

WORKERS' COMPENSATION - STATE OF PLAY

Australia - State By State

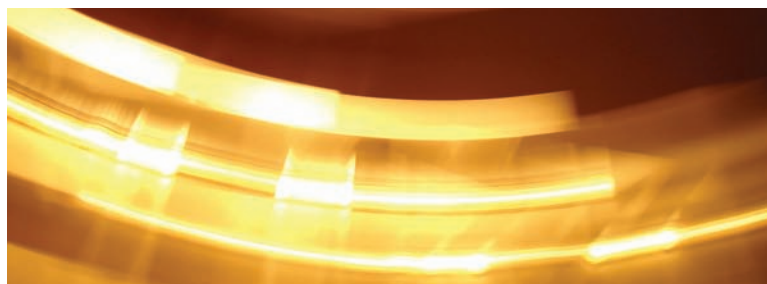
A recent report from Willis Workplace Risk highlighted significant variation in the outlook for the Workers' Compensation markets in each state.

In stark contrast to the QLD scheme which remains steady and in surplus, continuing its position of providing the lowest average premium rates in the country, performance of the costly SA scheme continues to deteriorate with the SA WorkCover Corporation recently announcing that the scheme's unfunded liability has blown out to \$911m (as at 31/12/07). These unfunded liabilities have prompted legislative review to improve return to work rates and the benefit structure.

NSW and VIC schemes continue to perform strongly, having each provided 3 consecutive years of average rate reductions.

The privatised schemes in WA, TAS, ACT and NT all continue a steady performance also.

To receive a full copy of the Willis Workplace Risk Workers' Compensation Outlook (for AU), please ask your Client Advocate.



KEY FOCUS

Willis Workplace Risk consider that whilst the premium calculations and State schemes continue to modify the Workers' Compensation landscape, the key focus for businesses should be on:

- Being safety conscious - reducing the potential of workplace injuries
- Returning injured employees to full time and sustainable duties as this will reduce costs
- Focusing on financial claims management principles that will ensure to optimise premium savings

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Workers' Compensation in NZ

In New Zealand, there are a number of unusual features of the insurance market which hinder accurate calculations of market size.

One such feature, which has wide reaching effects on the amount of conventional insurance transacted, is the operation of the Accident Compensation Corporation (ACC).

Effectively the insurer of Workers' Compensation risk (and more), the ACC was created to provide evenness in compensation for workplace injury.

It gives all New Zealand workers a statutory incontestable right to compensation and healthcare treatment for injury caused by workplace 'accidents', with the trade-off being the relinquishment of rights to common law recourse for liability.

A major direct effect of the ACC is that the cost of public liability insurance for NZ organisations is far lower than in other countries such as Australia. Businesses that export product to countries with common law rights for personal injury and illness pay extra for public and product liability insurance which reflects their increased risk exposure.

Coupled with the relative ease of access to healthcare treatment for all, it is arguable that one 'flow-on' effect of the ACC's existence is the lower take up of life and disability insurance than in other developed countries (see related facts in 'Snapshots', page 11).



INSURANCE MARKET OUTLOOK AUSTRALIA

RENEWAL NEGOTIATIONS IN THE FIRST HALF OF 2008 RESULTED IN IMPROVED TERMS AND CONDITIONS FOR THE MAJORITY OF CLIENTS.

Following this, in coming months we anticipate that attractive risks will secure single digit rate reductions and coverage enhancements.

Risks with poor claims profiles, including buildings made from Expanded Polystyrene (EPS) and locations in flood prone areas, are likely to experience increases in property rates and restrictions in cover due to the reduction in market appetite for these high risk exposures.

This insurance market outlook is our first since the half year results of Australian Insurers and full year results of Overseas Insurers were announced.

In this overview we provide a brief update on all key influencing factors.

Insurer Profitability

This is the area to watch over the next few months as insurer reserves diminish. Weaker than expected results have been announced by some insurers as their numbers start to reflect the current market environment. This has been evidenced by market comments made through the recent reporting period, for example:

“Unusual weather patterns have taken a heavy toll on the bottom line of insurance and banking group Suncorp-Metway.”

In other cases, however, insurer business appears to be performing well or claim reserves have not yet been eroded.

“Chubb has again reported record full-year profits. Fourth quarter operating profit, which excludes after-tax realised investment gains and losses, was up year-on-year at \$620m.”

There is currently a mixed message on profitability. Some lines of business are becoming marginal according to certain insurers. Others feel that there is still sufficient profitability in the market, which is moving gradually to the bottom of the soft market cycle. If profitability continues to be eroded, or the credit crisis causes further write downs by capital providers, then corrective action will be required.

What is clear is that there is now some volatility as insurers find themselves in varying states of health. Globally, and at home, losses have been testing insurers resolve with the first quarter of 2008 set to be the second highest ever period for single risk losses, according to market sources.

Level and use of Reserves

Insurers have been using claim reserves, built in prior years, to support declining performance. Their profitability will be eroded if these reserves run dry and current pricing levels are inadequate.



Insurers still holding significant reserves will have the opportunity to take business from those with low reserves, so profitability for some may come at the expense of market share. If insurers take this route, prices will rise as capacity contracts.

Cost of Reinsurance

In the first quarter of 2008, we reported that there was little evidence of reinsurance prices increasing. This is important as insurers' prices depend, to an extent, on how much they pay for their own insurance. The global reinsurance industry posted exceptionally strong profits in 2007 with a number of reinsurers achieving record high profit levels. This situation attracts new market entrants and reinsurance markets are now facing extensive competition with resultant downward pressure on prices.

// IF PROFITABILITY CONTINUES TO BE ERODED OR THE CREDIT CRISIS CAUSES FURTHER WRITE DOWNS BY CAPITAL PROVIDERS, CORRECTIVE ACTION WILL BE REQUIRED. //

Level and Nature of Catastrophic Losses

Australian insurers have recently experienced a run of "bad luck" from weather related incidents. Claims totaling over \$2bn have been reported from a number of events over the past 18 months. These losses have been major contributors to the declining performance of insurers such as IAG and Suncorp.

Investment Climate

Having stated previously that the investment climate had been strong, we now find ourselves in a position where there is increased volatility in the market. However, we do not foresee that the downturn in the stock market will have a material affect on insurance pricing in 2008.

Capital Inflow and Outflow

At the time of our previous market review, we were witnessing capital inflows with respect to capacity available for Australasian risks. Until capacity in any class of business contracts it is difficult to envisage movement in rating levels. To date, there have been few notices of insurers withdrawing totally from business lines, although there have been some withdrawals in certain niches.

Regulatory Environment

Please see our article on page 7 relating to Australia's new DOFI legislation and its impact.

In Conclusion

Increasing pressure on profits will start to result in changes in the market environment. There is, and will be, no immediate hardening other than in specific sectors where there has been significantly bad losses experienced. As insurer results weaken they may become more selective in the business that they accept and, as an example, we are seeing evidence of this where building construction includes EPS material. Many insurers are still talking about growth and are happy with the health of their business.

There are also many micro variables (including individual loss records) that impact on the price of insurance at a specific industry or client level. Please contact your Willis Client Advocate to discuss how these factors may affect you.

BUSINESS INTERRUPTION INSURANCE

The challenge of getting it right

As reported in our Insurance Market Outlook (left), global insurance markets have recently been experiencing very high losses. Causes are varied, however in Australia this is broadly as a result of a spate of mining losses, exacerbated by "biblical" flooding, together with a series of single risk property losses and business interruption losses driven by soaring commodity prices.

It's a timely reminder for all business leaders to consider Business Interruption insurance, whether this means checking levels of current cover or acquiring cover where none exists currently.

The intention of Business Interruption insurance is to protect a business against a shortfall in sales following an insured loss. In effect, the insurer takes the place of the business' customers, making up the resulting loss of gross profit caused by a drop in producing or supplying goods to sell.

A vital variable to be considered when incepting Business Interruption insurance is the Indemnity Period. This is the period of time during which the loss of gross profit - and other insured items - will be paid by the policy.

The challenge is to anticipate the "worst case scenario" for a business and how long the adverse impact of such a loss would continue. At first look, most people consider the time to rebuild or relocate premises, install replacement machinery and plant / computers and resurrect telecommunications, electricity and water.

Unfortunately this only scratches the surface! After considering "What happens to our customers and employees in the meantime? When will our customers return?", an estimate of the time it will take to resume 'normal' operations gets complicated. A practical and reliable methodology is needed to ensure the Indemnity Period is properly calculated.

The solution is to work closely with your Willis Client Advocate, who will help you to consider all factors relevant to your specific business environment. Most importantly, remember to allow time to regain lost customers or their replacement equivalent.

Following a decision as to the Indemnity Period required, other decisions can be made such as the required policy Sum Insured. The methodology for calculating this is complex and again your Advocate will assist you, however it's important to note that the level of Sum Insured is directly impacted by the length of the Indemnity Period chosen - so it's vital to get that right in the first instance.

For more information, please ask for a copy of Willis' [Business Interruption Insight Fact Sheet](#). If you would like to discuss Business Interruption insurance or have your policy reviewed in light of changes to your operations, contact your Client Advocate.

SUPERIOR SPECIALISATION

INTRODUCING WILLIS FINEX

Specialisation is the Key

Specialisation is a key pillar in the development of the Willis Group and forms a fundamental part of our overall strategy for the future.

This approach sets us apart from other brokers and it ensures that we have a clear focus on providing bespoke solutions. By heightening our skills in specialist areas, we are able to offer greater value to clients in addressing and responding to their specific risk needs.

Australasia's recently incorporated Willis FINEX division is a key example of the success of our specialisation strategy.

The Challenge

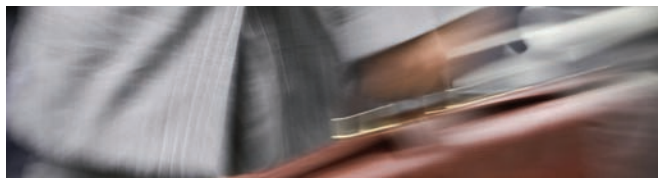
Changing market dynamics have reinforced the essential need to provide our FINEX clients in Australia and New Zealand with expert advice and tailored market solutions.

The insurance market treats such risk differently to the more generic exposures associated with business and it is generally accepted that the issues relating to these risks can be highly complex; each risk is unique and it's essential for organisations to consult with a specialist broker to fully address their risk exposures.

The Solution

To address this challenge, Willis has recently formed our specialist division Willis FINEX by merging the following expertise:

- Financial Institutions
- Professions
- Executive Risk
- Mergers, Acquisitions and Reconstruction



Aligned to Group philosophy and strongly supported by Willis' global FINEX division, Willis FINEX Australasia provides clear differentiation in the service we provide.

We have found that the synergies within FINEX allow us to better employ our expertise, and to anticipate and understand our Clients needs in the most effective manner. We are also able to work with clients in closer partnership.

We have the critical mass to ensure that we remain at the cutting edge in this specialist area of insurance and this means that our clients receive the very best advice.

The Impact

By investing in "specialisation" such as our FINEX division, the Willis Group is guaranteeing our superior consultative and advisory capability, as well as our marketing and execution roles.

This strategy is of particular benefit when market conditions are adverse, where it becomes generally more difficult to effectively transfer risk in terms of coverage, scope and cost.

Whether a current Willis Client or not, Willis FINEX can assist. To learn more about specialisation and the benefits for your business, please either ask your Client Advocate for a FINEX Fact Sheet or, contact John Grant, Managing Director of Willis FINEX, on +61 2 9285 4175.



INSURANCE MARKET SUMMARY

NEW ZEALAND

Insurance market conditions, recently dominated by one key factor - low pricing - are showing signs of upwards movement.

This assessment is made by considering the 'trend' factor. In 2001, the start of major price 'corrections' began to pick up pace. The overall state of global markets for the preceding decade was such that insurer losses had become universal and unsustainable. An increase in pricing was the inevitable solution and such was the weak state of the global insurance market that the corrective pricing regime needed to be severe, as experienced all around the world. Following that steep escalation from 2001 to 2004, pricing has steadily fallen back to 'low' levels from 2005 through to today.

The market in New Zealand is now starting to splinter – prices are increasing for smaller businesses and the domestic 'home owners' market, while for corporate and large business insurance buyers, present prices generally remain low for all lines.

A 'stable low' is no longer true for those insurance buyers with persistent claims incidents, nor for organisations with continued inadequate risk protection, be it property or liability based risk. Some insurance buyers are being asked to improve loss control measures where a problem has arisen, or where a risk factor is deemed very high.

Pricing for property earthquake insurance stays low, as benchmarked against earthquake insurance pricing since privatisation in 1993. In general, underwriting capacity remains high, with local insurers retaining more risk, resulting in engaging with global re-insurers at higher limits per risk and at increased levels for catastrophic risks.

Looming 'Storm Clouds'

Two elements have impacted the financial health of insurance companies to varying degrees in late 2007 and into 2008. In summary, these elements are:

- **Loss ratios** - Most insurers in the Trans-Tasman market have taken a "buffeting" over 2007 and early 2008 from windstorms, serious multiple floods, hail storms, big fire loss events, increased frequency of fires generally, the Gisborne earthquake of December 2007, and increased liability risks litigation.
- **Investment earnings (US sub-prime mortgage losses)** - The impact of this shocking economic event on insurers is two-fold:
 - Impact on the earnings from their investment portfolios
 - Impact on specific insurance policies including Directors' and Officers' Liability (D&O) and Professional Indemnity

Influencing Factors

Our observations are tempered by specific risk factors such as:

- **A buyer's individual claims experience** - per insurance type
- **Type of risk mitigation** - eg. fire suppressant systems, product identification methods, corp. governance standards, etc
- **Nature of the risk** - for example, on property insurance whether it's high or low fire hazard and/or the earthquake zone
- **Level of cover needed** - eg. very high values at risk in respect of buildings, plant and stock, or very high limits for liability policies, needing greater underwriting capacity, affects pricing bandings

Your Willis Client Advocate will review each factor with you as it may impact on your insurance.



NZ INSURANCE MARKET SNAPSHOT

At year end 2006, New Zealand was the world's 30th largest non-life, 45th largest life market, and 37th largest market overall.

Interestingly, New Zealand is one of the few countries in the developed world where life and pensions constitute a smaller part of the total insurance market than non-life.

Of course sometimes statistics don't quite tell the whole story!

The New Zealand Government Superannuation plan, funded via taxation, not insurance, provides for a significant pension for every citizen.

Future tables of insurance statistics may have to include KiwiSaver, along the lines of EQC (Earthquake Commission) and ACC (Accident Compensation Corporation) statistics.

When the ACC and EQC levies are added to the private market premiums, the NZ annual 'insurance' spend per capita is NZ\$1,518.00, compared to Australia at \$2,187.06 per capita.

It remains to be seen whether KiwiSaver will change this dynamic in coming years.

STATISTICS SNAPSHOT

PREMIUM INCOME:

Members of the Insurance Council (non-life) at YE 2006	NZ\$3,011m
EQC at YE 30 June 2006	NZ\$85m
ACC at YE 30 June 2007	NZ\$3,290m
Estimate for non-members	NZ\$225m
TOTAL	NZ\$ 6,611m

LIFE AND HEALTH INSURANCE:

Life at YE 2006	NZ\$1,264m
Health at YE 2006	NZ\$700m
Pensions at YE 2005	NZ\$1,919m
TOTAL	NZ\$ 3,883m

TOTAL NZ\$10,494 MILLION

Source: Axco Insurance Information Services Limited



NEW FIRE SERVICE LEVY RATE FOR NZ

On 7 April this year, the New Zealand Fire Service Levy Amendment Order 2008 was passed. This amendment effectively raised the current levy rates as shown below:

Residential Property

7.3 cents per \$100 of insured replacement value (limit \$100,000, maximum of \$73 levy payable)
From 1 July 2008 this increased to 7.6 cents per \$100

Personal Property

7.3 cents per \$100 of insured replacement value (limit \$20,000, maximum of \$14.60 levy payable)
From 1 July 2008 this increased to 7.6 cents per \$100 with a maximum of \$15.20

Motor Vehicles

\$5.84 flat rate per vehicle (under 3.5 tonnes gross laden weight.)
Levy on other vehicles is calculated as 'other property'.
From 1 July 2008 this increased to a flat rate of \$6.08

Other Property

(Eg Commercial Property)
7.3 cents per \$100 of insured value
From 1 July 2008 this increased to 7.6 cents per \$100

Where the fire insurance contract provides for settlement of any claim on a basis more favourable than its indemnity value, or where there is no sum insured, the amount of the insured value is the indemnity value of the property. The indemnity value must be supported by a statutory declaration or a valuation certificate. The indemnity value is calculated as the replacement value of the property, less any depreciation on an age and condition basis. The levy rate was effective from 1 July 2008 and applies to any policies that incept from that date.

DEMYSTIFYING THE GLOBAL INSURANCE MARKET CYCLE

Q. Clients often ask “What makes for the ever changing pricing cycles in insurance?”

A. The insurance markets’ well monitored historical cycle does not necessarily track in predictive parallel with other economic indicators such as interest rates, exchange rates, commodity prices, consumer price indexes, stock market indexes, property prices, and the like. It is, however, influenced by the returns on the insurers’ investment portfolios from some of these financial instruments such as stock markets, bond yields, and interest rates.

ASK AN EXPERT

If you have a question you would like to see answered in Challenger, please forward it via email to your Client Advocate. Authors of questions answered in print, will receive a Willis gift pack.

As insurer underwriting profits increase with the increase in prices, the desire for more business (and thus greater investor returns) drives business decisions. ‘More’ business comes from an expansion of the economy, and/or from other insurers. This creates the competition factor, leading to pricing reduction to secure additional business or to retain current business. This downwards pricing cycle continues to the point where underwriting losses begin to drag down the returns from the massive investment portfolios that insurers maintain. At some point, each of the insurers’ combined poor results force a change to that of an upward swing in pricing and the cycle begins over.

THE DOFI ACT

IMPORTANT CHANGE TO THE AUSTRALIAN INSURANCE LANDSCAPE



The Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007 or “DOFI Act” came into effect on 1 July 2008.

This Act has a significant impact on how Willis, and the insurance broking industry in general, can now access Unauthorised Foreign Insurers (UFIs) for clients.

The Challenge

In 2003, the HIH Royal Commissioner’s report recommended, amongst other things, greater protection for insurance consumers against poorly capitalised foreign insurers operating from low or non-existent regulatory regimes.

The Solution

In September 2007, the Australian Government passed legislation requiring all Direct Offshore Foreign Insurers (DOFIs) seeking to carry on general insurance business in Australia to be regulated by the Australian Prudential Regulation Authority (APRA). This legislation came into effect on 1 July 2008.

Exceptions

Lloyd’s underwriters are unaffected and can continue to conduct insurance business in Australia in the same way as they have done prior to the legislation coming into effect.

Exemptions

The Government has recognised that in some circumstances there is still a need for Australian insureds to have access to international insurance markets. The legislation permits such access, provided one of four exemptions can be satisfied, as summarised briefly in the following table:

Exemption	Summary
High-value insured exemption	<p>Applies to exempt a policy issued to a policy holder who has:</p> <ul style="list-style-type: none"> ■ Total group operating revenue derived in Australia of at least \$200 million or more; or ■ Total group gross assets in Australia of at least \$200 million or more; or ■ Total group employees in Australia of at least 500 or more. <p>Specific threshold calculations apply.</p>
Atypical risk exemption	<p>For risks covered by stand alone policies such as:</p> <ul style="list-style-type: none"> ■ Nuclear ■ Terrorism ■ Biological risks ■ Aviation liability ■ Equine mortality or fertility ■ War ■ Satellite or space ■ Medical clinical trials ■ Protection & indemnity for ships other than pleasure craft
Overseas risks subject to foreign laws exemption	<p>Applies if the law of a foreign country requires the policy be issued by an insurer authorised or permitted by the laws of that country. A common example of where this exemption may arise is with Workers’ Compensation insurance.</p>
Customised exemption	<p>For risks (other than those covered by the previously mentioned exemptions) that cannot reasonably be placed in the Australian market. An insurance broker will need to consider a range of factors before making a professional judgement as to whether this exemption can be relied upon.</p>

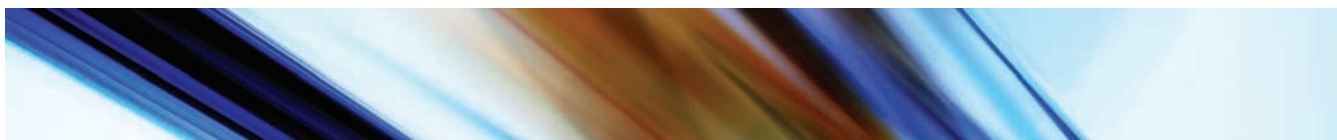
Exemptions will be determined by “self-assessment”, according to the professional judgement of the insurance broker. It is not necessary to apply to ASIC or APRA for approval to use an exemption.

The Impact

The DOFI legislation has already impacted the Australian insurance market, with two large European-based insurers having recently become APRA-regulated. However the biggest impact is likely to be on how the insurance broking industry self-assesses the exemption limbs, especially with respect to the customised exemption.

We have obligations to clients when placing insurance with any insurance company, irrespective of whether or not the insurer is authorised in Australia. The requirement for us to rely upon an exemption prior to placing a policy with a UFI does not alter these obligations. There is no legislative requirement compelling brokers to place insurance with an authorised Australian insurer where we consider the insurer to be unsuitable for that placement. However the exemption arrangements require us to undertake reasonable enquiries and, if required, be able to justify our decision for placing with a UFI.

For any queries about the legislation and the impact that it may have on your insurance, please contact your Client Advocate.



EMPLOYEE BENEFITS

KEEPING UP WITH THE PLAY!

Attracting, motivating and retaining employees is one of the key challenges for all businesses today, no matter how big or small. The mix of current global trends and local developments mean it is vital that employers review current practice to ensure they have an up-to-date benefit strategy capable of winning the battle for talent.

Benefits are one component of what is often called the “total rewards” approach to a co-ordinated strategy for attraction, motivation and retention. Under the total rewards model a strategy for benefits sits alongside consideration of compensation, work-life issues, performance and recognition, and development and career opportunities.

The outcome of a well developed total rewards strategy should be that employees feel they have the appropriate return in a mix of monetary and non-monetary rewards in exchange for their time, talents, efforts and results.

Demographic Trends

Demographic trends are responsible for many issues and opportunities facing businesses today, as well as current and expected future economic outcomes. The aging of the workforce is one of the most critical global trends.

For example, the median age of the workforce in New Zealand is now 39 years compared with 36.7 a decade earlier (*Source: Statistics New Zealand - Demographic Trends: 2007*). Similarly, the median age of the workforce in Australia is now 39 years for both men and women, compared to 37 years for men and 36 years for women in 1997 (*Source: Australian Bureau of Statistics - Australian Social Trends: 2008*).

In the US, baby boomers now represent just over 40% of the workforce. This aging of the workforce means there is a shrinking pool of 35 to 45 year olds from which businesses have traditionally sourced leadership candidates.

Generation X (born 1965 – 77) and Generation Y (1978-90) will probably get more promotional opportunities at an earlier age than their predecessors, given there will be a shortage of skilled workers across the board as Baby Boomers hit retirement. Businesses will have to hang on to every available worker as the skill shortage bites.

The recognised differences in expectations and behaviours between Baby Boomers, GenY and Gen X employees mean businesses need to think about different attraction, motivation and retention strategies for each of these groups. How do you keep the experienced, knowledgeable Baby Boomers for as long as possible while attracting the Gen X and Yers who have their own needs for a fast paced work style and expectations for rapid promotion?

Other factors are increased globalisation and mobility of workers resulting in more ethnic and cultural diversity and more women in the workforce with a desire for greater flexibility in relation to work hours and work location. In summary businesses face the challenges of changing demographics, multiple generations and cultures and evolving social attitudes.

All this means the old traditional package of benefits no longer works and businesses need to find new responses that are more flexible and will respond to continuing changes in the workplace. A cutting-edge employment package for a Gen X or Gen Y worker will need to look quite different to what was offered in the past to the baby boomers.

The Challenge - A New Approach is Required

To meet the demands of today’s workforce, a new approach to benefits is required. The menu of available benefits will probably still include those in the list that follows:

- Super
- Medical
- Dental
- Vision
- Life insurance
- Disability insurance
- Accidental death or injury
- Travel insurance
- Leave- sick, bereavement,
- Leave of absence
- Employee Assistance Programmes

The challenge is to put these benefits together in a way that provides the flexibility to meet a wide variety of employee needs and with the advantages of group buying through the work place.

All employers, in both Australia and New Zealand, are now required by legislation to have an involvement at some level in a workplace superannuation scheme. In both



countries any new retirement plans are now predominantly accumulation style arrangements established through master trusts. In Australia, membership is compulsory and employers must make contributions of at least 9% of pay. The recent “choice” legislation means employees must be able to select their own scheme if they prefer that to the employer offering.

In New Zealand, the new KiwiSaver scheme is currently voluntary for employees to join but from 1 April 2008 employers must make contributions if the employee joins, starting at 1% of pay and increasing by another 1% each year until they reach 4% from 1 April 2011. KiwiSaver is portable, it includes an option similar to the Australian “choice” provisions enabling transfer between providers at the employees election and offers employees choices of investment strategy.

The Solution

Employers can elect to just do what is mandated by local legislation or to seek a competitive advantage in recruitment by doing more than the minimum. Differentiation of benefits through superannuation is still possible through aspects such as the choice of scheme provider (e.g. product features such as the range of investment options are likely to differ between providers), the level of support provided to employees and the approach to associated insured death and disability benefits.

The move to master trusts with a wide array of investment choices, access to information from the internet and increased portability of savings should mean that today’s offerings are much more relevant to Gen X and Gen Y employees than the old style of superannuation scheme. The new style schemes also offer greater flexibility to meet the needs of older workers or those with varied working hours.

Other benefits can be developed to compliment the modern superannuation offering and help establish a complete benefits package that is consistent with the employer’s chosen rewards strategy.

Willis Employee Benefits specialises in working with employers to develop customised solutions. Further information on how we can help you win the battle for talent can be obtained by contacting our Employee Benefit Consultants.

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PROPERTY LAW ACT (NZ)

The new Property Law Act 2007 re-writes the long held insurance doctrine of 'subrogation', where tenancy is involved.

This New Zealand Act, which came into effect 1 January 2008 and replaced and repealed the Property Law Act 1952, modernises much contentious property rights law.

The practical effect of Sections 268 to 271 of the new Act is that lessors and their insurers no longer have any legal remedy to recover costs of damage to premises and related consequential loss from lessees even if caused by lessee negligence.

This is in respect of loss or damage caused by:

- fire, flood, explosion, lightning, storm, earthquake or volcanic eruption, and
- any other peril for which the lessor is insured.

The only instances in which recovery can still be sought from a lessee are:

- intentional damage;
- damage caused by criminal act; or
- lessor's insurance money is irrecoverable due to act or omission of lessee.

While the insurance implications may appear typically arcane at first look, they do in fact introduce a degree of commonsense.

The rationale behind the change is the recognition that lessees invariably pay the cost of lessors' property insurance and should accordingly enjoy the protection of that policy coverage.

This won't necessarily be welcomed by property insurers, but for liability insurers, a risk disappears. Given many insurers in New Zealand underwrite both property and liability risk, the end result may be balanced.

Of course this 'trade-off' in risk exposure between property and liability could shift the insurance pricing somewhat. While lessee liability risk diminishes, the property insurer may see a case to increase their premiums to allow for the removal of their subrogation rights.

Now in Force

This exoneration of lessees from liability is in respect of all damage occurring after 1 Jan 2008 and is regardless of what indemnities

may currently be contained in the lease. So this great news for liability insurers as the lessees' liability risk is dramatically reduced, but not so great for property insurers.

Variations

This newly established 'exoneration' of a lessee also applies in the event an agent of the lessee (such as a contractor) is the party who caused the damage.

However, the Act does not remove the lessor's common law rights to directly pursue the negligent contractor. Section 271 also allows that in the event a lessor elects not to insure (or not fully insure), a lessee can be held liable for damage caused by the specified major perils listed above provided that this was pre-agreed contractually between the parties.

The Impact - Potential Implications for Businesses

- If a lessor consciously does not purchase full insurance, or indeed elects to 'self insure', they have the option to negotiate with the lessee around the provisions of section 271.
- A lessor will not be able to recover any uninsured loss, for example an excess or deductible, from a negligent lessee. Loss caused by a negligent lessee and paid under the lessor's insurance cover will stay firmly planted against the lessor's insurance history.
- At first look, lessees have a strong case for arguing against high liability insurance limits imposed upon them by lessors in lease agreements. There remains, of course, the exposure to other third party loss such as damage to property of other tenants, adjacent property/ buildings and the public at large, which demands careful analysis of quantum.

An Inevitable Reaction...

It's possible we may see a trend in new or renewed lease agreements whereby lessees seek a new insurance clause stating that the lessor must provide annual confirmation of property insurance to the lessee in the same way that lessees now must do with evidence of public liability insurance.

At this time we can only assume that indemnity and insurance clauses of standard lease agreement forms will be amended in time to reflect the application of this Act.

To find out how this law change may affect you, please contact your Willis Client Advocate.



RESERVE BANK TO LICENCE INSURERS

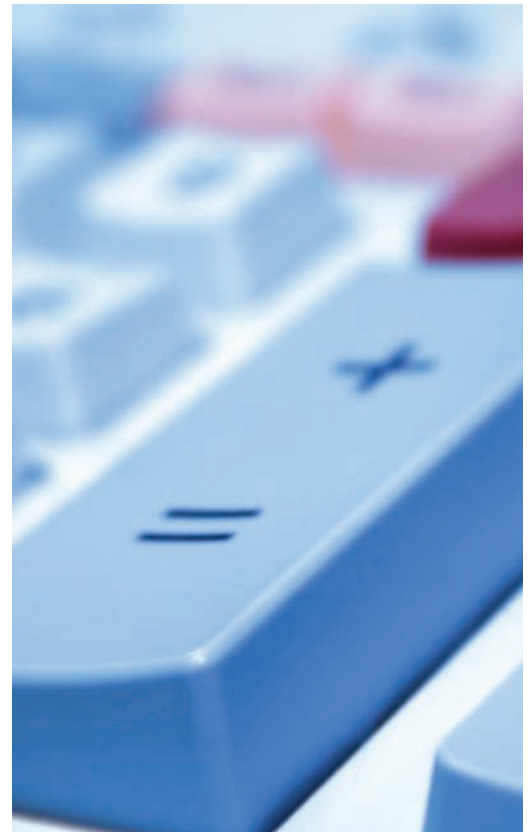
All New Zealand insurance providers – including life, health, and general insurance - will soon be licensed by the Reserve Bank of New Zealand under a new prudential regulatory framework announced last December. Legislation will be introduced in 2008 and brought into force in 2010.

“The purpose of licensing is to ensure that insurers are ‘fit for business’ by demonstrating their capacity to manage the business they undertake, identify and manage their risks effectively, and have sufficient financial strength” reported Finance Minister Dr Michael Cullen.

The Reserve Bank’s role as regulator and supervisor of the insurance sector will include licensing insurers and enforcing disclosure requirements, including a mandatory rating of an insurer’s financial strength.

Commenting on this development, the NZ Reserve Bank Governor Alan Bollard said “The insurance sector is an important part of the financial system which underpins economic activity; policy holders need to have confidence in insurance providers that insurance claims will be honoured. While prudential supervision can never eliminate the possibility of failures within the sector, licensing of all insurance providers helps ensure that minimum requirements are applied to the sector in a consistent manner.”

To learn how Willis monitors the financial security of insurers, ask your Client Advocate to explain the process we apply to all insurers worldwide.



SNAPSHOTS

Did you know?

Willis was the insurance broker for the Lunar Roving Vehicle, affectionately known as the “Moon Buggy”.

New Zealand is an expensive place for insurers to do business, partly because of the wide dispersion of its population and industry, and partly because the shortage of top-quality technical staff tends to push up salary levels, particularly in Auckland. According to one insurer with operations on both sides of the Tasman Sea, business costs are up to 30% higher in Auckland than in Sydney. Despite insurers’ efforts to reduce distribution and processing costs, expenses are currently rising at a faster rate than net earned premiums.

Source: Axco Insurance Information Services Limited

Willis China was recently appointed as the insurance consultant for the operational assets of the largest hydropower project in the world, the Three Gorges Dam. Located in Sandouping, a region in the Hubei province of China, the project will be fully operational by 2011.

The Three Gorges hydroelectric power project spans the mighty Yangtze River and will generate enough electricity (84.7 billion Kwh/yr) to power a city four times the size of Los Angeles.

The dam is the world’s largest concrete structure, containing 28 million tons of concrete and 32 million tons of rock and earth fill. It incorporates 32 700MW turbines and five-step ship locks that can lift 10,000 ton ocean-going vessels the 113m (371 ft.) necessary to pass upstream. This will allow ships to travel 600km inland to Chongqing, a region rich in manufactured and agricultural goods.

Net incurred claims for the Australian insurance industry in the year ended 31 March 2008 were \$14.4 billion, up 22.7 percent from the previous year.

Source: www.apra.gov.au, General Insurance Quarterly Performance Report March 2008

The Australian industry underwriting result in the year ended 31 March 2008 was a surplus of \$1.9 billion, a decrease of 52.9 per cent from the previous year. The higher claims expense in the year ended March 2008 was a major reason for the decrease.

Source: www.apra.gov.au, General Insurance Quarterly Performance Report March 2008.

Did you know?

Willis has placed insurance for the new safe confinement structure for the damaged reactor of the Chernobyl Nuclear Power Plant.

Local statistics indicate that New Zealanders are ignoring the need to insure adequately.

A recent survey by AIG Life found one quarter of respondents did not hold health, income protection or critical illness insurance and half lacked basic life insurance.

The Insurance Council of New Zealand estimate that similar figures apply to general insurance despite the recent spate of natural disasters.

Source: www.insurancenews.com.au

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The Willis Group

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The Willis Group is one of only three major risk management and insurance intermediaries that operate globally.

Willis employs 16,000 people worldwide and is represented through a network of over 300 offices in more than 100 countries.



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AT WILLIS, WE ARE KEEN TO REDUCE OUR IMPACT ON THE ENVIRONMENT.

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