

# brokerwise

Brought to you by: **Council of Queensland Insurance Brokers Inc**

## Welcome to brokerwise

Within the pages of this quarterly newsletter we plan to bring you a variety of interesting stories, opinions and news items.

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**Professional Risk**  
... essential insurance.

**Superannuation**  
... changes due.

**Driving distractions**  
... can kill.

**Dial before you dig**  
... or pay the price.

**Insurance**  
... brings contentment.

**Marine polluters**  
...beware.

**Defamation laws**  
...now uniform.

Member:



## Directors under fire

Recent developments in the Australian legal landscape are likely to mean that directors and officers of Australian companies will be facing the spectre of litigation and liability that until now was considered unlikely or categorised as “can only happen in America”.

In a recent high court decision ‘litigation funding’ has been given the green light whereas previously it was amber (that is, open to argument on the basis that encouraging litigation by financing it was against public interest). The basis for this decision was that litigation funders facilitate access to justice for those who otherwise may not be able to afford to bring about an action to enforce their rights.

So why should company executives be concerned about this recent development?

The Australian corporate risk landscape is likely to change as a consequence. As

the name suggests the core business of litigation funders is to provide finance for litigants in return for a cut of any settlement or award (often around 30-35%). Until recently Australian law had largely limited these funding arrangements to liquidator’s actions. But now the door is open for funders to more confidently participate in the consumer style class and/or shareholder actions that we tend to associate with the US.

Due to a confluence of factors currently present in Australia, there may be more significant consequences on the horizon for directors and officers than litigation funding. There is an apparent increased vigilance from corporate regulators resulting from a string of highly publicised corporate failures, both here and overseas. This increased scrutiny by regulators can be seen as a reaction to social expectations that corporations, and those who run them, should be held to account for their misconduct.


Few would argue with that principle but Australian corporations are now subject to more onerous regulatory scrutiny than ever before. Whether this will result in more prosecutions of directors and officers remains to be seen, but it is nevertheless a real possibility.

Litigation funding together with increased regulatory scrutiny and the rise in litigation is raising the risk stakes for directors and officers in Australia. This new risk landscape should provide ample incentive for individuals in the frame to take an active interest in understanding their exposures and ensuring that these risks are managed appropriately. 



## Super rules

The Federal Budget last year signalled big revisions to superannuation rules in Australia with proposed changes commencing 1 July 2007 promising to reduce many of the current complexities and provide greater tax concessions for those approaching or in retirement.

There’s no time to lose, talk to whoever looks after your super nest-egg and review your situation now because there are special conditions that will only apply this financial year. Be prepared and get maximum benefit. 

## Eyes on the road, hands on the wheel

Ever tried to switch a CD or find a radio station while driving? Ever spilled coffee? Ever got so caught up in a conversation that you missed your turn or worse, went through a red light? Ever seen other drivers reading the paper, or grooming themselves in the rear view mirror?

These are all examples of driver inattention, a very significant but often neglected road safety issue.

In terms of its contribution to the social cost of road crashes, it far outweighs the contribution of the fatal four - drink driving, speeding, fatigue and non-use of seatbelt.

Driving is one of the most demanding tasks we do yet a lot of drivers treat it as a secondary activity. The National Safety Council of Australia, the RACQ, the NRMA and just about every other motoring/safety organization in the land warn that unless the driving task itself is given top priority, a mishap sooner or later is assured - and it could be a serious one.

It might be stating the obvious but many drivers don't seem to understand the need to stay alert for the entire time they are behind the wheel, concentrating only on the driving task. This means scanning the road environment, processing information and making decisions about the primary task of driving. However, keeping drivers' minds on the job is easier said than done. All motorists engage in potentially dangerous distracting activities while driving. According to the latest data available, in Queensland in 2003 driver inattention contributed to 27% of crashes.

Drivers can be distracted in many ways - by something inside or outside the vehicle. Overseas research shows that the most common distractions in descending order of occurrence are reaching, changing controls, talking, eating/drinking, grooming, other passengers, reading/writing, using the mobile phone and smoking. Even though using a mobile phone (hand-held or hands-free) while driving has been shown to increase the chances of a crash, the other activities further up the list can be more distracting and also more difficult to counter.

Speed, alcohol and fatigue are definitely not the only culprits, sometimes it's the more commonplace that causes the crash. 🐱



### 10 tips from Zurich Australia on how to avoid distractions:

- Plan your trip to allow adequate time for rest breaks - to eat/drink, give the kids a play, consult maps etc.
- Complete personal grooming before you set off.
- Become familiar with audio volume controls on the steering wheel - so you can adjust levels without taking your eyes off the road.
- Switch off mobile phones when driving. No conversation is worth dying for!
- Plan your route so you're familiar with the main turning points, towns or rest points.
- Ensure children are safely entertained on long car trips (eg with DVD players and headphones).
- If you're easily distracted, pack your lunch, maps, phones etc in the boot.
- Ensure pets are properly and safely restrained in the car (eg using a dog guard/grille).
- Practice taking short quick glances at road signs, mirrors, speedometer/dials and other vehicles.
- Stay focused and alert; consciously stop yourself staring at the scenery.

## Phone first, then dig

In Queensland the Workplace Health and Safety Act now has important provisions for excavators in its 'Building and Construction Industry Workplace Health and Safety Guide' that requires any relevant person to use the 'Dial Before You Dig' service before any excavation work is carried out.

The principal contractor for the construction work must:

- Find out what underground services exist.
- Obtain relevant information about the service

(location, type, depth, restrictions to be followed etc).

- Record the information in writing.
- (and this is the crucial bit) Give the information to the relevant persons who are to do the work.
- Keep the recorded information until the construction work ends.

Don't fall foul of Workplace Health Safety, dial 1100 before you dig. 🐱

# Insurance and the Road to Contentment

While the widespread provision of insurance is a relatively modern affair, the idea of insurance has a long history, dating to ancient Babylon many centuries before Christ. Marine insurance was the first. It covered potential losses by traders and merchants who had to borrow funds (using their ships as collateral) to finance their trade. According to contract, if the merchant was robbed of his goods, suppliers agreed to cancel the loan in exchange for a premium paid. The Greeks, Hindus and Romans borrowed some of these arrangements and adapted them.

Life and health insurance had beginnings in ancient Greece (600 BC) and became part of the benefits of belonging to guilds and trade associations, the precursors of modern unions. The first insurance contract was signed in Genoa in 1347 and the first life insurance with "insurable interest" in 1430 concerned the lives of pregnant wives and slaves. England developed "Friendly Societies" to insure industrial workers and the Great Fire of London (1666) propelled the fire insurance industry forward.

The first permanent life insurance company was formed in the U.S. in 1759; then followed health insurance (1847), automobile (1898) and group hospitalisation (1936). Some of these companies were and are mutually owned by the insured; others operate as corporations with shareholders. Major factors in the evolution of multifaceted and near-universal insurance in the Western world are industrialisation (with its hazards for injury and loss), urbanisation (with its attendant risk of theft), mobility (with the loss of a stable family support group and land that can be worked) and privatisation (with the focus from society as a whole to the autonomous individual).

## Yes, but what does insurance do.

Insurance is a means by which individuals, families, businesses and other organisations reduce or eliminate financial uncertainties in areas of life where there are predictable possibilities of financial loss.

People exchange a small but predictable amount of money, their premium, for a larger, uncertain loss. Because the insurer can predict average losses over a large population, the risk is evened out and shared. The fortunate many who escape major loss help the unfortunate few who experience it.

Individuals, of course, buy some of these types of insurance for personal protection. Groups like businesses or corporations buy insurance for their employees; business partners may buy it to provide the means of buying out a partner's share in business upon his or her death.

Insurance, however, protects not only individuals (and by extension their families) but also corporations, non-profit agencies and governments. They may insure to cover the safe transfer of goods, the reliability of monies deposited in banks, the non-payment of loans and the loss or destruction of major assets.

And so dear reader, although often a 'grudge' purchase when taking it out, insurance, has the power to bring that warm glow of security and contentment when the things you hold most dear are shielded, at least financially, from danger, injury or loss. 🏠



# Marine pollution – new laws

Expected to become law in May this year is new legislation that requires vessels of more than 15 metres in length to be insured against marine pollution in coastal waters.

The law will require owners of such vessels to effect the insurance cover. This marks a significant change from existing legislation that only requires vessels of more than 35 metres in length to insure against marine pollution.

The insurance requirement is because of problems faced by Maritime Safety Queensland (MSQ) in recovering, from owners of smaller vessels, the often substantial cost of cleaning the environment of

discharged pollutants, performing salvage operations or removing abandoned, sunk and wrecked vessels. MSQ has in the past been required to sue the vessel's owner for the costs, at the taxpayer's expense, without any guarantee of recovering these costs from the owner who in many instances do not have the financial means to pay.

The requirement to insure against marine pollution will carry a maximum fine under the Act of \$318,750 for a corporation or \$63,750 in the case of an individual.

The new law is expected to significantly reduce the pollution problems caused by reckless boat owners and those operating unseaworthy vessels. 🏠

## Defamation by email

On 1 January 2006 relatively uniform defamation laws came into force throughout Australia.

Now this may be a big yawn to most of us who will get through our lives unaffected by defamation but for media professionals and people who are the target of media investigations (and that can be anyone, anywhere in business) defamation law is an ominous cloud.



New laws or not, that cloud sits squarely over senders of email. As all who use email know, it is remarkably quick and easy. Comments can be typed quickly and sent at the press of a button. Compared to conventional correspondence, where there is time to re-read, re-draft and then think again before snail mailing, transmission of email is virtually instantaneous and irrevocable.

Email correspondence is often more like spoken conversation than written interaction – often hasty, frequently ungrammatical and temptingly rash. The medium tends to lead parties to say things they would not normally commit to writing, let alone widely publish. In fact much of what is emailed would not be said at all in face to face interaction with the other party. There's a feeling of 'home turf' safety when writing from the security of one's own office with the absence of body language, eye contact or spoken cues, as there would be in conversation or on the phone, to prevent the making of inappropriate statements. All this means that those sending email are dangerously prone to making remarks that turn out to be legally actionable.

Thinking twice before sending or forwarding emails should keep you out of the courtroom.

Good business practice however would also recommend a healthy measure of Professional Indemnity insurance cover. 🐻

**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 50 Queensland firms employing nearly 400 staff

and placing \$400,000,000 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](http://www.cqib.org.au)

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## wisewords

**Take rest; a field that has rested gives a bountiful crop.**

*Ovid*

**Learning to ignore things is one of the great paths to inner peace.**

*Robert J. Sawyer*

**No matter how much pressure you feel at work, if you could find ways to relax for at least five minutes every hour, you'd be more productive.**

*Dr. Joyce Brothers*