

## KEEPING YOU INFORMED

### BIOSECURITY

SUREWISE understand that Biosecurity, particularly in Queensland is a prevalent issue for AERA – particularly with the changes in the Biosecurity Act which will come into effect of 1<sup>st</sup> July 2016.

The AERA insurance program has two policies which could respond in the instance of a biosecurity breach/contamination.

#### 1) **Association Liability:**

Association liability is a packaged insurance policy which is designed to cover legal defence costs as well as compensation and legal costs payable to the claimant following an allegation of a "wrongful act" by the Association and/or persons insured under the policy.

The policy only covers bodily injury or sickness claims in the instance that it is an Occupational Health and Safety matter.

This policy includes Statutory Liability cover which "means pecuniary penalties awarded in and under the laws of the jurisdictions of Australia and New Zealand against:

- a) An Insured Person for any civil offence
- b) An Insured Person for a strict liability offence in connection with the discharge, dispersal, release or escape of Pollutants; and
- c) An Insured for a strict liability offence in connection with a breach of occupational health and safety law or regulation

If We are not legally prohibited from paying the pecuniary penalties."

Please note Statutory Liability section of the policy does not cover reckless or grossly negligent conduct or any knowing or intentional breach of violation of the law.

The excesses/deductibles vary (\$0-\$2,500) depending on the insuring clause being claimed.

#### 2) **Public Liability**

The Public Liability policy covers AERA as well as all AERA State parties, State Management Committees, affiliated clubs, riders and members and/or *all volunteers and officials* as well as subsidiary companies.

The policy is to indemnify the above in respect of their legal liability for third party Personal Injury (which includes sickness and disease) and/or Property Damage and/or Advertising Liability. The limit of liability under this policy is \$50,000,000 (any one claim or series of claims arising out of any one Occurrence).

The excess involved for every claim including costs and expenses is \$2,500 – other than claims in respect of damage to property in the Insured's care, custody and control.

There is no exclusion for infectious diseases or contamination.

The Defence Costs and Supplementary Payments section 2.2 confirms the Insurer will:

"defend, in Your name and on Your behalf, any claim or suit against You alleging such Personal Injury and/or Property Damage and/or Advertising Injury and seeking damages on account thereof even if any of the allegations of such claim or suit is groundless, false or fraudulent"

It also states that The Insurer will

- 2.2.6 "pay all legal costs incurred by You with Our Consent for representation of You at:
- 2.2.6.1 Any Coronial Inquest or Inquiry
  - 2.2.6.2 Any proceedings in any court or tribunal in connection with liability insured against this Policy

- 2.2.6.3 Any Royal Commission or Government Enquiry arising out of any alleged breach of statutory duty, or other similar judicial enquiry into circumstances relating to any Occurrence, claim or potential claim which would be the subject of indemnity under this insurance
- 2.2.6.4 Any enquiry, prosecution or hearing of disciplinary nature held before a legally constituted enquiry board, committee, licensing authority or the like.  
Provided that Our liability under clauses 2.2.6.3 and 2.2.6.4 shall not exceed AUD250,000 in respect of any one claim or series of claims arising out of any one Occurrence."

We should indicate that there is a general condition within the Policy which states:

5.10.2 "You must:

- 5.10.1 exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition
- 5.10.2 take reasonable precautions:
  - To prevent *Personal Injury and/or Property Damage and/or Advertising*
  - To prevent manufacture, sale or supply of defective Products
  - To comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property"

Although the policy does not exclude infectious diseases or contaminations it needs to be noted that every situation is different and therefore every claim will be reviewed by the Insurer on a "case by case" basis.

However, should all "reasonable" steps be taken (as per the Biosecurity Act, effective 1<sup>st</sup> July 2016) to ensure that AERA do not spread a pest, disease or contaminant, the AERA liability policies should respond in the instance that AERA were negligent for a biosecurity breach.

If you would like any further information, please call us on (08) 8413 6300 or email [aera@surewise.com.au](mailto:aera@surewise.com.au).

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