



MANAGEMENT LIABILITY

What is Management Liability Insurance?

Management Liability Insurance protects you and the company against the risks and exposures of running the company (i.e. your liability for mismanagement).

Without adequate protection you could risk losing, not only your business, but also your personal assets. This insurance protects you personally, and therefore your wealth and lifestyle.

The legal costs to defend allegations of wrongful acts alone can be financially crippling for businesses and individuals.

Management Liability Insurance is not Professional Indemnity Insurance - why not?

The purpose of Professional Indemnity ('PI') Insurance is to respond to claims from third parties in respect of the professional/specialist services (including advice) you provide NOT for claims that you mismanaged your company and caused loss to others. You have to take out separate insurance for this exposure.

Where PI Insurance cover the 'activities' of the company, Management Liability Insurance focuses on the 'act of running a company'.

What does Management Liability Insurance Cover?

- Damages and claimant costs awarded against you
- Defence (i.e. legal) costs
- Investigation costs
- Civil fines & pecuniary penalties.

Most common types of claims

- Breaches of director's duties and/or fiduciary duties, including breach of trust
- False, misleading & deceptive conduct by directors/officers and employees
- Actions alleging improper and illegal conduct
- Statutory breach of duty i.e. under legislation
- OH & S prosecutions and inquiries
- Employment: unfair/wrongful dismissal, discrimination, harassment, wrongful failure to employ or promote
- Defamation by directors/officers
- Breach of intellectual property rights by directors/officers
- Employee theft, including theft of money and property
- Statutory fines & penalties
- Taxation investigation costs

Management Liability Insurance is a packaged product which will normally cover the following management liability risks:

Directors & Offices Liabilities

Will protect the past, present and future directors and officers plus anyone else involved in the management of a company for claims alleging a wrongful act and for which the company does not grant indemnification to such person. Employees can also be covered.

Claim examples

- Unfair Competition
- Fraud/Breach of Fiduciary Duty
- Misappropriation of Trade Secrets
- Insolvent Trading

Employment Practices Liabilities

Provides cover to the company, directors, officers and employees for claims made by current, past and prospective employees for issues arising from employment practices, including harassment, unfair dismissal and other employment issues.

Claim examples

- Bullying/Harassment
- Unfair Dismissal
- Discrimination

Statutory Liabilities

Covers certain individuals and the company for fines and penalties from operating the business including fines related to workers compensation and occupational health & safety.

Claim examples

- Occupational Health and Safety Penalties
- EPA and Pecuniary Penalties
- Other Pecuniary Penalties (Civil Penalties)

Crime Cover

A comprehensive crime section provides cover to the company for loss arising from dishonest acts such as theft and fraud by employees including theft of stock.

Claim examples

- Theft by Employee
- Theft of Inventory
- Theft by Contractor/Consultant

Corporate Entity Liabilities

Extremely relevant for companies that are owned by the directors by providing cover to the company for actions arising from managerial matters. A claim against the company will cause the same financial hardship to the owner; therefore this cover is extended to provide protection to the company. Many of the same claims against the directors and officers will, typically, be brought first against the company.

Claim examples

- Wrongful Act/Fraud
- Shareholder Dispute
- Shareholder Employment

Legal Representation Costs

Legal representation costs that are incurred by directors/officers and the company for attendance at official investigations or inquiries are covered.

Claim examples

- ASIC Enquiry

Other Covers – Tax Investigation / Public Relations / Crisis Containment

Additional management exposures can also be insured against under management liability insurance, to reimburse the company for certain costs incurred during a tax investigation by the ATO or to engage professional assistance in a crises.

Claim examples

- Taxation Investigation
- Public Relations
- Crises Containment

Some Pointers

- The potential for the severity of loss grows as revenue in the company increases. The bigger the company, the bigger the claims tend to be.
- Not only can directors be held personally liable (exposing personal wealth) but also managers and employees.
- As the regulatory environment changes, directors are often unaware of their full responsibilities at law.
- Directors are responsible for the risk management of their company. ASIC has been on the front foot, putting directors on notice.
- A company's reputation can be damaged if they are investigated, not to mention the ongoing legal costs to defend claims.

In the current economic climate – companies have seen an increase in:

1. Business failures
2. Regulatory investigations
3. Employment practices claims
4. Employee theft
5. Regulatory actions

Who can bring an action against a company, its directors, officers and employees?

- Regulators (e.g. ACCC, ASIC & the ATO)
- Employees
- Competitors
- Creditors
- Shareholders (especially minority shareholders)
- Clients
- Liquidators/Administrators

Summary Points

- Management Liability Insurance covers the exposures & risks in managing a business.
- Directors and officers face both personal & corporate liabilities in managing a company and can be held personally liable.
- Claims can often arise from actual or alleged breaches of the Corporations Act, which regulates company law in Australia.
- Where PI Insurance covers the activities of the company, Management Liability Insurance focuses on the act of running a company.

Every business is different – which means you need a Management Liability Insurance solution that is tailored for you. [For more information, contact us today.](#)



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