AIS Liaison
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Coming to terms with terror

After the horrific events of the Lindt Café siege in Sydney's CBD late last year, debate raged over whether perpetrator Man Haron Monis was a terrorist or simply a madman.

The gunman's true motivation for the hold-up on December 18, which resulted in the deaths of two hostages as well as his own, may never be known. But the official status of the attack is clear after the Federal Government classified it a terrorist event.

The label has more purpose than simply settling public debate, however. There are important and complex insurance ramifications.

The Australian Reinsurance Pool Corporation (ARPC), established by the Terrorism Insurance Act 2003, was designed to tackle a shortage of cover following the September 2001 attacks on the US.

Through the scheme, insurance companies can choose to reinsure the risk of claims for eligible terrorism losses by paying premiums to the ARPC.

Each insurer has an individual risk retention, and once this is exhausted the ARPC's pool of retained earnings meets claims until the retrocession deductible is reached.

Then the $2.9 billion retrocession program kicks in, and when this is depleted claims will continue to be met by the $10 billion Commonwealth guarantee.

The total value of the scheme is $13.3 billion.

The classification of the Lindt Café siege as a declared terrorist incident had several repercussions.

Firstly, it meant that insurers could not apply any terrorism exclusions.

This had no practical impact in this case, as insurers had already indicated prior to the declaration that they intended to pay claims.

Secondly, it triggered the ARPC reinsurance arrangements, allowing insurers to make claims.

Again, this was purely theoretical as the losses of the event – estimated at $600,000 – came nowhere near the insurers' deductibles, some of which are as high as $10 million.

Part of the ARPC's role is advisory, and it was able to give assistance to the Federal Government throughout the process.

The terrorism threat is constantly evolving and UK brokers have expressed concern that the British terror pool, Pool Re, does not provide business interruption coverage when there is no property damage.

The ARPC responds to the cover the policyholder has in place, and so could in theory cover such losses.

However, most business interruption policies do require property damage and it is rare for companies to purchase additional cover.

A Treasury review of the ARPC's future is pending, with some commentators believing the private reinsurance market now has the capacity and appetite to provide required cover.

The ARPC disputes this view however, pointing to the fact that all of the major Western economies have similar schemes in place.

The Sydney siege, while not significant in terms of insured losses, was certainly a tragic reminder of the purpose terrorism pools can serve.

Facing up to fraud

Be alert: most fraudsters work for their employer for years before they begin to steal

You might not be aware that organisations across the globe lose an estimated 5% of their annual revenues to fraud. Not from customers or crooks, but from employees inside the company.

According to the US-based Association of Certified Fraud Examiners (ACFE) – the world's biggest anti-fraud organisation – this translates into a staggering potential loss of $US3.7 trillion each year.

Yet many firms still take the view that "it wouldn't happen here".

Frankly, if this is you, it's time to wise up.

Every business should have an adequate level of insurance cover in place to ensure stability should they fall victim to this highly unpleasant and pervasive crime.

But the ACFE's latest report also gives crucial insight into other proactive fraud prevention measures and controls.

A "hotline" is a must for larger firms, with occupational fraud more likely to be detected through a tip than any other method. For smaller companies, staying aware of what's going on in the workplace – and listening to people you trust – is important.

More than 40% of all cases are discovered from tip-offs, with most of them likely to come from another employee.

Also, be alert to "red flag" behaviours, because more than 90% of fraudsters display certain traits.

Living beyond their means is the most common giveaway, followed by financial difficulties, an unusually close association with a vendor or customer, and unwillingness to share duties.

Managers and employees should be trained to recognise these warning signs.

The longer frauds last, the more financial damage they cause.

Small business owners need to be the most vigilant, as they suffer disproportionately when compared to larger firms.

Smaller organisations typically deploy fewer anti-fraud controls, making them much more vulnerable.

And don't think for a second that external audits or background checks will keep you safe. External audits have been shown to be among the least effective controls in combating occupational fraud – detecting just 3% of cases.

The vast majority of occupational fraudsters are first-time offenders, with just 5% having been convicted of a previous offence.

Background checks can be useful in screening out some bad applicants, but they often cannot predict fraudulent behaviour.

Most fraudsters work for their employers for years before they begin to steal.

You should aim to focus on prevention, rather than recovery.

Recovering the losses from an internal fraud can take years, and is often never complete.

In the cases examined by the ACFE, the average loss was $US145,000 and 22% involved losses in excess of $US1 million.

The average length of time for a fraud to be detected was 18 months.

Occupational fraud is a universal problem – and a pervasive threat to all organisations.

We all want to trust our teams, but the facts speak for themselves.

Talk to us about the range of tried and true policies available in the market that will ensure you're covered should the worst happen.

Privatising personal injury

Signs of change: Australia's injury schemes would be better in a competitive market

As governments at all levels seek new ways to lower costs for business, insurers are seeing a "window of opportunity" opening. The insurers believe Australia's personal injury schemes – most of which are owned and operated by government-owned agencies – could be more efficient and cheaper if they were opened up to a competitive market.

Suncorp is leading the charge, arguing that while intense regulation of compulsory third party and workers' compensation schemes are entirely understandable, there is no need whatsoever for governments to be in the insurance underwriting business.

State-owned monopolies might be justified if the private sector was unable to provide the service, but this is not the case.

The private sector currently provides insurance in eight of Australia's 19 personal injury schemes, with state-owned enterprises underwriting the remaining 11.

No schemes have moved from public to private since 1989 – despite the private sector having both the capacity and appetite to run successful schemes.

The insurers see the current situation as a patchwork of inconsistency – a process of natural reform that was never completed.

According to a PricewaterhouseCoopers (PWC) report, privatising state-based schemes could increase productivity and generate billions of dollars in economic output.

Privatised schemes can bring faster recovery times for injured people, reduce the burden on the health system and lower premiums.

Competing insurers would minimise price, and provide the best product and customer service possible.

The PWC report estimates that in a competitive private scheme, 5% of injured people would return to work faster.

Insurers deny that the small size of potential markets would put them off, arguing that the ability to operate nationally, in multiple jurisdictions, would allow them to generate economies of scale.

There is also conflict as governments have to act both as insurer and regulator – something that would be removed by private sector underwriting.

Governments would be able to focus on independent regulation, enforcing the rules and ensuring that licensed insurers conduct their operations in the public interest.

Suncorp argues that governments might be best placed to continue to handle the small number of injuries that are catastrophic.

Such claims are expensive and lengthy and the injured person should be provided appropriate care and support for as long as they live, potentially decades.

Aside from catastrophic injuries, insurers believe the appropriate role for government is purely as regulator.

They say it's hard to justify maintaining state-based monopolies when the private sector can deliver better outcomes.

Insurers already have the skills, systems and processes required to expand their operations and there has never been a better opportunity to complete the stalled process of reform and eradicate the inconsistencies of the current setup.

Insurers believe this is a once in a lifetime window of opportunity, and they want to climb through it before it slams shut.

Don't be beaten by bullying laws

New anti-bullying laws may not yet have resulted in the claims influx some insurance companies were anticipating, but there's no doubt they could still leave the unprepared business owner with a bloody nose.

From January 1 last year, employees who believe they are being bullied at work have the right to apply to the Fair Work Commission (FWC) for an order to prevent the behaviour.

The commission will then seek submissions from the company and individuals concerned before deciding whether mediation or a formal hearing is the best way forward.

If an order is issued, the firm and people bound by it must comply or face significant court penalties of more than $50,000.

The order could require individuals to stop behaving a certain way, or demand behaviour monitoring, additional training, or the review of anti-bullying policies.

On top of the FWC powers, renewed focus on the issue could also encourage general protection or unfair dismissal claims.

Victims of bullying can also claim for a psychological injury under workers' compensation laws.

All in all, it pays to be prepared.

It has never been more crucial to make sure your business has sufficient management liability cover, including employment practice liability.

But there a number of other steps you can take to prevent the problem rearing its ugly head.

Firstly though, it is essential to understand how bullying is defined.

According to the FWC, bullying at work occurs when a person "behaves unreasonably" towards another.

To be considered bullying, the behaviour must be repeated and must create a risk to health and safety.

It can involve intimidating conduct, humiliating comments, spreading of rumours, teasing, practical jokes, exclusion from events, or unreasonable work expectations.

However, bullying does not include reasonable management action including performance management, disciplinary action for misconduct, or informing an employee about unsatisfactory work.

So how can you stop bullying happening in your business?

Think about whether you have an effective policy about bullying in your workplace, and whether your managers have had sufficient management training.

Staff should also be trained in appropriate workplace behaviour.

Do you have satisfactory employee monitoring in place, and a process for managing complaints?

It's important to deal with grievances appropriately and quickly, as festering issues are more likely to be referred to the FWC – and one application may encourage others.

For small businesses in particular, the process of dealing with an FWC application can be expensive, time-consuming and distracting, as well as potentially devastating for team morale.

Talk to us to make sure you have an effective and up-to-date risk management strategy in place, as well as suitable cover should things go wrong.

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