



Insurance Insight

Insurance Industry News and Views from EBM

January-February 2010

Welcome message

Welcome to the January-February *Insurance Insight* and the first edition for 2010.

As we begin a new and hopefully prosperous year, already the contrasts between this year and last year are clear.

With a global business survey placing Australian firms among the most optimistic in the world, confidence looks to be returning to our corporate communities. In this edition we look at the results which suggest that 79 per cent of Australian businesses now claim to be confident about business prospects for the year ahead.

As encouraging as these signs are, we must remain cautiously optimistic about improving conditions. Early in January, we were reminded of this when the issue of insolvency regulation was highlighted. In the wake of Financial Services Minister Chris Bowen's planned changes to insolvency regulations, we look at how this will affect creditors and shareholders in the event of a corporate collapse.

Elsewhere in this edition of *Insurance Insight* we take a look at the rise of ethical shareholder groups and look at why shareholder activism should now be on the radar of every well-run business.

As always we are keen to hear your thoughts and ideas for issues you would like to see covered in *Insurance Insight*. Please email your suggestions to marketing@ebminsurance.com.au. If you would prefer to opt-out of receiving future newsletters simply click on the link at the bottom of this email.



Jeff Adams
Managing Director
EBM Insurance Brokers

Business optimism rises – but don't get carried away...

Shielded from the worst effects of the Global Financial Crisis, Australian firms are bursting with optimism compared to a year ago.

A worldwide study of medium-to-large private businesses by advisory firm Grant Thornton found that only Chile and India are more upbeat about 2010.¹ Among Australian businesses, just 11 per cent claimed to be optimistic in 2009, compared with 79 per cent in 2010.

High levels of flexibility, entrepreneurial spirit and a willingness to adapt to changing economic conditions were also registered by local firms.



"Businesses have responded quickly and effectively to changing economic conditions by exploiting their size and flexibility as private entities," said Tony Markwell, Grant Thornton Australia National Head of Privately Held Business.²

"Although Australia was very fortunate to not have officially experienced a recession, we were still very much impacted by the GFC with many businesses being forced to cost cut across the board. More than ever, as we enter the re-building phase, sound business planning and financial management, as well as utilising Government support, are vital to Australia's continued prosperity."

Responses from the 250 Australian firms surveyed in October 2009 included:

- 95 per cent said they expected their revenue to at least remain steady in 2010;
- 90 per cent expected their profit to stay the same or rise and 95 per cent said they would not lay off staff during 2010; and
- Western Australia was the most optimistic state, with 90 per cent of firms confident about 2010.

Relative protection from the full impact of the GFC was provided by many companies deciding to take a strategic long-term view rather than be rushed into short-term cost-cutting measures, added Mr Markham.

EBM Managing Director Jeff Adams said Australian business should be encouraged by surging levels of optimism but should not neglect sound business practices in the rush to recovery.

"Increased positivism about future operating conditions is a welcome addition to boardrooms around the country but we should not see this as a green light for reckless corporate behaviour," Mr Adams said.

"Many businesses remain vulnerable following the financial crisis and although undoubtedly thankful to have escaped the clutches of the worst of the crisis, the best way for businesses to capitalise on the expected upswing is to ensure that business fundamentals, such as a strong balance sheet, tight credit control and protection for major assets, are all safely in place.

"Retaining a sense of realism, for example by accurately valuing assets when renewing policies, will help position companies to take best advantage of the upswing."

¹ Grant Thornton, *International Business Report*, 2009.

² Grant Thornton, *New year, new economy: Aussie business super confident for 2010*,

Major changes to insolvency law proposed

Although only a few weeks old, 2010 looks to be a defining year for corporate and insolvency law reform in Australia.

In January 2010, Federal Minister for Corporate Law, Chris Bowen, announced a package of major changes to Australia's corporate insolvency laws.

According to the Government, the package will deliver a range of reforms directed at lowering the costs and complexity of insolvency administrations. This will be achieved by “improving communications with creditors and reducing the potential for abuse of corporate insolvency law.”³



But what has attracted the most attention from corporate and legal commentators is the Government's intention to amend the Corporations Act to reverse the effect of the High Court's decision in *Sons of Gwalia v Margaretic*.

This landmark decision in 2007 ranked shareholders of collapsed gold miner Sons of Gwalia equal with unsecured creditors on the basis that they had been misled. This meant that in certain claims, shareholders were on an equal basis with unsecured creditors.

Corporate commentators have labelled the decision controversial because, prior to the decision, shareholders of a collapsed company would have been the last group to receive funds which were paid to secured and unsecured creditors and employees first.

According to the proposed legislative amendment, in all cases shareholders will rank below creditors in gaining funds from insolvent companies no matter how and what representations were made to them.

Announcing the changes, Minister Bowen stated:

*“Any direct benefits to aggrieved shareholders arising from non-subordination are outweighed by the negative impacts on shareholders generally as a result of restrictions on access to, and increases in, the cost of debt financing for companies.”*⁴

EBM Managing Director Jeff Adams said any changes that increase certainty in corporate regulations for businesses and shareholders should be welcomed.

“Business administration and insolvency regulations are an increasingly complicated area of corporate law and clients are looking for advice and protection in the event of a business failure,” Mr Adams said.

“In the unfortunate circumstance when a company is no longer solvent, many parties can be affected including company directors, shareholders and administrators.

“EBM's corporate broking division recognises the complexities associated with these situations and assists clients to create risk management strategies.

³ Media statement, Corporate Insolvency Law Reform Package, Minister for Financial Services, Superannuation and Corporate Law, Jan 2010.

⁴ Media statement, Corporate Insolvency Law Reform Package, Minister for Financial Services, Superannuation and Corporate Law, Jan 2010.

“EBM offers tailored advice on specific insurance products such as management liability, directors’ and officers’ liability, employment practices liability, statutory (fines and penalties) liability, directors and officers’ supplementary legal expenses and more.”

For more information about EBM Corporate Insurance and Risk Management, call 1300 INSURE (1300 467 873) or visit www.cbminsurace.com.au.

From militancy to mainstream – the rise of ethical shareholder groups

Shareholder protests were once regarded as temporary nuisances, usually confined to the fringes of the corporate radar. Today, the boards of the biggest companies are amending businesses practices specifically to avoid the wrath of activist shareholders.

Ethical shareholder groups – virtually unheard of 20 years ago – are now wielding more influence than ever on a company’s business practices. Rising in power, some are now powerful enough to dictate the pace of boardroom reform.

Shareholders, the actual owners of companies, have traditionally left the business of management to their boards. An Annual General Meeting is the usual forum where shareholders can directly question their boards on management decisions and policies.

The ethical shareholder movement gained worldwide attention in 1995 when Shell’s intention to dump a disused oil storage platform in the Atlantic caused global uproar.

Despite its protests that the Brent Spar platform had been stripped of contaminants and met all statutory requirements for dumping, Shell faced unprecedented protest. When its share price began falling as a result of customer boycotts of service stations, accompanied by threats to Shell staff, the company relented – but too late to avoid a worldwide public relations catastrophe and a battered reputation which took years to fix.

Shareholder activism has spilled over from criticising perceived unethical or environmentally-questionable practices to virtually all areas of corporate governance, but with a particular focus on boardroom pay.

Shareholder knowledge and sophistication has also advanced greatly in the 15 years since Brent Spar with increasing scrutiny of boardroom practices and awareness of shareholders’ rights putting company practice in the spotlight to an unprecedented degree. The recent proliferation of ethical superannuation funds is more evidence that stakeholders are taking ethical issues seriously.

2009’s reporting season saw effective shareholder revolts against a number of high-profile Australian companies in Australia and overseas. Further evidence came from recent research from Insync Surveys which found only around half (55 per cent) of 625 Australian and New Zealand directors interviewed consider their CEOs and senior management’s remuneration packages to be appropriate.⁵ The survey



⁵ *CEO Performance and Remuneration: A Boardroom Perspective*, Insync Surveys, 2009

urged boards to do more to recalibrate the remuneration, including bonus expectations, of the CEO and senior management to ensure they are appropriate and linked to organisational performance.

As the influence of ethical shareholder groups grows, it is likely that businesses can expect far more of their up till now concealed business practices to come under greater public scrutiny.

The real cost of insurance fraud

Insurance fraud is often called the ‘victimless crime’ with some considering it an unsavoury but quasi-permissible offence. The truth however is that it represents a very serious offence and one that is continuing to cost Australia dearly.

According to findings from the Insurance Council of Australia, 25 per cent of people interviewed as part of a survey into insurance fraud admitted knowing someone who had committed defrauding an insurance company.⁶

More worrying, the same survey found that one in five respondents endorsed the ‘padding’ or exaggeration of an insurance claim and 38 per cent believed that insurers “can afford the cost and that there are not losers.”⁷

Broadly speaking, insurance fraud is defined as the deliberate distortion or fabrication of information by a claimant in order to attain a financial advantage or gain. Put simply, it is lying about a loss or circumstance for profit.

It can occur in many forms, such as in misrepresentation involving the provision of false information, claim padding which is overstating the value of a particular item, and building-up claims by exaggerating the damage sustained from a particular event. Other types of fraud commonly referred to include “phantom claims” which are made for the loss of non-existent items and “planned claims” which involve claimants deliberately staging an accident or theft and then claiming loss for it.

EBM General Manager Ward Dedman said while insurance companies are continuing to crack down on fraudulent claimants, many in the community remain oblivious to its affect on them.

“The notion that insurance fraud is a victimless crime is a popular but very incorrect myth in our society,” Mr Dedman said. “The reality is that each fraudulent claim costs insurers dearly and affects profits. Not only does this represent a great loss of resources and profit for insurers, what is worse is that these costs are passed onto all policy holders.

“The reality is that insurance fraud affects everyone.”

According to recent research into the cost of fraud in Australia, Ernst & Young found that the overall cost of crime in Australia amounts to nearly \$36 billion per year of which fraud accounts for \$14 billion. That’s \$700 for each and every Australian.⁸



⁶ Insurance Council of Australia, *What is Insurance Fraud?*, accessed Jan 2010.

⁷ Insurance Council of Australia, *What is Insurance Fraud?*, accessed Jan 2010.

⁸ Ernst & Young, *Fraud due to GFC, Investment & Financial Services Association – Life Discussion Group*, 15 July 2009

Mr Dedman said to combat the prevalence of insurance fraud, insurers are becoming increasingly sophisticated in their ways to detect fraudulent claims.

“Fraud costs the insurance industry dearly so it is no surprise that millions of dollars are being invested into systems design to detect and catch fraudulent claimants,” he said.

“While a ‘magic bullet’ to catch all insurance fraud may never exist, the industry is continuing to fight against dishonest claimants for the benefit of all policyholders.”

If you believe you have information relating to insurance fraud, you can contact the Insurance Council of Australia’s Insurance Fraud Hotline on **1300 600 444**. Callers can request that their details remain anonymous if they wish.

Message from Alan Bishop

As many of you are long term clients that have been with us since the early days of EBM, I felt it important to let you know that unfortunately we have lost one of our founding principals, John Molineaux.

It saddens me to report that John Molineaux passed away on Saturday the 28th November 2009, two days short of his 81st birthday, after his battle with cancer.

John joined the company in the late 1970’s, and retired with his family to Cairns in 1987, after undergoing a quadruple bypass heart operation.

John played an important role in helping the company get through some very tough years in the 1980’s, he became a shareholder of the company during that time, and still remains noted on the company master head. His support to me personally during this time was invaluable.

John was a pivotal part of the early years of development of the EBM we know today, and it is sad to report his passing.



Contact us

EBM Insurance Brokers, with offices in New South Wales, Victoria, Queensland and Western Australia, delivers local expertise combined with the national resources of one of Australia's largest insurance broking companies.

Email us at ebm@ebminsurace.com.au or contact a local broker who can help you determine your insurance needs. Call 1300 INSURE (1300 467 873) for your nearest office:

Sydney

Level 9/333 George Street, Sydney New South Wales 2000

Melbourne

Suite 4/651 Victoria Street, Abbotsford Victoria 3067

Brisbane Office

Level 5/150 Edward Street, Brisbane Queensland 4000

Perth Office

105 Outram Street, West Perth Western Australia 6005

Gold Coast

Level 8/64 Marine Parade, Southport Queensland 4215

Bunbury

28 Stirling Street, Bunbury Western Australia 6230

Kalgoorlie

47-49 Boulder Road, Kalgoorlie Western Australia 6430

Geraldton

65A Forrest Street, Geraldton Western Australia 6530

Margaret River

PO Box 658, Margaret River Western Australia 6285

Important note: Our advice is provided for your general information and does not take into account your individual needs, you should read the respective insurers product disclosure statement which we can provide upon request before taking out cover.



All Enquiries: 1300 INSURE (1300 467 873) | ebm@ebminsurace.com.au | www.ebminsurace.com.au
Sydney | Melbourne | Brisbane | Perth | Gold Coast | Bunbury | Kalgoorlie | Geraldton | Margaret River
Affiliated Offices: China, Indonesia, New Zealand, Philippines, Singapore, Taiwan, Thailand, Lloyd's Coverholder
Elkington Bishop Molineaux Insurance Brokers Pty Ltd | AFSLN 246986 | ABN 31 009 179 640 | Est 1975