

What is Management Liability Insurance?

“I don’t need another Liability policy, I already have Public & Products Liability Insurance?” “Surely, my Professional Indemnity policy already covers me?”

A Management Liability policy is a packaged policy aimed at privately owned businesses which incorporates the traditional Directors and Officers Liability Insurance historically purchased by public companies. If you have staff, directors, and shareholders or handle money on behalf of third parties, you may wish to consider a Management Liability policy. It is a policy suitable for businesses in most industries. Business owners are often held responsible for events that occur within their workplace. Many businesses insure against tangible property losses, but fail to insure against economic losses.

Many insurers in the market place offer various formats of Management Liability Insurance. The most common components of a Management Liability policy are:

Directors and Officers Liability cover

Covers loss arising from claims brought against the directors, officers or employees acting in a managerial or supervisory capacity within the company.

Directors and Officers Liability Insurance is designed to *protect the personal assets of directors and officers*. It provides indemnity for loss arising from a claim as a result of a wrongful act committed in the course of directors performing their duties.

Where have claims against Directors and Officers arisen from?

- Regulatory Authorities (ASIC, ACCC, EPA, ATO, Workcover for OH&S)
- Company insolvency/liquidations
- Employees (Unfair dismissal, discrimination, breaches of employment laws/awards)
- Shareholders
- Customers (can involve contractual negotiations, commercial

transactions)

- Creditors
- Competitors
- Members of the public

Company Liability cover

Loss arising from claims made against the company (also known as entity cover);

Employment Practices Liability cover

Loss arising from claims brought by past, present or prospective employees alleging discrimination, sexual harassment or failure to promote. In today's world employees are aware of their rights and will look to enforce them if they believe they have been wronged in the workplace. Whilst you may think you know your employees, claims can also arise from prospective employees who believe they may have been discriminated against in the interview process or wrongfully denied employment.

Employment Practices Liability Claim Example: A female employee is made redundant without warning. She takes action against the company for both wrongful dismissal and discrimination as she claims her manager also constantly belittled and insulted her in front of other staff with rude and offensive comments. The case was settled for \$65,000 with additional defence costs of \$18,000 also covered under the Management Liability policy.

Statutory Liability cover

Designed to protect companies and individuals against liability for statutory fines and penalties which result from breaches of various Acts by the company, its Directors or Officers.

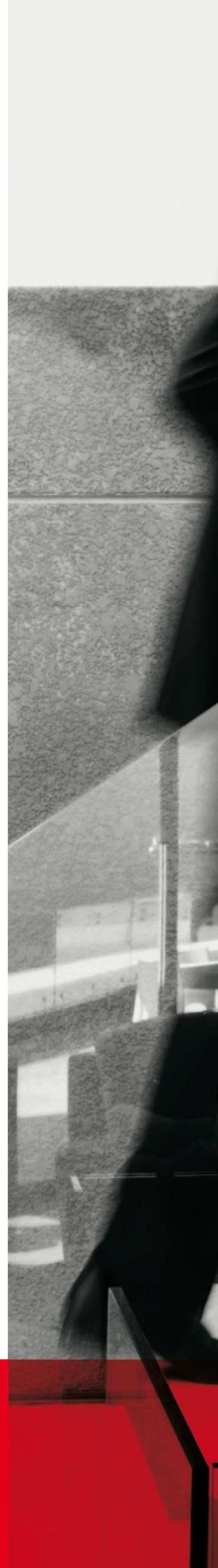
Claims can only be paid that are permitted by law, i.e. not against the public interest for an Insurer to pay for loss due to breach of legislation;

Statutory Liability claim example: The insured was erecting scaffolding at a building site when the scaffolding collapsed. Part of it fell onto vehicles on a busy road, causing injury to an employee below. Workcover interviewed staff on site and the company was alleged to have breached the Workplace Health and Safety Act for failing to prevent the incident and ensuring that their employees followed scaffolding erection guidelines. The company was fined, however the Management Liability policy covered the directors and the company for legal costs sustained in defending allegations raised by Workcover. This included legal representation expenses incurred during questioning by the investigators. The management liability cover also covered the fines imposed. Management Liability cover is critical in the event of a workplace accident.

Crime cover

Loss arising from third party theft or employee theft;

Commercial Crime claim example: Several cookware distributors were friends of the company's



warehouse manager. They colluded with the warehouse manager to steal cookware out of normal warehouse shipments and sell it at discounted prices to restaurants in three states while doctoring inventory records to cover the theft. The scheme, which continued for several years, was finally brought to light by an audit and an undercover investigation. The audit determined that close to \$1million worth of inventory had been stolen. The investigation ran for three months, which cost a further \$65,000. Cover provided for the loss and investigation costs under the Management Liability policy.

Internet Liability cover

Loss arising from an actual or alleged electronic publishing claim. Types may include libel, slander, plagiarism, violation of privacy, or infringement of copyright.

Some management liability policies also offer additional sections such as Kidnap Ransom and Extortion, Taxation Investigation and Crisis Management coverage.

Managing these risks is critical to the overall performance of a business. For small to medium size businesses, the cost and time involved in defending a claim can be detrimental to the survival of the business.

Perhaps the most important element is defence costs. You can be 100% right in a circumstance, but still need to defend yourself. Insurers have panels of appropriate lawyers ready to defend actions against you. Claims under this type of policy are often low frequency, but high severity when they occur. As a small to medium enterprise can you afford not to have this type of cover? Premiums are very low relevant to the level of exposure for this class of Insurance, don't wait for a loss to happen before taking out this type of cover.

So why should you purchase a purchase a Management Liability Policy?

- Protect personal assets of Directors, spouses and estates;
- Protect the company balance sheet;
- Help attract and retain qualified/experienced Directors and Employees;
- Avoid diverting Directors and Managements attention to sort out matters that can be costly in terms of time and reputation;
- Protect against unforeseen risks of business that may arise in the form of statutory liability or an employee or third party crime.

This advice and comments are provided in the capacity as your insurance broker and should not be construed as legal advice. Separate legal advice relating to the interpretation and implication of this article for your individual circumstances should be obtained.

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