

Management Liability Insurance for Private Companies

Policy Wording



POLICY

QM2348

This Policy is underwritten by QBE Insurance (Australia) Limited
ABN 78 003 191 035, AFS Licence No. 239545 of 82 Pitt Street, Sydney



About this booklet

This booklet contains 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.

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 service 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
Management Liability Insurance Policy	3
Insurer	3
Our agreement with you	3
Your policy	3
Paying your annual premium	3
Paying your instalment premium	3
Preventing our right of recovery	4
How Goods and Services Tax affects any payments we make	4
Insuring clauses	4
Extensions	4
General exclusions	6
Company exclusions	7
Fidelity exclusions	7
Claims conditions	8
General Terms and Conditions	9

GENERAL INFORMATION

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

1. That diminishes the risk,
2. that is of common knowledge,
3. that we know or should know in the ordinary course of our business as an insurer, or
4. 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.

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. We have 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 or claims made against you. 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, investigators and other insurers), for the purposes of assisting us and them in providing relevant services and products, or for the purposes of recovery or litigation. We may disclose personal information to people listed as co-insured on your policy and to family members or agents authorised by you. Computer systems and support services may be provided to us by related companies within the QBE Group that may be located overseas. 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
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:

1. promote more informed relations between insurers and their customers;
2. improve consumer confidence in the general insurance industry;
3. provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
4. 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:

1. any actual or alleged wrongful act committed prior to the retroactive date of the policy (if such a date is specified);
2. 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;
3. claims notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy;
4. claims made, threatened or intimated against you prior to the commencement of the period of insurance;

5. 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; and
6. 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 practical 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.

MANAGEMENT LIABILITY INSURANCE POLICY

Insurer

The policy is underwritten by QBE Insurance (Australia) Limited, ABN 78 003 191 035, AFS Licence No. 239545 of 82 Pitt Street, Sydney.

Our agreement with you

This policy is a legal contract between you and us. You pay us the premium, and we provide you with the cover you have chosen as set out in the policy, occurring during the period of insurance shown on your policy schedule or any renewal period.

The amount of any deductible that applies to your policy will be shown on your policy schedule.

The exclusions in the section headed 'Exclusions' and conditions in the section headed 'Claims conditions' and 'General conditions' apply to all sections of this policy.

Your policy

Your policy consists of the policy terms and conditions in this booklet and the policy schedule we give you.

Please read your policy carefully, and satisfy yourself that it provides the cover you require.

If you want more information about any part of your policy, please ask us, or your financial services provider.

Our address and telephone number is located on your policy schedule.

You should keep your policy booklet and policy schedule together in a safe and convenient place for future reference.

Paying your annual premium

If you are paying your premium in one annual payment, you must pay your premium, GST and other amounts charged for this policy by the due date. If we do not receive the premium by this date, or your payment is dishonoured, this policy will not operate and there will be no cover.

Paying your instalment premium

If you are paying your premium for the first time by instalments we will deduct instalments each month on the day of the month that you nominate as your payment date. If this is a replacement policy and you paid your previous policy by instalments, we will continue to deduct instalments for your replacement policy on the day of the month you previously nominated as your payment date, unless you tell us otherwise. If you have nominated the 29th, 30th or 31st of the month as your payment date, we will deduct your instalment payment on the next day if those dates don't occur in a month.

Details of your instalments are shown on your policy schedule.

There is no cover provided to you under this policy of insurance until the first instalment of the premium is paid to us. We will not pay a claim under this policy if, at the time the claim occurred, any instalment of premium has remained unpaid for 14 days or more. If any instalment of premium has remained unpaid for 1 month, we may cancel this policy. We will send you a notice giving you details of the action we intend to take and when any cancellation will become effective.

If you are paying your premium in instalments by direct debit from your credit card or financial institution account, you must tell us if those details change. You must do this no later than seven days before your next instalment is due.

Preventing our right of recovery

If you have agreed not to seek compensation from another person who is liable to compensate you for any loss, damage or liability which is covered by this policy, we will not cover you under this policy for that loss, damage or liability.

How Goods and Services Tax affects any payments we make

We will reduce the GST amount we pay for by the amount of any input tax credits to which you are or would be entitled if you made a relevant acquisition. In these circumstances, the Input Tax Credit may be claimable through your Business Activity Statement (BAS).

You must advise us of your correct Australian Business Number and taxable percentage.

Insuring clauses

Directors' and officers' liability

We agree, subject to the terms, conditions, limitations and exclusions of this policy, to pay on behalf of an insured person in respect of their liability for loss arising solely from a claim, except to the extent that the company has indemnified the insured person in respect of that claim.

Company reimbursement

We agree, subject to the terms, conditions, limitations and exclusions of this policy, to indemnify the company, to the extent it has lawfully indemnified an insured person for a claim otherwise insured under the insuring clauses for directors' and officers' liability or outside company directors.

Company liability

We agree, subject to the terms, conditions, limitations and exclusions of this policy, to indemnify the company in respect of its liability for loss arising solely from a claim made against the company.

Fidelity

We agree, notwithstanding the 'dishonesty' exclusion, and subject to the terms, conditions, limitations and exclusions (including the specific fidelity exclusions) of this Policy to indemnify the company for:

1. loss of money or property (including money or property in the care, custody or control of the company and for which it is legally liable) as a result of a fraudulent or dishonest act committed by an employee (acting alone or in collusion with others) with the intent of causing a loss to the company or an improper personal financial gain for themselves; and
2. fidelity investigation costs, up to 50% of the fidelity sub-limit of indemnity.

Our liability under clause 1 of this insuring clause will not exceed the fidelity sub-limit of indemnity shown in the policy schedule.

Outside company directors

We agree, subject to the terms, conditions, limitations and exclusions of this policy, to pay on behalf of each insured person in respect of their liability for loss incurred by them while acting in the capacity of director, officer, management committee member or member of the board of managers of any outside company and arising solely from a claim but only in excess of:

1. any valid and collectible insurance policy obtained by the outside company; or
2. any indemnification provided by the outside company.

Extensions

Additional limit for non-executive directors

For claims made against a non-executive director otherwise covered by this policy but for the limit of indemnity under this policy being exceeded or eroded, we will provide an additional limit of indemnity up to the amount specified in the policy schedule to pay on behalf of such non-executive director.

The additional limit of indemnity will be payable provided that:

1. the limit of indemnity;
2. all other applicable insurance whether written as excess over the limit of indemnity of this policy or otherwise; and
3. all other indemnification for such claim available to such non-executive director, whether from the company or otherwise have been exhausted.

Advancement of defence costs

In respect of any claim covered by this policy, we will advance defence costs prior to the final settlement of a claim. The advance payments of defence costs will be:

1. subject to the application of the deductible, (if any);
2. part of and not exceed the limit of indemnity; and

3. repayable to us by the insured persons or the company severally according to their respective interests in the event and to the extent that it is determined that they were not entitled under this policy to payment of such defence costs.

Bilateral extended reporting period

1. If we or the company refuse to renew this policy:
 - (a) you will have the right to the extended reporting period stated in the policy schedule if you give us:
 - written notice that you wish to exercise your right under this extension; and
 - pay the additional premium specified in the policy schedule within thirty (30) calendar days immediately following expiry of the period of insurance.
 - (b) we will give any insured person who voluntarily ceased to act as a director or officer prior to the expiry of the period of insurance an automatic 84 month extended reporting period.
2. The 'bilateral extended reporting period' extension is not available, and any extended reporting period exercised under the extension will expire, after:
 - (a) a takeover or merger of the company named in the policy schedule; or
 - (b) you effecting directors' and officers' liability insurance, (or similar insurance) with any other insurer or underwriter or other similar entity.

Civil fines and penalties

The definition of loss is extended to include civil fines and penalties awarded against an insured person where insurable by the law and regulation applicable to us and to the claim, up to the sub-limit of indemnity specified in the policy schedule.

Continuous cover

We agree, notwithstanding the 'prior or pending litigation' exclusion and 'claims made notice', to indemnify you for any claim made against you where that claim arises from a fact or circumstance which should have been, but was not, notified to us under an earlier policy under which we were indemnifying you, provided that we have continuously insured you between the date when that circumstance should have been notified and the date the claim was actually notified.

Crisis costs

We agree, subject to the terms, conditions, limitations and exclusions of this policy, to indemnify the company in respect of liability for crisis loss arising from a crisis that occurs during the period of insurance.

Our liability under this extension will not exceed the crisis costs sub-limit of indemnity shown in the policy schedule.

Emergency costs

Notwithstanding the 'advancement of defence costs' extension, if our prior written consent cannot be reasonably obtained before defence costs are incurred with respect to any claim, we will give retrospective consent to your incurring of defence costs up to, in the aggregate, fifteen (15) per cent of the limit of indemnity as specified in the policy schedule. Payment of such costs will be part of and not in addition to the limit of indemnity as shown in the policy schedule.

Employment practices liability

We agree, subject to the terms, conditions, limitations and exclusions of this policy, to indemnify you in respect of your liability for loss arising as a result of a claim made by a past, present or future employee or prospective employee for an actual or alleged employment practice wrongful act.

Investigation costs

We agree, subject to the terms, conditions, limitations and exclusions of this policy, to pay investigation costs for any investigation, regardless of whether a wrongful act has been alleged or not.

Occupational health and safety defence and investigation costs

Notwithstanding the 'bodily injury' or 'property damage' exclusion, we will, with our prior consent (which will not be unreasonably withheld or delayed), indemnify:

1. an insured person in respect of defence costs incurred in defending a claim arising from an actual or alleged breach of occupational health and safety law; or
2. the company in respect of defence costs incurred in defending a claim arising from an actual or alleged breach of occupational health and safety law up to the company occupational health and safety defence costs sub-limit of indemnity shown in the policy schedule.

Pollution defence and investigation costs

Notwithstanding the 'pollution' exclusion, we will, with our prior consent (which will not be unreasonably withheld or delayed), indemnify:

1. an insured person in respect of defence costs incurred in defending a claim arising out of pollution; or
2. the company in respect of defence costs incurred in defending a claim arising out of pollution, up to the company pollution defence costs sub-limit of indemnity shown in the policy schedule.

Prosecution costs

We will pay, where permitted by law, the reasonable legal costs, charges, fees, expenses and advances in respect of the same (other than salaries, commissions, expenses or other benefits of insured persons), incurred by an insured person with our prior written consent (which will not be unreasonably withheld

or delayed) to oppose the grant of, or the appeal against or seek the discharge or revocation of:

1. an interim or interlocutory judicial order entered against an insured person;
2. any proceeding concerning the extradition of any insured person in connection with a claim; or any proceeding imposing:
 - (a) confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of that insured person;
 - (b) a charge over real property or personal assets of that insured person;
 - (c) temporary or permanent prohibition on that insured person from holding the office of or performing the function of a director or officer;
 - (d) restriction of that insured person's liberty to a specified domestic residence or a confinement of that insured person in secure custodial premises, operated by or on behalf of a governmental or judicial agency, either without charge or without a judicial finding of culpability or liability in that claim;
 - (e) deportation of that insured person following revocation of otherwise proper, current and valid immigration status for any reason other than their conviction of a crime.

Our liability under this extension will not exceed the prosecution costs sub-limit of indemnity shown in the policy schedule.

Public relations expenses

We will pay the reasonable fees and related expenses of a public relations firm or consultant, crisis management firm or law firm, which you may, in the reasonable exercise of your discretion, engage with our written consent, (such consent not to be unreasonably withheld or delayed), in order to prevent or limit adverse effects or negative publicity which it is anticipated may arise from a claim during the period of insurance.

Our liability under this extension will not exceed the public relations sub-limit of indemnity shown in the policy schedule.

QBE legal panel

1. You may contact the QBE professional liability legal panel for a single complimentary session of verbal advice in relation to matters which are covered or potentially covered under this policy; and
2. in the event of a claim arising from the matter we agree to the appointment of any professional liability legal panel member firm to act on your behalf in respect of any claim notified to us provided there is no existing or potential conflict of interest, in which case we will refer you to another member of the panel.

The terms, conditions and contact details for the QBE professional liability legal panel can be found on our website at www.qbe.com.

Statutory liability

The definition of loss is extended to include strict liability fines and penalties awarded against you, where insurable by the law and regulation applicable to us and to the claim, in respect of claims alleging a breach of Australian or New Zealand:

1. occupational health and safety legislation; or
2. pollution legislation.

This extension does not cover and excludes claims arising from any intentional, wilful, reckless, or deliberate wrongful act.

Our liability under this extension will not exceed the statutory liability sub-limit of indemnity shown in the policy schedule.

Superannuation trustees liability

The definition of insured person is extended to include any insured person in their capacity as a trustee of any pension or superannuation scheme, health and welfare plan, share option scheme or plan, or other employee benefit programme, social benefits system or trust programme established or maintained for the sole benefit of the company's employees.

Tax liability

This policy will extend to insure any claim against an insured person for unpaid taxes or superannuation contributions of the company where the company has become insolvent.

This extension does not cover any liability which arises from the wilful intent of any insured person(s) to breach any statutory duty governing the payment of taxes and shall only apply to unpaid tax liabilities of the company.

Our liability under this extension will not exceed the tax liability sub-limit of indemnity shown in the policy schedule

General exclusions

Bodily injury and property damage

This policy does not cover and excludes claims for actual or alleged bodily or psychological injury, sickness, disease or death of any person or damage to or destruction of any tangible property, including loss of use thereof, except that this exclusion does not apply to emotional distress or mental anguish brought as part of a claim arising out of any employment practice wrongful act.

Dishonesty

This policy does not cover and excludes claims directly or indirectly arising out of any actual:

1. dishonest, fraudulent or malicious act of yours.
2. profit or advantage or receiving any remuneration to which you are not legally entitled.

This exclusion only applies if it is established through a final adjudication or formal written admission in the relevant claim that such conduct did in fact occur.

Non-covered acts

This policy does not cover and excludes claims directly or indirectly arising out of wrongful acts, or any investigation:

1. prior to the retroactive date shown in the policy schedule;
2. after the date of commencement of the winding up of, or the appointment of a receiver, administrative receiver, liquidator or administrator to the company or any outside company;
3. after the date of a takeover or merger; or
4. prior to the date any subsidiary was acquired by the company.

Pollution

This policy does not cover and excludes claims directly or indirectly arising out of pollution.

Prior/pending litigation

This policy does not cover and excludes claims directly or indirectly arising out of the circumstances underlying any claim or any legal, administrative or regulatory proceedings against you first made or commenced prior to the period of insurance.

Professional services

This policy does not cover and excludes claims for any actual or alleged breach of any professional services, except that this exclusion does not apply to any claims alleging a failure to supervise any employee of the company.

Stock offerings

This policy does not cover and excludes claims directly or indirectly arising out of any stock offering.

United States of America

This policy does not cover and excludes claims brought under the law or jurisdiction of the United States of America or any of its territories or protectorates.

Company exclusions

Anti-competitive conduct

This policy does not cover and excludes claims made against the company directly or indirectly arising out of any actual or alleged anti-competitive conduct.

Breach of patent claims

This policy does not cover and excludes claims made against the company directly or indirectly arising out of any actual or alleged breach of any patent.

Breach of contract

This policy does not cover and excludes claims made against the company directly or indirectly arising out of any actual or alleged breach of contract, except that this exclusion does not apply to any employment practice wrongful act.

Company vs. insured

This policy does not cover and excludes claims brought by or on behalf of the company; except that this exclusion does not apply to any claim:

1. in respect of defence costs; or
2. brought by or at the direction of any liquidator, provisional liquidator, administrator or receiver of the company; or
3. in the form of a shareholder derivative action made without your procurement or instigation.

Director employment practice claims

This policy does not cover and excludes claims made against the company by any director of the company arising from an actual or alleged employment practice wrongful act.

Fidelity exclusions

Consequential loss

This policy does not cover and excludes claims made under the 'fidelity' insuring clause directly or indirectly arising out of any consequential or indirect loss.

Director and shareholder dishonesty

This policy does not cover and excludes claims made under the 'fidelity' insuring clause involving a fraudulent or dishonest act by, or complicity in a dishonest or fraudulent act by a director or shareholder owning more than 5% of the company.

Geographical limits

This policy does not cover and excludes loss under the 'fidelity' insuring clause arising out of any dishonest or fraudulent act that occurred outside of Australia or New Zealand.

Intellectual property

This policy does not cover and excludes claims made under the 'fidelity' insuring clause directly or indirectly arising out of the actual or alleged theft of confidential information or intellectual property.

Knowledge of previous dishonest acts

This policy does not cover and excludes loss under the 'fidelity' insuring clause involving an employee who has previously committed, or was suspected by a director or officer of having previously committed, a dishonest or fraudulent act.

Non-covered acts

This policy does not cover and excludes loss under the 'fidelity' insuring clause for any dishonest or fraudulent act committed:

1. prior to the date when you first purchased fidelity insurance; or
2. discovered prior to the period of insurance; or
3. discovered more than 30 days after expiration of the period of insurance.

Proof of loss

This policy does not cover and excludes loss under the 'fidelity' insuring clause where the proof of loss is solely dependent on an inventory, stocktake or profit and loss reconciliation.

Claims conditions

When to notify

1. You must give us written notice as soon as practicable of any claim.
2. You may at any time during the period of insurance give us written notice of any circumstances that might reasonably be expected to give rise to a claim.

Who to notify

Notice of any claim should be given in writing to us, and delivered to:

The Claims Manager
Professional Liability Claims Department
QBE Insurance (Australia) Limited
85 Harrington Street, Sydney, NSW, 2000

What to notify

Notice given of a circumstance must include reasons for the anticipation of a claim, with full particulars of the circumstances, dates and persons involved. Any subsequent claim arising out of such circumstances will be deemed to have been made during the period of insurance.

Admission and settlement

You must not admit liability, or attempt to settle or make any admission with respect to any claim without our written consent, (which will not be unreasonably withheld or delayed).

Allocation

If a claim is made against a party entitled to cover under this policy in respect of loss covered by this policy together with other loss that is not covered by this policy or a claim is made against both a party entitled to cover and a party who is not so entitled, then the following sub-paragraphs will apply:

1. we will pay only such amount as is just and equitable having regard to established judicial allocation principles of the loss covered by this policy compared to other loss which is not covered by this policy and of the party entitled to cover compared to the party not so entitled;
2. the insured person(s) or where applicable, the company and us shall use our best efforts to agree this amount; and
3. in default of an agreement, this amount shall be determined by an independent lawyer in accordance with the principles set out in clause 1 above.

Conduct of defence

1. Unless you elect for us to conduct the defence in writing, it will be solely your obligation to investigate any claim, or circumstance notified, and to undertake the conduct of any proceedings in connection with any claim.
2. In the event that you conduct the defence we shall retain the right, but not the obligation, to take over the investigation, defence, mitigation or settlement of such claim on your behalf.

Incurring defence costs

Subject to the 'emergency defence costs' extension, we will only be liable to pay defence costs if we have given our prior written consent to do so, (which will not be unreasonably withheld or delayed). Where the same or a similar claim is made against more than one insured person or against the company and any insured person, the same lawyers will be appointed to defend all of them unless there is conflict of interest between them.

Information and assistance

You must disclose to us at your own expense all relevant information and provide any assistance we may reasonably require to enable us or our agents to investigate any claim, investigation or circumstance notified. You must also allow us to effectively associate in the defence, mitigation or settlement of any claim.

Legal opinion

We will not require you to contest any claim unless the legal opinion of an independent lawyer, (to be paid for by us) advises that such claim should be contested having given full consideration to:

1. the financial implications, damages and costs likely to be recovered by the claimant;
2. the likely defence costs;
3. the prospects of you successfully defending the claim; and
4. in respect of a criminal or regulatory claim, the reputation of the insured.

Subrogation

You must not waive any rights of recourse or recovery against any other person relating to a covered claim under this insurance and will assist us in all respects in exercising such rights if requested to do so by us. In the event of any payment under this policy, we shall be subrogated to the extent of such payment to all your rights of recovery, and you must execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of documents necessary to enable us to effectively bring proceedings in your name.

General Terms and Conditions

Applicable Law

This policy will be governed by and interpreted in accordance with the laws of the Commonwealth of Australia and the jurisdiction of the court in the state where this policy was issued.

Assignment

Assignment of interest under this policy will not bind us unless and until our written consent is endorsed on this policy.

Cancellation

1. You may cancel this policy at any time by notifying us in writing, and we will allow a pro-rata refund of premium for the unexpired period of insurance, unless a claim or circumstance has been notified to us during the period of insurance in which case no premium will be refunded.
2. We may not cancel this policy except for non-payment of premium.

Confidentiality

You may disclose that you have paid or agreed to pay a premium in respect of a contract insuring all directors' and officers' against a liability. You will 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:

1. such disclosure is made to a professional adviser; or
2. you are required by law to do so; or
3. we have consented, in writing, to such disclosure.

Deductible

1. Where a claim is made under this policy by the company under the 'company reimbursement' or 'company liability' insuring clauses, we will only indemnify the company for payments in excess of the amount stated in the policy schedule as the deductible. The deductible will be applied once to each and every claim.
2. Where a claim is made under this policy by an insured person under the insuring clause for directors' and officers' liability or outside company directors and the company could have indemnified the insured person under the applicable general law, but does not do so, the company must reimburse us for any indemnity paid by us up to the amount of the deductible stated in the policy schedule. However, the company will have no such obligation where its failure to indemnify the insured person is due solely to its insolvency.

Limit of indemnity

1. The amount stated in the policy schedule as the limit of indemnity is, subject to the additional limit available under the 'additional limit for non-executive directors' extension, the maximum payable by us under the policy in respect of any one claim and in the aggregate during the period of insurance irrespective of the number of:
 - (a) claims payable under this policy;
 - (b) insured parties entitled to indemnity;
 - (c) wrongful acts; or
 - (d) insured sections or covers within the insured sections under which claims are made under this policy.
2. The amount stated in the policy schedule in respect of the additional limit for non-executive directors is the maximum payable by us and in the aggregate irrespective of the number of:
 - (a) claims made;
 - (b) claims made under this policy;
 - (c) non-executive directors entitled to indemnity under this policy; or
 - (d) wrongful acts.
3. The limit of indemnity and the additional limit for non-executive directors is inclusive of all defence costs and other cover payable under this policy.
4. The limit of indemnity will not be increased by purchase of an extended reporting period under the 'extended reporting period' extension. Any sub-limit of indemnity stated in the policy schedule, except the additional limit provided under the 'additional limit for non-executive directors' extension, will be part of and not in addition to the limit of indemnity, and each sub-limit is an aggregate amount for the period of insurance. If more than one sub-limit is applicable to any one claim then the highest single sub-limit only applies. If a sub-limit or the additional limit of indemnity for non-executive directors exceeds the limit of indemnity, then the limit of indemnity will prevail.

Multiple claims

1. All causally connected or interrelated wrongful acts or investigations jointly constitute a single wrongful act or investigation under this policy which will be deemed to have occurred on the date of the earliest wrongful act or investigation.
2. Where a single wrongful act or investigation or series of causally connected or interrelated wrongful acts or investigations give rise to more than one claim, all such claims will jointly constitute one claim which will be deemed to have been made at the time the first claim was made.

Non-disclosure

We may reduce our liability under this policy to nil in the case of fraudulent non-disclosure or misrepresentation by you. We waive any other statutory right we may have to avoid this policy except for the non-payment of premium.

Notice

The company named in the policy schedule will act on behalf of all insured parties in all matters with respect to this policy except in the case of a claim in which it has a material conflict of interest with an insured party where it will have no such authority and that insured person will be entitled to communicate directly with us. In the event of a conflict of interest between insured parties, we will be under no obligation to communicate to any insured party our position with regard to any other insured party.

Order of payments

In the event of claims which are reasonably likely to exceed the limit of indemnity, we will:

1. first pay loss under the insuring clauses for directors' and officers' liability and outside company directors;
2. then pay loss under the insuring clause for company reimbursement paid by the company on behalf of an insured person; and
3. then pay other loss incurred by the company.

The insolvency of any company shall not relieve us of any of our obligations to prioritise payment under this policy.

Other insurance

If there is any other more specific valid and collectible insurance that is available to you in respect of a claim, other than insurance that is specifically stated to be in excess of this policy, then the insurance afforded by this policy will be in excess of and will not contribute to such other insurance.

Policy period and premium

1. The policy provides insurance as described in this booklet for the period of insurance provided the premium and other charges are paid to and accepted by us. Government taxes and charges are payable in addition to the premium.
2. The premium is deemed paid and accepted on receipt by us or the intermediary appointed to place this insurance with us.
3. If the premium is not paid and accepted by the payment date we may elect to cancel the policy and in so doing shall have no liability to indemnify any claim or circumstance already notified under the policy.
4. The payment to the company named in the policy schedule of any return premium that may be payable under or in respect of this policy will satisfy our obligation to return such premium.

Severability

1. The proposal will be construed as a separate application for insurance under this policy by each insured party. No statements in the proposal or knowledge possessed by an insured person will be imputed to any other insured person.
2. For the purpose of determining the applicability of the exclusions and limitations in the exclusions section above,
 - (a) the act or knowledge of an insured person will not be imputed to any other insured person.
 - (b) The act or knowledge of the chairman, chief executive officer, chief operating officer, legal counsel (or equivalent positions) of the company shall be imputed to the company.

Definitions

The following words will have the same meaning attached each time they appear in this policy. Where the context so admits or requires, words importing the singular will include the plural and vice versa and words importing the masculine will import the feminine and the neuter. References to 'a person' will be construed so as to include any individual, company, partnership, or any other legal entity. References to a statute will be construed to include all its amendments or replacements and the equivalent in any other jurisdiction. All headings within the policy are included for convenience only and will not form part of this policy.

Word or Expression	Meaning
Claim	any of the following first made during the period of insurance: <ol style="list-style-type: none"> 1. any legal, administrative or regulatory proceeding, whether civil or criminal, commenced against you for a wrongful act; or 2. any written communication received by you or an outside company alleging you have committed a wrongful act indicating an intention to claim or complain against you in respect of such wrongful act to a legal, administrative or regulatory authority; or 3. any investigation; or 4. any extradition proceedings.
Company	the company stated as the named insured in the policy schedule and all subsidiary companies.
Crisis	any of the following events which first occurs during the period of insurance and which in the reasonable opinion of the chief executive officer (or equivalent) of the company has the potential to reduce the consolidated annual revenue of the company by more than 30% if left unmanaged: <ol style="list-style-type: none"> 1. the company loses its intellectual property rights including but not limited to patents, trademarks and copyrights;

Word or Expression	Meaning
Crisis (continued)	<ol style="list-style-type: none"> the company loses a major customer, contract or credit facility; any product which is manufactured, produced, packaged or distributed by the company has a recall announced due to its potential for bodily injury or property damage; sudden and unforeseen bodily injury or death happening at the company's premises causing emotional distress to any director, officer, employee or customer of the company; discovery of unauthorised intrusion into the company's computer network or loss or theft of any of the company's computers containing commercial-in-confidence information or information governed by privacy laws; or commencement of a criminal investigation into any director or officer or employee of the company.
Crisis loss	the reasonable and necessary fees, costs and expenses paid by the company for an independent external crisis management consultant for a period not exceeding 30 calendar days after the crisis first happens to mitigate the effects of the crisis on the company's consolidated annual revenue.
Defence costs	<ol style="list-style-type: none"> all reasonable legal costs, charges, fees, expenses and advances in respect of the same (other than salaries, commissions, expenses or other benefits of any insured person or any employee of yours); and investigation costs; and any premiums paid for insurance instruments or for bonds which are required in order to defend proceedings, institute an appeal or be released on bail but without any obligation to furnish or procure such insurance instruments or bonds.
Director or officer	any director or officer, management committee member or member of the board of managers of the company.
Employment practice wrongful act	<ol style="list-style-type: none"> discrimination with respect to the terms or conditions of employment on the basis of an individual's race, colour, religion, age, sex, national origin, disability, pregnancy, sexual orientation or preference or other status protected under applicable law; or sexual harassment, including unwelcome sexual advances, requests for sexual favours, and any unwelcome verbal, visual or physical contact of a sexual nature which: <ol style="list-style-type: none"> is explicitly or implicitly made a term or condition of employment; and

Word or Expression	Meaning
Employment practice wrongful act (continued)	<ol style="list-style-type: none"> creates a hostile or offensive working environment; and when rejected or opposed by a person becomes a basis for decisions regarding that person's employment; or defamation relating to a person's job skill, job performance, qualifications for employment, professional reputation, disciplinary history, or termination of employment; or unfair or wrongful termination of employment or refusal to hire; or adverse change in the terms and conditions of a person's employment in retaliation for that person's exercise of his or her rights under law, or support of the rights of another.
Extended reporting period	the period immediately following expiry of the period of insurance in which notice may be given to us of a claim first made during such period in respect of wrongful acts or conduct, (as described in the Investigation costs extension) which occurred prior to the expiry of the period of insurance.
Extradition proceedings	a request for extradition of an insured person or a warrant for arrest in respect of an insured person under extradition legislation.
Fidelity investigation costs	the reasonable independent third party fees, costs and expenses (not including any remuneration of any insured person or employee of yours) incurred directly with respect to preparing any claim with respect to clause 1 of the 'fidelity' insuring clause.
Independent lawyer	<ol style="list-style-type: none"> where the claim is in a Commonwealth jurisdiction, a Senior Counsel agreed upon by you and us or failing such agreement to be nominated by the chairman for the time being of the Bar Council of New South Wales; or where the claim is in another jurisdiction, a lawyer of more than ten (10) years experience agreed upon by you and us or failing such agreement to be nominated by the chairman of the local law society.
Insured person	<ol style="list-style-type: none"> any natural person who is, was or during the period of insurance becomes a director or officer including any non-executive director; the director's or officer's estate, heirs, legal representatives or assigns, in the event of his death or incompetence or bankruptcy, but only for a wrongful act or conduct performed by that director or officer in their capacity as such;

Definitions

Word or Expression	Meaning
Insured person (continued)	<ol style="list-style-type: none"> the lawful spouse or domestic partner (including same sex partner(s)) of any director or officer provided that the claim is to enforce a judgment against that director or officer for a wrongful act or conduct performed in their capacity as such; any natural person acting as a shadow director of the company. any employee of the company not appointed by a receiver, administrative receiver, liquidator or administrator to the company: <ol style="list-style-type: none"> whilst acting in a managerial or supervisory capacity; named as a co-defendant with a director or officer of a company in a claim in which the employee is alleged to have participated or assisted in the commission of a wrongful act.
Investigation	<ol style="list-style-type: none"> any written notice served on you requiring the insured person to attend an interview or provide documentation or otherwise co-operate in an administrative or regulatory investigation, where the investigation directly concerns the conduct of the insured person (acting in their capacity as an insured person) or of the affairs of the company or outside company. a raid or on-site visit to any company by an official body that involves the production, review, copying or confiscation of records, or the interview of any insured person; or an internal enquiry by the company into the affairs of the company or an insured person requested by a regulator or official body (except for employment practices related bodies), following a formal written notification by the company informing the regulator of an actual or potential material breach of your legal or regulatory duties, in which an insured person in their capacity as such is requested in writing to participate. <p>Investigation will not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulated entity, conducted in a company's or regulator's normal review or compliance process.</p>

Word or Expression	Meaning
Investigation costs	<p>reasonable fees, costs and expenses (but not including any remuneration of any insured person or employee of the company) incurred with respect to preparing any written notice or reports to any official body or directly attributable to witness attendance.</p> <p>Our liability for investigation costs incurred in connection with clause 2 or 3 of definition of investigation are subject to the pre-investigation costs sub-limit of indemnity specified in the policy schedule. These will be part of, and not in addition to, the limit of indemnity.</p>
Loss	<ol style="list-style-type: none"> compensatory damages and costs awarded against you by a court or tribunal empowered to do so; or exemplary or aggravated damages for defamation awarded against you by a court or tribunal empowered to do so; or multiple, exemplary, aggravated or punitive damages (provided these are in addition to compensatory damages) awarded against you by a court or tribunal, if indemnity for this is lawful under the laws of the territory of that court or tribunal; or settlements compromising any actual or anticipated legal proceedings made with our prior written consent (such consent not to be unreasonably withheld or delayed); or defence costs incurred with our prior written consent (such consent not to be unreasonably withheld or delayed). <p>Loss does not include claims which we are prohibited from paying by law in the jurisdiction concerned.</p>
Named insured	is the named insured on the policy schedule which is also the company.
Non-executive director	any natural person who serves as a non-executive director.
Non-indemnifiable loss	any amounts which the company is not permitted to indemnify according to the applicable general law.
Outside company	<p>any company or non-profit entity to which the director or officer was or is appointed as a director or officer at the request, order or direction of the company provided that such outside company:</p> <ol style="list-style-type: none"> is not incorporated or domiciled within the United States of America; or does not have its securities listed on a security exchange or market; unless listed by endorsement as an outside company.
Period of insurance	the period shown as such on the policy schedule attaching to this policy.

Word or Expression	Meaning
Policy	this document, the policy schedule and any endorsements attaching to this document or the policy schedule.
Pollutant	any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste. Waste is deemed to include materials to be recycled, reconditioned or reclaimed. Legionella bacteria are deemed not to be pollutants for the purpose of this insurance.
Pollution	<ol style="list-style-type: none"> the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of pollutants at any time; or any cost, expense, claim or suit arising out of any <ol style="list-style-type: none"> request, demand or order as a result of actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of pollutants; or demand that you test for, monitor, clean up, remove, contain, treat, detoxify, or neutralise or in any way respond to, or assess the effects of pollutants.
Stock offering	the initial public offer of any of the company's own securities.
Subsidiary company	<ol style="list-style-type: none"> any company in respect of which the company (either directly or indirectly through one or more of its subsidiary companies): <ol style="list-style-type: none"> controls the composition of the board of directors; or controls more than half the voting power at a general meeting of shareholders; or holds more than half of the issued share capital (regardless of class of share), on or before the inception date of this policy. any company as defined above (other than any company part of whose issued share capital is offered to the public or otherwise traded on a recognised exchange in the United States of America) which is acquired or created on or subsequent to the inception date of this policy and of which the turnover for the prior 12 months does not exceed 50% of the company's turnover for the same period. any other company that we have given prior written consent to for its inclusion as a subsidiary company under this policy.

Word or Expression	Meaning
Takeover or merger	<ol style="list-style-type: none"> any sale of the majority of the issued share capital of the company; or the company's merger with or acquisition by another entity such that the company is not the surviving entity and no longer: <ol style="list-style-type: none"> controls the composition of the board of directors; or controls more than half the voting power; or holds more than half of the issued share capital.
We, our, us	QBE Insurance (Australia) Limited (ABN 78 003 191 035).
Wrongful act	any actual or alleged wrongful act or omission committed by: <ol style="list-style-type: none"> the insured person solely in their capacity as an insured person. the company. Wrongful act includes employment practice wrongful act.
You, your, yours	the company and the insured persons.