



Statutory Liability Insurance (SLI)

The QBE SLI product has been developed to protect companies and individuals against liability for statutory fines and penalties which result from a breach of legislation, provided that such breach is not attributable to or in consequence of any wilful, intentional or deliberate act or caused by gross negligence or recklessness or by a dishonest, fraudulent act or omission.

SLI is a 'stand alone' insurance product with no prerequisite that any other liability insurance be in effect (such as Directors & Officers Liability or D&O Supplementary Legal Expenses).

At both federal and state level, Australian businesses face a vast array of legislation. An increasing trend is to impose what is called 'no fault' liability in the form of fines or penalties on companies and individuals in breach of such legislation.

The most common terms used to describe no fault liability are:

1. Strict Liability, where a breach is deemed to have been committed by a company or individual (subject to limited defences) irrespective of the intent or recklessness with which the conduct was committed.
2. Vicarious Liability, where a company or an individual is held liable for a breach of legislation by an employee irrespective of whether the employee intended the act or the company or individual authorised it.

Some of the typical federal and state laws where companies and individuals experience the no fault regime include:

- Occupational Health & Safety Legislation (e.g. NSW Occupational Health & Safety Act 2000)
- Environmental Law (e.g. Protection of the Environment Operations Act 1997)
- Employment Practices Legislation (e.g. Section 349 of the Workplace Relations Act)
- Specific Industry Legislation such as the Telecommunications Act 1997 (Section 575)
- Companies Law (e.g. Corporations Act 2001).

What the Policy responds to

Any monetary sum (Penalty) payable to any Regulatory Authority consequent upon breach of an Act, plus legal costs and associated expenses incurred with the investigation, defence (including appeal or resisting appeal) and settlement of any Claim.

What the Policy will not respond to

- Wilful, intentional or deliberate breaches
- Wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any Act
- Gross negligence or recklessness
- Dishonest, fraudulent, or malicious acts, or omissions.

Directors & Officers Civil Penalty Regime (Pecuniary Penalty Order)

Many of the general duties of Directors & Officers of a company are subject to the Civil Penalty Provisions. This is another area of exposure that may be covered by the SLI Policy. A breach of a Civil Penalty Provision can result in a pecuniary penalty order being levied against a Director or Officer of a company despite the fact the court may acknowledge that the director or officer had acted honestly in the matter. Such penalties can be as much as \$200,000 for each contravention.

Examples of some of the Civil Penalty Provisions:

- Failing to act in good faith & for proper purpose (Section 181)
- Failing to exercise care & diligence in discharging their duties (Section 180)
- Errors in financial reports (Section 344)
- Allowing a company to trade while insolvent (Section 588g).

Claims Examples under the SLI Policy

- Two companies were fined a total of \$305,000 following the death of a Sydney warehouse worker. The warehouse worker died in hospital from head injuries suffered when hit by electrical goods which fell from a forklift on one of the company's premises.
- Audits by Occupational Health & Safety authorities may result in penalties even if a worker has not been injured following a breach of any workplace safety legislation.
- EPA Victoria fined a waste management company (operating a household waste landfill) after it breached its licence conditions. The licence breach was considered to increase the likelihood of pollution of groundwater and causing visual impacts for surrounding land users.
- The NSW Land and Environment Court fined a golf club \$250,000 and ordered it to fund costs and works of \$314,289 over its role in a devastating pesticide spill in a coastal lagoon. The Court rejected the golf club's not guilty plea where it was argued the club was not responsible for the pollution caused by a former employee. However the Court found the club was also to blame as it was responsible for taking steps to ensure its activities and staff did not harm the environment.
- A Brisbane Magistrates Court fined a hotel after a guest fell to his death on a set of the hotel's stairs. The fine under the Workplace Health & Safety Act 1995 amounted to \$30,000. The hotel also incurred legal costs in the investigation of the incident.
- A company director authorises the allocation of shares in contravention to the companies constitution. The Australian Securities & Investments Commission bring an action to rectify the breach and subsequently impose a pecuniary penalty of \$200,000 against the director in relation to that breach. While the court did not dispute the directors belief that they were acting in the best interest of the company, the legislative standard of failing to act for proper purpose was not fulfilled.
- A Cairns diving company was fined \$20,000 and ordered to pay costs after a diver died during a diving trip. It was found that the air supply line to the diver was weaker than required by Australian Standards.
- A snack food manufacturer was fined \$120,250 by the NSW Industrial Relations Commission following an accident in which a worker lost an arm after being dragged into the rotating blades of a dough cutting machine. An inspection by Workcover NSW after the incident revealed that a guard device designed to fit over the cutting trough had been removed and its safety mechanism disabled.

Complementary Insurance

While the QBE SLI product is a stand alone product, it is designed to comfortably sit alongside the QBE Supplementary Legal Expenses product (which is considered in conjunction with a Directors & Officers Liability policy). The Supplementary Legal Expenses policy is designed to enhance a Directors & Officers Liability policy through a 'difference in conditions' and 'entity cover' approach.

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

