

# Management Liability Insurance Explained

## What is Management Liability and what does it cover?

**Management Liability Insurance protects individuals and the company in relation to the various exposures associated with managing a company.**

A Management Liability policy covers claims made against the company itself as well as for claims made against the company's directors and officers. This cover is particularly important for directors who are also owners / shareholders of a company.



**A Management Liability Policy can protect companies in the following areas:**

- Statutory Liability - protects the company, executives and employees against claims resulting from the issuance of a penalty notice to pay a pecuniary or administrative fine or penalty pursuant to an Act of Parliament.
- Crime Insurance - protects the company from direct losses resulting from employee theft and a number of other insuring clauses that protect the company from third party thefts.
- Directors' & Officers' Liability Insurance - protects the directors and officers against claims resulting from management decisions.
- Employment Practices Insurance - protects the company, its directors, officers and employees from claims brought by current, past or prospective employees.

Obtaining Management Liability insurance is essential for construction businesses, and we strongly recommend construction businesses have this cover in place. Whilst the policy doesn't cover physical assets in the traditional sense, and is not mandatory, the cover is relatively affordable for the broad protection it provides against losses that could negatively impact your business particularly if the claim is pursued by a well resourced regulator such as ASIC, ACCC, WorkSafe, EPA etc. The policy covers legal expenses related to a claim, damages awarded to third parties, and even fines & penalties (where legally allowed).

In the event that you are personally liable for your actions as a director or officer of the business, your personal assets could be at risk to cover the costs associated with a claim.

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## What types of issues would I be covered for under a Management Liability policy?

Occupational Health & Safety prosecutions and inquiries are the top risk for construction businesses under a Management Liability policy. Prosecutions can take 1-2 years from the time of an accident to result in a conviction. This leads to significant legal costs being incurred as a result of accusations of directors or officers breaching their duties under OHS legislation.

### A serious injury claim

During the construction of a commercial property, a subcontractor was severely injured and left paraplegic when a pile of debris accidentally fell on him. The company was subject to a full Occupational Health and Safety investigation and prosecution. The Company vigorously denied and successfully defended most of the allegations.

Despite their attempt, the Company was fined \$250,000 and incurred \$200,000 in legal costs.

The costs associated with the defence of the prosecution and associated fine are not covered by Public Liability insurance and these costs would be in addition to any common law claim and workcover recovery claim brought by the injured worker.

Financial loss caused by Social Engineering Fraud is resulting in claims under the Crime section of the policy as cyber crime is on the rise generally. Unfortunately, construction businesses are viewed as easy targets due to generally low cyber security measures in place and the significant payments coming in and out of the business frequently.

### Social Engineering Fraud

An Insured construction company received emails from two separate subcontractors advising that their current account details could not be used to make payment for a couple of invoices that were outstanding. The accounts team at the Insured company responded to the email to obtain the correct payment details and made payment into the account provided to them by email. One transaction was flagged a week after payment by the Insured's bank as suspicious due to the name on the transaction not matching the account name of the recipient and the Insured was alerted by the second subcontractor of non-payment of one of the invoices in question. The bank was unable to recover the payments from the fraudulent third party.

The Crime section of the policy included a Social Engineering extension allowing the insured to claim for \$80,000 in loss of funds subject to \$10,000 deductible for each transaction.

Taxation investigation costs are frequently incurred by construction businesses due to the construction industry frequently being targeted by the ATO for audits.

### ATO conducts review of construction business' tax declarations

A company received a notice from the ATO advising that they intended to review their income tax, capital gains tax and superannuation payments tax records for the periods ending 31 March 2014, 31 March 2015, 31 March 2016 and 30 June 2017. The insured then retained specialist tax auditors and accountants to prepare an audit report. The entire process was arduous and took over 9 months to complete. The ATO deemed that all was in order and did not impose any penalties. The insured, however, was left to pay auditor's costs totalling \$88,500.

The management liability insurance covered this claim. The costs incurred were deemed to be necessary and reasonable and the insured was reimbursed the full amount less its excess

Accusations of false, misleading & deceptive conduct by directors/officers and employees can cause serious issues for a business' reputation and significant costs both from civil proceedings and regulatory action.

### Accusation of Misleading & Deceptive Conduct

A group of 4 home owners issued against the Insured Company and the Insured Director on the basis that they were dissatisfied with how long it took for their new homes to be completed. It was claimed that the company and the Director falsely misled new clients by stating that all new projects would be completed within 6 months. Many homes were still left uncompleted after 12 months.

The D&O and Company Reimbursement sections of the Policy were triggered and indemnity was extended to the Insured. The Company negotiated an out of court settlement with the clients for a combined amount of \$950,000. The total legal costs incurred were \$85,000.

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## Other examples of issues covered by a Management Liability policy include:

- Actions alleging improper and illegal conduct – usually started by regulators such as ASIC
- Statutory breach of duty i.e. under legislation including fines & penalties
- Employment issues including unfair/wrongful dismissal, discrimination, harassment, wrongful failure to employ or promote
- Defamation by directors/officers
- Breach of intellectual property rights
- Employee fraud & theft, including theft of money and property

As detailed above, the coverage provided by a Management Liability policy is quite broad and covers a range of different exposures you face in the running of your business.

We can assist in organising a Management Liability policy that suits the needs and exposures of your business. As construction insurance specialists, we can also assist in reviewing coverage on your existing Management Liability policy and finding alternative solutions that offer broad coverage tailored to your unique exposures as a construction business.

**For more information contact MBIB Ph: 1800 150 888**