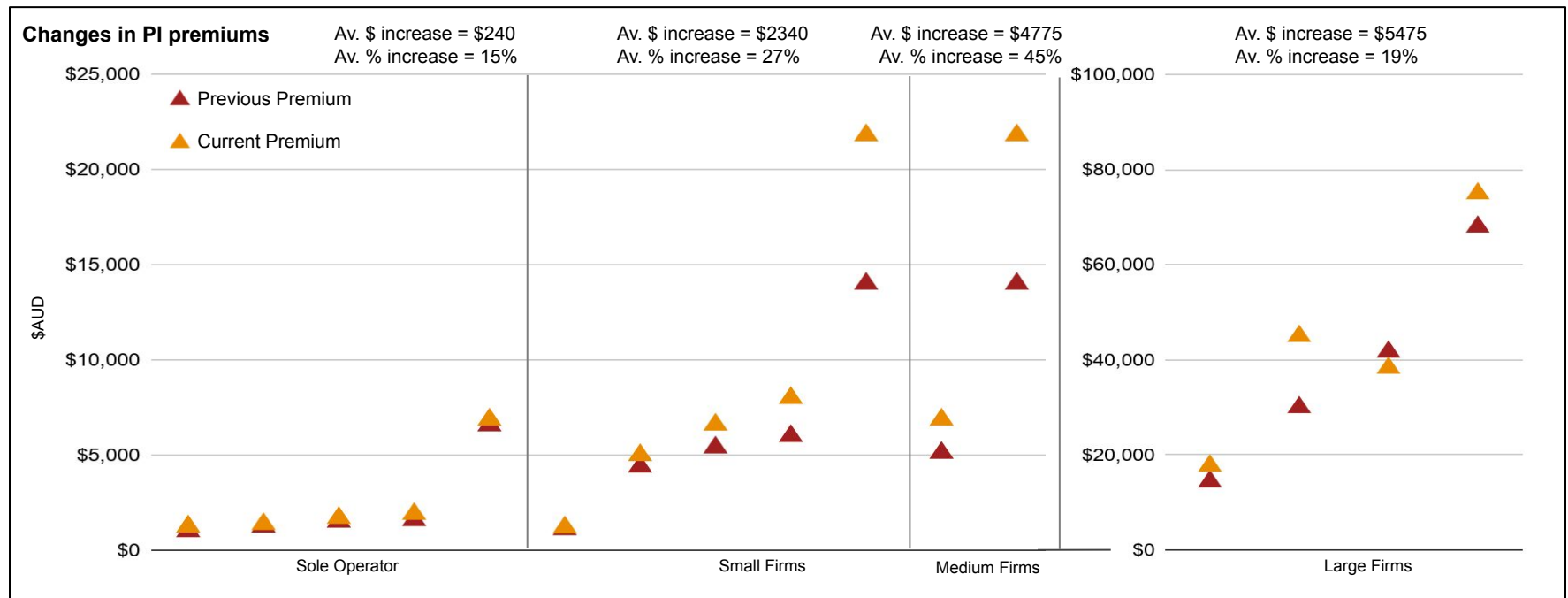
# Impact for architects (2)

*Changes to PI premiums for architects have been less than building certifiers and fire engineers, but many are reporting the introduction of a costs exclusive excess within their policy*

## Changes to premiums, excesses and levels of coverage

Premium increases for PI policies for architects have been minimal in comparison to building certifiers and engineers and the ability to maintain their current aggregate level of coverage has not been impacted. These premium increases potentially reflect an adjustment for historic under-pricing, and reflect the tail end of a soft market for architects given the surrounding context and examples seen in other professions. Excesses have remained largely standard at \$1,000, with many reporting an increase from \$0 to a “costs exclusive” excess of \$1,000, whereby the insured is not required to pay the excess unless a settlement amount is paid to claimant. The imposition of limited levels of coverage for cladding related claims is common, and is either completely excluded or limited to \$1 million. As a consequence, some firms have reported being excluded from government work as their PI coverage is not enough, due to the imposition of sublimits.

Other changes to policies include mandating a Facade Engineer be appointed to any project where the face is not able to be determined through the *Deemed-to-Satisfy* provisions within the BCA, and notifying their insurers when engaging subcontractors who may have broader ACP related exclusions.





# Impact for architects (3)

*While some architects have begun to report exclusions for claims relating to ACP, architects have not yet been imposed with 'blanket' ACP exclusions as seen in other professions*

## Changes to cladding exclusions

In July 2018, Planned Cover told clients that insurer Vero, one of the largest insurers for architects, was expected to start applying exclusions to projects with combustible ACPs to renewed policies. Survey results and consultation since then indicates that while some insureds have had exclusions placed on their cover, others have not as yet.

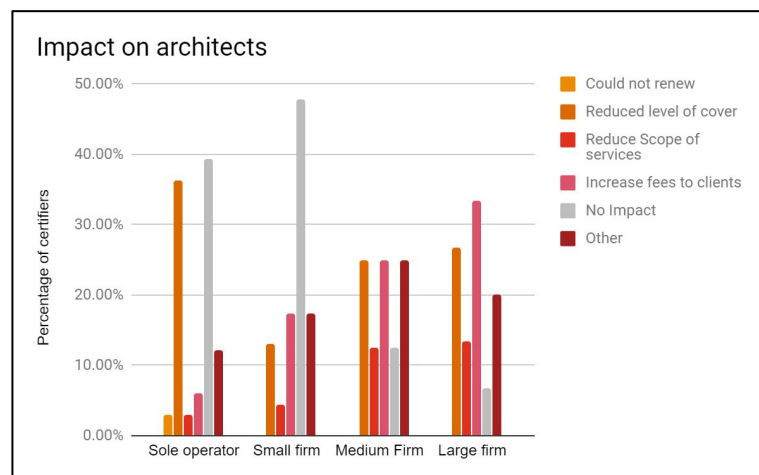
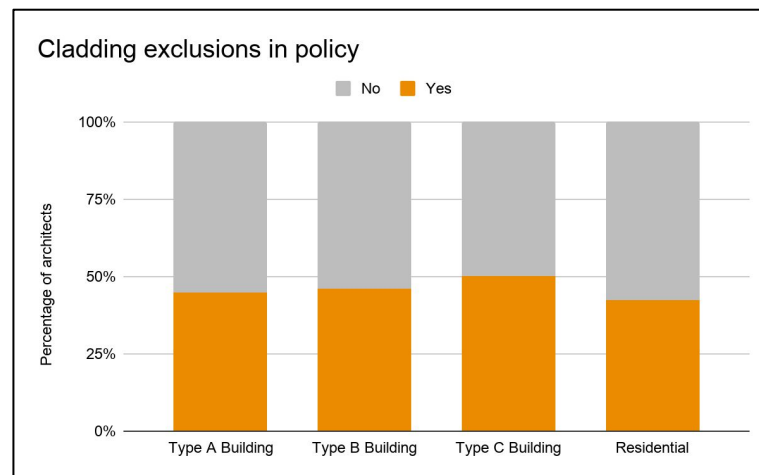
Similar to other professions, new exclusions removes cover for non-compliant composite aluminium cladding from the date of the new policy, but covers past liability. Some architects have been able to gain reinstatements for cladding, to a sublimit of \$500k and with a "costs exclusive" excess. Other exclusions are more strict, with all cladding on existing and previous projects excluded regardless of whether it was compliant with the NCC at the time.

Unlike blanket cladding exclusions being imposed on building certifiers, consultation suggests that architects are still able to gain a wide range of cover with various exclusion options based on their need.

## Responses by architects

Unlike building certifiers, the inability to renew their cover appears not to be a significant concern for architects, nor is the passing of costs onto clients seen as the first form of rectification. Rather, the architect profession have learnt to work within the constraints of their new PI policies, with many simply continuing the policy they had previously. Consultation with brokers suggested that insurers would continue to indemnify policy holders into the future, if they had held continuous cover with their insurer for a number of years.

Given that 18-month PI policies are common in the profession, a large number of survey participants, whose policies are up for renewal in the second half of 2019 (mainly September), have noted that they have been told to expect stricter conditions than those being imposed currently.



Note. Survey respondents self-nominated their business size



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## **B: Impact on building and construction**

# Impact on the building and construction industry

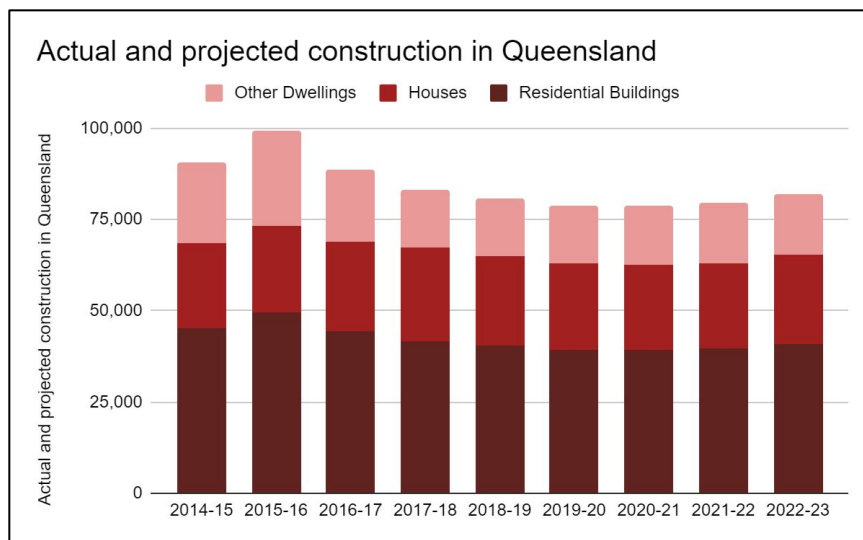
*The challenges faced by building industry professionals in obtaining appropriate PI insurance is likely to impact on the building and construction industry*

## Impact on the building and construction industry

The total number of all building certifiers in Queensland has grown by 8.5 per cent from FY15 to FY18, and the proportion of Level 1 Certifiers has remained consistent, but is expected to decline in the next 12 to 18 months.

Building certifier *Licence Application Finalisation Dates* provided by QBCC for all building certifiers, suggests there has been a 3 per cent reduction in licence finalisations from FY16 to FY17, and a 24 per cent reduction from FY18 to FY19. Based on sentiments gained through consultation and attendance at industry forums, retirement from the industry due to recent changes in PI insurance is a real possibility for many building certifiers.

The building and construction industry in Queensland is projected to grow over the next 5 years - accounting for \$29 billion (8.8 per cent) of the Queensland economy. The need for services provided by building industry professionals is critical in the immediate term for the Safer Buildings Program, and in the future to continue growing the building and construction industry.



Source Master Builders Australia. *Building and Construction Industry Forecasts, Queensland*. January, 2019.

## Impact on Queensland Government's Safer Buildings Program

Through consultation and survey results, it is apparent that all professions are aware of the Safer Buildings Program, and understand the implications for their profession. Based on data provided by DHPW, a large number of buildings have already progressed to Part 3, and it would appear that fire engineers have already been engaged to conduct these assessments. Through consultation, fire engineers indicated that they are expected to play a large role in Part 3 assessment activities, and expressed concern that any risks arising from these activities would be concentrated on their profession. Uncertainty as to the remediation requirements after Part 3 was also raised as a concern by professions, fire engineers in particular, and may impact the desire and capability to provide services as part of the program, given the uncertainty around potential exposure to risk. Fire engineers highlighted that the challenges in obtaining appropriate PI insurance requirements could prevent them from being engaged in Part 3 activities.

5

Additional market  
scan and  
stakeholder  
feedback

# Overview

*In late June we undertook an additional market scan of PI insurers to understand the status of the PI market for building certifiers*

## Background

The Ministerial Construction Council met in Brisbane on 18 June 2019 to continue to discuss the challenge of professional indemnity (PI) insurance for building industry professionals. Preliminary findings of our work were presented at this meeting, including an overview of:

- factors influencing the PI insurance market (Chapter 3); and
- the impacts of the PI insurance market on building industry professionals (Chapter 4).

Stakeholders raised concerns that there would no longer be PI insurers providing exclusion free policies in the market post 30 June for building certifiers. The Department subsequently requested a market scan to understand the prevailing status of the market.

This section details the outcomes of this market scan conducted 19 - 20 June 2019. This information is an update to information provided in earlier chapters (which was collected in May 2019).

This section also outlines a number of questions proposed by the Queensland Minister for Housing and Public Works, at the MCC meeting, and provides a summary of responses subsequently received from stakeholders.

# Market scan

*There has been a further hardening in the PI insurance market, with exclusion free policies appearing to now only be available on a very limited (case-by-case) basis for building certifiers*

## Findings of the market scan

We spoke to insurance brokers (4) and directly to a number of insurers (5) that provide PI insurance (or have done so in the past). Insurance brokers were able to provide details on the current status of some other PI insurers.

Overall, the PI insurance market currently is extremely fluid and dynamic. Insurers are moving in and out of the market, and declining to insure building industry professionals in many situations. Insurance brokers observed that the a number of PI insurers exiting the segment, and premiums and excesses are continuing to increase.

At the time of the market scan, insurance brokers indicated that some PI insurers were writing new policies. However, brokers we consulted were not aware of any insurers providing exclusion-free policies for new clients.

Some insurance brokers indicated that clients may be able to renew with their existing insurer, and may be able to get an exclusion free policy (brokers indicated they may not have visibility of some renewals where it is direct with the insurer). Further, there was a perception that very large firms (national/international building industry participants) may be in a better position to negotiate more favorable terms for PI insurance i.e. no cladding exclusions.

PI insurers we consulted indicated that cladding exclusions are now applied as standard and, while there may be some exceptions, these are rare. One insurer indicated that it may consider removing the cladding exclusion where a client's application disclosure is completed satisfactorily (indicating that they have low or no risks associated with cladding).

Insurer/underwriter	Active in PI market?	Cladding exclusions?
Allianz	Declined to comment	Unknown
Besso (known as Navigators in Australia)	No (with a few limited exceptions)	N/A
Berkley	Declined to comment	Unknown
Brooklyn / Catlan	Yes	Yes (1)
CGU	No	N/A
CHUBB	Unable to confirm	Unknown
Dual	Yes	Yes
JUA Underwriting	No	N/A
Landmark Underwriting	No - no new policies post 30 June	N/A
Liberty International	Yes	Yes
PEN Underwriting	No	N/A
Zurich	Yes, but typically does not insure building certifiers	Yes

(1) Will remove a cladding exclusion where a client completes their disclosure satisfactorily

## Limitations of the market scan

There may be other PI insurers operating in the market that were not identified as part of this market scan. Further, some PI insurers declined to speak with us. As such, there may be other insurers providing insurance without cladding exclusions, although none were identified by brokers or other insurers.

# Additional stakeholder feedback

*Ministerial Construction Council members were asked to comment on a number of proposals put forward by the Minister for Housing and Public Works to address PI market issues*

## Initiatives proposed

At the MCC meeting on 18 June, the Queensland Minister for Housing and Public Works outlined a number of possible initiatives to address issues in the market for PI insurance for building industry professionals. The MCC agreed that Members would consider these initiatives, and provide formal a response by 20 June 2019.

These reforms included:

1. improve professional standards by vigorously pursuing establishment of a national body
2. reduce the risk of certain types of construction by reviewing the use of performance solutions on certain types of buildings
3. maintain consumer protection standards by requiring certifiers to hold exclusion free PI insurance
4. promote awareness of the regulatory environment, including local government's certifying role
5. consider longer-term solutions to the systemic issues raised by investigating an insurance product modelled on the Queensland Home Warranty Scheme but modified for multi-storey developments.

This section provides a summary and analysis of the responses received from MCC members. This feedback will inform the next phase of this work.

## 1. Improve professional standards by vigorously pursuing establishment of a national body

There is mixed support from Members for this proposal. The majority of members explicitly supported the development of stronger and nationally consistent professional standards for building certifiers. However, the views differed on the form and remit of any body to provide oversight of members.

While a number of Members supported the development of a national body, it is noted that:

- two members pointed to the potential for any national body to act as an 'umbrella' body to help align standards across States and Territories (allowing professionals to work across borders)
- there is support for professionals to also be registered in each State and Territory with a Board approved by government
- the resources needed to establish any national body should be balanced against an alternative of strengthening any state-based systems.

Notwithstanding the above, two Members did not support the development of a national body, as follows:

- One Member opposed any industry self-regulation indicating that government should be the appropriate regulator, and this should happen within the context of existing state-based systems.
- One Member noted that the Shergold Weir Building Confidence report set an agenda for national oversight and resourcing, and the Australian Building Codes Board is able to under its existing remit to manage administrative reforms bringing together federal, state and territory authorities. This Member supported the development of independent statutory authority for national oversight of the administration of building to support industry compliance with the National Construction Code.

# Additional stakeholder feedback

*Ministerial Construction Council members were asked to comment on a number of proposals put forward by the Minister for Housing and Public Works to address PI market issues*

## **2. Reduce the risk of certain types of construction by reviewing the use of performance solutions on certain types of buildings**

This proposal was largely not supported by Members.

Members noted that performance based solutions provide a legitimate pathway that currently allows designers, engineers and builders to respond to the specifics of an individual project (through innovation), targeted at achieving a better outcome for the end user. These outcomes could not otherwise be achieved through 'Deemed to Satisfy' construction processes which are outlined in the National Construction Code (NCC). As such, there was limited support for the removal of performance based solutions.

Members highlighted that requirements for using performance based solutions are reasonably rigorous, but did acknowledge the potential for improving the application of performance based solutions in some situations, along with the process, quality and peer reviewing of performance based solutions (noting recommendations of the Shergold Weir Building Confidence report).

Members largely did not respond specifically to the issue of performance solutions and the use of ACPs, although one Member noted that performance based solutions will in many cases be essential to making existing buildings safe where ACPs and expanded polystyrene (EPS) have already been used.

Members noted that the wording of this proposal is very broad, and felt they would be able to better comment on a more specific and focused proposal.

## **3. Maintain consumer protection standards by requiring certifiers to hold exclusion free PI Insurance**

Member support for this proposal was mixed. Many Members noted that existing requirements for exclusion-free cover were being overtaken by the growing inability of building certifiers to obtain exclusion free PI insurance.

Some Members indicated a preference for building certifiers to hold PI insurance appropriate for the licence class and type of work they do. Given the current difficulties in obtaining exclusion free insurance, some Members are advocating for narrow and limited exclusions being allowed for classes of certifiers who have low exposure and low risks associated with combustible ACPs. Care would need to be taken that any exclusions do not affect the run-off cover held by building certifiers.

One Member viewed this issue more broadly, noting that other strategies could be used to improve the participation of insurers in the market. Possible strategies could include, for example, reducing the risks to insurers arising from non-compliant use of combustible cladding by funding of building remediations.

# Additional stakeholder feedback

*Ministerial Construction Council members were asked to comment on a number of proposals put forward by the Minister for Housing and Public Works to address PI market issues*

## **4. Promote awareness of the regulatory environment, including local government's certifying role**

Members were cautious of supporting this proposal. Some Members highlighted that the capacity of local governments to provide certification services is limited in Queensland. Therefore, care would need to be taken in promoting these services as an alternative to private certification, particularly where local governments outsource to private certifiers.

Some Members were supportive of any activities that sought to improve consumer awareness of the regulatory environment and how they were protected.

## **5. Consider longer-term solutions to the systemic issues raised by investigating an insurance product modelled on the Queensland Home Warranty Scheme but modified for multi-storey developments**

Members largely support this option in-principle, but noted that design and implementation would be complex and needs to be further considered. Members are seeking further information before commenting further.





# Appendices

# Appendix A: Stakeholders consulted

Organisation
Association of Consulting Architects
Australian Institute of Architects
Australian Institute of Building Surveyors
Board of Architects of Queensland
Board of Professional Engineers of Queensland
Bovill Risk and Insurance Brokers
Department of Finance, Services and Innovation, NSW
Department of Housing and Public Works
Department of Industry, Innovation and Science (Federal)
Department of Mines, Industry Regulation and Safety, WA
Engineers Australia
Environment, Planning and Sustainable Development Directorate, ACT
Housing Industry Association
Liberty International Underwriting
Master Builders Queensland
NSW Fair Trading, NSW
Planned Cover
Queensland Building and Construction Commission
Royal Institute of Chartered Surveyors
Victorian Building Authority, VIC
Whitbread Insurance Brokers

# Appendix B: Glossary of terms

Acronym / term	Definition
ACP	Aluminium Composite Panel
AIBS	Australian Institute of Building Surveyors
APRA	Australian Prudential Regulatory AUthority
BOAQ	Board of Architects of Queensland
BCA	Building Code of Australia
DHPW	Department of Housing and Public Works
DPTI	Department of Transport and Infrastructure
DTS	Deemed-to-Satisfy
FPA Australia	Fire Protection Association Australia
FSA	Fire Safety Assessment
FSD	Fire Safety Design
D&O	Directors and Officers Insurance
IFE	Institute of Fire Engineers
PE	Polyethylene
NCBP	Non-combustible building products
QBCC	Queensland Building and Construction Commission
RICS	Royal Institute of Chartered Surveyors
RHIP	Residual Hazard Identification Protocol
RPEQ	Royal Professional Engineer of Queensland
SMSF	Self Managed Super Fund
VCAT	Victorian Civil and Administrative Tribunal

# Appendix C: Survey questions (1)

*Sent to Queensland registrants of the AIBS, the Board of Architects Queensland, and RPEQs (Fire and Fire Safety) of the Board of Professional Engineers of Queensland*

Question no.	Question		
1	What level of licence do you hold? 1. Building Certifier - Level 1 2. Building Certifier - Level 2 3. Building Certifier - Level 3	Are you a: 1. Fire Engineer 2. Fire Safety Engineer	Are you a: 1. Practicing Architect 2. Non-practicing Architect
2	What is the size of your business (e.g. sole operator, small firm, large firm), and how many employees does your business have?		
3	Which Queensland regions do you operate in? A. Cairns and Far North Queensland B. Central Queensland (includes Gladstone and Rockhampton) C. Mackay and Whitsunday D. Mount Isa and North West (includes Townsville) E. South East Queensland F. South West and Darling Downs G. Wide Bay Burnett		
4	Do you also operate interstate? A. Yes B. No		
5	What type of buildings do you typically work on? A. Type A Building B. Type B Building C. Type C Building D. Residential Building		
6	When did you last renew your professional indemnity policy? a. 0 - 3 months ago b. 3 - 6 months ago c. 6 - 9 months ago d. 9 - 12 months ago e. Greater than 12 months ago		
7	At the time of your last renewal could you please indicate? a. Were there any changes to your professional indemnity policy? i. Yes ii. No		

# Appendix D: Survey questions (2)

*Questions sent to Queensland registrants of the AIBS, the Board of Architects Queensland, and RPEQs (Fire and Fire Safety) of the Board of Professional Engineers of Queensland*

Question no.	Question
7	<p>i. If yes, could you please summarise these changes (including providing dollar values) in relation to):</p> <ol style="list-style-type: none"> <li>1. Your premium</li> <li>2. Your excess</li> <li>3. Level of coverage provided</li> <li>4. Other</li> </ol> <p><b>b. Were you able to get an exclusion free policy?</b></p> <ol style="list-style-type: none"> <li>i. Yes</li> <li>ii. No</li> <li>iii. If yes, was there any specific difference in the specified excess or level of coverage for claims relating to cladding works? Please specify, and please provide dollar values.</li> <li>iv. If no, what were the exclusions, and were there any specific exclusions relating to cladding works specified in your policy? Please specify.</li> </ol> <p><b>c. Were there any changes to your disclosure or notification requirements relating to cladding workings in your policy?</b></p> <ol style="list-style-type: none"> <li>i. Yes</li> <li>ii. No</li> <li>1. If yes, could you please summarise/provide example of these changes=</li> </ol> <p><b>d. Did you experience any significant changes to your policy as part of previous renewal processes (i.e. prior to the most recent just described)?</b></p> <ol style="list-style-type: none"> <li>i. Yes</li> <li>ii. No</li> <li>1. If yes, could you please summarise / provide examples of these changes.</li> </ol>
8	<p>What is the business impact of any changes to your PI insurance policy?</p> <ol style="list-style-type: none"> <li>A. Unable to obtain cover</li> <li>B. Cover not renewed</li> <li>C. Reduced level of cover</li> <li>D. Reduced scope of professional services provided</li> <li>E. Cease providing professional services (i.e. leaving the profession)</li> <li>F. Increase in professional fees to clients</li> <li>G. Other</li> </ol>
9	Are there any other matters in relation to your professional indemnity insurance which you wish to bring to our attention?
10	Who is your current professional indemnity insurer/underwriter and/or broker?

# Appendix E: Survey results

*Participation rate of survey sent to Queensland registrants of the AIBS, the Board of Architects Queensland, and RPEQs (Fire and Fire Safety) of the Board of Professional Engineers of Queensland*

Profession	Participant rate
Architects	Total Number of respondents: 88 Q1. 83 Q2. 81 Q3. 82 Q4. 60 Q5. 82 Q6. 82 Q7. 44 Q8. 81 Q9. 25 Q10. 35 Q11. 73 Q12. 12 Q13. 19 Q14. 5 Q15. 66 Q16. 42 Q17. 74
Building Certifiers	Total Number of respondents: 70 Q1. 66 Q2. 65 Q3. 66 Q4. 66 Q5. 66 Q6. 67 Q7. 44 Q8. 55 Q9. 66 Q10. 44 Q11. 17 Q12. 66 Q13. 27 Q14. 52 Q15. 21 Q16. 63 Q17. 55 Q18. 63
Engineers	Total Number of respondents: 25 Q1.19 Q2. 17 Q3. 15 Q4. 18 Q5. 18 Q6. 18 Q7. 18 Q8. 12 Q9. 17 Q10. 12 Q11. 4 Q12. 16 Q13. 6 Q14. 9 Q15. 4 Q16. 16 Q17. 13 Q18. 16

# Appendix F: Examples of exclusions in PI policies

Notwithstanding anything else to the contrary, there is no Cover under this Policy for any claim or liability arising from the designs, selection, specification, schedule or certification by You, or on Your behalf, of any external building facade panelling or cladding or finishing or insulation which contains building materials (where imported or not) or their assembly, which is not or are not compliant with, do not confirm with, or have been installed, applied or used in a manner which does not comply with all relevant provisions of the Building Code of Australia and/or National Construction Code or Australian Standards or approved conditions of use or application, or any other applicable laws or regulations and including, but not limited to, in respect of fire resistant properties (having regard to their particular application).

It is declared and agreed that We shall not be liable to cover or pay on behalf of the Insured in respect of any liability, Claim, Fine or Penalty, Privacy Breach or Mitigation Costs arising out of, based upon, attributable to, or in connection with any external insulation and finishing system, wall panelling, cladding or façade material of any kind, that is: (a) not compliant with or does not conform to any relevant legislation, regulation, standard, instructions or building codes; or (b) installed, applied, specified or utilised in such a manner that is not compliant with or does not conform to any relevant legislation, regulation, standard, instructions or building codes.

We shall not be liable under the Policy to provide Indemnity in respect to any Claim against any Insured arising directly or indirectly based upon, attributable to, or in consequence of a Loss arising from Cladding Building Products on the properties disclosed in the "External Cladding Questionnaire form" dated 12/03/2019.

**Non-Compliant Cladding Exclusion – Remedial Services Write-back** It is hereby understood and agreed that Liberty will not pay for any amounts insured under the Policy for, arising out of or in any way connected with any external insulation and finishing system, wall panelling, cladding or façade material: (a) that is not compliant or does not conform; or (b) that is installed, applied or used in a manner that does not comply, with all relevant provisions of: (a) the National Construction Code of Australia; (b) the Building Code of Australia; (c) Australian Standards; (d) approved conditions of use or application, or (e) any other applicable law or regulation. However, this exclusion does not apply to inspection or remedial services performed after 1 October 2018 by a Registered Fire Safety Engineer. For the purposes of this endorsement, Registered Fire Safety Engineer means a natural person: (a) listed on the National Engineering Register as a CPEng in the Fire Safety practice area; (b) listed on the National Fire Engineers Australia list as a CEng MIFireE; or (c) registered as a RPEQ in Fire Engineering or Fire Safety, at the time they perform the services. All other terms and conditions of the Policy remain unchanged.

**Non-Compliant Aluminium Composite Panels** The attached quotation includes an exclusion for the use of non-compliant Aluminium Composite Panels on or after the date specified in the exclusion. The policy will continue to provide cover for claims arising out of the past use of this product but not the future use. We recommend that you do not use this product going forward as your policy will not cover you. If you have any current uncompleted projects where this product has been used we recommend you contact us to discuss the project before the expiry date of your current policy. You may need to make a notification under your current policy before the expiry date to protect your interests.

The insurer shall not be liable for any Claim(s) or loss including Cost and expenses, court attendance costs or fines or penalties arising directly or indirectly from or in respect of or as a result of any use after 05/04/2019 of Aluminium Composite Panels with a Polyethylene Core (ACPCC) including, but not limited to any design, specification, installation, inspection (including failure to inspect), certification, verification or approval by or on behalf of the Insured in any manner that is actually or allegedly not compliant with: a. BCA b. NCC c. AS d. Commonwealth, State or territory Legislation e. Relevant Ministerial Guidelines

# Appendix G: Referencing

1. *Building Act 1975* (Qld) s 163; *Building Regulation 2006* (Qld) reg 52(1).
2. JLT (2018). *PI Insurance Market: A hard market?* Retrieved from: <http://tiny.cc/7jz46y>.
3. GlobalData (2018). *UK Professional Indemnity Market Review 2018*. Retrieved through PwC market source.
4. AON (2018). *Professional Indemnity Insurance Market Insights Q3 2018*. Retrieved from: <http://tiny.cc/usz46y>.
5. Australian Prudential Regulation Authority (APRA). *National Claims and Policies Database (NCPD)*. Retrieved from: <http://tiny.cc/09z46y>.
6. *Owners Corporation No.1 of PS613436T v LU Simon Builders Pty Ltd (Building and Property)* [2019] VCAT 286.
7. *Queensland Building and Construction Commission Act 1991* (Qld).



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