

## Protecting your client's need to sustain a healthy business

Many directors of clubs and companies in the hospitality industry think they don't need Directors & Officers Liability (D&O) insurance because their company doesn't have shareholders or isn't publicly listed.

The hospitality industry is increasingly exposed to Management Liability claims ranging from employment issues, such as harassment, discrimination and wrongful termination, to business practices issues, such as misappropriation, financial mismanagement and negligence. These threats include claims from employees, minority shareholders, regulators, creditors, environmental groups, club members, customers and suppliers.

Horsell in conjunction with Chartis is pleased to offer you HospitalityEdge™ an essential 'all-in-one' tool set for protecting your client's and their business encompassing directors' and officers' liability, employment practices liability and fidelity insurance. Cover is also provided for membership disputes.

Quite simply, we are proud to offer you the easiest way to assist your client sustain a healthy business with comprehensive yet cost effective coverage.

### PrivateEdge® Advisory Panel

Free Advice - HospitalityEdge™ Policyholders are entitled to contact a PrivateEdge Advisory Panel firm for advice on matters which are relevant to the cover provided under the policy. This service is provided free of charge, provided the advice does not involve a significant time commitment on the part of the member firm.

### Claims Handling Service

If an Insured is unfortunate enough to have a claim made against them, speedy implementation of a good defence strategy is critical. The PrivateEdge Advisory Panel firms have been pre-approved to defend covered claims. In the absence of any conflict of interest, and provided that the member firm's rates and other terms of engagement are reasonable, then consent to any PrivateEdge Advisory Panel firm acting on an Insured's behalf will be granted without delay.

For more information:

[www.horsellonline.com](http://www.horsellonline.com)

Phone: 1300 556 826



### Insuring Covers

- Insured Persons
- Special Excess Limit
- Reimbursement
- Company Liability
- Fidelity

### Additional Benefits

- Bilateral Discovery Period
- Controlling Shareholder
- Crisis Loss
- Defence Cost Advancement
- Discovery Period for Retired Insured Persons
- Fraud Investigator's Costs
- Heirs, Estates and Legal Representatives
- Investigation Costs
- New Companies
- OH&S Defence /Investigation Costs
- Pecuniary Penalties
- Pollution Defence/Investigations Costs
- PrivateEdge Advisory Panel
- Publicity
- Spouses
- Superannuation Trustees

### Key Exposures

- Breach of directors duties, including breach of the Corporations Act
- Occupational Health & Safety breaches
- Investigations by regulators
- Claims by creditors as a result of insolvency
- Employment Liability e.g. wrongful dismissal and/or sexual harassment of employees
- Theft of money by employees
- Breach of a statutory liability
- Breach of intellectual property

### Target Markets

Any private, public unlisted company or other incorporated entities in the hospitality industry.

To obtain a quotation/bind cover

Go to

[www.horsellonline.com](http://www.horsellonline.com)

## Frequently asked questions

### Why should I be concerned about management liability?

You don't have to be a director of a public company to be exposed to management liability. If you are involved in the management of a Pty Ltd company, you can be the target of a management liability claim concerning your day to day managerial responsibilities. Examples include claims made by employees in connection with their recruitment, employment or termination (including harassment and discrimination), investigations and proceedings brought by a regulator for a breach of company law or workplace safety regulations or a claim made by a minority shareholder alleging an infringement of shareholder rights.

### ... but why me?

While your shareholding in the company may be at risk, you may also be exposed to personal liability. Even if you successfully defend a claim, the defence costs can cause financial hardship. When a breach of company law or regulation is alleged, the focus is on your conduct as a manager. You may think that a claim is completely baseless or without merit, but it will still cost money to defend successfully.

### I thought that I could form a company to protect myself?

Directors and other company managers can be personally liable for a breach of their managerial duties and obligations as an accessory to a contravention by a company or in conjunction with a claim against the company. Not only are the directors' and company managers' assets at risk, any spouse, estate, heir or legal representative may also be exposed to a claim for management liability of such director or company manager.

### Won't the company defend or reimburse me?

Indemnities may be provided by a company to directors and company managers for the cost of defending proceedings brought against them. However, an indemnity may not be available to every person. Also, the directors and company managers may need to fund their own defence if the company is unable (because of insolvency or otherwise) or unwilling to make the indemnity available (if there are allegations of fraud or dishonesty or misconduct against the company).

### Does Employment Liability only concern unfair dismissal claims?

No. Directors and company managers can be at risk of claims brought against them by any past, present or prospective employees in connection with recruitment, employment or termination (including claims alleging discrimination, harassment or unlawful termination).

### Who is Horsell Distribution Partners?

Horsell Distribution Partners are a dedicated business unit of Horsell International Pty Limited\* and are recognised as one of Australia's leading wholesale product facility providers.

Our products are managed by an experienced team of professionals who are committed to ensuring that you can consistently provide your clients with leading edge insurance coverage at competitive premiums.

All insurance products are placed with financially strong APRA approved licensed Insurers with an S&P rating of A- or higher.

\* Horsell International Pty Ltd is one of Australia's largest risk management and insurance broking intermediaries providing risk financing, insurance, risk management and claims management solutions. As a member of the Wells Fargo Global Broker Network, we have the capacity to provide excellent local service delivery through more than 10,000 team members, operating from 330 offices across 70 countries with the capability and resources to provide insurance brokerage services in 115 countries around the world.

### Insurance Gaps for the hospitality industry

Even when clubs and companies do take out D&O insurance there are often gaps in that cover. Most D&O insurance is designed for public companies and does not cover claims against the club or company itself. With many private companies owned by directors and their families, this puts directors' personal shareholdings at risk.

Clubs and companies also face other risks that are not covered by D&O insurance – wrongful dismissal and sexual harassment, claims relating to the staff superannuation fund, crisis management costs etc. That's a whole range of risks that need to be covered, which is why we offer HospitalityEdge – Management Liability Insurance for the hospitality industry.

## Examples of conditions that can stunt growth

### Management Liability

#### **Termination / Sexual Discrimination**

Jane was a senior employee who believed that she had worked hard and contributed to the success of the business over a significant period of time. Yet when it came to her annual review, she had the impression that she did not seem to be offered the same opportunities that she would have received if she was not a woman. Jane complained to her manager that she was being unfairly treated. Shortly after, Jane was dismissed. Jane commenced employment proceedings against the company who ultimately settled the matter with a payment to Jane for an amount in excess of \$80,000 with legal costs exceeding \$35,000.

#### **Harassment**

An incident occurred at a company Christmas party. One of the employees complained of harassment. The employee was concerned that the complaint was not taken seriously and subsequently commenced proceedings which alleged that the company had failed to prevent the incident and take appropriate action when it was reported. The claim was settled out of court for more than \$50,000 with a similar amount spent on legal costs.

### Reimbursement Cover

#### **Trade Practices Act claim**

An importer sourced and extensively advertised the sale of a lifestyle product. The advertisements caught the attention of the Australian Competition and Consumer Commission (ACCC) who brought an action against three company directors for misleading and deceptive conduct in breach of the Trade Practices Act 1974. The directors incurred a liability in excess of \$150,000 for legal costs and damages awarded against them by the Federal Court of Australia.

#### **Licensing claim**

The Australian Securities and Investments Commission (ASIC) brought an action against persons who were dealing with overseas entities that were not licensed or otherwise authorised to carry on business in Australia. No damages were sought by ASIC, though an award was made against the person's involved to each pay their share of the ASIC's legal costs which amounted to \$40,000. One of the companies involved in the action incurred more than \$50,000 in defence costs on behalf of the relevant person's costs.

### Fidelity Cover

A company found accounting irregularities in its payment systems and in subsequent investigations it discovered the theft of \$400,000. It turned out that an employee had misappropriated the money and deposited it into a personal bank account. The costs of a fraud investigator were incurred to investigate and determine the quantum of the loss.

### Why choose Chartis?

Chartis is a world leading property-casualty and general insurance organisation serving more than 40 million clients in over 160 countries and jurisdictions. With a 90-year history, one of the industry's most extensive ranges of products and services, deep claims expertise and excellent financial strength, Chartis enables its commercial and personal insurance clients alike to manage virtually any risk with confidence.

Operating in Australia since 1957 Chartis has offices in Sydney, Melbourne, Perth and Brisbane. With over 50 years of experience in the Australian market, we currently protect many of Australia's largest companies, as well as many smaller businesses, professionals and consumers. During this time we have established an enviable reputation for developing market leading and innovative products that keep in step with new trends and directions in business. Our quality products, together with superior service, help us to achieve our goal of strong, sustainable relationships with both brokers and clients. We have one of the widest commercial product ranges in the market and will continue to respond when it really matters.

#### Important Notes:

1. The availability of coverage is subject to underwriting assessment.
2. Availability of coverage and the terms and conditions thereof may be subject to regulatory approval and/or underwriter's determinations.
3. The terms and conditions available may vary depending on the location of the applicant.
4. Any claims examples stated herein are purely fictional and are for illustrative purposes only. Any relation to or reference to any actual person, party or events is purely coincidental. It is important to note that each actual claim is unique. The nature of the claims examples herein (if any) should not be construed as any comment on, or confirmation or extension of, coverage for any past, present or future claim. Furthermore, these examples should not be relied upon to predict the outcome of any actual claims as all claims are evaluated on their own individual merits and subject to the actual terms and conditions of the relevant insurance policies.
5. This document is for your information and the description herein is a summary only. It does not include all terms, conditions and exclusions of the policies described. Please refer to the actual policies for complete details of coverage and exclusions.
6. This brochure is general in nature and should not be treated as advice. Should you require any advice on your insurance or coverage requirements you should consult your professional insurance advisor.

Insurance products and services provided by American Home Assurance Company, ABN 67 007 483 267, AFSL 230903, trading in Australia as Chartis. You should read the Product Disclosure Statement and consider the PDS in light of your personal circumstances, prior to making any decision to acquire the product. Horsell International Pty Limited, ABN 65 003 922 487, AFS License No 235130, distributes this product on behalf of American Home Assurance Company. In effecting this contract of insurance Horsell may be acting under an authority given to it by the insurer and will be effecting the contract as agent of the insurer and not the insured.