austbrokers
PROFESSIONALSERVICES

Important Information about your Insurance

Understanding Policy Terms and Conditions

It is essential that you read and understand all the policy documents we provide you including the policy wording/Product Disclosure Statement, endorsements, and coverage summary, which contain the terms of your cover, exclusions, applicable limits, and sub-limits. If there are any errors in the policy documents or the cover is not suited to your needs, you must inform us immediately. Failure to read and understand your policy documents may result in uninsured losses.

Duty of disclosure / Duty to take reasonable care not to make a misrepresentation

Other than in the case of consumer contracts (as defined in Part IV of the Insurance Contracts Act 1984 (Cth) (ICA)), before you enter into a contract of insurance, you have a duty to disclose anything that you know, or could reasonably be expected to know that may affect the insurer's decision to insure you and on what terms. You do not need to tell the insurer anything that reduces the risk, or is common knowledge, or that the insurer already knows or should know as an insurer, or where the insurer has waived your duty of disclosure.

In the case of consumer contracts (as defined in Part IV of the ICA), you have a duty to take reasonable care not to make a misrepresentation about the risk to the insurer. This means you need to answer all questions honestly, accurately and completely. Examples of matters that should be disclosed are:

- any claims you have made in recent years for the particular type of insurance;
- cancellation, avoidance of, or a refusal to renew your insurance by an insurer;
- any unusual feature of the insured risk that may increase the likelihood of a claim; and
- circumstances which may give rise to a claim.

Whichever duty applies, you owe the relevant duty to the insurer (both in respect of information about you and information you provide about others) up until the time the insurer agrees to insure you. You have the same duty before you renew, extend, vary or reinstate a contract of insurance.

You need to tell us if you have disclosed information in the application process and something has happened that makes that information no longer accurate, or new matters arise that would require disclosure under your duty.
You must do this before the policy has been entered into (or renewed, varied, reinstated or extended as applicable).

If you are uncertain about whether or not a particular matter should be disclosed to the insurer, please contact us.

Non-disclosure and misrepresentation

If you fail to comply with your duty of disclosure, or in the case of consumer contracts fail to take reasonable care not to make a misrepresentation in disclosing information to us, the insurer may cancel your contract or reduce the amount that it is required to pay you if you make a claim, or both. If your failure is fraudulent, the insurer may refuse to pay a claim and treat the contract of insurance as if it never existed.

Utmost good faith

Every contract of insurance is subject to the doctrine of utmost good faith which requires the parties to the contract to act towards each other honestly and fairly, avoiding any attempts to deceive in respect of any matter arising under the contract. The insurer may refuse to pay your claim, cancel your policy, or both if you fail to act with the utmost good faith.

Claims made

If your policy is on a claims made basis it will provide cover for claims first made against you and notified to the insurer in writing during the period of insurance, provided that the act(s) resulting in the claim occurred after any retroactive date specified in your insurance schedule. In order to ensure you can claim under the policy, please report all incidents that may give rise to a claim against you to the insurer immediately after they come to your attention and before the policy expires.

Occurrence basis

if your policy is on an occurrence basis, then the policy that will respond is the policy that was in force at the time of the incident or when the injury or damage occurred.

Retroactive date

If the policy has a retroactive date, then only incidents or damage that occur or are alleged to have occurred, on or after that date is covered under the policy.

Underinsurance

Underinsurance occurs when you have not insured the full repair or replacement value of your property/asset. If you are underinsured, your insurer may rely on any 'Average' or 'Co-insurance' clause in the policy. This means you may not receive full compensation for your loss and would have to bear part of the loss yourself.

Average or Co-Insurance

Property policies and some other policies contain an "average" (sometimes called "co-insurance") clause. Under this clause if the sum insured under your policy does not cover the full cost of your loss, your claim may be reduced in proportion to the amount of this under insurance. If you do not want the average to apply, you must ensure that the level of your insurance is adequate whenever you take out or renew a policy. As an illustration of how the Average or Co-Insurance clause is applied:

For example: the full (replacement) value is $1,000,000 and the sum insured is $500,000. If the policy has an 80% co-insurance requirement, you must insure it for at least $800,000. If there is a claim, for say $100,000, the amount payable under the policy because of the Average or Co-Insurance clause would be reduced proportionately. In this example, a $100,000 claim would be payable at 62.5% or $62,500 (before any excess or other policy adjustments), being $500,000/$800,000 x $100,000.

Sanctions

We are unable to provide any of our services to the extent that the provision of such services will violate applicable law or expose us to any sanction, prohibition or restriction under the UN Security Council Resolutions or under other trade or economic sanctions, laws or regulations.

Subrogation

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 third party, or another party who would be otherwise liable.

Examples of such agreements are the "hold harmless" or "release" clauses which are often found in leases, in maintenance or supply contracts and in service/repair contracts. If you are in doubt, please consult us.