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## Underpaying employees...what's going wrong?

We've all heard of the \$7.8M underpayment scandal which recently engulfed celebrity chef George Colombaris, but is this just a symptom of the sheer complexity of workplace laws in Australia? After all, big organisations with dedicated HR departments are getting it wrong, so what chance does SMEs have of complying?

Just to name a few, apart from George Colombaris, Michael Hill, Caltex, Nandos, 7 Eleven, Chemist Warehouse and the ABC have been caught up in the problem and had to address prosecutions for breaching the Fair Work Act.

While the Fair Work Ombudsman (FWO) has been applauded in their pursuit of companies who are not paying their way, he has also suffered criticism in that the complexity of Australia's industrial relations system is causing the problems, which the regulator is trying to avoid.

When you consider that large employers with an abundance of experience, resources and more than competent management, still can't seem to get it right, what hope is there for the rest of us? Companies with more than 200 employees make up only 4% of businesses in Australia...how can we expect the other 96%, who don't have that in-house expertise on HR issues, to pay their people correctly?



Well firstly, there's the Fair Work Act, Modern Awards and Enterprise agreements, then add variable minimum wages, overtime, penalty rates, loadings and allowances. Some of these mistakes have been quite minor, but when that occurs over a long period with a large workforce, the figure starts stacking up.

While systematic underpayment is a serious issue and Australia's workplace relations system is one of the most complex in the world, ignorance is not an excuse in the eyes of the FWO and honest errors or a lack of knowledge relating to entitlements will not alter the attitude of the FWO in the pursuit of

businesses who come to their attention.

So...do we all just give up?  
Well no...but you have to properly address the issues...

- Investigate which of the Modern awards apply to your business.
- Calculate your employees minimum entitlements, including rates of pay, overtime, and penalty rates.
- Carefully consider minimum entitlements when embarking on an "all up" salary.

Finally, conduct regular reviews to ensure no-one "falls through the cracks."

## A Centuries Old Crime, Digitally Enhanced

Scams aimed at manipulating individuals for fraudulent purposes have been occurring for centuries, but this deception has now well and truly moved into the digital world. Social engineering, in the context of information security, refers to psychological manipulation of people into performing actions or divulging confidential information for the purpose of a broad spectrum of malicious activity. Social engineering theft or 'hacking the human' is a trending exposure in Australia and globally today. Most breaches are caused by employees opening phishing emails that have already made it through existing technology defences. Often, it can take months to find out the organisation's operating system have been compromised. Clicking on one phishing email can enable a criminal to infiltrate the company's system, escalate their access and privileges, and steal the company assets, clean out the bank accounts, or develop fake invoices. The cyber crime of social engineering has developed because of human fallibility. While technology has changed, people have not and can be psychologically manipulated because of their desire to be helpful and their attitude to authority. Phishing attacks are the most common type of attacks leveraging social engineering techniques. Attackers use emails, social



media, instant messaging, and SMS to trick victims into providing sensitive information or to visiting a malicious URL in the attempt to compromise their systems. Phishing attacks present the following common characteristics:

- Messages are composed to attract the user's attention, in many cases to stimulate their curiosity providing some information on a specific topic and suggesting the victim visit a specific website to gain further data.
- Messages often present a sense of urgency in the attempt to trick the victim into disclosing sensitive data to resolve a situation that could get worse without the victim's interaction
- Attackers leverage shortened URL or embedded links to redirect victims to a malicious domain that could host exploit codes, or that could be a clone of legitimate websites with URL's that appear legitimate
- Phishing email messages have a deceptive

subject line to entice the recipient to believe the email has come from a trusted source. Attackers usually copy contents such as texts, logos, images, and styles used on legitimate website to make it look genuine.

### Social Engineering Recommendations

Hackers who engage in social engineering attacks prey on human psychology and curiosity in order to compromise their targets' information. With this human-centric focus in mind, it is up to users and employees to counter these types of attacks. Here are a few tips on how users can avoid social engineering schemes:

- Do not open any emails from untrusted sources. Be sure to contact a friend or family member in person or via phone if you ever receive an email message that seems unlike them in any way.
- Do not give offers from strangers the benefit of the doubt. If they seem too good to be true, they probably are.
- Lock your laptop whenever you are away from your workstation.
- Purchase anti-virus software. No AV solution can defend against every threat that seeks to jeopardise users' information, but they can help protect against some.
- Read your company's privacy policy to understand under what circumstances you can or should let a stranger into the building.

## The importance of Internal Auditing

Given the steep rise in employee fraud and embezzlement, the importance of Internal Business Auditing has never been more vital. Whilst there are insurance policies, such as Management Liability & Crime, that provide Indemnity for some of the exposures; the reputational damage, together with the disruption to business' makes Internal Business Auditing, an important part of good business acumen. Open and involved internal auditing makes all management and staff fully aware of the emphasis placed on this process by the organisation. This will then result in cultural changes that should flow into "open" and "transparent" process' where staff and management alike are protected. It's imperative that audit results are shared not only with management but together with all business stakeholders so they are aware of not only the process' but also the

findings and required actions to amend or correct same. The results of all audits should be recorded so that they are easily comparable to future audits and ensure that required corrective measures have been completed. In an ideal world, quarterly or bi-annual auditing greatly increases the ability to discover and then rectify any shortfalls discovered. It's important to not only audit for financial purposes but to also include other areas that require strict compliance. Maintaining updated registers, such as, breach; complaints; data breach help to assist the auditor. Other areas that should be considered are -: company outsourcing procedures; succession planning, business continuity; annual leave and other staff related functions. Any company that operates a trust, auditing, both internal and external are



mandatory. Strong audit process' must include -:

- Checking of banking and financial statements
  - Trust bank account reconciliation
  - Joint signatory compliance
  - Debtors and creditors continued analysis.
- Whilst auditing doesn't 100% guarantee no problems arise it greatly reduces the chances of prolonged and extensive illegal activities remaining undiscovered.

# Proportionate liability in Queensland - Implications for Insurance

## What is proportionate liability?

Proportionate liability refers to the concept that liability for a plaintiff's loss should be apportioned to the defendants in accordance with the extent of their responsibility for that loss.

## Why was the proportionate liability scheme introduced?

The Ipp report (named after chair David Ipp who handed down the report) was commissioned to review the law of negligence, consider the causes of rapidly rising insurance premiums in the wake of the HIH collapse and to suggest reforms. One of many recommendations of the Ipp report was that the Commonwealth, States and Territories introduce legislative proportionate liability schemes.

Proportionate liability is basically a departure from the concept of 'joint and several liability'. In matters where defendants were held jointly and severally liable, the plaintiff could recover the entire judgment from any one of the defendants, regardless of the extent to which they were responsible for the loss.

In such circumstances, a defendant with 'deep pockets' or insurance cover may have been left picking up the liability exposure of impecunious or uninsured defendants. This in turn required insurers of deep pocketed defendants to set premium on the basis that such defendants would be completely liable for a plaintiff's loss, even if their actual responsibility for the loss was relatively minor.

## When does proportionate liability apply in Queensland?

Firstly, it is important to note that the proportionate liability regime does not apply to claims for damages for personal injury. A defendant can still be jointly and severally liable for a personal injury claim.

Under section 31 of the Civil Liability Act 2003 (Qld) (CLA) a defendant who is a 'concurrent wrongdoer' must only be held proportionately liable for a plaintiff's loss. Section 30 of the CLA provides that a concurrent wrongdoer is one of two or more persons whose acts or omissions caused, independently of each other, the loss or damage the subject of the claim. Section 32 obliges the plaintiff to commence proceedings against all 'concurrent wrongdoers'. Liability will be apportioned against a concurrent wrongdoer according to the extent



to which they caused the plaintiff's loss, regardless of whether they have insurance or financial means to meet the judgment.

## Can you avoid the proportionate liability scheme in Queensland?

Section 7(3) of the CLA contains an express prohibition against contracting out of the proportionate liability regime. This means, in property damage or pure economic loss claims, a defendant cannot rely upon a contractual indemnity to reduce the extent to which it is proportionately liable for a plaintiff's loss.

Perversely, this provision does not apply to personal injuries claims. In such claims, defendants can reduce their liability (as proportionately assessed at common law according to the extent of their wrongdoing) by relying on a contractual indemnity given in their favour.

## What does all of this mean for contracting parties in Queensland?

One party can still contractually assign risk to another party in Queensland. However, in the case of a claim for property damage or economic loss that falls under the proportionate liability regime in the CLA, the indemnity will have no effect. The contractual indemnity, depending on the strength of its drafting, may still have effect in the event of a claim for damages for personal injury.

## What does this mean for insurance?

**Property damage and economic loss claims.** The proportionate liability regime ensures that risk lies where it falls for property damage and economic loss claims. Insurers

do not have to assess premium assuming a 'worst case scenario' and defendants are not left wearing the loss simply because they have the capacity to pay.

## Personal injury claims

The proportionate liability regime does not apply for personal injury claims and liability can still be contractually assigned for such claims in Queensland. This means a party that is primarily liable to an injured plaintiff may obtain 100% relief via a contractual indemnity from another party that may have no liability to the plaintiff at common law.

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

If a party is granting a contractual indemnity, it must ensure that its policy of insurance does not include a contractual liability exclusion or other terms that will exclude any claim from cover.

The corollary is, the recipient of an indemnity should 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 which still applies to personal injury claims, the liability will vest back in the recipient of the indemnity.

## Seek advice

If in doubt how the proportionate liability regime in Queensland may affect your business and insurance, contact your broker for advice.

# 10 Unusual Guinness World Records

## 1. Largest display of toothpick sculptures

The largest display of toothpick sculptures consists of 101 sculptures and was created by Stan Munro from the US on 15 May 2014. Stan spent over 10 years creating the sculptures and figures and he has used more than 3 million toothpicks and 75 gallons of glue. His display includes buildings from 37 countries.

## 2. Longest legs (female)

Russia's Ekaterina Lisina has legs that measure 132.8 cm (4 ft 4.2 in) and 132.2 cm (4 ft 4 in) for the left and right leg respectively, take from the heel to the top of the hip. That's more than twice the height of the world's Shortest woman ever.

Ekaterina is also the record holder for the Tallest professional model, and she sports a height confirmed at 205.16 cm (6 ft 8.77 in).

## 3. Most streamed track in one week by a female artist (USA)

Taylor Swift's Look What You Made Me Do attracted 84.4 million US streams for the week ending 31 August 2017.

The track was streamed more than 8 million times on Spotify on 24-25 August 2017, also earning the record for Most streamed track on Spotify in the first 24 hours.

With 43.2 million YouTube views, the music video for this song also has the record for Most watched video online in 24 hours.

## 4. Most popular Instagram hashtag

As of December 2017, the most widely used hashtag on Instagram was #love, followed by #fashion and #photooftheday.

The hashtag that had seen the greatest rise in popularity during the previous year was #photography.

## 5. Largest tropical rainforest

The Amazon, which spans nine South American countries and covers between 6.24 and 6.56 million km<sup>2</sup> is the world's Largest tropical rainforest.

The rainforest represents more than 80% of the Amazon biome and contains a dazzling array of different animal species – ranging from mammals, to reptiles and insects!

## 6. Largest rubber band ball

Rubber-band balls are fun to bounce around when they are the size of your palm – but what about one that weighs 4,097 kg (9,032 lb)? Joel Waul (USA) made the world's Largest rubber band ball in Lauderhill, Florida, on 13 November 2008.

A total of 700,000 rubber bands of all sizes were used for the ball – and it took him four years to make!

## 7. Smelliest plant

Also known as the corpse flower, Amorphophallus titanum or titan arum releases an extremely foul odor comparable to that of rotten flesh, which can be smelled 0.5 mi (0.8 km) away.

## 8. Stretchiest skin

Brit Garry Turner has quite the talent – he can pull the skin of his stomach a length of 15.8 cm (6.22 in) giving him the record for the Stretchiest skin!

He is able to do this because he has a rare medical condition called Ehlers-Danlos syndrome. With this, the collagen that strengthens the skin and determines its elasticity allows for him to have such loose skin and super flexible joints.

## 9. Land mammal with the most teeth

The giant armadillo (Priodontes maximus) of South America typically has up to 100th teeth! It feeds mostly on ants and termites.

## 10. Smallest dog living

A female chihuahua called Milly measured 9.65 cm (3.8 in) tall on 21 February 2013. She is owned by Vanesa Semler of Dorado, Puerto Rico. Born on 1 Dec 2011, Milly was so small that she could fit in a teaspoon, and had to be fed milk every two hours with an eye-dropper.

Be sure. Before you insure!

Ask your CQIB broker about...

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- Business Interruption incl Loss of Rent
- Liability
- Burglary and Money
- Glass Breakage
- Machinery Breakdown
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- 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

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- Term Life
- Long Term Disability/Income Protection
- Key Man
- Superannuation

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# Wisewords

“He who is not  
courageous enough  
to take risks will  
accomplish nothing  
in life.”

— Muhammad Ali

“Don't wish it were  
easier. Wish you were  
better.”  
- Jim Rohn

“Believe you can and  
you're halfway there.”  
- Theodore Roosevelt