

## Government applauds GB's administration of HIH Claims Support Scheme



Back Row Left-Right: Nigel Willis, Russell Williams, Brian Walker, Anna Stanley, Phillip Stacey, Tony McPhee  
Front Row Left-Right: Kathryn Moran, Michelle Scott, Ian Pullar & Sabina Jansen

### GB's involvement in the Federal Government's HIH Claims Support Scheme will end in the next six months when the Scheme is wound up.

Assistant Treasurer and Minister for Competition Policy & Consumer Affairs Chris Bowen said the Scheme, established in 2001 to provide financial assistance to eligible HIH policyholders after the insurer's collapse, would finish once the remaining claims were finalised.

GB Claims Operations Manager Brian Walker said the government had been extremely happy with the expertise of GB's HIH Claims Support Scheme (HCSS) team and the speed at which it had managed claims to a successful conclusion.

*"We've met or exceeded all our key performance indicators and are now down to fewer than 150 claims to be resolved. The government and the HIH Group liquidators would like them dealt with as soon as possible, so that's what we are doing."*




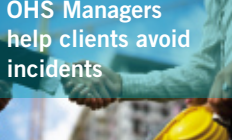
GB has been a partner in the Scheme since its inception and sole claims administrator since August 2004. During its involvement, GB's HCSS team has assessed more than 15,800 applications for assistance and managed nearly 11,000 claims. Most of the claims portfolio comprised public and products liability and professional indemnity claims and almost 95% of the total portfolio was now resolved.

Brian said GB's Melbourne-based HCSS team had grown as large as 36 people at its peak. As claims were resolved the team was reduced and there were now 12 people wrapping up the final claims. Competition for skilled personnel was fierce in the insurance industry and the importance GB placed on teamwork and ensuring its people were empowered and happy had stood it in good stead, he said.

"What Treasury is really applauding GB for is our ability to keep skilled claims managers in their jobs and retain valuable experience. We've had a very happy team and it's remained extremely stable. We've been able to achieve this by empowering team members to set the claims management strategy and have ownership of the claim so those strategies can be effectively managed to successful resolution."

Scheme requirements had changed over the years, particularly following the 2004 restructure that saw GB become the sole administrator, Brian said. "We've adapted well and the government has told us on many occasions that they have learned a lot from us in terms of our proactive and commercial approach to these types of situations."

GB's administration contract was scheduled to end on August 24, but is now to be extended until February, Brian said. By year end there would likely be fewer than 24 unresolved claims, mostly cases involving children, which could not be processed until they were older. "The intention is definitely to minimise that number," Brian said. The scheme was now closed to further applications.

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## GB supports **successful Berry Street forum**



Sandie de Wolf, CEO Berry Street and John McNamara, GB General Manager Victoria

**Almost 100 people flocked to Melbourne’s Town Hall on August 19 for a free, GB-sponsored breakfast forum to educate businesses about Victorian independent child welfare organisation Berry Street.**

GB’s Berry Street Business Account Manager Jane Sullivan said Berry Street, which supports children, young people and families affected by violence, chronic neglect, substance abuse, mental illness and poverty, was a major GB client and the company was happy to help fund the event.

“It was a great way for people to learn more about Berry Street and the positive differences it makes. It’s a socially responsible organisation and it’s great that we have the opportunity to be part of what it does.”

Berry Street CEO Sandie de Wolf gave a presentation on the effects

of poor parenting on children and families. She outlined the services Berry Street provides to help affected children and families. They included foster care, alternative education, help dealing with domestic violence and therapeutic counselling.

GB Victoria General Manager John McNamara spoke about the company’s commitment to ethical standards and corporate Australia’s social responsibility.

The event was attended by 15 GB employees and about 70 corporate partners. “As well as helping to raise the profile of a valuable cause, the event was a great networking opportunity,” Jane said.

Greeting card company John Sands, another GB client, has donated Christmas and birthday cards to Berry Street to support the cause.



## Pioneering exercise program **aims to reduce worker stress**

**A group of 15 Victorian police officers are undergoing a unique exercise program designed to help them deal with and recover from occupational stress.**

Aidan Brophy, GB Branch Manager – Victoria Police, said the six-month pilot program, called Mastering Occupational Stress Through Exercise, had been put together by Victoria Police and healthcare provider Boundless Health, with support and input from GB.

It aimed to assist police who were currently receiving compensation for occupational stress or had lodged claims in the past by providing a structured exercise and mental health assessment program. “There’s significant empirical research showing that exercise can help people deal with stress. The link between psychological improvement and wellbeing improvement is well known but this is the first course I know of that tackles the issue with such a thorough multi-disciplinary approach,” Aidan said.

Officers selected to participate have their mental and physical health assessed at the start and end of the program by two psychologists and two physiotherapists who had been brought in to assist. The program involves “fairly intensive, structured” exercise schedules tailored to the officers’ individual fitness levels, Aidan said. “It will also provide a good opportunity for the officers to build greater networks with colleagues.”

The program had received funding from GB and Victoria Police and could be continued in future years if it was successful, he said. In the long term, the investment in the officers’ health could potentially save money by reducing hidden costs and future medical expenses and ensuring improvement in officers’ wellbeing, Aidan said.

“Victoria Police realises more than anyone that officers work in a stressful environment and they are fully committed to providing them with outlets to manage this more effectively. This program will hopefully make a big difference to their health.”



# Insurer wins High Court ruling on exclusion



**The High Court has overturned several lower court rulings in finding CGU Insurance Ltd is not obliged to indemnify a Sydney barrister because he did not properly apply an objective test required by the “known circumstance” exclusion in a professional indemnity policy.**

Barrister Anthony Porthouse had sought indemnity from CGU after a client, James Bahmad, initiated a negligence action against him. In 1999, Mr Bahmad was working under a community service order when he slipped and fell, injuring his right shoulder.

He sought legal advice on whether he could claim against the Department of Corrective Services under the NSW Workers’ Compensation Act. Mr Porthouse was briefed and in June 2001 incorrectly advised that the Act did not apply as Mr Bahmad was not in paid employment.

At the time, the NSW Government had foreshadowed restrictions on common law claims under the Act, including amendments to rule out damages for anyone sustaining a degree of permanent impairment of less than 15%. Although Mr Bahmad’s injuries

were below the threshold, proceedings brought before November 27, 2001, would have been unaffected by the amendments.

On November 26, 2001, Mr Porthouse was instructed to draft a statement of claim that was filed the following month. Mr Bahmad subsequently secured an award through arbitration that was disallowed in 2004 after the NSW Government challenged it in court, arguing he did not meet the 15% threshold.

In March 2005, Mr Bahmad launched a negligence action against his solicitor and Mr Porthouse claiming that if they had filed the claim earlier he would have escaped the effect of the 2001 amendments.

In May 2004, Mr Porthouse had filled out an application to CGU for professional indemnity cover for 2004-05. The form asked: “Are you aware of any circumstances which could result in any claim or disciplinary proceedings being made against you?” Mr Porthouse answered “no”.

CGU refused to indemnify him against Mr Bahmad’s negligence claim and the

barrister challenged that decision in the NSW District Court.

In March 2006, NSW District Court Judge Audrey Balla ruled CGU should indemnify Mr Porthouse after finding the “known circumstance” exclusion clause of his policy did not void his cover. The insurer appealed against that ruling but, in a majority decision in April 2007, the NSW Court of Appeal upheld Judge Balla’s finding. Justices David Hodgson and Peter Young said Judge Balla had applied the correct standard in assessing what Mr Porthouse “believed was a realistic possibility”.

In a dissenting opinion, Justice David Hunt said a reasonable person in Mr Porthouse’s professional position would “upon the reflection required by his policy” have contemplated the real possibility that his client “at the very least” could make an allegation of negligence against him.

CGU secured special leave of the High Court to appeal against the Court of Appeal decision. On July 30, the High Court found in the insurer’s favour.

In their unanimous decision (HCA, CGU Insurance Ltd v Porthouse, 30/2008) Justices Bill Gummow, Michael Kirby, Dyson Heydon, Susan Crennan and Susan Keifel confirmed that a known-circumstance exclusion in a professional indemnity policy set an objective standard, modified by the “reasonable insured’s” professional experience and knowledge of facts.

They said Mr Porthouse had argued that, as at June 30, 2004, the possibility of an allegation being made against him by Mr Bahmad was not “plain and obvious”.

However, the court said Mr Porthouse also had knowledge, at the relevant time, of the potential effect of the 2001 amendment to the Workers’ Compensation Act on his client’s case. They said the objective standard was “a question of fact to be determined independently of the insured’s state of mind”. “It introduced a necessary element of objectivity into the final conclusion to be reached. It had to be given proper application in the present case. This, with respect, is where (Judge Balla) and the majority in the Court of Appeal erred,” they said.

## Safety steps **start with a little thought**



Left Terry Daniher and Christian Pouw

**Getting bumped and jostled while negotiating steps with other kids at school is a hassle when you're six.**

They're big, you're small and, apart from being a bit scary, it could be dangerous.

Christian Pouw, of Leongatha's St Laurence's Primary School, in Victoria, found himself in that position and came up with a good idea, confirming that making your workplace safer is not rocket science.

In the spidery letters of a learner-writer, he wrote to school principal Robyn Halliwell with an idea that has stopped kids being bumped and reduced the risk of falling on the steps.

"I think we should put an arrow at the top of the right side and an arrow at the bottom of the left side [of the stairs]. The children will know how to go up and down," he wrote.

The principal agreed and soon Christian was in charge of a gang of students who made stencils for arrows and were soon happily marking the right way to go.

Christian's idea was entered in this year's WorkSafe Awards, which will be announced in October.

It's the youngest ever entry. WorkSafe Executive Director John Merritt said Christian's idea showed that if a six-year-old could improve safety, anyone could.

**"Christian applied a simple, but effective risk management strategy and set an example for adult employers, managers and workers."**

"He identified a safety issue, came up with a solution, got the support of someone who could make things happen (essential for good safety outcomes) and worked collaboratively to make the site safer."

WorkSafe presented Christian with a special commendation for his efforts at a WorkSafe-Victorian Country Football League match in South Gippsland.

"If more people applied this approach in Victorian workplaces, fewer people would be hurt or killed. It's as simple as that," Mr Merritt said.

WorkSafe Victoria's 14th annual Work Safe Week is on October 27-31. It features a huge program of 120 seminars and events in Melbourne and regional Victoria, including a presentation by GB.

A major highlight is the 20th annual WorkSafe Victoria Awards Dinner at Crown Palladium on Thursday, October 30.

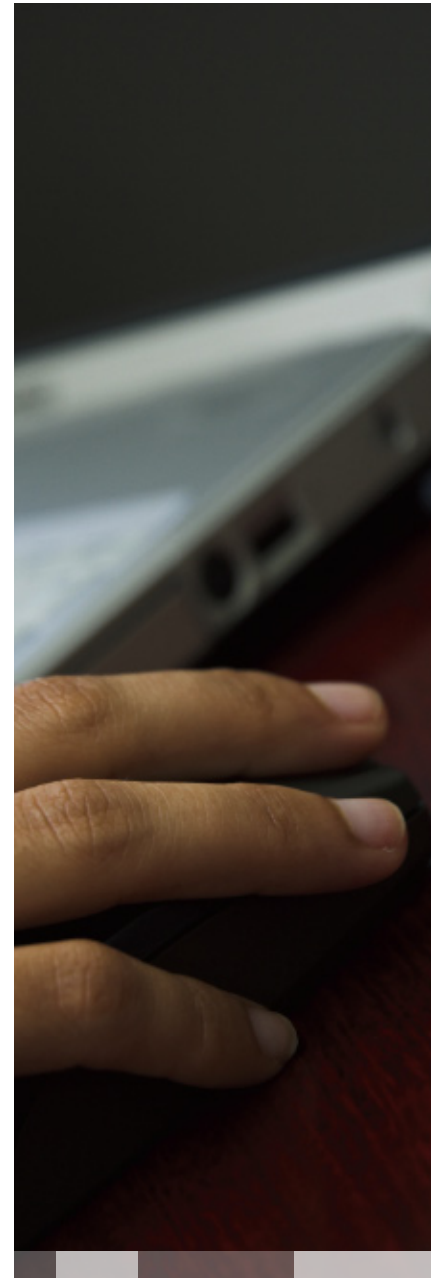
For further information, to register for events or buy tickets to the awards, visit [worksafe.vic.gov.au](http://worksafe.vic.gov.au) or phone WorkSafe Advisory on 1800 136 089.

## GB Advantage available online

**In line with GB's efforts to reduce its carbon footprint, the company is now inviting newsletter recipients to elect to receive GB Advantage electronically.**

If you would like to take advantage of this, please email your name, company name and email address to [marketing@gbtpa.com.au](mailto:marketing@gbtpa.com.au).

In future, you will be emailed a PDF version of the newsletter, once it is published, instead of receiving a hard copy in the mail.



## Prompt negotiation ensures **reasonable settlement achieved**



### **An HIH insured's excavator snagged a live gas line during renovation of NSW's historic Kogarah Railway Station.**

The insured immediately reported the rupture to AGL, but no AGL personnel reached the site before an explosion occurred.

Two police officers arrived to investigate a strong gas smell, but made no attempt to evacuate surrounding buildings or warn people of the potential danger. The officers were assisting the insured's employees to barricade the ruptured pipeline when gas entered a nearby amusement parlour and ignited. The resulting explosion killed two people, injured 18, destroyed the amusement parlour and caused significant damage to other property. Several people suffered horrific burns and other severe injuries.

NSW Supreme Court proceedings were issued by the injured parties, dependants of the deceased, NSW WorkCover and several subrogated property insurers, naming the State Rail Authority (as principal), ABI Group (as contractor to SRA), the HIH insured (as subcontractor to ABI), AGL and NSW Police as defendants.

At the coronial inquiry, the coroner was extremely critical of ABI and AGL, but did not apportion any responsibility to NSW Police as he found they had arrived only five minutes before the explosion, which was too late to prevent the tragedy or mitigate its consequences.

### **Claims management strategy**

As one or more defendants was clearly liable to compensate the plaintiffs, the strategy adopted was:

1. Determine the defendants' contractual relationships and obligations so an early apportionment of liability and common legal representation could be agreed.
2. Once contribution had been agreed, start immediate settlement negotiations with the plaintiffs to avoid, where possible, the expense and delays of protracted litigation.
3. Confirm reinsurance of the HIH insured's policy to ensure prompt notification to and recovery from the reinsurers.

### **Outcome**

1. Early negotiations between all defendants achieved agreement on contribution: ABI Group - 70%; HIH insured- 15%; AGL - 7.5%; SRA - 7.5%. As the SRA contract required the HIH insured to insure in the name of the principal, contractors and all subcontractors and to indemnify those parties for its own negligence, the apportionment was an excellent result for the insured.
2. While direct negotiations with the plaintiffs were left to ABI's solicitor, all contributing defendants met regularly to direct the negotiations. All claims were eventually disposed of for a contribution of over \$1.9 million by the HIH insured. Significant legal costs were avoided by starting early proactive negotiations.
3. The reinsurance was identified as primary \$500,000 - 100% HIH; \$1.5 million excess \$500,000 - 7.5% HIH; 92.5% Lloyd's and

London companies; and \$3 million excess \$2 million - 100 % FAI Re. Prompt notification was made to the solvent reinsurers. Settlement negotiations were influenced by the knowledge that if the HIH insured's contribution exceeded \$2 million, payments could not be recovered from FAI.

### **Knowledge gained**

- In multiparty construction risk claims it is essential the defendants agree contribution early in the claim process and then focus on resolving the claim with the plaintiff. This approach usually results in a better settlement than one determined by a court and always results in significant savings in legal costs.
- Early confirmation of reinsurance arrangements ensures early notification to reinsurers and their concurrence with the proposed strategy and allows the strategy to be formulated in light of the realities of any potential reinsurance recovery.
- Proactive input, even when another party will have to bear the majority of the claim, is vital to achieve the desired outcome. GB's active involvement in settlement and contribution negotiations, despite the client being exposed for only 15% of the claim, resulted in the client's exposure being contained in the reinsured layer so the client could recover 92.5% of its outlay from HIH's reinsurers. Had the claim reached the insolvent reinsurer layer, the client would have had to meet 100% of all further payments.

## Guide alerts employers, employees to fatigue risk

**WorkSafe Victoria and WorkSafe NSW have released a practical guide to managing workplace fatigue risk.**

While it is normal to feel tired or drowsy after prolonged mental or physical effort at work, fatigue is more than that. It is an acute and/or ongoing state of tiredness that leads to mental or physical exhaustion and prevents people from functioning within normal boundaries. Working long hours, with intense mental or physical effort, or during some or all of the natural time for sleep, can cause fatigue. It can have long-term effects on health.

WorkSafe Victoria Executive Director John Merritt said fatigue could lead to people not thinking clearly, making mistakes and taking shortcuts to get the job done.

“Understanding the dangers of fatigue and managing it can be the difference between someone going home at the end of the day, a hospital stay or dying.”

The guide, *Fatigue prevention in the workplace*, can be used by employers and workers to reduce the risk of injury or death.

It includes a fatigue hazards identification checklist and a chart to help with risk assessments. The advice is applicable in any working environment.

To help reduce fatigue-related risks, the guide provides information on:

- Proper planning and scheduling of work;
- The need for well-organised rosters;
- The effects of night-work and environmental factors;
- Provision of adequate resources (including human); and
- The value of appropriate rest periods and breaks between shifts.

The guide was developed after extensive consultation with industry groups.

Copies are available from WorkSafe offices, online at [www.worksafe.vic.gov.au](http://www.worksafe.vic.gov.au) or by calling the WorkSafe advisory service on 1800 136 089.

## OHS Managers help clients avoid incidents



**Executives aim to “make things happen”. But GB’s OHS Managers in Victoria and New South Wales try their hardest to stop things happening, namely workplace incidents giving rise to compensation claims.**

Karlo Milosevic, OHS Manager for Victoria, says his role is helping clients avoid incidents that might give rise to claims and finding solutions to employers’ problems.

GB’s status as one of six authorised agents for the WorkSafe Victoria and one of seven for WorkCover NSW, involves Karlo and GB’s OHS Manager for NSW, Melanie Pickering, in varied activities.

Their work can include making presentations to management on OHS and employer obligations, conducting training, undertaking formal audits, incident investigations and risk assessments. Karlo says an incident on an employer’s premises can trigger his involvement, or a WorkSafe inspection. “We might identify an injury trend that’s going in the wrong direction. We have to be proactive in developing solutions,” he says.

Melanie agrees. “Ultimately, my job is to try to stop claims coming in the door. It’s a matter of educating employers on their roles and responsibilities under the legislation and targeting poor-performing employers.”

Like Karlo, she says an injury trend

in a particular firm or industry sector can prompt her intervention. “We do a lot of tailored training programs and face-to-face consultations — sitting down with an employer and teasing out what the problem might be. GB tracks employers’ performance from higher-risk industries, such as construction, health and community services, and transport to identify incident and injury trends to assist in problem-solving.”

GB NSW offers a range of “user-friendly” employer tools designed to help employers self manage injury management and prevention activities. But Melanie says it is important not to deluge clients with an avalanche of data. “We try to make [advice] needs-based rather than offering ‘everything’ to a client.”

Both Melanie and Karlo work closely with GB’s client relationship and business development teams to meet the needs of existing clients and identify potential new ones.

Melanie says larger client firms are generally more “savvy” about OHS, so her efforts often focus on small to medium size employers. Karlo also finds some clients have a more positive approach to OHS than others.

“Employers who are used to managing safety look ahead, which is what we want them to do. They can see a need for improvement before an incident or injury occurs,” he says.

## Risk management culture **embraced at GB**



Michael and Andrea Kanserski, with daughters, from left, Martina, Annika and Vivien.

**For Andrea Kanserski, one of the biggest positives in working for GB is its embrace of compliance and risk management and its strong company values.**

Andrea, National Risk Manager for GB since last November, is based in Brisbane where she also is responsible for the company's business continuity plan, fraud management program and insurances.

She says risk management and compliance concepts and principles are "fully endorsed and supported" by GB's senior staff and executives. "It makes my job easier. We are now at the point where we are able to demonstrate considerable integration across the business and are starting to realise some of its benefits."

Andrea says she is fortunate her predecessors had laid good groundwork. "My job has been about developing and implementing an integrated, formalised risk management plan and framework to support the business at strategic, operational, contractual and project management levels and ensuring the risk management process is clearly understood and applied to support our business decisions. We have had some great feedback from external auditors, so

it's good to know we are on the right track."

Andrea was educated in Victoria, after coming to Australia from Germany with her family in 1974. She studied nursing at Royal Melbourne Hospital — and is still a registered nurse — before moving into the community health and acute care sectors. "Nursing set me on the path of risk management, especially when it comes to applying the principles to complex problem solving and decision making. Add the need for sound communication and time management skills and you've got a risk manager in the making."

The past 15 years have been a focused "transition" through jobs, including senior management positions, audit and compliance, quality management, education and training and enterprise risk management, each supported by ongoing tertiary studies. Andrea is a member of the Risk Management Institution of Australasia and a Certified Practising Risk Manager (CPRM). "I wanted to build a diverse skill set that would allow me to apply my skills outside the health sector," she said.

The transition involved a move by the Kanserski family (husband Michael

and three daughters) to Queensland's Gold Coast in late 1994 where Michael is now building compliance officer with Gold Coast City Council. "We are a risk, compliance and audit family," Andrea joked.

Before joining GB, Andrea spent 10 years working for Blue Care, an aged and community care provider with services throughout Queensland, supported by a 10,000 strong workforce. She held the role of risk manager at regional and then corporate levels.

*"It was quite a challenge, setting up the risk management structure and framework and then making it operational. I had some great mentoring support from Blue Care's internal audit manager and fellow CPRMs and that is something I try to give back to new risk practitioners entering the field."*

Andrea sees her role as contributing to GB achieving its business vision and goals. "My job will be to work with and support the team in that direction, and I'm very happy in that role," she said.

## Enterprise risk management ensures ‘holistic approach’



**The term risk management is used very liberally in business. For example, safety, security, disaster management, business continuity, insurance and internal audit are often referred to as risk management.**

While these functions form part of the wider discipline of risk management, the term risk management means a deliberate focus on all a business's risks. Enterprise risk management (ERM) has become a popular way of describing the application of risk management throughout a company rather than in selected business areas individually.

Risk management is a management discipline with its own techniques and principles. It is a recognised management science and has been formalised by international and national codes of practice, standards, regulations and legislation.

Risk management forms part of management's core responsibilities and is an integral part of the internal processes of the business.

When properly executed, risk management provides reasonable but not absolute assurance that the business

will be successful in achieving its goals and objectives. It must be integrated into all parts of the business; no part of the business can claim that it does not need to participate in its processes.

### **Why do we need risk management?**

Many managers have justifiably asked why risk needs a separate focus; why can't it be managed as before? The main reason is that the service delivery environment and the public sector's interface with stakeholders have become far more demanding and volatile.

Historical ways of doing things are no longer effective, as evidenced by several service delivery and general governance failures. In response to that, the principles of corporate governance and associated legislation require public sector institutions to be more transparent and structured about the ways they manage and report on risk. Stakeholders need to observe that the institution has a proactive, systematic approach to managing its business risks.

Gallagher Bassett has long recognised the importance of integrating corporate governance principals into its management structures.

Risk management is an integral part of the business, supported by a robust ERM framework and plan that has been articulated throughout the business from the strategic, operational, contractual and project management context and supported by formalised reporting from both risk and internal audit perspectives to provide assurance to the business and its stakeholders.

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