



## What is Directors & Officers Liability Insurance?

Put simply, it is a policy providing indemnity to Directors and Officers of a company for Personal liability to pay damages to another party as a consequence of wrongful acts committed by the Directors or Officers in their management of the affairs of the company.

*However, it is anything but simple.*

Recent and on-going changes to legislation and consumer protection regulations mean Businesses are being subjected to tighter controls and Directors and Officers to even greater personal liability. Combine this with an alarming increase in litigation and Directors and Officers are now faced with an incredibly complex minefield of legal responsibilities. The result being greater levels of risk and therefore an increased need for protection. When unprotected, skyrocketing legal costs and ballooning payouts could put your personal assets at great risk. The costs alone of defending even unfounded legal actions could ruin you.

### *What it covers*

Directors & Officers Liability Insurance provides coverage for both damages and legal costs associated with defending legal actions. (Because we believe in being innocent until proven guilty.) In short, Directors & Officers Liability Insurance is protection for everything you've worked hard for.

### *Who needs Directors & Officers Liability Insurance?*

Obviously Directors and Officers of Companies, whether you are the CEO of a large institution, Director of a private company, a committee member of a local club or even a Director with a non-active role in a company. Even the spouse of a Director can be held liable (but we've got that covered).

### *Why do you need it?*

Because as your power increases as a Director, so does your responsibility. Increasingly, responsibility translates as liability for actions involved in the running of the company. You may be sued for making a completely honest error in judgment. You may be liable for an employee's mistake. You may not have even made a mistake at all. But, if a party brings an action against you, the costs of successfully defending your good name, not to mention your business and personal assets, can be crippling, A damages payout will be financially devastating.

### *Increasing litigation*

Unfortunately litigation cases in Australia are resembling those of the United States in frequency and costs, and Directors are at risk from increasingly opportunistic legal action. Such actions can come from employment issues, creditor and insolvency issues, liquidator actions, regulatory authorities or shareholder and member actions.



## insurance advisory service

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### *It could happen to you*

Below are some actual examples of where Directors and Officers were held liable.

#### **Liquidator actions:**

- A Liquidator commenced action against two Directors of a company (a husband and wife). The Court found the husband and wife had been aware of the company's insolvency before drawing a cheque for \$80,000 from the company's account. They were ordered to pay \$98,355 plus interest, and the Liquidator's costs.
- A former Chairman of the National Safety Council in Victoria, was ordered to pay \$97 million relating to the Council's collapse. Although the position was largely honorary, the court action cost him his wealth, home and \$300,000 in legal fees.

#### **Trade Practices breach**

- A company placed a motel, which it owned, on the market. The buyers successfully brought an action against a Director for misrepresenting the trading performance of the motel. The Director was liable for approximately \$300,000 in damages, plus the purchaser's legal costs (not to mention his own).

#### **Creditor issues**

- An action was brought against a Director in respect of a debt for the purchase of video tapes. The company had since gone into liquidation, however, the court found the Director had reasonable grounds to expect that the company could not pay all its debts as and when they fell due. The Director paid \$270,000, plus costs for his misjudgment.

- A widow who was a non-active Director in a company was found liable for over \$165,000.

#### **Shareholder action**

- Minority shareholders sued a Governing Director and major shareholder of one company after he allocated additional shares to another company he controlled. He was found in breach of fiduciary duty and, with the other directors, was ordered to repay \$127,561.

Most importantly, Directors & Officers Liability Insurance provides coverage for both damages and legal costs associated with defending actions made against you.

Most insurers policies have introduced plain English wording to Professional Risk Insurance policy documents. This easy to understand language clarifies exactly what your policy covers. In addition, this policy has numerous features and benefits we believe make it state-of-the-art'.

These include:

#### **Key features**

- **Advance Payment of Defence Costs.**  
Legal costs of defending a claim can have a significant impact on an individual Director and the cash-flow of the company.
- **Official Investigations.**  
Directors will be covered for legal costs associated with investigations by official institutions and regulatory authorities such as the Australian Securities Commission and the Australian Competition & Consumer Commission. Directors & Officers policy is also the first to include investigations by Parliamentary Committees and the Australian Stock Exchange.



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- Automatic Limited Prospectus Cover.  
Most Directors & Officers policies do not provide this cover automatically.
- Automatic Cover for Outside Directorships assumed during the period of cover – eliminating the hassle of notifying each new Outside Directorship.
- Automatic Cover for Newly Acquired Subsidiaries whose asset size is less than 20% of the insured entity.
- Run-off Cover for Former Subsidiaries  
Whose asset size is less than 20% of the insured entity.
- Payment of Defence Costs for Occupational Health and Safety Actions, including Coronal Investigations.
- Broad Definitions of Insured Persons. Including any past, present or future Director, Executive, Officer or Employee.
- Coverage for Spouses of Insured Persons.
- Innocent Until Proven Guilty.  
Dishonesty Exclusion is only applicable after final adjudication of guilt. Other optional extensions include the following:
  - Pre-acquisition Cover for Subsidiaries.
  - Full Prospectus Liability.
  - Automatic Reinstatement.

In addition, your underwriting and technical specialists continually review our policy coverage to ensure it encompasses changes in regulations and legislation, and consistently meets your professional needs. So you can rest assured that your reputation and assets are protected.

### Operative Clause – Insuring Agreement A

- This insurance pays in respect to a loss for which a Director or Officer may not be legally indemnified by the Corporation, arising out of a claim as a result of a Wrongful Act committed while acting as a Director or Officer.

The Policy covers the personal assets of Directors, Officers and employees of the Corporation while acting in their capacity as a Director or Officer arising out of a wrongful act. A wrongful act includes any breach of duty, breach of trust, neglect, error, misstatement, misleading statement, omission or breach of warranty of authority.

### Operative Clause – Insuring Agreement B

- The policy pays a Corporation for any payment, which it has legally made on behalf of a Director or Officer because of a claim against the Director and Officer for a wrongful act.

Where allowable at law, the policy will reimburse the Corporation for amounts paid to a Director or Officer in successfully defending a claim made against them. The total amount to be paid under Part A or Part B will not exceed the limit of aggregate liability.



## AUTOMATIC EXTENSIONS

- Advancement of Defence Costs**  
Covers the defence costs in defending or settling a claim where we elect not to take over the conduct of the claim.
- Extended Reporting Period**  
Where refusal to offer any terms for 'renewal' of the old policy, the client is given the option of covering claims reported during the next 12 months relating to incidents occurring prior to the non-renewal. The previous policy wording gave only a 90-day option.
- Estates and Legal Representatives**  
We cover estates, heirs or legal representatives of deceased, incompetent or insolvent Directors and Officers.
- Spousal Liability Cover**  
Automatically covers the Spouse of a Director or Officer for the wrongful acts of their partner in relation to property.
- Insured vs Insured Cover**  
Covers claims brought against a Director or Officer by another Director or Officer, Shareholder, regulatory authority or any court appointed Liquidator or Receiver in certain circumstances.
- Attendance at Official Investigations or Inquiries.**  
Covers defence costs incurred in attending any official investigation, examination and inquiry i.e. ASIC, ACCC that involves an allegation of a wrongful act against a Director or Officer.
- Occupational Health & Safety**  
Covers defence costs for a claim for breach of occupational health and safety laws (other than a civil claim for compensation) (No sub-limit).
- Run-Off Cover for Subsidiaries**  
Provides Run-Off cover for an entity that ceased to be a subsidiary before or during the Period of Insurance.
- New Subsidiaries**  
Covers claims arising from wrongful acts committed by Directors or Officers of a newly acquired subsidiary, but only for acts arising during the period after the Insured's acquisition. Where a subsidiary company has a consolidated asset value of less than 20% of the total consolidated asset value of the Corporation, cover is automatic. For others, cover is provided for 60 days pending discussion.
- Continuity of Cover**  
Provides cover for known circumstances arising prior to the Period of Insurance as long as the Insured was continuously insured with us and was insured with us at the time he/she became aware that a Claim may be made, and in the normal course, this Claim would have been covered under both policies.
- Preservation of Indemnity**  
Covers the Insured where the Corporation is unable to properly indemnify him/her due to liquidation (including Voluntary Liquidation) and inadequate funds.



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- **Current Outside Directorships (Non-Profit Organisations)**  
Covers Outside Directors Liability in non-profit organisations.
  - **Limited Prospectus Liability**  
Covers the liability arising out of rights issues, bonus share issues, employee share options, dividend reinvestment plans, convertible notes and redeemable preference issues. Optional cover is provided for the Initial Public Offering.
  - **Run-Off Cover for Outside Directorships**  
Provides Run-Off cover for Directors or Officers who cease to hold an Outside Directorship before or during the Period of Insurance.
  - **Joint Venture Cover (Clause 2.15)**  
Covers the Directors and Officers liability arising out of activities of an unincorporated Joint Venture.
  - **Territory/Jurisdiction (Clause 4.18)**  
Gives world wide jurisdictional cover excluding USA/Canada claims and world wide territorial cover.
- OPTIONAL EXTENSIONS**
- **Reinstatement of Aggregate Limit**  
Gives one (1) reinstatement of limit.
  - **Current Outside Directorships**  
Covers outside Directorships held prior to policy inception, as long as the Directorship is listed on the schedule. We provide, automatically, 60 days interim cover during the Period of Insurance, for an Outside Directorship appointment.
  - **Prospectus Liability –Initial Public Offering**  
We cover the liability arising out of the issue of any initial public offering of securities of the Corporation.
  - **USA & Canadian Jurisdiction**  
Covers claims first brought against the Insured in USA or Canada in certain circumstances.
  - **Entity Cover for Employment Practices Liability**  
Covers the entity for specific Employment Practices related claims.
  - **Pre Acquisition Liability**  
Covers the Directors or Officers of any subsidiary of the Insured for wrongful acts preceding its acquisition.
  - **Pollution Defence Costs**  
Covers the defence costs in respect to a 'Wrongful Act' arising out of some pollution offences. Maximum covers \$1 Million. Excludes USA and Canada
  - **Multi-year Run-Off after Consolidation, Merger**  
Gives an optional extension for up to seven (7) years Run-Off cover for wrongful acts committed prior to merger, consolidation, sell-off, etc.



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To get a Directors & Officers Liability Insurance quotation as quickly as possible, we need you to provide us with full, up-to-date information.

**Namely:**

- A completed and signed proposal form.
- A copy of the latest annual report, Including notes to the accounts and auditor's reports. Then we will provide a quotation in as few working days as possible.

The information contained in this brochure is for general marketing purposes only for a full explanation of the applicable terms and conditions, please read the policy document carefully.