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Workers Comp in QLD

CHANGES ON THE WAY

With the recent election of the Labor government in Queensland, the repeal of the impairment threshold for access to common law claims arising out of workplace injuries seems imminent.

Changes to the WorkCover scheme, introduced in October 2013, meant that workers assessed with 5% impairment or less do not have access to claims for common law damages against their employers. Consequently, injured workers who do not meet the threshold are more likely to make direct claims against other parties, such as host employers, occupiers and contractors. Those parties in turn will inevitably seek indemnity and contribution from employers, where they have a right to sue under the contractual agreement between the parties.

The introduction of the threshold was intended to reduce common law claims for employers, thereby resulting in reduced workers' compensation premiums. However, in practice, it has caused problems for employers in other areas.

Notably, in many instances, employers may be uninsured for claims by third parties because other insurance arrangements that employers have in place, such as public liability policies, may not respond to these claims.

The repeal of the impairment threshold will give back to workers the right to access common law damages against employers. This will likely reduce issues for employers regarding claims made under contract by third parties, and transfer the exposure back to WorkCover Queensland.

While the repeal of the threshold appears to be imminent, it remains to be seen whether the Labor government can or will remove the threshold retrospectively.

It is important for employers to ensure they understand their rights and obligations under the workers' compensation regime, and are aware of how contractual agreements with third parties may impact on these rights and obligations, and what additional insurance arrangements may be required to adequately protect themselves against third party claims. ■



Closing your business?

DON'T CANCEL YOUR COVER

The business has closed, it's no longer trading, no more parts or products being manufactured or imported. No more installations or maintenance. No goods for sale.

So, time for retirement or a change in direction. We just need to cancel the insurance.

Well, not exactly. There is an element of insurance risk for a business once they have ceased trading. For a tradesman it would be the work they have installed and maintained which may cause an incident at a later date. An example would be a switchboard that causes a fire due to faulty wiring. The loss may cause subsequent damage to a

building or worst case, death or injury. The time of loss is determined to be the occurrence date, therefore cover may have existed when the switchboard was installed but it should have still been in force when the incident occurred.

For the manufacturer of goods, their products may be discontinued but the

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element of risk remains if they cause damage or injury at a later date. So how long do you maintain run off cover?

Ideally, up to seven years is the industry standard. But not all businesses need cover for that long. For example, a restaurant would know within days or weeks of potential claims rather than years. Various States have their own legislation requirements and these would need to be addressed to clarify your situation.

Examples of run off cover for classes of insurance would include Public and Products Liability / Professional Indemnity / Directors & Officers Liability (Management Liability). Advice from your

broker should be sought in these cases as to which basis of wording applies and any interruption to cover should be avoided so a claim won't be jeopardised.

When a business is sold, the risk of potential future claims may be transferred to the new owner but this can't be assumed, it would be negotiated and details of the sale would need to be reviewed with legal opinion.

The good news regarding run off cover is that it does get cheaper year after year due to decreasing exposure, subject to no claims activity. You can also negotiate a number of years up front with an insurer. This is suggested if a sale of the business occurs or retirement beckons.

Be sure to get both legal and insurance advice for peace of mind. You can then close the door with confidence. ■



Underinsurance

WEATHER EVENTS DEMAND A CLOSER LOOK

Following on from the previous article in the last edition of Brokerwise, we continue to focus on the impact of Co-Insurance or "Underinsurance" as it is more commonly known.

The importance of considering and selecting appropriate and adequate Insurance Policy Limits or sub limits of liability are paramount and should always take into account any possible 'Underinsurance' potential impact.

The latest weather perils that have impacted Queensland and Australia generally over the past few months highlight the need to look at various points that require consideration. These are:

1. Current relevant Laws
2. Replacement Material Costs
3. Removal of Debris.

Point 1: There have now been changes to both State and Federal Laws regarding the required 'wind rating' of roller



doors used in commercial buildings. Following the various cyclones and storms, insured clients discovered that because they had 'old' roller doors that didn't comply with the new building laws, they didn't have an adequate sum insured to pay for replacement with new 'legally compliant' doors.

Point 2: Both local and imported building materials have risen in cost due to demand after the various weather events. As such, insured clients have experienced first hand the impact of not 'setting' an adequate Sum Insured only

to find that they were sometimes grossly underinsured, and as such, had claim payments and settlements considerably reduced. Consideration also needs to be given to both the a) extra time and b) extra costs related to imported materials.

Point 3: In this scenario, the Removal of Debris limit becomes applicable. As there are many buildings that still have varying degrees of asbestos sheeting or materials as part of their overall construction there is large cost associated with both the a) removal of debris (following an Insured loss) and b) the replacement of the damaged area. Further, there can be a 'flow on' effect where Increased Cost of Working Policy sub limits may also be required to be utilised following this kind of loss.

Your insurance broker can advise on policy coverage and adequate Limits of Liability required for your circumstances. Following your broker's advice will result in better outcomes during the claims process. ■



Pollution Liability Insurance

A MUST-HAVE FOR MANY BUSINESSES

Many business owners are unaware their standard business package insurance will not cover pollution remediation. It's likely that contractors and other professionals working on major infrastructure and construction projects will have appropriate cover, but the cover is not just for heavy industry. Businesses with high risk include dry cleaners and hair salons due to chemicals they store and use. Service stations are vulnerable because of the potential leakage from underground storage tanks and pipes corroding over time.

Recently there was a \$300,000 clean-up claim from a contractor that had serviced pipes at a petrol station. An explosion at a sewerage plant, some kilometres away, was traced back to the service station, and it was discovered that pollutants had flowed into the water table.

Pollution incidents are not confined to heavy industrial sites, they can also be caused by small businesses or individuals such as contractors or subcontractors - for example, due to a failure to install proper sediment controls while undertaking earthworks.

Independent contractors need to protect themselves against any claims of damage caused by the work they do or have done. One type of cover that may be suitable is pollution liability insurance. This cover protects an entity against liability from damage caused by hazardous waste materials. The reality is that environmental clean-up projects can cost millions of dollars.

It's too late to buy cover if you cause an incident and you should be aware that pollution liability is not covered under a general liability policy. Some policies may provide coverage only for sudden and accidental events, but exclude gradual pollution events and the cover may specifically exclude clean-up costs.

Mould, Legionella, noise and odour are also considered pollutions and may be covered by an environmental insurance policy.

If you think you may have a risk of hazardous waste exposure in your business operations, it is a good idea to consult with your insurance broker about the need for pollution liability insurance. ■



Tougher transport laws

PENALTIES TO HIT HARDER

Recent changes to transport laws now hold more individuals and companies in the transport chain accountable for breaches.

The Heavy Vehicle National Law (HVNL) commenced in 2014 and applies in all States of Australia except Western Australia. The legislation applies to all vehicles that have a GVM (Gross Vehicle Mass) or ATM (Aggregate Trailer Mass) of more than 4.5 tonnes.

The HVNL makes complying with transport laws the responsibility of everyone in the transport chain, not just drivers and operators. This approach recognises that actions, inactions and demands made by off-the-road parties play a role in road safety.

Under the chain of responsibility provisions of the HVNL, consignors, packers, loaders, schedulers and consignees must all take reasonable steps to prevent breaches of laws in relation to mass, dimension, loading, speed and fatigue. As well, an 'executive officer' of any party in the chain can be responsible for a breach of the law by another party if they knowingly authorised or permitted the conduct or if they knew or ought reasonably to have known that there was a substantial risk that an offence would be committed.

The potential penalties under the legislation are significant. For example, the maximum penalty for a single offence involving a critical breach of the fatigue regulations is \$15,000 for an individual and a five times

multiplier (making the penalty \$75,000) can be applied if the offender is a corporation. The offence of tampering with a speed limiter attracts a penalty of \$10,000. Similar fines apply for offences such as severe overloading or speeding. The law also provides for heavy penalties to be imposed on parties who enter into contracts that encourage or provide an incentive for any party in the chain of responsibility to speed.

In addition to fines and penalties, the legislation gives the courts power to impose penalties that reflect the commercial benefits that an offender has derived from offences. Persistent offenders can also be subject to intervention orders and prohibition orders banning them from being involved with the transport industry for up to one year. ■

Good staff

HOW DO YOU KEEP THEM?

The common misconception is that all you have to do is pay well. Many studies have found that this is simply not the case... in fact, it generally comes in around third or fourth on the employee list of 'job satisfaction' priorities. Paying a fair and reasonable salary is expected but of high priority is the need to provide a great company culture. What that really means is provide a great company atmosphere. Make it a happy place to be and strive to create a culture where everyone gets along and helps fellow employees – cultivate real team spirit. Also have a company-wide rule – 'always do the right thing by our clients'. Maintain a positive ethos at all levels of the business and recognise the value of good humour.

Doing as much as you can to create a great atmosphere at work goes a long way to retaining quality staff.

On the relationship building and work side of things, here are more suggestions to help develop the desired culture in your business:

Get to know your staff: Although you need to be mindful of privacy considerations, try to find out what drives them.... different people have different triggers and finding out what they are will help in your relationship.

Develop their skills: Training is a critical factor, as it not only provides benefits for your business but also identifies a career path for them and can help develop their aspirations.

Engage them in the business: If people feel connected with the values and direction of the business, they will be comfortable putting forward their views. By having the opportunity to 'have a say', they see that their work and they themselves are important to the business. It takes appreciated, valued employees to ensure long-term success for any business.

Provide feedback: Not just the traditional annual Performance Review and measuring of KPI's... it's an ongoing position of providing feedback; positive and appreciative feedback when it's due and swift course correction in areas that need improvement.

Remember, times change, so don't expect to keep good staff forever. It's unlikely that you will be able to offer the flow of opportunities that the really good ones will be seeking. But they will contribute their energy and passion while working with you, provided you fulfill your side of the relationship. ■

Be sure. Before you insure!

Ask your CQIB broker about...

Commercial and Retail Insurance

- Business Property
- Business Interruption incl Loss of Rent
- Liability
- Burglary and Money
- Glass Breakage
- Machinery Breakdown
- Computer
- Goods in Transit
- Tax Audit
- Motor
- Contract Works
- Commercial Strata

Liability

- Public and Products Liability
- Professional Indemnity
- Management Liability
- Directors and Officers
- Employment Practices Liability
- Statutory Liability
- Cyber Risk

Private and Domestic Insurance

- Home and Contents
- Car, Caravan, Boat and Trailer
- Travel
- Residential Strata

Life, Disability and Partnership

- Life / Accident and Illness
- Term Life
- Long Term Disability / Income Protection
- Key Man
- Superannuation

The CQIB represents over 60 Queensland firms employing nearly 400 staff and placing in excess of \$500,000,000 in annual premiums. The CQIB charter is to maintain the level of professionalism of its members by the sharing of knowledge, information and ideas.



For more information visit
www.cqib.org.au

The articles in Brokerwise are provided as information only. They are not general or insurance broking or legal advice. It is important that you seek advice relevant to your particular circumstance.

Wise words

"Don't let your studies interfere with your education."

— Henry Rutgers

"Good judgement comes from experience, and experience comes from bad judgement."

— Fred Brookes

"A smooth sea never made a skillful mariner."

— English proverb

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