

Directors & Officers

Liability Insurance Policy

About this booklet

This booklet contains 2 separate parts:

General Information and the Policy Terms and Conditions.

General Information

This part of the booklet contains information you need to know before you take out a Policy. Please read it carefully before taking out this insurance.

Policy Terms and Conditions

The Policy part of this booklet contains the Policy Terms and Conditions, which detail all the terms, conditions and exclusions relating to the Policy. It forms part of your legal contract with us.

If we issue you with an insurance policy, you will be given a Policy Schedule. The Policy Schedule sets out the specific terms applicable to your cover and should be read together with the Policy Terms and Conditions.

The Policy Terms and Conditions and the Policy Schedule we send to you form your legal contract with us so please keep them in a safe place for future reference.

If you require further information about this product, please contact your financial services Provider.

About QBE Australia

QBE Insurance (Australia) Limited is a member of the QBE Insurance Group (ASX: QBE). QBE Insurance Group is Australia's largest international general insurance and reinsurance group, and one of the top 25 insurers and reinsurers worldwide. The company has been operating in Australia since 1886 and continues to provide industry-leading insurance solutions that are focused on the needs of intermediaries and their clients.

QBE is a household name in Australian insurance, backed by sizeable assets, and well known as a strong and financially secure organisation.

Index

Page

About this booklet	1
About QBE Australia	1
General Information	2
Duty of Disclosure – What you must tell us	2
Privacy	2
The General Insurance Code of Practice	2
Dispute resolution	2
Claims made	2
Policy Terms and Conditions	3
Section 1: Insuring Clauses	3
Section 2: Policy Extensions	4
Section 3: Optional Extensions	8
Section 4: Exclusions	9
Section 5: Claims Conditions	11
Section 6: General Conditions	13
Section 7: Definitions	15

GENERAL INFORMATION FOR DIRECTORS & OFFICERS LIABILITY INSURANCE POLICY

The information contained in this part is general information only and does not form part of your contract with us. The Policy Terms and Conditions in the rest of this booklet contain details of your contract.

Duty of Disclosure – What you must tell us

Under the Insurance Contracts Act 1984 (the Act), you have a Duty of Disclosure. You are required before you enter into, renew, vary, extend or reinstate your Policy, to tell us everything you know and that a reasonable person in the circumstances could be expected to know, is a matter that is relevant to our decision whether to insure you, and anyone else to be insured under the Policy, and if so, on what terms.

- **You do not have to tell us about any matter**
 - that diminishes the risk
 - that is of common knowledge
 - that we know or should know in the ordinary course of our business as an insurer, or
 - which we indicate we do not want to know.
- **If you do not tell us**

If you do not comply with your Duty of Disclosure we may reduce or refuse to pay a claim or cancel your Policy. If your non-disclosure is fraudulent we may treat this Policy as never having worked.

Privacy

Privacy legislation regulates the way private sector organisations can collect, use, keep secure and disclose personal information. We are bound by the Privacy Act 1988 (Cth.), when collecting and handling your personal information. QBE has developed a privacy policy which explains what sort of personal information we hold about you and what we do with it.

We will only collect personal information from or about you for the purpose of assessing your application for insurance and administering your insurance policy, including any claims you make. We will only use and disclose your personal information for a purpose you would reasonably expect.

We may need to disclose personal information to our reinsurers, (who may be located overseas), insurance intermediaries, insurance reference bureaux, credit reference agencies, our advisers and those involved in the claims handling process (including assessors and investigators), for the purposes of assisting us and them in providing relevant services and products, or for the purposes of litigation. We may disclose personal information to people listed as co-insured on your policy and to family members or agents authorised by you. We may also disclose information to organisations which conduct customer service surveys on our behalf. We will request your consent to any other purpose.

By providing your personal information to us, you consent to us making these disclosures. Without your personal information we may not be able to issue insurance cover to you or process your claim.

You also have the opportunity to find out what personal information we hold about you and, when necessary, correct any errors in this information. Generally we will do this without restriction or charge. For further information about our Privacy Policy or to access or correct your personal information, please contact The Compliance Manager, QBE Insurance (Australia) Limited, GPO Box 82 Sydney NSW 2001. Telephone: (02) 9375-4656, Fax: (02) 8275-9022 or Email: compliance.manager@qbe.com

The General Insurance Code of Practice

QBE Insurance (Australia) Limited is a signatory to the General Insurance Code of Practice. The Code aims to:

- promote more informed relations between insurers and their customers; and
- improve consumer confidence in the general insurance industry;
- provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- commit insurers and the professionals they rely upon to higher standards of customer service.

Dispute resolution

We will do everything possible to provide a quality service to you. However, we recognise that occasionally there may be some aspect of our service or a decision we have made that you wish to query or draw to our attention.

We have a Complaints and Dispute Resolution Procedure which undertakes to provide an answer to your complaint within 15 working days.

If you would like to make a complaint or access our internal dispute resolution service please contact your nearest QBE office and ask to speak to a dispute resolution specialist.

Claims made

This Policy operates on a 'claims made and notified' basis. This means that the Policy covers you for claims made against you and notified to us during the period of insurance.

The Policy does not provide cover in relation to:

- acts, errors or omissions actually or allegedly committed prior to the retroactive date of the Policy (if such a date is specified)
- claims made after the expiry of the period of insurance even though the event giving rise to the claim may have occurred during the period of insurance
- claims notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy

- claims made, threatened or intimated against you prior to the commencement of the period of insurance
- facts or circumstances of which you first became aware prior to the period of insurance, and which you knew or ought reasonably to have known had the potential to give rise to a claim under this Policy
- claims arising out of circumstances noted on the Proposal form for the current period of insurance or on any previous proposal form.

Where you give notice in writing to us of any facts that might give rise to a claim against you as soon as reasonably practicable after you become aware of those facts but before the expiry of the period of insurance, you may have rights under Section 40(3) of the Insurance Contracts Act 1984 to be indemnified in respect of any claim subsequently made against you arising from those facts notwithstanding that the claim is made after the expiry of the period of insurance. Any such rights arise under the legislation only. The terms of the policy and the effect of the policy is that you are not covered for claims made against you after the expiry of the period of insurance.

POLICY TERMS AND CONDITIONS FOR DIRECTORS & OFFICERS LIABILITY INSURANCE POLICY

Preamble

In consideration of payment of the premium, QBE will provide indemnity in accordance with, and subject to, the terms of this Policy.

Section 1: Insuring Clauses

1.1 Insuring Clause A – Directors & Officers Liability

QBE shall pay on behalf of each Director or Officer all Loss for which the Director or Officer is not indemnified by the Corporation, arising from a Claim first made against such Director or Officer, individually or collectively, during the Period of Indemnity and notified to QBE during the Reporting Period.

1.2 Insuring Clause B – Company Reimbursement

QBE shall pay on behalf of the Corporation all Loss for which it has granted indemnification to any Director or Officer, arising from a Claim first made against such Director or Officer, individually or collectively, during the Period of Indemnity and notified to QBE during the Reporting Period.

1.3 Insuring Clause Clarification

For the avoidance of doubt, subject to all of its terms, conditions and exclusions, this Policy:

1.3.1 Breach of Contract

applies to any Claim made against a Director or Officer for breach or alleged breach of any contract arising from a Wrongful Act, other than a breach or alleged breach of a contract in connection with the provision, rendering or failure to render any professional service and/or professional advice.

1.3.2 Intellectual Property

applies to any Claim made against a Director or Officer for infringement of copyright, trademarks, registered designs or patents, or for any plagiarism or breach of confidentiality.

1.3.3 Libel & Slander

applies to any Claim made against a Director or Officer for libel or slander by reason of words written or spoken by any Director or Officer.

1.3.4 Retroactive Date

shall only provide indemnity in respect of a Wrongful Act committed, or alleged to have been committed, after the Retroactive Date stated in the Schedule. If no Retroactive Date is stated in the Schedule the indemnity provided by this Policy shall only apply to any Wrongful Act committed, or alleged to have been committed, after the inception date of the Policy.

Section 2: Policy Extensions

Preamble

QBE shall provide indemnity as is available under this section, for no additional premium, provided always that:

- (a) the indemnity provided by each policy extension is subject to the terms of this Policy unless otherwise expressly stated herein to the contrary;
- (b) the inclusion of any policy extension shall not increase the Limit of Indemnity;
- (c) where a policy extension is not stated in the Schedule as "Included" then this Policy shall not provide any indemnity, Defence Costs or Official Investigation Costs specified under such policy extension.

2.1 Advance Payment of Defence Costs

QBE agrees to advance Defence Costs within a reasonable time frame following QBE's receipt of invoices specifying such Defence Costs and prior to determining the entitlement of the Insured to indemnity for the Claim. In determining the entitlement of the Insured to indemnity under the Policy in respect of such Claim, QBE agrees that it will not rely on Exclusion 4.7 (Fraud and Dishonesty) unless and until:

- (i) an Insured makes an admission of any conduct described in Exclusion 4.7 (Fraud and Dishonesty); or
- (ii) it has been established through a judicial process that such Insured has committed any conduct described in Exclusion 4.7 (Fraud and Dishonesty).

Provided always that:

- (a) the advance of such Defence Costs does not constitute an acceptance of indemnity under the Policy for such Claim; and
- (b) In the event that 2.1 (i) or (ii) applies:
 - (i) QBE may cease to advance Defence Costs for any such Insured, unless QBE, at its sole discretion, continues to pay Defence Costs resulting from such Claim;
 - (ii) such Insured(s) shall (for their respective rights and interests) refund Defence Costs advanced by QBE, unless QBE agrees in writing to waive recovery of such Defence Costs.

2.2 Continuity of Indemnity

QBE shall, notwithstanding Exclusion 4.12 (Prior or Pending) and Claims made notice, provide indemnity in respect of any Claim made against a Director or Officer where such Claim arises from a fact, situation or circumstance ("Circumstance"):

- a) of which a Director or Officer first became aware prior to the Period of Indemnity and which such Director or Officer knew, or ought to have reasonably known, had potential to give rise to a Claim; and

- b) which should have, but was not, notified to QBE under an earlier policy under which QBE was indemnifying the Directors and Officers.

Provided always that:

- (a) such indemnity shall not apply to any Claim where the Insured's failure to notify such Claim is fraudulent;
- (b) QBE has continued as the insurer of the Corporation's Directors and Officers Liability policy in uninterrupted succession between the date when the Circumstance should have been notified and the date the Claim was actually notified;
- (c) such indemnity shall be subject to the terms, conditions, limit of indemnity and Excess applicable to this Policy

2.3 Created or Acquired Subsidiaries

QBE shall provide indemnity to the Directors and Officers of any Subsidiary which is created or acquired by the Corporation, irrespective of whether such Subsidiary was created or acquired prior to, or during, the Period of Indemnity. Provided always that such indemnity shall only apply in respect of a Wrongful Act occurring subsequent to the date of creation or acquisition.

In the case, however, of a Subsidiary whose consolidated asset value exceeds, as at its last balance date or date of its creation, 20% of the total consolidated asset value of the Corporation:

- (a) Notification of such Subsidiary shall be given in writing to QBE within 60 days after such acquisition or creation. If notification is not given to QBE within 60 days of the acquisition or creation cover will cease at 4.00 pm 60 days after the acquisition or creation;
- (b) QBE may, at its discretion, provide cover for such Subsidiary subject to such additional terms and/or premium as prescribed by QBE.

2.4 Estates & Legal Representatives

QBE shall provide indemnity to the estate, heirs, legal representatives or assigns of any deceased, mentally incompetent or insolvent Director or Officer provided always that:

- (a) such persons shall observe and be subject to all the terms of this Policy insofar as they can apply;
- (b) the claim is made against them solely because of their status as such;
- (c) the claim against the estate, heirs, legal representatives or assigns is first made during the Period of Indemnity and notified to QBE during the Reporting Period;
- (d) QBE shall not provide any indemnity if the claim alleges any act or omission by the estate, heirs, legal representatives or assigns of that Director or Officer;
- (e) such claim would otherwise be a Claim covered by this Policy if made against the Director or Officer.

2.5 Extended Reporting Period

QBE agrees that the Insured may notify a Claim in accordance with Claims Condition 5.6 (Reporting & Notice) during a period immediately following the Period of Indemnity of:

- (a) Thirty (30) days, provided always that such Claim was made against the Director or Officer during the Period of Indemnity;
- (b) Twelve (12) months, provided always that:
 - (i) The Insured shall provide QBE with a written request not later than thirty (30) days immediately after the end of the Period of Indemnity and has paid an additional premium of 50% of the annual equivalent of the Premium not later than thirty (30) days immediately after the end of the Period of Indemnity;
 - (ii) the Wrongful Act giving rise to the Claim must have been committed prior to the end of the Period of Indemnity;
 - (iii) the Insured has not been subject to a merger, takeover, sale, administration, provisional liquidation, liquidation whether voluntary or involuntary, receivership, receivership and management, scheme of arrangement or composition with creditors during the Period of Indemnity;
 - (iv) the Insured has not, following the expiry of the Period of Indemnity, obtained coverage of similar type to this Policy from another Insurer;
 - (v) this Policy has not been cancelled or avoided.

2.6 Occupational Health & Safety Defence Costs

QBE shall pay Defence Costs, notwithstanding Exclusion 4.2 (Bodily Injury/Property Damage) in respect of any Claim made against any Director or Officer under any Commonwealth, State or Territory occupational or workplace health and safety legislation. Provided always that:

- (a) notice of such prosecution is served on the Director or Officer and is notified to QBE during the Reporting Period;
- (b) the indemnity provided by this extension shall not extend to costs and expenses incurred in relation to any proceeding or civil claim arising from any alleged breach of such legislation;
- (c) where the provisions of this extension conflict with Exclusion 4.2 (Bodily Injury/Property Damage) the provisions of this extension shall prevail;
- (d) there is no indemnity for the Corporation or any Outside Entity under this extension.

2.7 Official Investigation Costs

QBE shall pay Official Investigation Costs on behalf of any Director or Officer for their attendance at an official investigation, examination or inquiry into the affairs of the Corporation or Outside Entity by a regulatory authority at which the Director or Officer is legally required to attend.

Provided always that:

- (a) QBE shall be entitled, at its discretion, to appoint legal representation to represent the Directors and Officers in such investigation, examination or inquiry;
- (b) notice of the investigation, examination or inquiry and the notice requiring the Director or Officer to attend is served on the Director or Officer and is notified to QBE during the Period of Indemnity;
- (c) in the event that a claim for payment of Official Investigation Costs is withdrawn or indemnity under this Policy is subsequently withdrawn or denied, QBE shall cease to advance Official Investigation Costs and the Directors and Officers for their respective rights and interests shall refund any Official Investigation Costs advanced by QBE to the extent that QBE is satisfied that the Directors and Officers were not entitled to such Official Investigation Costs, unless QBE agrees in writing to waive recovery of such Official Investigation Costs;
- (d) there is no indemnity for the Corporation or Outside Entity under this extension;
- (e) QBE's total liability for all claims made under this extension shall not exceed the lesser amount of five hundred thousand dollars [\$500,000] in the aggregate or the Limit of Indemnity;
- (f) The terms, conditions and exclusions of the Policy apply to any claim for Official Investigation Costs under this extension, as if they are Defence Costs.

2.8 Outside Directorship Cover

QBE shall provide indemnity in respect of any Claim made against a Director or Officer where such Claim is attributable to any:

- (a) Outside Directorship listed in the Schedule; or
- (b) Outside Directorship with a not for profit organisation.

Such indemnity shall automatically apply to any Outside Directorship the Corporation seeks to have listed in the Schedule for a period of 90 days from the date of the Directors or Officers appointment.

Provided always that:

Other than in the case of non-profit organisations, such indemnity shall cease after 90 days from the date of appointment unless QBE agrees to continue such indemnity and list the Outside Directorship in the Schedule. The following conditions apply to this coverage extension:

- (i) such indemnity is specifically in excess of any other insurance and/or indemnity available to the Director or Officer by reason of holding the Outside Directorship;
- (ii) such indemnity will only apply where the outside company or legal entity in which the Outside Directorship is held, is not required or permitted to indemnify the Director or Officer;
- (iii) this coverage extension shall not be construed to extend cover to the outside company or legal entity in which the Outside Directorship is held, or to any other director, officer or employee of that outside company or legal entity;
- (iv) such indemnity shall only apply in respect of a Wrongful Act occurring during the period for which such Outside Directorship was held.

2.9 Pecuniary Penalties

QBE shall pay on behalf of Directors or Officers any amount which the Director or Officer is ordered to pay pursuant to the laws of or in the jurisdictions of Australia or New Zealand as a fine or penalty, provided always that QBE is not legally prohibited from paying the fine or penalty. QBE's total liability for all claims under this extension shall not exceed the lesser amount of five hundred thousand (\$500,000) in the aggregate or the Limit of Indemnity.

2.10 Pollution Defence Costs

QBE shall pay Defence Costs incurred in defending a Claim:

- (a) alleging a Wrongful Act in connection with the discharge, dispersal, release or escape of Pollutants; or
- (b) where the Claim is based on the discharge, dispersal, release or escape of Pollutants on any real property deemed to be occupied, controlled or owned by the Corporation

Provided always that:

- (i) this extension does not apply to Claims brought in and which Claims allege Wrongful Acts in, the United States of America or Canada or their territories or protectorates;
- (ii) this extension does not otherwise provide indemnity for Loss;
- (iii) QBE's total liability in respect of Defence Costs for all Claims under this extension shall not exceed the lesser amount of two million dollars (\$2,000,000) in the aggregate or the Limit of Indemnity;
- (iv) there is no indemnity for the Corporation under this extension;

- (v) QBE shall not provide indemnity for Defence Costs where the Claim arises from asbestos;
- (vi) where the provisions of this extension conflict with Exclusion 4.11 (Pollutants) the provisions of this extension shall prevail.

2.11 Preservation of Indemnity

QBE agrees that if, for whatever reason, a Director or Officer is unable to satisfy a right to indemnity against the Corporation, QBE shall provide indemnity to such Director or Officer against Loss to the extent that the Corporation could have granted indemnity, as permitted or required by law. Any payment by QBE pursuant to this extension shall be subject to the Excess applying to Insuring Clause 1.2 (Insuring Clause B – Corporation Reimbursement) other than where the Corporation becomes Insolvent in which event any payment by QBE will be subject to the Excess applying to Insuring Clause 1.1 (Insuring Clause A - Directors & Officers Liability).

For the purpose of this policy extension Insolvent does not mean the voluntary liquidation, winding-up or dissolution of the Corporation.

2.12 Retired Directors and Officers

If, and only if, the Insured:

- (a) does not replace this Policy; or
- (b) does not purchase insurance similar to the cover provided by this Policy, to take effect following the expiry of the Period of Indemnity; or
- (c) does not purchase an Extended Reporting Period;

QBE shall provide a run-off period, of twelve (12) months immediately following the Period of Indemnity of this Policy in which to notify a Claim, to any Director or Officer who retired from all employment, office or any board position during the Period of Indemnity.

Provided always that:

- (i) the Wrongful Act giving rise to the Claim must have been committed prior to the retirement of the Director or Officer;
- (ii) any Claim made during the indemnity provided by this insuring agreement is deemed to have been made in the Period of Indemnity;
- (iii) no indemnity under this insuring agreement is available in the event:
 - (a) of a Merger or Acquisition during the Period of Indemnity; or
 - (b) of the non-payment of Premium for this Policy during the Period of Indemnity; or
 - (c) of the Corporation becoming Financially Impaired during the Period of Indemnity; or
 - (d) that this Policy is, has been, or will be cancelled by QBE during the Period of Indemnity; or

- (e) that the retired Directors and Officers have purchased other insurance, similar to the cover provided by this Policy, to take effect following the expiry of the Period of Indemnity.

2.13 Severability/Non Imputation

QBE agrees that where a Director or Officer:

- (a) failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984; or
- (b) made a misrepresentation to QBE before this contract of insurance was entered into; or
- (c) breached a term or condition of the Policy;

such conduct shall not prejudice the right of any other Director or Officer to indemnity as may be provided by this Policy.

Provided always that:

- (i) such other Director or Officer shall have no prior knowledge of any such conduct;
- (ii) such other Director or Officer has acted without any direct or indirect express or tacit consent, acquiescence, concurrence, solicitation, enticement or co-operation of or with any other Director or Officer regarding such conduct;
- (iii) such other Director or Officer shall, as soon as is reasonably practicable upon becoming aware of any such conduct, advise QBE in writing of all known facts in relation to such conduct.

2.14 Spousal Property

QBE shall provide indemnity to the lawful spouse of a Director or Officer provided always that:

- (a) such claim is made solely because of his or her status as the lawful spouse of that Director or Officer;
- (b) such claim results directly from a Claim made against that Director or Officer which is indemnified under this Policy;
- (c) such claim seeks damages recoverable from marital community property, or from property jointly held by that Director or Officer and the spouse, or from property transferred from that Director or Officer to the spouse;
- (d) such claim would otherwise be a Claim covered by this Policy if made against the Director or Officer.

2.15 Subsidiary Run-Off Cover

QBE agrees that:

- (a) in the event that an Entity ceases to be a Subsidiary during the Period of Indemnity, cover with respect to the Directors and Officers of such Subsidiary shall continue until the expiry date of the Reporting Period;
- (b) in the event that an Entity ceased to be a Subsidiary prior to the commencement of the Period of Indemnity, cover with respect to such Subsidiary shall be granted under this Policy.

Provided always that such indemnity shall only apply in respect of a Wrongful Act occurring between the date of creation or acquisition of the Subsidiary by the Corporation and the date such Entity ceased to be a Subsidiary, subject to the Retroactive Date.

2.16 Waiver of Excess

No Excess shall apply, or QBE will reimburse the Director or Officer for any payments made within the Excess, in relation to a Claim where Final Judgment is obtained and no Director or Officer is liable in respect of that Claim. Provided always that this extension does not apply to any Claim that is settled prior to such Final Judgment being obtained.

Section 3: Optional Extensions

Preamble

QBE shall provide indemnity as is available under this section provided always that:

- (a) the indemnity provided by each optional extension is subject to the terms of this Policy unless otherwise expressly stated herein to the contrary;
- (b) the inclusion of any optional extension shall not increase the Limit of Indemnity;
- (c) where an optional extension is not specified as "Included" in the Schedule then this Policy shall not provide any indemnity, Defence Costs or Official Investigation Costs in relation to the cover specified under such optional extension.

3.1 Entity Employment Practices Liability

This optional extension is not subject to Section 1: Insuring Clauses

QBE shall provide indemnity to the Corporation against civil liability for compensation arising from any Claim attributable to any Employment Practices Breach, where the Claim is first made against the Corporation during the Period of Indemnity and is notified to QBE during the Period of Indemnity. Provided always that:

- (a) Policy extension 2.5 (Extended Reporting Period) shall not apply to coverage under this optional extension;
- (b) the provisions of this extension shall prevail in any conflict with Exclusion 4.8 (Insured vs Insured);
- (c) QBE's total liability for all claims under this extension shall not exceed the lesser amount of two million dollars (\$2,000,000) including Defence Costs in the aggregate or the Limit of Indemnity.

For the purposes of this extension only the definition of Claim means:

- (d) the receipt by any Insured of any written demand for compensation made by an Employee or prospective Employee against the Corporation;
- (e) any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counter claim or third or similar party notice served upon any Insured containing a demand for compensation made by an Employee or prospective Employee against the Corporation.

3.2 Increased Aggregate Limit of Indemnity

QBE shall provide indemnity under this Policy to the Directors and Officers in respect of any Claim first made against the Directors and Officers during the Period of Indemnity and notified to QBE during the Reporting Period for Loss up to the Aggregate Limit of Indemnity provided always that:

- (a) QBE's total liability under this Policy shall not exceed:

- (i) the Limit of Indemnity stated in the Schedule in respect of any one Claim indemnified by this Policy; and

- (ii) the Aggregate Limit of Indemnity stated the Schedule in respect of all Claims indemnified by this Policy.

- (b) the Aggregate Limit of Indemnity shall not apply to and nothing in this Policy shall operate to increase or reinstate the indemnity provided by insuring agreements:

2.9 (Pecuniary Penalties);

3.1 (Entity Employment Practices Liability).

- (c) there is no indemnity for the Corporation under this Insuring agreement other than as provided by the provisions of clause 1.2 (Operative Clause B - Company Reimbursement).

3.3 Joint Venture Liability

QBE shall provide indemnity in respect of any Claim made against a Director or Officer where such Claim is attributable to any Joint Venture, where the Claim is first made against such Director or Officer during the Period of Indemnity and is notified to QBE during the Period of Indemnity. Provided always that such indemnity shall not apply to any Claim brought by or on behalf of:

- (a) any Joint Venture Partner; or
- (b) any vehicle established to conduct, control or manage such Joint Venture.

3.4 Pre-Acquisition Liability

QBE shall provide indemnity in respect of any Claim made against a Director or Officer where such Claim is attributable to any Subsidiary acquired by the Corporation which is listed in the Schedule, with respect to any Wrongful Act occurring prior to the date of such acquisition.

Provided always that such indemnity shall not extend to any Wrongful Act committed or alleged to have been committed:

- (a) by any director or officer of such subsidiary who is not also a Director or Officer of the Corporation at the time any Claim was first made; or
- (b) before the Retroactive Date.

3.5 Securities

QBE shall provide indemnity in respect of any Claim made against a Director or Officer where such Claim is attributable to any offer, invitation, sale or issue of any Securities in or any right to any Securities of the Corporation, including but not limited to dividend reinvestment plans, bonus share plans or Employee share option plans

Provided always that no indemnity is available in respect of an initial public offering of such Securities during the Period of Indemnity, unless QBE agrees to provide such indemnity and gives written confirmation of such agreement.

Section 4: Exclusions

QBE shall not be liable under this Policy to make any payment for or in connection with any Loss or part thereof:

4.1 Asbestos

arising directly or indirectly from or in consequence of exposure to asbestos or materials containing asbestos.

4.2 Bodily Injury/Property Damage

arising directly or indirectly from or in consequence of:

- (a) bodily injury, sickness, disease or death of any person, however this exclusion shall not apply to mental injury, mental anguish, nervous shock or emotional distress not associated with bodily injury; or
- (b) physical loss of, or damage to, or destruction of, any tangible property including loss of use thereof or any consequential loss.

4.3 Breach of Professional Duty

arising directly or indirectly from or in consequence of the provision, rendering or failure to render any professional service and/or professional advice, including any breach or alleged breach of any contract for the provision of such service or advice.

4.4 Consensual Claim

arising directly or indirectly from or in consequence of any Claim which is brought with the support, co-operation, concurrence, consent, encouragement, enticement, assistance or solicitation of the Insured against whom it is brought.

4.5 Employment Practices Liability

- (a) arising directly or indirectly from, or in consequence of any breach of an express obligation of the Corporation:

- (i) to make payments (including the provision of non-cash benefits); or
- (ii) pursuant to any procedural or notification requirements in the event of termination of employment;

whether such obligation arises under statute, regulation, award, contract of employment (including any arrangement or agreement collateral to any contract of employment) or any industrial, workplace or enterprise agreement or otherwise. However, this exclusion shall not apply to Back-pay arising from such claim.

- (b) which constitutes any costs incurred by the Corporation to modify any building, premises, fixtures, fittings, plants, equipment or other property in order to make same more accessible or accommodating to any disabled person.
- (c) which constitutes the cost of compliance with any order for, grant of, or agreement to provide injunctive or non-pecuniary relief. However, this exclusion shall not apply to Defence Costs arising from such claim.

4.6 Fines & Penalties

arising directly or indirectly from or in consequence of:

- (a) punitive, aggravated, multiple or exemplary damages;
- (b) fines or penalties uninsurable under the law or against the public interest;
- (c) payments made, or liabilities, or fines, or penalties incurred in connection with the non payment or underpayment or avoidance of any income tax, customs duties, excise duty, stamp duty, GST, sales tax or any other State or Federal tax or duty.

4.7 Fraud & Dishonesty

arising directly or indirectly from or in consequence of:

- (a) any dishonest, fraudulent, criminal, or malicious conduct of any Director or Officer;
- (b) any conduct of any Director or Officer committed with a reckless disregard for the consequences thereof;
- (c) any wilful breach of any statute, contract or duty by any Director or Officer.

4.8 Insured vs Insured

in respect of a Claim brought or maintained by or on behalf of:

- (a) any Director or Officer, provided always that this exclusion shall not apply to:
 - (i) any Claim brought by any Director or Officer for contribution or indemnity if such Claim directly results from another Claim covered under this Policy;
 - (ii) any Claim brought by any former Director or Officer;
 - (iii) any Claim brought by any Director or Officer for an Employment Practices Breach.
 - (iv) Defence Costs, provided always that QBE's total liability with respect to such Defence Costs shall not exceed the lesser amount of two million dollars (\$2,000,000) in the aggregate or the Limit of Indemnity.
- (b) the Corporation, provided always that this exclusion shall not apply to any such Claim that is caused to be brought in the name of the Corporation:
 - (i) as a shareholder derivative action, provided further that such shareholder is not also a Director or Officer and is acting without any direct or indirect express or tacit acquiescence, concurrence, consent, cooperation, encouragement, enticement or solicitation of or with any other Director or Officer, other than if required by law;

- (ii) by the Australian Securities and Investments Commission pursuant to Section 50 of the Australian Securities and Investments Commission Act 2001, or equivalent legislation, provided further that the Australian Securities and Investments Commission is acting without any direct or indirect express or tacit acquiescence, concurrence, consent, cooperation, encouragement, enticement or solicitation of or with any Director or Officer, other than if required by law;
- (iii) at the instigation of a Receiver formally appointed by a Court.

4.9 Jurisdictional Limits

arising directly or indirectly from or in consequence of:

- (a) a Claim brought in a court of law within the territorial limits of the United States of America or Canada or their territories or protectorates; or
- (b) the enforcement of any judgment, order or award obtained within, or determined pursuant to, the laws of the United States of America or Canada or their protectorates;
- (c) an official investigation, examination or inquiry within the territorial limits of the United States of America or Canada or their territories or protectorates.

4.10 Nuclear

arising directly or indirectly from or in consequence of ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel.

4.11 Pollutants

arising directly or indirectly from or in consequence of :

- (a) the actual, alleged or threatened discharge, release, escape, containment or disposal of Pollutants into or upon land, the atmosphere, or any watercourse or body of water;
- (b) any enforcement action or proceeding in connection with the containment, clean up, removal, or treatment of such Pollutants.

4.12 Prior or Pending

arising directly or indirectly from or in consequence of a Claim:

- (a) made, threatened or intimated to any Insured prior to the Period of Indemnity;
- (b) attributable to, in consequence of, or in connection with any fact, situation or circumstance:
 - (i) of which written notice has been given, or ought reasonably to have been given, under any previous policy; or
 - (ii) of which any Director or Officer first became aware prior to the Period of Indemnity, and which such Director or Officer knew or ought reasonably to have known had potential to give rise to a Claim.

4.13 Retroactive Date

arising directly or indirectly from or in consequence of:

- (a) a Wrongful Act committed, or alleged to have been committed, prior to the Retroactive Date;
- (b) any Claim notified subsequent to the Reporting Period;
- (c) any matter recorded in the Proposal, no matter how that reference is made.

4.14 Terrorism

arising directly or indirectly from or in consequence of any actual or alleged act of Terrorism or any action taken in controlling, preventing, suppressing or in any way relating to any actual or alleged act of Terrorism.

This exclusion operates in connection with any act of Terrorism regardless of any other cause or event and regardless of the sequence of the act of Terrorism and the other cause or event.

If QBE asserts that this exclusion applies, then in any action, suit, proceedings or claim brought by or on behalf of the Insured or QBE or any other person in connection with the Terrorism exclusion, the burden of proving that this exclusion does not operate shall be upon the Insured.

4.15 Trustee Liability

arising directly or indirectly from or in consequence of any position held by a Director or Officer as trustee or administrator of any superannuation, pension, health and welfare, or other employee benefit plan or trust established or maintained for the purpose of providing pensions, annuities or any other form of benefits to the Directors, Officers or Employees of the Corporation.

4.16 War

arising directly or indirectly from or in consequence of war, invasion, acts of foreign enemies, hostilities, whether war be declared or not, civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition of or damage to property by or under the order of any government or public local authority.

Section 5: Claims Conditions

5.1 Allocation

- (a) QBE has no obligation under this Policy for all Common Loss or all Common Defence Costs. There must be an allocation of Common Loss and Common Defence Costs calculated in accordance with this clause and the relevant terms of the Policy. QBE shall only be liable for that amount of Common Loss and/or Common Defence Costs calculated in accordance with and subject to the provisions of this clause and the relevant terms of the Policy.
- (b) In the event of Common Loss, where there are matters indemnified by this Policy and matters not indemnified by this Policy, the liability of QBE is limited to that part of the Common Loss represented by matters which are indemnified by the Policy. Where there are matters indemnified and not indemnified by the Policy which have not been apportioned, the liability of QBE in respect of such matters shall be based on the overriding intention that QBE shall not be liable for all Common Loss, and including but not limited to the following factors:
 - (i) whether the claim is principally in relation to matters indemnified by this Policy or matters not indemnified by this Policy;
 - (ii) the number of causes of action directed to the matters indemnified by this Policy and matters not indemnified by this Policy;
 - (iii) the number of defendants defending matters indemnified by this Policy and matters not indemnified by this Policy; and
 - (iv) the extent of the liability of the Directors and Officers attaching to or potentially attaching to the matters indemnified and not indemnified by the Policy.
- (c) In the event of Common Loss, where any Directors or Officers are parties to the Claim and are indemnified by this Policy and there are parties to the claim not indemnified by this Policy (including but not limited to the Corporation), the extent of QBE's liability shall be based on the overriding intention that QBE shall not be liable for all Common Loss and the relative legal and financial exposures of and the relative benefits to the parties, including but not limited to the following factors:
 - (i) whether the claim is principally directed against the Directors and Officers or an Entity not indemnified by this Policy;
 - (ii) the number of causes of action asserted in the claim against the Directors or Officers compared to the number of causes of action asserted in the claim against an Entity not indemnified by this Policy;
 - (iii) the number of defendants who are Directors or Officers compared to the number of defendants who are not indemnified by this Policy;
 - (iv) which of the Directors or Officers or Entity not indemnified by this Policy will derive the primary benefit from the resolution of the action;
 - (v) which of the Directors or Officers or Entity not indemnified by this Policy derived the primary commercial benefit from the transaction(s) or matters the subject of the claim;
 - (vi) the relative legal and financial exposure of the Directors and Officers, compared to that of the Entity not indemnified by this Policy, including by reference to the likelihood of an adverse judgement against each in the claim.
- (d) In the event of Common Defence Costs, QBE shall only be liable for an amount based on:
 - (i) where Common Defence Costs involve matters indemnified by this Policy and matters not indemnified by this Policy, to the extent of matters indemnified by this Policy as against matters not indemnified by this Policy by reference to the factors in sub-clause (b) above;
 - (ii) where Common Defence Costs involve parties indemnified by this Policy and parties not indemnified by this Policy, by reference to the factors in sub-clause (c) above.
- (e) In the event that agreement is reached on the allocation of Common Defence Costs, QBE shall advance Defence Costs in accordance with that agreement. In the absence of such agreement QBE may advance Defence Costs at its sole and absolute discretion provided always that no presumption as to allocation shall exist in any arbitration, suit or other proceeding.
- (f) In the event of disagreement on the allocation of Common Loss and/or Common Defence Costs then QBE shall, at the request of the Insured, resolve the matter by reference of the dispute to an expert for a binding determination. The expert shall be mutually agreed by the parties to the reference or, in the absence of mutual agreement, appointed by the President of the Law Society or equivalent organisation in the country or region in which the Common Loss was and/or Common Defence Costs were incurred. The expert shall make his determination in accordance with the intention of this Policy expressed in sub-clause (a) above and the principles in this clause 5.1.
- (g) The allocation finally agreed upon or determined shall be applied retrospectively to Common Defence Costs. In the event that an allocation is determined by a court, that determination shall apply retrospectively to any payments made prior to the determination. Each party agrees to reimburse the other, according to the consequences of such determination.

5.2 Claims Mitigation & Co-Operation.

If an Insured either prior to or during the Period of Indemnity becomes aware of a fact, situation or circumstance which could, if not rectified, lead to a Claim or increase the quantum of a Claim, the Insured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability under this Policy.

The Insured shall frankly and honestly disclose to QBE all relevant information and, in addition shall provide assistance to QBE, as it may require, to enable it to investigate and to defend any Claim under this Policy and/or to enable QBE to determine its liability under this Policy.

Other than costs and expenses incurred by QBE to enable QBE to determine its liability under this Policy, compliance with this condition shall be at the Insured's own cost, unless otherwise agreed in writing by QBE.

5.3 Defence & Settlement

The Insured agree not to settle any Claim, incur any Defence Costs or Official Investigation Costs, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any Claim or official investigation without QBE's written consent, such consent not to be unreasonably withheld. QBE shall not be liable for any settlement, Defence Costs, Official Investigation Costs, admission, offer or payment, or assumed obligation to which it has not consented.

QBE shall be entitled at any time to conduct, in the name of the Director or Officer, the defence or settlement of any Claim or their representation at any official investigation.

QBE may, if it believes that any Claim will not exceed the Excess, instruct the Director or Officer to conduct the defence of the Claim. In such a situation, QBE will reimburse the Director or Officer for Defence Costs in the defence of the Claim in the event that any payment made to dispose of the Claim exceeds the Excess.

If QBE retains lawyers to conduct, in the name of the Directors and Officers, the investigation, defence or settlement of any Claim or the representation of any Director or Officer at an official investigation, those lawyers will act on behalf of QBE solely in relation to any issue regarding the Insured's entitlement to indemnity from QBE and they will not act on behalf of the Director or Officer in respect of any such issue. Any information that is received by such lawyers retained by QBE can be provided to QBE and relied upon by QBE in relation to any issue that may arise regarding QBE's liability to indemnify the Insured. In relation to any such information, the Insured waives against QBE any claim or right that it may have for client or legal professional privilege as between the Insured and the lawyers retained by QBE.

The lawyers so retained by QBE may provide advice to QBE on any issue regarding QBE's liability to indemnify the Insured and, whilst doing so, may continue to act on behalf of both QBE and the Director or Officer in connection with the Claim or official investigation.

The Insured agrees that all communications between QBE and lawyers so retained by QBE which relate to the Insured's entitlement to indemnity from QBE are privileged as between QBE and the lawyers and the Insured agree that they are not entitled, under any circumstances, to access or obtain any such communications.

If any actual or apparent conflict arises between the interests of QBE and the Insured's interests, the lawyers retained by QBE to conduct the investigation, defence or settlement of any Claim or represent the Directors and Officers at an official investigation may cease acting on behalf of the Directors and Officers and may continue to act on behalf of QBE in relation to any dispute between QBE and the Directors and Officers with respect to the Insured's entitlement to indemnity from QBE.

5.4 Directors & Officers Right to Contest

In the event that QBE recommends settlement in respect of any Claim and the Directors and Officers do not agree that such Claim should be settled, then the Directors and Officers may elect to contest such Claim. Provided always that QBE's liability in connection with such Claim shall not exceed the amount for which the Claim could have been so settled plus the Defence Costs incurred with QBE's written consent up to the date of such election.

5.5 Multiple Claims

All causally connected or interrelated or continuous or repeated Wrongful Acts, whether committed by a Director or Officer individually or by more than one Director or Officer and whether directed to or affecting one, or more than one, Entity shall jointly constitute a single Wrongful Act under this Policy.

Where a single Wrongful Act gives rise to more than one Claim, all such Claims shall jointly constitute one Claim under the Policy, and only one Excess shall apply.

5.6 Reporting & Notice

The Insured shall give to QBE written notice as soon as practicable of any Claim made against any Director or Officer, provided always that such written notice is given to QBE during the Reporting Period. Notice of any Claim shall be given in writing to QBE, and delivered to:

The Claims Manager
Professional Liability
QBE Insurance (Australia) Ltd
85 Harrington St Sydney NSW 2000

5.7 Senior Counsel Clause

QBE shall not require the Insured to contest any Claim unless a Senior Counsel, to be mutually agreed upon by the Directors and Officers and QBE, shall advise that such Claim should be contested.

In formulating such advice, Senior Counsel shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely Defence Costs and the prospects of the Directors and Officers successfully defending the Claim.

The cost of such Senior Counsel's opinion shall be regarded as part of the Defence Costs.

5.8 Subrogation

In respect of any Loss indemnified by this Policy, and without limiting QBE's rights at law, QBE shall be subrogated to all the Insured's rights of recovery, and the Insured shall at their own cost co-operate and provide assistance, execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of documents necessary to enable QBE effectively to bring suit in the name of any Insured.

The Insured shall not, without first obtaining the written consent of QBE, do anything or fail to do anything which excludes, limits or prejudices QBE's rights of subrogation or recovery. In particular, without limiting the operation of this provision, the Insured shall not enter into any contract or agreement which excludes, limits or prejudices a right of recovery which the Insured may have in respect of any Claim or Loss indemnified by this Policy.

Section 6: General Conditions

6.1 Alteration to Risk

The Insured shall give to QBE written notice as soon as practicable of any material alteration to the risk during the Period of Indemnity including the Corporation going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or the Corporation failing to pay debts or breaching any other obligation giving rise to the appointment of a Receiver or bankruptcy or winding-up proceedings.

Where such notice is given and/or where there is any material alteration to the risk QBE shall be entitled to cancel this Policy in accordance with the Insurance Contracts Act 1984.

6.2 Assignment of Interest

No change in, modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement to this Policy and signed by an authorised employee of QBE.

6.3 Cancellation

The Corporation may cancel this Policy at any time by notifying QBE in writing, and QBE will (subject to the terms and conditions of the Policy) allow a pro-rata refund of Premium for the unexpired Period of Indemnity less 20% of such refund unless QBE agrees in writing to waive such charge.

QBE may cancel this Policy in accordance with the relevant provisions of the Insurance Contracts Act 1984, and QBE will provide a pro-rata refund of Premium for the unexpired Period of Indemnity.

6.4 Confidentiality

The Insured may disclose that the Insured has paid or agreed to pay a Premium in respect of a contract insuring all Director and Officers against a liability. The Insured shall not otherwise disclose the existence of this Policy, the nature of the liability indemnified, the Limit of Indemnity or the amount of the Premium paid, to any third party, except to the extent that:

- (a) such disclosure is made to a professional adviser; or
- (b) they are required by law to do so; or
- (c) QBE consents, in writing, to such disclosure.

6.5 Excess

QBE's liability under Insuring Clause 1.1 (Insuring Clause A – Directors & Officers Liability) and Insuring Clause 1.2 (Insuring Clause B – Corporation Reimbursement) shall apply to each Claim which is in excess of the respective amounts stated in the Schedule.

The relevant Excess shall be borne by the Directors and Officers or the Corporation, as the case may be, at their own risk and uninsured. The Excess is inclusive of Defence Costs unless otherwise stated in the Schedule.

Any costs and expenses incurred by QBE to determine whether QBE has a liability to indemnify the Insured under this Policy shall not be subject to the Excess but shall be borne by QBE.

6.6 GST

Where the Insured pays an amount for any acquisition relevant to a Claim indemnified under this Policy which includes GST, or where the Insured would pay such an amount were the Insured to make a relevant Acquisition, QBE will indemnify the Insured for that GST less any Input Tax Credit the Insured is or would be able to claim for it (the "GST amount").

QBE will pay the GST amount in addition to the Limit of Indemnity shown in the Schedule.

QBE will only provide indemnity to the Insured for the GST amount that relates to QBE's proportion of the Claim. This means that in the event that the Limit of Indemnity is not sufficient to cover the total amount of the Claim, QBE will only provide indemnity to the Insured for the GST that relates to the Insured's agreed payment under the Policy.

QBE will not indemnify the Insured for any GST liability that arises due to the Insured's failure to notify QBE of the Insured's entitlement or correct entitlement to an Input Tax Credit on the Premium.

6.7 Limit of Indemnity

QBE's total liability under this Policy for Loss in respect of any one Claim, and in the aggregate in respect of all Claims, shall not exceed the Limit of Indemnity specified in the Schedule.

Defence Costs are part of, and not in addition to, the Limit of Indemnity or any sub-limit, and payment by QBE of Defence Costs reduces such Limit of Indemnity or sub-limit by the amount of any such payment.

6.8 Merger Acquisition or Receivership

If the Corporation, during the Period of Indemnity, is the subject of a Merger or Acquisition or has a Receiver appointed then the indemnity provided by this Policy shall only apply in respect of a Wrongful Act occurring prior to such an event, unless otherwise agreed in writing by QBE.

6.9 Policy Construction & Interpretation

The construction, interpretation and meaning of the provisions of this Policy shall be determined in accordance with the law of the state, territory or country in which this Policy is issued, being the Place of Issue specified in the Schedule, and any disputes relating thereto shall be submitted to the exclusive jurisdiction of the courts of such state, territory or country. If no Place of Issue is shown in the Schedule it is agreed that the Place of Issue is Sydney, New South Wales, Australia.

Any marginal notes and titles of paragraphs in this Policy are included for descriptive purposes only and do not form part of this Policy for the purpose of its construction or interpretation. Capitalised words have special meaning and are defined in this Policy. Words that are not specifically defined in this Policy have the meaning normally attributed to them.

Under this Policy, the masculine includes the feminine and the singular includes the plural and vice versa and reference to a person includes a body corporate, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership or trust.

Section 7: Definitions

7.1 Aggregate Limit of Indemnity

means the amount shown as the Aggregate Limit of Indemnity stated in the Schedule. If no amount is shown the Aggregate Limit of Indemnity in respect of all Claims under this Policy is no greater than the Limit of Indemnity.

7.2 Back-pay

means back-pay arising from an order of reinstatement or re-employment but shall be limited to the amount the Insured is legally obliged to pay an Employee for the period between the time of termination of the Employee's employment and the time the Employee is reinstated or re-employed.

7.3 Claim

means:

- (a) the receipt by any Director or Officer of any written demand for compensation made by a third party against such Director or Officer;
- (b) any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counter claim or third or similar party notice served upon any Director or Officer containing a demand for compensation made by a third party against such Director or Officer;
- (c) any criminal proceeding.

7.4 Common Defence Costs

means any costs which are Defence Costs and which are costs common to:

- (a) both matters indemnified in the Claim and matters not indemnified in the Claim; or
- (b) a Director or Officer and any Entity not indemnified by this Policy.

It does not include any costs incurred solely by or on behalf of an Entity, or in relation to any matter, not indemnified by this Policy that is not part of Loss under this Policy and is not payable by QBE.

7.5 Common Loss

means any loss which is Loss and which is common to:

- (a) Both matters indemnified and matters not indemnified in any Claim; or
- (b) a Director or Officer and any Entity not indemnified by this Policy.

It does not include any loss incurred solely by or on behalf of an Entity, or in relation to any matter, not indemnified by this Policy that is not part of Loss under this Policy and is not payable by QBE.

7.6 Continuity Date

means the earlier of the first day of the Period of Indemnity or the first day of the first policy period where QBE has continuously been the insurer under a Directors & Officers Liability policy in uninterrupted succession.

7.7 Corporation

means the Entity declared in the Schedule and any Subsidiary companies.

7.8 Corporations Act

means Corporations Act 2001 as may be amended from time to time.

7.9 Defence Costs

means reasonable costs, charges and expenses incurred by QBE or with the prior written consent of QBE, such consent not to be unreasonably withheld, in defending, investigating or monitoring any Claim, or proceedings and appeals therefrom together with the costs of appeal.

It does not mean:

- (a) regular or overtime wages, salaries or fees of any Director or Officer;
- (b) costs, charges and expenses incurred by or on behalf of the Corporation;
- (c) costs for which QBE is not liable under the Claims Condition 5.1 (Allocation) and relevant terms of this Policy.

7.10 Director

means:

- (a) a natural person who is or was:
 - (i) appointed to the position of a director of the Corporation; or
 - (ii) appointed to the position of an alternate director of the Corporation and is acting in that capacity; regardless of the name that is given to their position; and
- (b) unless the contrary intention appears, a natural person who is not validly appointed as a director if:
 - (i) they act in the position of a director; or
 - (ii) the directors of the Corporation are accustomed to act in accordance with the person's instructions or wishes.

Subparagraph 7.10 (b)(ii) does not apply merely because the directors act on advice given by the person in the proper performance of functions attaching to the person's professional capacity, or the person's business relationship with the directors of the Corporation.

It does not mean an:

1. Employee or Officer who is not also a Director of the Corporation; or
2. agent, Receiver or an external auditor.

7.11 Employee

means a natural person who is or was:

- (a) employed under a contract of service with the Corporation during or prior to commencement of the Period of Indemnity who is or was pursuant to the contract of service subject to the direct control and supervision of the Corporation.
- (b) one of Corporation's retired employees who have been retained by the Corporation as consultants while acting in their capacity as consultants.

It does not mean an agent, consultant, Director or an external auditor.

7.12 Employment Practices Breach means, in relation to any Employee or prospective Employee of the Corporation, any actual or alleged:

- (a) actual or constructive wrongful or unfair dismissal, discharge or termination of an employment relationship;
- (b) breach of any oral or written, express or implied, employment contract or quasi-employment contract;
- (c) misleading representation or advertising relating to employment;
- (d) failure to employ or promote;
- (e) unfair deprivation of a career opportunity;
- (f) unfair discipline;
- (g) failure to grant tenure;
- (h) negligent Employee evaluation;
- (i) workplace harassment of any kind (whether sexual or otherwise), including the alleged creation or permission of a harassing workplace environment;
- (j) employment-related:
 - (i) denial of natural justice;
 - (ii) invasion of privacy;
 - (iii) defamation;
 - (iv) wrongful infliction of emotional distress;
 - (v) discrimination on any legally prohibited basis;
- (k) unfair contract of employment.

7.13 Entity means a body corporate.

7.14 Excess means:

- (a) the amount stated in the Schedule in respect of Insuring Clause 1.1 (Insuring Clause A – Directors & Officers Liability); and
- (b) the amount stated in the Schedule in respect of Insuring Clause 1.2 (Insuring Clause B – Corporation Reimbursement).

7.15 Extended Reporting Period means the time period specified in the Policy Extension 2.5 (Extended Reporting Period) immediately following the end of the Period of Indemnity during which written notice may be given to QBE of any Claim, on account of a Wrongful Act, occurring prior to the end of the Period of Indemnity.

7.16 Final Judgment means the full and final disposal of a Claim in favour of the Director or Officer:

- (a) by a successful motion to irrevocably dismiss or for summary judgment prior to trial; or
- (b) where final judgment has been given at trial and upheld after all appeals therefrom have been exhausted.

7.17 GST has the same meaning as given to that expression in A New Tax System (Goods and Services Tax) Act 1999.

7.18 Input Tax Credit has the same meaning as given to that expression in A New Tax System (Goods and Services Tax) Act 1999.

7.19 Insolvent means:

- (a) the appointment of an administrator or trustee in bankruptcy;
- (b) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, or other steps are taken for:
 - (i) liquidation, winding up, dissolution, administration or bankruptcy; or
 - (ii) entering into an arrangement, compromise or composition with, or assignment for the benefit of, creditors or a class of them,
 except for the purpose of a solvent reconstruction or amalgamation;
- (c) a Receiver or similar officer appointed over all or any part of the assets or undertaking;
- (d) stopping or suspending the payment of debts that are due, or the inability to pay debts for any reason;
- (e) the Directors and Officers had reasonable grounds for suspecting the Corporation could not pay its debts as they become due or a prudent director in the Insureds position ought to have known that there were reasonable grounds to expect the Corporation could not pay its debts as they become due.

7.20 Insured means the Directors and Officers, individually or collectively, or the Corporation, or both.

7.21 Joint Venture means any enterprise undertaken jointly by the Corporation with a third party or parties.

7.22 Joint Venture Partner means any third party or parties who jointly participate(s) with the Corporation in any Joint Venture.

7.23 Limit of Indemnity means the total limit of QBE's liability under this Policy stated in the Schedule, including Defence Costs.

7.24 Loss means:

- (a) the total amount which a Director or Officer becomes legally obligated to pay on account of a Claim made against such Director or Officer for a Wrongful Act and shall include damages, judgments, settlements, legal costs and expenses awarded against a Director or Officer to any claimant; and
- (b) Defence Costs arising from any Claim the subject of coverage under 7.24(a) above or Official Investigation Costs incurred by the Director or Officer.

It does not mean:

- (i) punitive, aggravated, multiple or exemplary damages; or
- (ii) matters which may be deemed uninsurable under Australian law; or
- (iii) any amount for which any Director or Officer is not legally liable; or
- (iv) any amount for which the Corporation is liable whether by way of judgement or settlement;

- (v) loss for which QBE is not liable under the Claims Condition 5.1 (Allocation) and relevant terms of this Policy.

7.25 Merger or Acquisition means:

- (a) the Corporation consolidating or merging with, or selling all or substantially all of its assets to, any other Entity or group of Entities acting in concert; or
- (b) the Corporation becomes a subsidiary of another Entity by virtue of Australian law.

7.26 Officer means a natural person:

- (a) who is or was employed under contract of service with the Corporation during or prior to commencement of the Period of Indemnity including but not limited to a secretary who was, or is, pursuant to the contract of service, subject to the direct control and supervision of the Corporation; or
- (b) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Corporation; or
- (c) who has the capacity to affect significantly the Corporation's financial standing; or
- (d) in accordance with whose instructions or wishes the Directors of the Corporation are accustomed to act, excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the Directors of the Corporation.

It does not mean an agent, Director, Receiver or an external auditor.

7.27 Official Investigation Costs means reasonable costs, charges and expenses incurred by QBE or with the prior written consent of QBE, such consent not to be unreasonably withheld for any legally compellable attendance by a Director or Officer at any official investigation, examination or inquiry pursuant to Policy Extension 2.7 (Official Investigation Costs),

always subject to all terms of that extension and other applicable terms of the Policy.

It does not mean:

- (i) regular or overtime wages, salaries or fees of any Director or Officer.
- (ii) costs, charges and expenses incurred by or on behalf of the Corporation.

7.28 Outside Directorship means the position of director, officer, trustee, governor, councillor, secretary or equivalent position held by a Director or Officer in an Outside Entity, which position is held:

- (a) with the knowledge and consent of the Corporation; and
- (b) for the purpose of representing the Corporation.

7.29 Outside Entity means any:

- (a) not for profit organisation;
- (b) Entity stated in the Schedule, or endorsed thereon during the Period of Indemnity

in which an Outside Directorship is held. It does not mean a Subsidiary.

7.30 Period of Indemnity means the Period of Indemnity stated in the Schedule.

7.31 Policy means:

- (a) the Schedule, insuring agreements, extensions, conditions, definitions, exclusions and other terms contained herein;
- (b) any endorsement attaching to and forming part of this policy either at inception or during the Period of Indemnity;
- (c) the Proposal.

7.32 Pollutants means:

- (a) any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals; or
- (b) any waste materials including materials recycled, reconditioned or reclaimed; or
- (c) any other air emission, odour, waste water, oil, oil products; or
- (d) infectious or medical waste; or
- (e) asbestos or asbestos products in whatever form or quantity; or
- (f) any noise emission.

7.33 Premium means the total amount payable stated in the Schedule or in any endorsement to the Schedule.

7.34 Proposal means:

- (a) the written application;
- (b) other information containing particulars and statements annexed to such application,

provided by the Insured and declared to QBE.

7.35 QBE means QBE Insurance (Australia) Limited (ABN 78 003 191 035).

7.36 Receiver means:

- (a) a receiver, or receiver and manager, of any property of the Corporation; or
- (b) an administrator of the Corporation; or
- (c) an administrator of a deed of company arrangement executed by the Corporation; or
- (d) a provisional liquidator or liquidator of the Corporation; or
- (e) a trustee or other person administering a compromise or arrangement made between the Corporation and someone else; or
- (f) any other external administrator of the Corporation.

7.37 Reporting Period means:

- (a) the Period of Indemnity;
- (b) the first thirty [30] days immediately after the Period of Indemnity in accordance with the provisions of Policy Extension 2.5 (Extended Reporting Period); or alternatively:
- (c) The first twelve [12] months immediately after the Period of Indemnity if Policy Extension 2.5 (Extended Reporting Period) is operative.

7.38 Retroactive Date means the date stated the Schedule.

7.39 Schedule means the schedule to this Policy.

7.40 Securities means shares or stock, bonds and debentures issued by the Corporation.

7.41 Subsidiary means:

- (a) any Entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the Corporation stated in the Schedule; or
- (b) any Entity over which the Corporation stated in the Schedule is in a position to exercise effective direction or control through ownership or control of more than fifty percent (50%) of the issued voting shares of such Entity.

7.42 Terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological or similar purposes or reasons including the intention to influence any government and/or to put the public, or any section of the public, in fear.

7.43 Wrongful Act means any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act or omission committed or attempted by any Director or Officer, individually or otherwise, in their capacity as a Director or Officer of the Corporation or, for the purpose only of Policy Extension 2.8 (Outside Directorship Cover), in their capacity as a director or officer of an Outside Entity.