



# MIDDLE MARKET BUSINESS INSURANCE UPDATE

(<\$250m turnover, 20+ employees)

COVID-19 considerations

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Insurance | Risk Management | Consulting



Middle market businesses (<\$250m turnover, 20+ employees) have specific insurance needs and risk exposures which require careful consideration, particularly in light of the current COVID-19 pandemic environment.

Your insurance program needs to remain responsive to the prevailing market conditions while also taking into consideration the future needs of your business. Therefore, it is important to maintain adequate insurance cover and understand emerging risk exposures.

This guide seeks to provide information on the scope and limitations of commercial insurance policies for middle market businesses and perspectives specific to COVID-19, including:

1. Management Liability
  - o Directors and Officers' insurance (D&O)
  - o Employment Practices Liability (EPL)
  - o Crime
2. Public Liability insurance
3. Property damage and industrial special risks
4. Workplace Health and Safety
5. Cyber risk and data security

Also included in the latter part of the guide is additional information on general risk related support, including:

- Vacant premises during government restrictions
- Availability of pandemic insurance cover
- Supply chain disruption; and
- Making a COVID-19 claim.

Please get in touch should you have any questions and/or concerns relating to your current insurance program.

#### Important:

Please contact your Gallagher broker or account manager if any of the following scenarios apply to your business:

- **Reducing insurance cover:** you have made, or are considering making, changes to your insurance cover, including limits of liability;
- **The scope of business activity changes,** including moving aspects (or all) of your business to an online trading platform and remote working arrangements; or
- **Cash flow concerns** that are likely to impact your ability to continue trading and/or require structural changes to your business operation.

We are well positioned to help you navigate through the current period of change, disruption and uncertainty and ensure you maintain adequate (and appropriate) levels of insurance cover.

#### Looking for more information?

Visit: [ajg.com.au/pandemic](https://ajg.com.au/pandemic)



## Maintaining adequate insurance cover and understanding COVID-19 implications

Insurance plays a critical role through all stages of business life, and during times of change and vulnerability insurance remains essential to business operations and continuity. Whether the insurances apply to your business assets, employees, clients and customers or members of the general public you service, core insurance remains vital to the ongoing protection of your business.

When assessing cash flow and other business continuity considerations some businesses may consider reducing limits, adjusting the breadth or scope of cover, or sometimes cancelling insurance cover altogether.

We strongly recommend contacting your Gallagher account manager to discuss any material changes to your insurance program. Changes to your insurance program may expose your business to undue risk and advice should be sought to fully understand the impact of making any decisions.

With current uncertainty for businesses throughout Australia, this guide provides key insurance information about these business insurance essentials.

### Steps you can take today:

#### 1. Review your current insurance program

Working closely with your Gallagher account manager to resolve questions, address concerns and review any adjustments required to current levels of insurance cover to reflect changes in the scope of business activity and the prevailing trading conditions.

Gallagher is working closely with insurers to achieve the best possible outcome for clients. Our priority is to provide an interim solution that ensures clients can continue to adapt to the evolving commercial environment and maintain appropriate levels of insurance cover during this time.

#### 2. Monitor and follow your state and federal government alerts

Released via their websites, monitoring and following state and Federal Government alerts will help you to remain across important legislative and regulatory changes, and updates on economic and financial stimulus packages available to assist you.



# Management liability insurance

## General information

Management liability is a comprehensive package policy that addresses the various risks in managing a business. The policy protects a company and its directors and officers against legal liabilities and statutory obligations.

A range of provisions fall under the management liability 'umbrella', including:

1. **Directors' and Officers' Liability (D&O)** – provides cover for costs associated with defending directors, managers and employees against claims arising from their actions and decisions. Claims and investigations may be brought by competitors, suppliers or customers or regulatory bodies;
2. **Employment Practices Liability (EPL)** – covering employee related claims including failure to promote and sexual harassment claims;
3. **Statutory fines relating to unintentional breaches of workplace health & safety laws;** and
4. **Crime** – covering employee fidelity issues (fraudulent activity, money and property theft)

Actions can be brought against a company, its directors, officers and employees by a number of parties including: regulators, employees, competitors, creditors, shareholders, clients and liquidators.

Detailed information is provided below on the prevailing COVID-19 specific response from each of the management liability provisions, as well as a range of core insurances relevant to middle market or commercial businesses.

Please note this information is subject to change and it is recommended that you discuss your specific situation with your Gallagher account manager at the earliest available opportunity.

## Directors' and Officers' Liability Insurance (D&O)

With increased scrutiny of compliance and governance practices becoming more likely in the current environment, a regular review of your risk management framework is strongly advised.

Important points to consider:

- Supply chain disruption and the business impact associated with project delays;
- Maintaining financial and contractual obligations; and
- Adhering to compliance requirements set out by ongoing legislative and regulatory change.

Allegations of unsatisfactory risk management, workforce management, and contingency planning are likely to trigger D&O claims and regulatory investigations.

Tight management of cash flow and supplier agreements is also important in light of growing economic uncertainty. We recommend maintaining regular contact with customers, shareholders and suppliers, and contacting your Gallagher account manager should anything arise that is likely to trigger a claim.

Potential insolvency and personal liability for directors, who may be held personally liable for debts incurred by the company when it is unable to pay those debts should also be considered. Understanding how to mitigate these risks should be factored into business continuity plans as standard practice.

### Exclusions

Bodily injury and property damage are generally listed as exclusions in standard D&O policy wordings. However, defence costs may still be covered under the policy depending on the specific circumstances.



## Employment Practices Liability (EPL)

Given the nature and complexity of managing a workforce, employers are quickly responding to many different implications of COVID-19, including return to workplace planning as the lockdown restrictions are gradually lifted.

EPL insurance is designed to respond to risk exposures associated with the failure to take appropriate steps to protect employees. Claims may therefore arise due to:

- An employee becoming infected with COVID-19;
- Undue stress created by the poor or ineffective management of the COVID-19 crisis;
- Businesses with variable risk management procedures that impact teams and locations differently, giving rising to a claim of 'discrimination';
- Loss associated with, or arising from, a period of enforced self-isolation; and
- Breach of privacy and/or emotional distress.

EPL exclusions, which may become relevant to your specific situation:

- **Bodily injury:** most EPL policies contain exclusions for loss related to bodily injury, however, there is generally coverage for claims relating to mental anguish or emotional distress alleging an EPL breach. In such case, we recommend contacting your Gallagher account manager to discuss the scope of cover provided under your EPL policy wording.

### Looking for additional support?

Gallagher's [Workplace Risk practice](#) is equipped to manage and respond to workplace risk and workers compensation questions, and are actively working with Australian organisations to support them with structuring remote workplace health & safety.

Visit [workplacerrisk.com.au](https://workplacerrisk.com.au).

## Crime

Remote working, growing concerns about continued employment / loss of income and evolving work practices increase the risk of loss associated with fraudulent or dishonest practices by employees, which may result in financial loss or reputational impact.

Actions that can be taken to safeguard your business include:

- Ensuring comprehensive background checks are undertaken when hiring new employees and that employment contracts include explicit obligations to operate with integrity;
- Appropriate HR policies and procedures that set out clear expectations on employee conduct and handling of commercially sensitive information;
- Ensuring anti-bribery and corruption policies and training are in place that outline expected standards of professionalism and integrity;
- A review of payment / money handling procedures; and
- Dishonesty/Willful Conduct exclusions may remove cover for claims arising from specific acts, such as willful breaches of statute, dishonest conduct or deliberate fraud. In many cases, a willful blindness to COVID-19 related legislation could trigger the exclusion.



## Public liability

Business premises that are closed down or partially trading (e.g. a restaurant offering takeaway or delivery services) are still exposed to risks that may be covered by public liability insurance.

Public liability insurance also covers public areas such as car parks, and business owners are liable for injuries occurring in these spaces. Business premises exposed to COVID-19 contamination should undertake deep cleaning and sanitisation by an accredited service provider. This may be provided under your property insurance cover.

Public Liability insurance should be reviewed and considered alongside broader business interruption and property insurance cover to ensure risk exposure is appropriately managed and mitigated.

## Cyber risk and security

As businesses operate under remote working and the increased use of online trading conditions, the number of malicious cyber incidents reported in Australia is increasing. Cyber risk extends to lost passwords, credit cards, voicemail and ID cards that enables a perpetrator to access information that enables fraudulent activity.

Maintaining robust IT security and ensuring data and password management protocols are in place, is essential. This includes clear guidelines on prohibiting the sharing of login credentials to manage the workload or gain access to information from an employee unable to work as normal due to COVID-19 exposure or infection.

Some other practical cyber security precautions that can be taken include:

- Assessing levels of IT and computer literacy and providing online training and support, as appropriate
- Ensuring directors, executives and employees are fully aware of compliance requirements for privacy, data security, and confidentiality laws in handling sensitive, health-related information they collect from their employees, as well keeping remote working staff cyber secure.

It is important to regularly review cyber insurance coverage and contact your Gallagher account manager to discuss any concerns or questions, including where cover may no longer be appropriate to meet changing business requirements. Insurance will also assist with managing the impact of cyber-related business interruption, including mandatory breach notification and responding to third-party legal action.





## Property damage and business interruption

The Industrial Special Risk (ISR), Business Pack, and Commercial Pack policies provide cover for damage to assets owned by your business. The Business Interruption (BI) section of these policies covers include loss of profits, revenue or rentals and/or increased expenses caused by 'damage' to insured property, as well as loss of profits, revenue or rentals and/or increased expenses caused by contingent damage to property at the premises of suppliers, customers and utilities.

A claim of 'damage' to the insured property is based on an event causing impact not for example damage caused by lack of maintenance or deterioration of the building. 'Damage' caused by pandemics or other communicable diseases are stated exclusions on standard policy wordings.

Cover may be subject to sub-limits which essentially restrict the amount recoverable to a lower amount than the limit set out in the overall policy. BI for example may have time limits to the length of the disruption such as 48 hours before a claim can be initiated.

In the event of the business premises being damaged by an insured peril such as storm, fire or civil unrest, business interruption cover (either as a stand-alone policy or as an ISR policy section) would generally cover the loss of gross profit and increased cost of working. Specific terms & conditions apply in policy wordings that must be reviewed to determine whether a claim can be made under the purchased insurance.



## Workplace Health & Safety

Business owners and employers are faced with an evolving risk profile as their workforce operates from remote working conditions and potential workers' compensation claims arising from COVID-19. Early consideration should be given to how to manage the return to workplace transition to ensure that your employees have access to a healthy and safe working environment.

Workplace health & safety considerations include:

- Open and transparent employee consultation to assess individual workplace requirements, identifying associated risks, and implementing appropriate measures to address those risks;
- Executives, managers and employees working together to adapt and promote COVID-19 safe work practices, consistent with advice from health authorities, to ensure their workplaces are ready for the social distancing and exemplary hygiene measures that will be an important part of the transition;
- The promotion and embedding of safe working practices, ensuring adherence to the prevailing government advice, including social distancing and hygiene measures; and
- Planning and preparation for the possibility that there will be cases of COVID-19 in the workplace and being ready to respond immediately, appropriately, effectively and efficiently, and consistent with advice from health authorities.

## Trade credit

Managing credit risk in the prevailing pandemic environment is critical, and should form part of a business continuity plan. Trade credit insurance can be purchased to cover individual customers or an entire customer base.

The majority of trade credit insurance policies have exclusions relating to natural disasters and government decrees – both of which are relevant to COVID-19 and other pandemics. Government mandated lockdowns of entire industries and sectors may also trigger a policy exclusion and each situation should be considered on its own merits.

Liquidity issues and restricted access to capital markets, major supply chain disruptions, contracting consumer demand and the increasing risk of default, require an ongoing review of your cash flow position and maintaining regular contact with suppliers and customers. Implementing more rigorous credit checks and inserting protective clauses into supplier contracts are two ways to respond to this situation.

More information is available via our Trade Credit Insurance update, visit [ajg.com.au/pandemic](https://ajg.com.au/pandemic).

### Important note

Insurance cover is generally tailored to suit the specific requirements of a particular business. As such, policy wordings, limits of liability and the scope of cover will vary between insurers. Commercial liability policies generally exclude pandemic or infectious diseases, and we actively encourage clients to review policy wordings to identify and understand the implications of exclusions. Please seek advice from your Gallagher expert to ensure you fully understand the scope of insurance cover applicable to your business. Visit [ajg.com.au/pandemic](https://ajg.com.au/pandemic).



## Additional information

### Property and asset risk exposures during lockdown of business premises

Some lockdown restrictions are preventing many businesses owners from regularly checking the safety and security of their premises. Selected insurers have introduced degrees of flexibility based on owners being able to evidence that robust risk management and security provisions are in place.

For businesses we are advising clients, where possible, to take the appropriate measures to secure the properties, periodically monitor and where possible mitigate loss. Vacancy coverage limitations may exist within your property policy and these need to be addressed with the carrier as soon as possible.

If you have a mortgage, bank loan and/or have a commercial lease, it is important to check the terms & conditions attached to those agreements, as some contracts will stipulate having adequate insurance cover in place.

Property related claims will generally be reviewed on a case-by-case basis, and there may be separate guidelines in place specific to managing higher hazard risks.

### Supply chain disruption

Given the current State restrictions and international travel limitations, which has in turn impacted the normal flow of imports and exports, the flow-on impact is likely to involve disruption to your suppliers and the delivery of materials, goods and services to your business and its customers.

Important actions to mitigate credit risk, include:

- Reviewing and implementing your **business continuity plan** and **communication plan** (if not already) and maintaining regular (and timely) communication with suppliers and customers to advise of ongoing changes;
- A detailed review of **cash flow position** and **business plans**, including an assessment of supplier and customer credit status. This will help to maintain optimal cash flow, and also managing creditors, loans and financing arrangements proactively; and
- Subscribe to news alerts released by the Australian Government outlining **economic stimulus packages** available to support you at this time. There are a range of options available (subject to eligibility criteria) including tax deferral, asset write-off, investment incentives and support for employers to retain their workforce.

### Are there policies that cover a COVID-19 or pandemic event?

There may be some coverage under certain environmental insurance policies for deep cleaning or decontamination of business premises, but each policy is unique and needs to be individually reviewed. Please get in touch to discuss any event that is likely to trigger a claim on your insurance policy.

Before engaging a cleaning services provider, we recommend that you get in touch to confirm whether costs can be recovered under your policy.

### Lodging a COVID-19 related claim

Lodging a COVID-19 related claim requires the submission of documentation and supporting information including details of losses, just like any other claim.

Tracking and reconciling this information while losses are being sustained in real time can be challenging.

We recommend starting the documentation process early, including the logging of dates, specifics about losses, and any other information material to the claim. The information insurers require may vary depending on the type and scope of cover, and getting in touch should additional guidance be required on specific aspects of your claim.

More information on submitting a claim is available at [ajg.com.au/claims](http://ajg.com.au/claims)

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