



# COMMUNIQUÉ

*Newsletter of the New Zealand Architects Cooperative Society Ltd  
August 2002*

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## *WELCOME TO COMMUNIQUÉ*

*EDITOR ALAN PURDIE WRITES -*

### ***As I See It - Unity The Key***

We have just witnessed a very successful Commonwealth Games for New Zealand with 42 medals won. As the team entered its last day of competition the president of the NZ Olympic Committee, John Davies said it was the strong unity within the team that was behind the drive for medals.

Unity is what **NZACS** is on about in this and in our most recent issues of Communiqué. The Professional Indemnity Insurance market worldwide is just so volatile right now that unity is our best defence in protecting you, the Members. However, it is you, the Members, the Group that have to provide that unity.

Unity is our strength in **NZACS** and your support is needed to maintain that strength. In October and November the Group's Professional Indemnity Insurance arrangements are up for their annual re-negotiation. We must present **NZACS** as a strong and unified group as our Insurance Consultants go to the market.

The **July Communiqué** reported the situation in Australia where liability insurance is becoming either too expensive or unavailable, exposing architects and engineers to the prospect of not being able to carrying on in business. This trend was very recently confirmed to me from the UK where architects are facing up to **40%** premium increases or finding that their Professional Indemnity Insurer is not renewing their insurance. As a Group we have strength, unlike an individual practice seeking cover, as is more often the case in the UK and Australia.

The article which follows by Chairman, Barry Dacombe, re-affirms some very strong and compelling reasons as to why maintaining your **NZACS** membership is so advantageous and describes the potential dangers out there, in the insurance market, for those not experienced in its ways. The quality of your policy you are buying, the quality of service and claims handling you receive are more important considerations than just cost. Cheaper ain't always the best!!

A unified approach in minimising risk is also essential. Don't sign client driven conditions of engagement which extend your liabilities and contain indemnities requiring payouts to them as clients, far beyond normal liabilities and beyond the common law duty of care.

Some larger firms may feel compelled to sign such agreements as they believe they have the resources to effectively manage such contracts. However, have they thought about the precedent this sets when a smaller firm is presented with a similar agreement and the argument that "*Big Firm A has signed such an agreement so you should too!!*"

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Again unity, or standing firm, is required. As emphasised in July Communiqué - only the "model conditions" as negotiated within the industry, i.e. **NZIA**, should be used, that is the **AAS 2** and **SF1**, long and short forms preferably.

So I urge you all to take notice of the Risk Management advice included in recent Communiqués as an improved claims record by the Group will greatly assist and be to your benefit when our renewal negotiations take place.

Remember your Unity is our strength. That's what being an **NZACS** member is all about.

### ***Risk Management Tip***

Building Consent drawings are not construction drawings. All consent drawings should be marked to this effect. Clients must also be notified of the status of such drawings.

### **A MESSAGE FROM THE CHAIRMAN**

### ***NZACS – Working in the Interests of Members***

Recently, one of our Members was approached with an offer for an alternate Professional Indemnity Insurance from another source. There is nothing new in this, as Member Firms have often been approached by Insurance Brokers from time to time wishing to offer alternative insurances to those that are provided to Members through **NZACS**.

Although, over the years, very few Members have accepted these alternatives, in the above case the Member did accept a "reduced premium" proposal that he mistakenly thought provided an "equivalent" protection to the quality **NZACS** Master Professional Indemnity Policy.

We spoke to the Member and obtained a copy of the so-called "equivalent policy" to check it out that it was indeed equivalent.

### ***Sadly it was not! It was even much worse than that!***

On the face of it the Policy seemed very similar in some respects, but on close inspection of the "exclusions" it was found to be very "exclusive" in a number of significant respects.

*"The alternative Policy excluded any claims:*

- *directly or indirectly caused by, or attributable to the occurrence, threat or allegation of seepage, pollution or contamination howsoever occurring.*
- *breach of any statute, regulation or any by-law prohibiting emissions, effluent or pollution of any kind, enforcement action or proceedings under such statutes.*
- *for any direction or request to clean up, remove, detoxify, neutralise, or in any way responding to the effects of seepage, pollution or contamination."*

***In other words, the policy excluded the effects of mould, rot or decay and the costs arising in remedying these effects.***

The impact of these exclusions has since been further extended by this particular Insurer and we are reliably informed any renewal of this Policy will in future contain the following exclusion wording.

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"Building Defects & Mould Exclusion"

The **Insurer** shall not be liable for, or fulfill any obligation in respect of **any claim, inquiry, notice, damages, defence costs or inquiry costs**, which are directly or indirectly caused by or contributed to or arises directly or indirectly out of:

- (A). *the action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure or*
- (B). *any cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in anyway responding to or assessing the effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria protozoa or similar or like forms, in any building or structure; or*
- (C). *the failure of any building or structure to meet or conform to the requirements of the New Zealand Building Code contained in the first schedule to the Building Regulations 1992 (or any amendment or substitution thereof) in relation to:*
  - (i) *external water or moisture; or*
  - (ii) *either durability or protection from external water or moisture entering that building or structure, or the effects thereof."*

Whilst the wording was clear to us in it's meaning we, none-the-less, sought a legal opinion that has subsequently supported our interpretation.

In our view, such exclusions render ineffective many of the purposes of a Professional Indemnity Insurance Policy.

**In effect, these exclusions negate any claim arising from building "leaks".**

**NZACS** claim history demonstrates that a significant number of claims both in dollar terms and frequency arise from building "leaks". The current nationwide (*or indeed the worldwide*) problem "*the wet building syndrome*" continues to create much debate and has heightened potential awareness among home owners, lawyers, architects and insurers alike of the problem.

The problem goes beyond water ingress and rotting framing timbers. It also refers to "*fungi, micro-organisms, bacteria, protozoa*" that have the potential to infect people and incur sickness – there have been recent cases in NZ. The "*no fault*" Accident Compensation Act is no protection here and leaves the door open for the potential for actions for bodily injury not covered by this alternative Policy.

Our quest for a healthy environment through our architecture is also at risk here – viz, **NZIA** Environmental Policy. Overseas the substantial costs of decontamination have given rise to such exclusions also and could have their parallel here in NZ.

The exclusions contained in (C) above have very extensive ramifications for design professionals and the building industry in general. In effect any building that "*leaks*" is excluded under this clause and worse any compromise to the "*durability*" of the building as required by the Building Regulations is also excluded.

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***To be uninsured for these particular risks is a very serious issue and renders the insurance protection purchased by this past Member highly questionable and of quite limited value.***

***I am pleased to be able to report that the NZACS arranged insurance policy contain no such exclusions and will hopefully continue to remain free of them.***

**NZACS** is continuing to work with this past Member with the object of reinstating his insurance under the **NZACS** Scheme, but for this Member there were other issues that he had not appreciated he had abandoned by leaving the **NZACS** scheme.

- *Continuity of insurance was broken.*
- *The opportunity to gain Complimentary "run-off " cover after retirement was lost.*
- *Access to Partnership Life insurance was made unavailable.*
- *Support of NZACS Claims Committee involvement in claims was lost and replaced by loss adjusters or lawyers focused on minimising the Insurer's exposure.*
- *Communiqué was no longer available.*
- *Loss Prevention & Risk Management assistance was also no longer available.*

Fortunately this was an isolated case and **NZACS** enjoys considerable loyalty from its Members.

We are here as a safe backstop, generally quietly and unobtrusively looking after our Members' interests.

***BJ Dacombe – Chairman***

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***We welcome contributions from readers, on how they manage risk.***