ICT Liability Insurance for ICT contractors and consultants – Why is it important?

Anyone who gives to another person advice and/or services of a skilful character according to an established discipline can be regarded as a ‘professional’.

While the law requires a professional to exercise their skill at an appropriate level expected of that profession, professionals are only human and mistakes do happen. Any financial loss arising from a mistake or failure by the ICT professional may result in an award in favour of a third party. Such professionals may also be held to be liable for a mistake even though there was no negligence (i.e. breach of the Trade Practices Act).

Generally an employee ICT professional is covered by the employer's ICT Liability cover but appropriate and adequate ICT insurance is essential for those undertaking any consulting or contracting work for which they are liable.

Why do you need ICT Liability insurance?

Legal uncertainty exists over the character of some of the activities provided by IT consultants. In providing software advice and/or design, are they providing a service or a 'product'? Understandably, the uncertainty has caused confusion in the handling of claims. Should the claim be treated as a 'service' and therefore be covered under a Professional Indemnity policy? i.e. the claim arose from a breach of the Insured's professional duty. Alternatively, should the claim be treated as a 'product' under a Public & Products liability policy i.e. the claim arose out of a product or manufacturing fault?

The ICT Liability Insurance package provides the convenience and benefit of both Professional Indemnity and Broadform Liability Insurance policies, in one Packaged Policy. The Package provides cover for both civil liability arising from the conduct of the Insured’s professional business practice, and third party loss caused by bodily injury or property damage. A traditional Professional Indemnity policy is not suitable for an ICT professional as they contain ‘sale and supply exclusions’. The policies within this package are specifically tailored for IT professionals.

You may feel that because your work is supervised by others, you do not need ICT Liability Insurance, but you should consider this:

- Defending a claim of "negligence" usually involves seeking specialist legal advice and costs can very quickly mount up. You could expect to pay, for your own legal costs alone, $15,000 per day should the claim end up in Court. On this basis, the cost of defending a claim can very easily become a financial nightmare for the uninsured professional person.

- Contracting ICT professionals have been held to be negligent even though their work was supervised by the principal by whom they were engaged

- Everything an ICT professional does and says in the course of their business could result in a professional liability claim. In the present climate, spurious claims of negligent advice are being made with the aim of delaying the payment of professional fees. You might know that the claim is spurious, but you still may need to defend it. Remember, Civil Courts operate on the balance of probability principle, rather than the level of proof required in Criminal Courts.

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