

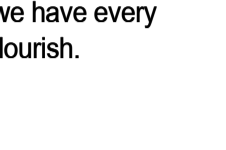


## A sure start to the Financial Year 2016-2017

We have had an awesome start to the new financial year with many new clients choosing us as their broker. Thanks again for choosing Austinsure.

We caught up with many potential and existing clients at two recent conferences. Firstly, Neil Austin attended the Aviation New Zealand conference in Wellington in late June, and secondly, we had a stand at the Roofing Association of NZ conference in Auckland in early July, where Blair Dyer, our Professional Liability Manager, was one of the speakers.

In early April, Neil and Blair attended the Steadfast conference in Brisbane to keep up with the latest industry developments. Austinsure has been a member of the Steadfast network for the past two years. This provides our customers with access to the reach, strength and buying power of Australasia's largest insurance broking group.



## Brexit update

### No impact expected on Lloyd's policies

Our partners at Lloyd's do not expect the vote by the United Kingdom to end its membership of the European Union – known as 'Brexit' – to have any impact on the policies we have arranged in the London market.

This timetable starts at the point that the UK formally informs the European Union of its intention to leave. During that period, Lloyd's will continue to operate within the single market and under the current EU rules and regulations.

Lloyd's has prepared for Brexit and will be putting into action a contingency plan to ensure that Lloyd's can continue to access its key European markets. Given Lloyd's position at the heart of the global insurance and reinsurance sector, and the financial strength, expertise, and innovation of the Lloyd's market and its participants, we have every confidence that Lloyd's will continue to flourish.

## We welcome 2 new members to the team

### Robin McNaughton, Servicing Broker

Robin is a highly experienced insurance broker who joined Austinsure earlier this year to provide broker support to Neil Austin, predominantly in the aviation insurance field. She provides back up for the clients and processes the documentation, invoices, changes, etc. Robin started her insurance career at Aon Insurance Brokers in Wellington in 2002, then moved to Sydney in 2004 where she worked for Jardine Lloyd Thompson and a newly established brokerage called Internisk. She left the industry for a few years to bring up her children, who are now both at school.

### Jen Wilkie, Office Administrator

Gifted with an eagle eye for detail and a service ethic honed through 12 years in the hospitality industry, Jen comes to Austinsure via an 18-month stint as a travel consultant with Flight Centre. She made the leap to the insurance industry because she really enjoys working with the fine details of policy schedules and wordings, plus helping clients through the insurance broking process. As Office Administrator, Jen ensures the smooth running of the office by assisting the brokers and also follows up renewal declarations and proposal forms, etc from clients.

Meanwhile, Jared Sun left Austinsure in April to play cricket in the UK. Christina Tombs now oversees the back office and provides broker support to Blair Dyer.

## Check in with us

### before signing aviation lease or rental agreements

A word of warning to all helicopter and aircraft operators: don't get caught out when you lease or borrow aircraft or components. You need to be aware that insurance cover is not necessarily automatic and there are a number of fishhooks that you may not know about. So please don't sign any lease or rental agreements without talking to us first.

We will review your policy to ensure it responds to any insurable conditions within any lease or rental agreements. For example, in the event of a claim involving a leased aircraft, some aircraft lease agreements require the lessor to pay the rental until the aircraft is fixed. Other lease agreements may require the aircraft to be treated as a write-off if the cost of repairs is more than 75% of the agreed value.

In many cases the lessor needs to be named as additional insureds under the liability section of the

policy. Plus loaned engines and components need to be added to your policy and specified while they are attached to your aircraft.

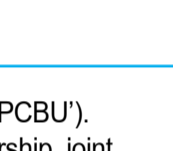
If you are sending an engine overseas, some agreements require you to cover the transit yourself. However, you may find that your aviation policy only covers the transit within New Zealand, so you may need a separate cargo policy. If you don't have a written agreement stipulating the agreed amount covered and who is responsible to insure the engine during transit, the actual carrier's liability will be limited to just \$2,000 for each unit of goods lost or damaged.

We can work with your insurers to make sure your policy covers all the possibilities so you won't end up out of pocket. So talk to us before you sign any lease or rental agreements – we'll make sure you're covered.

## All you need to know

### How the Health & Safety at Work Act affects you

The Health & Safety at Work Act 2015 came into force in April 2016 replacing the Health and Safety in Employment Act 1992. This means businesses and individuals now have new responsibilities and face stiffer penalties if they don't comply. Let's have a look at some of the main changes.



#### What is a 'PCBU'?

The new legislation replaces the term 'Employer' with 'Person Conducting a Business or Undertaking' (or 'PCBU'). This new term includes employers, principals, and the self-employed people of any company, trust, partnership, joint venture, or sole trader, conducting a business or undertaking, whether for profit or not.

#### Duty of care

A PCBU has a primary duty of care to ensure the health and safety of workers, as far as is "reasonably practicable". If they fail to comply they may face a range of sanctions, including fines and/or imprisonment. Any individuals who "exercise significant influence over the management of the business" can be held personally liable if they fail to ensure that their business complies with the Act.

#### "Reasonably practicable" definition

The phrase "reasonably practicable" replaces the old definition of "all practicable steps" in the previous legislation. This means that with regard to health and safety risks, you will have to take into account all relevant factors, including the likelihood of each risk occurring, the potential harm posed by each risk, and how each risk may be reduced or eliminated.

#### Worker responsibilities

The new Act requires workers to take reasonable care for their own health and safety and that of others. At the same time the new Act requires employers to support and encourage worker participation and consultation in workplace risk management, including the ability for employees to elect workplace health and safety representatives.

#### Maximum penalties

The agency charged with enforcing the new Act, WorkSafe New Zealand, will have up to two years to investigate any incidents, and may impose up to a maximum of the following penalties:

Category	Corporation	PCBU/Officer	Individual/ Employee
Reckless conduct exposing someone to death/serious injury	\$3 million fine	\$600,000 fine, 5 years in jail, or both	\$300,000 fine, 5 years in jail, or both
Failure to comply exposing someone to death/serious injury	\$1.5 million fine	\$300,000 fine	\$150,000 fine
Failure to comply with a Health & Safety duty	\$500,000 fine	\$100,000 fine	\$50,000 fine

#### Insurance cover

It remains illegal to insure against fines levied under Health & Safety legislation. However, it is still possible to insure for defence costs involved in investigations and prosecutions brought by WorkSafe NZ and for reparations and damages awarded by the Court. Cover for unintentional breaches of New Zealand Health & Safety legislation is provided by a Statutory Liability or Management Liability insurance policy.

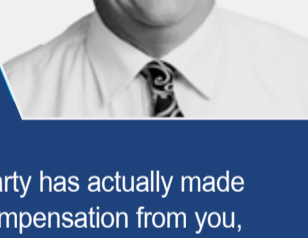
#### Conclusions

Don't ignore this new law change – that would be a very risky option. In the event of an incident, you will need to show that you have developed and implemented a risk management plan, worked with management and employees to identify and mitigate or remove health and safety risks, and implemented a complaint and accident reporting programme.

The new Act is more rigorous than previous legislation and we expect enforcement will be more frequent and more complex (i.e. more expensive and disruptive to your business). So we strongly recommend a review of your limits for Statutory Liability and Directors and Officers Liability insurance. Talk to us today about reviewing your insurance and helping you meet your obligations under the new law.

## Notification and Admissions

### By Andrew Hooker, Managing Director, Shine Lawyers NZ



One of the enduring issues with liability insurance is the fine balancing act between protecting commercial relationships with clients and protecting your legal exposure should things go totally pear-shaped. Your insurance company covers you for legal liability but has no obligation to indemnify you in a way that protects your commercial relationships.

So if, for example, you cause loss through negligence to a valued client, your insurance company won't necessarily be interested in protecting the client relationship when considering your claim. This often means that things you may do to protect your commercial relationship could even compromise your claim if you are not careful.

The first issue relates to 'admissions'. Almost all liability policies, whether general liability, products liability, or professional negligence, will contain a clause prohibiting you from making any admissions. In other words, if circumstances arise in which there is possible liability, you must not make any admissions of your liability, even if you believe such admission might protect your overall commercial position.

A typical clause might read as follows: "The insured shall not without prior written consent in writing from the insurer make any admission, offer, promise or payment in connection with any occurrence or claim".

There is a significant amount of case law around these provisions, and the Courts have ruled that they cannot be relied upon to decline the claim unless the admission has caused or contributed to the loss (being your liability). So if you would have been liable anyway, it could be difficult for the insurance company to enforce the clause. But you don't want to be taking that risk. So the best option is not to make any statements and immediately report the matter to your broker.

The second issue relates to 'notification'. Almost all policies, including liability, contain specific clauses requiring notification of a claim as soon as you become aware of it.

Most clauses are very wide. They often require you to notify "any circumstances that may give rise to a claim". This could mean that, even before your client or any other party has actually made an allegation against you or sought compensation from you, you could have an obligation to notify your insurer.

So, to protect your position it is very important that you notify your broker as soon as you become aware of anything that might give rise to a claim. Obviously your broker will advise you about what to do next. And generally speaking a notification that does not result in an actual claim is unlikely to affect your coverage or premium. So when you have that sudden realisation that you may have made a mistake, that is the time to notify, not later when you are served with the proceedings.

The Courts and legislation have limited the ability of the insurance company to rely on these clauses. But again, it is better to make the notification than to have to rely on legal or statutory arguments to get around a late notification.

The third issue that often arises is the insurer's entitlement to take over the defence. Most liability policies contain a clause that reads something like this: "The insurer shall be entitled to take over and conduct in the name of the insured the defence or settlement of any claim and the prosecution of any counterclaim. The insurer shall have full discretion and the conduct of any proceedings in connection with any claim or available counterclaim".

Where the potential liability for which you are claiming relates directly, or even sometimes indirectly, to a valued client, the insurer has no obligation to protect that commercial relationship. It is entitled to defend the proceedings purely on the letter of the law.

Liability insurance is probably the most important type of insurance for any business. But you need to be aware of your obligations and ensure that you don't act in a way that could invalidate your cover.

## Your business needs Cyber Liability Insurance because the internet knows no borders



Your company, like all organisations that use a computer network or collect data, is exposed to cyber risks and potential privacy issues. In fact 56% of New Zealand businesses experience a 'cyber event' at least once each year and cyber crime costs the country more than \$257 million per year. Our geographical isolation is no protection because the internet recognises no borders.

The question is: what to do about it? One way to protect your business from internet and network-based risks is 'cyber liability insurance'. Risks of this nature are typically excluded or not specifically defined in traditional public liability and property policies.

Cyber liability insurance can fill many of the gaps in traditional insurance as well as provide direct loss and liability protection for risks created by the use of technology and data in your company's day-to-day operations.

Most cyber liability insurance policies currently cover third party claims (including claims for compensation, investigations, and payment of fines and penalties), business interruption (including lost profits), and remediation costs (including reimbursement of your costs).

Austinsure can customise your cyber liability insurance policy to cover malicious attacks (such as cyber theft, fraud, cyber terrorism, cyber warfare, hacking, insider attacks, and industrial espionage) and non-malicious attacks (such as massive disruption or system failure).

Cyber liability insurance has generally only been available in the New Zealand market for about three years but is now offered by several local insurers, so premiums are relatively competitive. Call us today to discuss your cyber risks and let us advise you on the best options for your organisation.

### Here are some real claims by NZ businesses

Type	System damage and business interruption
Insured	IT company
Event	A malicious attack to steal customer data
Loss	More than \$2.1 million, including \$1.2 million for data recovery and income loss.

Type	Employee error and privacy issues
Insured	Online retailer
Event	An employee error that caused a privacy breach for customers
Loss	\$50,000 for notification and credit monitoring costs + \$100,000 for legal fees and nuisance settlement.

Type	Computer virus and business interruption
Insured	Law firm
Event	The company's own IT person turned off their virus protection so they could receive a large file. However, they forgot to turn the virus protection back on and their system became infected with a computer virus.
Loss	\$65,000 to restore their system and business interruption costs

Type	Extortion
Insured	Decorating company
Event	A crime syndicate took their website down and demanded a \$2,500 ransom to restore it
Loss	The ransom was less than the \$7,000 it would cost to remedy so the insurers paid it.