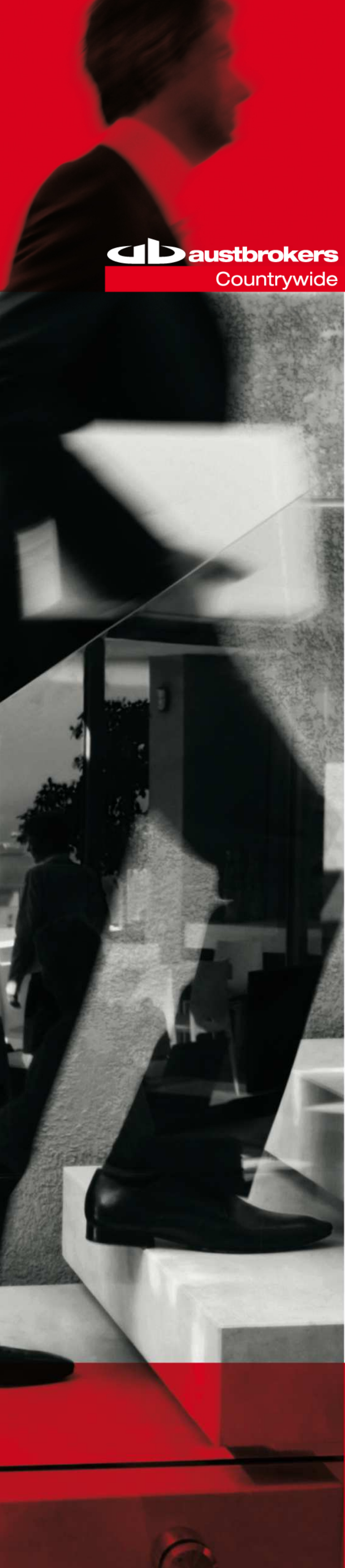

Understanding Run-Off Cover

After a wonderful working life Dirk Rigby decided to sell his consulting engineering firm and retire to the mountains, which he loved. Within the contract for sale the new firm specifically excluded responsibility for past work performed prior to the sale of the business. Dirk had never had a Professional Indemnity claim against him in his 35 years in the industry and did not envisage that a claim might arise against him after he ceased his business. Although his Insurance broker provided a quotation and discussed the coverage with him he elected not to pay for run-off cover.

Three years into retirement, after returning from a bush walk he checked the mailbox and opened a writ against him. Five years earlier, Dirk's firm had been the consulting structural engineer on a project to convert a series of large warehouses to apartments. In order to create two levels within the building reinforced concrete with a banded first floor slab and precast concrete walls were used. Unfortunately, cracking had appeared in the concrete between the floors and water was leaking from upstairs to downstairs. Both the architects and his firm were accused of a design error and rectification work was to cost $220,000. Dirk was shaken to the core and reviewed his contract of sale again and spoke to his previous broker, but without current cover at the time of the claim against him Dirk would need to appoint his own solicitors and pay for his defence and any compensation awarded against him. Dirk was extremely concerned about the impact to his finances and retirement enjoyment. He would be unable to utilise Insurer panels of specialist solicitors but would need to determine who would be best to represent him using his own resources.

This scenario demonstrates the importance of purchasing run-off cover as once Dirk's policy had lapsed no further claims could be made against it; this is because Professional Indemnity is a "Claims Made" type policy. *Coverage will respond to incidents arising on or after the policy retroactive date and which are reported during the term of the policy.* So with a "Claims Made" policy, there needs to be an active policy in place in order to make a claim. This differs from say a Public Liability insurance policy which is on an “Occurrence” type basis where *coverage would respond to incidents arising from the coverage period - regardless of when those claims are reported.*

When an active Professional Indemnity policy is no longer required, such as in Dirk’s case where he is retiring, your Insurance broker can arrange “run-off” cover.

Run-off cover operates the same as regular cover but has an end date of when cover is required to, which may be a period of 12 months, up to the statute of limitations or longer in some cases. Construction professionals should consider having ‘Run Off’ cover beyond six years (period varies in each state and depending on relevant area of law) because an injury or damage may occur or be discovered a long time after their involvement with the construction. Various exceptions can apply to a statute of limitations defence. Depending on the jurisdiction and nature of claim, an action may also be brought after the statute of limitations period if they relate to latent damage, minors, disability or personal injury.

When considering how long to purchase run-off cover for you should also check if you have signed any contracts stipulating that Professional Indemnity Insurance needs to be maintained x years after the contract or if particular legislation or association requirement affects your industry. Of course Commercial considerations and the cost of run-off cover will also affect the length cover is purchased for.

As long as “run-off” cover is in place, it will cover you for the timeframe in question. When a policy is in “run-off” mode cover is only applicable for claims for past work and will not apply if you take up work again. Essentially it is retirement cover; therefore if you are looking to retire / cease business let your broker know so that they can arrange appropriate cover. Depending on timing this may occur mid-way through the policy period or at the end of the period. A broker may need a re-signed proposal from you together with your date of run-off, i.e. cessation of the business and length run-off cover is required. They will then arrange the run-off endorsement on your policy. If you only take run-off cover for 12 months initially as opposed to a multiple year run-off you can request that this is extended for a further period prior to expiry date.

Further, where possible you should ensure that ‘run-off” cover is written with unlimited retroactive cover (or at least back to the start of operation of the business) so that all unknown acts, errors, omissions, mistakes made by a professional throughout your working years are covered. Limiting the retroactive period on a ‘Run Off’ policy severely limits the effectiveness the cover provides. This retroactive date is most likely to be the same as on your regular Professional Indemnity policy.

If your business is currently inactive or you are having a quiet patch without contracts, but if you do intend to pick up new contracts it would be preferable to renew the policy without the run-off endorsement due to the claims made nature of the policy.

If however you have enacted run-off cover believing that you are retiring permanently at the time, but then return to work some time later, insurers will remove the run-off endorsement, returning the policy to regular cover again, however insurers may endorse the policy to exclude claims that emanate from work between the two dates.

Run-off cover is an important risk management tool to utilise upon cessation of your business. It is better to arrange run-off cover at the outset, than have a scenario like Dirk's where a matter unexpectedly arises during retirement causing unnecessary stress.

This advice and comments are provided in the capacity as your insurance broker and should not be construed as legal advice. Separate legal advice relating to the interpretation and implication of this article for your individual contracts should be obtained.

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