

WHY D&O PREMIUMS have been rising

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Marcus Thomas, senior vice-president professional and financial risk

The rapidly rising cost of Directors' and Officers' (D&O) Insurance in Australia can be explained by two numbers – one very large and one not large enough.

Marcus Thomas, senior vice-president in professional and financial risks at Liberty International Underwriters, points out a single shareholder securities class action claim can cost a company more than \$100 million — and the average defence cost is around \$10m and increasing. The total amount of claims settled and in the process of litigation or pre-litigation is in excess of \$1 billion, with frequency increasing.

At the same time, the total premium pool for all Australian D&O insurance (including public listed, government and private companies) is around \$300m per annum, which must pay for shareholder securities class actions and all other types of D&O claims.

"There needs to be a bigger pool to pay for the large shareholder securities class actions — those that are currently out there and future ones," Thomas says.

The price of cover in Australia, including "entity" cover for shareholder class actions, has risen a minimum of 25–50 per cent over the past year, in some cases by 200–300 per cent, he adds.

The roles of directors are becoming increasingly complex – with so many responsibilities it's important to have suitable D&O insurance

A single shareholder securities class actions claim can cost more than \$100m

"Directors of publicly listed companies and those with securities entity cover are bearing the brunt of the increases due to a decade of increasingly frequent and severe securities class actions."

With limits up to US\$25m we're an attractive lead insurer for larger and publicly listed companies and government bodies

Shareholder class actions against companies and directors have risen to the point where Australia is considered the most active jurisdiction outside of the US, but without the class action certification process that exists in that country.

D&O policies typically contain three main clauses: side A, pure directors cover; side B, which reimburses the company for money spent indemnifying directors and officers; and side C, securities entity cover, which pays the liability of the company itself relating to securities markets breaches.

Thomas warns that most D&O policies aggregate the insured limit across the three types of cover. This means there's a risk that a securities class action could take out the whole cover via a claim

against the company, leaving directors with nothing to cover their liability in relation to the same claim or other claims.

"There are products you can buy that will sit over and above, and effectively give those directors their own block of limit," he says.

Today, Liberty insures more than 500 boards across Australia. With capacity of up to \$25m, Liberty is a key partner in D&O for publicly listed companies, large private companies and government entities.

Losses are large in this class of insurance, especially with securities class actions now embedded in the Australian legal landscape