



ace insurance

A high-angle, black and white photograph of a person standing in a large, modern atrium. The floor is made of large, light-colored tiles, and the ceiling is a complex grid of dark structural beams. The person is silhouetted against the bright light coming from above. The overall mood is professional and sophisticated.

## Elite Management Liability Policy

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The ACE Insurance Limited Elite Management Liability insurance policy is specifically designed for privately owned companies. These companies and their directors, officers and employees are exposed to the legal consequences of unintended errors arising from their daily actions. The companies also face the potential exposure of financial loss caused by employee dishonesty and similar conduct.

#### Insuring Clauses:

- **Directors and Officers Liability and Company Reimbursement:** cover for claims against the directors, officers or employees (insured persons) of the company (insured organisation) for any actual or alleged act, error, omission, breach of duty, breach of trust, breach of authority, misstatement or misleading statement by them.
- **Employment Liability – Insured Organisation:** cover for claims against the company by any person who was, now is or becomes during the policy period an employee for an actual or alleged employment-related breach.
- **Superannuation Trustee Liability:** cover for claims against a trustee of a superannuation fund for any actual or alleged act, error, omission, breach of duty, breach of trust, breach of authority, misstatement or misleading statement by the trustee in that capacity.
- **Insured Organisation Liability:** cover for claims against the company for any actual or alleged act, error, omission, breach of duty, breach of trust, breach of authority, misstatement or misleading statement by the company.
- **Employee Crime:** cover for direct financial loss to the company resulting from a single act, or series of related, continuous or repeated acts, of fraud, dishonesty or theft committed by an employee, acting alone or in collusion with others.

#### Additional Benefits:

- **Additional Excess Limit for Non Executive Directors:** cover for non executive directors, in addition to the policy limit, when the limit of liability and all other insurance and avenues of indemnification have first been exhausted.
- **Advancement of Defence Costs and Legal Representation Expenses:** defence costs and legal representation expenses are advanced to the insured as they are incurred. There is also provision for defence costs and legal representation expenses (up to 10% of the full limit of liability) to be incurred before obtaining the consent of ACE, provided ACE's consent is obtained within 30 days of the first day on which defence costs or legal representation expenses were incurred.
- **Broad Definition of Insured Person:** covers all past, present and future directors, officers and employees.
- **Broad Definition of Loss:** includes cover for aggravated, punitive or exemplary damages, to the extent insurable at law and not comprising any multiplied portion.
- **Continuous Cover:** subject to the satisfaction of certain requirements, for claims arising from circumstances that should or could have been notified under an earlier management liability insurance policy.
- **Costs of Defending Extradition Proceedings, Extradition Bail Bond Costs, Extradition Crisis Costs:** these fall within the insuring clauses for insured persons as a result of the definition of Claim and Loss. Since the "NatWest 3" incident and the various publicised extradition proceedings from the UK to USA, directors and officers at all levels are becoming aware of the increasing possibility, and costly consequences, of attempted extradition.
- **Crime Costs:** reimbursement to the company of any reasonable expenses (up to \$25,000) paid to an investigator in establishing the existence and amount of any direct financial loss resulting from employee crime.
- **Crisis Loss Costs:** for external crisis management services provided to and paid for by the company, to help limit the adverse financial effects on the company of any event with the potential to cause an imminent decrease of greater than 30% of the total consolidated annual revenues of the company.
- **Discovery Period:** 84 month discovery period available in the event of an acquisition or merger of the company, in respect of conduct prior to the merger or acquisition.
- **Estate, Heir, Legal Representative, Spouse or Domestic Partner:** cover for claims against any estate, heir, legal representative, spouse or domestic partner if the claim is made solely by reason of the estate's, heir's, legal representative's, spouse's or domestic partner's status as such and arises directly from a covered claim made against an insured person.
- **Legal Representation Expenses:** cover for legal representation expenses in respect of any official investigation or inquiry compelling the attendance of an insured person. It is sub-limited to \$100,000 for the insured organisation but not for insured persons, and does not require an allegation of a wrongful act before it is triggered.



- **Public Relations Expenses:** to help limit the adverse effects of negative publicity of an insured in respect of any claim or investigation.
- **Non-Renewal Discovery Periods:** if the policy is not renewed or replaced, the insured is automatically entitled to a discovery period of 30 days in respect of conduct prior to the expiry of the policy. Subject to the payment of additional premium, a discovery period of 12 months can also be purchased.
- **Occupational Health and Safety legislation:** covers insured persons for defence costs and legal representation expenses for occupational health and safety matters, including for workplace deaths.
- **Outside Directorship Cover:** covers insured persons for certain claims made against them whilst acting as a director or officer in an outside organisation.
- **Pecuniary Penalties:** covers directors and officers for pecuniary penalties, including civil and certain strict liability offences.
- **Pollution Defence Costs:** covers defence costs and legal representation expenses of insured persons.
- **Retired Directors & Officers:** under the D&O cover, covers directors and officers who retire before the policy expires, for a period of 84 months after such expiry in respect of conduct occurring before such expiry provided that a discovery period is not purchasable and the policy is not renewed or replaced with another policy affording D&O cover.

### Claims Examples:

The Claims Examples given below are illustrative, and by way of example only, and should not be taken as an indication of how a particular claim will be assessed by ACE. ACE does not represent that any future matter will be covered by the policy. Cover for a particular claim is determined by all the terms, exclusions and conditions of the policy depending on the specific facts assessed at that time. We recommend that a potential purchaser thoroughly examine our policy offered and consult with an appropriate expert to be certain about the precise scope of cover under the policy.

### Against Directors

A lender advanced moneys to shareholders in a private company to allow the shareholders to fund the company's business. The lender took security over the shares held by those shareholders and later exercised the securities. The directors resolved to transfer the shares to the lender under the security. The minority shareholders sued the directors for wrongful conduct. The policy met the defence costs of the directors in ascertaining whether the shares ought to be transferred back to the minority shareholders.

### Investigation

An investigation was launched by the ACCC into the pricing practices of a group of liquor retailers. There was no allegation of a wrongful act however the investigation required the attendance of the directors of the insured. Ultimately the insured was innocent of any wrong doing however the policy paid for the legal fees incurred by the directors in obtaining advice for, and the legal representation required during, the investigation.

### Public Relations Expenses

After the successful conclusion of the investigation referred to above the directors consulted a public relations firm to advise on how best to restore the directors' and the company's previously strong reputation in the community. The public relations firm put together a media campaign in local publications which made it clear that the directors and the company were not in any way involved in any price fixing. The policy paid for the costs of the public relations firm.





### Employment Practices Claims

1. A disgruntled employee alleged that a manager sexually harassed her and sued both the manager and the company. Ultimately the action failed however the legal costs of defence were paid by the policy.
2. The company retrenched a number of staff due to a downturn in business. The method of retrenchment used by the company was on the basis of those employees that had been with the company for the least amount of time were the first to be retrenched. The retrenched employees were all women who saw this as discriminating against them based on their sex. They brought an action against the company alleging that these employment practices discriminated against women. The company was able to successfully defend the retrenchment policy however paid legal costs in defending the action. The policy indemnified the company for those costs.
3. An employee brought an action against his manager and the company alleging that they did not protect him from being bullied by fellow employees. The employee claimed that despite complaints, nothing was done to prevent the bullying and that as a result he was embarrassed, no longer able to work and that it had affected his relationships with his family and friends. Although the directors of the company were not aware of the bullying, the manager and company were both found liable for not providing a safe work environment. The policy paid legal costs as well as damages in connection with the suffering incurred by the employee.

### Against Entity

1. In the claim scenario in 'Against Directors' above, the company was also joined as a party to ensure that any orders were binding on it. It incurred significant costs through its participation in the litigation which were met by the policy.
2. A consultant sued the company alleging that it misrepresented that it would contract with the consultant, but failed to do so, causing the consultant to turn away other work and thereby suffer economic loss. The company was found liable to the consultant and the policy met the company's liability, including for the consultant's costs, and the company's own defence costs.

### Employee Crime

1. An employee who prepared cheque requisitions forged the signature of the directors on a cheque. The cheque was made payable to the employee who used the funds to gamble. By the time the fraud was discovered the funds could not be recovered. The policy indemnified the company for its direct financial loss.\*
2. The owners of a retail store had suspicions that an employee who worked on the counter was stealing from the takings so they brought in an expert to investigate. The investigator was able to establish who was committing the fraud, how it was conducted and the amount defrauded. The policy indemnified the company for the loss as well as the cost of the investigator.\*

\*In both cases it would be up to ACE to seek recovery against the employee who committed the fraud.

### Crisis Loss

A company sought cover under the policy for the costs of retaining a crisis management expert when there was suspected product tampering that threatened the major contracts with customers. The crisis management expert was able to convince the customers that the tampering occurred after the product had left the company's premises and did not represent a fault in the company's production processes. The policy indemnified the company for the costs of the expert.





### **Occupational Health and Safety**

An employee was killed in the carrying out of his work duties as a result of a live electrical wire in the employer's premises. Workcover commenced an investigation and later a prosecution of the company and 2 directors for failing to have in place a safe work environment in breach of occupational health and safety legislation and regulations. The policy met the directors' costs of representation for the investigation and prosecution.

### **Outside Directorship - Non Profit Organisation**

A company required one of its directors to sit on the board of an incorporated not-for-profit entity as part of its contribution to the activities of that entity. Some of the members then claimed that the board of the entity incorrectly disbursed the funds available to the entity for its objectives. The costs of the company's director were met under the Outside Directorship extension of its Management Liability policy.

### **Pecuniary Penalties**

1. In the Occupational Health and Safety scenario referred to above, orders were made for improvements to the work place and systems for ensuring safety. When those improvements were not completed by the time a further inspection occurred (through an explicable oversight), proceedings were taken and pecuniary penalties were imposed on the directors for breach of provisions in the relevant OH&S legislation. The policy met the penalties imposed on the directors and the defence costs of the proceedings.
2. A manufacturing company accidentally had a spill of harmful waste from its factory. The Environment Operations Act (NSW) imposed liability on the company and its directors for spillage and waste disposal. Penalties of up to \$500,000 were possible for the directors, but the penalty imposed was \$200,000. The spillage also caused pollution to a nearby waterway, putting the directors at risk of a further penalty of up to \$250,000 and \$60,000 for each day the offence continued. A further penalty of \$200,000 was imposed. The policy indemnified the directors for the penalties.

### **Pollution Defence Costs**

The defence costs of the directors in the pecuniary penalty proceeding under the Environmental Operations Act above were met by the policy. The policy also met the legal costs of the directors in obtaining advice during the investigation which preceded the penalty proceeding.

### **Retired Directors & Officers**

A director retired from the board and sold his equity stake to the remaining directors. At renewal of the policy the remaining directors decided not to renew the policy in order to save on expenses. Five months later the company was placed in the hands of administrators who brought an action against the directors (including the retired director) for trading whilst insolvent. Ultimately the retired director was innocent of any wrong doing however the policy paid for the legal fees incurred in successfully defending the allegation of insolvent trading made against him (and the legal representation expenses incurred in the examinations conducted by the administrators before the proceedings were commenced).

#### **About ACE:**

The ACE Group of Companies® is a global leader in insurance and reinsurance serving a diverse group of clients. Zurich-based parent company ACE Limited has the A+ financial strength rating by both Standard & Poor's and AM Best. This rating is indicative of ACE's strong capital base and financial stability; key attributes in the business of risk. With a history dating back to 1792, the members of the ACE Group have offices in more than 50 countries and a strong presence in Asia Pacific.

ACE Australia delivers a broad range of quality risk products and exceptional service to large corporates and small to medium businesses. In Australia, ACE has wealth of on-the-ground expertise backed by the organisation's global reach and breadth of resources. With over 50 years of operation in the Australian market, ACE is a major supplier of insurance protection to many of the country's largest companies.

Additional information can be found at: [www.aceinsurance.com.au](http://www.aceinsurance.com.au).

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### **Important Note:**

This brochure is intended to provide only a general description of the insurance policy (ACE Elite Management Liability ed. 10/07) and is not intended to modify the actual provisions of the wording. The Claims Examples given above are illustrative, and by way of example, only and should not be taken as an indication of how a particular claim will be assessed by ACE. ACE does not represent that any future matter will be covered by the policy. Cover for a particular claim is determined by all the terms, exclusions and conditions of the policy depending on the specific facts assessed at that time. We recommend that a potential purchaser thoroughly examine our policy offered and consult with an appropriate expert to be certain of the precise nature of its details. Potential purchasers should contact their broker and / or insurance agent for further advice.



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