STRONGER SUPER REFORMS AND TRUSTEE LIABILITY INSURANCE IMPLICATIONS

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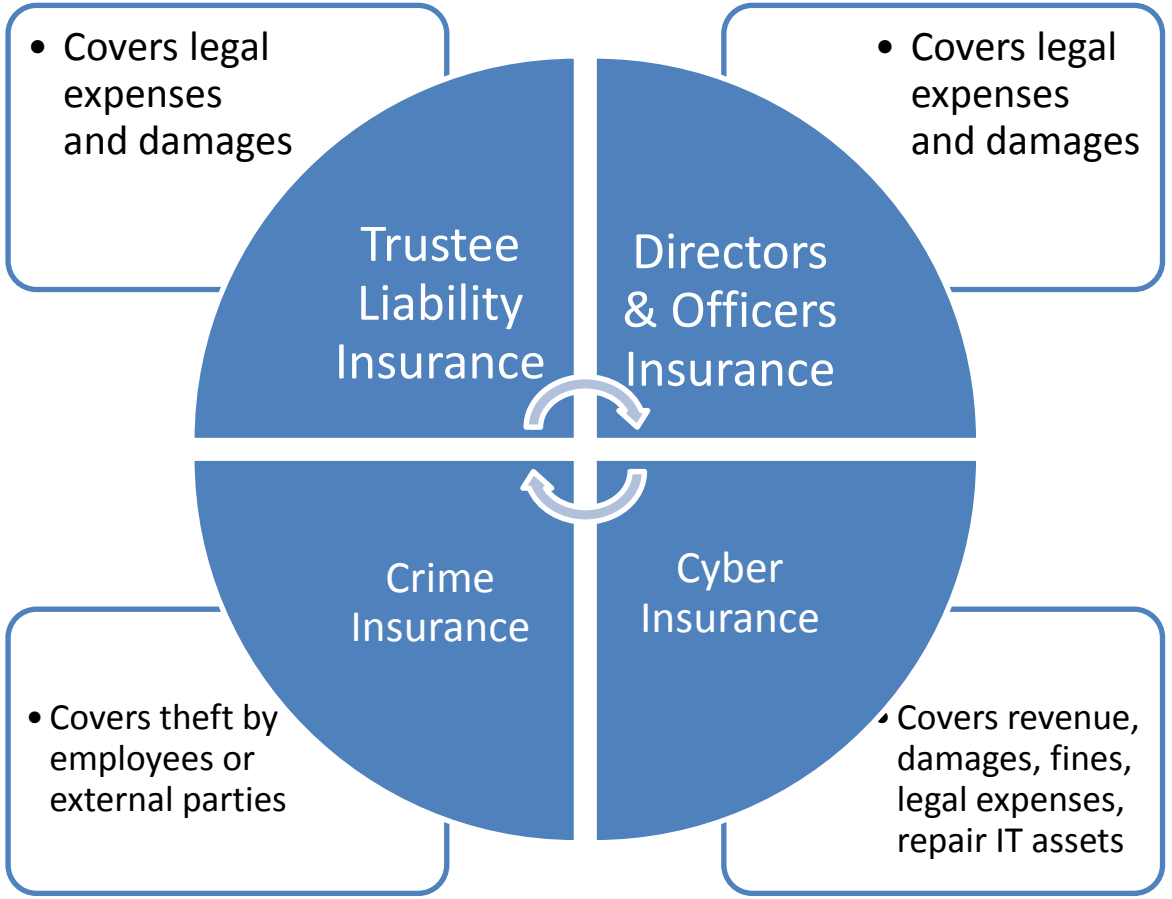
Overview - Trustee Liability Insurance

- Changing risk environment
- What is trustee liability insurance?
- Tailoring your cover – Insurable Risk Profiling
- Trustee liability insurance protects fund assets
- Case examples

Changing Risk Environment

- **For trustees:**
  - S52 and S52A of the SIS Act / MySuper
  - Super Stream Gateway
  - Prudential Standards
  - Reporting Standards (eg Product Dashboard)
  - Fund mergers
- **For insurers:**
  - Cyber risk
  - Administration
  - Financial planning
  - Fear of representative proceedings (class actions)
  - In-house investment management

What is Trustee Liability Insurance?



The key questions

- Is your cover adequate?
- Do you have enough cover?

Three common methods to answering:

1. The past - What did we buy last year?
2. The industry – What are others doing?
3. Risk based – What is appropriate for our fund?

Insurable Risk Profiling / Gap Analysis

What is it?

An engineered process of analysing insurable risk and comparing those risks to the insurance programme.

OPERATIONS/INSURANCE/ADMINISTRATION

Risk Ref	Risk Title	Potential Causes		Property Damage (Risk Rating)	Personal Injury (Risk Rating)	Pure Economic Loss (Risk Rating)	Loss Estimate ($000's)	Controls	Summary of Cover	Insurance response	Comments on insurance response	Action
TP-1	Disasters/Major Event	Losses resulting from: a. Inadequate emergency response b. Boiler explosion c. Gas explosion d. Dust explosion d. Act of terrorism e. Building collapse f. Structural collapse g. Crowd crush	A fire in the main location, and evacuation procedures fail, resulting in third party injury and death. There is the potential for extensive defence costs.	4	5	5	#REF!	Business Continuity Plan in place outlining various alternatives in the event of a loss.	Covered by Public Liability Policy	Insured		
TP-2	Site Safety	Losses (localised) arising from: a. Slips, trips and falls b. Working from heights c. Electrocution d. Equipment failure (e.g. boilers, lifts, escalators etc.) e. Assets creating specific safety issues (e.g. ponds, dams and viewing platform etc.) f. Labour hire g. Emergency first aid h. Exposure to chemicals (asbestos, solvents etc.) i. Cooling towers j. Handling of waste k. Combustible dusts (localised)	Localised injury involving three or four third parties. See Disasters for a large scale event. Should there be any labour hire - there is the potential for costs to be incurred as it is XYZ's duty of care to ensure they are working in a safe environment (potential for the recovery of workers compensation costs etc.).	2	5	2	#REF!	OH&S Reviews undertaken.	Covered by Public Liability Policy	Insured		
TP-3	Goods in Care, Custody and Control	Losses from: a. Leased equipment (including IT, plant, artwork etc.) b. Property of any third party (including contractors equipment held on premises)	At worst case would assume minor amounts of damage to leased property.	1	0	0	#REF!		Public Liability insurance	Insured		
TP-4	Misleading Communication	Misleading communication through: a. PDS b. Inaccurate reports, calculators, statistics, media releases, shareholder information etc. c. Advice to shareholders, government, regulators, finance/commercial partners etc.	A worst case scenario/catastrophic loss would be misleading information to members and other stakeholders. There could be implications for auditors, accounts and to professional advisors (legal etc.). There are very strict disclosure requirements as discussed. A worse case scenario has the potential for ASIC or APRA implications - resulting in operating licence issues, investigation initially. Worst Case - a reportable breach. losses including compensation claimed, legal expenses and regulator inquiry. Would also involve reputational damage (not insurable) and physical loss/defence costs.	0	0	5	#REF!	Use of an external auditor to regularly review financial transactions and data. Conflicts of Interest policy.	$15,000,000 shared limit for Trustee / D&O Insurance. If the trustee limit is eroded this policy can be reinstated to the full policy limit for trustees only. $50,000 Excess	Partially insured	A reportable breach could lead to an enforceable undertaking upon XYZ - the costs are not covered of complying. The limit of liability does not appear adequate to cover this risk. No cover exists for reputational damages.	1) Consider seeking enforceable undertaking extension of cover to the trustee insurance. 2) The maxiumum forseeable loss is identified at $50,000,000 this subswtantially exceeds the current limit of liability. consider higher options 3) Consider whether insurers would offer a reputation clause extenstion that would cover costs (public relations).

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Protection

Corporate Trustee

1. Operational Risk Reserve
   - What circumstances can it be accessed?
   - What affect on insurance?
2. Trustee Liability Insurance
   - When can cover be accessed?
   - What are some key limitations?

Protection

Director

1. Deed of access and indemnity
   - Ensure your deed of indemnity offers the broadest protection
     - Indemnity
     - Access
     - Insurance
   - Limitations of a deed of indemnity
2. Directors and Officers Liability Insurance
   - Ensure your D&O insurance offers the broadest protection
     - Have you got enough cover?
     - When can cover be accessed?

Case Example 1

Successor Fund Transfer

Would your deed of indemnity or D&O insurance respond?

- This is an interesting example, imagine:
- Litigation arises years after the corporate trustee is extinguished
  - **Deed may not respond.**
  - **D&O insurance should respond but it is very important that the policy has an appropriate period of cover (eg 7 years or longer).**

Case Example 2

Litigated Group Risk Claim

Would your trustee insurance respond in the event of litigation against the trustee?

- Will your group risk insurer indemnify the fund for legal costs, damages or an adverse award of costs?
- What is your deductible?
  - Trustee insurance in this example will only respond to legal expenses

Case Example 3
Class action against director

Would your deed of indemnity or D&O insurance respond?

- The limit of cover is a key consideration
- Nil deductible
  - Deed may not respond.
  - D&O insurance should respond.

Class actions and litigation

Entity	Description
Centro	A settlement of $200 million was agreed to by parties to the class action. This claim involved allegations that continuous disclosure obligations and the Corporations Act was breached and misleading and deceptive conduct by failing to adequately disclose debt obligations, risk of refinancing debt and profit forecasts.
Aristocrat Leisure	Retail investors and financial institutions participated in this class action. There was a failure to meet continuous disclosure requirements. Misleading and deceptive conduct allegations relating to profit forecast as well as failure to disclose relevant materials contributed to the $144 million settlement.
AWB Limited	Shareholders alleged deliberate concealing of contractual arrangements (Oil-for-Food). Settlement of $39 million.
GIO class actions	The Board rejected a takeover offer by AMP on the grounds of an inadequate offer, but forecast provided to shareholders was wrong by approximately $1 billion. The settlement to shareholders was $112 million, with costs unknown.
Various	Regulatory investigations by APRA, ASIC and the ACCC. Directors required to attend prior to any allegation being made.

Our Services

- Group Risk Insurance
- Professional Risks
- General Insurance
- Group Income Protection (EBA)
- Employee Benefits
- Affinity Programs
- Advisory and Consulting

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