

31 July 2020

"There cannot be a crisis next week. My schedule is already full."

- Henry Kissinger

View from the top



Murray Rosser
Managing Director

Dear Broker Partner,

Where did the first half of this year go? It doesn't seem so far back that we were enjoying summer but now August is upon us and we're well into winter.

A tumultuous few months have elapsed as the Covid-19 pandemic erupted across the world and it's clear that the impact will be with us all for some considerable time.

In New Zealand the principal effect will be economic, rather than health-related. Many businesses will experience financial pain over coming months as government support measures unwind or become more targeted.

The result is likely to be an increase in employee redundancies as organisations restructure to cope with reduced incomes or even worse, cease to operate at all. There will be consequential impact in our industry from the loss of premium income from these closed or down-sized businesses.

However, there are important issues facing those of your clients who are contemplating "right-sizing" their organisations so they can continue to operate in the new economic environment.

It is essential that proper employment processes and protocols are followed when restructuring a business to avoid or minimise the risk of subsequent employee grievance claims. Businesses that carry Employment Practices Liability (EPL) insurance also must follow any obligations required by their insurer when going through the restructuring process, if they are to ensure their cover operates effectively.

In this month's *Rosser Roundup* we highlight an issue that arose from an EPL claim currently under consideration. It demonstrates that the policy wording should be checked before commencing a restructuring process and that insured's should not assume they are automatically covered should something go wrong.

We strongly recommend you communicate with your EPL-covered clients about this issue.

Best wishes for a successful month ahead – and keep warm.

Best regards
Murray

The July Roundup

THE FAIR INSURANCE CODE

- **Update from ICNZ CEO, Tim Grafton**

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BROKER IN THE SPOTLIGHT

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CHANGES TO THE FAIR TRADING ACT

- **Legal article from Wotton + Kearney**

ARE ANY OF YOUR CLIENTS RESTRUCTURING?

- **A current claim highlights the need for extreme care when businesses are restructuring**

SUREPAC SPORT PROMOTION

- **Our first \$1,000 donation winner is announced**

The Revised Fair Insurance Code



Tim Grafton
Chief Executive
Insurance Council of New Zealand

Due to ongoing government scrutiny and regulatory change within the sector, the customer and their experience throughout the insurance journey is now more important than ever. High standards and good conduct throughout all parts of the process are essential for increasing customer trust and confidence in both their insurer and their intermediary.

The Fair Insurance Code, ICNZ's code of conduct for the general insurance industry, plays an important part in establishing that trust and confidence. It sets the benchmark for self-regulation of ICNZ members, outlining the standard of service they must provide to their customers in addition to those imposed by law, and promises sanctions for instances of non-compliance which threaten to bring the industry into disrepute.

The revised Fair Insurance Code 2020 has been effective since April this year and is the next step in the lifespan of ICNZ's code of conduct. First introduced in 2006, the Code has come a long way since then. Each revision has seen it evolve to reflect changing circumstances and consider learnings from the likes of the Canterbury Earthquake Sequence, and legislative change both here and abroad.

The latest iteration is the culmination of a long period of review and incorporates feedback received from the public, stakeholders, ICNZ members, and regulators, amongst others. There is an increased focus on dispute resolution, the role of the independent Code Compliance Committee and their oversight of compliance with the Code, and significant breaches.

The Code is also now more accessible, with versions now available in Te Reo Māori and New Zealand Sign Language, and an audio version to come.

“THERE IS NOW AN OBLIGATION TO DEVELOP, MARKET AND SELL PRODUCTS RESPONSIBLY, AND TO IDENTIFY AND ADDRESS INSTANCES OF POOR CONDUCT WITHIN A COMPANY.”

ICNZ research shows that trust and confidence in insurers increases when an individual has knowledge about the Code. To help increase its reach we have made two key changes. Firstly, ICNZ members are now required to proactively promote the Code, be it via media or social media channels or direct engagement with customers. Secondly, to help with the requirement to promote the Code, a Fair Insurance Code logo was introduced in 2019. The logo must be included on members' websites, claims and complaints collateral, as a minimum.

To reflect the current focus of the Government and regulators on financial service provider conduct, the customer-centric provisions of the Code have also been strengthened and added to. There is now an obligation to develop, market and sell products responsibly, and to identify and address instances of poor conduct within a company

Both provisions are reflective of the FMA's 'Good Conduct Guide', an essential piece of reading for insurers and brokers alike.

As part of the previous Code review in late 2015, the Code Compliance Committee was formed to provide oversight of the Code. The Committee is made up of three independent members with ICNZ's Chief Executive Tim Grafton as chair, a role which allows him to act as a liaison between the Committee and the ICNZ Board.

The current independent members are Sir David Carruthers, David Caygill and Diane Morcom. Specific tasks include the collection of quarterly significant breach and yearly complaints data, investigation of breaches, and monitoring annual attestations, a new requirement accompanying the introduction of the 2020 Code.

From April 2021 all ICNZ members will be required to submit an attestation stating that they have systems and processes in place to monitor compliance with the Code, and that they have recorded and notified to ICNZ all significant breaches that they became aware of during the year.

The Code's relationship to agents remains the same as under the 2016 version. Where an insurer owes an obligation under the Code to the customer, the insurer can meet that obligation by carrying it out with their agent. It is also expected, that where members have tied agents, those agents will receive training on the Code.

If you would like more information about the Code you can contact ICNZ directly or find out more at www.icnz.org.nz/fair-insurance-code.

Covid-19 impact on insurance markets



**Commentary from
Murray Rosser
Managing Director
Rosser Underwriting Limited**

John F Kennedy said “Change is the law of life. And those who look only to the past or present are certain to miss the future.”

As the world has so rapidly changed around us over the last few months the former US President’s statement rings true. We can all learn from the past and the present but looking ahead and expecting change and planning for it is vital for future success.

Not only has 2020 presented the massive change of Covid-19 itself but consequences of the pandemic continue to affect economics and markets world-wide.

Early estimates of the Covid-19 cost to insurance markets exceed **\$NZ310 billion**. This compares to the 2019 estimated insured cost of **all 820** natural catastrophes of less than \$NZ230 billion. So what are the likely Covid related changes which will impact on the future of the insurance market?

Asymmetrical Market

Global risk and reinsurance specialist Guy Carpenter & Coy, commenting following the 1 January reinsurance renewals, were already pointing to the development of an asymmetrical market.

In the primary insurance market this is illustrated by **scaling back or withdrawal of capacity** from underperforming business lines.

Classes where underlying performance remained positive and profitable often resulted in flat or, modest rate reductions whereas those with more strained operating conditions faced “market corrections”.

In markets already demonstrating deteriorating performance or changing risk perceptions (such as New Zealand) Covid-19 losses will only worsen the situation. This will be especially so for those classes where capacity is already tight – **capacity will become particularly elusive**.

With the very small numbers of New Zealand licensed insurers and the general inability of offshore non-licensed insurers to transact business in New Zealand, finding a home for less attractive risks will become especially difficult.

“WHILE COVID-19 IS NOT A GENERATOR OF DISRUPTION IT IS AN ACCELERATOR OF THE DISRUPTION OF TRADITIONAL INSURANCE MARKETS”

Recovery of Covid-19 Losses

Whilst New Zealand has been a proportionally small contributor to Covid-19 related losses the local market, nevertheless, will face significant rate increases across most, if not all, lines as the market attempts to recover losses.

Precedents for this are very clear – remember the effects post 11 September 2001 and the GFC of 2007 – 2008. In both cases New Zealand was not a source of the losses but inevitably the market hardened and rates rose.

It is worth recalling that the 9/11 total insured losses were less than \$NZ50 billion and so the current issue is at least six times larger. Over the next six months, and ongoing, anticipate rate rises.

Weakening of Traditional Markets

The Covid-19 losses, just like earlier catastrophic losses, will also cause stress on insurers balance sheets thus significantly weakening them.

This will also push up the cost of insurance and shorten capacity but more seriously it may result in immediate failures in the market and will certainly undermine the future of some traditional markets along with putting stress on traditional distribution models such as intermediated business.

A consequence of the weakening of traditional markets and stressed distribution will be the more rapid entry into the risk management world of new means of risk transfer and new players offering innovative and likely more efficient delivery mechanisms.

While Covid-19 is not a generator of disruption it is an accelerator of the disruption of traditional insurance markets and the associated distribution systems thus threatening our present forms of intermediated business.

This will be Covid-19’s greatest long-term effect on our businesses and we all had better get prepared for more change!

Financial pressures intensifying



Economic commentary from
Cameron Bagrie
Managing Director & Chief Economist
Bagrie Economics

Who pays?

Expect that question to be asked more and more.

There are near-term consequences of borrowing heavily to support the economy. Net government debt is projected to go from \$60 billion in 2019 to \$200 billion in 2024 - or more than 50 percent of gross domestic product (GDP).

The strategy of borrowing big in response to Covid19 is the right one, but eventually we will need to face the reality of fiscal repair.

Net government debt manages to ease to 43 percent of GDP by 2034. But this is on the assumptions we:

- record reasonable growth, and
- don't experience another downturn that rocks the economy (unlikely given the 10-year pattern,) and,
- future governments tighten the belt that involves less capital investment by the government than we saw between 2010 and 2018.

These assumptions are bold and strain credibility.

The reality is that the herculean days of having net government debt around 20 percent of GDP will never be seen again. Thirty percent might be doable, but 40-50 percent could be the new reality.

That will be far lower than international peers but does not provide much of a buffer against another extraordinary shock whether that is of the economic or seismic variety.

“THE 2020 UPDATE WILL LIKELY SHOW A FAR WORSE TRAJECTORY FOR DEBT GIVEN THE OPENING FISCAL POSITION HAS GONE FROM ONE OF STRENGTH TO HAVING MUCH HIGHER LEVERAGE. “

But there is a deeper thematic too. The fiscal cost of an ageing population.

Pressures are intensifying. Welfare expenditure on New Zealand Superannuation (NZS) is larger than what we spend on education. It is more than 50 percent of total welfare expenses and is projected to be around 15 percent of core crown expenses by 2024.

As the population ages, health and superannuation expenditure will rise as a share of GDP. The aggregate fiscal cost could be mitigated by squeezing other government spending (i.e. make them shrink) as a share of GDP. But is that realistic or desirable to squeeze the likes of education?

The Public Finance Act (1989) requires the Treasury to produce a Statement on the Crown's Long-Term Fiscal Position at least every four years. These statements provide 40-year projections on the fiscal position.

That will come out post the election.

The 2016 Statement showed that the combination of changing demographics and continuation of historical spending trends would result in a fiscal blowout with net government debt rising to 200 percent of gross domestic product.

That will not occur. It merely highlighted that the status quo was unsustainable. That has been known for a long time, but year after year the issue has been kicked down the road.

The 2020 update will likely show a far worse trajectory for debt given the opening fiscal position has gone from one of strength to having much higher leverage.

With attention set to turn to repairing the fiscal books, the 2020 Statement should provide a platform for either hard decision, or the easy way out.

In a perfect world, we would turbo-charge the economy as a means of curing fiscal challenges.

The other options are increasing taxes, selling some assets, or much tighter spending.

It seems inevitable a lot will like the easy way out and higher taxes.

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Broker in the spotlight

Ashleigh Mills has been in Insurance for close to 7 years. After completing a triple major at Victoria University in Wellington, in Accounting, Taxation and Commercial Law, before relocating to Hamilton, Ashleigh says she “fell into the insurance industry.”

“I applied to Bridges Insurance for an Accounts Based role, and from there I moved up through a variety of roles, including, Claims handler, Domestic

Broker and Broker Support. I am now a Broker specialising in both domestic and commercial insurance” said Ashleigh.

Outside of work, she spends time with her two dogs (Bailey and Toby) as well as watching her husband, Gary, play rugby for his club on Saturdays. Ashleigh and Gary are expecting their first child in January. While they are both focusing on getting their house (and themselves) ready for this exciting event, Ashleigh took some time out to answer some questions for us:

What do you enjoy most about your role at Bridges?

I love the ability to constantly learn and improve my skills. I work alongside some brilliant people and being able to bounce ideas and see things in a different perspective highlights why I love this job.

What has been your best day at the business? Any day we get a “win” for our clients is considered a good day. When things require a bit more negotiation, and we get a great outcome for the client, you are left with a nice feeling of success.

You were selected as one of the 2020 Insurance Young Guns.

What did that mean to you? To me this was a huge achievement. I’m lucky enough to work alongside a few previous Young Guns, who I also consider my mentors. To be honoured with the same award was a fantastic feeling,

One thing I would like to change about the insurance industry is... The perception, especially in the media, around how the Insurance Industry is portrayed. We do a lot of good, for a lot of people, and you constantly hear of the negative outcomes and why Insurance isn’t needed.

The most amusing (or difficult) claim I’ve handled was...

Probably something that is not suitable to include in this publication...

The most challenging part of my job is... Ensuring that clients’ expectations are managed from the get go. I place a big focus on ensuring that my clients understand what Insurance does and does not cover, to avoid those difficult conversations come claim time.

I like dealing with the Rosser team because... of their prompt response times and they are easy to deal with in most circumstances.

My favourite sports team is ... (and the best player in the team is...?) Chiefs Rugby – I would say the best player is Brodie Retallick, although he is on a Sabbatical.



Ashleigh Mills

Bridges Insurance Brokers
Hamilton

My friends (or colleagues) reckon I’m... very clumsy. I frequently manage to catch myself on desks, walls and doors around the office and at home.

Which concert or sporting event would you travel back in time to attend? Queen at Live Aid.

What’s your most embarrassing moment (that you’re prepared to share)? Early on in my pregnancy, I managed to convince myself I had 4 fingers and my Husband took great joy in calming me down....baby brain is definitely a thing.

Tell us about your biggest achievement to date – personal or professional? This would be what I have achieved over the 6 years being with Bridges Insurance and definitely being awarded the Young Guns Award.

You’re on death row; describe your “Last Supper” meal.

A good Beef burger, with a side of Wedges, with lots of Cheese, Bacon and Sour Cream.

If you weren’t in the insurance industry, you would love to be a...Travel Blogger – although I am terrible at writing. But getting paid to travel the world would be amazing.

I know they’re good for you, but one vegetable I detest is...

Celery, I cannot stand it and will pick it out from any dish.

You can swap jobs with anyone for one day? Whose job would you choose (and why?)

I would say the Prime Minister, - but not at this very the moment with all the media scrutiny around Covid and the MP Scandals. Spending the day seeing how the country is run would be extremely interesting.

The best life lesson I’ve learned so far is..? Don’t let the small stuff get you down. Things are never as bad as they seem, and it’s a lot easier to have a positive outlook on life.

My four best ever guests for dinner (living or dead) are...?

Elton John, Michelle Obama, my husband and Prince Harry. My husband would never forgive me if I invited Elton John and he wasn’t there.

A secret talent I have that most people don’t know about is...

I can eat an entire block of chocolate in one sitting...not sure if this is a talent but I enjoy it.

The person who has/had most influence on me (not including family) is ... My good friend Claire: she’s been through more in her life (at the young age of 29) than most other people could expect, and she still has the most positive outlook on life. She’s definitely helped me see perspective and change my outlook over the years.

Whenever I get the chance to escape for some relaxation I love to...?

Curl up with a good movie and some snacks. If I am really treating myself, a Hot Stone Massage is the first option though.

Growing up I always wanted to be a... dancer. I spent a large portion of my childhood and teenage years dancing, but lost the passion around 17.

If you could only eat three foods for the rest of your life, what would they be? Bacon, Chocolate and Kumara, you can make a lot of different options from those!

If you could claim the credit for a song, film or book which one would you choose? Bohemian Rhapsody – it’s iconic!

What’s the most interesting thing about you that we wouldn’t learn from your resume alone? I had open heart surgery at the age of 6, but thankfully have been very well since then.

Proposed changes to the Fair Trading Act



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An amendment bill for the Fair Trading Act 1986 (**FTA**) was introduced in Parliament in December 2019. Currently at the Select Committee stage, the Fair Trading Amendment Bill 231 (**FTA Bill**) introduces a variety of changes to the FTA, with the most notable changes being the introduction of a prohibition of “unconscionable conduct” and increased restrictions on unfair terms.

Key changes

Two main changes have been proposed under the FTA Bill:

1. Introduction of a prohibition against “unconscionable conduct” and associated penalties; and
2. Extending the FTA’s current protections against unfair contract terms in standard form contracts to also apply to business-to-business contracts.

These changes are to bring New Zealand fair trading provisions in line with Australia.

Unconscionable conduct

Australia already has protection against “unconscionable conduct” under their competition and consumer legislation.

No definition of “unconscionable conduct” is provided in the amending bill, but it is envisaged interpretation to “unconscionable conduct” will be similar to developments in Australia.

Australian courts have defined unconscionable conduct as being an act “against conscience by reference to the norms of society” such as acting honestly, fairly and without deception or unfair pressure (*Australian Competition and Consumer Commission v Lux Distributors Pty Ltd* [2013] FCAFC 90). It is likely to capture conduct such as bullying, undue pressure, unfair tactics, taking advantage of vulnerability/lack of understanding, trickery or misleading conduct.

“Unconscionable conduct” is likely to have a high threshold. The drafting of the FTA Bill as it currently stands will provide a wide scope for the Commerce Commission to pursue and charge businesses with what it believes is “unconscionable conduct”.

Maximum penalties for “unconscionable conduct” will be \$600,000 for businesses and \$200,000 for individuals.

Equivalent civil liability will also be enacted.

“BUSINESSES WITH UNREASONABLY STRINGENT LIABILITY EXCLUSION ... WOULD BE WELL-SERVED BY A REVIEW OF THEIR TERMS OF TRADE IN ADVANCE OF THE COMING INTO FORCE OF THE BILL.”

Protections in business-to-business contracts

Changes to the FTA in 2013 saw the prohibition of “unfair terms” in standard form unilateral consumer contracts, where there is little to no negotiation of the terms of the contract between the business and the consumer.

The FTA Bill proposes to extend these protections to some standard form business-to-business contracts.

These protections will apply where the goods or services provided have a value below \$250,000 (or in a given year, where the agreement spans over multiple years). The test used for unfair contract terms for consumers will be carried forward and applied to small business-to-business contracts as well:

1. The term is in a standard form contract, which have not been effectively negotiated between the parties;
2. The term creates a significant imbalance between the parties under the contracts;
3. The term is not necessary to protect the legitimate interests of the advantaged party; and
4. The term causes detriment (financial or otherwise) to a party is applied, enforced or relied on.

Unfair terms might include unduly onerous exclusion or limitation of liability clauses that are not effectively negotiated between the parties. Businesses with unreasonably stringent liability exclusions may find themselves unable to rely on such provisions if the above criteria are satisfied and would be well-served by a review of their terms of trade in advance of the coming into force of the Bill.

This publication is intended to provide commentary and general information. It should not be relied upon as legal advice. Formal legal advice should be sought in particular transactions or on matters of interest arising from this publication. Company no 3179310. Regulated by the New Zealand Law Society.

Are any of your clients restructuring?

Some politicians are predicting that as many as half a million Kiwis may be unemployed by Christmas as the economic effects of the Covid-19 pandemic are felt across New Zealand.

Even if only partially true, these forecasts indicate that restructuring of operations and potential redundancies are likely to be under consideration by many businesses and not-for-profit organisations.

It is vital that proper employment processes and protocols are followed if organisations are to avoid or minimise the risk of grievance claims arising from employees whose conditions are being changed or are being made redundant.

Many entities carry **Employment Practices Liability (EPL)** cover to protect themselves from liability arising from an act, error or omission in an employment-related matter. However, a current claim under the EPL section of a **Rosser SurePac Liability** policy has led us to highlight two important conditions in our policy:

1. Rosser's **SurePac Liability** policy provides insureds with **complimentary legal advice** from Wotton + Kearney of up to one hour with respect to issues within any insuring section for which they are covered under the policy, including EPL.

2. Our SurePac Liability policy **EXCLUDES** cover under the EPL section for loss attributable to redundancy **except where in respect of the redundancy the insured:**

- a) instructed an external solicitor qualified in employment law; and
- b) obtained legal advice from that solicitor; and
- c) complied with that advice; and
- d) undertook all reasonable steps to mitigate the **loss** and/or likelihood of a **claim** arising.

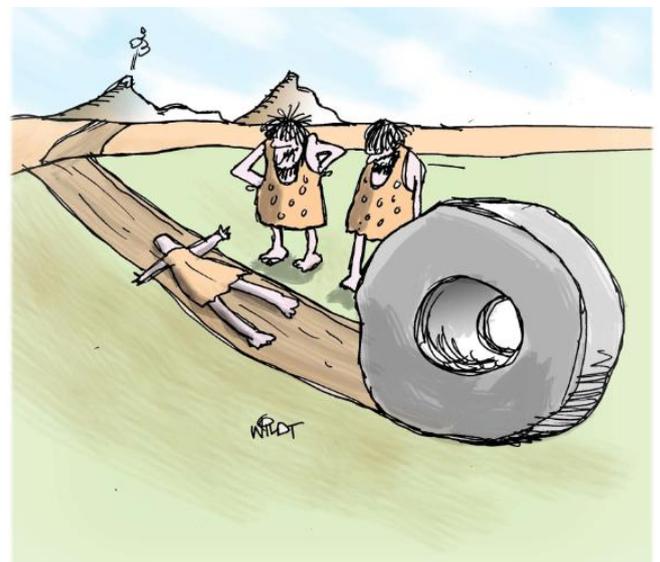
We strongly recommend you communicate with your SurePac EPL-covered clients to ensure they are aware of the important policy condition relating to redundancy procedures.

SurePac Liability clients seeking complimentary legal advice under their policy should contact Wotton + Kearney on:

E: nzclaims@wottonkearney.com

P: 0800 9525 2467 (0800 WK Claims)

Or + 64 9 600 5570



"Oh, great. Now we have to invent accident insurance!"

Surepac "Support for Sport" Promotion



\$1,000 Monthly Donation to a Not-for Profit Insured



Every month through until June 2021, Rosser will donate \$1,000 to a not-for-profit organisation insured with SurePac Sport.

A draw to randomly select each month's recipient will be conducted from all SurePac Sport policies incepting in the preceding month. Each donation will be made in the name of the winning organisation's broker and Rosser.*

Winners' details will be published each month in "Rosser Roundup".

* An insured's entry in the draw is conditional upon all required policy documentation being provided to Rosser no later than the 15th of the month following inception.

Congratulations to our first \$1,000 donation winner!

Netball Waitakere
Waitakere, Auckland
represented by
Noel Barkley
Rothbury Insurance Brokers

Our Business Development Team is available to help with product information, coverage advice, quotes or other assistance.

For Policy Wordings, Product Profiles, Proposals & Claim forms - click [here](#) to download from our web site.



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