



# McCormick Harris

## INSURANCE

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WINTER 2026

CLIENT NEWSLETTER

## A robo-power boost for disgruntled staff

Freely available artificial intelligence tools have driven a surge in unfair dismissal disputes reaching the Fair Work Commission, in an unexpected outcome from the rise of the technology.

Dispute lodgements have jumped to record levels, with no sign of plateauing, and many applications clearly use AI-generated language, commission president Adam Hatcher warned in a speech earlier this year.

Applications in the December half totalled 27,192, representing a 40% increase from the preceding three-year average.

Justice Hatcher pointed out applications can be put together quickly and easily, even when they have no reasonable prospects of success.

The trend is coinciding with rising business cost pressures that can lead to staffing level reviews. But difficult decisions on employees can be required at any time, due to issues such as poor performance or serious misconduct.

Whatever the cause of a job loss, technology is making it easier for aggrieved people to take matters further and to test the chance of gaining redress, even when their case is weak.

The federal government has introduced reforms to ease caseload pressures on the Fair Work Commission and curb dubious applications, but it remains important for employers to follow correct processes – and to have the right insurance in place.

An employer could be ordered to pay compensation, generally capped at 26 weeks, or give a former staff member their job back if their case succeeds, but even if the employer wins and follows processes “by the book”, legal defence costs can be high.

Eligibility criteria for a person to make an unfair dismissal claim include that they have been employed continuously for six months, or a year in the case of a small business.

Common mistakes employers make include not having documentation to support concerns and not raising problems in a timely way, with managers sometimes reluctant to pursue difficult conversations.

Steps to prevent escalation start with having clear policies in place, setting expectations, documenting concerns and addressing them as they arise. Written warnings are particularly important in poor performance cases, and where more serious misconduct occurs a person should have an opportunity to respond.

Businesses of all sizes are exposed to risks, and problems can arise even when staff are considered friends, underscoring the importance of employment practices liability cover for related expenses.

Having a conversation with your broker and assessing the relevant cover required will put your mind at ease.



# Defusing a time bomb

As an SME owner, it's vital to understand your insurance needs while your business is operating as normal – but also as you consider changes.

When the time comes to sell or restructure your business, one important area that often gets overlooked is run-off insurance (sometimes known as tail cover).

Run-off insurance is designed to protect against legal claims that arise after you've stopped trading but that relate to work you performed while your business was active.

This is particularly relevant for small businesses that provide professional advice, services or products that could lead to future liability – such as consultants, tradespeople, IT providers or health practitioners.

Many policies – including professional indemnity and management liability insurance – are written on a “claims-made” basis. This means the policy that responds is the one in place when the claim is made, not when the work was done.

So, if you cease trading and cancel your insurance, you may have no cover for claims that come in later, even if the issue stems from your past work.

That's where run-off insurance comes in.

It effectively extends your protection for a defined period, allowing claims to be reported after your business has stopped operating. For example, if you completed a project two years ago and the client later alleges an error or negligence, run-off cover ensures you still have insurance backing.

This is especially important because claims can take time to emerge. Defects, professional errors or financial losses aren't always discovered immediately. Without run-off cover, you could be personally exposed to legal costs, settlements or damages – expenses that can be significant and unexpected.

From a practical standpoint, run-off insurance is often required in business sale agreements, professional industry standards or contractual obligations.

It also provides peace of mind, knowing your past work won't come back to financially impact you down the track.

If you're planning to retire, close, sell or even significantly scale back your business, run-off insurance is a critical consideration.

Talk to us about reviewing your existing policies and discussing an appropriate run-off period tailored to your risk profile.

It's a relatively small investment compared to the potential cost of an uninsured claim – and an essential step in protecting the legacy of your business.





## Protect your business from customer payment defaults

Imagine you have invoiced a customer for a consignment of goods that has been delivered. The 30-day credit term has expired but payment has not been received, despite several reminder notices to the customer.

Such situations are on the rise in Australia as economic uncertainties worsen. Most sole traders, family businesses and small companies are finding it increasingly tough to get paid on time, interrupting their cash flows.

Many offer credit terms for customers that agree to make an initial deposit as part of the condition for paying the outstanding amount after goods or services have been provided.

In better times, one or two unpaid invoices might not affect your cash flow terribly. But the current business climate has

made it riskier for SMEs like yours to offer flexible payment terms, as insolvencies or defaults tend to rise in difficult economic times.

So, what can you do about it? Credit terms are vital to many SMEs, which see them as a way to secure sales. Scrapping them is probably not an option.

If you haven't already acquired trade credit insurance, now is a good time to think about it.

The cover is one of the best ways to minimise the risk of bad debts for SMEs that rely on credit terms to secure sales.

Also known as debtor insurance, the cover is designed to ensure a business can maintain its cash flow and continue to trade if it is struggling with unpaid customer invoices.

Most trade credit insurance can be arranged to accommodate your needs. It can be set up to cover your business' debtor ledger, or if you want protection for high-value invoices, that can be arranged as well.

In the event of a claim, up to 90% of a bad debt could be recovered, depending on coverage terms and conditions.

The thing to remember is, no matter how well managed your business is, the risk of bad debt is always there. If you have trade credit insurance, it gives you the confidence to offer credit terms to customers even in a difficult economic climate.

So, give us a call, and we'll work out a trade credit cover to safeguard your business.

# Avoiding ML hell



While it may not be as obvious a requirement as property cover, small business owners should always pay close attention to management liability insurance.

It plays a critical role in protecting both your business and your personal assets from risks associated with running and managing a company.

ML is designed to cover the exposures faced by business owners, directors and officers in the course of making decisions, managing staff and fulfilling legal obligations.

It typically includes key components such as directors and officers liability, employment practices liability, statutory liability and crime cover. For small businesses – where owners are often directly involved in day-to-day management – these risks are particularly concentrated. Getting this cover right is essential because claims in this area are becoming more common and more complex.

For example, employment-related disputes – such as unfair dismissal, discrimination

or workplace harassment – can arise even in well-run businesses.

And many employees are using AI to help them compile such complaints, and make them sound legitimate even if they aren't.

Similarly, breaches of regulations or reporting obligations can trigger investigations and penalties from regulators. Without adequate cover, defending these matters can be costly, time-consuming and stressful.

The consequences of getting it wrong can be significant. One of the biggest risks is underinsurance or gaps in cover. Not all management liability policies are created equal – policy limits, sublimits, exclusions and definitions can vary widely between insurers.

If your policy limit is too low, you may find it exhausted quickly by legal costs alone, leaving you exposed to the remaining expenses. Likewise, if key extensions such as employment practices liability are missing or restricted, you may have no cover for some of the most common claims faced by small businesses.

Another important consideration is who is covered. Poorly structured policies may not adequately cover all directors, officers or even the entity itself.

This can lead to situations where individuals are personally exposed, which is particularly concerning for small company owners who often assume their business structure protects them.

There's also the risk of not keeping your policy up to date as your business evolves. Changes in staff numbers, operations or regulatory requirements can all impact your exposure. If your cover isn't reviewed regularly, it may no longer reflect your actual risk profile.

In short, management liability insurance is not a "set and forget" policy. As your broker, our role is to ensure your cover is tailored, comprehensive and aligned with your business activities.

Getting it right provides crucial protection and peace of mind; getting it wrong can leave you facing serious financial and personal consequences when you need support the most.



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