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Business Insurance & Risk Market Update

H2 2021

Expert insights & perspectives

Experts within the Gallagher network offer perspectives on critical trends and changes shaping the insurance and business landscape.

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& perspectives

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EXECUTIVE SUMMARY

Mark Oatway
Managing Director, Market Placement and Insurer Relations

Welcome to the latest edition of our Business Insurance & Risk Market Update. Our industry experts provide insight and considerations on key insurance market issues and trends in Australia and globally.

We're working in the toughest insurance market in living memory. A hard market cycle typically lasts for 18 months to two years, but the current hard cycle is in its fourth year and there's little sign of significant recovery.

Limited capacity continues to push premium increases, and across the board we are seeing every risk put under increased scrutiny by insurers looking to protect their own balance sheets by limiting their exposure.

In this edition, we examine:

- **The current market and placement:** the need to present a compelling narrative to potential insurers about your business direction and risk management.
- **Claims:** the increasingly involved role brokers are playing in managing your claims, and how to contribute to achieving an optimal outcome.
- **Directors and officers' liability:** how we can assist overseas tech companies looking to list in Australia meet the inherent D&O challenges involved.
- **Energy sector:** as energy companies are reviewing and shedding assets regulators are applying significant scrutiny to purchasing companies and the decommissioning process.
- **Negotiating the insurance market:** why flexibility in structuring your business insurance is considered essential to obtaining the cover you may need on terms you can manage.
- **Workplace resilience:** with the pandemic causing stress on mental health across the population, regulators are moving to insist businesses provide support to employees.

Business risk management: it's a partnership

Good insurance brokers have always worked closely with their clients to understand the business, identify risks and obtain the most appropriate, cost effective risk solution.

That relationship is more important than ever before. Your broker needs to be working with you closely, typically months in advance, to prepare renewals, fulfil regulatory requirements and ensure your business is protected with the right levels of insurance.

As the relationship you have with your broker is important, so too is the relationship your broker has with the insurer. As a global company, we are able to provide our clients with industry sector expertise and market reach, as well as creativity in designing bespoke solutions.

As part of that process we encourage conversations between clients, their broker and prospective insurers because the insurer is buying into your business, as well as your risks.

Through this involvement and interaction we can better help protect your business and minimise the risks you face.

Working in a COVID-19 world

The world we're working in has been made more complex by the global pandemic bringing a host of challenges and obligations for businesses to contend with.

It's often said that our people are our most valuable assets, and the past two years have put most under enormous and unprecedented amounts of stress. From the bushfires that swept the country in 2019/20 to the global pandemic we're learning to live with, the mental and physical strain people have been under is taking its toll – and we all need to rethink how we are going to work moving forward.

Working from home is likely to become a common practice as we look ahead to 2022 and beyond. Overall, it's incumbent on employers to create the work environment that's going to serve the business well into the future. And, as it's a future that will undoubtedly feature change, that environment needs to be adaptable.

At Gallagher we pride ourselves on innovation and our ability to customise solutions for our clients, drawing on our access to global expertise and scope. This year to keep pace with rapidly changing conditions and requirements we have developed some unique workplace health and safety solutions, and we look forward to doing more for clients in this space.

Mark Oatway
Managing Director, Market Placement and Insurer Relations

Why telling your business's story helps sell your risk

It's a very challenging market and insurers are being increasingly selective about the businesses they're partnering with. It's important to remember the insurer isn't just buying the risk – it's buying into you and your business.

KEY TRENDS

- **Placement challenges continue, however, there are some signs that the market is stabilising.**
- **Insurers are looking deeply into the business, as well as the risk.**
- **Having a strong culture and a positive social responsibility story to tell about how the business addresses risk and contributes positively to the world can reduce the insurers' stringent conditions.**

Today's insurance market conditions present ongoing challenges that even highly experienced brokers have not had to contend with before.

Hard market cycles typically last for about 18 months before an insurer breaks away and drives some competition that gives everything a bit of a kick start – but the current market shows little sign of turning around to any major extent.

Insurers have suffered large losses from major catastrophes and just can't seem to catch up. As capacity has shrunk, clients have seen premiums rise significantly.

However, there are some signs that the worst is behind us. The market is beginning to stabilise and we're starting to see 10–20% increases, rather than the huge, dramatic increases we've experienced recently.

Of course, that's still a big change from the days when your broker would call you to inform you they'd saved 10% on last year's premium and your deductible had been reduced too. It has forced businesses to look at insurance in a different way; as a partnership that's as crucial to their future as their bank is, rather than being a simple transactional purchase.

Because, when you're operating in an environment with limited capacity and increased scrutiny, it's important to remember that the insurer isn't just buying the risk. It's buying into you and your business. And the importance of that cannot be underestimated.

Insurers are increasingly looking at the culture of a company and its environmental, social and governance strategy.

The need for a business narrative

When insurers consider a risk proposal, they're considering the business as a whole. They're considering the management, culture, reputation and the client's attitude to risk management. It's a huge part of the 'sell', particularly with big risks.

Insurers want to know who the client is, and they want to hear it from the client directly.

No one is able to represent your business better than you.

Across the globe, businesses are increasingly focusing on the environmental impact they – and the businesses they partner with – are having, and insurance is no different.

Some insurers are stepping back from and reducing capacity available to sectors that are environmentally harmful. More generally, insurers are increasingly looking at the culture of a company and its environmental, social and governance (ESG) strategy – particularly those businesses operating in coal and energy production.

Focusing on the positive

If your company is demonstrating how it's offsetting any negative environmental impact it's having, and showing how it's contributing positively to the world through social responsibility initiatives, it creates a lasting impression for insurance companies.

The desire from insurers to hear how your business contributes socially or environmentally is growing.

Even if a client has some risk challenges, it's a matter of having honest conversations – putting the facts on the table and finding a solution.

Those conversations can be challenging, however, we encourage dialogue between broker, insurer and our clients – and having a renewal strategy that leaves plenty of time for those open conversations significantly increases the chances of getting a satisfactory insurance result for all concerned.

Over the past four years many businesses have invested significant time and money in establishing strong risk management policies and procedures. That investment is now being realised as insurers are wanting to partner with those organisations that have those policies and procedures around responsible risk practices in place.

Adam Squire
Head of Claims

Claims service: insurers experiencing testing times

Claims processing times have increased over recent times for some complex insurance classes, with the average number of interactions increasing by 25% – and that is just in our role as a broker. However, some insurers are meeting the challenges better than others.

If you've had to make an insurance claim over the past 12 months, it is likely to have taken more time to resolve than it would have done in previous years.

Across the board, market conditions have meant that claims are being scrutinised more closely than ever, and claims teams have reduced authority to make decisions.

That in itself would slow the claims process regardless, however, it has been compounded by a reduction in qualified professionals who can take up claims roles as a source of 'ready-made' personnel for insurers.

The combination of changes in staffing and resource pools with the increases in the complexity of claims assessments has resulted in an increase in the average time involved in claims management. Two years ago, an average complex claim would take 14 or 15 interactions, today the average complex claim takes 20.

There's a significant difference between insurer claims departments that are doing well and those that are not in the current environment.

Insurer claims performance reviewed

Here at Gallagher, we keep up-to-date claims performance records on all insurers. Insurers send us monthly claim reports and we conduct audits on the major players to understand how they're performing.

KEY TRENDS

- **There's significant variation between the high-performing claims departments and others that are not doing so well.**
- **Up-to-date claim performance records enable insurers' responsiveness to be measured.**
- **When choosing which insurer to partner with, claims service should be taken into account.**

All of this information helps us determine which insurer is going to be the right partner for your business.

We'll look at the speed with which the insurer pays claims, its flexibility, its responsiveness and its service.

When discussing options with your broker, it's increasingly important to ask about the insurer's claims service, their strategy and how that would affect their claims offering in, say, a year's time.

Today you really need to ask about the key decision makers. Does the team on the ground have the ability to settle claims? What is the quality of the insurer's claims team at present?

After all, their approach to claims resourcing and flexibility will have a direct impact on your claims experience.

Working with a broker in a global firm, of course, can help smooth things to a greater extent.

Accountability underpins our insurer relationships

Insurance is a relationship-based service business, and it's our responsibility to have relationships with the right people – loss adjusters and law firms as well as people who can deal with, and escalate, claims. And that's becoming increasingly important for businesses when considering who to work with.

At Gallagher we are very active in holding insurers accountable and being claims advocates for our clients. We understand different ways to engage different insurers; we have relationships with people across the insurance business and can escalate claims to the right person.

When buying insurance businesses are not generally thinking about what happens if they need to make a claim.

In an environment in which the claims process is taking more time, and is under more scrutiny, your broker can be your secret weapon – doing all of the heavy lifting for you at a time when you'll have many other things to sort out. Our post-claims Net Promoter Score is consistently above 50, which is classed as 'excellent'.

And it matters, because having a claim settled efficiently and effectively can make all of the difference to both you and your business.

To manage claims effectively, we understand the different ways to engage different insurers; we have relationships across the insurance business.

For more insights about the challenging insurance market conditions, download our Navigating the Hard Market report.

Michael Herron
National Head, Professional & Financial Risks

D&O challenges for overseas businesses listing on the ASX

The emerging market of directors and officers' liability insurance for foreign-domiciled companies provides both challenges and new opportunities.

Over recent years Australia has become a mature market for tech startups. The likes of Atlassian, Canva, Afterpay and Safety Culture are Australian tech 'poster children', and there are a significant number of other Australian-based technology businesses making impressive strides.

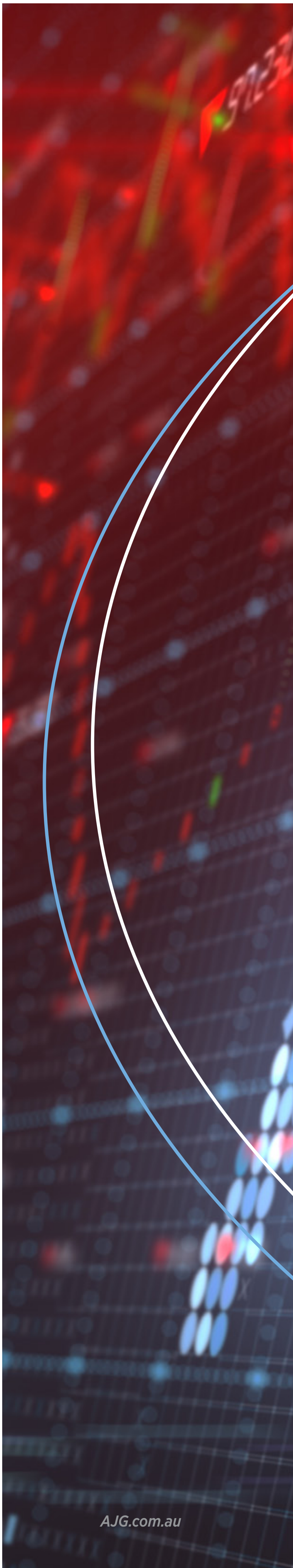
It is also widely reported that we are seeing a shift in the Asia Pacific with COVID-19, in which Australia is attracting the talent and tech funding that might otherwise have gone to China or Hong Kong.

The increasing local presence of large international operations seeded by tech companies such as Google and Salesforce is adding sector maturity.

With increasing institutional capital flows and willing cornerstone investors in February 2020 the ASX launched the new All Technology Index (XTX), creating an attractive place for technology companies that aren't quite at that Afterpay or Square level to have their primary listing.

KEY TRENDS

- **While foreign-domiciled tech companies are being encouraged to have their primary listing on the ASX's new All Technology Index, acquiring D&O insurance is challenging.**
- **D&O insurers tend to follow a 'blackbox' rule that if you're an Australian underwriter you can only write Australian domiciled risk.**
- **Gallagher is working with a number of foreign-domiciled businesses to secure Australian D&O insurance and enable them to list on the ASX.**

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Emerging global tech companies are now following what is becoming a well-worn track to the XTX, as an alternative to the NASDAQ or the London Stock Exchange which typically require a minimum market capitalisation of $2 billion to attract investor interest and liquidity.

And there's a very healthy investor community here in Australia underpinned by a US$2 trillion superannuation pool seeking to support emerging technology companies.

Simultaneously there's been a lot of work undertaken by the ASX to draw foreign issuers to the XTX, and those businesses are being attracted to this support for technology companies.

At present there are 17 non-Australian companies listed on the XTX – five from the US, five from New Zealand, two from Israel, two from Malaysia and one each from Ireland, Germany and Singapore. The expectation is that there'll be many more foreign-domiciled companies that choose to come to Australia and list on the ASX as their primary listing.

However, that creates significant challenges from a D&O perspective.

D&O challenges for foreign-domiciled companies

D&O insurers tend to follow a 'blackbox' rule that if you're an Australian underwriter you can only write Australian domiciled risk.

While insurers have been somewhat liberal in applying this over the years, as global insurance markets tightened up the default position for many D&O insurers was to revert to their rule books which made it difficult for foreign issuer companies seeking cover from Australian insurers for their primary ASX listing.

Some Australian insurers insist the D&O insurance must be purchased at the place of domicile, even if the same insurers decline when approached at the place of domicile (US, UK, EUR, SEAsia) as a result of the ASX listing.

It's a situation where some D&O insurers haven't caught up with the ASX and the government, and it's creating a significant hurdle.

The leading insurers adopt accepted market practice for global programs covering companies with policies issued from abroad, with exceptions, if insurers are approached by a buyer or an intermediary on a non-admitted basis (source: AXCO September 2021 Non-Life Insurance Market Reports).

The key question for insurers will be if the listing motivation and the proximity of the risk to the place the policy is issued will allow insurers to participate.

We are securing D&O insurance for a number of foreign domiciled businesses seeking a primary listing on the ASX against barriers set by precedent that Australian D&O insurers can only support Australian domiciled risk.

The need for local knowledge

Gallagher has extensive experience in capital raising and IPOs, and has been able to successfully secure D&O insurance from supporting insurers for a number of foreign-domiciled businesses seeking a primary listing on the ASX.

In order to do this we work very closely with our clients to firstly understand their business and then ensure they are fully prepared to deal with the continuous disclosure obligations that accompany being a listed entity on the ASX.

The unique elements of ASX continuous disclosure obligations are designed for a transparent and efficient market, although it does put the onus on listed companies.

Clients need to demonstrate to insurers that they have sufficient local representation to manage this – the foreign-domiciled companies that are best placed to do this have local ASX directors, or at least directors with ASX experience. They have well established legal panels and have done the requisite due diligence prior to listing.

We are working with businesses to demonstrate to insurers a readiness for ASX requirements, that our clients have done the due diligence and have the right processes and procedures in place to manage risk – and that way we can help secure the D&O coverage these businesses need to launch on the ASX.

The tech market in Australia – and consequently the XTX – is only going to grow over the coming years. The ASX presents a significant opportunity for tech startups from around the world to consider, and we are well positioned to navigate the challenges and help turn that opportunity into a reality.

Ryan Mansom
National Practice Leader, Energy

Energy sector asset sell-offs raise regulatory and insurance challenges

KEY TRENDS

- **Large energy companies are reviewing asset registers in response to environmental and governance pressures.**
- **An increase in regulatory focus related to decommissioning practices.**
- **Meeting the needs of decommissioning, for safe removal of property such as equipment used in energy production, and ensuring restoration of the environment, are fairly new processes in Australia.**

As large energy companies continue to streamline their asset registry, regulators are placing greater scrutiny on both the seller and purchaser.

Across the globe there's a concerted push for businesses to take ownership of environmental issues, be carbon neutral and have strong environmental, social and governance policies. In the energy sector this is prompting many companies, particularly the large majors, to review their asset registry and schedules to dispose of some of their non-core assets.

Many of these assets are at different stages of life and need to be addressed accordingly, with a focus on how the purchaser will meet the commitments of future decommissioning costs.

Decommissioning – the safe removal of property (for example, equipment, infrastructure and wells) and restoration of the environment – is still a relatively new process in Australia, particularly in the oil and gas industry, and requires careful planning.

Gallagher continues to work closely with a number of purchasers to navigate the complexities involved in purchasing an energy production asset, and there's an enormous amount of federal regulation and legislation to comply with. The purchasing companies come under significant pressure from political/regulatory groups because they're not only taking on the asset but also the decommissioning responsibility.

Our role is to ensure our clients are best placed for both the planned and potential unplanned events that could force the decommissioning of a field. We have live examples of ensuring acquired assets marry into the existing risk profile and working with clients to make sure they are able to file for the appropriate regulatory licences to undertake future decommissioning activities.

The regulators want to thoroughly understand the risk mitigation strategies in place surrounding future decommissioning activities when assets are acquired.

Energy risk mitigation and response

The regulators – understandably – put small to medium tier energy companies under tremendous scrutiny. These companies don't have the bank balance of a large corporation in the sector, so the regulators want to thoroughly understand the risk mitigation strategies in place to prevent an incident occurring, and the response strategies should this occur.

We help clients understand and comply with the regulations, as well as put the required and appropriate insurances in place. Each field presents a different risk profile. Understanding these risks – be it first party, third party or financial assurance – enables us to future-proof our clients energy operations and assets. We seek to ensure our clients are protected from loss of their asset(s), damage or pollution to third parties and continuation of a revenue stream.

For those mid-life assets, the purchasing company needs to prove it has the financial capabilities to decommission the asset, both to the selling company and the regulator. New legislation means that if the purchasing company goes out of business, the liability for the asset would revert to the selling company. Consequently there's an additional layer of information and negotiation needed when undertaking this type of transaction.

A push into renewables

As well as selling some of their non-core assets, there is a significant push within the energy sector towards renewables, and establishing more diversified and carbon friendly businesses. Entering the solar, wind, hydrogen or battery storage arena is another rigorous undertaking for

any company, particularly as it moves away from a traditional risk profile. The energy sector involves numerous regulatory and contractual obligations, requiring careful scrutiny and an experienced insurance broker to support the business in adapting to the resultant changes in risk profile.

Working side by side

To meet these challenges we partner with our clients to help them understand the regulations and what their organisation needs to address. We look for ways to transfer the risks from our clients' financial balance sheets while ensuring satisfaction from a regulatory perspective.

As a global business we have a very strong relationship with our colleagues in London that ensures we provide our energy clients with the solutions they need – we have a close, experienced team working across the various risks associated to this sector, and that knowledge and experience is essential to securing the right outcomes for our clients

Renewable energy business practices are growing – diverging from a traditional risk profile.

Nathan Rayner
Business Development Manager

RENEWALS AND REVIEWS

Take a lateral approach to business insurance options

With the insurance market subject to constraints in availability and capacity, and premiums continuing to rise, business decision makers should be prepared to be flexible in both sourcing and terms of obtaining cover.

At Gallagher we're hearing from businesses that have received renewals premiums which have more than doubled – presented without any explanation.

In situations where premiums have soared, it's helpful if the broker provides alternative quotes for comparison. Insurance options provided may differ as different portions of cover may be included, or the business may be required to carry some of the risk.

It pays to be flexible and prepared to think laterally in seeking solutions.

Proactivity essential to obtaining optimal solutions

To address conditions of reduced insurance capacity, increasing premiums and restrictive cover, the following three steps provide the basis for approaching the insurance market.

1. Obtain alternative quotes – even if these only validate the stated figures.
2. Work with your broker on a strategy to manage costs, allowing sufficient lead time. With both new policies and at renewal you want to avoid being boxed into a corner.
3. Have a fallback position if your current insurer withdraws capacity to repair balance sheet losses. Many insurers have abandoned unprofitable market sectors in recent years.

KEY TRENDS

- **Considering how your business's risk profile has changed is key to assessing your insurance needs.**
- **Do you have alternatives if your current insurer withdraws capacity?**
- **With placement, capacity and pricing limitations, a strong renewal strategy is important.**

Reassessing business cover needs

Most businesses have made operational adjustments to meet ongoing challenges in the past 12 months, with related changes to their risk profiles.

For your insurance cover to accurately align with your new risk exposures it is critically important that your broker correctly assesses your updated business needs, represents your organisation well to the insurance market and can articulate its risk correctly.

In retail, for example, in the past year non-essential stores closed and shoppers stayed home. Pandemic shutdowns pushed many shoppers to make their purchases online. As a consequence, with reduced exposure retailers may not need as much liability cover as they held previously.

In such an instance, businesses should be able to rely on their broker to pre-empt over-insuring. The broker should have a conversation with the insurer before submitting the proposal to give them the updated context of the need for cover.

The importance of a strong strategy

Putting risk management systems in place is essential to preparing your approach to insurers. Your broker should understand the risks your business faces currently and for a projected 12 months, and put mitigation strategies in place. Likewise, they should also assess declared values and the acceptability of proposed deductibles.

Deductibles should be set at figures which justify the time and cost involved in submitting a claim. In some instances this could involve the business effectively taking on more of the risk. This can enable a more cost effective solution.

There may be times when increasing deductibles in certain areas makes better business sense.

This is one of a number of possible tactics for managing premium costs – for example, it might be more cost effective to insure a multi-site business with a single policy rather than a number of individual policies. Similarly you could review individual areas of cover and maybe limit some coverage in certain places.

Ultimately it's incumbent on your broker to ensure your insurance program is fit for purpose, cost effective and represents value for money.

Your business insurance status quo should be challenged – if costs are increasing, then alternative program structures should be explored. There's nothing to lose and a lot to potentially gain.

Your business insurance status quo should be challenged – if costs are increasing, then alternative program structures should be explored.

> We're here to help
Connect with us for a confidential review of your current business insurance needs.

Vivienne Toll
Head of Workplace Risk

Workplace resilience at a tipping point

Protecting the health and wellbeing of your people has been demonstrated to have the single greatest impact on workplace outcomes. And that's going to be increasingly important over the coming period.

KEY TRENDS

- **While workplaces have shown an incredible amount of resilience over the past 18 months, fatigue and stagnation are setting in.**
- **Mental health issues are on the rise and employers need to provide the right support.**
- **A holistic workplace risk strategy is needed to safeguard operations, ensure compliance and look after the mental health and wellbeing of staff.**

Over the past 18 months, our workplaces have shown an incredible amount of resilience and have been forced to change immeasurably. Fatigue and stagnation are setting in, however, leading to poor mental health outcomes for employees.

The follow-on effect, of course, can negatively impact the business in a number of ways, including absenteeism, presenteeism, low levels of performance, increased workers' compensation claims – which cost time and money – and damage to your team and business culture, as well as your brand and reputation.

Today, we're navigating an incredibly fluid workplace environment, one in which new challenges emerge on an almost daily basis. Businesses need to take a holistic approach to risk that includes work health and safety with a focus on mental health, human resources, and having the right software solutions that enable employees to work remotely and securely.

There are also implications for reputation and brand, physical/property and crisis management which is more agile and people focused than we have previously seen.

Regulatory response to COVID stress in the workplace

The COVID pandemic isn't going away, and while we've seen remarkable resilience so far, we're expecting a decrease in resilience, both in the community and the workplace, over the coming months.

The pandemic has placed a significant mental health strain across the Australian population – calls to Lifeline and crisis services have increased by 40% since the onset of COVID-19.[1]

Employers are a trusted source of information for employees and remain a constant in their lives, and that's something organisations need to embrace in order to manage the growing mental health risk.

There's an increasing expectation from regulators that businesses identify, manage and provide support to employees improved mental health.

Because of this, there has never been a more important time to develop a psychosocial safety strategy that encompasses all aspects of the working experience, including the new risks that we are seeing emerge from a hybrid/at home workforce.

The evolving expectations of work from home

Establishing and managing what that hybrid/at home work system looks like is a key challenge, and it brings with it numerous risks that organisations need to address.

There's an increasing expectation from national and state-based safety authorities that employers have structured, supportive and formalised processes for hybrid working, which include employee education, the development of policies and procedures, risk management guidance and setting out clear work expectations.

What happens, for example, if a member of staff refuses to work from the office or has moved further away from work during the pandemic?

How will businesses respond to support the call for improved mental health of staff?

The Gallagher hybrid model means employers are more exposed than they were previously and as such need to have policies and procedures that cater for working from home. The home environment is now also considered a working environment where issues of physical and psychosocial risk have to be understood and addressed.

Family and domestic violence is one such issue.

One in six women in Australia experiences family or domestic violence,[2] while 65% of women experiencing family and domestic violence reported that the abuse either began or escalated since the onset of the COVID-19 pandemic.[3]

The majority have also reported the severity of the abuse increased throughout the pandemic.[2]

A new challenge for employers is injury or fatality through family or domestic violence experienced during the course of work – especially as a New South Wales test case ruling held that it is a compensable experience under the workers' compensation scheme.

Mapping the future

There has never been a more important time for businesses to develop a psychosocial safety strategy which encompasses all aspects of the working experience, including those new risks that emerge from a hybrid/at home workforce.

In doing so businesses not only safeguard their operations and ensure compliance, but also protect the health and wellbeing of their people. This has been demonstrated to have the single greatest impact on workplace outcomes.

The workplace risk team has demonstrated expertise in working with employers to establish and respond to these emerging risks.

We work in partnership with organisations to ensure they have the knowledge they need, the right policies and procedures in place and, most importantly, the practical know-how and resources to actually make a difference to their people and their business.

Crucially we keep businesses abreast of the new and emerging risks.

Over the coming months and years it's realistic to expect a raft of new workplace legislation and legal cases that will change the landscape considerably.

And as they emerge it's crucial you're aware of them, have the knowledge to navigate and interpret them, and have the capacity to act quickly.

A clear communication strategy is fundamental to effectively managing these risks – and it's got to be coordinated and well planned.

We're entering unchartered territory – and it's critical to gather as much information as possible about what lies ahead.

1. www.lifeline.org.au Media Release
2. Family, domestic and sexual violence in Australia, 2018. Australian Institute of Health and Welfare
3. The prevalence of domestic violence among women during the COVID-19 pandemic. Australian Institute of Criminology

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Should you require any advice about your current risk management program

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Through our network of more than 30 regional and metropolitan branches across Australia, we understand local business communities because we are part of them ourselves.

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