

INSIDE THIS EDITION

- » Hayne Royal Commission Report
- » Changes to the Queensland Building and Construction Commission Act
- » Protecting your interests
- » Contractual indemnity
- » Take away tips
- » Fast Fun Facts

What does the Royal Commission Report mean for insurance?

The Royal Commission into misconduct in the Financial Services Industry released its Final Report in February after 69 days of hearings with 76 recommendations made and 22 referrals to regulatory authorities for criminal investigation and potential prosecution.

Of the issues that were raised during the royal commission, none related to insurance broking.

In total, there were 15 recommendations relating to the insurance sector, with the major being a recommendation which suggest ASIC conduct a review as to whether the exemption for a ban on conflicted remuneration remains justified for general insurance products. This review should be completed by June 2022 with no change to current arrangements proposed in the meantime.

Other key themes in the Royal Commission recommendations that are relevant for general insurance clients include:

- Conflict of Interest – must be recognition that conflicts of interest and conflicts between duty and interest should be eliminated.
- Cold Calling – unsurprisingly, cold calling fell under scrutiny – and an outright ban has been recommended.
- Add-on Insurance – should be sold completely separately from the original insurance product. It has also been recommended that a cap be placed on the



commissions that car dealers can earn when they make add-on insurance sales.

- Claims Handling – currently, ASIC is limited in how much it can intervene in the handling of claims. The recommendation is that ‘claims handling’ would be seen as a ‘financial service’ within the Corporation Act – placing the emphasis on insurers to be increasingly honest and fair.
- Funeral Insurance – it is recommended that this be reclassified and brought under the ASIC regime.
- Approach to Enforcement – ASIC is being encouraged to prosecute and penalise, rather than settle and enter into enforceable undertakings.

The level of tolerance for misconduct and any breach of the regulatory frame-

work will reduce considerably, with strong obligations on firms to identify, report and deal with misconduct and breaches, to remediate clients where losses have occurred, and to ensure they are not repeated.

Whilst the royal commission did not find any systemic problems with the general insurance industry, it highlighted the need for high standards across the financial services sector.

The true impact on general insurance of the Hayne Royal Commission will not be clear ‘for several years’. Insurance brokers may not have contributed to the issues raised by Commissioner Hayne, but they are still affected by the reputational & regulatory fallout.

Changes to QBCC - New Security of Payment Laws

With effect from 17 December 2018 elements of the Building Industry Fairness (Security of Payment) Act 2017 (BIF Act) and amendments to the QBCC (Queensland Building and Construction Commission) Act commence.

The purpose for these changes and amendments means that it should be easier for both the Contractor(s) and sub contractor(s) to be paid for related goods and services in Queensland.

Any Contract that now exceeds a Limit of \$ 1,000,000 the payments will be held, "In Trust", by the QBCC and not the individual contractor.

Changes to retentions and defects liability period

These changes are included as amendments to the QBCC Act and mean that:

- Retention amounts or security held under a Contract must be released.
- There is an automatic twelve (12) month

defects Liability period if the Contract is silent or doesn't provide one.

- Contractors are required to provide notice of the end of the defects liability period.

As consumers, it's prudent to ensure, that once they've entered into a

Contract with their chosen Contractor(s) that the Contractor(s) provide a current "Certificate of Insurance" noting -:

- Current Contract Works & Combined Liability Policies noting Contract price, Contract details, adequate Policy Limit(s) and Sub Limit(s) of Liability for the Project.
- All required Named Parties noted accordingly.



As these amendments may now result in "split or staged" Contracts being "suggested" by Contractor(s), consultation prior to signing and finalisation of Contracts, with your Legal and Insurance specialist advisors would be prudent.

More information on the changes to Act are able to be viewed under the Queensland Government Website Legislation Blog [here](#).

Do you really know who you're dealing with?

As a consumer or business owner, it is vital to ensure that your interests are protected, when dealing with other businesses.

There are a number of steps you can take to protect your interests.

1. Ask for information

What is their ACN?

Since 1991, every company in Australia has been issued with an ACN. This is a unique identifier, as the ACN cannot apply to more than one company.

What is their ABN?

An ABN is needed to register for GST.

What is their business name registration number?

Since 2012, all business names are registered by ASIC and the holder of a business name must hold an ABN. Each registered business name has an individual number.

2. Verify the information

Once you have the ACN, ABN or business name registration number, you can check its registration, find out who holds the

business name and find out who the directors are, by searching ASIC's registers at ASIC Connect.

ASIC's Money Smart website enables you to check basic facts about the people or companies you're dealing with.

You can purchase a company extract at ASIC Connect, which will provide current and historical information about a company, including the officeholders, addresses, and in some cases, the shareholders of the company. Further information is available through an ASIC information broker.

3. Use the information

You can use your search results to answer a number of questions, which will help you to assess how much risk may be involved in dealing with the business.

How long has it been in business?

What's its current status?...registered, dereg-



istered or under external administration.

Who are the directors?

Are the directors disqualified?

What is the company's share capital?

What is the company's financial situation?

Does the activities of the business require a licence?

What is their credit rating?

So, now you're in a better position to know who you're dealing with.

We will address Trusts in a future addition of Brokerwise.

Contractual indemnities and insurance - trips and traps

What is a contractual indemnity?

A contractual indemnity is a term of a contract or agreement between two parties in which one party assigns or transfers their risk to another.

The contractual indemnity term is usually express and in writing, although in some cases a term has been implied through a course of conduct or to give the contract business efficacy.

The courts have held that the interpretation of contractual indemnities will be approached in the same way as any other clause in the contract, save that if there is an ambiguity after applying the rules of contractual construction, the clause will be interpreted strictly against the party seeking to rely on it (or contra preferentem).

There are a number of different standard contractual indemnities in wide use, for instance:

- (a) bare indemnities - where one party indemnifies the other for and against all losses incurred by the other, without stating limitations
- (b) reverse indemnities - where one party indemnifies the other for and against losses, including as a result of the latter party's acts or omissions
- (c) proportionate indemnities - where one party indemnifies the other for and against losses, except those arising from the latter party's own negligence

A proportionate indemnity usually means that liability lies where it falls and will not impact on the apportionment of liability that would arise, in the absence of the contract, at common law.

How will a contractual indemnity be applied?

Even subtle differences in the words and phrases used in contractual indemnities can have a huge impact on the way in which the court will interpret and give effect to them. Contractual indemnity clauses are interpreted according to the rules of contractual construction; including the rule that contracts must be read as a whole.

A clause contractually assigning liability is often accompanied by a clause imposing insurance obligations. There is a risk that a contractual indemnity will be read down or construed narrowly so that it corresponds with the insuring clause.

For example, an indemnity that may otherwise be total or complete may be read down so that it corresponds with the obligation that each party obtain their own insurance for their own liability.

Can you contract out of liability in Queensland?

In Queensland, you can contract out of liability via a carefully crafted contractual indemnity clause, which:

- (a) assigns your liability to the party you are contracting with for and against damage howsoever arising, even from your own negligence, misconduct or breach of contract;
- (b) contracts out of your liability for damage to a third party; and/or
- (c) stipulates that the party you are contracting with must insure you for your liability to that party or a third party for

damages arising from your negligence etc. However, since the advent of the proportionate liability scheme in Queensland under the Civil Liability Act 2003, the contractual indemnity will not apply to your liability for property damage or consequential loss.

The proportionate liability regime, which cannot be contracted out of in Queensland, means that your liability will be determined according to the extent to which you are found liable for the damage at common law.

Will insurance cover a contractual indemnity?

Standard occurrence based public liability policies contain a 'contractual liability exclusion', which excludes any liability you have assumed under contract beyond that which would otherwise arise at common law.

If you are giving away a contractual indemnity, you must ensure that your policy of insurance does not include a contractual liability exclusion or other terms that will exclude any claim on that indemnity from cover.

Likewise, if you are the recipient of an indemnity, it would be prudent to ensure that the indemnifier has insurance cover in place or sufficient means to satisfy the indemnity.

If the indemnifier does not have insurance or means, under the principle of joint and several liability, the liability will vest back in you.

Before you sign anything it is recommended that you contact us (your broker) or your legal advisor.

Take away tips

- **Not every contractual indemnity is created equal. Minor differences in words and phrases can have a major impact on how the indemnity will be interpreted by the court- seek advice!**
- **Contractual indemnities may be read down, particularly if insuring clauses are not consistent with the indemnity.**
- **If the indemnity is not effective, or there is no means or insurance behind the indemnifier to meet the indemnity, liability will revert to the indemnified.**
- **Whether you are on the giving or receiving end of a contractual indemnity, make sure there is insurance behind it.**

Fun facts to make you say...I didn't know that

- The creature that kills the most people every year isn't snakes, sharks, or even other humans — it's the mosquito.
- There's an island in Japan you can visit that's inhabited only by friendly bunnies.
- There are actually more public libraries in the US than McDonald's.
- Before the invention of colour TV, 75% of people said they dreamed in black and white. Today, only 12% do.
- It's illegal to own just one guinea pig in Switzerland because they get lonely.
- Wombat poop is cube-shaped.
- The British royal family isn't allowed to play Monopoly.
- The voice of Mickey Mouse and the voice of Minnie Mouse got married in real life.
- Iceland has an elf whisperer who inspects construction sites before anything gets built to make sure no elves are hanging around.
- There is an island in the Bahamas that's inhabited only by swimming pigs.
- Ancient Greeks came up with the idea of cyclops after they found a fossil of a mammoth, and had no idea what it was.
- A "buttload" is a real measurement of weight.
- 4% of the sand on Normandy beach is made up of shrapnel from D-Day that has broken down.
- If someone gives opinions on topics they know nothing about, they're an ultracrepidarian.
- Canadians say "sorry" so much that The Apology Act was passed in 2009, declaring that an apology can't be used as evidence of admission of guilt.
- Most American movie villains have British accents because we associate them with having high intellect and low morals.
- The logo for Chupa Chups was designed by Salvador Dali.
- In Queensland, it's illegal to own a pet rabbit unless you're a magician.
- Sea otters have a pouch under their forearm to store their favourite rocks.
- T-shirts were originally marketed to unmarried men who didn't know how to sew buttons back on collared shirts by themselves.
- Prior to the 20th century, squirrels were one of America's most popular pets.
- All colours of Froot Loops have the same flavour.
- April 18, 1930, was such a slow news day that at 6:30 PM, the BBC's radio announcer said, "There is no news."
- Before the 1800s, people had a "first" and "second sleep." They would sleep 3-4 hours, wake up for 2-3 hours to do some type of activity, then go back to sleep until morning.
- Cows have "best friends" and get stressed when separated.
- Ketchup was sold as medicine in the 1830s.
- If you're being violent or drunk in Japan, police will get a futon and roll you into a burrito.
- All mammals take about 12 seconds to poop, regardless of size.
- Shaggy from Scooby Doo's real name is Norville Rogers.
- Every year on Aug. 5, the Mars Curiosity rover sings itself a sad, solitary "Happy Birthday."
- There are turtle tunnels in Japan to save them from being run over by trains.
- "She sells seashells by the seashore" was written about an actual person named Mary Anning.
- Baby puffins are called pufflings.

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

Premium Funding

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 57 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.

Council of Queensland
Insurance Brokers Inc
ABN 23 731 682 292

PO Box 8401
Woolloongabba QLD 4102

Phone: 07 3847 9542
Fax: 07 3847 4769
Email: admin@cqib.org.au
Web: www.cqib.org.au

Wisewords

“Everything you
can imagine is
real.”

— Pablo Picasso

“You must expect
great things of yourself
before you can do
them.”
- Michael Jordan

“Courage is grace
under pressure”
- Ernest Hemingway