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 **NORTON ROSE FULBRIGHT**

# **From Infancy to Maturity: Financial Lines Insurance in Australia, the past, present and future**

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“

Don't worry about the world coming to an end today. It is already tomorrow in Australia.

-- Charles M. Schulz

”



# Types of financial lines insurance in Australia



Professional Indemnity



Directors' and Officers'



Cyber



Warranty and Indemnity



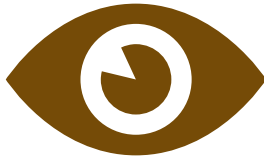
Employment Practices Liability



Kidnap/Ransom/Extortion



Prospectus Liability

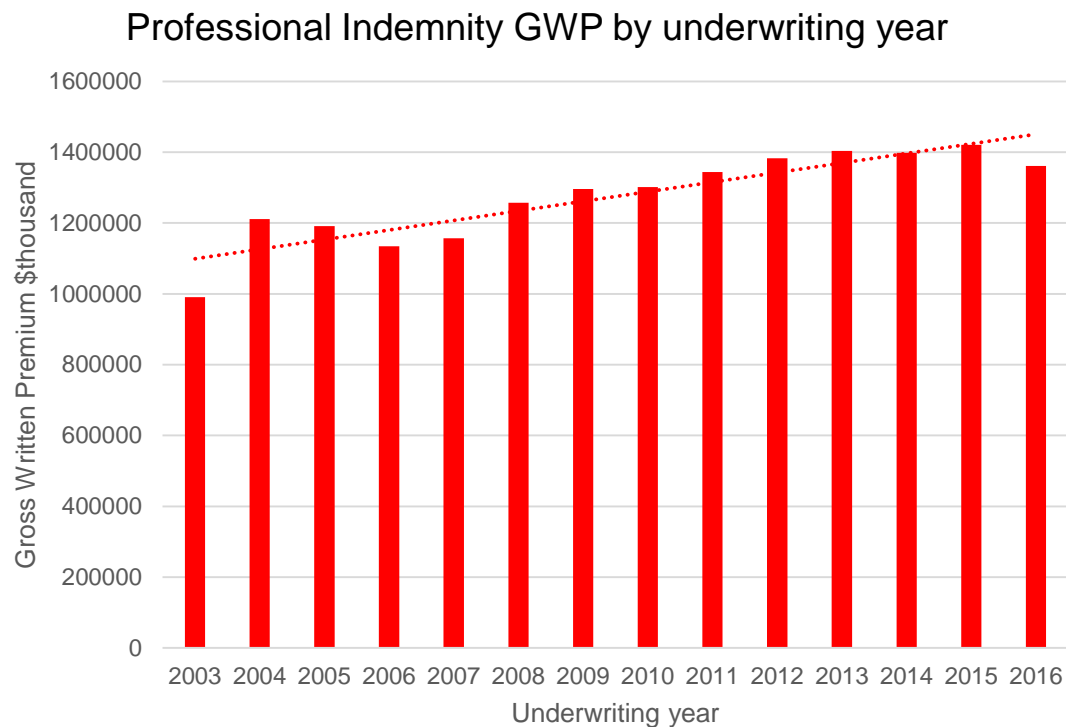


Bankers' Bond and Computer Crime



Management Liability - Bundled Cover

## Size and health of the Australian financial lines market



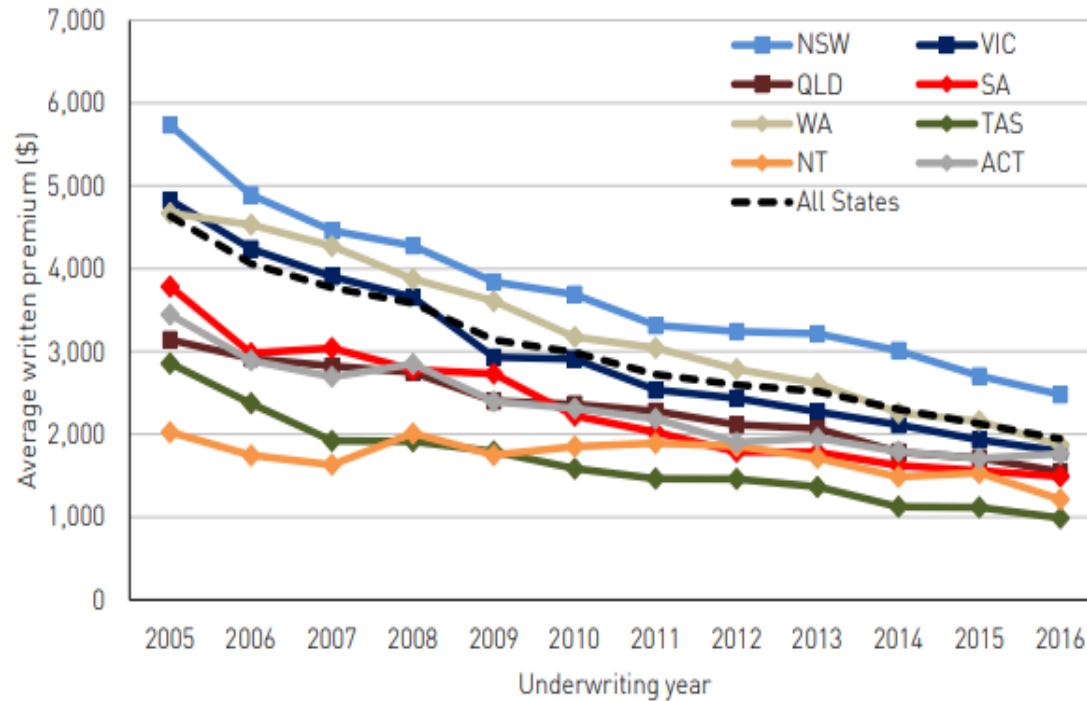
**\$45.6 bn (~USD 32.45 bn)**  
GWP across all lines in Australia  
year ending 30 June 2018

**\$5.7 bn (~USD 4.06bn)**  
Commercial Lines

Data sourced from National Claims and Policy Database, APRA.

## Size and health of the Australian financial lines market

### Professional indemnity



- Aggregate Gross Written Premium increasing
- Average Written Premium decreasing

National Claims and Policy Database, APRA.



An underwater photograph of a vibrant coral reef. In the foreground, there are large, rounded, light-colored coral structures. The reef extends into the distance, showing various types of coral in shades of green, yellow, and white. A diver is visible in the upper left, swimming towards the right. The water is clear and blue, with sunlight filtering through from above.

“

The Antipodes were drifting, though  
where they were drifting no one  
knew...

-- Geoffrey Blainey

”



# Statutory Intervention



## *Insurance Contracts Act 1984 (Cth)*

- Section 54 and Claims Made policies
- *FAI General Insurance Co Limited v Australian Hospital Care Pty Limited* [2001] HCA 38
- Section 40(3) vs deeming clauses
- *Gosford City Council v GIO General Limited* [2003] NSWCA 34



## *Civil Liability (Third Party Claims Against Insurers) Act 2017 (NSW)*

- Previously s 6 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW)
- *Chubb v Moore* [2013] NSWCA 212
- *Rushleigh Services Pty Ltd v Forge Group Limited (In Liquidation) (Receivers and Managers Appointed)* [2018] FCA 26

## Statutorily required insurance



- Generally not compulsory to hold financial lines insurances
- Certain professions as part of professional body's requirements
- AFSL and ACL holders



# Securities Class Actions

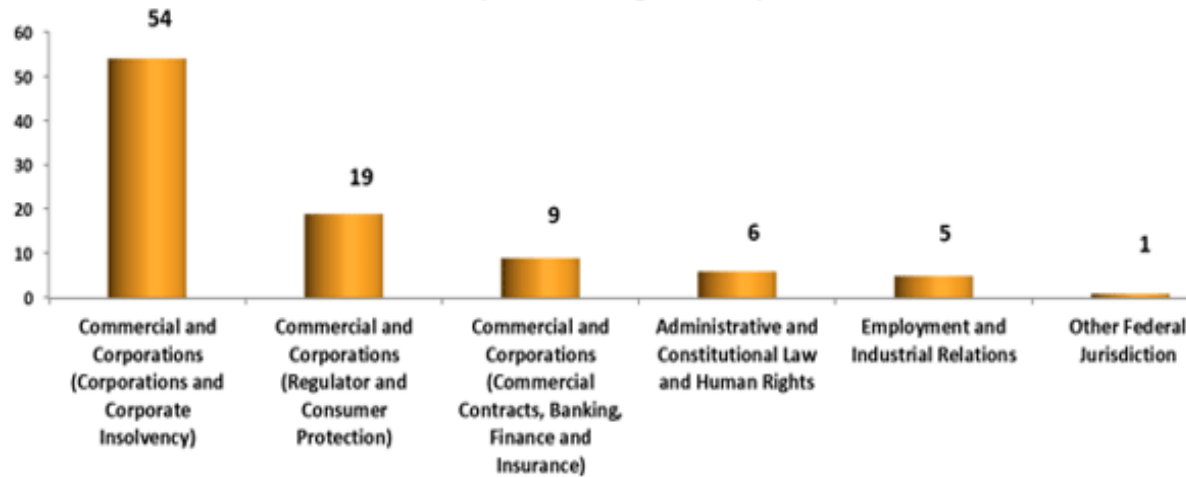


## Key issues

- Royal Commission into Misconduct in the Banking, Superannuation and Financial Services
- Unprofitability of Side C, increasing retentions, and reduced capacity in Australian market
- Class action landscape and Australian Law Reform Commission report due December 2018

## Securities Class Actions

Current Class Actions in the Federal Court - by NPA  
(as at 15 August 2018)



Source: Federal Court of Australia

**353% increase**

D&O insurance premiums for ASX200 between 2011 to 2018

**100%**

Under-priced according to Marsh

**\$1.86 m (~USD 1.32 m)**

Average premium for ASX200

Source: Marsh



# Cyber Insurance and Privacy Legislation



## 305

Notifications to the Office of the Australian Information Commissioner since February 2018 when NDB scheme commenced

## Key issues

- Standalone cyber or management liability?
- Privacy related class actions

## Financial Lines Market Distribution

APRA licence required to carry on an insurance business in Australia. In limited circumstances, a foreign insurer may insure a risk without such a licence:



Atypical risks



Risks that cannot be reasonably placed in Australia



Insurance contracts required under laws of foreign country



High value insured

- \$200 million revenue
- value of gross assets is at least \$200 million
- number of employees is at least 500

## Intermediaries

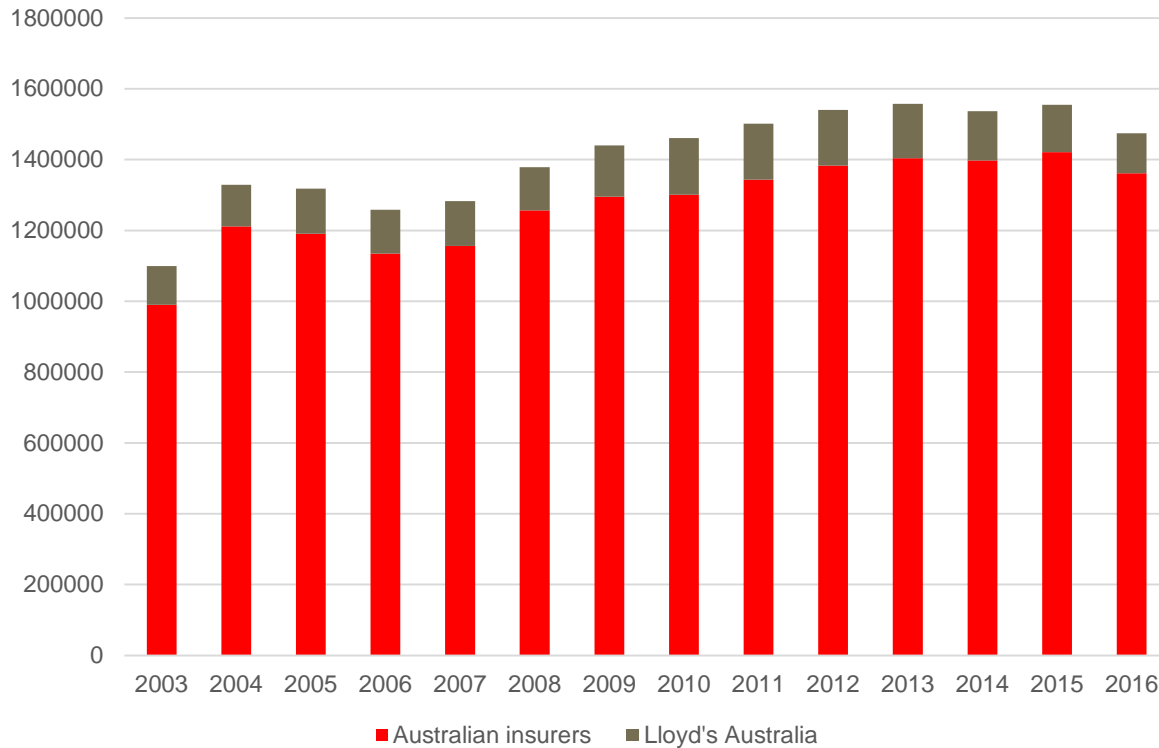


- Brokers
- Underwriting agencies



# Lloyd's business in Australia

## Professional Indemnity GWP



No APRA  
authorisation  
required for Lloyd's  
underwriters

## Things to watch...what's next?



- Whether premium alignment occurs in the D&O market
- Impact of Royal Commission
- Australian Law Reform Commission's report into the class actions landscape
- Cyber



# Questions

