

CPD Seminar – 26 September 2024

Insurance Market and Claims Update – Fitness for Purpose, Contracting tips, New Engineer Registration Scheme and Construction Industry Economic update

At the end of the seminar attendees will be able to:

- Understand the professional indemnity insurance market and how it impacts professionals in the Built Environment
- Understand common causes of claims against professionals in the Built Environment and how to avoid them
- Identify clauses in contracts that create additional risk for professionals and understand some common tips and strategies to help minimise risk
- Broadly understand the economic factors impacting the construction industry.

This session delivers learning outcomes related to the following Performance Criterion from the 2021 National Standard of Competency for Architects:

PC 1 Comply with the regulatory requirements and obligations pertaining to practice as an architect, including legislation, professional codes of conduct, obligations for continuing professional development and professional indemnity insurance.

Content cuts across the “Professionalism” Professional Capability in the 2021 NSCA as it relates to understanding and incorporating relevant disciplinary knowledge and standards within the practice of architecture and the provision of architectural services.

1. Where are we in the insurance cycle?

Insurers chase market share or 3 o'clock.

2. Why has the Engineers Professional Practice Standards implementation been put on hold?

On 18 August a (Draft) Building Bill NSW 2024 was announced. The intension of the Bill is to consolidate 9 pieces of building works legislation. This includes the DBP Act 2020. The practice standard forms part of the DBP Act 2020 and so the implementation of the Practice Standard has been paused for, we assume implementation now with the Building Bill NSW 2024.

3. What do you view as the most significant driver of claims in the construction space?

Construction claims are driven by many factors, but in my experience a significant factor is the lack of expectation management between what is contracted and what is ultimately provided. This expectation gap can be due to a lack of clarity around specific roles and responsibilities and the limited nature of many engagements. Likewise, time constraints surrounding delivery of services also plays a factor as well as the disconnect between project leads and deliverables from sub-contractors. Poor record keeping and the lack of express memorialisation of changes in roles and responsibilities is also a key factor particularly around site supervision and project managements roles.

4. How do records impact claims outcomes for good or bad?

Records are the cornerstone of the defence of any claim. Where records are poor or piecemeal, it is often difficult to defend claims even where we know a customer has done the right thing which can lead to a poor financial outcomes on claims because we are unable to properly justify a key defence. On the other hand, where records are strong, clear, and robust, we have been able to run key defences which can lead to the absolute defence of a claim or at a minimum reducing greatly a customer's exposure.

5. Name two examples of contract "red flags"?

Answers may include any of the following:

- Contract or Deed (6 year v 12 year obligations)
- **Scope**
 - Limitations/Caps on Liability (beware the carve out!)
 - Indemnities (including for Subcontractor's Work)
 - Proportionate Liability waiver
- **Warranties (Incl. Fitness for Purpose)**
 - Insurance Requirements
 - Dispute Resolution

6. Which of the following is not a key takeaway on fitness for purpose terms?

- (a) It is important to know the key project technical requirements.
- (b) You should always check your policy for exclusions.
- (c) Downstream fitness for purpose obligations will always match upstream obligations.**
- (d) It is important to identify differences at law between contractor and consultants on fitness for purpose.

7. What is the stated band of inflation for the RBA?

0-1%

1-2%

2-3%

3% plus