

Trucking... law changes that may affect you!



TruckSure
By Trevor Toohill

The net will catch more fish!

The penalty will be significantly greater!

Two top lawyers have warned of the major implications from two law changes affecting the insurance industry, and have likened the impact to a 'perfect storm'.

Neil Beadle and Crossley Gates, both partners at DLA Piper New Zealand, were addressing insurance professionals at this year's Risk Rendezvous in Auckland, themed Changing Market Dynamics.

The two pieces of legislation they discussed are worth a mention, - the Health and Safety Reform Act 2015 and the Sentencing Amendment Act 2014.

Health and Safety Reform Act

One of the key changes emanating from the Health and Safety Reform Act is the change in personal responsibility for officers in business.

'Officer' has been defined as 'a person occupying a position that allows them to exercise significant influence over the management of a business'.

"So in big organisations it may not be the directors and senior management of a company but also regional, branch, country, or site managers. These people may now fall into this 'officer' definition." Beadle said.

New exposures emanating from the change in legislation include the new duty on designers, manufacturers, importers, suppliers, installers and instructors and not just employers.

"There are all sorts of rules now about making sure we don't inhibit or overlook Health & Safety at work which has given rise to new criminal offences," he said.

"And a big thing is a **six fold increase in penalties.**"

While fines cannot be insured, defence costs and compensation awarded for victims can, and with directors and officers having personal responsibility and broader duties it could change the course of courtroom proceedings.

"You now have these new offences, and huge new fines, so I think there will be a bit of a focus on whether people defend or elect to plead guilty because, let's face it, if the fine's going to be \$600,000 per person some people would say I'd rather roll the dice and go to trial," he said.

There is now a bigger impact on understanding and in terms of having cover under your Statutory Liability policy. Bear in mind that most transport clients have very little knowledge of the coverage provided by this policy. Most just think that it is an extension of their Public Liability coverage and that 'Stats' is just a tack on.

Sentencing Amendment Act

Gates went into detail about the Sentencing Amendment Act, saying it marked an interesting intersection between criminal law and insurance.

When a person has been prosecuted, convicted and punished in a criminal court, the court is also charged with considering civil reparation to the victim.

Three types of compensation can be paid, including property damage, emotional harm and the loss consequential on those plus physical harm.

"The consequences of physical injury are covered by ACC, and this is the one that causes difficulty about whether reparation sentences ought to be able to top up ACC," Gates said.

There are 'a whole lot of discretions' that the judge has, he said, with one being that the court must take into account the offender's ability to pay, and if it's an insured risk it may make a judge even more inclined.

"That's being a bit cynical, but that's the kind of thinking that might start happening as this thing So we have what we call a perfect storm brewing in this situation. We have increased exposure through the Health & Safety Reform Act, a whole

basket of people that probably weren't exposed to that previously who now will be, then the exposure of reparation sentences to top up ACC where, if people are very badly injured, the possibility of very large lump sums being ordered to be paid."

Brokers should now be pointing out to clients' the increased exposures and the need for reviewing their clients sum insured to higher amounts. In many instances it is not just the policy limits that require attention, but also ensuring that the right covers have been put in place through Statutory Liability, Employers Liability and Directors and Officers Liability insurance.

These are complex law changes and they will have an effect on transport operators. If you need to know more detail or how it could impact your business then you should contact your broker or www.trucksure.co.nz

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