# Company Directors and Officers Insurance

- **Chris Coyne, Partner and Mark Waller, Associate, Henderson Trout, Solicitors, Brisbane**

**Companies might soon be able to insure their directors and officers against liability in relation to the company.**

Sec. 237 of the Companies Act effectively prohibits companies from taking out insurance policies to protect their officers against claims as a result of negligence, default or breach of duty in relation to the company. There is a great deal of uncertainty as to the scope of this prohibition.

The UK has recently legislated to permit this type of insurance and the Companies and Securities Review Committee has recommended that Australia should do likewise.

At present companies are arranging two separate policies of insurance; one which the company takes out to cover company officers against the costs of successfully defending civil or criminal proceedings; and a second policy, which protects company officers from liability for wrongful acts. The latter policy is taken out and initially paid for by the company officer personally.

The Committee's view is that when loss is caused to a company there should be insurance proceeds available for the benefit of creditors and members.

The Committee says the insurance should:

- be on reasonable terms;
- not involve the company's bearing the substantial burden of liability;
- not be with a related or associated company unless that company is backed by an independent re-insurer.

The changes proposed by the Committee should have the effect of streamlining a company's insurance arrangements and removing the uncertainties in relation to Section 237.

- **Reprinted with permission from Henderson Trout's HT Update.**

# Reinstatement - New Powers in Queensland

- **Geoff Harley, Partner and Anne Milner, Associate, Henderson Trout, Solicitors, Brisbane.**

**The Queensland Industrial Commission now has power to order payment of compensation to dismissed employees.**

On 23 June, 1990 the Queensland Government passed a new Industrial Relations Act which gives the Commission power to make the following orders relating to dismissed employees, "if in all the circumstances it is of the opinion that it should do so":

- an order for reinstatement - the employer may be ordered to reinstate the employee in the same position as at the time of dismissal;
- to re-employ the employee in another position if the Commission thinks that is preferable;
- to pay compensation to the dismissed employee.

The Commission simply cannot order payment of compensation - if it decides that compensation is appropriate then the employer is given the right to decide whether to reinstate or re-employ the dismissed employee or pay compensation.

The ceiling on the amount of compensation which can be awarded is one month for every year of service - forexample, three months average salary for three years of service or up to 20 months most recent average salary for 20 years employment.

As in the past, the Commission will intervene only where it considers that a dismissal has been unfair, harsh or unreasonable.

- **Reprinted with permission from Henderson Trout's HT Update.**