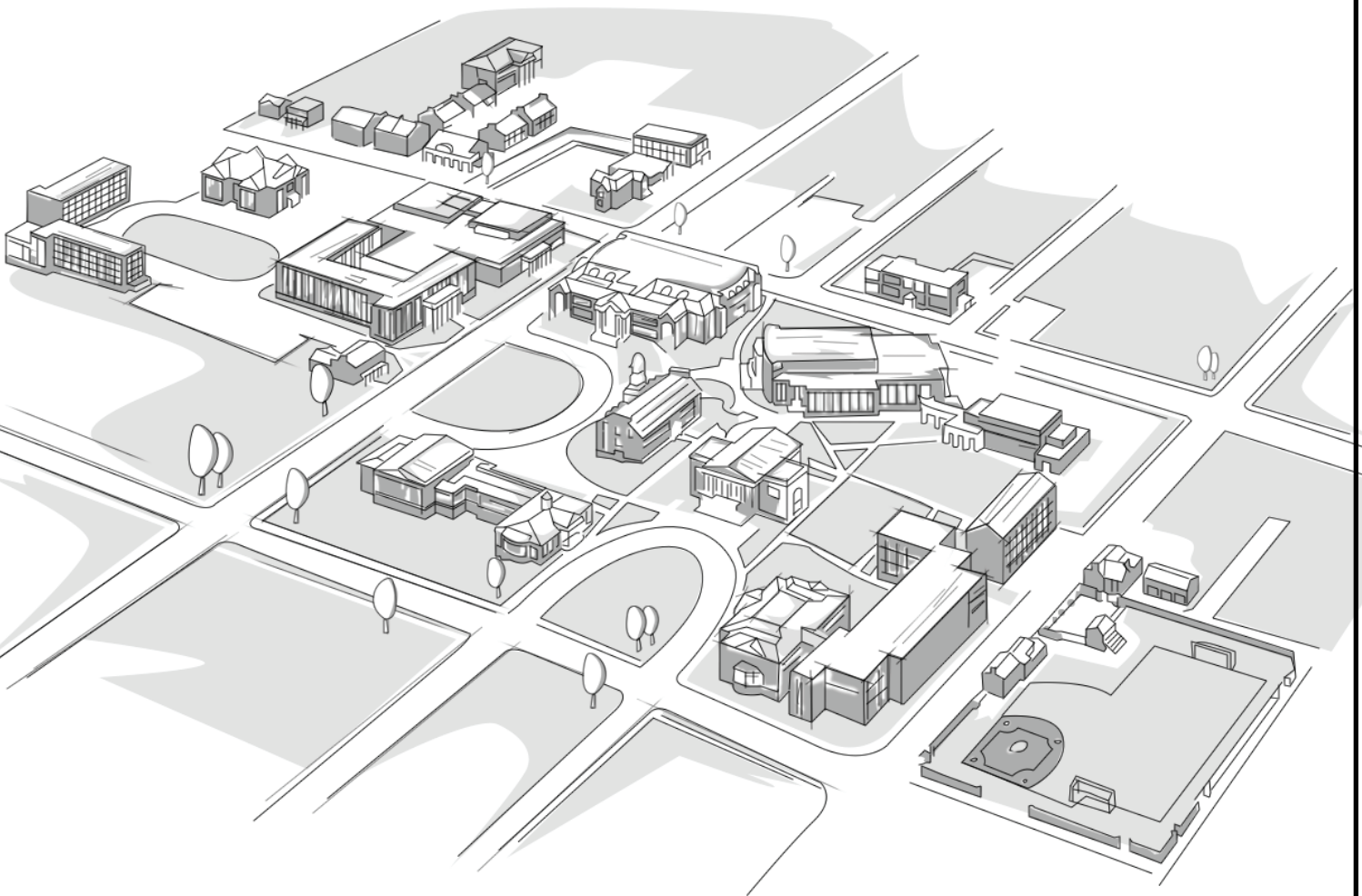
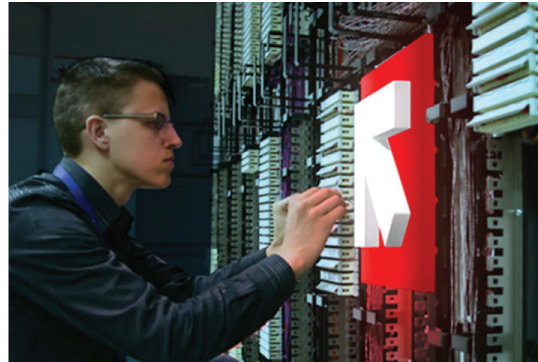


IT LIABILITY

Lecturer: Louise Soutter





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- The Australian Information Technology industry can best be categorised as a services industry. The industry has always been dominated by software developers, systems integrators, consultancy firms, multimedia, network and internet firms with a lower focus on hardware manufacturers.
- In recent years we have seen a concentration on mobile applications, cloud technology and business intelligence services.



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➤ With over 15,000 'IT' companies in Australia, businesses are spread across all facets of industry including:

- The Technology Sector;
- Government;
- Banking & Finance;
- Telecommunications;
- Retail;
- Mining & Resources.



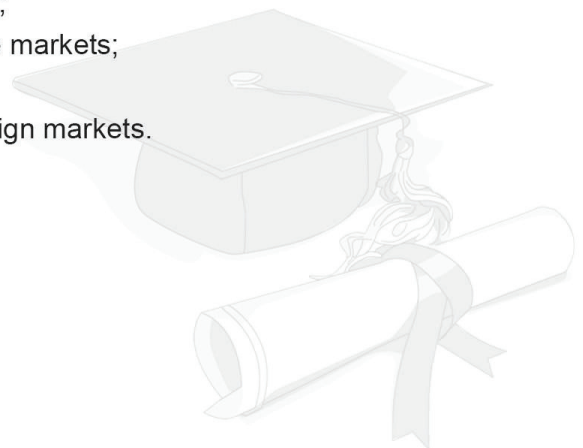
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➤ In recent years, there has been an increase in pressures faced by IT companies driven by:

- Ever increasing need to speed product to market;
- Increased competition in key product and service markets;
- Increasing customer expectation;
- The need to export products and services to foreign markets.

➤ These threats and challenges are exacerbated by:

- Increased outsourcing of systems and data;
- Increase in fixed price long terms contracts;
- Ever increasing consumer protection legislation.



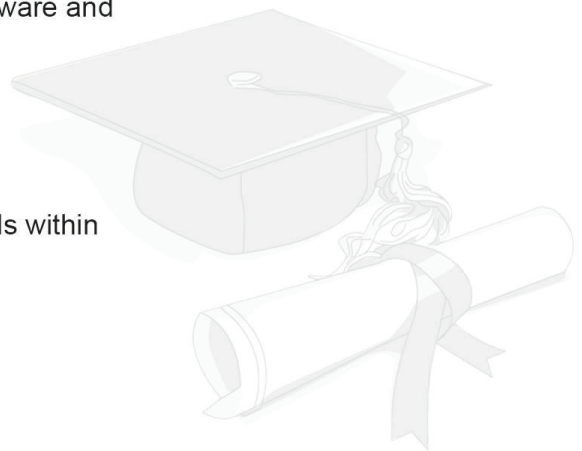
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- Application Development (APP)(including iOS & Android)
 - Refers to custom design and programming of applications that App developers provide to enterprises and software developers.
- Data Storage, Data Processing and Data Warehousing
 - The permanent holding place for digital data until purposely erased. Storage is on magnetic discs, solid state discs, USB drives, magnetic tapes and optical discs (CD's and DVD's).
 - The processing of data/information, which includes text, images, audio and video.



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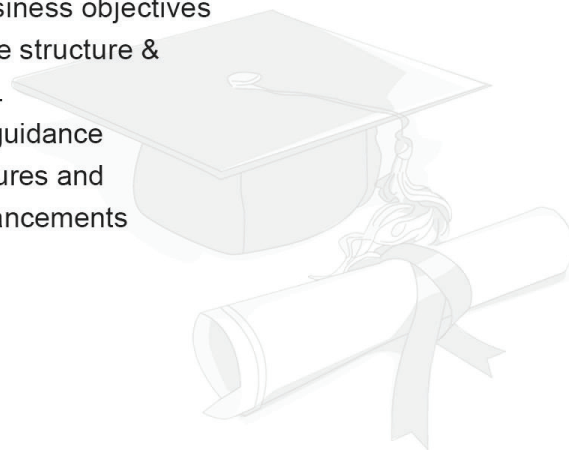
- Hardware Maintenance & Installation Services
 - The testing ,cleaning and ongoing servicing of equipment.
 - The placement and connection of computer hardware and peripheral systems.
 - Also includes the installation of software.
- IT Recruitment and Placement Services
 - The recruitment and placement of IT professionals within industry sectors.



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➤ IT Consulting

- Work in partnership with clients, advising them how to use information technology in order to meet their business objectives or overcome problems. They work to improve the structure & efficiency of IT systems in various organisations.
- IT consultants may be used to provide strategic guidance to clients with regard to technology, IT infrastructures and enabling major business processes through enhancements to IT.



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- They can also be used to provide guidance during selection and procurement as well as providing highly expert technical assistance, and may be responsible for user training & feedback.
- IT consultants may be involved in sales and business

➤ Reselling Services – Hardware and Software

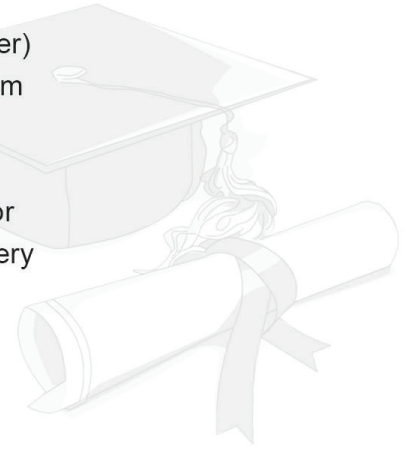
- The sale of hardware and software developed and manufactured by a third party.



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➤ SCADA/PLC Services

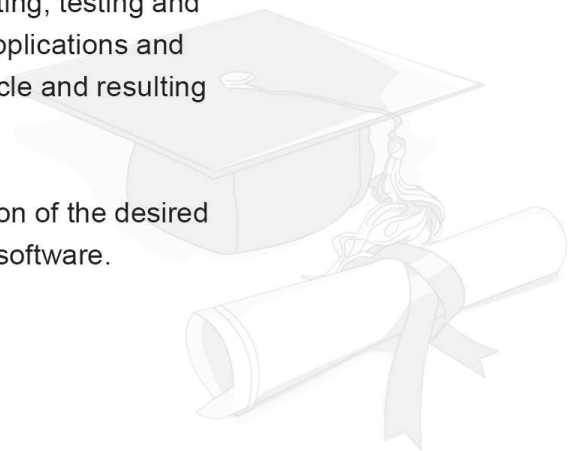
- Supervisory Control And Data Acquisition. A process control system that is used in a myriad of applications including manufacturing, communications, distribution (water, gas, power) and heating, cooling and security in buildings. A SCADA system collects data from sensors in local and remote locations and sends them to central computers to control local machinery.
- A Programmable Logic Controller is a digital computer used for automation of industrial processes, such as control of machinery on factory assemble lines.



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➤ Software Development, Design, Analysis and Programming Services

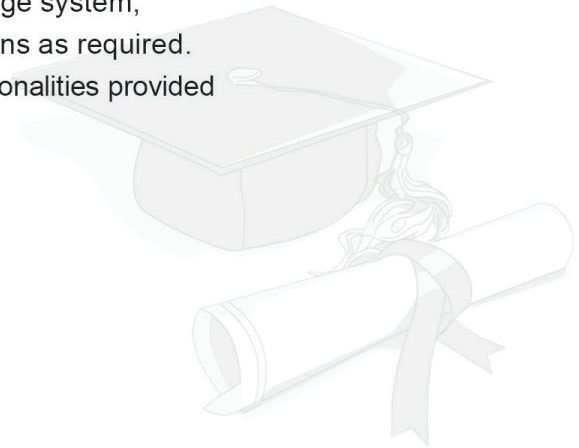
- The research, computer programming, documenting, testing and bug fixing involved in creating and maintaining applications and frameworks involved in a software release life cycle and resulting in a software product.
- Process of writing and maintaining source code.
- Includes all that is involved between the conception of the desired software through to the final manifestation of the software.



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➤ Systems Integration Services

- An IT or engineering process or phase concerned with joining different subsystems or components into one large system, ensuring that each integrated subsystem functions as required.
- Used to add value to a system through new functionalities provided by connecting functions of different systems.



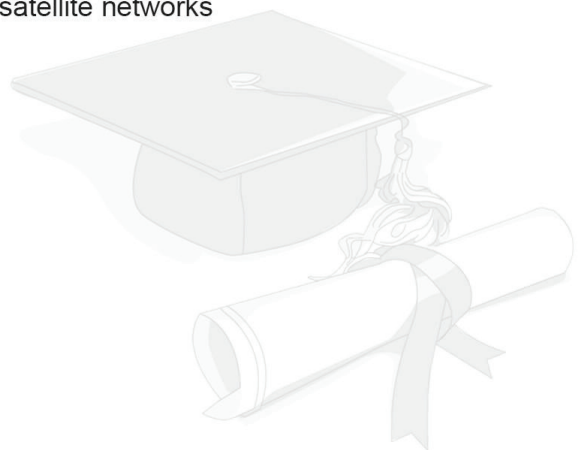
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➤ Telecommunications Services

- All services offered in relation to a telecommunications network.
- This could be phone networks, internet networks, satellite networks or mobile networks.
- Internet Service Providers.

➤ Website Design and Development

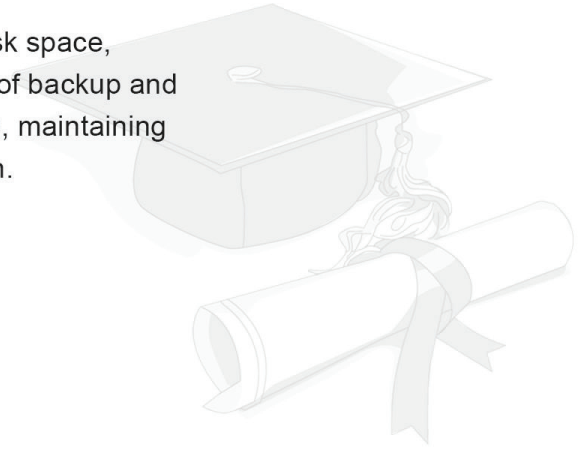
- Building, creating and maintaining websites.



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➤ Website Hosting Services incl reselling

- Provides server space, web services and file maintenance for web sites.
- Related services may include leasing of hard disk space, maintenance of hardware & software, provision of backup and security, content integrity, credit card processing, maintaining email boxes, and high speed internet connection.



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IT Liability Insurance covers the insured's liability for claims from third parties arising from the failure of the insured's products, services and/or advice.

Cover also usually extends to protect against:

- unintentional breaches of contracts;
- infringement of intellectual property;
- damage, loss or destruction of documents & data;
- libel, slander or defamation;
- defence costs.



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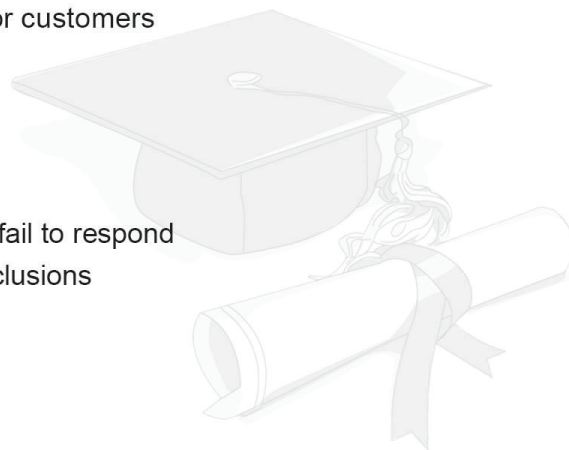
WHAT DOES IT LIABILITY COVER ?

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The exposures faced by the IT industry are unique in that the majority of IT professionals provide not only a professional service in the form of design and advice, but also supply goods in the form of software or hardware. They are exposed to claims from third parties or customers arising from:

- pure financial loss and;
- personal injury and/or property damage.

As a result, a traditional Professional Indemnity policy may fail to respond as they provide cover for financial loss only and contain exclusions relating to the supply of goods.



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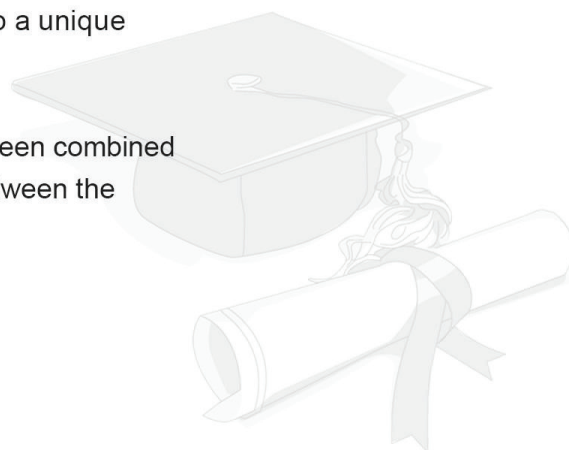
WHAT DOES IT LIABILITY COVER ?

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In addition a traditional Public/Products Liability policy excludes liability for pure financial loss (without personal injury and/or property damage).

This prompted the Australian Insurance market to develop a unique product tailored to the needs of IT industry professionals.

Professional Indemnity and Public/Products Liability have been combined into the one policy, minimising the risk of a claim “falling between the gaps” of the traditional separate products.



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WHAT DOES IT LIABILITY COVER ?

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The comprehensive IT Liability Policy also meets the specific needs of the industry by providing a broad definition of Information Technology that stretches across business that provide both products and services/advice.



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WHAT DOES IT LIABILITY COVER ?

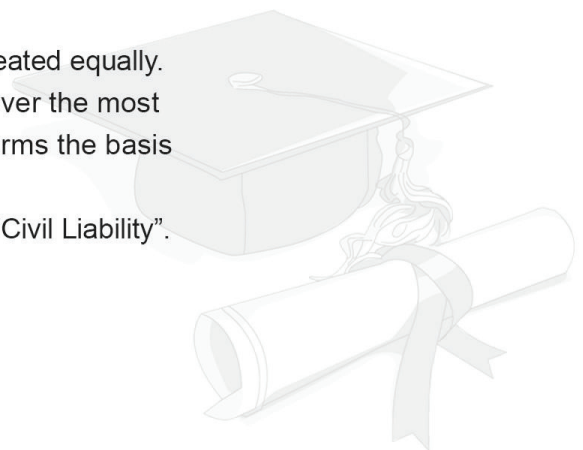
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INSURING CLAUSE

“Act, Error or Omission” versus “Civil Liability” policy wording

Despite what you may have heard, not all IT policies are created equally. If we first look at the Professional Indemnity side of the cover the most important difference is within the Insuring Clause which forms the basis of cover.

Two of the most common are “Act, Error or Omission” and “Civil Liability”.



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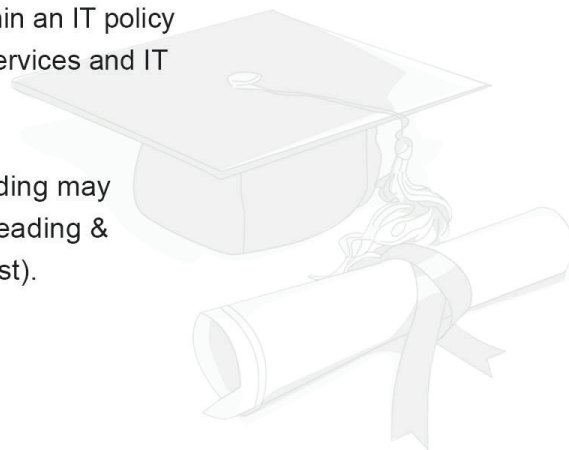
WHAT DOES IT LIABILITY COVER ?

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Act, Error or Omission

Provides cover for claims which arise out of an act, error or omission in the performance of the insured's professional services. Within an IT policy the professional services are usually further defined as IT services and IT products provided by the insured.

Where not excluded an Act, Error or Omission based wording may respond to contractual liabilities, statutory breaches (misleading & deceptive conduct) and equitable breaches (breach of trust).



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WHAT DOES IT LIABILITY COVER ?

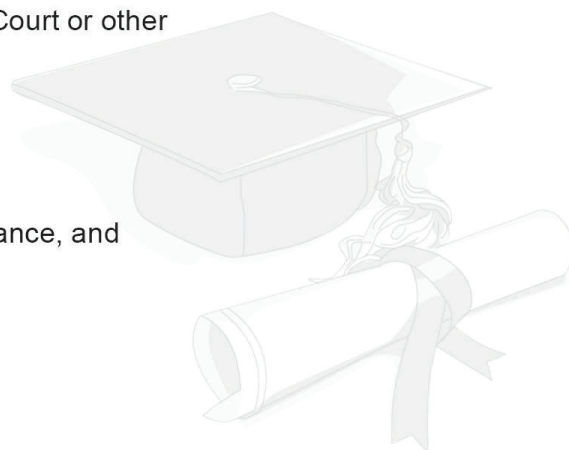
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Civil Liability

Civil liability is the liability of one party to another arising out of civil law, as opposed to criminal law. This is usually imposed by a Court or other public authority.

There are four branches of civil law:

- 1) Tort law (the common law torts of negligence, nuisance, and defamation);
- 2) Contract law (breach of contract);



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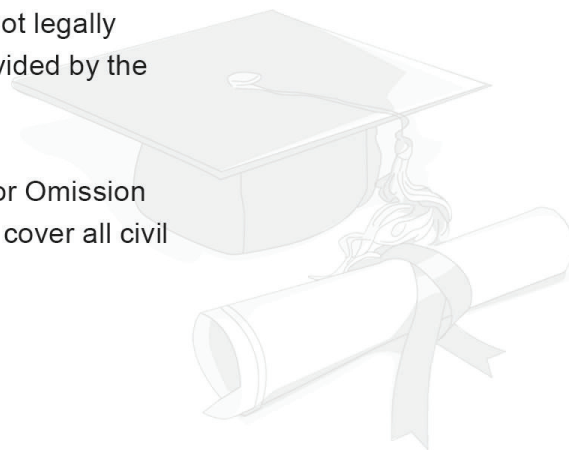
WHAT DOES IT LIABILITY COVER ?

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3) Statutory law (eg the Trade Practices Act);

4) Equity - (a system of law based on the principle of 'fairness' designed to furnish remedies for wrongs which were not legally recognised or for which no adequate remedy was provided by the common law). law,

Civil Liability wordings provide similar cover to Act, Error or Omission wordings, although are considered broader because they cover all civil liability, subject to the exclusions within the policy.



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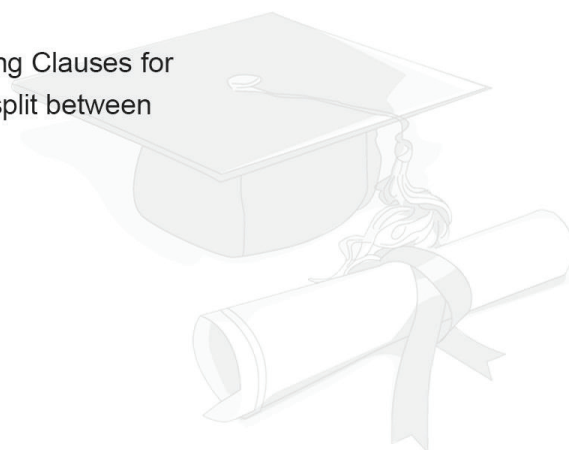
WHAT DOES IT LIABILITY COVER ?

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INSURING CLAUSE

Claims Made and Notified versus Occurrence

Even though the IT Policy is a combined wording the Insuring Clauses for the Professional and Public/Products Liability sections are split between Claims Made and Occurrence based.



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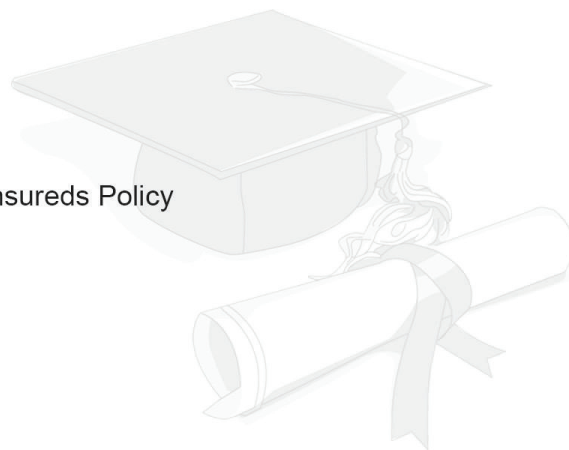
WHAT DOES IT LIABILITY COVER ?

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Claims Made and Notified (Professional Indemnity)

- 1) a Claim must first be made against the Insured and
- 2) notified to the Insurer
- 3) during the Period of Insurance

The Period of Insurance is always clearly outlined on the Insureds Policy Schedule.



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WHAT DOES IT LIABILITY COVER ?

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Occurrence (Public and Products Liability)

- 1) The policy in force on the date of the event or accident causing the loss will respond
- 2) The claim may arise years after the policy has expired
- 3) The date the Insured receives notice of the Claim is of no importance



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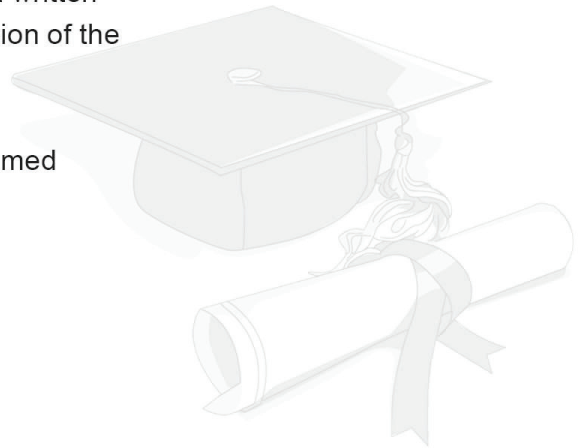
WHAT DOES IT LIABILITY COVER ?

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COMMON EXTENSIONS

- Contractual Liability
 - provides cover for any unintentional breach of a written contract with a third party arising from the provision of the insureds IT products and Services.

Can be restricted through application of an Assumed Contractual Liability Exclusion (see Exclusions)



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WHAT DOES IT LIABILITY COVER ?

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COMMON EXTENSIONS

- Intellectual Property Rights
 - provides cover for an unintentional infringement of a patent, trademark, copyright etc owned by a third party. Also extends to claims brought by third party's whom the insured has licensed their IT products to and provided a warranty/indemnity in respect of the insured's ownership and/or permission to license intellectual property rights.

- Documents and Data
 - extends to unintentional damage, loss, mislaying or destruction of Documents and/or Data, both electronic and written/printed.



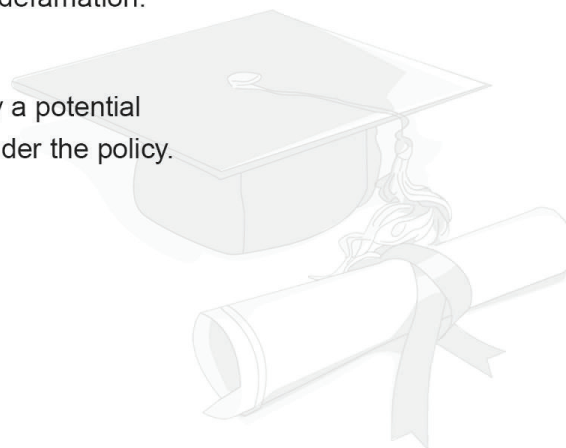
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WHAT DOES IT LIABILITY COVER ?

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COMMON EXTENSIONS

- Defamation
 - provides cover for unintentional libel, slander or defamation.
- Claims Mitigation Costs
 - costs and expenses incurred to mitigate or rectify a potential loss that would otherwise be subject to a claim under the policy.
 - It is usual for a sub limit to be applied.



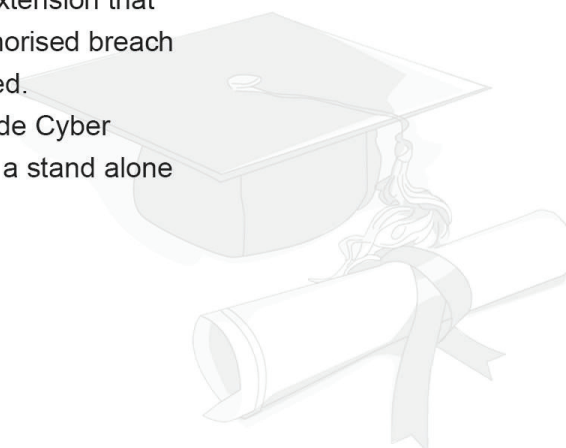
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WHAT DOES IT LIABILITY COVER ?

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COMMON EXTENSIONS

- Data Recovery Expenses
 - Some policies may offer a quasi Cyber Liability extension that provides first party cover in the event of an unauthorised breach of the clients system or website. Usually sub limited.
 - Do not rely on this cover alone if wanting to provide Cyber Liability coverage. You should consider providing a stand alone Cyber Liability option.



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WHAT DOES IT LIABILITY COVER ?

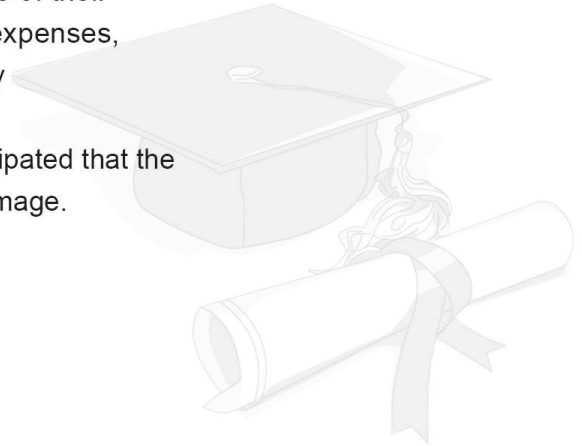
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COMMON EXTENSIONS

- Product Recall

-costs incurred by the Insured in the event of one of their products being recalled. This could include PR expenses, shipping & disposal of recalled products and any other expenses deemed necessary.

The trigger for this extension is usually if it is anticipated that the product may cause personal injury or property damage.



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WHAT DOES IT LIABILITY COVER ?

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COMMON EXCLUSIONS

- Fines & Penalties

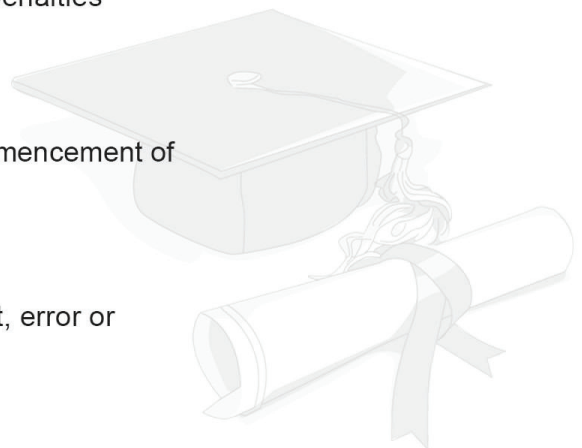
-Policies will not respond to any taxes, fines or penalties imposed on the Insured.

- Prior Claim or Circumstances

-Any claims made or threatened prior to the commencement of the period of insurance.

- Dishonesty

-dishonest, fraudulent, malicious, or reckless act, error or omission.



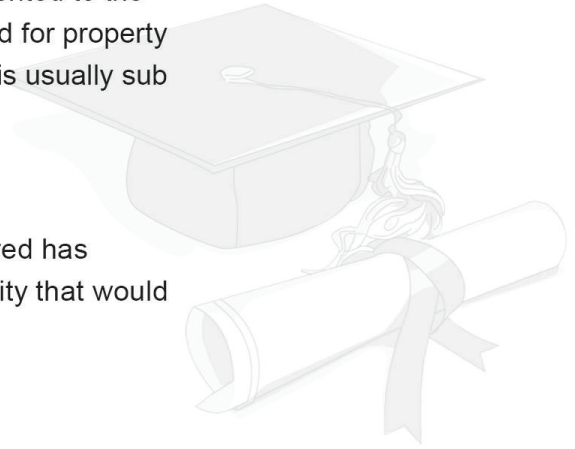
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WHAT DOES IT LIABILITY COVER ?

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COMMON EXCLUSIONS

- Own Property damage
 - damage to property owned, leased, hired by or rented to the Insured. However a writeback is normally provided for property in the care, custody or control of the Insured and is usually sub limited.
- Assumed Contractual Liability
 - excludes a breach of contract whereby the insured has assumed the liability above and beyond the liability that would have arisen at common law.



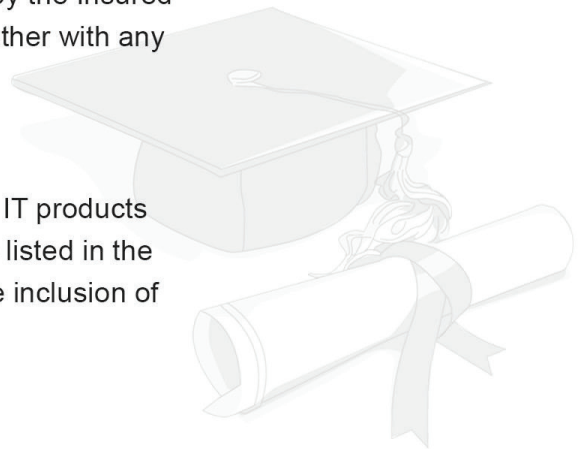
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WHAT DOES IT LIABILITY COVER ?

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COMMON EXCLUSIONS

- Reckless & Wilful Act
 - excludes any act, error or omission committed by the Insured with a reckless regard for its consequences together with any wilful breach of contract
- Non IT Products and Services
 - will not extend to the provision or supply of non IT products and or services. If required these will need to be listed in the schedule or an endorsement provided noting the inclusion of such.



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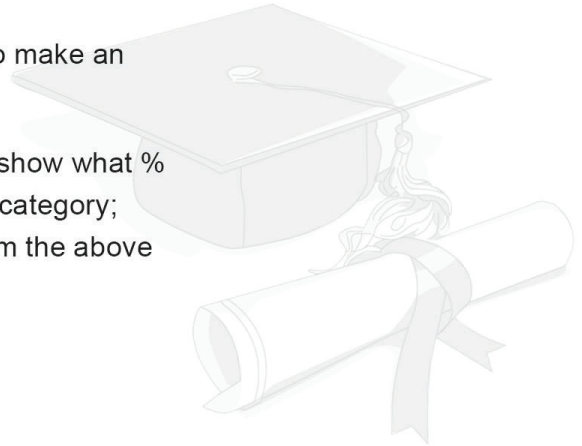
WHAT DO INSURERS LOOK FOR ?

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As with other traditional professions, Insurers will look for a combination of qualifications and experience. If a consultant is unqualified the Insurer will need to see a CV showing experience.

In general Insurers will require the following information to make an accurate assessment of the Insured's exposures:

- Occupation – Split of product/services provided will show what % of products/services are in low, medium or high risk category;
- Industry – In which industry does the insured perform the above services;

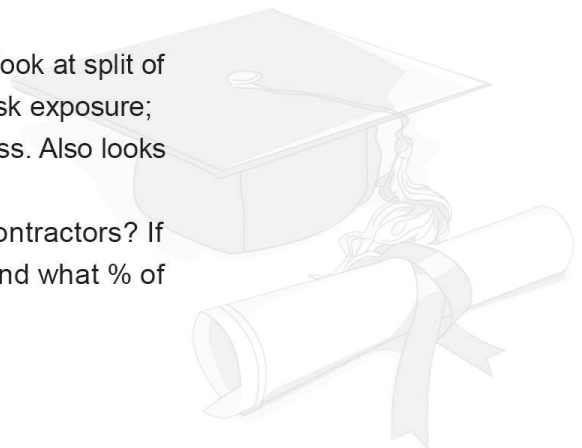


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WHAT DO INSURERS LOOK FOR ?

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- Date Established – shows the experience and stability of the business;
- Qualifications/Experience – shows experience and qualifications of principals, directors and partners;
- Revenue – determines the size of the company. Also look at split of revenue across countries which determines level of risk exposure;
- Employee Numbers – Helps determine size of business. Also looks at individual specialties within the business;
- Use of Contractors – Does the entity outsource to contractors? If so, what elements of the business are outsourced and what % of the business does this represent?



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- Claims History – Has the insured experienced claims in the past? Frequency, Amount? What has the insured done to ensure the same situation does not repeat itself, ie risk management.

