

## Recruitment Industry Insurance

### **Guidance Note – Management Liability insurance**

This guidance note is provided to assist you understand your insurance policy in order to reduce uncertainty and give you the information upon which you can make an informed decision when considering your risks and insurance protection.

Further information is available at [www.oamps.com.au/amranz](http://www.oamps.com.au/amranz) or you can contact one of our insurance brokers who specialise in recruitment consultants on 03 9412 1212.

### **Why do I need it?**

- Companies can be fined or claimed against for unintentionally breaching laws and regulations when carrying out their business, for example employment practices liability (claimable under the Company Liability section).
- Companies can also be victims of theft or fraud, especially by people in positions of trust within the organisation (claimable under the Crime section).
- Directors & Officers can be found personally liable for substantial damages or fines which means their personal assets are at stake. Just the legal costs of defending a lengthy action against a director has the potential to cause bankruptcy. Worryingly, in some instances the Directors & Officers may be held personally liable for the trading debts of the company with no protection provided by the company (claimable under the Directors & Officers and Company Reimbursement sections).

### **A Management Liability policy will protect you against:**

- Claims against the Directors & Officers resulting from failure to properly carry out their management duties or oversee the behaviour of the company.
- Claims against the company resulting from business related matters or infringements (but not the provision of professional services).
- Claims against both the company and Directors & Officers for employment practices issues such as unfair dismissal, discrimination and harassment.
- Legal representation for Directors & Officers at investigations (including OH&S inquiries and pollution related actions).
- Legally insurable fines and pecuniary penalties levied personally against the Directors & Officers.
- Company's direct financial loss as a result of employee or third party theft or fraud (including the costs of discovery and proving the loss).
- Internet Liability cover for libel, slander or privacy breaches.



## **What are typical claims examples?**

### **Directors & Officers Liability & Company Reimbursement**

A Director breached his authority by appointing a company belonging to an employee to undertake work on the company's behalf. The Director was sued by the employee's company for damages for non-payment of fees following the cancellation of the contract. Claim for defence costs, damages and third party legal costs.

### **Company Liability**

A company verbally confirmed that it required a consultant's services. The consultant therefore turned away other offers of work. The contract between the company and the consultant was never actioned, the consultant subsequently alleged misrepresentation and sued the company for the economic loss that it suffered due to missed work. Claim for defence costs, damages and third party legal costs.

### **Employment Practices Liability Entity Coverage (EPL)**

A female employee injured her back at work. Her employment was later terminated. She claimed that she was treated less favourably than other workers because of her age and her disability. Claim by company for defence costs, damages and third party legal costs. This matter was settled at a total cost of around \$40,000.

### **Crime**

False Invoicing - A manager with a gambling problem (who was married with two young children) defrauded his company over almost 5 years for more than \$1,000,000 through the creation of false invoices.

### **Pecuniary Penalties**

A company director was fined after a worker lost two fingers as a result of his hand becoming caught in an unguarded machine. The director failed to provide adequate supervision and training under the Occupational Health and Safety Act. Claim for \$17,500 in pecuniary penalties.

### **Occupational Health and Safety Costs**

In the situation referred to above, a WorkSafe investigation was commenced into the use of guards on machines in a factory. The director required legal advice and made a claim for inquiry representation costs.

### **General Inquiry Costs**

The ACCC investigated the managing directors of companies for their involvement in alleged price-fixing and market-sharing contraventions of the Trade Practices Act 1974. Initial claim for legal costs associated with attending the inquiry. In this situation the subsequent prosecution resulted in the directors also receiving large pecuniary penalties (between \$125,000 and \$150,000 each).

*Please Note: This document is not part of an insurance contract and does not supersede or replace the actual policy wording. Please read the policy wording for complete terms, conditions and exclusions. The potential claims examples given above are illustrative only and are not indicative of how a possible claim may be assessed or handled by your insurer. Cover for any claim is determined by the particular circumstances of the claim and all of the terms, exclusions and conditions of the policy in force at the time. Further information is available to OAMPS clients at [www.oamps.com.au/amranz](http://www.oamps.com.au/amranz), or you can contact one of our specialised insurance brokers on (03) 9412 1212.*



Our comments above are for your guidance and should be read in conjunction with the full policy wording, schedule and any endorsements that apply – January 2010.

