



# COMMUNIQUÉ

*Newsletter of the New Zealand Architects Cooperative Society Ltd  
February 2003*

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## **CHAIRMANS COMMENT**

### **PI Renewals - What Went Wrong?**

In case you haven't noticed, these past two months on the PI renewal front have been somewhat chaotic. A few members have written to me expressing their concern and I am sure there are many others who are more than puzzled about the process.

I'm referring to the apparent lateness of the posting out of the subscription notices (insurance premium invoices from AON) and the need to pay the first instalment of these shortly afterwards so as to maintain continuity of cover.

I'm sure it all looked like lax administration but I can assure you that it wasn't.

I would like to explain.

NZACS (through our insurance advisers AON) seek PI Insurance cover for the group of members from a relatively small pool of insurers. Getting the appropriate terms and premiums is the focus as is the establishment of continuing insurance relationships. Prior to the expiry of the current insurance year we commenced negotiations with the few insurers left in the market only to find that all of them were excluding claims in relation to "leaky buildings".

It was important for us and therefore for our members to secure better terms and considerable effort was made by AON, NZACS Directors and the President and Executive Director of NZIA to convince our likely insurer that such a blanket exclusion was inappropriate in terms of our members claims experience.

We were successful but it took time.

I am absolutely convinced that a great job was done by all on behalf of our members and we have an insurance policy that is remarkably favourable in the circumstances. Articles in this Communiqué will further elaborate as has past contributions on NZIA chat list.

Getting our insurer to convince their pool of reinsurers and co-insurers and then finalise the premium quantum was the next task and this is what impacted on us all resulting in the apparently late posting of subscription notices.

I hope the explanation helps to alleviate some of the frustration experienced by members. The Directors appreciate your patience and your continuing support.

Have a good year.

**Barry Dacombe**  
**Chairman**  
**NZACS**

## **MORE ABOUT INSURANCE PREMIUMS & EXCLUSIONS**

Professional Indemnity Insurance is a special form of Liability Insurance; a sub branch of Casualty & General Insurance. It is a minor player within the overall insurance market, but one that has the potential to be of high risk for Insurers – it was a significant factor in the problems of the Lloyds Insurance Market some years ago.

### ***Categories of Insurance***

Insurance is divided into two parent categories, “*Life*” and “*Non-Life*”. The Life category is concerned with the insurance of persons and includes life, annuity, disability & health insurance subgroups. “*Life*” insurance is concerned with a known outcome – death, but with uncertain timing.

“*Non Life*” insurance is concerned with the probability of events which are not predictable, but which have a known random probability of occurrence. Actuarial assessment is much more complex and benefits from a larger pool of risks – over a period of time, the results should more closely match the actuarial prediction. - Over time! The vagaries of insurance risk can provide unexpected results within the short term.

### ***Spreading the Risk***

Insurers tend to spread this risk, by insuring a wide range of risk types, where cross subsidisation can occur. Sometimes, for branding purposes, unprofitable lines of insurance may be underwritten; in the knowledge that cross subsidisation is possible.

Further subsidisation can occur through the return on investments. Insurance companies, even Acanthus, have surplus funds or reserves that can be invested; hopefully for a profit. However, when the global investment market is in retreat, the investment receipts are down.

Insurance companies then have a reduced ability to cross subsidise their insurance risks. There is a temptation for Insurers to increase their insurance pool in order to even out their risk predictions. Smaller Insurers are sometimes purchased and absorbed into larger companies – not always successfully.

When insurance risk categories are unprofitable, there maybe reluctance on the part of Insurers to underwrite these under-performing risks. Liability Insurance, and in particular Professional Indemnity Insurance, is often seen as an early casualty in the jettisoning of risk.

### ***Market Influences***

In global terms Australasia, and particularly NZ, are minor insurance markets. We are small fry, and easily dismissed as a market player. We have little bargaining power with the big multi-national insurers

Architects will be aware of the international decline in stock market activity and investment returns. Additionally there have been substantial insurance losses because of Sept 11 and its aftermath, recent pollution liabilities, tornado losses, etc.

In NZ, Professional Indemnity risk for Architects, Engineers, Valuers and Accountants has proved to be unprofitable. Over the past five years, NZACS Insurers have consistently paid out much more in claim settlements than they have received in premiums. Clearly this could not continue. It was inevitable that our Insurers would attempt to limit their risk exposure and also to increase their premium pool.

A significant premium increase was therefore always on the cards for the 2002/2003-year and NZACS also had to build up its capital reserves in order to continue to service the interests of the Architectural Profession.

## **The “Leaky Building Syndrome”**

Enter now the media frenzy surrounding “*Leaky Building Syndrome*” and inflated estimates of billions of dollar risks. It was only natural that Insurers would seek to reassess their risk position in light of this revelation.

Many Insurers chose to exclude all risks attaching to, or caused by, water entry and/or failure to comply with the NZ Building Code. In essence, they effectively withdrew from the Professional Indemnity market for the design professions. Those insurers, which remain, are seen by some to be masquerading as if they were providing full professional Indemnity Cover.

### **NZACS Research**

During renewal negotiations for 2002/2003, NZACS was faced with obtaining insurance at a time when a full understanding of the “*leaky building syndrome*” issue had not evolved.

NZACS therefore undertook an analysis of all claim notifications since 1995 and isolated all claims relating to leaking claddings of fibre cement, stucco, EIFS systems, and further identified the risk when the above failures occurred in conjunction with untreated timber. In addition, NZACS related these failures to the pattern of architectural service provided – full service, building consent documentation only, no observation, observation on request only.

This research included new notifications that followed the *leaky building syndrome* media attention. These findings were summarized and used by NZACS and AON in negotiating insurance terms with the small pool of available 2002/2003 year Insurers and re-insurers.

These research findings are commercially sensitive and confidential to NZACS and to our Insurer. This year’s NZACS group performance will be measured against this historical background when next year’s insurance is negotiated.

NZACS found that relatively few claims were related to cladding failures identified as “*Leaky Building*” membrane failures, and even less were associated with untreated timber. In many cases the failures were associated with partial service by architects.

Our impression from within NZACS, and from comments from TAs, the Master Builders insurance group and Weathertight Buildings Resolution Service registrations, is that the dramatic postulations of some media commentators would seem to be unjustified.

The alarmist comments relating to the toxic mould – *stachybotrys atra*, has been seized upon by some advocates as a basis for overzealous demolition of exterior framing, with inflated repair costs and general damages claims for distress.

### **The Quality of Cover**

As with most purchases, buyers often only get what they pay for. The purchase of insurance is no different. If insurance is bought on premium price alone, the quality of cover will likely be diminished.

If purchasers seek a superior product, the premium costs will be higher. NZACS has consistently sought and obtained from the available insurance market, the most competitively cost-effective balance between premium cost and breadth of cover – and for year after year.

It has always been the intention of NZACS to stay in business and to provide the best possible insurance service for its Member Firms.

**Graham Strez** *Claims Director, NZACS*

## BUILDING CONSENTS

***Tom Dixon, one of our Auckland based NZACS Directors, offers some timely risk management advice regarding Building Consents.***

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***Be aware!*** - There are implications beyond the contractor and the building owner. Work without Building Consent or "*Retrospective Consents*" – there is no such thing.

In principle there is no work involving construction or alteration to buildings that does not require a Building Consent application.

It is an offence to do work, or permit work, other than to Building Consent. The exceptions are listed in the Third Schedule of the Building Act 1991. In practical terms these are limited to defined areas of maintenance.

### **Refer:**

***The Building Regulations 1992***  
***The Building Act 1991***

In principle the Territorial Authority (*the Council*) is charged with approving the issue of a Building Consent and satisfying itself during construction that it is built as it should be to satisfy, safety, health and amenity criteria.

*The Building Regulations 1992* prescribe the requirements to be observed by the Territorial Authority.

1. A PIM must be issued before a Building Consent.
2. An amendment to the Building Consent must be applied for whenever the work to be undertaken is different from that originally covered by the Building Consent.
3. The Council is unable to issue a Building Consent retrospectively – after the work has been undertaken. Council may accept liability for the issue of a Code Compliance Certificate without undertaking appropriate inspection of the work during construction.

### ***The Third Schedule - Building Act 1991 – page 78***

*Only limited work may be undertaken without a Building Consent as listed below:*

Maintenance on Compliance Schedule items.

Replacement of taps, valves or washers but not part of hot water system or part of back flow prevention.

Repair with comparable materials, component or assembly of any component but not replacement of a system.

Replacement of any component contributing to structural behaviour or fire safety.

Repair or replacement of any component of assembly failing to satisfy code durability provision.

### ***Also permitted:***

Retaining walls not retaining more than 1.5m depth and not supporting any surcharge or additional load on that ground.

Any wall, fence, or hoarding not more than 2.000 above ground.

Any platform or bridge not more than 1.000 above ground.

### **Minor temporary buildings – where**

- Detached
- Houses fixed plant or machinery
- People do not normally enter
- Used only by construction workers
- Does not exceed 1 story or 10 sq.m
- Does not contain sleeping accommodation or sanitary facilities.
- Unlikely to cause danger of affect adjoining property.

### **Unauthorised Work**

Each Council: will adopt its own procedures for recording and where necessary correcting inadequate work undertaken without consent.

#### **but**

this does not legitimise the unauthorised work and will not permit the issue of a Code Compliance Certificate by the Council. This will be on record in the property file of the Council and accessible to the general public.

#### ***The procedure may involve:***

1. Requiring the Owner to supply a “*Safe & Sanitary Report*” prepared by an approved qualified person. The report will also be accessible to the public on the property file (*and will alert an intending purchaser of the property to the condition of the property.*)
2. The Council may, as a result, require the building owner to take out a Building Consent for corrective work to make safe or sanitary the unauthorised work.

This does not legitimise the unauthorised work nor does it permit the issue of a Code Compliance Certificate for the original work.

### ***Implications***

There exist serious implications to the Architect (*as agent of the Owner*), to the property owner in terms of loss of value to a third party as a future owner.

A purchase made by a third party without knowledge of the unauthorised work may result in litigation (*at a later date*) between the purchaser and those responsible for the unauthorised work.

The Architect should not be a party to, or offer advice to an Owner to apply for a Building Consent after the event – although this may be seen as correcting an oversight.

Consultation between the Owner and the Council is the only available remedy.

### ***Leaky Buildings***

The defining issue with correction of defects and Building Consents is recognition that replacement of :

a system, e.g. a cladding system, or structural system constitutes an exclusion from the exemptions for a Building Consent.

## **COMMUNIQUÉ**

***The Official Newsletter of the New Zealand Architects Cooperative Society Ltd***

**Editor: Alan Purdie**

**NZACS**

**P O Box 11-106, Wellington**

**Phone (04) 801-8972**

**Fax (04) 801-7010**

**E-mail: [www.nzacs.co.nz](http://www.nzacs.co.nz)**

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