



Insurance Council
of Australia

6 March 2026

Senator Deborah O'Neill
Chair
Parliamentary Joint Committee on Corporations and Financial Services

Via upload

Dear Chair

Small business insurance – professional indemnity insurance

The Insurance Council of Australia (Insurance Council) welcomes the opportunity to provide a submission on behalf of our members on this important topic.

The Insurance Council is the representative body for the general insurance industry of Australia. Our members represent approximately 85 per cent of total premium income written by private sector general insurers and provide a range of general insurance products including small business insurance products.

This submission is one of a series of submissions the Insurance Council will be providing to the Committee's inquiry and focusses on professional indemnity.

What is professional indemnity insurance

Professional indemnity insurance is designed to cover claims arising from certain types of professional negligence. It is a general insurance product that provides cover for individuals, businesses and organisations that provide professional services.

Professional indemnity insurance provides protection to the policyholder against claims for alleged negligence or breach of duty arising from an act or omission in the performance of the policyholder's professional duties.

For example, an engineer or accountant will take out professional indemnity insurance to protect them against any potential claims for financial loss brought against them by their clients.

An individual or business (or their insurance broker) will apply to insurers (seek a quote) for coverage. Each insurer has their own underwriting criteria they apply to determine whether they will provide coverage, the premium charged and level of coverage provided.

Typically, things like the type of work being undertaken, any claims history of the business and the market conditions for the professional services being provided are considered by the insurer.

While professional indemnity insurance helps pay for compensation to third parties for negligent acts undertaken by the policyholder, professional indemnity insurance is not designed, nor is it its purpose to provide a source of general financial protection to third parties and consumers.

While professional indemnity insurance is designed to cover claims arising from certain types of professional negligence, some types of negligence or conduct are typically not covered under a professional indemnity insurance policy.

Professional indemnity insurance will generally not cover claims that involve:

- Systemic prudential failures
- Deliberate or fraudulent acts
- Criminal conduct
- Claims from known but undisclosed circumstances
- Claims arising after the runoff period when a firm is insolvent.

The Australian professional indemnity insurance market

In Australia, professional indemnity insurance is a commercial product predominantly provided through privately underwritten insurance companies.

When providing professional indemnity insurance, insurers typically need to charge \$1 for every 70 cents of claims incurred to break even.¹ This is because, in addition to the cost of paying claims, additional administrative, claims and operating costs need to be factored into the price of premiums.

In recent years, some sections of the professional indemnity insurance market have experienced high loss ratios of over 95 per cent. Loss ratios of over 100 per cent mean that insurers do not have sufficient income from premiums alone to pay insurance claims.

From 2017 to 2023 there was significant hardening of the professional indemnity insurance market. Market hardening is characterised by rising premiums, higher excesses for policyholders and less capacity in the market, particularly for professionals performing work that presents higher underwriting risk for insurers.

During this hard market some industries with high claims frequency and high quantum claims activity experienced greater premium increases and coverage restrictions. These sectors included the professionals operating in the construction sector (design and geotechnical engineers) and the financial advice sector.²

This hard insurance market was the result of unsustainable loss ratios and unprofitability (where insurers pay out more in claims than they collect in premiums). For example, in 2017, professional indemnity insurers were, on average, losing 16 cents from every dollar charged in premiums in the Australian professional indemnity market.³

Table 1 below outlines the gross loss ratios reported by the Australian Prudential Regulatory Authority (APRA) from 2013 to 2025. Under APRA reporting, the gross loss ratio refers to gross claims incurred as a proportion of gross premium earned, expressed as a percentage. The worst quarter was the period ending December 2017, when the gross loss ratio reached 139%. In other words, for every \$1 of premium collected, insurers paid about \$1.40 in claims. Loss-making conditions then persisted, including the quarters ending June 2018 (106%), September 2018 (109%) and December 2018 (136%).

¹ Aon. 2018. [Professions indemnity Insurance Market Insights Q3 2018](#).

² Finity. 2023. [Optima Report 2023](#). Page 103.

³ Consult Australia. 2019. [Professional Indemnity Insurance Market Update](#). Page 2.

Professional indemnity insurance - Gross loss ratio

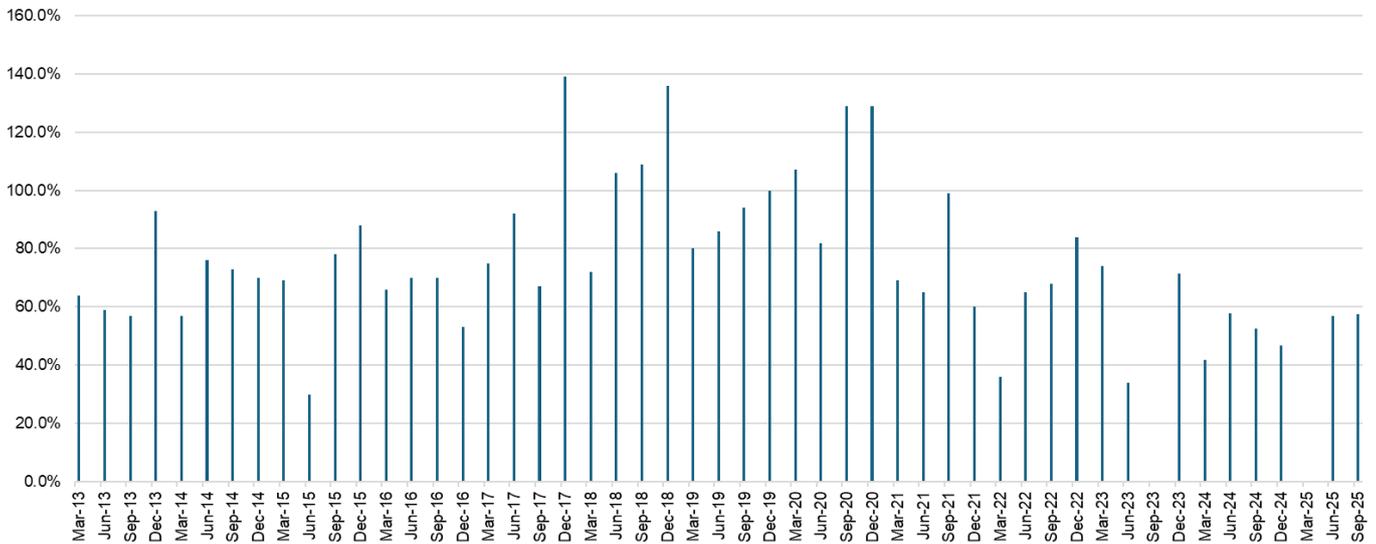


Table 1. Professional indemnity insurance – gross loss ratio.⁴

These loss ratios experienced by insurers resulted in insurers having to increase premiums to restore a level of profitability to their professional indemnity insurance businesses which resulted in accelerated premium growth from September 2018 to June 2022.

Average premium per risk for professional indemnity insurance since 2013 are outlined in Table 2 below which shows significant increases quarter on quarter from between 2013 to 2017 from \$2,116 average premium in March 2013 to a peak of \$8,503 in June 2022, followed by a substantial subsequent decline from June 2022 to September 2025. As of September 2025, the average premium per risk has reduced to about 2013 levels at \$2,286.⁵

Professional Indemnity Insurance - Average premium per risk (\$)

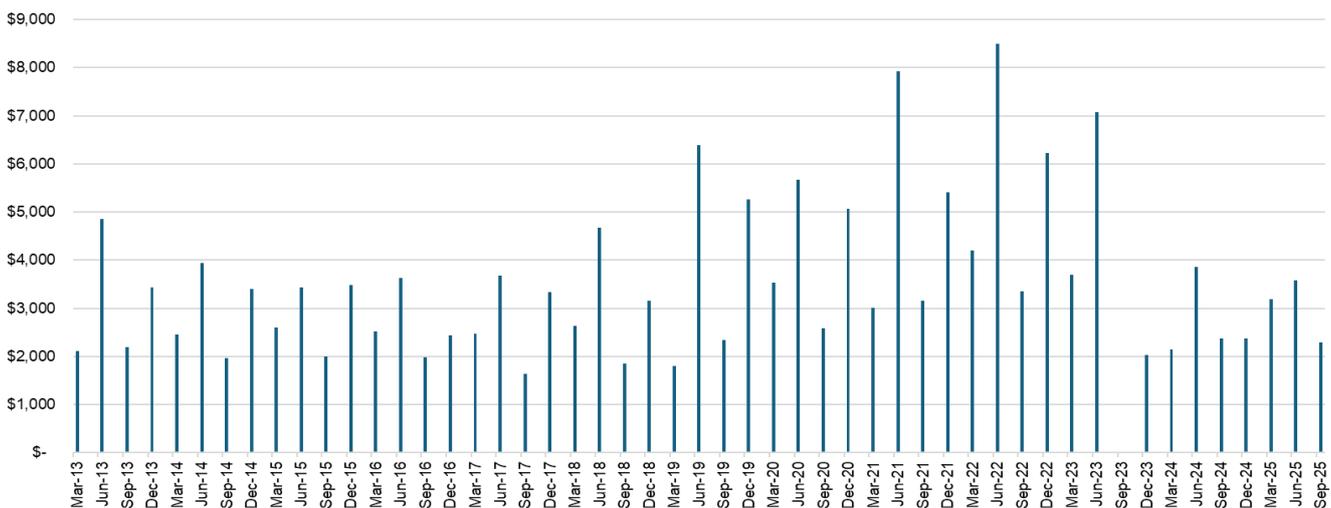


Table 2. Professional indemnity insurance – average premium per risk (\$).⁶

Market conditions are softening although affordability pressures remain for some sectors

⁴ Australian Prudential Regulatory Authority. *Quarterly general insurance performance statistics* (September 2023 to September 2025 and December 2002 to June 2023 – Professional Indemnity). Available [here](#).

⁵ *ibid*.

⁶ *Ibid*.

Impact on small business and not-for-profits

The premium rate increases that occurred between 2017 and 2022 and subsequent improved insurer profitability has contributed to a significant shift in the professional indemnity market with premiums rates decreasing and capacity in the professional indemnity market increasing.⁷ Significant increases in competition in the professional indemnity market has also seen rates decrease to their lowest levels since 2016.⁸ In the first half of 2025 premiums rates ranged between flat to 15% decreases compared to 2024.⁹ Table 3 below shows the relationship between gross loss ratio and average premium per risk for professional indemnity insurance.

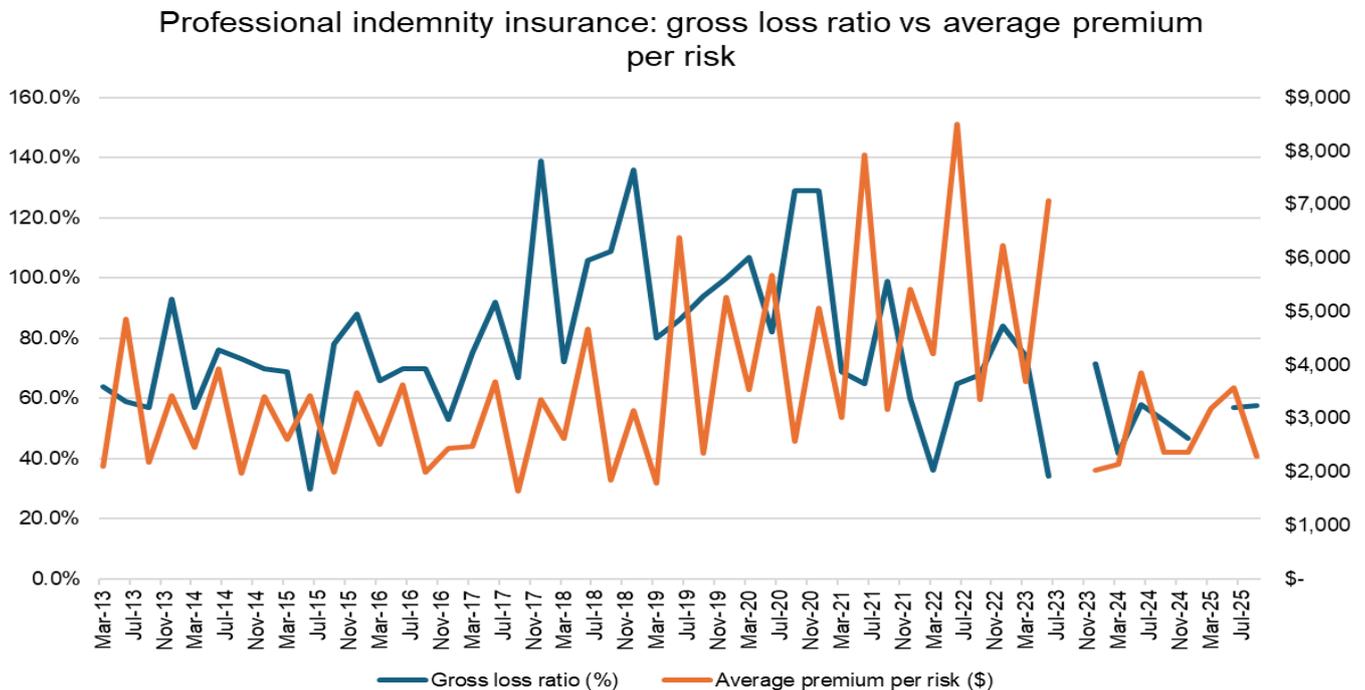


Table 3. Professional indemnity insurance: gross loss ratio vs average premium per risk.¹⁰

Consequently, many of those industries that have experienced more severe professional indemnity availability and affordability pressures now have more options to obtain improved coverage and premium terms as more competition has entered the market and insurer appetite has increased.

Insurance brokers Marsh report that at June 2025 there had been a 10% average decrease in professional indemnity insurance premiums in the construction and design sector.¹¹

Similarly, the financial planning sector is experiencing a softer professional indemnity insurance market with premium rates easing and broader coverage available.¹² This has been attributed to an uplift in risk management in the sector through greater compliance, better standards and increased education requirements in the financial planning sector.¹³

⁷ Finity. 2024. *Optima report 2024*. Page 105

⁸ Edgewise Insurance Brokers. 2025. [Market Update H1 2025](#).

⁹ Marsh. 2025. *Australian Mid-Year Insurance Market update 2025*. Page 14. Available [here](#).

¹⁰ Australian Prudential Regulatory Authority. *Quarterly general insurance performance statistics* (September 2023 to September 2025 and December 2002 to June 2023 – Professional Indemnity). Available [here](#). N.b. no data was recorded for September 2023. No gross loss ratio data recorded for September 2023 quarter.

¹¹ Marsh. 2025. *Construction and Insurance Market Update 2025*. Page 4. Available [here](#).

¹² Bellrock. 2025. [Professional Indemnity Insurance Market Update: July 2025](#).

¹³ Ibid.

However, financial planners and other financial service providers involved with high-risk financial products, those with poor claims histories, or those lacking governance and risk controls are less likely to benefit from these current favourable market conditions.¹⁴

Other factors that may be impacting professional indemnity coverage

In addition to factors directly impacting insurers, the environment individual businesses operate in can also impact their ability to source the insurance coverage they need or create exposure to risks not covered by their insurance.

Onerous and unnecessary insurance requirements

For many small businesses, participation in governmental building and infrastructure projects often requires businesses to comply with onerous and, at times, unnecessary insurance requirements. The Insurance Council understands these requirements continue to be imposed in government contracts despite the 2023 changes to the *Commonwealth Procurement Rules* which included changes designed to ensure insurance requirements imposed on businesses were reasonable and appropriate for the work being undertaken. Similar requirements are also common across state, territory and local government contracts.

Insurers advise some contractual insurance requirements are often not only unnecessary for the work being undertaken (resulting in over insurance) but require a minimum monetary level of cover that can be prohibitively expensive. In some cases, the level of professional indemnity coverage required by the procuring entity is not available in the market. Examples of this include requirements for businesses to source unlimited cyber security insurance coverage.

The Insurance Council also note these types of requirements continue to be applied despite appearing contrary to clause 7f of the *Commonwealth Procurement Rules Procurement Risk Guide* which provides that insurance requirements should be informed by consideration of which risks are capable of being insured on commercially acceptable terms.

The Insurance Council is also advised there is often no scope or opportunity provided to individual businesses to negotiate on the terms of these requirements.

Other examples provided to the Insurance Council of onerous insurance requirements include terms requiring businesses to have government agencies/clients named on their insurance policies which in effect requires these businesses to obtain insurance to cover not just themselves but also the government entity/client. This practice is not only contrary to paragraph 8.4 of the *Commonwealth Procurement Rules*, but also, in our view, may amount to the use of unfair contract terms if applied in other non-government contractual arrangements.

Therefore, the Insurance Council supports regulatory reform to ensure all government contractual insurance requirements are reasonable and proportionate to the work to be provided under a contract.

We recommend that as per the *Commonwealth Government Procurement Risk Guide*, regulatory reform be undertaken to ensure all government contractual insurance requirements:

- Are reasonable and proportionate to the work being undertaken.
- Are informed by and have consideration of which risks are capable of being insured on commercially acceptable terms.
- Consider the contracting business supplier's costs associated with obtaining the insurance.

Contractual indemnities

An indemnity provided in a contract is a promise by one party to compensate the other party for certain losses or damage. Contractual indemnities often expose contracting small businesses to liability for risks which they would otherwise not be liable and may have limited or no control over (in which case they have no ability manage or mitigate the risk).

¹⁴ Gow Gates. 2025. [Market Update: November 2025](#).

The widespread use of contractual indemnities in government and large private construction contracts is also contributing to insurance protection gaps for professionals and businesses where they are uninsured and exposed to greater liability exposure and financial risk.

Contractual indemnity clauses are added to contracts to transfer risk from one party to another party. They can allow one party to a contract to alter the common law and statutory rights of the other party. Insurers advise that the use and scope of contractual indemnity clauses have expanded over time.

These contracting practices also place an unfair financial risk and burden on the party subject to the contractual indemnity, as insurance policies typically exclude coverage for any liability that arises solely because of a contractual agreement an insured has entered.

At the national level, the *Commonwealth Procurement Rules* do seek to address this by outlining that entities best placed to manage risk on a project should not inappropriately transfer that risk to a supplier. However, even with this provision in place, the use of contractual indemnities that impose additional liability exposure on industry professionals and businesses remain commonplace, particularly in government department and agency service and infrastructure contracts.

The use of contractual indemnities is also inconsistent with the fundamental objective and purpose of insurance, namely, to provide a level of financial protection to the policyholder. As outlined, it is not the role or purpose of insurance to provide financial protection to third parties whether they be plaintiffs/claimants, or parties contracting with the insured policyholder.

To help address the increased liability exposure to small businesses that can be created by the use broad indemnity clauses and ensure the long-term availability of insurance for businesses wishing to participate in government work, the Insurance Council recommend reforms that restrict the use of contractual indemnities that do not reflect or align with prevailing common law or legislated legal liability setting and transfer liability and insurance risk to businesses and individuals. Procurement practices should cease using contractual arrangements that unreasonably transfer liability and insurance risk.

Contracting out of proportionate liability

Procurement contracts requiring parties to contract out of proportionate liability can also create situations where small business and not-for-profit organisations are exposed to increased liability and financial risk.

Proportionate liability laws relating to financial loss and property damage claims (excluding personal injury claims) were introduced across each jurisdiction in Australia between 2002 and 2004.¹⁵

Proportionate liability ensures a party is only liable in damages for the proportion of the loss/damage caused by that party. These laws were introduced to address insurance affordability problems and the unfairness of an individual, business or organisation being held legally liable for the whole amount of legal judgment when there were other parties also responsible for the loss or damage.

For example, in a civil claim involving defects identified in a building, where multiple parties (e.g. an engineer, architect, builder) are all found to have caused the defects, each will only be responsible to pay for compensation in the proportion to which they have caused/contributed to the defects and subsequent loss.

The proportionate liability regime replaced the common law rules of joint, several and joint and several liability with a system which requires liability for the loss to be apportioned between all the concurrent wrongdoers according to their respective responsibility for the loss. Each concurrent wrongdoer's liability is then limited to the amount of loss attributable to it.

The proportionate liability regime prevents a plaintiff/claimant from only pursuing the negligent party with the “deepest pockets” who, under the former joint and several liability regimes, would have to pay

¹⁵ Informed by Planned Cover. 2018. [Understanding Proportionate Liability](#).

for the entire claim/compensation award regardless of whether there were other parties who also caused and contributed to the claimant's loss.

These proportionate laws play an important role in helping maintain insurance affordability and availability as they provide insurers with a level of certainty and clarity that their insureds will be only be legally liable for the claims to the extent they have caused the loss and damage, and avoids the situation where an insurer must pay for damage and loss caused by other parties, thereby reducing the insurance underwriting risk.

When a contracting party is required to sign contracts agreeing not to be subject to proportionate liability, they will be left exposed to the liabilities of other negligent parties for which they are likely to be uninsured.

Queensland is currently the only jurisdiction with legislation that explicitly prohibits contracting out of proportionate liability.¹⁶

To address these issues the Insurance Council recommends that Commonwealth, State and Territory governments all reform legislation to prevent contracting out of proportionate liability for professional service contracts.

The role of insurance and Compensation Scheme of Last Resort

The Insurance Council notes the recently announced Treasury consultation seeking feedback on the on the current operation of professional indemnity insurance and opportunities to enhance the effectiveness of professional indemnity insurance in the context of the Compensation Scheme of Last Resort (CSLR).

The Insurance Council will be providing a separate submission to that consultation. Nonetheless we wish to reiterate the purpose of insurance is to provide financial protection to the policyholder, as opposed to providing a source of financial protection or compensation to third parties, and is not designed to serve as a financial safety net for consumers who have suffered financial loss.

We also wish to highlight that most claims against financial planners and advisors that are entering the CSLR involve conduct for which professional indemnity insurance does not provide cover (e.g. systemic prudential failures, deliberate or fraudulent acts, and claims for known but undisclosed circumstances).

The Insurance Council is of the strong view that the most effective way of relieving financial pressure on the CSLR is to undertake critical reform of the scheme itself, and to review regulatory settings to significantly reduce the risk of Australian consumers suffering financial losses arising from the conduct of financial service providers. This would help to reduce claims on the last-resort scheme, as well as reduce insurance underwriting risk and the cost of insurance for financial service providers.

We trust this information is useful for the Committee. If you have any queries please contact Tom Lunn, Director Insurance Lines at tlunn@insurancecouncil.com.au or 0418 251 326.

Yours sincerely,



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Executive Director and CEO

¹⁶ *Civil Liability Act 2003* (QLD).