

## Important Information

We have prepared this document to assist you to understand important issues relating to your insurances and recommend you read it carefully. Please contact your Insurance Broker if there is anything you do not understand, or if you have any questions.

### **Your duty of disclosure** (*This applies to non-consumer insurance contracts*).

Before you enter into a contract of general insurance with an insurer, you have a duty to tell the insurer anything that you know, or could reasonably be expected to know, that may affect the insurer's decision to insure you and on what terms.

You have this duty until the insurer agrees to insure you. You have the same duty before you renew, extend, vary or reinstate a contract of general insurance.

You do not need to tell us anything that:

- Reduces the risk the insurer insures you for.
- Is common knowledge.
- Your insurer knows or ought to know as an insurer.
- The insurer waives your duty of compliance about.

### If you do not tell us something

If you do not tell the insurer something you are required to, the insurer may cancel the contract or reduce the amount they will pay you if you make a claim, or both.

If your failure to tell the insurer is fraudulent, the insurer may refuse to pay a claim and treat the contract as if it never exists.

Please note that your duty applies also when you seek to renew, extend, alter or reinstate a policy.

**Duty to take reasonable care not to make a misrepresentation** (*This applies to consumer insurance contracts only, these are insurance contracts obtained wholly or predominantly for personal, domestic or householder purposes. Consumer insurance contracts include but are not limited to Home Building, Home Contents, Motor Vehicle, Motorcycle, Residential Strata, Consumer Credit, Sickness & Accident, and Travel*).

You have a duty under the *Insurance Contracts Act 1984 (ICA)* to take reasonable care not to make a misrepresentation to the insurer (**your duty**).

Your duty applies only in respect of your policy that is a consumer insurance contract, which is a term defined in the ICA.

This notice includes information you have previously told us that is relevant to your policy, which we passed on to the insurer. The insurer requires you to contact us to tell us if this information is incorrect, or if it has changed. If you do not tell us about a change to something you have previously told us, the insurer will take this to mean that there is no change.

To ensure you meet your duty, when you contact us to advise of any information that is incorrect or has changed, the updated information you give us must be truthful, accurate and complete.

If you fail to meet your duty, the insurer may be able to cancel your contract or reduce the amount it will pay if you make a claim, or both.

If your failure is fraudulent, the insurer may be able to refuse to pay a claim and treat the contract as if it never existed.

### **Utmost good faith**

Every contract of insurance is subject to the doctrine of utmost good faith which requires that the parties to the contract should act toward each other with the utmost good faith. Failure to do so on your part may prejudice any claim or the continuation of cover provided by Insurers.

### **Changes and developments**

This insurance programme has been prepared in accordance with your instructions from known information about your business activities at a certain date. Changes and developments may occur which could have a bearing on the adequacy or efficacy of your insurances.

The following list should be used as a guide to areas of activity which should be notified to your insurance broker immediately as they are proposed or occur so that steps can be taken to ensure your organisation remains adequately protected. It is not exhaustive, so when in doubt please contact your insurance broker for guidance:

- Acquisition of new subsidiaries, mergers or joint ventures in which you are involved in Australia or elsewhere.
- Acquisition, construction or occupancy of new premises; alteration, vacation, temporary vacancy, extension or demolition of existing premises.
- Increases in value in excess of policy limits for buildings, plant, machinery or stock (whether due to acquisition, economic inflation or exchange rate fluctuation).

- Alterations to or disconnection of fire or burglary protection systems.
- New contracts, leases or agreements to be signed - Contractual liabilities assumed and legal rights contractually relinquished or diminished, any contracts which impose onerous conditions.
- Changes in processes, occupancy or products and extensions of business operations, including new products or processes.
- Hiring, leasing or borrowing of plant and equipment.
- Acquisition of pressure vessels, lifting equipment or other substantial equipment.
- Movements of stock or equipment to new locations.
- Charter or operation of aircraft or waterborne craft.
- External funding – mortgages or other borrowings which create insurable interest of third parties in insured property.
- Foreign trade and travel – developments involving exposures beyond Australia, overseas acquisitions or exports of products.

### New buildings and alterations

Details of any new building or alteration work should be advised during the planning stage to enable McLardy McShane to advise on:

- A sound and economical approach to construction insurance from your standpoint.
- Appropriate indemnity and insurance clauses to be incorporated in the contract for your protection.
- Standards of fire protection, safety and security.
- Financial loss exposures - if completion of the new building or alteration work is delayed - to determine your need for advance business interruption insurance.

### Average or co-insurance

Some policies contain an Average/Co-Insurance clause which means that you must insure for the full insurable value of the property insured. If you under-insure, your claim may be reduced in proportion to the amount of the under-insurance.

A simple example, illustrating the basic principle, application and effect of the average/co-insurance clause is as follows:

Full (replacement) value.	\$1,000,000
Sum insured.	\$500,000
Therefore, you would be self-insured for 50% of the full value.	
Amount of claim, say	\$100,000
Amount payable by insurers as a result of the application of average/co-insurance (being 50% of the \$100,000).	\$50,000

### Average/co-insurance – business interruption policies

Some policies contain an average/co-insurance clause which is fully set out in the 'basis of cover' or 'policy specification' of the policy. For the types of cover most usually provided, the average/co-insurance calculation is arrived at by applying the rate of gross profit, revenue or rentals (as applicable) to the annual turnover, revenue or rentals (as applicable); these factors first being appropriately adjusted as provided for in the 'trend of business' or 'other circumstances' clauses.

If you are in any doubt regarding this clause insofar as it applies to your policy, please contact your Account Manager for assistance.

### Subrogation and/or hold harmless agreements

You may prejudice your rights with regard to a claim if, without prior agreement from your Insurers, you make any agreement with a third-party that will prevent the insurer from recovering the loss from that, or another party who would be otherwise liable. This can occur when you sign a contract containing an indemnity clause, 'hold harmless' clause or release.

Some policies contain provisions that either exclude the insurer from liability, or reduce its liability, if you have entered into any agreements that exclude or limit your rights to recover damages from another party in relation to any loss, damage or destruction that is the subject of a claim under the policy or where you assume liability under a contract which is different to your liability at law. This is known as a 'contractual liability exclusion' and often appears in public and products liability, broad form liability and professional indemnity policies.

Examples of such agreements are the 'hold harmless' clauses which are often found in leases, in property management contracts, in maintenance or supply contracts from burglar alarm or fire protection installers and in repair contracts. Other contracts you sign from time to time relating to your business operations (e. g. supply agreements, equipment hire contracts, event hire contracts, labour hire contracts, subcontracts, design and

construct contracts, consultancy agreements etc. ) may contain indemnity clauses and releases which may trigger the operation of policy exclusions or breach the conditions of your insurance.

Do not sign a contract or lease without contacting your broker and/or taking legal advice as to whether the contract terms will prejudice your insurance protection under your policies. If you are in doubt or require further assistance, please consult your Account Manager.

### **Unnamed parties and other policy requirements**

If you require a person to be named as a co-insured, joint insured, insured person or

if you require the interest of a party to be covered by your policy, you **MUST** request this. Most policy conditions will exclude indemnity to other parties (e. g. , mortgagees, lessors, principals etc) unless their interest is properly noted on the policy. Please note, we cannot guarantee that an insurer will accommodate a request to include a further party as an insured under your policy or to note the interests of another party on your policy.

If this is a requirement under a contract or agreement, do not sign the contract without checking with us as to whether the insurer is prepared to include the other party as an insured or note that party's interests. You should be aware that it may not be in your best interests to arrange to have someone else insured under the terms of your policy.

If you would like assistance or guidance with the insurance requirements under a contract, please consult your account manager.

### **Insurance placed with unauthorised foreign insurers**

We will identify in this report the policies that we have placed with an unauthorised foreign insurer (on your instructions) and the specific information relating to that insurer.

If the policy is an atypical risk or the policy cannot reasonably be placed with an Australian authorised insurer and we have placed the policy with an unauthorised foreign insurer (on your behalf), please note:

An unauthorised foreign insurer is an insurer that is not authorised under the Insurance Act 1973 (Act) to conduct insurance business in Australia and is not subject to the provisions of that Act, which establishes a system of financial supervision of general insurers in Australia that is monitored by the Australian Prudential Regulation Authority (APRA).

The insurer cannot be a declared general insurer for the purpose of Part VC of the Insurance Act 1973, and, if the insurer becomes insolvent, you will not be covered by the Federal Government's Financial Claims Scheme provided under Part VC of that Act.

You should consider whether you require further information regarding:

- The country in which the insurer is incorporated, and what scheme of financial supervision of insurers applies.
- The paid-up capital of the insurer.
- The insurer's rating by credit rating agencies.
- The insurer's financial reports.
- Which country's laws will determine disputes in relation to the policy.

As your insurance broker, we do not warrant or guarantee the current or ongoing solvency or financial viability of the insurer because we have no control over the insurer's performance and this can be affected by many complex commercial and economic factors. The solvency of an insurer can change significantly between the time an insurance contract is entered into and the time a claim may be made. If you have concerns about the insurer's solvency you should review the insurer's credit rating from time to time.

This notice also applies to all variations and renewals of the insurance arranged by us with the insurer.

### **Claims made during the period of insurance**

Your attention is drawn to the fact that some policies (for example, professional indemnity insurance) provide cover on a 'claims made' basis which means that claims first advised to you (or made against you) and reported to your insurer during the period of insurance are recoverable irrespective of when the incident causing the claim occurred, subject to the provisions of any clause relating to a 'retroactive date'.

You should also note that, in terms of the provisions of Section 40(3) of the Insurance Contracts Act 1984, where you give notice in writing to the insurer of facts that might give rise to a claim against you as soon as is reasonably practicable after you become aware of those facts (but before the insurance cover provided by the contract expires) then the insurer is not relieved of liability under the contract in respect of the claim, when made, by reason only that it was made after the expiration of the period of insurance cover provided by the contract.

In order to ensure that any entitlement under the policy is protected, you must therefore report all incidents that may give rise to a claim against you to the insurers without delay after such incidents come to your attention and prior to the expiration of the policy period.

### **Claims occurring prior to commencement**

Your attention is drawn to the fact that your policies do not provide indemnity in respect of events that occurred PRIOR to commencement of the contract.

### **Not a renewable contract**

Cover under your policies terminates on the date shown in this report or as indicated in the corresponding tax invoice or adjustment note.

Some policies are not renewable contracts. If you wish to effect similar insurance for any subsequent period, it will be necessary for you to complete a new proposal prior to the termination of the current policy so that terms of insurance and quotations can then be developed for your consideration.

### **Leasing, hiring and borrowing property**

When you lease, hire or borrow property, make sure that the contract clearly identifies who is responsible to insure the property. This will help avoid arguments after a loss and ensure that any claims are efficiently processed.

Your industrial special risks policy automatically covers property you are responsible to insure, subject to the policy deductible. The decision as to who should insure the property is not left to your discretion. You may have other insurance (for example, public liability) which may assist you meet claims relating to property damage or personal injury caused to or by property which you lease or hire. Please note, there is usually a sub-limit on the amount of claims that can be made for damage to property in your temporary care, custody or control.

If the responsibility to insure lies with the owner, we recommend you try to ensure the lease or hire conditions waive any rights of recovery against you, even when the damage is due to your negligence. This will prevent the owner's Insurer making a recovery against you. If there are no lease or hire conditions, you should write to the owner asking who is to insure the property.

### **Application of GST on insurance policies**

Most insurance is deemed a taxable supply (i. e. , it is not GST-free), although there are some classes of insurance that do not attract GST.

For the majority of insurance policies issued, the insurer has a liability to pay GST. This liability can be passed on to the insured. The insured may be able to claim any GST back from the Australian Taxation Office as an input tax credit.

### **The amount of GST payable**

The consideration paid for an insurance policy consists of premium plus fire service levies (where applicable) and stamp duty.

GST is applied to that part of the amount to be paid net of stamp duty but including any fire services levy.

### **Declaration of sums insured**

An insured who is registered for GST should consider the net amount (after all ITCs have been taken into account) which is to be insured and advise the sums insured or asset values or turnover on a GST Exclusive basis.

An unregistered insured who is wholly input taxed or a registered insured who is partially input taxed will need to advise the sums insured or asset values or turnover on a GST Inclusive basis in addition to their precise taxable status.

### **Insurance claims and the application of the policy excess or deductible**

Payment of an excess by an insured is not treated as consideration for a taxable supply and is therefore not subject to GST.

### **Insurance claims and GST**

The treatment of settlements for GST purposes depends on whether or not the insured is registered for GST and their entitlement to claim a full or partial input tax credit on the premium paid.

#### *Registered insured*

A registered insured is entitled to an input tax credit on a premium to the extent that it is acquired for a taxable purpose. If the insured is entitled to an ITC in respect of the premium, it must notify the insurer of the percentage that it is entitled to claim. This must be done on or before making the claim.

So long as the percentage notified by the insured to the insurer is correct, the insured will have no GST liability on a settlement received under the policy.

Settlements where a registered business can claim a partial input tax credit will be for an amount somewhere between the GST-exclusive and the GST inclusive price (depending on the entitlement).

### *Unregistered insured*

An unregistered insured is not entitled to claim an input tax credit on the premium and has no liability to pay GST on the settlement.

Settlements to non-registered entities will be for the 'GST-inclusive price' of the insured item.

It is important to note that an insured is not liable to pay GST on claim payments, provided they have informed their insurer as to their entitlement to an ITC on the premium paid on the policy (or their tax status). This must be done at (or before) the time of a claim.

*The tax status is the percentage an insured is entitled to claim as an input tax credit for the GST on the premium paid on any policy. If the insured is registered for GST, it is a requirement under the GST legislation for the insured to advise its Insurer(s) of its ABN and tax status. Failure to do so may result in the insured having a GST liability on any claim settlement made under any policy.*

*The level of an insured's tax status is a matter to be determined by a professional tax adviser.*

*Our advice to you regarding the application of GST on general insurance policies is offered in our capacity as insurance brokers. The level of your tax status as a business registered for GST is a matter to be assessed by your professional taxation adviser. We cannot and do not accept liability for the consequences of any information provided to your insurer regarding your entitlements to input tax credits on the premiums paid on your insurance policies.*

### **Essential reading of policy wording**

The original of your policy wordings have been provided to you or will be passed to you as soon as they are received from insurers. It is in your own interests to read these documents without delay and advise your insurance broker in writing of any aspects which are not clear to you or where any aspect of the cover does not meet with your requirements.

### **General**

Many areas of insurance are complex, and some implications may not be evident to you. Your insurance broker will keep you informed, but if at any time you are unsure of any aspect of your insurances, please contact your insurance broker to discuss the matter.