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An employer's right of dismissal for lies in a job application

Employers may sometimes come across job applicants who have embellished, exaggerated or stretched the truth about their qualifications, skills and experience in order to gain employment. While lying on a job application through a résumé, CV, cover letter or job interview may not be a criminal offence, it will be considered fraud if an individual presents false documents to back up claims of qualifications, education or job history. It is also illegal to impersonate a doctor, a police officer and various other occupations.

In these situations, an employer may take disciplinary action, and go so far as to dismiss the employee, even if the misrepresentation does not relate to the qualifications or skills required to perform the role. This is because of the inherent requirements of trust and honesty in the employment relationship. Furthermore, even a little stretching of the truth could amount to a breach of the employment contract.

In *Jacques v The McCarroll Motor Group* [2014] FWC 5793, the Applicant was a trainee motor mechanic who lied in a job interview and said that he had around six modules left to complete in the near future for his trade qualifications. However, the Applicant actually had 14 modules left to complete and had not made any progress since starting the job. The Fair Work Commission found that the dismissal was not 'harsh, unjust or unreasonable' because the Applicant's



misrepresentations had demolished the trust and confidence necessary to maintain the employment relationship. Furthermore, the Applicant could not satisfy the foundation element of the employment without his trade qualifications.

In 2015, Jeffrey Flanagan pleaded guilty to deception charges when it was uncovered that he had falsified his employment history and gave fictional references on his résumé. Myer, who had hired Mr Flanagan as an executive, had terminated his employment on the first day and referred this matter to police.

More recently, in *Tham v Hertz Australia Pty Ltd T/A Hertz* [2018] FWC 3967, an

employer was able to dismiss an employee due to exaggerated employment dates on his CV, despite the fact that the misrepresentation did not directly relate to the employee's role and there were procedural deficiencies in the disciplinary action taken by the employer.

The key takeaway for employers is that there is a right to dismiss an employee who intentionally lies in their job application or provides false details. However, employers should ensure that any immediate dismissal is due to sufficiently serious dishonesty and that all procedural matters are followed during the disciplinary and dismissal process.

Unfair contract laws to be extended to insurance

Many of you would be unaware that existing legislation dealing with unfair contracts, does not apply to insurance.

Given the generally held distrust of insurers who “use the small print” to escape from paying genuine claims, some people would say that is a position which shouldn’t continue...and the Government agrees.

Following an announcement that a proposals paper has been prepared to extend unfair contract provisions for consumers and SMEs to insurance policies, the relevant Minister, Kelly O’Dwyer, believes that better protection is long overdue.

She said “Consumers and small businesses who enter into standard form insurance contracts should have confidence that the contract accurately reflects the cover agreed with the insurer”. “They should also have appropriate remedies when they suffer detriment as a result of terms in the contract which are unfair.”

The lobby group for the insurance companies... the Insurance Council of Australia...have stated that they have “serious concerns” about the proposal, but many people would argue that the same protections from unfair contracts which exist for other financial products and services, should apply to insurance.

“While the ICA will work carefully through the proposed model with members... on an initial reading, the Governments proposal has profound implications for insurance contracts, the scope of cover offered and the pricing of insurance,” the group CEO said. “If implemented, it would cause insurers to fundamentally review their contracts and reassess their pricing”.

While it’s true that the introduction of the



law to other providers of financial services, caused a substantial review of their fundamental contractual terms, the recent Financial Services Royal commission has shone the light on some appalling actions by the Banks, and while previous reviews of the insurance industry has not found any compelling evidence that introduction of these laws into the industry would significantly benefit consumers and SMEs, in the increasing age of transparency, it is hard to argue against its extension to insurance.

Reputations in the Financial Services Industry have been savaged!

The royal commission into Australia’s financial services sector continues to reveal how customers’ lives have been ruined by financial advice at the big banks, but those in the finance space are predicting the investigation will also change the game for smaller operators and independent financial advisers.

Recent hearings into the nation’s banking sector uncovered shocking tales of customers being charged by AMP for financial advice they never actually saw, and customers losing their family home after taking advice from Westpac.

The inquiry has also revealed cases where customers did not fully understand the

financial services they were paying for, or weren’t informed about what they were paying for in the first place.

However, as the CEO of the National Insurance Brokers Association (NIBA), Mr Dallas Booth, highlighted in a recent address to members of the Council of Queensland Insurance Brokers, not all sectors of the Financial Services Industry are performing poorly.

The NIBA Board of Directors recently met with the Lead General Insurance Ombudsman, John Price. John Price provided the following data for insurance broking disputes as at the end of April 2018, which showed disputes against insurance brokers were well down

compared to the same period in 2017.

Only around 13% of disputes reach a formal determination by the Financial Ombudsman Service, and of those, around 75% are being decided in favour of the broker.

During the same period, the number of general insurance disputes continued to increase substantially. Disputes against general insurers increased from 11,500 to over 13,000 during the same period. General Insurance disputes were around 5,000 a few years ago. NIBA expects the Royal Commission will try to examine the causes of such large numbers of disputes involving general insurance companies in the September hearings.



	12 months to 30/04/2017	12 months to 30/04/2018
Disputes lodged	397	277
Disputes accepted	233	154

Social Media Scams

Social media – there is no escaping it. Over time, it has become a way of life, from humble beginnings as a platform for friends and family to keep in touch, social media is now a complex system that allows all to interact on a personal level from consumers and companies to groups and governments.

It is estimated that there will be around 2.77 billion social media users around the globe by 2019. With that many users it's no surprise that social media is a hotbed for cyber criminals.

Here are five of the most common social media scams that you could possibly fall prey to.

1. Chain Letters

Just like the dreaded chain letter you used to receive in the mail, the chain letter has returned in the form of social sharing. "Share this post and Bill Gates will donate \$5 million to charity" or "Every like and \$5 will be donated to charity". These are typically 'like farmers' or a spammer looking for 'friends' to hit up later. Many well-meaning people continue to share their posts and pass these fake claims onto others. Break the chain and leave it.

2. Cash Grabs

Social media allow us to stay in touch with friends and family, but occasionally you may receive an email or direct message from a friend who 'lost their wallet on holidays and needs some cash to get home' – you drop everything to help as per their instructions, when in fact your friend never sent this request and is a bulk-email sent from their malware-infected computer. The easiest solution is to ring your friend directly, inform them of the request, then ensure your computer isn't infected as well.

3. Hidden Charges

The quizzes that pop up on your feed asking "What type of friend are you?" or "Personality tracker" – all your friends are taking the quiz, all you need to do is enter your information including your email and/or phone number. You may have



unwittingly subscribed to a service that charges or spams you.

4. Phishing Requests

"Check out this video I found of you online" Click the link and check it out – you follow the link and your asked to login to your social media. Now the cyber criminal has your password and total control of your account. How did this happen? Both the email and landing page were fake. That link you clicked took you to a page that only looked like your intended social site. It's called phishing, and you've just been had. To prevent this, make sure your Internet security includes antiphishing defenses. Many freeware programs don't include this essential protection.

5. Hidden URLs

Shortened URLs, particularly on Twitter are common place, and while many times clicking on a shortened link will take you to the website you wish to go, it could be a link that installs all sorts of malware on your computer.

URL shorteners can be quite useful. Just be aware of their potential pitfalls and make sure you have real-time protection against spyware and viruses. Bottom line: Sites that attract a significant number of visitors are going to lure in a criminal element, too. If you take security precautions ahead of time, such as using antivirus and anti-spyware protection, you can defend yourself against these dangers and surf with confidence.

TOP SIX TIPS TO SPOT A SCAM

- 1. Is the deal too good to be true?**
Scammers will often pretend to be from legitimate and trustworthy sources, offering an enticing incentive to click through to a 'too good to be true' deal. So, the first thing you should do is try doing a quick search for the promotion.
- 2. Inspect the URL**
Closely inspect any URLs you aren't sure about. Does the URL look suspicious? Does it match the URL of the company website? Sometimes enticing posts on social media link to a fake login page, and when you enter your email and password, you're actually giving those details to a scammer.
- 3. Check your timeline**
Are you seeing an unusually high volume of the same status being shared? This should ring alarm bells that it may be a scam, especially if the post message is the same for more than a few people.
- 4. Check the branding**
Check the post for branding inconsistencies. Are they using the right logo? Is this the standard of design and care for presentation you usually see from the brand?
- 5. Send a message**
Send a private message to your friend or family member asking them if they posted the status.
- 6. Contact the company**
You could reach out to the organisation, company or brand to find out if the deal is genuine. Don't do this by clicking on any links in the post you believe could be a scam. Instead, search for the company's real homepage and contact them via a social media account, email address or phone number you find on there.

Growth by Acquisition



In today's current Economic Climate many businesses are electing to increase their growth by way of acquisition.

Whilst this strategy remains sound, there are many considerations that need to be undertaken prior to purchasing an existing business, particularly if that business is in the same industry and/or profession you're currently trading in.

The main key to any successful acquisition is undertaking the appropriate 'Due Diligence' prior to any contracts being arranged. Initially, "Commercial in Confidence" Agreements are prudent to be agreed and executed as this provides protection to both the buyer and seller.

It's been stated on many previous occasions however, if the 'culture' of both businesses aren't similar, that it can make the combining of the two entities difficult.

Whilst there are many dollar savings that are able to be achieved as a result of business

"synergies" the largest is always the savings made from duplication of staffing. Any successful unification of businesses places a great deal of emphasis on the 'coming together' of multiple organisations.

Some of the other cost savings that are able to be achieved are -: Lease & Rental duplication, Office Leases, Computer & IT Savings, Motor Vehicle duplication, Professional Fees etc.

As with all business acquisitions and purchases ensuring that the appropriate Sale Contract is in place is critical. It's very important that matters relating to previous and ongoing taxation and other financial matters are succinctly dealt with so that neither of the parties is disadvantaged post settlement. The early involvement of Solicitors and Accountants, together with any other business advisors such as Insurance Brokers, will assist in the smooth transition of combining entities.

Be sure. Before you insure!

Ask your CQIB broker about...

Commercial and Retail Insurance

- Business Property
- Business Interruption incl Loss of Rent
- Liability
- Burglary and Money
- Glass Breakage
- Machinery Breakdown
- Computer
- Goods in Transit
- Tax Audit
- Motor
- Contract Works
- Commercial Strata

Liability

- Public and Products Liability
- Professional Indemnity
- Management Liability
- Directors and Officers
- Employment Practices Liability
- Statutory Liability
- Cyber Risk

Premium Funding

Private and Domestic Insurance

- Home and Contents
- Car, Caravan, Boat and Trailer
- Travel
- Residential Strata

Life, Disability and Partnership

- Life/Accident and Illness
- Term Life
- Long Term Disability/Income Protection
- Key Man
- Superannuation

The CQIB represents over 57 Queensland firms employing nearly 400 staff and placing in excess of \$500,000,000 in annual premiums. The CQIB charter is to maintain the level of professionalism of its members by the sharing of knowledge, information and ideas.



For more information visit
www.cqib.org.au

The articles in Brokerwise are provided as information only. They are not general or insurance broking or legal advice. It is important that you seek advice relevant to your particular circumstance.

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Wisewords

"It is never too late to be what you might have been."
— George Eliot

"Do one thing every day that scares you."
- Eleanor Roosevelt

"Learn from yesterday, live for today, hope for tomorrow. The important thing is not to stop questioning"
- Albert Einstein