



Australian Institute of
Building Surveyors

NSW Upper House Public Accountability Committee

*Inquiry into the regulation of building standards, building
quality and building disputes*

Response to Questions on Notice

Professional Indemnity Insurance Update and
Clerk of Works

9 September 2019



Australian Institute of Building Surveyors

www.aibs.com.au

Who we are

The Australian Institute of Building Surveyors (AIBS) is recognised nationally and internationally as the peak professional body representing building surveying practitioners in Australia.

Our Mission

AIBS is committed to ensuring a safer Australia through continuous improvement and development of the profession of Building Surveying. The overarching objective of the Institute can be best summarised as follows:

To achieve the highest standard of professionalism through Professional Development, such as education pathways and training, and Advocacy in representing the profession and establishing standards.

Australian Institute of Building Surveyors – Submission Principal Contact

Mr Brett Mace
Chief Executive Officer

Questions on notice

1. Professional Indemnity Insurance Update

While the Building Ministers' Forum at their meeting in July have taken welcomed steps towards improving standards throughout the sector over a longer period of time, AIBS remains deeply concerned that these measures will not provide immediate relief for building surveyors faced right now with unworkable professional indemnity insurance renewals.

As has been publicly advised, the only provider of compliant (in NSW/QLD/VIC) exclusion free insurance policies exited the Australian market on 2 July 2019. Building surveyors and other industry professionals are now being offered policies at vastly increased prices. In addition, new policies contain exclusions around cladding and more broadly around non-confirming products. Added to this, are big increases in excesses to the extent that one or two claims could wipe out a business completely. Insurers are taking this action because they have lost confidence in the Australian building and construction sector.

Since 2014, when AIBS wrote to the then Prime Minister Tony Abbott and advised him that the professional indemnity insurance market in Australia was in "the early stages of failure," AIBS has regularly warned governments, industry and the public about the consequences of continued lack of action around the availability and viability of professional indemnity insurance. The non-availability of compliant exclusion free PI Insurance from 2nd July can now be viewed as this insurance market failing.

The most recent development in the insurance market which specifically relates to professional indemnity insurance for industry practitioners working on high-rise projects over three storeys was conveyed to all BMF Ministers in early August. In this, we notified Ministers that we have been advised by Bovill Risk & Insurance Consultants (BRIC), the main provider of professional indemnity insurance to building surveyors and other building professionals, that insurers who remain prepared to underwrite building surveying risks have indicated they want to reduce their exposure and, in some cases, withdraw completely from this particular area. In fact, just last week one medium sized building surveying firm could not access any PI Insurance and to this point remains uninsured. This lack of ability to acquire insurance related specifically to their participation in high-rise projects. We understand that in the coming weeks there are more firms seeking to acquire insurance, but as advised by BRIC, the outlook for them obtaining this insurance is 'grim'.

Once again, this stems from a lack of confidence in building regulations and quality around high rise projects and will most certainly mean fewer building professionals will be available in future to carry out work on buildings over three storeys, including cladding rectification works.

AIBS has advised the Building Ministers' Forum that a nationally consistent program directed towards rectification of combustible cladding issues across all jurisdictions is a vital first step towards regaining the confidence of the insurance sector. We are disappointed to note that so far only the Victorian Government has acted in this regard by pledging \$600m towards rectification of combustible cladding on apartment buildings.

The increasing tightening of the professional indemnity insurance market is placing industry and many professionals who work in the sector in very grave circumstances indeed. During July alone, AIBS has received notifications from a number of building surveying firms who are closing their doors due to the impossibility of continuing to work with inadequate and unaffordable insurance cover. These professionals are telling us they cannot continue without full insurance cover, which of course is an expectation of their clients, as well as the general public, especially building owners. This represents a significant loss to industry of professional knowledge and expertise.

2. The Clerk of Works

The NSW Upper House Public Accountability Committee requested AIBS outline how a clerk of works might contribute to the quality of constructed buildings. AIBS do not believe that a clerk of works will resolve the issues raised through the terms of reference for the inquiry into the regulation of building standards, building quality and building disputes. Making those who control and execute the work accountable is far simpler and a more economic means of improving construction outcomes which should be considered first.

A clerk of works is traditionally a representative of the interests of a project principle (owner). The traditional role of a clerk of works was to be vigilant in their inspections of work in progress of a large range of technical aspects of the work. The traditional role of clerk of works had no power. They simply reported to the project principle, who would then make decisions based on that information about their dealings with the builder. With the advent of non-traditional project delivery methods this model is historical and would need significant adaptation if a clerk of works role was to address a consumer protection need.

Contemporary delivery involves developers who employ project managers and construction managers. More often, elements of the traditional functions of a clerk of works are now being performed in-house by developers and builders who, within their own delivery structures, control matters of time, cost and quality, particularly as they benefit the developer or builder. These roles are absent any licensing requirement and therefore auditing control or oversight.

To address the increasing risk to the community from the inevitable diminution of construction standards from contemporary delivery methods, mandatory involvement of a clerk of works is understandably within the contemplation of governments amongst the range of options available.

AIBS strongly suggests that Governments continue to reform the responsibility and accountability structure of all building practitioners in preference to the introduction of a public clerk of works role. In comparison to regulation of building practitioners, the public clerk of works role is expensive for each project, requires substantial human resources to address the quantum of projects involved and will exacerbate issues arising from a public perception of such a role having responsibility in the same way as the role of the building surveyor has been publicly misreported and misunderstood simply because “they signed off on it”.

It is far simpler to make developers and builders individually accountable for the decisions they take and the work they do or directly control.

Recommendations – Clerk of Works

AIBS believes that because of the inevitable limitations of the clerk of works role, the cost of implementation of the role, particularly on significant construction projects, and the complexity of the relationship of the role with the building surveying profession, it would be far more economic and considerably more effectual to ensure that those currently involved in the industry are properly made accountable for their work.

Developers, project managers and builders should be subject to strict licensing controls inclusive of an audit scheme and consequences for ongoing practice from poor performance. They must be required to be people of good character and hold insurance that protects the consumer. By ensuring that individuals have this responsibility, the ability to hide behind a corporate structure or a failed entity should be removed.

In closing

AIBS is committed to working with government, industry and key stakeholders to continually improve the building regulatory system throughout Australia.

Please contact us for any clarification or further information that may assist.