Professional Indemnity and Directors & Officers

All signs point to a soft market for professional indemnity insurance, which is good news for consumers who have experienced some large increases over the past decade. We're seeing new capacity entering the market, particularly from overseas.

Despite the softening market, news is still pretty good for insurers, too. Reserve releases have boosted profits, and loss ratios have tended to sit in the 50s, which gives plenty of space for expenses and margins.

As always, a true understanding of professional indemnity insurance requires being across the stories for individual occupations and sectors. I'll flag four things that caught our eye in recent times:

First, for directors and officers, there were a couple of court findings that swing the pendulum a bit towards insurers and the companies they insure. The AUSTRAC v CBA class action was dismissed at the Full Court, pointing to the challenges of establishing causation and loss. And in the Lendlease Corporation Limited v Pallas case, the high court deemed there was an ability to order a soft class closure, which potentially reduces some of the open-ended risks of class actions.

Second, the scrutiny of financial advisors continues. There have been some high-profile collapses, with First Guardian adding to Shield Master Fund and Australian Fiduciaries. This is on top of the Senate inquiry into Dixon Advisory's collapse. Much of the debate is around the overall level of regulation and compliance that surrounds financial advice. Some submissions to the inquiry point out the relatively poor oversight of PI holdings by licensed financial advisors, while others question whether PI is doing enough to protect consumers before having to fall back on the Compensation Scheme of Last Resort. Given the large drop in financial advisors over the past five years, there's still concern that such moves would need to be balanced with considerations for the profession's sustainability.

The third thing that's caught our eye is that the NSW government has denied a request from ABC Insurance to enter the market for solicitor professional indemnity insurance, which is currently served by a sole provider in the state. This suggests a low appetite for competition in markets that are operating stably.

Fourth and finally, Australian organisations are starting to talk more about how AI can impact indemnity insurance. There's a general recognition that improper use of generative AI tools creates risks (e.g. introducing errors in lawyer briefs). Insurers have not yet introduced specific exclusions for such cases (and face some competitive pressure not to do so), but we expect this to be a potentially active space in coming years. Certainly, there will be fewer policies in the future that are silent on their treatment of AI.

Looking ahead, the softening market will likely continue to depress prices. This means insurers need to understand their industries very well, and also how risk varies within a sector. In doing so, they will be more likely to achieve that elusive balance between maintaining profit and premium volumes.