



Brokerwise

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Are They Really Contractors?

OR ARE THEY EMPLOYEES?

A recent court case between *Ace Insurance & Trifunovski* has thrown the light on the employment status of independent contractors and in fact whether or not they are employees. In the case, five insurance agents engaged as Independent Contractors claimed they were entitled to annual leave and long service leave following the termination of their engagement.

In October 2011, Justice Perram of the Federal Court decided the Agents were in fact employees due to a combination of factors that included the control the company had over how the work was

done and that they accrued no goodwill in the business they were transacting.

The case follows another recent case in which the Federal Court decided that nearly 2000 interpreters and translators engaged as contractors were in fact employees and were found to have missed five years' worth of super contributions. Employment lawyers are advising businesses to review contracting arrangements to check exposure to liability and are warning clients who may have hundreds of contractors on their books to consider employing staff in borderline cases.

The tax office, which can in theory go

back an unlimited period to collect the super for employees, has announced that targeting sham contracting arrangements will be a key focus for 2012. ■



100 Years On...

ANOTHER 'NIGHT TO REMEMBER'

A broker colleague has family members who enjoyed the delights of a Mediterranean cruise a year or so ago. They recalled that they were encouraged, whilst on board, to carry only the ship's charge card.



As they watched, with mixed emotions, the January 2012 news broadcasts of the rescued passengers standing on shore adjacent to the stricken Costa Concordia, they wondered at the usefulness of the ship's charge card to those shivering people.

Perhaps a cruise liner disaster on this scale is only a 'once in 100 years' event. But all travellers, whether going international or interstate, need to be prepared for trouble - whatever the mode of transport, wherever the destination.

Inconvenience and injury may not be avoidable but the financial repercussions of a nasty event can be soothed by having an appropriate level of travel insurance to suit your circumstances.

Comprehensive travel insurance is the ideal and is relatively inexpensive compared to the investment in the travel itself. It should

cover all medical expenses for injury or illness, as well as theft of your valuables and cancellations or interruptions to your flight plans, baggage damage and more. It also saves you the worry and financial burden if you have an accident or illness overseas where medical costs can be in the tens of thousands of dollars. Many families have been devastated financially in paying these costs.

Travel insurance is about helping you deal with the unexpected. So talk to us about your needs whether it is cover for a one-off trip or annual cover for regular travellers. An insurance broker can provide you with travel cover alternatives, unlike the travel agent who usually only offers one.

More information: Department of Foreign Affairs and Trade website –

www.dfat.gov.au ■

Insurance Premiums On The Rise

BUT IS THIS JUSTIFIED?

We are now beginning to see insurance premiums increasing across Australia and most insurance executives are predicting these are likely to keep rising. But with many households and businesses throughout Queensland struggling under the growing pressure of the rising costs for most services and products, is this additional impost for insurance protection justifiable?



Why are premiums rising?

Weather events

Weather-related events and other natural catastrophes occurring in Australia and other regions of the world during 2011 are having huge flow-on consequences for the insurance sector globally.

The storms that ravaged Melbourne, Perth

and Western Queensland caused damage worth about \$2.1 billion to the insurance industry. This has been the highest annual weather cost for the industry since 1999 when a hailstorm in Sydney took \$1.7 billion from insurance funds. Predictions based on detailed modelling by natural perils experts show there is likely to be a 15 per cent increase in the number of category four and five cyclones over the next 40 years and these would also hit the coast further south, potentially affecting population centres such as Brisbane, the Gold Coast and northern NSW.

Cost of Catastrophes in 2011

For Australia's population of about 22.8 million, general insurers are facing a bill of almost \$5 billion so far for natural catastrophes that affected the nation. That's a cost of almost \$220 for every Australian in addition to the normal level of claims experienced by insurers.

The Insurance Council of Australia detailed the cost of 2011 catastrophes as follows:

- Queensland floods - \$2.4 billion (58,463 claims)
- Cyclone Yasi - \$1.33 billion (72,203)
- Perth bushfires - \$35 million (410)
- Victorian floods - \$122 million (7,952)

- Victorian severe storms - \$412.3 million (49,396)
- Margaret River bushfires - \$52.3 million (392)
- Melbourne Christmas Day storms - \$550.7 million (77,174)

TOTAL

\$4.902 billion (265,990 claims)

The Role of Global Reinsurance

Reinsurance protects the insurance pool as a whole - it's effectively insurance for insurers. Insurance companies cannot expose shareholders to significant one-off losses so the support of reinsurance is vital.

The global reinsurance industry now perceives Australia to be a more 'risky' place. Regional events such as the Christchurch earthquakes, Thai floods and Japanese earthquake and tsunami had cost the world economy about \$US350 billion last year. This also affects our regional pricing. Insurance companies are increasing premiums to offset the sharp rise in the cost of reinsurance.

Most insurers had been absorbing much of the impact of these rising costs, but the situation has reached a stage where these significant cost increases are forcing insurers to review their pricing. ■

Workplace Health & Safety Changes

HARMONISATION AND NEW PENALTIES

Occupational health and safety laws in each Australian state and territory were reformed on 1 January 2012 to 'harmonise' occupational health and safety principles, obligations and procedures across Australia. This was achieved through the adoption of the Model Work Health and Safety (WHS) Act (model act) by the states and territories. Although the model act drew on existing workplace

health and safety laws, it changed the manner in which businesses, their employees and workplace representatives interacted to protect and promote health and safety in the workplace.

A person conducting a business or undertaking (PCBU) will have the primary duty of care under the model act to ensure, so far as is reasonably practicable, the health and safety of workers it engages or causes to be engaged.

Under the Act directors and officers have a positive duty to exercise due diligence to ensure that a PCBU complies with any duty or obligation. This is a change from and distinct from the situation existing under the previous legislation, Queensland Workplace Health and Safety Act 1995, where corporate officers were deemed to be liable for offences committed by their corporation unless they could show that they exercised proper diligence to ensure

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that the corporation complied with the WHS Act. The duty under the new Act applies whether or not there has been an incident and irrespective of whether the corporation is prosecuted, i.e. if a company which is subject to a routine audit is unable to produce evidence that it is meeting its due diligence obligations, a director from that company may be issued with an improvement notice or if that failure is serious or reckless, proceedings may commence against the director.

“Due diligence” is defined in the Act and means taking reasonable steps to:

- keep up-to-date knowledge of work health and safety matters; and
- gain an understanding of the nature of the operations of the business and hazards and risks associated with the operations; and
- have appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out; and

- have appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information; and
- have processes for complying with any duty or obligation of the person conducting the business or undertaking under this act.

There have also been significant increases in the penalties with the most serious category offences carrying maximum amounts of \$3 million for corporations or \$600,000 for individuals and even up to 5 years possible imprisonment. With these dramatic increases, it's vital that business owners and directors are familiar with their obligations and Queensland businesses will need to take a more proactive approach in administering their workplace health and safety obligations.

Many companies and directors have chosen to transfer this Workplace Health & Safety liability exposure to the insurance

market via the purchase of a Directors & Officers or a Management Liability policy, which may cover the cost of legal representation and the resultant fines from a prosecution. However, care needs to be taken with such coverage as within some of these policies dishonest, fraudulent or criminal acts may be excluded and in the event that a workplace health and safety offence runs as a criminal prosecution the policy may not respond. You should speak to your broker about the changes to the legislation and how your current insurance arrangements will respond. ■



Body Corporate Committees

...AND THE RISK OF UNDERINSURANCE

Being a member of a body corporate committee is one of the many voluntary community roles that do not receive the proper recognition for the hard work involved.

The role and operation of a body corporate committee can be daunting. The challenges of satisfying Owner and Occupier's needs, complying with legislative requirements, as well as ensuring the efficient and financial operation of the day to day running is, in effect, the running of a business.

It is important that the committee make informed decisions. As a committee member you may be required to make decisions on subjects in which you have

no experience. In these instances it is important to obtain professional advice to ensure you make the right decisions.

Many body corporate committees rely on Strata Managers to source insurance quotations from one or a limited number of insurers as part of their general role in assisting the committee with myriad secretarial, financial reporting and general administrative tasks.

Strata managers receive commissions from Insurers, however many strata managers have very limited insurance knowledge and by law are not authorised to provide any insurance advice..

To protect the interests of Owners and Occupiers, the wisest move would be to appoint a General Insurance Broker firm



to look after the insurance interests of the property. A general broker's services include professional insurance advice as required but in addition, they have a full understanding of the ramifications of Policy Wordings and Sum Insured calculations, as well as access to a wider number of insurers, specialised risk management services and so on to enable the committee make informed decisions that ensure the successful running of their property enterprise. ■

If you are on a body corporate committee, or about to be, we recommend the following Government website that offers a host of additional information:

<http://www.justice.qld.gov.au/justice-services/body-corporate-and-community-management>

Fair Work Act

REVIEW ON THE WAY

In 2009 the Government introduced the Fair Work Act 2009. This legislation repealed and replaced a number of the previous liberal Government's notorious "Work Choices" laws. That legislation has now been in force for over two years, and just before Christmas 2011 the Government announced a review into the new legislation. This review is to be conducted early this year by a three member panel consisting of a Federal Court Judge and former Vice President of the Australian Industrial Relations Commission, a Professor from the University of Sydney and an economist and member of the Reserve Bank Board.

This review follows a commitment made by the Government prior to the introduction of the new Act to undertake a post-implementation review within two years of the full implementation of the legislation.

In recent times there has been increased pressure from employer groups for changes to be made to the Act, in particular after the Qantas dispute late last year.

There were a number of significant bargaining disputes in 2011, with the most notable of course being the Qantas dispute, and as a result the Fair Work Act framework for enterprise bargaining and protected industrial action will be key areas of focus in the review.

An area of great concern to many employers is the easier access to unfair dismissal claims provided by the Fair Work Act in contrast to the previous Government's industrial relations laws. Significantly, under Work Choices, no claim for unfair dismissal could be made if the employer had 100 employees or less. That protection for small business was removed by the Fair Work Act.

Unfair dismissal claims have risen by 10% per year since the Fair Work Act was introduced. This is a bone of contention for many employers. This is an area that will no doubt be looked at by the review panel, but at this stage the general perception of interested parties is that there will be few changes of any great significance to the fair work system after the review. We note that since the legislation was introduced the Government has consistently resisted employer and union groups lobbying for reforms to the legislation.

Of course it is yet to be seen what reforms will be made should as many expect we see a change of government at the next election. Whilst the Coalition has consistently denied that they would reintroduce the unpopular Work Choices, one would expect that they would definitely make some reforms upon their return to government. ■

Be sure. Before you insure!

Ask your Council of Queensland Insurance Broker about...

Commercial and Retail Insurance

- Business Property
- Business Interruption and Loss of Rent
- Liability, Money, Glass Breakage
- Burglary
- Machinery Breakdown
- Computer
- Goods in Transit
- Contractors Risk
- Motor
- Tax Audit

Liability

- Public Liability
- Products Liability
- Professional Indemnity
- Directors and Officers
- Employment Practices Liability

Private and Domestic Insurance

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

Income Protection Insurance

- Long Term Disability
- Sickness and Accident

Life, Superannuation, Partnership

- Mortgage Protection
- Key Man
- Term Life
- 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 ON "CHANGE"

All great changes are preceded by chaos.

— Deepak Chopra

"Nothing diminishes anxiety faster than action."

— Walter Anderson

"One day your life will flash before your eyes. Make sure it's worth watching."

— Gerard Way

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