

Professional Indemnity Insurance: A threat to the legal profession?

The rise in PII premiums has raised fears that the increased costs will see the local legal profession become “skeletal remains”. The Law Society NT attempts to answer your questions and fleshes out the bare bones of the dilemma.

Why have premiums risen 59 per cent on the last insurance period and 120 per cent on the previous insurance year?

It used to be the case that the NT lawyers went to the insurance market seeking the best competitive quote for insurance for a 12 month period in a market that was healthy and vibrant.

Times have changed.

Few companies are prepared to write professional indemnity insurance and even less are interested in a relatively small pool of 250 lawyers.

The search for an insurer began in Australia and overseas in June 2002. When the insurance period expired in September 2002 there were two insurers prepared to take on the NT profession.

The insurers offered inferior policies and at much higher premiums than the expiring policy. Our current insurer at the time, Gerling, had lower premiums, was considering taking the NT on but the company had run out of the capital allocation required under the new Australian Prudential Regulatory Authority regulations.

Gerling offered to extend the cover under the existing policy for NT lawyers 100 per cent for a further three months.

The Law Society took the offer expecting that the extension would allow for more time to seek competitive deals from other insurers, to source a 50 percent partner for Gerling and/or for Gerling to renew capital levels from January 2003.

In late November 2002, Gerling ceased placing Australian business (was taken over by QBE) and the problem became finding an insurer prepared to cover the NT profession.

Insurance was due to expire on 31 December 2002. There were two possibilities but only one insurer – QBE – quoting terms.

The main difficulty facing the NT profession is the very ordinary claims experience of the profession and the small number of legal practitioners requiring insurance.

Insurers are commanding at least \$2.1 million premium pool before considering terms, and many require more than this.

This means that collectively the NT profession must collectively raise over \$2.1 million in premiums or no insurance.

It is an insurer's market.

What can be done to improve the situation?

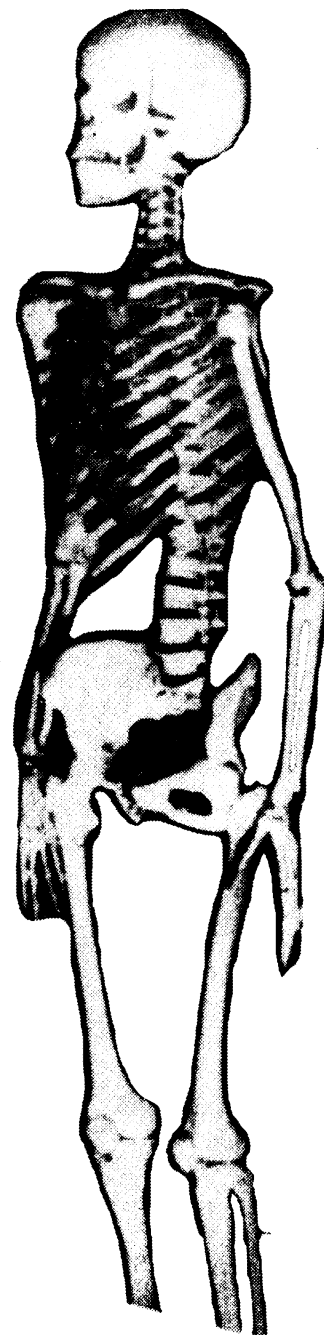
The downturn in the commercial insurance market has had a dramatic affect on practitioners of the Northern Territory.

Up until September 2000 legal practitioners in the Northern Territory had experienced for many years some of the lowest insurance premiums in the country.

The NT also had maintained aspects to their insurance policy that had been eroded in other jurisdictions.

For example the limit of liability offered by the society did not include the legal costs, meaning the cost of defending a claim came on top of the cover.

This year, in line with the majority of other policies around Australia, the limit of liability was only offered as a “costs inclusive” limit. The situation has now reached crisis point and options that were rejected in the past as too expensive or restrictive now seem attractive.



The hardening professional indemnity insurance market has affected most legal practitioners in the country.

Even practitioners in Victoria who benefit from Legal Practitioners Liability Committee by receiving subsidised premiums by virtue of a mutual style scheme established decades ago, are set to face an extremely difficult reinsurance market.

The national response has been to lobby state and territory governments for the introduction of the Professional Standards legislation designed to reduce claims.

There is also a push by the Law Council of Australia to make premiums more affordable by campaigning for a limit on the liability of legal professionals. Other professions have already benefited from such moves. For example, the NSW Government has legislated for accountants providing proportionate liability and a regime of professional standards, including a safety ceiling on claims.

A further option to be considered by the Standing Committee of Attorney-Generals, that may provide a long-term solution, is the establishment of a national Professional Indemnity Scheme for lawyers.

Ascertaining the viability and affordability of such a scheme will require extensive actuarial work. Read on for the options the Law Society is exploring for cover in the future.

Is Professional Indemnity Insurance necessary?

All Australian jurisdictions require legal practitioners to carry professional indemnity insurance. Insurance is required to cover all civil liability arising from a practitioner's practice.

This provides consumers with protection if an act of negligence occurs. It also ensures practitioners are not personally liable for a problem arising from practice.

NT lawyers are required to hold Professional Indemnity Insurance pursuant to the *Legal Practitioners Act* NT.

The Law Society currently negotiates the policy on behalf of the NT profession each year.

There are benefits in the Society negotiating the policy.

Not only does it save practitioners time in seeking quotes and negotiating their own cover, the policy is uniform, giving consumers security in the measure of cover purchased by all solicitors.

By seeking insurance as a block of practitioners, there can be an assurance that all practitioners will receive cover for the same price, which is collectively lower due to the pooling of practitioners, and that all practitioners can in fact buy cover, which could not be guaranteed in an open market situation.

There are also specific benefits gained in seeking agreements not otherwise available.

For example by making an agreement to ensure there is "run-off" cover. Claims of negligence typically have a long tail.

This cover ensures that a practitioner remains covered for his or her actions if they are no longer in practice.

Such run-off cover would not be available to persons insuring individually unless they continued to pay for a new cover each year after they have ceased practicing.

Can legal practitioners withdraw from the Law Society Professional Indemnity Insurance scheme?

As *Balance* goes to press the Council of the Law Society has received two applications for exemption from the Law Society scheme.

The effect of this possible withdrawal on premiums is being assessed by the Society.

Pursuant to the *Legal Practitioners Act* the Society may exempt a class of practitioners from the scheme.

If the Society grants an exemption, the Attorney-General must review the decision within 60 days of being notified. The Attorney General may revoke or vary the decision if he considers it would be in the "public interest."

The Council will consider the two applications at a meeting on 28 January 2002.

It is not only the big firms feeling the pinch. The dramatic increase in PII has also caused difficulty for small operations with three sole legal practitioners deciding to no longer practice due to the cost of PII.

How can NT legal practitioners help lower premiums?

The major factor in determining premiums is the level of risk the pool represents to insurers. The risk to the market in the past has been promoted as somewhat lower due to the size of the Territory in comparison with states and the nature of the work in the NT.

Unfortunately claims experience of the scheme has deteriorated with a number of claims currently holding large reserves.

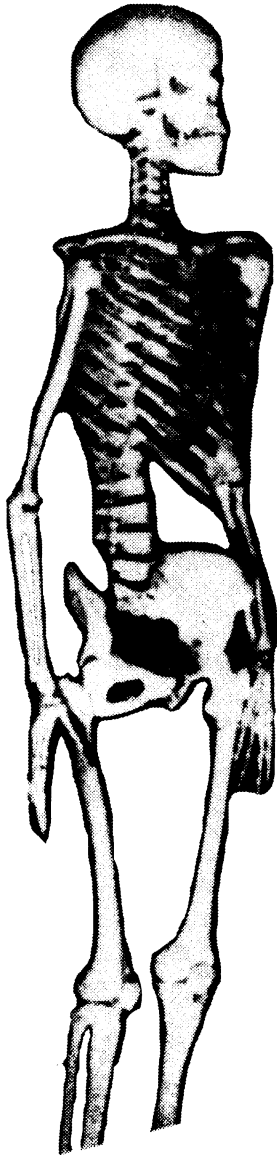
Insurers are now commonly rating risks based on actuarial evaluation, but it is a simple calculation to see why the premiums have increased - claims for the last 10 years have cost more than the premium paid.

Managing claims then is critical and good sense. Risk management practices are vital for each firm to assist in reducing the number of claims that arise.

There are some claims that are preventable by the use of proper management systems, these include those termed "out of time" claims.

Seeking basic advice on management risk systems is the first step to reducing claims.

So what is the Law Society NT planning to do to secure the future for Territory practitioners?



Are lawyers the only ones being affected by with escalating PII premiums?

No.

In November last year the Institute of Chartered Accountants was claiming members were receiving increases of up to 1000 per cent and more than 30 per cent had ceased offering audit services in a bid to purchase affordable cover.

Earlier in the year the Institute of Engineers Australia reported that some engineers experienced rises in premiums on the last insurance period of up to 400 per cent (the average increase recorded was 50 per cent and some specialists can simply not buy insurance).

Medical practitioners have experienced increases every year for the last five years.

The Australian Medication Association (NT) says the minimum increases have been around 50 percent but have been higher than 100 percent. That can mean insurance costs of \$100,000 to \$200,000 a year.

The premiums vary widely depending on the type of work the practitioner is engaged. For example, a proceduralist gets hit harder than a non-proceduralist.

The issue has impacted upon the medical profession to such an extent that last year the AMA reported 28.4 percent of the nation's obstetricians moved away from the field with four percent giving it away altogether.

Independent midwives in Northern Territory have been unable to get insurance and have been relying on the government to assist with liability cover.

What is the Law Society doing to secure the future?

A meeting will be held with the Law Society's brokers as *Balance* magazine goes to press.

Options to be explored include the possibility of joining a larger pool of solicitors for negotiation, the staged establishment of a mutual style fund based on the West Australian model, possible establishment of a statutory insurer and perhaps seeking entrance to an existing mutual fund to subsidise the cost of premiums in a hard insurance market.

The latter three options require the Society going to the funds with some capital. The Society is currently preparing a submission to the Attorney-General in this regard.

In addition to this we are looking at potentially changing rating structures to include discounts for no claims, fee based rating and introducing higher deductibles to try to make premium distribution more equitable and experience based. ①

Opening of the Legal Year



On going to print, the Opening of the Legal Year 2003 in the Northern Territory was just about to happen.

Guest speaker for this year's event in Darwin and Alice Springs is the Honourable Paul de Jersey AC, Chief Justice of the Supreme Court of Queensland.

Chief Justice de Jersey served at the Queensland Bar for 14 years, taking silk in 1981.

While at the Bar he had a broad general practice focussing on the commercial field.

He also appeared in constitutional cases before the High Court of Australia.

His Honour was appointed a judge in Queensland in 1985. He became Chief Justice on 17 February 1998.

Balance will feature a special pictorial spread in next month's edition as well as a report on His Honour's address.