



DUTY OF DISCLOSURE

INTRODUCTION

The Insurance Contracts Act 1984 requires insurance companies to provide certain information to people intending to insure with them. The information concerns the duty of disclosure of an intending Insured and the effect of particular types of clauses in a proposed insurance policy. Where an Insurance Broker is involved in the transaction, the information is to be provided by the broker.

WHAT INFORMATION DOES AN INSURANCE COMPANY OR BROKER HAVE TO GIVE YOU?

In general terms, the kind of information which an insurance company or broker must give you is as follows:

YOUR DUTY OF DISCLOSURE – CONTRACTS OF GENERAL INSURANCE SUBJECT TO INSURANCE CONTRACTS ACT

Before you enter into a contract of general insurance with an Insurer, you have a duty, under the Insurance Contracts Act 1984, to disclose to the Insurer every matter that you know, or could reasonably be expected to know, that is relevant to the Insurer's decision whether to accept the risk of the insurance, and if so on what terms.

You have the same duty to disclose those matters to the Insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty, however, does not require disclosure of matter:

- that diminishes the risk to be undertaken by the Insurer,
- that is of common knowledge,
- that your Insurer knows or, in the ordinary course of his business, ought to know, as to which compliance with your duty is waived by the Insurer.

NON-DISCLOSURE

If you fail to comply with your duty of disclosure, the Insurer may be entitled to reduce his liability under the contract in respect of a claim or may cancel the contract.

If your non-disclosure is fraudulent, the Insurer may also have the option of avoiding the contract from its beginning.

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

IMPORTANT NOTICES & INFORMATION

For your protection under legislation, we are required to inform you of your duty of disclosure and draw your attention to the following important information.

YOUR DUTY OF DISCLOSURE

Please note that in relation to policies which are not governed by the Insurance Contracts Act 1984 such as Marine Insurance (other than Marine Inland Transit Insurance) and insurance required by statute, the Insured still owes a Duty of Disclosure to the Insurer. This is a duty to disclose to the Insurer before the contract is concluded, every material circumstance which is known to the Insured. Every circumstance is material which would influence the judgement of a prudent Insurer in fixing the premium or determining whether he will take the risk. **The Insurer may avoid the contract from inception if the Insured fails to make such disclosure.** In the case of insurance required by statute, such as Compulsory Third Party Motor Vehicle insurance, the Insurer may have rights of recovery against the Insured in the event of misrepresentation, misstatement or non-disclosure.

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.

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.

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.

Examples of such agreements are the “hold harmless” clauses which are often found in leases, in maintenance or supply contracts from burglar alarm or fire protection installers and in repair contracts. If you are in doubt, please consult your Account Manager.

UNNAMED PARTIES

If you require the interest of a party other than the Named Insured to be covered, you **MUST** request this. Most policy conditions will exclude indemnity to other parties (eg, mortgagees, lessors, principals etc) unless their interest is properly noted on the policy.

CLAIMS MADE DURING THE PERIOD OF INSURANCE

Your attention is drawn to the fact that some policies 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

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.

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 (ie, 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 us 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 Account Manager and/or Account Director will keep you informed, but if at any time you are unsure of any aspect of your insurances, please contact us to discuss the matter. A directory of personnel to contact is included in this website