



Business Insurance

What Policies Do I Need?

Useful for: Business, Government, Local Government, Not for Profit
Article looks at: Types of Insurance Policies for Business

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In Brief

- Types of cover relevant to businesses in general include public liability, professional indemnity, directors and officers and workcover, and may include special risks for the particular industry, for example if your business operates in the construction or IT sectors.
- Consult an insurance broker for specific advice about kinds of cover, exclusions, explanation of policy provisions and costs involved.

Types of Business Insurance Cover Explained

Public Liability

All business (at least where they are operating from premises that receive customers) should carry public liability insurance. Public liability covers your business (and you personally if you are a sole trader) against personal injury and property damage occurring to any person that arises from your business activities. Essentially, this covers liability for injury caused to you or other persons coming on to your premises or occurring when you are working at a client's/customer's premises. If your business operates from home, your homeowner's policy will respond to this risk (if you have notified your insurer that you are operating a business from the premises). The accepted standard across most industries is currently \$20 million (but may be different for specialised industries such as aviation/major construction and other high-risk environments).

Professional Indemnity

Professional Indemnity policies cover your liability to clients/customers arising from your breach of contract or contractual obligations, your negligent acts or omissions, or breach of statutory liabilities (for example, under the *Australian Consumer Law, Privacy Act or Copyright Act*), as well as cover your loss of fees and other loss or damage you may suffer, for example the expenditure of legal fees.

Professional service providers may fall into one of two classes:

- (a) Professionals who are required to be licensed by a professional body (and as part of being eligible to hold that licence will be required to carry a certain level of professional indemnity insurance by their regulating body). Examples are accountants, lawyers, engineers, architects; or
- (b) Professionals who are not required to be licensed (for example people who consult based on their past work experience/formal qualifications but are not required to be licensed). They may provide things like advice on marketing, business planning, IT services, web building and the like.

Professionals falling under class (a) will often carry a mandatory minimum amount of professional indemnity insurance that is required by their licensing body as a condition of eligibility to hold their licence. Care should be taken to consider whether the minimum amount adequately covers your business risk – for example a professional services firm with a number of employees, engaged in high value and/or high-risk projects for clients will need a much higher amount than a small business or sole trader engaged in low-risk activities. Remember the value of a contract in terms of price does not necessarily reflect the level of risk. A contract for the design of a simple underground pipe system to a building may not be high value, but if the design fails necessitating re-work after construction, the potential liability to your customer (and subsequently to your business when it gets sued) could be very high.

Professionals operating under class (b) may consider they don't need professional indemnity insurance as the nature of the services being delivered is less likely to result in tangible or quantifiable loss to the client (or at least it is less likely that a client could prove their actual loss in a breach of contract or negligence case), but bear in mind the *Australian Consumer Law* sets out a number of guarantees by providers of goods and services which cannot be contracted out of and which provide a less costly and much more straightforward remedy to consumers (note: "consumers" include businesses in certain circumstances) where loss has occurred because goods or services in question do not meet the reasonable needs or reasonable expectations of the client. It is much easier for a customer/client to obtain compensation via this route than the traditional general law remedies, and it is therefore prudent for all providers of professional services to carry a policy, even if only for a relatively small amount.

Providers of services to government or local government (or to the community using funding granted by a government) will also find that there are almost invariably minimum types and amounts of insurance that will be required by government be carried by a business before a department releases funding or contracts direct for the provision of services – amounts will depend on the nature of the contract and any government policies in place at the time.

Contract Works (also known as contractors All Risk Insurance)

Designed for businesses operating in the construction, civil works and property development industries, these policies protect all construction-related activities on a single project basis (ie by reference to the "works."). The project is covered for all stages of the construction process, from development through completion and defects liability or follow-up testing/commissioning periods. This policy protects in the event of loss, damage, theft, and

other unforeseen occurrences, and covers the many risks inherent in construction projects. Policies also cover tools and protect equipment suppliers and other third parties.

Directors and Officers

A Directors and Officers policy protects directors and officers of organisations against personal liability for actual or alleged wrongdoing or breach of duty in the course of the exercise of their role in the organisation (with exclusions for criminal and fraudulent behaviour).

Who is an Officer of an organisation?

Includes not only those persons with a named office (directors and secretaries), but also persons who “make, or participate in making, decisions that affect the whole or a substantial part of the business of the organisation, who have the capacity to affect significantly the financial standing of the organisation, or in accordance with whose instructions or wishes the directors are accustomed to act” (see section 9 definition of Officer in the *Corporations Act 2001* for further detail).

If you hold a role in any company or other body corporate, including not for profit organisations, and even if you are a volunteer, you are at risk of claims from third parties, employees of the company, or even the company itself. Directors and Officers have a number of duties, both at general law and under the *Corporations Act*, and a breach of those duties can occur in a number of different ways. Non-executive officers do not escape liability just because they are not on the board of management. Every officer has a duty to inform themselves of what their board is doing, and ensure decisions are being taken that are in the best interests of the organisation and that the organisation is being governed in compliance with all relevant laws. (See related article “**Company Officers**”).

Note – an agency of the government of the Commonwealth, a State or a Territory is not a corporation for the purposes of the *Corporations Act*.

Special Risks

Policies are available to cover special risks in certain industries, such as liability of your company for data breach of sensitive customer information, cover to protect Information Technology product and service providers for liability where there may be gaps in public liability or professional indemnity policies due to the fast growing and changing nature of the industries and their compliance laws.

An emerging area of importance to all businesses that have a digital footprint is the issue of Cyber risk. A cyber insurance policy is designed to cover the financial losses and expenses of your business arising from a cyber-attack. Losses may include such things as:

- Loss of profits and operational expenses during the period you can't trade
- Privacy/data breach lawsuits brought against you
- Regulatory action taken against you

- Data recovery and damage to your system.

It is very important to note though that cyber insurance does not extend to losses caused to third parties, so you need to consult your insurer or broker about how to ensure your public liability/Information Technology or other cover extends to losses suffered by others as a result of a cyber attack on or affecting your business.

Important Note: Insurance law is complex and in the context of a contract often ties in with indemnities, guarantees, and provisions about caps on liability. General business risks and legal risk taken on by your business under a contract are not the same thing. The information in this article is general and is not intended to be a substitute for specific legal advice in relation to a particular contract of insurance.