

Directors & Officers Supplementary Legal Expenses Insurance (SLE)

The QBE SLE product is designed to be offered in conjunction with an existing Directors & Officers Liability insurance contract.

The benefits of the SLE Policy include:

1. Through a 'difference in conditions' coverage the SLE product is able to provide legal expenses cover for exposures traditionally excluded by stand alone Directors & Officers policies.

Such exposures include:

- (i) Bodily Injury (i.e. occupational/ workplace health & safety legislation)
- (ii) Pollution (i.e. environmental legislation)
- (iii) Insured vs Insured (i.e. disagreements at board level)
- (iv) Organisation vs Insured (i.e. actions brought by a new board in name of the company against the former directors)
- (v) Substantial shareholder claims (i.e. shareholders holding greater than 15% of voting rights).

2. Expand the scope of the traditional Directors & Officers policy to include legal expenses cover for the company itself (i.e. providing cover beyond the personal liabilities of Directors & Officers).

Entity coverage provided in respect of:

- (i) Employment disputes
- (ii) Prosecutions, inquiries, investigations, and examinations.

3. The SLE policy does not require a 'Wrongful Act' to trigger the insuring clause in relation to compulsory attendance at any prosecution, inquiry, investigation, examination or other proceedings before a Court or Regulatory Authority or Tribunal. This is critical where the inquiry, investigation or examination is initially a fact finding mission and no specific allegation of a Wrongful Act is made. The 'trigger' under the SLE Policy is a 'direction to appear'.

Specific SLE Exposure Examples

Occupational Health & Safety Investigations and Prosecutions

An area which receives a great deal of attention is the onerous obligations placed on employers in relation to occupational health and safety exposures. It is not uncommon for companies to be investigated by the relevant State/Territory workcover authority when a worker is injured at the workplace. Companies can incur significant costs in responding to or defending any investigation, inquiry or prosecution.

Pollution Inquiries/Prosecution – Attendance and Defence Costs

For example, a golf club and its directors may be named in a notice issued by the Environmental Protection Authority relating to a discharge of chemicals into an adjoining watercourse. This exposure may be excluded by the overlying D&O cover.

Employment Disputes

Employees may bring actions against the employer organisation under the relevant Workplace Relations Act (through the Australian Industrial Relations Commission) claiming unfair dismissal, harassment, failure to promote, etc. The employer organisation's exposure may be excluded by the overlying D&O Policy.

Government Agency Inquiries or Investigations

Companies and their employees can be 'directed to appear' at various inquiries/investigations. Entirely innocent parties are frequently compelled to attend an inquiry simply to assist in the evidence gathering process (often at substantial legal costs for which they have no insurance protection without an SLE policy)

Examples of such inquiries include:

- Royal Commission: Ambulance service emergency response call frequency
- Australian Broadcasting Inquiry: Independence in advertising
- Australian Securities and Investment Commission: Mortgage industry & secret commissions
- Australian Securities and Investment Commission: Financial advice and real estate agents
- Royal Commission into the Building & Construction Industry: Building industry integrity

Board Disputes

Internal board disputes are traditionally excluded by a D&O Policy's Insured v. Insured Exclusion. For example, a defamation action is brought by one director against another in respect of alleged defamatory remarks made by the latter director at an industry function concerning the level of board input by the former director.

Organisation vs Insured

Traditionally 'organisation v. insured' claims are excluded by overlying D&O Policies. A new board of directors may bring an action in the name of the company (derivative action) against a former board member in relation to an alleged failure to act with care and diligence in managing the company.

Substantial Shareholder Claims

Traditionally, overlying D&O Policies have a limitation placed on actions brought by shareholders (e.g. shareholders owning >15% of the organisation's shares). A 'substantial shareholder' may make a claim against several directors in respect of the mismanagement of the company. The legal costs to defend such an action would otherwise not be covered without a SLE Policy.

Claim Examples

- The State coroner conducts an inquiry into the death of an electrical apprentice who dies from third degree burns after lifting himself into powerlines in a cherry picker. The employer organisation is directed to appear at the inquiry.

- An employee suffers a serious injury and the employer organisation has breached Workplace/Occupational Health & Safety law. An investigation is conducted by the regulatory authority which costs the employer organisation \$50,000 + in legal fees to respond to the alleged breach.
- A snack food manufacturer incurs significant legal costs following a charge by Workcover in the NSW Industrial Relations Commission in respect of a worker losing an arm after being dragged into the rotating blades of a dough cutting machine.
- A theme park is charged as a result of an accident where a riderless jet ski left the water and ploughed into an audience injuring four people. Investigation and defence costs are incurred.
- A prominent luxury car dealer is prosecuted following the electrocution and death of an employed panel beater when he tried to fix a faulty spot welder.
- A disabled employee brings an action against the company under the Disability Discrimination Act 1992 for failing to ensure adequate access to a meeting room which was required to assist the employee to carry out their activities as an employee. The action commenced when the employee was demoted to a position which did not require access to a meeting room.

Complementary Insurance

In addition to the SLE product, QBE also offers a Statutory Liability Insurance product which is written as a stand alone but complementary policy to the SLE cover. The Statutory Liability Insurance policy is designed to insure against penalties and fines payable to government authorities as a result of a breach of any Act.

Please contact your broker if you wish to receive more information on the QBE Directors & Officers Supplementary Legal Expenses product or the QBE Statutory Liability product.