

POLICY DESCRIPTIONS

◆ *Audit & Investigation Insurance*

These days, it is only a matter of time before most businesses receive a tax audit in some form or another. Consider the following possibilities:

- Payroll
- GST
- Stamp Duty
- Super Funds
- Customs

Audit insurance generally provides cover for the cost to engage professional accounting, legal or qualified specialists, assistance and advice to respond to or to defend audits undertaken by Local, State and Commonwealth authorities.

◆ *Beware of Contractual Liabilities*

From time to time, most businesses enter into contracts with others. Whilst many contracts may seem quite straight forward, they often contain clauses which place quite onerous obligations on you, should a loss occur

Be aware that other contracts, may also affect the operation of your insurance contract.

Some examples include:

- The lease of a premises
- The lease of a vehicle
- A contract to hire some equipment
- A contract with a carrier to transport items on your behalf
- You enter into a contract with a builder to repair, renovate, or construct a premises
- You tender for a job, and the principal requires you to sign a contract

Many of the above contracts contain clauses which specifically relate to your insurances. You may be required to effect insurance for loss or damage on an item you lease or hire and note the owner as an interest party. However, other contracts contain clauses which require you to accept the responsibilities of others, irrespective of fault. These clauses are often introduced into contracts by the dominant party to try to improve its position in the event of a loss.

Most insurance contracts specifically exclude such contractual liability as it prevents the Insurer from recovering or claiming against another party, even if they are negligent.

Before signing **any** contract, you should disclose all details to your Solicitor and Insurance adviser, and have the cover extended to meet the conditions of the contract. If you do not, you could well find yourself uninsured.

◆ *Business Continuity Cover keeps the business going.*

If the business owner or key person is unable to perform his or her duties due to long term sickness or injury, this policy will pay for the costs associated with replacing them until they get back to work.

These costs can include:

- Salary costs
- Recruitment costs
- Legal fees
- Travel and moving costs
- Advertising costs

Most successful businesses are specialised – this policy could enable you to find, hire and pay the expertise you need to keep the business running the way you want.

◇ *Business Interruption Insurance:*

Following a major loss to the building and/or contents, your business may take some time to relocate, rebuild, and re-establish. During this time, apart from the loss or destruction of assets, another serious problem may arise: resultant interruption of trading activities, accompanied by a reduction in cash flow. Other problems can include:

- ◆ Non-fulfilment of outstanding orders
- ◆ Breaking of contracts
- ◆ Loss of customers to competitors
- ◆ Fixed expenses such as, rent, payroll, leases, and loans, must still be met even if the business is not trading
- ◆ There will also be additional expenditure incurred in order to minimise the loss of income, for example, rental of temporary premises, or working additional shifts.

Therefore, the abovementioned factors can threaten the future viability of the organisation.

Business Interruption insurance provides protection against such a loss by replacing income that has been lost during the re-establishment period, and restores the business to the same financial position it held immediately prior to the loss. The policy generally covers 'Insured Gross Profit', which is calculated by deducting those expenses that vary directly with turnover, from gross sales or revenue. Cover can also be extended to include professional claims preparation costs and reimbursement of additional costs reasonably incurred in reducing the loss.

◇ *Burglary: (Theft as a consequence of forced entry or threat of violence)*

Business assets are also at risk from theft. Depending on the type of business, and the security precautions taken, the risk of theft is high for most businesses.

Insurers are generally prepared to cover the theft risk as a proportion of the value of all assets as not all assets are taken in the event of a breakin. For example, if total assets are worth \$50,000.00, you can generally elect to insured for theft up to say, \$10,000.00.

◇ *Contract Works Insurance:*

Contract Works insurance provides indemnity for accidental, physical loss or damage to a 'Contract Works'. The 'Contract Works' project can include: construction and civil engineering projects such as building, road, rail, bridge or tunnel construction; and installation projects such as mechanical and electrical items. The period of insurance generally covers the construction period plus a maintenance and/or testing period.

The most important causes of losses indemnifiable under Contract Works Insurance are: fire, lightning, explosion, crashing aircraft, storm, earthquake, theft/burglary, impact, malicious acts, and the consequences of poor workmanship or error or omission in design or specification.

The sum insured generally includes the Contract Price plus materials supplied by the Principal or other parties, and an allowance for escalation of costs during the construction period. Options for additional cover include: temporary buildings, plant or equipment; items in transit; removal of debris; professional fees; expediting expenses; pre-existing structures; and Legal Liability.

◇ *Corporate Travel Insurance:*

Corporate Travel insurance can provide comprehensive cover for the organisation's principals and employees. Some policies offer a 12 month 'blanket cover' for all employees for travel anywhere in the world, whilst they are on authorised business travel.

Agreed benefits can usually be arranged with the insurer, under the following headings:

- ◆ Death and Disablement, with the option of a weekly injury benefit.
- ◆ Overseas Medical Expenses.
- ◆ Luggage, Personal Effects, Travel Documents, Money & Credit Cards.
- ◆ Cancellation or Curtailment Expenses.
- ◆ Personal Liability.
- ◆ Kidnap & Ransom.
- ◆ Extra Territorial Workers Compensation.

◇ *Directors and Officers Liability Insurance:*

Directors and officers of companies are becoming increasingly accountable as a result of their responsibilities and seniority. This accountability also extends to honorary directors acting in a non-executive capacity.

Directors and officers can be held personally liable under a number of Acts of Parliament as well as under common law. Some examples are as follows:

- ◆ **The Corporations Law** - This is principal Act governing the corporate arena, and Section 232 of this legislation sets out the duties and liabilities of directors and officers, which include the duties to act honestly, exercise a reasonable degree of care and diligence, and not to make improper use of information or their position.
- ◆ **Trade Practices Legislation** - Violation of this legislation could result in proceedings taken against the director/officer by competitors.
- ◆ **Employment Law** - Employees could take action in relation to unfair dismissal, discrimination, mismanaged superannuation funds, or sexual harassment.
- ◆ Plus many more parliamentary acts with varying degrees of relevance to corporate life, which to monitor, would be a mammoth task.

Whilst Insurer's policy wordings differ in the extensions offered, the basic Directors and Officers Liability insurance generally covers payments made by the corporation, which it is legally entitled to make to indemnify the Insured Party, by reason of any 'wrongful act' committed by them in their official capacity. Cover is for damages and legal costs insured in defending a civil action, brought against an insured director or officer. In addition, it will provide cover for legal costs incurred in the successful defence of criminal proceedings. The claim must be made against the person concerned, and notified to the Insurer, during the period of insurance.

There are 2 parts to the policy:

1. **Directors & Officers Liability:** Protects directors and officers personally for any liability for which the corporation is unable to legally reimburse them.
2. **Company Reimbursement:** Reimburses the corporation for any amounts paid to its directors and officers for expenses incurred in successfully defending actions based on alleged negligence, default, breach of duty, or breach of trust.

In addition to the standard cover, most Insurers offer various extensions. Some of the more common extensions are listed below:

- ◆ Advancement of defence costs
- ◆ 'Insured vs Insured' cover - indemnity for one director/officer against another director/officer with regard to specified issues.
- ◆ Occupational Health & Safety Legislation
- ◆ An extended reported period in which to notify the Insurer of claims arising from a wrongful act committed prior to expiration of the period of insurance, where the Insurer has not invited renewal.
- ◆ Indemnity to the estate or legal representatives of a director/officer.
- ◆ Cover for costs incurred in attending official investigations.
- ◆ Continuity of Cover - indemnity is provided where the director/officer first became aware of the circumstance, prior to the period of insurance, and the director/officer did not notify the Insurer of such circumstance during the period of insurance.
- ◆ Cover for newly created or acquired subsidiaries.

◇ *Disability:*

Too often, people think of personal insurance merely as protecting their possessions, yet they ignore the most important factor that enables them to own those possessions - *their income*.

Small business owners face significant financial loss if they are unable to undertake their normal occupation either through sickness or injury. In addition to their daily expenses, they may also incur the extra cost of employing temporary staff to take on their duties during the period of disablement. Disability insurance provides a nominated weekly benefit (often up to 100% of earnings) in the event of temporary disablement due to accident or illness

◇ *Electronic Equipment Breakdown Insurance:*

This cover gives protection in the event of sudden and unforeseen breakdown of electronic items such as computers, printers, fax machines, photocopiers, and other associated equipment. The Electronic Equipment policy can also be extended to include cover for:

- ◆ The costs to reinstate lost data media or software.
- ◆ Increased costs incurred as a result of using substitute equipment.
- ◆ Burglary.
- ◆ Accidental Damage.
- ◆ Temporary Removal of equipment.

◇ *Employee Dishonesty Insurance:*

Most employers do not like to contemplate the possibility that they could be betrayed by their own staff, but the risk is regrettably, very real. While most people tend to think of employee fraud as purely a white collar crime - embezzlement of cash, conversion of cheques and the like - losses can involve blue collar workers as well - signing for goods not actually received, or delivery of goods not actually paid for.

An Employee Dishonesty policy, therefore, covers the fraudulent misappropriation of money or goods by employees. As one cannot always pick the potential defaulter in advance, 'blanket' policies which cover all employees can be purchased.

◇ *Employment Practices Liability:*

Employers these days are faced with numerous responsibilities towards employees - employment law, safety laws, and insurance requirements in the form of Workers Compensation and Superannuation. There is also, however, the possibility of an employee (or potential employee) taking action against the employer for a variety of reasons.

Employers, therefore, should consider effecting cover against such actions, not only for the possible eventual compensation, but also the legal costs incurred in defending the action. The smaller the organisation, the more likely that an action against them could result in costs so large as to threaten the viability of it.

Employment Practices Liability insurance, provides indemnity to the organisation in relation to their personnel functions and relationships. Some policies offer the following cover (Note: cover may vary between Insurers):

- ◆ Discrimination on the basis of: sex, race, disability, pregnancy, marital, sexual orientation etc.
- ◆ Unfair dismissal.
- ◆ Defamation arising from unfair dismissal or discrimination.
- ◆ Workplace harassment.
- ◆ Breach of employment contract.
- ◆ Misleading representation involving employment.
- ◆ Denial of natural justice.
- ◆ Unfair demotion, failure to promote, unfair evaluation, wrongful discipline.

◇ *Fire & Extraneous Perils*

This cover is designed to cover business assets such as equipment and stock for total or partial destruction following the occurrence of a specific event.

Events covered generally include fire, explosion, impact, earthquake, malicious damage, storm, lightning, impact by vehicles/animals/aircraft/falling trees, damage as a result of liquids such as water which can leak or discharge from pipes etc, and riots and strikes.

Generally replacement cover is offered on all items, and the Insurer expects that those items are insured for their full replacement cost.

◇ *General Property Insurance:*

Often, there exists in the business, property that requires cover whilst away from the normal business premises. A tradesman's tools stolen from a locked vehicle, or a laptop computer taken from a hotel room, are examples of losses that can occur. A General Property policy is designed to cover such items for physical loss or damage anywhere in Australia.

◇ *Glass:*

Accidental breakage of glass cover may be required where there are large areas of glass either externally or inside the business premises. For leased premises, most landlords require that their tenant takes care of the cost of glass breakage, even for glass in windows. Some large shopfront windows can cost thousands of dollars to replace. Therefore, it is important to consider this cover.

◇ *Machinery Breakdown Insurance:*

Machinery breakdown cover is designed to give protection to owners of plant, machinery, and mechanical equipment, in the event of sudden and unforeseen breakdown. Basically, all types of machinery can be covered, for eg., presses and lathes in engineering workshops, printing presses in printing workshops, air conditioning plants in office buildings, and refrigeration plant in food shops or restaurants. Extensions to the basic cover are also available in the form of resultant interruption to trading, or resultant loss of perishable stock under refrigeration.

◇ *Marine Transit Insurance:*

Most businesses insure their raw materials and finished goods while at their own premises, but frequently overlook the risk exposure that can arise when such property is in transit - either by road, rail, air, sea, or post. The most effective answer is generally to purchase a Goods in Transit cover, which can be effected for a specific trip, or an annual policy that provides automatic cover for all movements throughout the year based on pre-agreed limits of cover and geographic areas.

◇ *Money Insurance:*

Money is an important and key component in the viable operation of a business. Loss of cash can hinder daily operations and threaten short-term and/or long-term stability of the organisation. Under a Money insurance policy, cover can be provided for all or some of the following scenarios:

- ◆ loss of money during transit
- ◆ safes or safe deposit boxes are forcibly entered or forcibly removed
- ◆ loss of money whilst in the personal custody of the insured
- ◆ loss of money at the nominated business premises during normal trading hours
- ◆ loss of money at the nominated business *outside* normal trading hours

Whilst definitions may vary between Insurers, 'money' is generally defined as current coin, bank notes, currency notes, cheques, credit card sales vouchers, instant lottery tickets, postal orders, unused postage and revenue stamps, and other negotiable or stored-value items.

◇ *Personal Accident – Voluntary Workers:*

Many organisations these days have committee members or other voluntary workers involved in their activities. These 'voluntary workers' are not 'employees within the context of workers compensation legislation, so they have no such protection in the event of injury while engaged on the organisation's business. This can present a problem if an accident occurs and the organisation feels a moral obligation to compensate the injured party. The organisation may not be empowered, or financial enough to make such a compensation.

Many organisations may also be under the impression that public liability insurance will respond. Bear in mind that public liability insurance does not respond in the case of a pure accident, nor does it respond where the injury arises out of a car accident. A 'Voluntary Workers Personal Accident' policy can provide a specified set of pre-agreed benefit to an injured party. These benefits range from a weekly compensation for temporary disablement, to a lump sum compensation in the event of permanent disablement or even death.

◇ *Professional Indemnity Insurance:*

It is important to note that most Public and Product Liability policies exclude any professional service provided by you , whether or not a fee is charged.

There is no comprehensive definition of a 'professional' and its usage today is applied to many occupations not always considered to be a 'profession' in the traditional sense. However, 'professionals' may possess some or all of the following characteristics:

- ◆ specialised skills acquired by intellectual and/or practical training
- ◆ offer advice and/or service (usually, but not necessarily, for a fee) in a specified field having indicated that they are qualified or have sufficient knowledge to provide such advice or service.
- ◆ there is an accepted professional standard in existence for the exercise of the profession, either established by a Governing Body or a Statutory enactment.

In summary, the basis of liability for a 'professional' is the failure to exercise a fair, reasonable, and competent degree of care and skill. Liabilities extend to the staff of the professional person, his partners, and his qualified agents.

A Professional Indemnity insurance policy (subject to the policy limits) meets the costs of settlements as well as the costs incurred in defending the claim. It operates on a 'claims made' basis, i.e. a claim made during the insurance period, regardless of when the negligent act giving rise to the claim actually occurred.

Please contact us if you require further information regarding Professional Indemnity insurance and whether it applies to your business.

◇ *Public & Product Liability Insurance:*

One of the most important and most essential parts of any insurance program is the legal liability area. Exposure to loss from liability to third parties is potentially unlimited, nearly impossible to quantify, and difficult to predict.

Public and Products Liability insurance **is one of a number of policies designed to cover different aspects of a business' legal liability exposure.** While some Insurer's policies differ, essentially, most Public and Product Liability policies provide indemnity in respect of your legal liability to pay compensation for claims made against you where a third party has suffered personal injury and/or damage to their property, arising out of your activities or products.

Important Considerations:

- ◆ A combined Public and Products Liability is necessary for any business that makes, sells, installs, repairs, or delivers things, as recent changes to the Trade Practices Act makes it clear that retailers, importers, and distributors need products liability just as much as manufacturers. The end result is that there are very few businesses that do not need Product Liability coverage.
- ◆ In terms of adequate liability protection, no amount is too little. A claim arising out of an occurrence today, may not be finally settled for several years - and your protection is still only whatever the policy's Indemnity Limit was at the time of the occurrence. Therefore, you must also consider inflation factors as well as defence costs.
- ◆ Buying liability insurance is not like buying carpet - double the order, and it costs twice as much. Since the likelihood of a claim decreases at higher levels, the premium is discounted for increased cover.

Public & Product Liability policies do not cover:

- ◆ Liability arising out of the ownership, use, or possession of a registered vehicle.
- ◆ Liability arising out of the breach of a professional duty.
- ◆ Liability assumed by you under any contract or agreement other than one for tenancy of a premises.
- ◆ Liability for costs incurred in the recall, withdrawal, repair, or replacement of your products.

Please contact us in order to assess your exposure in the liability area.

POLICY DESCRIPTIONS

◆ *Statutory Liability Insurance*

Most Companies (and individuals) these days can be vulnerable to fines and penalties imposed by breaches of Acts of Parliament. Companies and individuals may also be held responsible for the unauthorised actions of contractors, agents, directors, employees, and partners.

A Statutory Liability policy may include cover for (specific conditions may vary):

- Fines
- Costs & expenses to defend the imposition of a fine
- All Acts administered by Commonwealth, State, and Local Government
- Innocent parties

Some examples:

- Breaches of Occupational Health & Safety Regulations
- Certain breaches of Environmental Protection legislation

◇ *Workers Compensation:*

People are the most important resource in any business. Injuries sustained at work can cause physical and financial hardship to both the employer and employee.

Workers Compensation is a compulsory insurance for all organisations with employees. Heavy fines are a consequence of failing to effect this insurance.

Workers Compensation insurance provides various factors of compensation following a work-related injury - payments for loss of earnings, medical expenses incurred, rehabilitation costs, and compensation for permanent incapacity. Depending on the size of the employer, it is important not only to effect Workers Compensation insurance, but also to develop a total program involving occupational health and safety, rehabilitation, and formalised risk and claims management procedures.

It's good to be with Markey!

