



# A Business Owner's Guide to Risk & Insurance Protection

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*What business owners need to know to  
protect their business*

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INSURANCE

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Running a business or starting a new business is one of the biggest and most challenging things you might ever do in your life. It can also be very rewarding, as well as being the gateway to financial success for your own future and that of your family.

But why do so many businesses fail? Quite often, a small business will fail due to a lack of forward planning. Obtaining the right advice from industry professionals such as accountants, lawyers and insurance advisers, in addition to well thought out planning are key for starting a new business. Get it right at the beginning and chances are your business will be a success.

In this regard, insurance is one of the most important considerations. Ensuring you have the right cover and understanding the risks and exposures relating to your business is vital. The protection, not just for your business, but for the personal assets of directors and officers, is another important feature, as these may be exposed if their actions are brought into question.

In the very early stages of developing a business plan, you must ensure you have adequate insurance that will continue to meet the needs of your business, and be subject to review as your business evolves. It is not a case of 'set and forget' as your policies may need to change as your business grows.

Having the right insurance in place to manage your business risks is essential. This means obtaining the correct advice up front and reviewing your insurance regularly as your business grows and changes, to ensure you will be covered if you ever need it.

Each business is unique and therefore requires customised insurance solutions. We have compiled this e-book to help business owners understand the insurance cover options they may need to consider for their business.

This information provided is a guide only. Always consult with an adviser for more tailored advice for your business. In this e-book, we will cover some tips on the following insurance covers and other areas that are important to understand as a business owner:

- **Business Property & Liability Insurance**
- **Professional Indemnity Insurance**
- **Management Liability Insurance**
- **Workers Compensation Insurance**



# Business Property and Liability Insurance Policies

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Confused by what you need to protect your business? Business insurance policies provide protection and peace of mind against a range of risks. Below is a glossary of terms with a description of the risks they cover.

Fire & Perils	Cover for damage to insured property including buildings, contents and stock caused by events such as Storm, Malicious Damage, Explosion, Earthquake, Wind, Leakage of liquid and Flood (dependant on the insurance product).
Business Interruption	Cover for Business Income or Consequential Loss of Profits in the event that normal business routine is interrupted or interfered with following an insured event.
Public & Products Liability	Cover in the event of damage or loss caused, or allegedly caused, by your negligence to a third party in connection with your business activities. It indemnifies against legal liability to pay compensation in respect of personal injury or property damage arising from a sold product. It does not cover product warranty. It includes cover for defence costs even if the action against you is fraudulent or false.
Theft/Burglary	Cover for insured property (contents, stock etc. as declared) contained on the premises from forced entry.
Glass Breakage	Cover for accidental breakage of glass at the premises (internal and/or external as declared) including signage and advertising printed thereon.
Employee Dishonesty	Provides cover for loss due to fraudulent or dishonest employee conduct such as employee theft of company money or property.
Machinery Breakdown	Cover for repair or replacement costs following sudden and unforeseen breakdown of mechanical machinery.
Electronic Equipment Breakdown	Cover for repair or replacement costs following sudden and unforeseen breakdown of electrical equipment.
Goods in Transit	Cover for damage to contents or stock whilst in transit within Australia caused by certain events such as fire, theft, pilferage, overturning of a conveyancing vehicle, loading, unloading and some policies include accidental damage.
General Property	Cover for damage to or loss of portable goods, anywhere in Australia even worldwide if this level of cover is selected.
Tax Audit	Cover for professional fees incurred in connection with an audit by a government body.

In this section we will focus on three key areas and explain them in more detail so you'll know what to look for in a policy to make sure you get the right cover for your business.

These three areas are:

- Fire & Perils,
- Business Interruption and
- Public & Products Liability Insurance.

Remember, each business is unique and no two businesses require the same cover. The above three areas are common policies to acquire for Business protection. Speak to an adviser for more detailed advice pertaining to your specific situation.

## **Fire & Perils Insurance**

Cover for damage to your physical property including; building, contents and stock caused by one or more defined events or perils.

You will generally find two types of cover available:

- Accidental Damage
- Defined Events

Accidental Damage (or AD) is a much broader policy and will cover any event resulting in physical damage to your property, unless it is specifically excluded (think rust, gradual deterioration, property undergoing processing etc.).

A Defined Events policy will cover exactly that; Defined Events – these policies will list the types of events that must occur for the policy to respond e.g. Fire, Lightning, Storm, Impact etc.

Some insurers may also provide you with settlement options on either an Indemnity or Replacement value basis. This is how your claim will be settled if you opt for a replacement value – the sum insured you declare must represent the cost to replace all your contents and stock (including customers or third party goods you are responsible for) on a new for old basis.

Indemnity is the market value of the damaged or stolen item i.e. what it is worth on the second hand market. An indemnity option is only generally recommended for redundant contents and stock you would not want to replace in the event of a claim.

## **Average or Co-Insurance Clause and the Impact of Underinsurance**

Some insurance policies contain an Average or Co-Insurance clause (this is common under Fire and Perils, and some Business Interruption Insurance Covers) whereby you must insure for the full replacement value of insured property. If you underinsure, your claim may be reduced in proportion to the amount of the underinsurance.

For example, if you insure a \$1 million property for \$500,000 (half its actual replacement value), and a claim for the property is made for \$500,000, then the Average/Co-Insurance amount that is paid would be half, making your settlement \$250,000. Why? The amount of 'Underinsurance' in this scenario is 50%, so the insurer can apply that to the sum insured on the policy to determine your maximum entitlement.

Most policies have an allowance that the sum insured nominated on your policy must be within 80 – 90% of the actual replacement value before the underinsurance applies, although this can vary depending on the insurers policy coverage provided.

## What is 'Underinsurance' and why is it so important

Underinsurance occurs when the sum of your insurance cover falls below the true cost of replacing or rebuilding your business at today's specifications.

Often, the full costs of rebuilding or replacing property after a major event are underestimated and the sum insured nominated on the policy may be inadequate.

When setting the sum insured you need to consider not just the replacement cost of the building, contents and stock but other costs such as:

- Removal of debris
- Additional costs for rebuilding based on new building requirements due to changes to building codes
- Heritage issues (if applicable)
- Legal and professional fees such as architects
- Engineers
- Surveyors
- Site conditions and zoning restrictions (to name a few)

All of these can have a major financial impact on the sum insured and are factors that you, as a business owner, may not be aware of.

Failure to consider these additional costs when nominating your sum insured, will mean that in the event the sum insured is inadequate to cover these costs, the underinsurance in the policy may apply.

## Business Interruption Insurance

Many business owners understand why they need the basic insurances such as fire, burglary, glass, money and liability, but don't understand the need for other insurances such as Business Interruption Insurance. Which for some businesses, can be vital if the business wants to survive after a major event.

Business Interruption Insurance is like personal accident cover for your business. After a major loss, not only does it cover your net profit and business drawings, it will help you meet ongoing business expenses, such as ensuring everyone's salaries are paid and business loan repayments are met.

It also covers additional expenses incurred to maintain turnover which could include providing funds for the cost of alternative premises, or even paying for advertising to announce the recommencement of your business.

As a relatively inexpensive form of insurance, Business Interruption Insurance is a must for businesses to consider if it is needed in the event of a loss. Without it, a business has less than a one in 10 chance of survival following a major loss.



## Setting Indemnity Periods for Business Interruption Insurance

Business Interruption Insurance provides cover based on the indemnity period in the event of a fire, or other insured peril claim, and replaces the business's gross profit and fixed expenses. It should also include additional covers for Increased & Additional Costs of Working and Claims Preparation Costs.

An indemnity period is the length of time for which benefits are payable under an insurance policy. Getting the indemnity period right for business interruption insurance is extremely important. A company's chances of survival following a major incident may be drastically reduced if the indemnity period falls short.

Potential delays should be factored in when setting an indemnity period. The process of returning a business to its pre-loss financial position can be long and sometimes 12 months is not enough.

Many intervening factors can emerge during the interruption period, including:

- A requirement for further investigation into the incident's cause, especially in larger fires.
- The presence of asbestos, which requires involvement from the relevant environmental authority and can hold-up the damage assessment until the site is deemed 'safe'.
- Involvement of the relevant WorkCover authority if employees have suffered a serious injury or died.
- Council re-zoning preventing the business from rebuilding on the damaged site.
- Building design needing to be updated in line with new regulations.
- Replacing damaged plant and equipment can be an issue if it is unique or needs to be imported from overseas.
- The right resources may not be available when the business is ready to resume operation.
- Reliance on key contractors or tenants to provide professional services from the property, many may have moved onto other facilities.

## Setting Indemnity Periods for Business Interruption Insurance (cont.)

In the event of one or more such delays, 12 months may no longer seem like such a long time. Consider a business which has a large contract to supply parts to a major hardware chain.

The product has a designated amount of shelf space which is quickly filled by a competitor's product during your rebuild phase forcing you to lose this contract. Business Interruption cover will continue to pay any shortfall in earnings until your business returns to the position it was in prior to the event.

For the business owner woken in the middle of the night by the news that their business premises has been reduced to ashes, knowing their insurance cover will provide enough funds to rebuild and pay for overheads will provide some measure of comfort during a traumatic time.



## Public and Products Liability Insurance

Unfortunately, no matter how much you plan in business, unpredictable events can happen and these events can put your business at risk.

This is why businesses must consider Public and Products Liability Insurance as a bare minimum. This is the case no matter what the industry – retail, manufacturing, importing, construction or professional services. Yes, even consultants should carry Liability Insurance to protect them from any damage that may occur in connection with their business.

Public Liability (often referred to as Legal Liability or Third Party Liability) protects you from costly litigation following an allegation of negligence involving your company's product, staff or business activities, which contributed to an injury or caused damage to property of a third party.

Products Liability generally goes hand in hand with Public Liability, and represents an important feature. It provides protection for liability associated to the sale of products. Current laws in Australia generally deem the importer of a product responsible where the manufacturer isn't locally represented, even though you didn't manufacture, alter or otherwise modify the product.

As a general rule, a \$10million liability limit is viewed as the "normal" limit in Australia. Anything less is deemed to be inadequate and may leave your personal assets exposed if you are sued by third parties. The difference in price between \$5million and \$10million cover is in many cases less than 20%, so is well worth the extra investment.

Courts take into account the extent of property damage and impact on the life of the injured party when determining a final payout figure. Consider a fire in your building started by a staff member making lunch. It proceeds to burn down several neighbouring businesses. Courts establish negligence as the appliance responsible had not been tagged and approved.

## Public and Products Liability Insurance (cont.)

It is recommended when setting your sum insured that you consider your contractual obligations, customer size/exposure. A typical professional services business has trip and fall exposures for any guests that attend their premises, and product liability responsibilities for any food and drink supplied, whereas a large manufacturing outfit may have greater liabilities to a retailer who distributes their product, in the event a customer is injured or has their property damaged.

In this case, the manufacturer may have agreed under contract to protect the retailer in such circumstances e.g. pay for any legal costs it incurs in defending any claim, or pay daily damages until the case is finalised. Such commercial obligations can often fall outside the scope of an insurance policy, as insurers are only looking to cover claims their insured is responsible for at law – whereas a contract will attempt to capture everything.

An astute insurance adviser will assist in reviewing any agreement prior to execution and highlight any areas that need to be addressed relative to their client's policy. It is always accompanied by a recommendation to also have a lawyer look at it.





# Professional Indemnity Insurance

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## Essentials for all Professionals

Professional Indemnity Insurance is essential protection for professionals who provide a service, including design and advice.

Professionals are only human and mistakes do happen. Any financial loss, injury or damage arising from a mistake, or failure by the professional to exercise the required level of skill, may mean that an award is made in favour of a person or company who suffers a loss, damage or injury.

A professional may also be held liable for a mistake even though there was no negligence. Defence costs under the policy are made available to dispose of such allegations.

## Who is a Professional

A professional will hold himself or herself out as having a special skill, which can be relied upon by another. Consequently the law requires that the professional exercise the required skill to an appropriate level expected by that profession.

Anyone who provides an individual or company advice and/or services of a skilful character (according to an established discipline) might be regarded as a 'Professional'. That means persons other than those in 'traditional' Professions, such as doctors, lawyers, architects and engineers, are now considered to be 'Professionals' e.g. IT consultants, advertising agents, real estate agents, mortgage and finance brokers, management consultants, trade associations and fund managers.

## Who can make a claim against you

Any third party such as a customer, supplier, competitor, regulatory authority (including ACCC, ASIC, EPA), Industry bodies and others can make a claim against you, if they have allegedly suffered a loss due to negligence (or alleged negligence) arising from your professional services.

Claims can arise from various allegations including:

- Breach of your duty of care
- Negligence / Common Law Matters
- Civil Liabilities
- Conflicts of Interest
- Breach of Confidentiality
- Competition and Consumer Act or similar commonwealth legislation designed to protect consumers

## What does Professional Indemnity Insurance Cover

Professional Indemnity Cover provides indemnity for claims brought against you for financial loss, injury or damage arising from a breach (or an alleged breach) of your professional duty in the course of conducting your business. Professional Indemnity Insurance aims to protect your assets in the event of a claim to ensure you can still carry on your business.

The need for Professional Indemnity Insurance is not to be confused with Liability Insurance. Liability Insurance expressly excludes claims arising from advice or design, where a separate fee is charged.

As a business owner, it is important that you have a sound understanding of both insurance and uninsured exposures for your business due to the inability to control all outcomes.

## What is a "Claims Made" Policy

Professional Indemnity Insurance is offered on a "claims made" basis, meaning it only covers claims made or possible claims that you become aware of (or could reasonably be expected to give rise to a claim) that are notified to the insurer within a current or active policy period. This is distinct from an "occurrence" based policy that covers any claim, provided the loss "occurred" during the policy period, no matter when the claim is brought against you.

Under claims made policies, an act or omission may have occurred in a prior period, and as long as that act or omission was on or after the retroactive date, the policy will extend to those prior acts (assuming the claim was not intentionally withheld at the last renewal and reported within a reasonable timeframe) and you have maintained continuity of cover with the same insurer.

It is essential to maintain continuity of PI insurance cover, as claims made against you, or circumstances which you become aware of that could give rise to a claim, will not be covered if they are not disclosed within the period of insurance they first arise.

If there is any claim or potential claim, or even a circumstance that could reasonably be expected to give rise to a claim, it must be reported to your insurer immediately, regardless of your own view as to fault. If you know of a claim or circumstance and it is not reported within the insurance period in which it arises, your insurance policy is unlikely to respond.

The below diagram illustrates the importance of notifying claims under a claims made policy whilst the policy is current. Failure to do so means you will not be covered.



## What is a 'circumstance' that could give rise to a claim

This varies from insurer to insurer, so always check your policy first. Generally, the definition of "claim" will define what a notifiable event is.

If you become aware of a mistake that could give rise to a future claim, you should report it. Consider if the error is likely to cost your client money, or be a breach of your company or professional guidelines.

We should also dispel any beliefs that any incident reported to an insurer will cause premiums to rise. Not true, unless the issue is likely to result in a claim. Instead, what this does is demonstrate an understanding of the policy holder's obligations to report any issue that might later require the policy's assistance – something that is viewed very favourably by insurers in most cases.



## Questions to consider when setting your Sum Insured

When considering the level of cover for your Professional Indemnity Insurance, you need to review your past, present and future business and review the exposure to types of possible claims that may arise from your clients and other third parties.

In general, a sum insured of less than \$1 million is unlikely to be adequate for even a small practice which assesses its exposure as low.

- In a worst-case scenario, if something went wrong, what could be the potential financial loss to third parties?
- Is there a potential for bodily injury claims (or even multiple injuries) arising from your professional services?
- What is the potential for financial loss to any third party arising from your professional services?
- What is the potential for multiple claims in any one policy year?
- Does your policy limit include defence costs and erode your policy sum insured, or are defence costs in addition to the policy limit? Consider the potential legal and investigation costs which may be incurred over the life of the claim.
- How long may a claim take to settle? Claims can sometimes take many many years to finalise, which means the legal costs and interest liability will mount, as will the effect of inflation.
- How many parties may be implicated in any claim or action? The more parties there are, the more difficult and costlier it is to settle a claim.
- What is the nature, scale, and complexity of work done in the past and during the policy period? A policy generally covers exposure from prior work, where the retroactive date has been extended to do so. Consider any potential risk exposure that may arise from prior business activities, as in some cases it may take years before a liability becomes apparent.
- What is the overall contract/project value you work on? You may only have a small part and only earn a small amount of fees, but consider whether an allegation of an act of negligence, error or omission could delay the entire contract/project and be extremely costly.
- Review contractual or legislative obligations to take out a minimum level of cover.



**Life Insurance,  
for your Business**

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All businesses depend on key people – be it the owners, executives and employees with specialist skills, provide the capital, generate the revenue, manage the day-to-days, plan for the future and create the profits.

Small to medium sized businesses are particularly exposed to unplanned events such as the sudden death, illness or disablement of these key people, which can severely impact the business financially.

That's where Life Insurance policies for your business can be considered to protect against these possible impacts. Critical covers include;

## **Keyman Insurance**

Think of it as Life insurance for the most critical staff members in the business. Cover is designed to pay a benefit to the business following; the sudden death; critical illness and permanent disability of a nominated key person within the business. The policy provides funds to pay expenses and debts or replace lost revenue to keep a business afloat.

## **Buy-Sell Insurance (or Partnership Buyout Insurance)**

Buy/Sell Insurance is a mechanism providing a lump sum of money for remaining partners to purchase a business share from a departing co-owner following death, permanent disability or trauma. This allows for a quick transfer of ownership to minimise disruption to the business. Such cover is often welcomed by the family of the departing owner, as it can be an extremely stressful time for them in dealing with the death or incapacitation of their loved one.

## **Business Expenses Insurance**

Similar to Income Protection Insurance, but designed for business owners. If the business owner is unable to work due to illness or injury, the policy will pay ongoing fixed business expenses, including; rent, loan repayments, utilities, phone/internet, insurance, leases, salaries etc. Cover typically operates for up to 12 months.



# Management Liability Insurance

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## Protect your assets from costly legal bills

As a company director, you are personally liable for the decisions you make every day and just as importantly, for the decisions you don't make. Company directors are increasingly under the microscope from regulatory authorities, shareholders, customers and other third parties in respect of their overall management of company affairs. Today's legal environment shows us that private company directors are just as vulnerable as their counterparts in the public company arena. Even if not a director by title, anyone involved in the management of a company can be personally exposed. Just one lawsuit or criminal scheme may be enough to send a vigorous, growing business crashing into bankruptcy.

## How to protect your personal assets from your business exposures

Your accountant can do clever things to protect your assets, but is this really a watertight solution?

The most cost effective solution at present is Management Liability Insurance - a product specifically designed to provide protection for private companies and their directors and officers. It combines traditional Directors' & Officers' Liability Insurance with several other policies, to provide a broad range of covers for company mismanagement under the one policy, including:

- ✓ Directors & Officers Liability Insurance (protection for personal assets)
- ✓ Employment Practices Liability Insurance (claims from employees)
- ✓ Fidelity Guarantee Insurance (Fraud/embezzlement)
- ✓ Statutory Liability Insurance (Fines and Penalties from regulatory bodies)
- ✓ Defence Costs (Legal costs in defending claims)
- ✓ Official Investigation and Enquiries Costs (Regulatory bodies investigations)
- ✓ Occupational Health & Safety (legal defence costs for potential breaches of OH&S)
- ✓ Taxation audit expenses (professional fees incurred responding to an audit)

## Types of Claims Covered

In today's litigious environment, no business relationship is free of risk. Type of claims covered include claims from:

- Government agencies (such as ASIC, APRA or ATO)
- Employees
- Competitors
- Investors
- Creditors
- Defence costs
- Cover for breach of WH&S
- Fines and penalties

This is an affordable insurance solution for private companies.





# Machinery & Transport Insurance

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Machinery insurance policies provide protection for most types of plant and equipment in the earthmoving, construction, crane, agriculture and mining industries. These include:

- ✓ Cranes / Tower Cranes
- ✓ Earthmoving Equipment – Backhoes, Excavators
- ✓ Forklifts / Scissor Lifts
- ✓ Lifting Equipment
- ✓ Concrete / Water Truck
- ✓ Drilling Machines - Rock Breakers / Borers
- ✓ Farming Equipment / Machinery
- ✓ Forestry Equipment – Wood Chippers / Mulchers

Transport Insurance provides protection for most types of vehicles, trucks and trailers in the transport industry. These include:

- ✓ Commercial Motor Vehicles
- ✓ Prime Mover (articulated vehicles)
- ✓ Rigid Truck (comprises of one complete chassis, not articulated)
- ✓ Flap Top Trailer
- ✓ Dry Freight Van
- ✓ Refrigerated Van
- ✓ Tanker
- ✓ Tautliner
- ✓ Low Loader Trailer
- ✓ Drop Frame Trailer
- ✓ Skeletal Trailer
- ✓ Dog Trailer
- ✓ Pig Trailer
- ✓ Dog/Super Dog Tipping Trailer

## Types of Cover

The type of cover available to insure these items is very similar to comprehensive motor vehicle insurance which cover for material damage and third party liability.

**Material damage** provides cover for sudden and unexpected physical damage or destruction to the item insured.

**Third Party Liability** (also known as Road Risk Liability) provides cover for registered or conditionally registered items for their legal liability for third party personal injury and/or property damage. It is important to note that this section of cover does not provide cover for the operation of machinery as a 'tool of trade' (eg. A crane lifting goods, excavator doing site preparation services). Liability insurance is required to cover the operation of machinery for its intended purpose.

Tailored policies are available for Machinery & Transport industries that provide broad policy features and benefits that are not available in basic motor vehicle policies. They commonly include options for hired in plant, machinery breakdown and public/products liability insurance as optional sections of cover.





# Corporate Travel Insurance

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If you undertake at least 2 business trips a year and personal leisure travel more than 100km from your home or work, it would be cost effective for you to consider Annual Corporate Travel Insurance.

Travelling abroad for work and/or pleasure can be an exciting experience. But what would happen if you or one of your colleagues/ family members became ill or injured while away from home? International travel can quickly turn frightening if you're not prepared for a medical emergency.

With natural disasters and crises becoming increasingly common around the globe, having the right travel insurance is a must.

Corporate Travel Insurance includes cover for:

- All Employees, Directors, Officers including Accompanying Spouse & Dependant Children
- Leisure travel of directors and officers
- Unlimited Medical Expenses
- Loss of Deposits
- Alternative Employee Cover
- Luggage, Personal Effects, Travel Documents
- Personal Injury
- Rental Vehicle Excess (you don't need to buy down excess cover!)
- Kidnap and Ransom and Extortion
- Personal Liability
- Extra Territorial Workers Compensation



# Cyber Risk Insurance

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Cyber Risk Insurance is something that both big and small companies must consider. It's designed to protect first party and third party cyber exposures that arise when a company's data and/or customer information is breached or stolen.

The success of most companies these days is underpinned by data and technology. Most companies store personal data and financial information of customers and many use a website to sell to, service, or transact with them. They will also run a network to manage crucial day-to-day operations. If either of these technologies are compromised, a business could face major interruption, financial loss, and even collapse.

Companies with access to private, confidential information about their customers and suppliers have a responsibility to keep it secure. Equally, companies who have a web presence or a dependency on technology have emerging content and transactional exposures that can leave them open to cyber risk.

Insurance companies have dedicated data breach response teams to handle and mitigate cyber breaches.

In today's online world, Cyber Risk Insurance is becoming increasingly vital.



## First Party & Third Party Cyber Risks are extensive

A company faces a number of first party cyber risks. These include:

- Loss or damage to digital assets, which are data and software.
- Non-physical business interruption and extra expense such as service interruption or network failure.
- Cyber extortion arising from threats to business data or customer data and relationships.
- Reputational harm that comes from a data protection breach.

Examples of the cyber risks that can affect the third parties of a company are:

- Security or privacy breach that impacts any third party/employee confidentiality rights.
- Privacy regulation defence fees and fines as a result of the above.
- Customer care and reputational expenses incurred if individuals need to be notified of a security breach.
- Multi-media liability if a company commits negligence in the publication of content in electronic or print media format.

## General insurance policies won't provide cover

Many companies believe that their existing insurance policy/policies (such as those listed below) will cover them for loss of data. However, this is usually not the case.

- **Professional Indemnity Insurance** - loss of data is only covered if it arises in the ordinary course of a company's professional services. Losses incurred because of the Internet are usually excluded. It also does not cover business income losses, damage to digital assets, cyber extortion or reputational damage.
- **General Liability Insurance** - only covers bodily injury and property damage losses and, as data is deemed to be an intangible form of property, no coverage would usually be provided for breaches of privacy.
- **Property Insurance** - typically only covers damage to tangible property, so data would not be covered. Whilst business interruption may be covered, it will not be covered when it has arisen out of non-material damage to a network.
- **Computer All Risks Insurance** - covers costs involved in repairing damaged hardware (tangible property) and would not respond to claims for lost data.

## Types of Covers available for First Party Exposures vs Third Party Exposures

First Party Exposures	Third Party Exposures
<ul style="list-style-type: none"> <li>• <i>Loss or damage to digital assets</i> – damage to a company's data or software programs.</li> <li>• <i>Non-physical business interruption and extra expense</i> – income lost and interruption expense due to network interruption/failure or degradation in service.</li> <li>• <i>Cyber extortion</i> – when someone tries to extort money from a company by threatening to damage/restrict its network or data, or to communicate with a company's customers under false pretences to gain personal information.</li> <li>• <i>Reputational harm</i> – loss of income and PR expenses when damage to a company's reputation results from a data protection breach.</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Security and privacy liability</i> – investigation and defence costs paid if there is a security breach on a company's network, if the company transmits malicious code, or if the company breaches third party or employee privacy rights.</li> <li>• <i>Privacy regulation defence</i> – investigation costs, fines and defence costs paid when a company is investigated by any regulator.</li> <li>• <i>Customer care and reputational expenses</i> – notification expenses, privacy assistance expenses and crisis management expenses incurred when customers and a company's reputation have been affected.</li> <li>• <i>Multi-media liability</i> – investigation and defence costs incurred if you infringe a third party's intellectual property rights.</li> </ul>

A smiling woman with long brown hair, wearing a white sleeveless blouse, is sitting at a white desk in an office. She is looking towards the camera. On the desk in front of her are a white computer mouse, a white keyboard, and a silver pen holder containing several pens. The background is a blurred office environment with windows and other desks.

# Workers Compensation Insurance

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Workers Compensation Insurance is compulsory for employers in all states and territories within Australia that provides compensation for an employee(s) in the event of an injury in the course of their employment.

Compensation includes:

- Loss of earnings
- Medical expenses
- Rehabilitation

This policy is designed to assist the injured worker to return to work as soon as possible following the injury. Premiums are generally calculated based on your industry segment and business activities, number of employees, annual estimated gross wages and claims history.

You must have a policy if you employ workers and:

- Your annual remuneration is more than \$7,500, or you believe that it will be more than \$7,500, or
- You employ apprentices or trainees.

If you hire a contractor to perform work, this person may actually be a worker, or deemed to be a worker, under some contracts. If the contractor you hire is deemed to be a worker, you must include some or all of the money you pay this person in your estimate and certification of rateable remuneration.

Guidelines for whether a contractor is deemed to be a worker are available on the government WorkSafe website in your relevant state.

Each state and territory has different workers compensation requirements, details of which can be found on the government WorkSafe website.

## Private Insurers

ACT - Australian Capital Territory	<a href="http://www.worksafe.act.gov.au">www.worksafe.act.gov.au</a>
TAS - Tasmania	<a href="http://www.worksafe.tas.gov.au">www.worksafe.tas.gov.au</a>
NT - Northern Territory	<a href="http://www.worksafe.nt.gov.au">www.worksafe.nt.gov.au</a>
WA - Western Australia	<a href="http://www.commerce.wa.gov.au/worksafe">www.commerce.wa.gov.au/worksafe</a>

## Agents for Government Funds

NSW - New South Wales	<a href="http://www.safework.nsw.gov.au">www.safework.nsw.gov.au</a>
SA - South Australia	<a href="http://www.safework.sa.gov.au">www.safework.sa.gov.au</a>
VIC - Victoria	<a href="http://www.safework.vic.gov.au">www.safework.vic.gov.au</a>

## State Government Scheme

QLD - Queensland	<a href="http://www.safework.qld.gov.au">www.safework.qld.gov.au</a>
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## Change in workplace activity

If the predominant businesses activity at a workplace changes, you must advise the insurer within 14 days of the change.

## Report an injury

If someone is injured at work, or they become sick because of their work, it should be reported to the employer within 24 hours and the worker should seek immediate medical attention.

A worker should report their injury or illness to the employer, whether they intend to make a claim for workers compensation or not. An injury or illness can be reported verbally or in writing. If a worker is unable to make a report, one can be made by a representative such as a family member or friend.

It is the business owner’s responsibility to ensure that all employees are aware of this requirement.

If there is a claim, the employer must contact their Insurance Company or Broker as soon as possible via email or phone so that the claim can be lodged with the insurer in time. A claim form must be completed and submitted electronically or via fax.

## Legislation for lodgement in each state

The legislation for time-frames for employers to report workers compensation claims to their insurer varies in each state.

Please see below for state-by-state requirements. An excess will be due and there may be an additional premium added upon renewal, if the claim is not lodged within the below timeframes:

State	Employer to Notify Insurer
New South Wales	Within 48 hours
Victoria	Within 10 calendar days
South Australia	Within 5 calendar days
Western Australia	Within 5 working days
Tasmania	Within 3 working days
Northern Territory	Within 3 working days
Australian Capital Territory	Within 48 hours, lodge form within 7 days
Queensland	Within 6 months

## Register of Injuries

All employers are responsible for maintaining a Register of Injuries. Employers are required to keep a Register of Injuries that is readily accessible in the workplace. The Register of Injuries is a current record of any injuries suffered by workers, whether they result in a claim or not.





# What You Need to Know When Hiring Contractors

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## Insurance Types

As part of ongoing risk management for your business, it is recommended that confirmation of the following insurance types is obtained from all contractors on an annual basis:

- Workers Compensation Insurance and/or Personal Accident Insurance
- Liability Insurance
- Professional Indemnity Insurance (if applicable)

It is important that contractors have the appropriate insurance in place. They are individual legal entities (whether they are sole traders or incorporated companies) in their own right and most liability policies held by a business owner will not extend to cover their liability.

It's a horrible experience for anyone to be left facing huge legal and insurance claim bills without the protection of insurance. So if you're a contractor starting a new business, you must get the right insurance advice and the right cover.

## Workers Compensation Insurance or Personal Accident Insurance

The personal injury of contractors is very important as a business owner. If the contractor is a company, then the appropriate Workers Compensation Insurance must be in place to cover all employees. If a sole trader, then Personal Accident Insurance will provide cover for the individual or an Income Protection Insurance Policy.

In the event that a contractor is injured whilst working under your direction, your liability insurance may be exposed to claims relating to their personal injury if the correct insurance is not in place.

## **Liability Insurance**

In the event that a contractor is negligent and causes third party property damage or personal injury whilst working under your direction, your business will be exposed to claims.

Under most insurance policies, the insurer has the right to recover a loss from the negligent party. In the absence of adequate insurance by the contractor, a loss may be unrecoverable by the insurance company and this can affect your claims history.

## **Professional Indemnity Insurance**

Where a contractor provides a service for a fee, Professional Indemnity Insurance should be in force.

If a consultant causes third party personal injury or property damage arising from their services, it is most likely not covered under their liability insurance policy. Most (if not all) standard liability insurance policies exclude claims arising from professional services, being Professional Indemnity Insurance Risk.

As noted above under Liability Insurance, in absence of insurance being in place, your policy may be exposed to unrecoverable losses.

## **Obtaining Insurance Certificates from Contractors**

Obtaining insurance certificates from contractors is good risk management. It is recommended that a system be implemented to obtain current insurance certificates from contractors prior to their policy expiring, to ensure they maintain current and appropriate insurances.



**Before Entering Into Insurance  
Contracts, Consider the Conditions**

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When entering into contracts, whether it be with your landlord, suppliers, customers or other third parties, consider the conditions and how you may be held liable.

## **Contractual Liabilities**

Contractual Liabilities (indemnities) and Commercial Risks are generally excluded under insurance, unless such liability would have existed in absence of the contract being in place. In some cases, contracts may impose unreasonable conditions and/or liability that would not exist in absence of the contract being in place.

Outlined below are Indemnity and Hold Harmless Clauses that may apply to some contracts:

### **What is an Indemnity Clause**

In accordance with the provisions set out in the contract, an indemnity clause is about risk allocation. Parties to commercial contracts allocate their respective legal risk exposures – whether their exposure is in breach of contract, negligence or other unlawful conduct. The precise wording of the indemnity clause determines the extent of the indemnity and the risks allocated between the parties to the contract.

At law, an indemnity is a legally binding promise whereby one party undertakes to accept the risk of loss that another party may suffer. An indemnity is therefore an obligation to reimburse or make good the recipient of the indemnity for the loss or liability it may suffer, to the extent provided in the contract.

### **What is a Hold Harmless Clause**

A hold harmless clause gives the recipient of that clause the benefit of being held harmless by the other contracting party, or any other party claiming against the recipient. Like an indemnity clause, a hold harmless clause is a risk transfer mechanism.

## **What is a Hold Harmless Clause (cont.)**

An example of this clause is when the contractor holds the principal harmless from any action, claims, liability or loss in respect of the performance of the services. Under this clause, the contractor is not only prevented from bringing any claim against the principal (even if the principal has contributed to the loss or liability in the first place), the contractor may be required to hold the principal harmless by ensuring that the principal does not suffer any loss or liability as a result of the performance of the services, which may include claims by a third party.

## **Insurance Implications of Indemnity & Hold Harmless Clauses**

If you agree in a contract to hold harmless another party without any right to adjust their respective liabilities according to each party's contribution to the loss or liability, this may jeopardise a company's insurance for financial liability risks (i.e. potentially no cover in place). This in effect waives your rights (and that of your insurer) to subrogate (recover) the loss from a potential at fault party.

## **What insurance generally covers in respect to Contractual Liabilities**

Outlined below is the extent of cover provided by liability and indemnity insurance in relation to contractual liability:

The insurer will not be held liable for any assumptions made by the insured, under any express warranty, guarantee, hold-harmless agreement or indemnity clause. That is, unless such liability would have been in place in the absence of such an agreement.

Where a claim is an alleged breach of contract, the insurer will not reduce their liability. Contributory negligence is not available as a defence.

Cover is provided where, in absence of the agreement, the liability would still be owed. It is not going to extend to cover any breach of contract where additional liability is assumed or as an agent.

It is always recommended that when entering into a new agreement, you seek legal advice as to the nature of the agreement.

A smiling woman with long brown hair, wearing a white blouse, is sitting at a desk in an office. She is looking towards the camera. On the desk in front of her are a computer mouse, a keyboard, and a pen holder with several pens. The background is a blurred office environment.

# Your Duty of Disclosure to Your Insurer

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## **Duty of Disclosure**

Before you enter into a contract of insurance, you have a duty under the Insurance Contracts Act 1984 to disclose to the insurer every matter that you know, or could reasonably be expected to know, that is relevant to the insurer's decision on whether or not to accept the risk of the insurance. You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate your insurance.

Your duty does not require disclosure of matters that:

- Diminish the risk to be undertaken by the insurer.
- Are of common knowledge.
- The insurers know, or, in the ordinary course of their business, ought to know.
- The insurer waives compliance with your duty.

## **Non-Disclosure**

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce their liability under the contract in relation to a claim, or may cancel the contract. If your non-disclosure is fraudulent, they can also avoid the contract from its beginning.

## **Reasonable Precautions**

You must take all reasonable precautions for the maintenance and safety of the insured property. Your insurer will not be liable for any loss, damage, injury or liability arising from a deliberate or fraudulent act committed by you or on your behalf.

## **Utmost Good Faith**

Insurance contracts are subject to the doctrine of utmost good faith and this is part of the law. Both parties must strictly adhere to utmost good faith and failure to do so may prejudice any claim/s made.



# Change of Risk or Circumstances

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## Change of Risk or Circumstances

It is important that you notify your insurer or adviser of anything that represents a departure from your normal form of business during the insurance period.

Your insurer has assessed and accepted the risks of your insurance policy based on the information given. Therefore, alterations to your business or anything related to your business may have an impact on your insurance contract, underwriting guidelines and/or policy conditions.

## Examples of Material Changes to your Business

Changes to your business that you would need to notify your insurer of, include:

- Change of business activities or services provided
- Acquisition of new companies and/or mergers
- Purchase, construction or occupancy of new premises
- Alterations, vacation, temporary vacancy, extension or demolition of existing premises
- Increase in values in excess of insured limits for buildings, content, plant and stock
- Acquisition of machinery, contents and motor vehicles
- Removal of stocks of equipment to other locations
- Contractual liabilities, including leases and hiring agreements
- Granting of indemnities or hold-harmless agreements
- Alterations, amendments to or disconnection of fire or burglary protection systems

If variations such as the above are made to your business but not provided to your insurer, your claim could be prejudiced.



**Review Your Insurance  
Policies at Least Annually**

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Business continually evolve which means it is extremely important that you review your insurance policies at minimum annually, or more frequently if your business changes, so that adequate protection is provided for your business.

Your assets need to be insured for the cost to replace them at today's prices, not what was paid in the past. Then, in the event of a major loss, your insurance will provide the right protection to enable you to re-build your business to today's specifications.

Research has shown that 70% of uninsured or underinsured businesses that incur a major insurable loss fail within the following year (Allan Manning, LMI Group) if they don't have adequate insurance.

**Building Costs** - Rebuilding costs continue to rise so that last year's replacement value may not be adequate this year. Furthermore, you need to take into account the cost of removal of debris, additional costs for rebuilding based on new building requirements due to changes to building codes, heritage issues (if applicable), legal and professional fees such as architects, engineers, surveyors, site conditions and zoning restrictions (to name a few) – all of which can have a major financial impact on the sum insured.

**Contents** – needs to be insured for the replacement value, not the depreciated value you use in your accounting records. It is important to ensure that your contents remains adequate each year and takes into account any new additions. This also should include your office fitout (if applicable). Redundant contents, such as machines also need to be taken into account for replacement value, or specifically noted as not insured under your policy.

**Stock** – needs to reflect your stock holdings. Most policies have a seasonal increase cover, whereby if you have a busy period, such as the lead up to Christmas or public holidays, the stock cover automatically increases under the policy. If this is applicable to you, review your peak periods and check the cover available under your policy, so that you have additional cover for these peak periods.

**Business Interruption** - review your insurable profit based on historical turnover, taking into account any projected increases for the insurable period and thereafter as if a loss was to happen on the last day of the policy.

**Liability and Professional Indemnity** – review what changes have occurred within your business and assess whether your business may have an increased exposure due to factors such as the type of customers in which you look after, size of contracts, insurance obligations in contracts to name a few.

**Workers Compensation** – at the end of the policy period you will be required to do a declaration of Actual Wages paid during the policy period and your policy will be adjusted if there is any variance and an additional premium or a refund may be due. You will also be required to declare your estimated wages to renew your policy. Also, remember to notify changes to your business to your insurer within 14 days.



A smiling woman with long brown hair, wearing a white sleeveless blouse, is sitting at a desk in an office. She is looking towards the camera. On the desk in front of her are a white computer mouse, a keyboard, and a pen holder with several pens. The background is a blurred office environment with windows and other desks.

# Claims Notification Process

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## Types of Claims

A claim occurs when an unfortunate incident happens to cause loss or damage to an insured person and/or property. "The insured" will be entitled to cover under policy of insurance, depending on the circumstance giving rise to the loss and the limits of cover provided by the insurance.

It is important that all claims are settled quickly and fairly so as to minimise any disruption to you or your business. Claims fall in to one or two categories, or a mixture of both:

- Claims by you.
- Claims against you.

## What to Do

Both categories require that certain procedures be followed to ensure the process runs efficiently:

- Record all details of the incident or loss.
- Report claims promptly to your insurer or adviser.
- Complete claim forms and forward with applicable documentation (such as quotes and proof of loss) where necessary.

Remember to:

- Minimise loss by securing premises/vehicle to prevent further damage.
- Never admit liability as this is up to your insurers to accept or reject.
- Communication is important, as quickly as possible after the incident.

## Handling Third Parties

Whatever the claim type, you must make sure to gather all the right information at the time of the incident, and pass it on to your adviser or insurer immediately, or as soon as practicable. Doing this means your claim can be actioned quickly and efficiently – maximising the service provided and minimising the impact to you.

## Incidents with Third Parties

If you have an incident with a third party, your response should be:

- All care, no responsibility
- Making all staff (where applicable) aware of how to react

## Do's and Don'ts


Below are lists of what you should and shouldn't do in the event of an incident with a third party.

### Do's

- Show sympathy and sincere interest
- Render any assistance, including medical assistance
- Gather all information
- Gather any witness statements and tenant observations
- Take photographs
- Settle small claims on the spot

### Don'ts

- Admit liability
- Mention insurance
- Volunteer information
- Fill out form in their presence
- Put any negative statements on the form

A woman with long brown hair, wearing a white sleeveless blouse, is smiling warmly at the camera. She is sitting at a white desk in an office setting. Her right hand is on a white computer mouse, and her left hand is near a white keyboard. A pen holder with several pens is visible on the desk to her right. The background is a blurred office environment with windows and other desks.

**Contact an Adviser for  
Expert Advice**

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## About Optimum

Optimum Insurance Services are insurance advisers based in Australia, servicing clients in Asia Pacific markets. As a Corporate Authorised Representative of Insurance Advisernet, we proudly provide a wide range of insurance products and services.

Our award winning Founder, Amanda Smith, inspires her team of qualified advisers to embody her standards of excellence, so clients receive an Optimum experience every time.

We understand insurance can be complex and risky. At Optimum, we:

- ✓ Minimise your business risks by equipping you with the right policies for your business
- ✓ Make choosing an insurance policy easy by providing tailored, expert service
- ✓ Deliver quality customer service and expert advice, from finding the right quote, to efficiently processing claims procedures

**With Optimum, you'll get peace of mind by knowing that all your needs are covered, from quote to claim.**



## **Quality Policies at Competitive Prices**

We recognise policy quality and price are extremely important for business owners.

Rest assured that with Optimum, you will receive high quality, comprehensive policies that are made to match your business' risk requirements that are competitive in the marketplace.

Our comprehensive risk analysis and trained personnel ensures we ask the right questions to make sure you receive the most suitable quotes for your individual needs.

We only use industry leading, financially stable insurance companies that provide excellent service, and we pride ourselves on our ability to offer quality insurance products and services.

**We don't compromise on quality - and never will.**

## **Contact Us**

We hope you're interested in hiring Optimum Insurance to support and help protect your business.

Get in touch, and one of our insurance experts will be happy to help you find the right insurance solutions for your needs:

**+61 1300 739 861**

**[service@optimuminsurance.com.au](mailto:service@optimuminsurance.com.au)**

**[www.optimuminsurance.com.au](http://www.optimuminsurance.com.au)**

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You should obtain advice to ensure that your policy provides adequate cover for your circumstances.

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