



Brokerwise

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Business Name Registration

CHANGES TO LEGISLATION

The Commonwealth parliament has recently passed the Business Names Registration Act 2011. This legislation has been passed to replace the current state and territory business names registration systems. It is to commence on 28 May 2012, subject to the passage of complementary legislation in Western Australia and the Northern Territory.

The Act will make it mandatory for a person carrying on a business in Australia under a business name to register the business name with ASIC.

Under the new system, ASIC will be responsible for registering, renewing and administering business names for

all Australian businesses. ASIC will maintain the Business Names Register and this will be available online.

Business names registered with a state or territory as of 28 May 2012 will automatically be transferred to the Business Names Register.

If you are currently carrying on business under an existing business name which is registered, but that registration expires prior to 28 May 2012, you are still required to renew the business name registration and pay the necessary fee to the state or territory in which it is registered.

After 28 May 2012 new business names will need to be registered with ASIC. In

order to register a business name, the business will need to have an ABN.

Registration of a business name does not provide the registered business name owner with property rights or any exclusive use to that name. Such rights still need to be secured by registration of the name as a trademark.

Once the new system is in place ASIC will provide notification in advance of a business name registration expiring. However, until that time, all businesses with registered business names should ensure that they don't inadvertently lapse. ■

Tax Audit

A CLEAR AND PRESENT DANGER

The month of June means the end of the Financial Year and it can be a particularly taxing time, even more so if your business is one of the ever-increasing number of business' selected by the ATO to undergo a Tax Audit. These audits are not simply confined to Income Tax Audits; as one CQIB member recently stated, "three of my clients have had GST audits performed on them in the last 3 weeks!"

This demonstrates an obvious increase in audit activity expected from the \$337 million dollars allocated to the ATO in the 2010-11 Federal Budget to be spent over four years in eradicating GST non-compliance. Other forms of audits can be Fringe Benefits Tax, Capital Gains Tax, Wholesale and Sales Tax, Payroll Tax and/

or Superannuation Contributions Tax.

The cost of complying with these audits can be a significant burden on your business, regardless of size. Enter the need for Tax Audit Insurance.

Sometimes referred to as Tax Probe, or Tax Investigations cover, this provides protection for the professional fees incurred with an audit of your business' financial or tax affairs by the ATO or any other Commonwealth, State or Territory Department empowered to do so. The cover may include fees paid to tax agents, advisors or accountants who are not your employees for the preparation of evidence to be submitted to the auditor. The cover may also include overtime paid to your employees to prepare evidence for your advisor, and/or travel expenses incurred by you to attend an audit.

In some instances, Tax Audit covers can be offered within a Business Package Policy, a Management Liability or Business Practices Policy or in the form of a Tax Probe Policy only.

Speak to your Broker now to see how this inexpensive cover can be tailored to your needs and provide protection to your business. ■



Contractual Liability

TRAPS FOR THE UNWARY

Queensland is in the middle of a mining and infrastructure boom and small to medium sized contractors are reaping the benefits of this by contracting to provide their services to construct works and/or supply goods.

If you are a contractor presented with a contract to sign, we suggest you contact your insurance broker as soon as possible or immediately if you have already signed.

Usually the contract will contain indemnity and insurance clauses and these should be checked carefully by your broker and your lawyer before you sign it.

Indemnity clauses can invalidate your insurance or adversely affect your ability to claim on the liability insurance (e.g. public liability, professional indemnity and management liability). Under these

policies, the insurer agrees to insure you for your legal liability (e.g. negligence) in the absence of a contract, guarantee, warranty or agreement. Therefore, liability you assume under contract can trigger the 'contractual liability' exclusion.

Many mining and infrastructure projects ask for 'knock for knock' indemnity and release clauses. 'Knock for knock' is where every contractor on a project is required to provide mutual releases and hold harmless clauses to everyone else working at the project - regardless of who actually caused the injury or damage. If you agree to the clauses, you could be 'self-insuring' your workers and your equipment - without realising it.

Also in Queensland, 'knock for knock' arrangements will often breach the proportionate liability legislation (Civil

Liability Act 2003 (Qld)) because they result in you 'contracting out' of the laws. Proportionate liability is where you are only liable for the share of an economic loss or property damage claim and your share is determined according to the percentage or proportion that fairly represents the extent to which you caused or contributed to the loss or damage. If the indemnity clauses in your contract are re-drafted to reflect proportionate liability, then the contractual liability exclusion will not be triggered.

Your commercial lawyer may not be familiar with the issues relating to indemnity clauses and liability insurance so speak to your broker and they can assist you or refer you to a lawyer who specialises in this area.

The last thing you want is an uninsured liability claim – just because you signed a contract. ■

Injured While On The Job

A LEGITIMATE CLAIM

The Federal Court recently found that a woman who suffered injuries whilst engaging in sexual relations in a motel room on a work business trip was entitled to workers' compensation.

The female claimant, whose name was not released, was employed by the human relations section of the Commonwealth Government.

The evidence was that the claimant and a male friend returned to her hotel room after dinner and were engaging in sexual activity when a glass light fixture above their bed came away from the wall and fell on the woman's face. The woman suffered injuries to her nose, mouth and a tooth, and also reportedly suffered from depression and anxiety.

When the claimant originally applied for workers' compensation through ComCare it was denied. The claimant appealed this decision.

It was ComCare's position that to be entitled to compensation the claimant had to prove that her injury had been caused by an activity that had been "encouraged" or "implied" by her employer.

The Federal Court disagreed with ComCare's position. Justice John Nicholas said as follows:

"If the applicant had been injured while playing a game of cards in her motel room she would have been entitled to compensation, even though it could not be said that her employer induced or encouraged her to engage in such an activity."

He went on to say:

"In the absence of any misconduct or an intentionally self inflicted injury, the fact that the applicant was engaged in sexual activity rather than some other lawful recreational activity does not lead to a different result."

Whilst this decision may seem surprising, it is consistent with previous decisions. The Courts have traditionally upheld a broad definition of when employees who have been required to travel away from home for work can claim compensation. For example, in a previous matter a woman who slipped in the shower in a motel room was found entitled to compensation.

There does not seem to be any logical reason why the situation should be any different in this case, notwithstanding the rather salacious nature of the facts.

Effectively the case is consistent with the proposition that employees who are away from home due to their work are covered by workers' compensation if injured while they are undertaking normal activities and not engaging in illegal or willful misconduct. ■

Footnote: We understand that ComCare will be appealing the decision.



Statutory Liability Insurance

WHAT IS IT AND DO I NEED IT?

At both the federal and state level, Australian businesses face a vast array of legislation. There is also an increasing trend to impose what is called 'no fault' liability in the form of fines or penalties on companies and individuals in breach of such legislation.

A company and/or its Directors may also incur a fine for the unauthorised or irresponsible actions of its contractors, agents or other directors, partners or employees.

Some of the typical federal and state laws where companies and individuals experience the 'no-fault' regime include:

- Occupational Health & Safety Legislation
- Environmental Law (e.g. Protection of the Environment Operations Act 1997)
- Employment Practices Legislation
- Companies Law (e.g. Corporation Act 2001)

- Specific Industry Legislation (such as Telecommunications Act 1997)

A Statutory Liability insurance policy covers:

- Fines
- Costs and Expenses to investigate and defend the imposition of a fine
- All Acts administered by Commonwealth, State and Local Government
- Innocent parties - one party's wrongful acts does not prejudice the cover provided to innocent parties

Claims Examples under Statutory Liability Insurance:

- A Brisbane Magistrates Court fined a hotel after a guest fell to his death on a set of the hotel's stairs. The fine under the Workplace Health & Safety Act 1995 amounted to \$30,000. The hotel also incurred legal costs in the investigation of the incident.
- The director of a transport company and the company itself were charged with three offences under the Environment

Protection Act. These were indictable offences and each charge carried a potential maximum fine of \$280,000. It was alleged that the driver, employed by the company, drove a petrol tanker (owned by the company) to a petrol station and while maneuvering the tanker to the unloading tanks, the driver collided with a fuel pipe, causing over 3000 litres of petrol to escape from the tanker and on to the grounds of the petrol station. Following a 3 day hearing, the director and company were found liable and were fined \$120,000. Overall defence costs of \$60,000 were incurred over the duration of the investigation and prosecution.

- A Cairns diving company was fined \$20,000 and ordered to pay costs after a diver died during a diving trip. It was found that the air supply line to the diver was weaker than required by Australian Standards.

For further details and advice on this cover, contact your insurance broker. ■

La Nina

GONE BUT NOT FORGOTTEN

After wreaking havoc in Australia over the past two years, La Nina is now gone. The indications show that the inclement La Nina may have receded (now neutral) but it may not be time to relax just yet.

The Bureau of Meteorology has announced on its website that "the demise of La Nina does not mean the risk of wet conditions and tropical cyclones are over. While sea surface temperatures around the continent remain warmer than normal and the tropical wet season is active, there remains a risk of above average rainfall over Australia."

Australia has contended with two consecutive La Nina conditions from

2010-2012, with torrential rain and flooding. These two years have been the wettest recorded in Australia's history. Swelling rivers and floods have caused thousands of people to evacuate their homes, and sadly deaths have occurred.

La Nina occurs when the sea temperatures become cooler than usual. In Australia, when La Nina was at its peak, the sea surface temperatures had dipped below normal. This caused the excessive rainfall and flooding that was seen over most regions in northern and eastern Australia.

Unfortunately, the possibility of tropical cyclones and more heavy rain cannot be ruled out. La Nina may have

officially gone but the rains probably have not and the memory of La Nina's potential for disaster is still fresh. ■



Hire Car Insurance

EXTRA COVER CAN BE OF QUESTIONABLE VALUE

Most rental car agreements offer various forms of 'additional cover' in exchange for payment of an extra fee. These additional 'protections' are marketed as 'Super Peace of Mind', 'Renter Protection' and 'Maximum Cover' (amongst others) and are promoted as substantially reducing the hirer's potential liabilities. However, when pressed most car hire providers assert that these products are not 'insurance' and thus not subject to the legislative protections afforded to the hirer by the Insurance Contracts Act. Also, the apparent "protection" offered by these products is usually subject to a series of exclusions contained in the fine print of the agreement.

For a prescribed fee, optional cover products may reduce renters' liability in respect of damages to the vehicle during the rental period. However as a general rule, cover is not provided for any of the vehicle's accessories such as child restraints, GPS navigation and other removable items. Further, cover will usually not apply in any circumstances where the vehicle sustains damage to the body or the undercarriage as a result of making contact with a stationary object overhanging or on the road surface. As such, a hirer having paid significant sums for 'cover' may well be left

with a sizeable liability in the event of a vehicle or its accessories being damaged.

Hirers should also be aware that most car hire agreements provide that the hirer irrevocably and unconditionally authorises the car hire company to charge any amounts due under the agreement, including claims for damage to the vehicle, to the renter's nominated credit card account. As such, the car hire provider has a relatively simple method of recovering any amounts it asserts are due to it for damage sustained by the vehicle during the hire period.

The question of whether the 'cover' provided by car hire companies constitutes a contract of insurance under the Insurance Contracts Act has rarely been litigated in Australia. In *Bayswater Car Rentals v Hannell and Xerri v Thrifty Car Rentals* the courts were prepared to find that the car rental agreements under consideration in those cases constituted insurance contracts. If the 'protection' offered by a car hire company constitutes insurance cover, the hirer is then entitled to the benefit of the consumer protection provisions in the Insurance Contracts Act and the car hire company's ability to rely on breaches of the rental agreement to deny protection will be reduced. ■

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

To handle yourself,
use your head;
to handle others,
use your heart.

— Donald Laird

"A year from now you may wish you had started today."

— Karen Lamb

"The ultimate inspiration is the deadline."

— Nolan Bushnell

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