

## Important Notices

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 an insurance contract with an insurer, you have a duty under the Insurance Contracts Act 1984 to disclose information to the insurer. The Duty of Disclosure applies until the insurer agrees to insure you or renew your insurance. The Duty of Disclosure also applies before you extend, vary or reinstate your insurance.

If you are applying for or renewing insurance in relation to your motor vehicle, home building and/or contents, residential strata, travel, personal accident or sickness and/or consumer credit products, you must answer the specific questions asked by the insurer truthfully and accurately. In answering those questions, you must tell the insurer all information that's known to you and that a reasonable person would be expected to provide in answer to the questions.

At renewal, the insurer may ask you to advise any changes to something you have previously disclosed, or may give you a copy of the information you previously disclosed and ask you to advise the insurer if there has been a change. If you do not tell the insurer about a change, you will be taken to have told the insurer there is no change.

If you are applying for or renewing any other insurance, you must tell the insurer all information that is known to you that a reasonable person could be expected to know or that is relevant to the insurer's decision to insure you and on what terms. You do not need to tell the insurer anything:

- that reduces the risk it insures you for;
- is common knowledge;
- that the insurer knows or should know; or
- which the insurer waived you duty to tell it about.

**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.

**Non-Disclosure**

If you fail to comply with your Duty of Disclosure, the insurer may cancel your contract or reduce the amount it will pay you if you make a claim, or both. If your failure to comply with the Duty of Disclosure is fraudulent, the insurer may refuse to pay a claim and treat the contract as if it never existed.

If you are in doubt about whether or not a particular matter should be disclosed, please contact your broker.

**People you represent**

You must make sure you explain the Duty of Disclosure to any person you represent when we arrange any insurance cover for you. Alternatively, you may ask any person you represent to contact us and we will explain their Duty of Disclosure to them directly.

**Duty of good faith**

Both parties to an insurance contract, the insurer and the insured, must act towards each other with the utmost good faith. If you fail to do so, the insurer may be able to cancel your insurance. If the insurer fails to do so, you may be able to sue the insurer.

**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 unoccupancy, 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.

**Underinsurance**

Underinsurance occurs when you have not insured the full repair or replacement value of your property/asset. If you are underinsured, your insurer may rely on any ‘Average’ or ‘Co-insurance’ clause in the insurance policy. This means you may not receive full compensation for your loss and would have to bear part of the loss yourself.

Reviewing the sums insured and declared values on a regular basis and at each renewal will help you to ensure that you have maximum protection under your policies.

You need to decide whether to increase the sums insured or declared values of insured property/assets, and whether you require replacement on a ‘new for old’ basis. It is also important to consider other costs such as removal of debris and any additional costs that may be required to replace the damaged property/asset. The value of the property/assets insured may need to be updated if you change locations, renovate or expand your premises, or purchase new property/assets (especially if your purchases are substantial).

In some cases insured property (like a motor vehicle) may depreciate in value or you may want to reduce the insured values to ensure that you are paying a competitive premium.

If you want to discuss whether insured property/asset values should be changed in your policies, please contact your Insurance Broker for assistance. If a change to the value of the property/assets insured under your policies is not notified to us, we cannot communicate these changes to the insurer.

**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 (ie: 50%)	\$ 50,000

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

Some Business Interruption policies contain an Average/Co-Insurance clause, but the calculation is different. Generally, the Rate of Gross Profit, Revenue or Rentals (as applicable) is applied to the Annual Turnover, Revenue or Rentals (as applicable) (after adjustment for business trends or other circumstances).

If you are in any doubt about whether and how Average/Co-Insurance clauses apply to your insurances, please contact your Insurance Broker for assistance

**Subrogation and/or hold harmless agreements**

You can prejudice your rights to claim under your insurance if you make any agreement with a third party that will prevent or limit the Insurer from recovering the loss from that party (or another party who would otherwise be liable). This can occur when you sign a contract containing an indemnity clause, “hold harmless” clause or a release – unless you obtain the Insurer’s consent in advance.

This is because some policies contain a ‘contractual liability exclusions’ that mean the Insurer can refuse to pay or reduce the amount it is liable to pay by the extent to which it is unable to recover from the third party. These exclusions are often found in public and products liability, broadform 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 Insurance Broker.

### **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.

### **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 Insurance Broker

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

If your risk is atypical or the insurance cannot reasonably be placed with an Australian authorised insurer, we may recommend that you insure with an unauthorised foreign insurer.

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.

If we do recommend that you insure, vary or renew your insurance with an unauthorised foreign insurer, we will tell you about that insurer and which policies we have placed with them.

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; and
- 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.

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

Your attention is drawn to the fact that most of your policies do not provide indemnity in respect of events that occurred before the insurance commenced. They cover events that occur during the time the policy is current.

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

Some policies (for example, professional indemnity insurance) provide cover on a "claims made" basis.

This means that claims that are first advised to you (or made against you) and reported to your insurer during the period that the policy is current are insured under that policy, irrespective of when the incident causing the claim occurred (unless there is a date beyond which the policy does not cover – this is called a "retroactive date").

If you become aware of circumstances which could give rise to a claim and notify the insurer during the period that the policy is current, a claim later arising out of those circumstances should also be covered by the policy that is current at the time of the notification, regardless of when the claim is actually made or when the incident causing the claim occurred

In order to ensure that your entitlement to claim under the policy is protected, you must report all incidents that may give rise to a claim against you to the Insurers without delay after they come to your attention and before the policy expires.

#### **Non-renewable insurance**

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

While insurers will send renewal offers for most insurance policies, there are some which are not "renewable". For these, if you wish to effect similar insurance for a subsequent period, you will need to complete a further proposal before the current policy expires so that we can seek terms of insurance and quotations on your behalf.

#### **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 policy wordings for your insurances have either been provided to you or will be sent to you as soon as they are received from your Insurers. We recommend that you read these documents carefully as soon as possible and advise us in writing of any aspects which are not clear to you or if any aspect of the cover does not meet with your requirements.

**Retail Client Definition**

The Corporations Act 2001 (the Act) defines Retail Clients as: Individuals or a manufacturing business employing less than 100 people or any other business employing less than 20 people and that are purchasing the following types of insurance covers: Motor vehicle, home building, contents, personal and domestic, sickness/accident/travel, consumer credit and other classes as prescribed by regulations.

**Policy Cancellation**

If a cover is cancelled before the expiry of the period of insurance, and provided the relevant policy contains a cancellation clause allowing it, we will refund to you only the net return premium we receive from the insurer and not refund any part of the brokerage and / or fee we receive for arranging the cover. A separate fee may also be charged to process the cancellation.

**Non-monetary remuneration**

During the course of our business we may receive non-monetary remuneration from insurers, underwriters or other third parties. This may include but is not limited to; access to technology platforms and I.T support, education and training, event sponsorship, and marketing assistance. We will not accept any non-monetary remuneration where doing so could reasonably be expected to influence the advice we provide to you.

**Premium funding warning**

Premium funding allows you to spread out the cash flow associated with paying your insurance premiums over the next twelve months. We may receive a commission from the funder for arranging the funding contract; full details are available on request.

Please note that should the insurance policy be cancelled before the expiry date for whatever reason, the Premium Funder may charge you the full interest applicable to the contract, as detailed in the Loan Application Form. There may be no refund of our commission on the refund premium and no refund of any fee we may have charged you for arranging the cover. We also reserve the right to charge you a policy cancellation handling fee. In some cases underwriters also apply minimum premiums to policies, which may further reduce the refund that you might otherwise receive.

The impact of the above on you is that any refund you receive for the mid-term cancellation of your policy may be significantly less than a pro rata calculation would produce and in extreme cases may involve you having to make an additional final payment even though the policy has been cancelled. Therefore prior to cancelling a policy and replacing it with another cover we strongly recommend that you discuss your situation with us so that we can advise the exact extent and impact of the early cancellation provisions mentioned above.

**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.