

# PURPL

One Cover, One Company, Six Dimensions

Packaged Underwritten Risk and Professional  
Liability Insurance Policy



POLICY

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 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.

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## GENERAL INFORMATION FOR PURPL 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](mailto: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

Section 2, 'Corporate Cover' of 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
- 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 intimidated 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 PURPL 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, Section 1 for claims occurring and Section 2 for claims made, respectively during the period of insurance shown on your Policy Schedule or any renewal period.

The deductibles set out in the section headed 'What you must pay if you make a claim – Deductible' apply to all claims except where otherwise stated. The amount of any deductible that applies to your Policy will be shown on your Policy Schedule.

The exclusions in the section(s) headed 'When you are not covered' and conditions in the section headed 'General Conditions' apply to all types of cover.

### Your Policy

Your PURPL 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.

The address and telephone number of your QBE branch are on your Policy Schedule.

You should keep your Policy Booklet and Policy Schedule together in a safe and convenient place for future reference.

### Other party's interests

You must tell us of the interests of all parties (e.g. financiers, owners, lessors) who will be covered by this insurance. We will protect their interests only if you have told us about them and we have noted them on your Policy Schedule.

### Paying your premium

You must pay your premium by the due date. If we do not receive your premium by this date or your payment is dishonoured this Policy will not operate and there will be no cover.

### 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

The amount of premium payable by you for this Policy includes an amount on account of the GST on the premium.

When we pay a claim, your GST status will determine the amount we pay.

When you are:

- (a) not registered for GST, the amount we pay is the sum insured/limit of liability or the other limits of insurance cover including GST.
- (b) registered for GST, we will pay the sum insured/limit of liability or the other limits of insurance and where you are liable to pay an amount for GST in respect of an acquisition relevant to your claim (such as services to repair a Damaged item insured under the Policy) we will pay for the GST amount.

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.

Any GST liability arising from your incorrect advice is payable by you.

Where the settlement of your claim is less than the sum insured/limit of liability or the other limits of insurance cover, we will only pay an amount for GST (less your entitlement for Input Tax Credit) applicable to the settlement. This means that if these amounts are not sufficient to cover your loss, we will only pay the GST relating to our settlement of the claim.

We will (where relevant) pay you on your claim by reference to the GST exclusive amount of any supply made by any business of yours which is relevant to your claim.

GST, Input Tax Credit (ITC), Business Activity Statement (BAS) and Acquisition have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time.

Taxable Percentage is your entitlement to an Input Tax Credit on your premium as a percentage of the total GST on that premium.

## Words with special meanings – definitions which apply to all Sections of this Policy

Some key words and terms used in this Policy have a special meaning.

If words and terms are only used in just one Section of the Policy, we will describe their special meaning in that Section.

Wherever the following words or terms are used in the Policy, they mean what is set out below:

Word or Term	Meaning
Aggregate limit of liability	the amount shown as the aggregate limit of liability in the Policy Schedule, and which includes all loss and defence costs. If no amount is shown, the aggregate limit of liability in respect of all claims, loss and defence costs is no greater than the limit of liability.
Aircraft	any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.
Computer equipment	includes but is not limited to any, or any combination or part of data, computer hardware, operating system, application, software, and computer chip including microprocessor chip or embedded control logic, and irrespective of by whom it is owned or operated.
Deductible	the amount specified in the Policy Schedule that you must pay for each and every claim arising out of the one event or occurrence, including where we advance money to you under 'Defence of claims'.
Employee	any person employed by you under a contract of service or apprenticeship during the period of insurance, but does not include any person employed under such contract who is excluded from the definition of 'worker' under any workers' compensation legislation. Under Section 2, an 'employee' will also include any person employed by you under a contract of service or apprenticeship prior to commencement of the period of insurance.
Environmental legislation	any Commonwealth, State or Territory statute, regulation, by-law or local law prohibiting, controlling or regulating the discharge, release, escape or disposal of pollutants into or upon land, the atmosphere or any watercourse or body of water.
Hovercraft	any vessel, craft or thing made or intended to float on or in or travel on or through the atmosphere or water.

Word or Term	Meaning
Investigation costs & expenses	<p>reasonable legal costs and other expenses incurred by you or on your behalf with our consent, or by us, resulting from any legally compellable attendance by you at any official investigation or inquiry.</p> <p>But 'investigation costs &amp; expenses' does not include any fine, penalty or order for the payment of monetary compensation. Payment by us of investigation costs &amp; expenses reduces the sub-limit shown for 'investigation costs &amp; expenses' in the Policy. That sub-limit is part of and not in addition to the limit of liability.</p> <p>For the purpose of application of any relevant extensions and optional extensions in this Policy, an official investigation or inquiry is deemed to be a claim, notwithstanding that there has been no allegation of a wrongful act against you. However, the sub-limit for such investigation costs &amp; expenses is not increased.</p>
Joint venture	any enterprise undertaken jointly by you with a third party or parties.
Joint venture partner	any non-insured who jointly participates with you in any joint venture.
Limit of liability	our total limit of liability under this Policy, as specified in the Policy Schedule.
Loss	the total amount which you become legally obligated to pay in respect of a claim made against you and will include damages, judgements, settlements, legal costs and expenses awarded against you to any claimant and defence costs.
Official investigation or inquiry	<p>an official investigation, examination or inquiry in relation to your affairs or the conduct of insured's professional services where such official investigation or inquiry may lead to a recommendation in respect of civil or criminal liability, or civil or criminal proceedings, and which would be the subject of a claim or defence costs covered by this Policy, including an investigation, examination or inquiry by way of royal commission or coronial inquiry or conducted by a regulatory authority such as the Australian Securities and Investments Commission or Workcover.</p> <p>However, 'official investigation or inquiry' does not include any investigation, examination or inquiry conducted by a parliament, or any committee of a parliament, or any disciplinary committee of any association or professional body of which you are a member.</p>

Word or Term	Meaning
Period of insurance	the period shown in the Policy Schedule.
Policy Schedule	the schedule of insurance or any endorsement schedule we give you.
Pollutants	<p>(a) any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals</p> <p>(b) any waste materials including materials recycled, reconditioned or reclaimed</p> <p>(c) any other air emission, odour, waste water, oil, oil products, infectious or medical waste or any noise emission.</p>
Subsidiary	<p>(a) any entity which by virtue of any applicable legislation or law is deemed to be your subsidiary (where you are a company), or</p> <p>(b) any entity over which you (where you are a company) are in a position to exercise effective direction or control.</p>
Territorial limits	anywhere in the world subject to General exclusion – 'Territorial Limits' and Exclusion – 'Exports to the USA and Canada' in Section 1.
Trust	any corporate sponsored superannuation fund(s) where the only contributor(s) to the fund is you, or you and your employees.
Trustee	<p>(a) any natural person who was, is, or may in future become, a duly appointed trustee of the trust</p> <p>(b) any body corporate forming part of you (where you are a company), including any past, present or future director, officer, secretary or employee of such body corporate who was, is, or may in future become, a duly appointed trustee of the trust</p> <p>(c) any member of any policy or management committee which has been established pursuant to the governing rules of the trust</p> <p>(d) any natural person who is deemed to be a trustee of the trust by virtue of any applicable law.</p>
Watercraft	any vessel, craft or thing made or intended to float on or in or travel on or through or under water.
We, our, us	QBE Insurance (Australia) Limited, ABN 78 003 191 035.

Word or Term	Meaning
You, your, insured	<p>the person(s), companies or firms named on the current Policy Schedule as the insured including, as if they were you;</p> <p>(a) every past or present director, officer, employee or partner of you, but only while acting within the scope of their duties in such capacity.</p> <p>(b) all the subsidiary companies (now or subsequently constituted), including their directors, officers, employees, partners or shareholders, but only while acting within the scope of their duties in such capacity, of the named insured specified in the Policy Schedule provided their places of incorporation are within Australia or any Territory of Australia, and including any entity over which the corporation is in a position to exercise effective direction or control</p> <p>For the purposes of Section 1 of the Policy, the definition of 'you, your, insured' also includes:</p> <p>(c) every principal, in respect of that principal's vicarious liability for your acts or omissions or those of the parties shown in paragraph (a) in the performance by them of work for that principal, but subject always to the extent of cover and the limit of liability provided by this Policy</p> <p>(d) each partner, joint venturer, co-venturer or joint lessee of the insured named in the Policy Schedule but only if we agree to insure them and the insured named in the Policy Schedule agrees to pay the premium we require</p> <p>(e) every office bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services formed with your consent (other than one of the parties shown in paragraphs (b) or (c) above) in respect of claims arising from their duties connected with the activities of any such club, organisation or service. This insurance will not apply to personal injury to or property damage of any participants of any game, match, race, practice or trial</p> <p>(f) any director or senior executive of you or one of the parties shown in paragraph (a) above in respect of private work undertaken by your employees for such director or senior executive.</p>

Word or Term	Meaning
You, your, insured (continued)	<p>However, 'you, your, insured' does not include the interest of any other person other than as described in this definition, unless the definition is amended in subsequent Sections of the Policy.</p> <p>For the purposes of Section 2 of the Policy, the definition of 'you, your, insured' also includes:</p> <p>(g) any person who is a trustee, during the period of insurance</p> <p>(h) any former trustee of the trust.</p>

## Types of cover

Section 1: Broadform Liability

Section 2: Corporate Cover

## Section 1: Broadform Liability

### Words with special meanings – definitions which apply to Section 1

Some key words and terms used in this Section 1 have a special meaning.

Wherever the following words or terms are used in this Section of the Policy, they mean what is set out below:

Word or Term	Meaning
Advertising liability	<p>liability arising out of one or more of the following:</p> <ul style="list-style-type: none"> <li>(a) defamation except arising out of the publication or utterance of defamatory statements or disparaging material prior to the inception date of this Policy or made at your direction with your knowledge of the falsity of the statement or material</li> <li>(b) infringement of copyright, title or slogan</li> <li>(c) unfair competition, misappropriation of advertising ideas or style of doing business, or</li> <li>(d) invasion of privacy</li> </ul> <p>committed or alleged to have been committed in any advertisement and arising out of any advertising activities conducted by you or on your behalf, in the course of carrying out your business.</p> <p>For the purposes of this definition, 'advertisement' means any manner of communication given to the public including by way of any form of print media, telecommunication, radio or television broadcast, electronic mail, internet, world wide web or exhibit.</p>
Business	the business described in the Policy Schedule including the provision and management of canteens, social, sports and welfare organisations for the benefit of your employees, first aid, fire and ambulance services and the maintenance of your premises.
Defence costs	means the costs and expenses we pay under 'Defence of claims' set out in this Section 1.
Employment Practices	any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination directly or indirectly related to employment or prospective employment of any person or persons by you.

Word or Term	Meaning
Internet operations	<ul style="list-style-type: none"> <li>(a) transfer of computer data or programs by use of electronic mail systems by you or your employees, including part-time and temporary staff, contractors and others within your organisation whether or not such data or programs contain any malicious or damaging code, including but not limited to computer virus, worm, logic bomb, or trojan horse</li> <li>(b) access through your network to the world wide web or a public internet site by your employees, including part-time and temporary staff, contractors and others within your organisation</li> <li>(c) access to your intranet (meaning internal company information and computing resources) which is made available through the world wide web for your customers or others outside your organisation, and</li> <li>(d) the operation and maintenance of your web site.</li> </ul>
Medical persons	qualified medical practitioners, nurses, dentists and first aid attendants.
Occurrence	an event which results in personal injury, property damage or advertising liability, neither expected nor intended from your standpoint. All personal injury, property damage or advertising liability arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one occurrence.
Personal injury	<ul style="list-style-type: none"> <li>(a) bodily injury (and this expression includes death and illness), disability, shock, fright, mental anguish, mental injury</li> <li>(b) the effects of false arrest, wrongful detention, false imprisonment or malicious prosecution</li> <li>(c) the effects of wrongful entry or eviction</li> <li>(d) the effects of a publication or utterance of defamatory or disparaging material</li> <li>(e) the effects of assault and battery not committed by you or at your direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.</li> </ul>



Word or Term	Meaning
Property damage	<p>(a) physical damage to or loss or destruction of tangible property including any resulting loss of use of that property, or</p> <p>(b) loss of use of tangible property which has not been physically damaged, lost or destroyed, provided the loss of use is caused by an occurrence.</p>
Vehicle	any type of machine on wheels or self laid track made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine.
Your products	any goods, products and property (after they have ceased to be in your possession or under your control), which are deemed to have been manufactured, grown, extracted, produced, processed, constructed, assembled, erected, installed, repaired, serviced, treated, sold, supplied or distributed by you (including any container for them other than a vehicle).

## What you are insured against

We will cover you in accordance with the terms of this Section 1 'Broadform liability' of the Policy and in accordance with the Exclusions which apply to Section 1, General Exclusions and General Conditions.

### Liability

We will cover you for your legal liability to pay:

- all sums by way of compensation, and
- all costs awarded against you

in respect of:

- personal injury
- property damage
- advertising liability

happening during the period of insurance and caused by an occurrence within the territorial limits in connection with your business.

In the event of any claims for personal injury arising from a latent injury, latent disease or latent sickness (other than claims caused by, contributed to by or arising from exposure to asbestos), the personal injury, disease or sickness in respect of each claim will be deemed to have first happened on the day the personal injury, disease or sickness was first medically diagnosed. For cover to apply under this Policy Section, that diagnosis must first occur during the period of insurance.

### Defence of claims

If we agree to cover you we will:

- defend in your name and on your behalf any claim or legal action against you seeking damages for personal injury, property damage or advertising liability even if the action is groundless, false or fraudulent, and we will investigate, negotiate and settle any claim or legal action as we see fit
- pay all legal costs and expenses incurred by us and all interest accruing after entry of judgement until we have paid, tendered or deposited in court such part of the judgement as does not exceed the limit of liability
- reimburse you for all reasonable expenses, other than loss of earnings, incurred by you with our consent in connection with the defence of a claim or legal action
- pay reasonable expenses incurred by you for first aid to others at the time of personal injury caused by an occurrence (other than medical expenses prohibited by Section 126 of the Health Insurance Act 1973).

We will do this, provided that:

- we will not be obliged to pay any claim or judgment or to defend any claim or legal action after the limit of liability has been exhausted by payment of judgments or settlement;

- (f) if a payment exceeding the limit of liability has to be made to dispose of a claim, our liability to pay any costs, expenses and interest under (a) to (d) above will be limited to that proportion of those costs, expenses and interest as the limit of liability bears to the amount paid to dispose of the claim.

Any amount we pay for defence costs in this Section 1, other than payments in settlement of claims, suits and all costs awarded against you, is payable by us over and above the limit of liability set out in the Policy Schedule.

## What we will pay

### Limit of Liability

- (a) Our maximum liability in respect of any claim or any series of claims for personal injury, property damage or advertising liability caused by or arising out of one occurrence will not exceed the limit of liability shown on your Policy Schedule.
- (b) Our total aggregate liability during any one period of insurance for all claims arising out of your products will not exceed the limit of liability shown on your Policy Schedule.

## Exclusions which apply to Section 1

There are also General Exclusions which apply to all Sections of this Policy.

This Policy Section does not cover:

### Employment Liability

liability for personal injury imposed:

- (a) by any workers' compensation law
- (b) by the provision of any industrial award, agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award, agreement or determination or contract of employment or workplace agreement, or

provided that if you are:

- (c) required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited or not) for such personal injury, or
- (d) not required to so insure or otherwise fund such liability by reason only that the personal injury is to a person who is not a worker or employee for the purposes of the relevant worker's compensation law or the personal injury is not an injury which is subject to such law

then this Policy Section will respond to the extent that your liability would not be covered under such fund, scheme, policy of insurance or self insurance arrangement had you complied with your obligations pursuant to such law.

There is no cover under this Section 1 for and in respect of employment practices.

### Product defect

property damage to your products if the damage is attributed to any defect in them or to their harmful nature or unsuitability.

### Loss of use

loss of use of tangible property which has not been physically injured, lost or destroyed resulting from:

- (a) a delay in or lack of performance by or on your behalf of any agreement
- (b) the failure of your products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by you, but this exclusion does not apply to the loss of use of other tangible property resulting from the sudden and accidental physical damage to or loss or destruction of your products after they have been put to use by any person or organisation other than you as defined under the definition of 'you', 'your' or 'insured'.

### Exports to the USA or Canada

claims in respect of personal injury, property damage or advertising liability caused by or arising out of your products knowingly exported by you, or your agents or servants, to the United States of America or Canada.

### Faulty workmanship

the cost of performing, correcting or improving any work undertaken by you.

### Advertising liability

Advertising liability arising out of:

- (a) breach of contract, other than misappropriation of advertising ideas under an implied contract,
- (b) the wrong description of the price of your products, or
- (c) the failure of your products to conform with advertised performance or quality,
- (d) incurred by any insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

### Defamation

the publication or utterance of any defamatory or disparaging material:

- (a) made prior to the commencement of the period of insurance, or
- (b) made by you or at your direction with knowledge of its falsity, or
- (c) if your business is advertising, broadcasting or telecasting.

**Information technology hazards, computer data, program and storage media exclusion**

- (a) personal injury, property damage, advertising liability, wrongful acts or wrongful breach arising, directly or indirectly, out of, or in any way involving your internet operations, or
- (b) property damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
  - (i) the use of any computer hardware or software
  - (ii) the provision of computer or telecommunication services by you or on your behalf
  - (iii) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

But this exclusion does not apply to:

- (c) personal injury, property damage, advertising liability, wrongful acts or wrongful breach arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site, or
- (d) liability which arises irrespective of the involvement of your internet operations,

and nothing in this exclusion will be construed to extend cover under this Policy to any liability which would not have been covered in the absence of this exclusion.

**Professional liability**

The rendering of or failure to render professional advice or service by you or any related error or omission, but this exclusion does not apply to claims for:

- (a) personal injury and/or
- (b) property damage and/or
- (c) advertising liability

arising from such rendering of or failure to render professional advice or service.

**Conditions which apply to Section 1**

There are also General Conditions which apply to all Sections of this Policy.

**Joint insureds**

Where more than one party comprises the insured each of the parties will be considered as a separate and distinct unit and the words 'you', 'your' or 'insured' will be considered as applying to each party in the same manner as if a separate Policy had been issued to each of them, provided that nothing in this clause will result in an increase of our limit of liability in respect of any occurrence or period of insurance.

**Section 2: Corporate cover****Claims made**

This Section of the Policy operates on a "claims made and notified" basis. This means that Section 2 covers you for claims made against you and notified to us during the period of insurance.

Section 2 of 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 Section
- 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 Section
- 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 Section and the effect of the Policy Section is that you are not covered for claims made against you after the expiry of the period of insurance.

## Words with special meanings – definitions which apply to Section 2

Some key words and terms used in this Section 2 have a special meaning.

Wherever the following words or terms are used in this Section of the Policy, they mean what is set out below:

Word or Term	Meaning
Bodily injury	physical injury, sickness, disease, or death of any person but does not include mental injury, mental anguish, nervous shock, or emotional distress not associated with bodily injury.
Claim	<ul style="list-style-type: none"> <li>(a) a written demand for compensation or non-pecuniary relief</li> <li>(b) a criminal charge</li> <li>(c) a written or other notice by a regulatory authority in connection with any investigation or penalty proceedings</li> <li>(d) arbitration, mediation or other dispute resolution process.</li> </ul>
Conflict	<ul style="list-style-type: none"> <li>(a) a conflict of duty and duty, where you act for a client while being subjected to a contrary interest, being an interest of another client, or</li> <li>(b) a conflict of interest and duty, where you act for a client while being subjected to a contrary interest, being a personal advantage interest.</li> </ul>
Defence costs	<ul style="list-style-type: none"> <li>(a) reasonable costs, charges, and expenses (other than regular or overtime wages, salaries or fees of any insured person) incurred by us or by you with our prior written consent (and such consent will not be unreasonably withheld) in defending, investigating or monitoring any claim, or proceedings and appeals from them, together with costs of the proceedings and appeal. Where you are not indemnified under this Policy Section, only those costs, charges and expenses incurred solely and exclusively for the benefit, and on behalf, of an insured person or trustee will constitute defence costs</li> </ul>

Word or Term	Meaning
Defence costs (continued)	<ul style="list-style-type: none"> <li>(b) investigation costs &amp; expenses</li> </ul> <p>Defence costs in this Section 2 are part of, and not in addition to, the limit of liability (or if applicable the aggregate limit of liability), and payment by us of defence costs reduces the limit of liability (or if applicable the aggregate limit of liability) by the amount of any such payment. The sub-limit in General extension 'Official investigations and inquiries – costs &amp; expenses' applies to investigation costs &amp; expenses, not the limit of liability, and any payment by us of investigation costs &amp; expenses reduces the sub-limit by the amount of that payment.</p>
Family member	<p>your:</p> <ul style="list-style-type: none"> <li>(a) spouse, domestic partner, or companion</li> <li>(b) parent, or parent of your spouse, domestic partner or companion</li> <li>(c) sibling or child.</li> </ul>
Insured person	<p>any past, present, or future director, secretary, officer, office bearer, committee member or employee of you, or any natural person who by virtue of any applicable legislation or law is deemed to be a director, officer, office bearer, or committee member of you (where you are a company).</p> <p>But 'insured person' does not include:</p> <ul style="list-style-type: none"> <li>(a) a receiver, receiver and manager, official manager, liquidator, administrator, trustee or other person administering a compromise or scheme of arrangement made between you and any other person or persons, or</li> <li>(b) any company, organisation or other body corporate, or</li> <li>(c) a person acting in the capacity as a trustee.</li> </ul>
Insured's professional services	the Business described in the Schedule. If you change your name and there is no other change which materially alters the risk, insured's professional services will continue to be covered by this Policy Section.
Minor interest	a direct or indirect control or ownership of less than 10% of the issued share capital and/or options of a public company or less than 10% of the value of any other company, entity or enterprise.
Original expiry date	the expiry date in force immediately prior to any effecting of optional extension 'Extended reporting period'

## Section 2

Word or Term	Meaning
Outside directorship	the position of director, secretary, officer, office bearer, or committee member held by an insured person in an outside entity, which position is held: <ul style="list-style-type: none"> <li>(a) with your knowledge and consent, and</li> <li>(b) for the purpose of representing you.</li> </ul>
Outside entity	any entity which is not a subsidiary, and in which an outside directorship is held.
Penalty	any monetary sum payable by you to any regulatory authority pursuant to a wrongful breach by you but excluding: <ul style="list-style-type: none"> <li>(a) any amounts payable as compensation</li> <li>(b) any compliance, remedial, reparation or restitution costs</li> <li>(c) any damages, including but not limited to any exemplary or punitive damages</li> <li>(d) any consequential economic loss</li> <li>(e) any amounts uninsurable under the law pursuant to which this Policy Section is construed</li> <li>(f) any legal costs and associated expenses of the regulatory authority.</li> </ul>
Regulatory authority	a person or entity appointed, constituted or acting under a delegation pursuant to any Act for the purposes of enforcement of such Act or another Act, including a person or entity authorised to collect monies payable to the Consolidated Revenue Fund, Consolidated Fund or any other such fund.
Senior Counsel	a person entitled to use the letters 'QC' or 'SC' in any one or more superior court in Australia or New Zealand.
Wrongful act	<ul style="list-style-type: none"> <li>(a) for the purposes of Insuring Clauses A (Directors &amp; officers and trustees liability) and B (Corporate entity and trust reimbursement), in respect of insured persons, any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement or other act committed or allegedly committed or attempted by any insured person in the course of their duties to you. It does not include conduct as a trustee. For the purpose only of optional extensions 'Outside directorship cover' and 'Outside directorship run-off cover', it also includes such actual or alleged conduct in the course of their duties to the outside entity</li> </ul>

Word or Term	Meaning
Wrongful act (continued)	<ul style="list-style-type: none"> <li>(b) for the purposes of Insuring Clauses A (Directors &amp; officers and trustees liability) and B (Corporate entity and trust reimbursement) in respect of trustees, any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act committed or allegedly committed or attempted by any trustee, in the course of executing any of the functions of the trust</li> <li>(c) for the purposes of Insuring Clause C (Corporate entity liability) in respect of you (where you are a company), any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act committed or allegedly committed or attempted by any insured person in the course of undertaking your business. It does not include conduct as a trustee</li> <li>(d) for the purposes of Insuring Clause D (Employment practices liability), any of the following actual or alleged conduct by an insured person in the course of their duties to you, or by you: <ul style="list-style-type: none"> <li>(1) <ul style="list-style-type: none"> <li>(i) discharge or termination, either actual or constructive, of an employment relationship</li> <li>(ii) breach of any oral or written, express or implied, employment contract or quasi-employment contract</li> <li>(iii) misleading representation or advertising relating to employment.</li> </ul> </li> <li>(2) <ul style="list-style-type: none"> <li>(i) failure to employ or promote</li> <li>(ii) unfair deprivation of a career opportunity</li> <li>(iii) unfair discipline</li> <li>(iv) failure to grant tenure</li> <li>(v) negligent employee evaluation</li> </ul> </li> <li>(3) workplace harassment of any kind (whether sexual or otherwise), including the alleged creation or permission of a harassing workplace environment <ul style="list-style-type: none"> <li>(i) discrimination on any legally prohibited basis</li> </ul> </li> </ul> </li> </ul>



Word or Term	Meaning
Wrongful act (continued)	<p>(4) employment-related:</p> <ul style="list-style-type: none"> <li>(i) denial of natural justice</li> <li>(ii) invasion of privacy</li> <li>(iii) defamation</li> <li>(iv) infliction of emotional distress</li> </ul> <p>(e) for the purposes of Insuring Clause E (Professional services), any actual or alleged breach of professional duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act committed or allegedly committed or attempted by any insured in the conduct of the insured's professional services. It does not include conduct as a trustee</p> <p>(f) for the purposes of extension 'Intellectual property', any unintentional infringement of copyright, trademarks, registered designs or patents, or any plagiarism or breach of confidentiality</p> <p>(g) for the purposes of extension 'Defamation', any actual or alleged conduct referred to in that extension</p>
Wrongful breach	<p>any conduct by you which results in a contravention of:</p> <ul style="list-style-type: none"> <li>(a) any occupational, health, or safety legislation of the Commonwealth of Australia or any state or territory of Australia</li> <li>(b) the Corporations Act 2001</li> <li>(c) any environmental legislation</li> </ul>

## What you are insured against – Insuring clauses

We will cover you in accordance with the terms of this Section 2 'Corporate cover' of the Policy and in accordance with the Exclusions which apply to Section 2, General Exclusions and General Conditions.

In respect of each Insuring Clause, all causally connected or interrelated wrongful acts will jointly constitute a single wrongful act under this Policy Section.

Under Insuring Clauses A to E, we agree to pay all loss arising from a claim against:

### A - Directors & officers and trustees liability

- an insured person(s)/trustee alleging a wrongful act where the insured person/trustee is not indemnified by you or the trust

This Insuring Clause will only operate when you are a company or an incorporated association.

### B - Corporate entity and trust reimbursement

- an insured person(s)/trustee alleging a wrongful act where you or the trust grants indemnification to the insured person(s)/trustee as permitted or required by law

This Insuring Clause will only operate when you are a company or an incorporated association.

### C - Corporate entity liability

- you alleging a wrongful act

This Insuring Clause will only operate when you are a company or an incorporated association.

### D – Employment practices liability

- you alleging a wrongful act

### E – Professional services

- you alleging a wrongful act,

where the claim is first made and notified to us during the period of insurance.

## What we will pay

### Limit of liability

- (a) Our total liability under this Policy Section for any one claim, claim or loss, including defence costs, will not exceed the limit of liability specified in the Policy Schedule, and our total liability in the aggregate in respect of all claims, claims or losses, including defence costs, during the period of insurance, will not exceed the aggregate limit of liability shown on your Policy Schedule.
- (b) This clause does not increase any sub-limit in the Policy.

### Retroactive date

This Policy Section will only provide indemnity in respect of conduct and wrongful acts committed (or alleged to have been committed) after the retroactive date shown in the Schedule.

## General extensions to Section 2

### These General extensions apply to all cover under this Section.

We will cover you under each of the Policy extensions below in accordance with the terms of this Policy Section and in accordance with the General exclusions and General conditions.

The inclusion of any Policy extension will not increase the limit of liability, aggregate limit of liability or any applicable sub-limit under the Policy.

### Official investigations and inquiries – costs & expenses

We agree to pay investigation costs & expenses in relation to any official investigation or inquiry commenced during the period of insurance and which is notified to us during the period of insurance.

Our aggregate liability for all claims under this extension will not exceed \$250,000.

In relation to any cover afforded under this extension:

- (a) we will be entitled, at our discretion, to appoint legal representation to represent you in the official investigation or inquiry; and
- (b) in the event that a claim for payment of investigation costs & expenses is subsequently withdrawn or denied, we will cease to advance investigation costs & expenses and you or any person named as an insured (for your respective rights and interests) will refund any investigation costs & expenses advanced by us, unless we agree in writing to waive recovery of the investigation costs & expenses; and
- (c) the deductible will apply to each and every official investigation or inquiry.

### Estates and legal representatives

We will indemnify the estate, heirs, legal representatives or assigns of any insured person or trustee (other than a corporate trustee) in the event of the death or incapacity of that insured person or trustee, but only:

- (a) where the claim is made against them solely because of their status as an insured person or trustee, and
- (b) in respect of a wrongful act of that insured person or trustee which would otherwise be covered under this Policy Section.

Such insured persons and trustees must observe and are subject to all the terms of this Policy insofar as they can apply.

### Severability and non-imputation

We agree that where this Policy Section insures more than one party, any conduct on the part of any party or parties where the party or parties:

- (a) failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984, or
- (b) made a misrepresentation to us before this contract of insurance was entered into,

any knowledge possessed by any party shall not be imputed to any other party, and will not prejudice the right of the remaining party or parties to any indemnity which may be provided by this Policy Section; and

Provided always that:

- (c) the remaining party or parties are entirely innocent of and had no prior knowledge of the conduct and as soon as reasonably practicable upon becoming aware of the conduct, advise us in writing of all known facts in relation to the conduct, and
- (d) before the contract of insurance was entered into with us, proper inquiry has been made of you (where you are a company) and your directors for the purposes of complying with the duty of disclosure under the Insurance Contracts Act 1984. For the sake of clarity, this provision is not intended to limit your duty of disclosure.

### Advancement of defence costs

We will cover you for defence costs. We agree to advance defence costs within a reasonable time frame following our receipt of invoices specifying such defence costs and prior to determining your entitlement for indemnity for the claim. In determining your entitlement to indemnity under the Policy Section in respect of a claim, we agree that we will not rely on Exclusion 'Fraud and dishonesty' of the Exclusions which apply to Section 2 unless and until:

- (a) you or an insured person makes an admission of any conduct described in Exclusion 'Fraud and dishonesty' of the Exclusions which apply to Section 2; or
- (b) it has been established through a judicial process that you or an insured person has committed any conduct described within Exclusion 'Fraud and dishonesty' of the Exclusions which apply to Section 2.

The advancement of any defence costs is subject to the following conditions:

- (c) the advance of any defence costs to you by us does not constitute an acceptance by us of your right to any indemnity under the Policy Section for any claim
- (d) if either (a) or (b) above apply, we may cease to advance defence costs for you or an insured person, unless we, at our sole discretion, decide to continue to pay defence costs resulting from such claim
- (e) where either (a) or (b) above applies, the insured person (for your respective rights and interests) will refund defence costs advanced by us, unless we agree in writing to waive recovery of such defence costs
- (f) any advancement of defence costs will form part of the limit of liability, and will not be in addition to it.

### Contractual liabilities, assumed duty or obligation

We will indemnify you under Insuring Clauses A (Directors & officers and trustees liability) and B (Corporate entity and trust reimbursement) in respect of any claim against an insured person or trustee which would otherwise be excluded by reason of General Exclusion 'Contractual liabilities, assumed duty or obligation'.

### Extended period of insurance for retired directors

We agree that a director of you (where you are a company) or a committee member of an incorporated association may notify under Insuring Clauses A (Directors & officers and trustees liability) or B (Corporate entity and trust reimbursement) a claim made on them as an insured person in an extended period of insurance of 72 months immediately following the period of insurance.

We will cover you under this extension provided always that:

- (a) no policy insuring directors' and officers' or committee members' legal liability on or after expiry of the period of insurance has been effected by you with us or any other insurer (whether as a replacement policy or otherwise); and
- (b) indemnity will only be provided in respect of directors or committee members of an incorporated association who, prior to the expiry of the Policy, have permanently retired from all appointments and positions (not only with you or an association), other than from any 'not for profit' organisation; and
- (c) our aggregate liability in respect of all claims under this Policy extension, including for defence costs, will not exceed the lesser of the limit of liability or \$2,000,000.

### Penalties

We will indemnify you against any penalty resulting from a claim by a regulatory authority for a wrongful breach which would otherwise be excluded by reason of General Exclusion 'Fines, penalties, punitive damages' where the claim is first made on you and notified in writing to us in the period of insurance. Provided always that we will not be liable to indemnify you in respect of any penalty in respect of any such claim arising directly or indirectly from or which is based upon, attributable to, or in consequence of any:

- (a) dishonest, wilful, intentional or deliberate wrongful breach; or
- (b) wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any Act; or
- (c) your gross negligence or recklessness; or
- (d) requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost; or
- (e) breach of sections 182 or 183 of the Corporations Act and any amendment, consolidation or re-enactment of any of these sections.

Our aggregate liability for all claims under this extension will not exceed \$250,000.

### Intellectual property

We will indemnify you in respect of any claim for loss arising from a wrongful act in relation to intellectual property and/or confidentiality.

### Defamation

We will indemnify you in respect of any claim for loss arising from a wrongful act of unintentional defamation.

### Pollution liability defence costs

We will indemnify you under Insuring Clauses A (Directors & officers and trustees liability) and B (Corporate entity and trust reimbursement) and C (Corporate entity liability) for defence costs in respect of any claim brought or maintained by a regulatory authority, which would otherwise be excluded by reason of General Exclusion 'Pollution' where the claim alleges a breach of environmental legislation.

Indemnity is provided subject to the following conditions:

- (a) cover will not extend to any claim brought by a regulatory authority on behalf of, in the name of or as a representative of any other person(s), corporation or other entity; and
- (b) our aggregate liability for all claims under this extension will not exceed \$250,000.

### Spousal liability

We will provide indemnity under Insuring Clauses A (Directors & officers and trustees liability) and B (Corporate entity and trust reimbursement) in respect of any claim made against the lawful spouse of any insured person or trustee solely because of his or her status as spouse, which seeks damages recoverable from:

- (a) marital community property; or
- (b) property jointly held by any insured person or trustee and the spouse; or
- (c) property transferred from any insured person or trustee to the spouse;

but only where the claim is based on a wrongful act of the insured person or trustee which would otherwise be covered under this Policy Section. It does not provide cover in respect of any conduct of the spouse.

### Subsidiary created or acquired

We agree the definition of 'you', 'your' 'insured' will include any subsidiary which is created or acquired by you, irrespective of whether the subsidiary was created or acquired prior to or during the period of insurance.

However:

- (a) indemnity will only apply in respect of a wrongful act which occurs after the date of creation or acquisition, and
- (b) notification of any subsidiary created or acquired during the period of insurance will be given in writing to us as soon as reasonably practicable, and
- (c) the inclusion of this extension will not have the effect of amending the insured's professional services.

### Subsidiary run-off cover

We agree that:

- (a) if an entity ceases to be a subsidiary during the period of insurance, cover with respect to that subsidiary will continue until the expiry date of the period of insurance
- (b) if an entity ceased to be a subsidiary prior to the commencement of the period of insurance, cover with respect to that subsidiary will be granted under this Policy Section.

However, cover will only apply in respect of a wrongful act occurring between the date of creation or acquisition by you and the date the entity ceased to be a subsidiary.

### Trade Practices Act and similar legislation

We will provide indemnity in respect of any claim under Insuring Clauses A (Directors & officers and trustees liability), B (Corporate entity and trust reimbursement), D (Employment practices liability) and E (Professional services), where the claim is brought pursuant to the:

- (a) misleading or deceptive conduct provisions under Part V of the Trade Practices Act 1974 (Commonwealth), Part 2 Division 2 Sub Division D of the Australian Securities and Investment Commission Act 2001, Part 7.10 Division 2 of the Corporations Act 2001, or any similar legislation enacted by the states or territories of the Commonwealth of Australia or the Dominion of New Zealand.
- (b) restrictive trade practices provisions under Part IV of the Trade Practices Act 1974 or any similar legislation enacted by the states or territories of the Commonwealth of Australia or the Dominion of New Zealand.

Except as expressly stated, this Policy extension does not derogate from the operation of the Exclusions to Section 2 and the General exclusions in the Policy, including but not limited to Exclusion 'Fraud and dishonesty' of the Exclusions which apply to Section 2.

### Extensions to Insuring Clause E

We will cover you under each of the Policy Extensions below in accordance with the terms of insuring Clause E of Section 2 'Corporate cover' of the Policy and in accordance with the Exclusions which apply to insuring Clause E, Section 2, the General Exclusions and General Conditions.

The inclusion of any Policy Extension will not increase the limit of liability, aggregate limit of liability or any applicable sub-limit under the Policy.

#### Fraud and dishonesty extension

We will indemnify you under Insuring Clause E (Professional services) for any claim against you, which would otherwise be excluded by reason of items (a), (b) and (e) of Exclusion 'Fraud and dishonesty' which apply to Section 2 of this Policy Section.

Provided always that:

- (a) such cover shall not be provided to any Insured who committed or condoned any act, error or omission excluded by reason of Items (a), (b) and (e) of Exclusion 'Fraud and dishonesty' which apply to Section 2 of this Policy Section;
- (b) such cover shall not apply to any Claim against you directly or indirectly based upon, attributable to, or in consequence of:
  - (i) other than the cover provided under extension 'Fidelity', the loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes;

- (ii) the loss of an electronic record which represents a current and transferable obligation of a person to pay the holder of the electronic record an amount or amounts of money described in the electronic record in exchange for delivery, adjustment or cancellation of the electronic record; or
- (iii) a transaction, direction or dealing involving or in any way relating to a right to be paid money or to have any of the items referred to in sub paragraph (i) or (ii) of this paragraph (b) delivered, negotiated or assigned or an electronic record of such right.

#### Loss of documents

We will indemnify you in respect of any claim arising from the loss of any documents (including but not limited to documents which are your property) which have been destroyed, lost or mislaid and, after diligent search and attempt to recover, cannot be found. Provided always that :

- (a) the discovery of such loss of documents occurred during the period of insurance and was notified to us within twenty eight (28) days after the date of such discovery (but never beyond the expiry date of the period of insurance); and
- (b) such indemnity shall be limited to the costs, charges and expenses of whatsoever nature incurred by you in replacing and/or restoring such documents and any claim for such costs, charges and expenses shall be supported by bills and/or accounts which shall be subject to approval by a competent person nominated by us with your approval; and
- (c) we shall not be liable under this extension to provide indemnity in respect of that proportion of any costs, charges and expenses of whatsoever nature arising directly or indirectly out of:
  - (i) corruption, erasure, theft, alteration of, or
  - (ii) access or lack of access to, or
  - (iii) interference with

electronically stored data belonging to or held by you wholly or partly caused by:

  - (iv) any computer virus
  - (v) any person who is not currently your principal, partner, director or employee of yours

where such costs, charges and expenses relate to you replacing and/or restoring such data after a period of 48 hours following the time when the virus or act took effect; and
- (d) such indemnity shall be limited to the loss of any documents:
  - (i) which were in your physical custody or control or of any person to whom you have entrusted, lodged, or deposited such documents in the ordinary course of business; and
  - (ii) which occurred within Australia or New Zealand; and
- (e) our aggregate liability in respect of all losses under this extension shall not exceed the sum of \$100,000.

### Fidelity

We agree to provide indemnity to you against loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to you or for which you are legally liable (including as trustee) where any such loss is sustained in consequence of any dishonest or fraudulent act or omission of any person who is included in the definition of 'you', 'your', 'insured'.

Our aggregate liability for all losses under this extension will not exceed \$250,000.

In relation to any cover afforded under this extension:

- (a) any loss must be first discovered by you during the period of insurance and notified in writing to us within twenty-eight (28) days of the date of the discovery (but never beyond the expiry of the period of insurance)
- (b) we will not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on your part
- (c) we will not be liable to indemnify you or any person named as an insured who committed or condoned any dishonest or fraudulent conduct in consequence of which the loss occurred
- (d) you will bear the burden of adducing satisfactory proof to substantiate any loss under this extension (including any legal, investigative, accounting or other costs incurred in such process)
- (e) we will be under no obligation to provide indemnity to you until such time as we are satisfied that such loss has, in fact, been sustained
- (f) the deductible will apply to each and every individual dishonest or fraudulent act or omission.

### Optional extensions

If you have chosen cover for any of these optional extensions it will be shown on your Policy Schedule. You can choose cover under any or all of the optional Policy extensions set out below. Where an optional Policy extension is not specified in the Policy Schedule as 'included', then this Policy will not provide any cover under that Policy extension.

We will cover you under each of the Policy extensions you have chosen in accordance with the terms of Section 2 'Corporate cover' of the Policy and in accordance with the Exclusions which apply to Section 2, the General exclusions and General conditions.

The inclusion of any Policy extension will not increase the limit of liability, aggregate limit of liability or any applicable sub-limit under the Policy, except where otherwise shown on the Policy Schedule.

### Outside directorship cover

We will provide indemnity under Insuring Clauses A (Directors & officers and trustees liability) and B (Corporate entity and trust reimbursement) in respect of a claim arising from any outside directorship which is held by an insured person at the commencement of the period of insurance or which is assumed by an insured person during the period of insurance, subject to the following conditions:

- (a) cover will not be available to the outside entity in which the outside directorship is held or to any other director, officer, office bearer, or employee of the outside entity who is not also an insured person, and
- (b) cover will be specifically excess of any other indemnity available to any insured person by reason of serving in the outside directorship, and
- (c) this extension will only apply in respect of a wrongful act occurring during the period for which the outside directorship was held.

### Outside directorship run-off cover

We agree that:

- (a) if an insured person ceases to hold an outside directorship during the period of insurance, cover under Insuring Clauses A (Directors & officers and trustees liability) and B (Corporate entity and trust reimbursement) with respect to the outside directorship will continue until the expiry date of the period of insurance
- (b) if an insured person ceases to hold an outside directorship prior to the commencement date of the period of insurance, cover with respect to the outside directorship will be granted under Insuring Clauses A (Directors & officers and trustees liability) and B (Corporate entity and trust reimbursement) of this Policy.

Cover under this optional extension will be subject to the conditions of optional extension 'Outside directorship cover'.

### Extended reporting period

We agree to amend the period of insurance for the purposes of Insuring Clauses A (Directors & officers and trustees liability) and B (Corporate entity and trust reimbursement) for claims on insured persons by extending the expiry date by 12 months so that you may notify a claim within 12 months after the original expiry date. We will do this provided that:

- (a) we have refused to offer terms for another policy of the same or lesser limit of liability to you (whether a replacement policy or otherwise) incepting on or from the expiry date of the period of insurance, or you chose not to effect another policy issued by us (whether a replacement policy or otherwise) incepting from the expiry date of the period of insurance, and
- (b) you have requested the purchase of the extended reporting period in writing prior to the expiry of the period of insurance, and
- (c) you pay an additional premium of 75% of the annualised premium, and
- (d) indemnity will not be provided for any wrongful act committed or allegedly committed after the original expiry date, and
- (e) this extension is not available if:
  - (i) you have effected another policy with any insurer (whether a replacement policy or otherwise) incepting at any time on or after the original expiry date and which insures directors' and officers' legal liability, or
  - (ii) this Policy is cancelled or voided.



## Exclusions which apply to Section 2

There are also General exclusions which apply to all Sections of this Policy.

This Section 2 of the Policy does not cover loss arising from any claim against you:

### Bodily injury

directly or indirectly based upon, attributable to or in consequence of bodily injury. However, this exclusion will not apply to:

- (a) penalties and defence costs resulting from a claim by a regulatory authority, or
- (b) investigation costs & expenses

as a result of an alleged contravention of any Commonwealth, State or Territory occupational or workplace health and safety legislation, provided always that cover will not extend to defence costs incurred in relation to any civil proceeding or claim seeking damages or compensation in connection with such alleged contravention.

### Prior or pending

- (a) made, threatened or intimated against you prior to the period of insurance, or
- (b) directly or indirectly based upon, attributable to or in consequence of any fact 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 you first became aware prior to the period of insurance, and which you knew or ought reasonably to have known had potential to give rise to a claim.

### Property damage

directly or indirectly based upon, attributable to or in consequence of physical loss of, damage to or destruction of any tangible property (other than any document), including loss of use of the tangible property or any consequential loss.

### Fraud and dishonesty

any claims made against you which are directly or indirectly based upon, attributable to or in consequence of any:

- (a) your actual or alleged dishonest, fraudulent, criminal or malicious act or omission or those of your consultants, sub-contractors or agents, or
- (b) your actual or alleged act or omission or those of your consultants, sub-contractors or agents with a reckless disregard for the consequences of the acts or omissions, or
- (c) actual or alleged act or omission by an insured person within Section 199B (1) (a) and/or Section 199B (1) (b) of the Corporations Act 2001 or any legislation which supersedes or replaces this section of the Corporations Act 2001, or

- (d) actual or alleged improper use of position or information by you or an insured person to gain, or attempt to gain, any profit or advantage or cause, or attempt to cause, detriment to the you (if you are a company) or the trust, or
- (e) wilful violation or wilful breach of any statute or regulation, or any wilful breach of any contract.

## Additional exclusions which apply to Insuring Clauses A, B, and C

The following exclusions apply to Insuring Clauses A (Directors & officers and trustees liability), B (Corporate entity and trust reimbursement) and C (Corporate entity liability) only. They are in addition to the exclusions which apply to Section 2 and the General exclusions of this Policy.

This Policy Section does not cover loss arising from any claim against you:

### Breach of professional duty

directly or indirectly based upon, attributable to or in connection with the rendering or failure to render professional services and/or professional advice.

This exclusion does not apply to any claim for an alleged breach by a trustee of any duty owed to members of a trust.

In this exclusion 'professional services' includes but is not limited to the development, sale, supply or licensing of any computer equipment for or to persons who are not included in the definition of 'you, your, insured' under this Policy.

### Capital raising disclosure document

directly or indirectly based upon, attributable to or in consequence of any capital raising disclosure document including but not limited to a prospectus, short-form prospectus, profile statement, offer information statement or information memorandum or similar document providing information to potential investors.

### Employment practices liability

directly or indirectly based upon, attributable to or in consequence of any employment dispute or conduct by you within clause (d) of the definition of 'wrongful act'.

### Insolvency

directly or indirectly based upon, attributable to, or in consequence of the insolvent trading of a company named as the insured or the insolvent trading of the trust.

However, this exclusion will not apply:

- (a) to defence costs under Insuring Clauses A and B, where 'Insolvency defence costs' cover is specified in the Policy Schedule as 'included', provided always that:
  - (i) the advance or payment of the defence costs for such a claim will cease immediately upon you or the trustee (whichever is subject to the claim) admitting that the subject company named as an insured or the trust was known by you or the trustee (as applicable) to have been trading while insolvent; and

- (ii) the advance or payment of the defence costs for such a claim will immediately cease upon establishment through a judicial process that the subject company named as an insured or the trust was known by you or the trustee (as applicable) to have been trading while insolvent; and
- (iii) our maximum liability for defence costs under the write-back in (i) and (ii) above will not exceed \$250,000.
- (b) where either a(i) or a(ii) above applies, the insured person (for your respective rights and interests) will refund defence costs advanced by us, unless we agree in writing to waive recovery of such defence costs.
- (c) to Insuring Clauses A and B, if 'Solvency protection' cover is specified in the Policy Schedule as 'included' after presentation to us of any information requested by us and written acceptance by you of any written offer by us for that cover.

### **Insured versus Insured**

brought or maintained by you or on your behalf, however this exclusion will not apply to :

- (a) defence costs
- (b) any claim brought by an insured person/trustee against another insured person/trustee for contribution or indemnity if the claim directly results from another claim covered under Insuring Clause A (Directors & officers and trustees liability)
- (c) any claim brought or maintained against an insured person in the name of the company named as the insured:
  - (i) as a shareholder derivative action, provided that the shareholder is not also named as an insured and is acting without any prior direct or indirect solicitation or enticement or with any other person named as an insured, or
  - (ii) pursuant to Section 50 of the Australian Securities & Investment Commission Act 1989, or
  - (iii) at the instigation of a receiver, a receiver and manager, an administrator or liquidator formally appointed by the court.
- (d) any trustee claim brought by any person named as an insured in the capacity as a trustee of the trust for or on behalf of members of the trust, or in the capacity as a member of the trust.

### **Statutory payments liability**

directly or indirectly based upon, attributable to or in consequence of any amounts owing or allegedly owing to the Australian Taxation Office or any State or Territory revenue office, including but not limited to tax, duties, levies, penalties, interest and costs.

### **Substantial shareholders**

brought or maintained by or on behalf of any substantial shareholder. This exclusion will apply whether or not the wrongful act was committed or is alleged to have been committed before or after the date on which the substantial shareholder of the company named as an insured first became a substantial shareholder of the company named as an insured.

For the purposes of this exclusion:

- (a) 'substantial shareholder' means any person, body corporate or other entity who holds or is entitled to hold fifteen percent (15%) or more of the voting shares in the company in question
- (b) a person, body corporate or other entity will be taken to be entitled to a voting share if that person, body corporate or other entity has any direct or indirect, legal or beneficial interest in the share or any direct or indirect power to vote the share or to dispose of the share and whether or not the interest or power is held through any interposed body corporates or other entities or held jointly with others
- (c) where optional extensions 'Outside director cover' and 'Outside directorship run-off cover' have been included, then the definition of 'you, your, insured' will be deemed to include any outside entity.

### **Trust benefits and amounts**

for or in connection with any amount payable or allegedly payable to a member of a trust by the trustee under the rules governing the trust.

### **Joint venture**

brought or maintained by or on behalf of any joint venture partner.

### **Products**

directly or indirectly based upon, attributable to or in consequence of the efficacy of, or failure to supply, any goods or products manufactured, sold or supplied by you.

For the purposes of this exclusion, where optional extensions 'Outside directorship cover' and 'Outside directorship run-off cover's have been included, then the definition of 'you, your, insured' will be deemed to include any outside entity.

## **Additional exclusions which apply to Insuring Clause D**

The following exclusions apply to Insuring Clause D (Employment practices liability) only. They are in addition to the exclusions which apply to Section 2 and the General exclusions of this Policy.

This Policy Section does not cover loss arising from any claim against you directly or indirectly based upon, attributable to or in consequence of any:

### **Criminal proceedings**

criminal, administrative or other disciplinary proceeding against you.

### **Benefits**

your actual or alleged obligation:

- (a) pursuant to any workers' compensation, disability benefits, redundancy or unemployment benefits or compensation, unemployment insurance, superannuation, retirement benefits, social security benefits, or similar law

- (b) for or in respect of employment entitlements such as but not limited to employee share or equity plans, bonuses or incentives of any kind, leave or similar entitlements, severance or redundancy, superannuation contributions and similar alleged entitlements or amounts.

### Unfair contract

actual or alleged unfair contract of employment, including but not limited to any claim or proceeding brought under Section 106 of the Industrial Relations Act (NSW) 1996 or Section 276 of the Industrial Relations Act (Queensland) 1999 or similar legislation in any other state, territory, or jurisdiction.

### Building modifications

costs incurred by you to modify any building or property in order to make such building or property more accessible or accommodating to any disabled person. This exclusion does not apply to defence costs.

### Continuity of employment benefits

employment-related benefits (other than back pay) to which the claimant would have been entitled as an employee had you provided the claimant with a continuance, reinstatement or commencement of employment. This exclusion does not apply to defence costs.

### Non-Pecuniary Relief

cost of compliance with any order for, grant of, or agreement to provide injunctive or non pecuniary relief. This exclusion does not apply to defence costs.

## Additional exclusions which apply to Insuring Clause E

The following exclusions apply to Insuring Clause E (Professional services) only. They are in addition to the exclusions which apply to Section 2 and the General exclusions of this Policy.

This Policy Section does not cover loss arising from any claim against you:

### Conflict

directly or indirectly based upon, attributable to or in consequence of a conflict.

Provided always that:

- (a) this exclusion does not derogate from or limit Exclusion 'Fraud and dishonesty' of the Exclusions which apply to Section 2, and
- (b) this exclusion will not apply where the conflict arises from the provision, or alleged provision, of insured's professional services to more than one client (which term in this sub paragraph includes former clients) and you obtain a signed and dated document from each client prior to providing insured's professional services acknowledging that you may also be involved with another client whose interests may be different from those of the client in question.

### Financial interest

directly or indirectly based upon, attributable to or in consequence of any actual or alleged:

- (a) advice
- (b) inducement
- (c) recommendation
- (d) endorsement, or
- (e) other service

provided by you regarding investment in, work for or lending to:

- (f) you or any person named as an insured
- (g) any entity operated or controlled by you or any person named as an insured
- (h) your subsidiary, nominee, trustee or family member or those of any person named as an insured
- (i) any entity in which you or any person named as an insured or any subsidiary, nominee of you or any person named as an insured, trustee of an insured or family member has a direct or indirect financial interest, other than a minor interest.

### Insured and related or associated entities

brought or maintained by or on behalf of:

- (a) any person named as an insured (in whatever capacity) or any subsidiary; or
- (b) any person who, at the time of the wrongful act giving rise to the claim is a family member of any person named as an insured (irrespective of the capacity in which such family member claims), unless such person is acting without any prior direct or indirect solicitation or co-operation of the person named as an insured.

### Refund of professional fees

for or based on the return or refund by you of professional fees, remuneration or charges, whether by way of damages or otherwise.

### Trading debts

directly or indirectly based upon, attributable to or in consequence of any trading or business debt or liabilities of any person named as an insured in the provision of insured's professional services.

## Conditions which apply to Section 2

The following conditions apply to Section 2 only. They are in addition to the General Conditions which apply to all Sections of this Policy.

### Confidentiality

In respect of all Insuring Clauses, other than Insuring Clause E (Professional services), you will not disclose the existence of this Policy, the nature of the cover, the limit of liability or the amount of the premium paid, to any third party, except to the extent that:

- (a) you are required to do so by law; or
- (b) we consent, in writing, to such disclosure.

## Takeover or Acquisition

If you, during the period of insurance, are acquired by, merged into, or become a subsidiary of any other entity then the cover provided by this Policy Section will only apply in respect of any conduct or wrongful act occurring prior to the effective date on which you were acquired by, merged into, or became a subsidiary of such other entity, unless otherwise agreed in writing by us.

## What you must pay if you make a claim – Deductible

### This condition applies to all Sections of this Policy.

For claims you make on this Policy, we will reduce the amount of a claim by the deductible shown on the Policy Schedule. The deductible applies to all amounts payable under this Policy including any indemnity provided under 'Defence of claims'.

If more than one deductible is payable under this Policy for any claim, or series of claims arising from the one event:

- you must pay the highest deductible, but
- you pay only one deductible.

## When you are not covered

### General Exclusions which apply to all Sections of this Policy

This Policy excludes loss, damage, destruction, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

1. **War**, invasion, acts of foreign enemies, hostilities or war-like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government or public or local authority.

2. **Any act(s) of Terrorism**

For the purpose of this exclusion, an act of terrorism includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- involves violence against one or more persons, or
- involves damage to property, or
- endangers life other than that of the person committing the action, or

- creates a risk to health or safety of the public or a section of the public, or
- is designed to interfere with or to disrupt an electronic system.

3. **Radioactivity** or the use, existence or escape of any nuclear fuel, nuclear material, or nuclear waste or action of nuclear fission or fusion.

This Policy also excludes any loss, destruction, damage, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any action taken in controlling, preventing, suppressing, retaliating against, or responding to or in any way relating to 1, 2 or 3 above.

### This Policy also does not cover:

#### Property in custody or control

property damage to:

- (a) property owned by or leased or rented to you, or
- (b) property in your physical or legal control.

But this exclusion does not apply to liability for property damage to:

- (c) premises (including landlord's fixtures and fittings) which are leased or rented to you
- (d) premises (or their contents) not owned, leased or rented by you but temporarily occupied by you for work therein
- (e) vehicles (not belonging to or used by you) in your physical or legal control where the property damage occurs while the vehicles are in a car park owned or operated by you, unless you own or operate the car park for reward
- (f) the property of an employee of you or of the parties shown in item (b) of 'Words with special meanings' of 'you', 'your' or 'insured'
- (g) other property temporarily in your physical or legal control provided no indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which you are or have been working on and our limit under this item (g) does not exceed \$50,000 for any one occurrence and in the aggregate for any one period of insurance.

Provided that we will not cover you under this Policy in respect of liability assumed by you under any contract or agreement which requires you to effect material damage insurance on premises, property or goods which you do not own.

#### Aircraft, aircraft products, watercraft and hovercraft

claims arising out of

- (a) the ownership, maintenance, operation or use by you or on your behalf of:
  - (i) any aircraft, or
the ownership, operation or use by you or on your behalf of:

- (ii) any watercraft exceeding 10 metres in length, except where such watercraft are owned or operated by others and used by you for business entertainment, or
- (iii) hovercraft.
- (b) your products that are aircraft component parts used for maintaining an aircraft in flight or moving upon the ground or used in the construction of an aircraft hull or machinery which to your knowledge are incorporated in an aircraft.

### Vehicles

personal injury, property damage, wrongful act or wrongful breach arising out of the ownership, possession, operation, or use by you or on your behalf of any vehicle:

- (a) which is registered or which is required under any legislation to be registered, or
- (b) in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation (whether or not that insurance is effected).

Exclusions (a) and (b) above do not apply to:

- (c) personal injury where:
  - (i) that compulsory liability insurance or statutory indemnity does not provide indemnity, and
  - (ii) the reason or reasons why that compulsory liability insurance or statutory indemnity does not provide indemnity do not involve a breach by you of legislation relating to vehicles.
- (d) property damage arising out of and during the loading or unloading of goods to or from any vehicle
- (e) property damage caused by or arising from the operation or use of any vehicle which is designed primarily for lifting, lowering, loading, unloading, while being operated or used by you or on your behalf within the confines of your premises
- (f) property damage caused by or arising out of the use of
  - (i) any vehicle while being used as a tool, or
  - (ii) plant forming part of your vehicle being used as a tool operating at any worksite

but excluding property damage caused by or arising while the vehicle is transporting or carting goods.

### Contractual liability, assumed duty or obligation

any obligation assumed by you under any agreement or contract except to the extent that:

- (a) the liability would have been implied by law
- (b) the liability arises from a provision in a contract for lease of real or personal property other than a provision which obliges you to effect insurance in respect of the subject matter of that contract
- (c) the liability is assumed by you under a warranty of fitness or quality as regards to your products.

### Pollution

- (a) personal injury or property damage caused by or arising out of the discharge, dispersal, release, seepage, migration or escape of pollutants into or upon land, the atmosphere, or any water course or body of water, but this exclusion does not apply if the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place
- (b) any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution but this exclusion does not apply to clean-up, removal or nullifying expenses only, which are consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in personal injury and/or property damage
- (c) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of pollutants caused by any product that has been discarded, dumped, abandoned or thrown away by others
- (d) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of pollutants in the United States of America or Canada or in any country to which the laws of the United States of America or Canada apply

except to the extent that cover for pollution is provided by Section 2.

Our liability under clauses (a) and (b) above in respect of any one discharge, dispersal, release, seepage, migration or escape and for all discharges, dispersals, releases, and escape of pollutants during any one period of insurance will not exceed the limit of liability.

### Territorial limits

- (a) claims made or actions instituted within any country, state or territory (outside Australia) that require insurance to be insured or secured with an insurer or organisation licensed in that country, state or territory to grant such insurance
- (b) claims made and actions instituted within the United States of America or Canada or any other territory coming within the jurisdiction of the courts of the United States of America or Canada
- (c) claims and actions to which the laws of the United States of America or Canada apply
- (d) claims arising out of 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 territories or protectorates.

Provided that:

- (e) exclusions (b), (c) and (d) above do not apply to claims and actions arising from the presence outside Australia of any of your employees and/or directors, partners or proprietors who are normally resident in Australia and who are not undertaking manual work or supervision of work of any kind while in the United States of America or Canada.



The limit of liability in respect of cover provided under paragraph (e) is inclusive of all costs, expenses and interest as set out in 'Defence of claims'.

### Asbestos

personal injury, property damage (including loss of use of property), advertising liability, wrongful acts or wrongful breach directly or indirectly caused by or arising from exposure to asbestos or materials containing asbestos.

### Fines, penalties, punitive damages

fines, penalties or liquidated or other damages for, directly or indirectly based upon, attributable to or in consequence of any punitive, aggravated, multiple, or exemplary damages, or fines or penalties imposed by law including but not limited to civil penalties. This exclusion does not apply to any cover afforded by extensions 'Penalties' or 'Pollution liability defence costs' under Section 2.

### Assault and battery

personal injury, property damage, wrongful act or wrongful breach caused by or arising from assault and battery committed by you or at your direction unless reasonably necessary for the protection of persons or property.

### Tobacco

personal injury, bodily injury, wrongful act or wrongful breach arising directly or indirectly out of or due to the inhalation or ingestion of, or exposure to:

- (a) tobacco or tobacco smoke
- (b) any ingredient or additive present in any articles, items or goods which contain or include tobacco.

### Product recall

claims arising out of or resulting from any loss, cost or expense incurred by you for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of your products or of any property of which they form a part, if such products or property are withdrawn from the market or from use because of any known or suspected defect, deficiency, inadequacy or dangerous condition in them.

## General conditions

### General conditions which apply to all Sections of this Policy

### Changing your Policy

If you want to make a change to this Policy, the change becomes effective when:

- we agree to it, and
- we give you a new Policy Schedule detailing the change.

### Other interests

You must not transfer any interests in this Policy without our written consent.

Any person whose interests you have told us about and we have noted on your Policy Schedule is bound by the terms of this Policy.

### Cancelling your Policy

#### How you may cancel this Policy

- You may cancel this Policy at any time by telling us in writing that you want to cancel it.

#### How we may cancel this Policy

- We may cancel this Policy in any of the circumstances permitted by law by informing you in writing.
- We will give you this notice in person or send it to your address last known to us.

### The premium

We will refund to you the proportion of the premium for the remaining period of insurance.

### Notices

Any notice we give you will be in writing, and it will be effective:

- if it is delivered to you personally, or
- if it is delivered or posted to your address last known to us.

It is important for you to tell us of any change of address as soon as possible.

### Changes to information previously advised

You must tell us as soon as possible if circumstances occur, or if changes or alterations are intended or made which increase the risk of loss, damage or injury.

You must tell us immediately if:

- (a) you or any person named as an insured go into voluntary bankruptcy, receivership, liquidation or any other form of external administration or fail to pay debts or breach any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings
- (b) there is any material change in the nature of insured's professional services offered by you or any person named as an insured (where cover is provided under Section 2, Insuring Clause E (Professional services)).

Where there is any material alteration to the risk we will be entitled to cancel this Policy in accordance with the Insurance Contracts Act 1984.

### Notice to us of other insurance

In the event of any claim for indemnity under this Policy you must notify us of all other insurance effected by you providing the same or similar cover.

### Authorisation

The entity specified in the Policy Schedule as the insured agrees to act on behalf of every person who falls within the definition of 'you, your, insured' under this Policy and each person insured agrees that the entity will act on their behalf with respect to the giving and receiving of notice of any claim, the giving and receiving of notice of cancellation or expiry of this Policy, the payment of premium and the return of any premium that may become due under this Policy, the negotiation, agreement to and acceptance of endorsements, and the giving and receiving of a notice provided for in this Policy.

### Jurisdiction

All disputes arising out of or under this Policy will be subject to determination by any Court or competent jurisdiction within Australia.

### Mitigation and co-operation

If you, either prior to or during the period of insurance, become aware of a situation which could, if not rectified, lead to a loss or claim or increase the quantum of a loss or claim, you will use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability under this Policy. You must not pursue a course of action which you know or ought reasonably to know will bring about any claim, unless this is undertaken to discharge your duties under any relevant law.

You must frankly and honestly disclose to us all relevant information and, in addition, must provide assistance to us as we may require to enable us to investigate and to defend any claim under this Policy and/or to enable us to determine our liability under this Policy.

Compliance with this condition will be at your own cost, unless otherwise agreed in writing by us.

### Discharge of Liabilities

At any time we can pay to you or on your behalf, for all claims made against you for any one occurrence:

- the limit of liability, after deducting any amounts already paid, or
- any lower sum for which the claim may be settled.

If we do so:

- the conduct of any outstanding claim(s) will become your responsibility, and
- we will not be liable to pay any further amounts under that claim other than costs, charges, or expenses that we agreed to pay before we made the payment referred to above.

### Reasonable Care

You must:

- (a) exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition

- (b) take all reasonable precautions to prevent personal injury, property damage, advertising liability, wrongful acts or wrongful breach and prevent the manufacture, sale or supply of defective products, and comply with and ensure that your employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by all relevant public authorities for the:

- (i) safety of persons or property
- (ii) disposal of waste products
- (iii) handling, storage or use of flammable liquids or substances, gases or toxic chemicals

- (c) at your own expense take reasonable action to trace, recall or modify any of your products containing any defect or deficiency of which you have knowledge or have reason to suspect, including (but not limited to) any of your Products subject to governmental or statutory ban.

### Inspection of Property

- (a) We will be permitted but not obligated to inspect your property and operations at any time.
- (b) Neither our right to inspect nor our failure to inspect nor the making of any inspection nor any report of an inspection may be used by you or others in any action or proceeding involving us.
- (c) We may examine and audit your books and records at any time during the period of insurance and within three years thereafter but that examination and audit will be restricted to matters which in our opinion are relevant to the Policy.

### Adjustment of Premium

Where the Policy Schedule shows premium for Section 1 of the Policy has wholly or partly been calculated on estimates you must, within 30 days after the expiry of each period of insurance, provide to us such matters, particulars and information relevant to the Policy as we may reasonably require. The premium for the period of insurance will then be adjusted and any difference paid by or allowed to you, as the case may be, provided that the adjusted premium will not be less than any minimum premium specified in the Policy Schedule.

You must keep a record of all matters, particulars and information requested by us and must on reasonable notice allow us or our nominee to inspect and make copies of those records.

### Allocation

- (a) If both loss covered by this Policy and loss not covered by this Policy are incurred, either because:
  - (i) a claim against you includes both covered and uncovered matters, or
  - (ii) a claim is made against you and there are others who are party to the proceedings or demand to which the claim relates but who are not insured under the Policy,

then we will use our best efforts to agree with you upon a fair and proper allocation of such amount between covered loss and uncovered loss, having regard to the relative legal and financial exposures attributable to covered and uncovered matters and parties. We are only liable under this Policy for amounts attributable to covered matters and parties, and our liability for loss, including defence costs, otherwise payable by us will be reduced to reflect such fair and proper allocation.

- (b) If we cannot agree with you on an allocation of defence costs then we will advance defence costs which we believe to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially or otherwise determined.
- (c) We will, if requested by you, submit the dispute to a senior counsel to be mutually agreed or, in default of agreement, to be appointed by the President of the Bar Association in the relevant State or Territory, on the basis that the senior counsel will determine the allocation of loss according to his view of the fair and proper allocation, but having regard to the relative legal and financial exposures attributable to covered and uncovered matters and parties, and the overriding intention in (a) above.
- (d) Any negotiated, arbitrated or judicially or otherwise determined allocation of defence costs on account of a claim will be applied retrospectively to all defence costs on account of such claim.

#### **Your right to contest**

If we recommend a settlement in respect of any claim and you do not agree that the claim should be settled, then you may elect to contest the claim. Our liability in connection with that claim will not exceed the amount for which we believe the claim could have been settled, plus the defence costs incurred with our written consent up to the date of your election, less the deductible.

#### **Senior Counsel**

We will not require you to contest any claim unless a senior counsel (to be mutually agreed upon by you and us) advises that the claim should be contested.

In formulating their advice, senior counsel will 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 your prospects of successfully defending the claim.

The cost of the senior counsel's opinion will be regarded as part of the defence costs.

## **Claims**

### **What you must do**

If an event happens which may give rise to a claim under this Policy you must:

- tell us or your Financial Services Provider as soon as possible, but in any case you must tell us during the period of insurance in which the claim is made or the loss discovered. You will be provided with advice on the procedure to follow
- supply us with all information we require to settle the claim
- take all reasonable precautions to prevent further loss or damage
- not negotiate, admit, repudiate or pay any claim by any person
- co-operate with us fully in any action we take if we have a right to recover any money payable under this Policy from any other person.

If in doubt at any time, ring us or your Financial Services Provider for advice.

### **What you must NOT do**

#### **You must not:**

- admit liability if an incident occurs which is likely to result in someone claiming against you
- make any admission of guilt, incur any defence costs or make any promise or offer of payment in connection with any such claim, unless we first agree in writing. This applies to you or any other person making a claim under this Policy. We will not be liable for any settlement, loss, defence costs, admission, offer or payment, or assumed obligation to which we have not consented in writing.

### **What we do**

We may take over and conduct the defence or settlement of any claim or issue legal proceedings for damages. If we do this we will do it in your name. We have full discretion in the conduct of any legal proceedings and in the settlement of any claim. You must co-operate by giving us any statements, documents or assistance we require. This may include giving evidence in any legal proceedings.

We may, if we believe that any claim will not exceed the deductible, instruct you to conduct the defence of the claim. If we do this, we will (subject to the terms of this Policy) reimburse you for all reasonable defence costs in the defence of the claim if any payment you make to dispose of the claim exceeds the deductible.

### **What can affect a claim**

We will reduce the amount of a claim by the deductible shown in the Policy Terms and Conditions or on the Policy Schedule. We may refuse to pay a claim if you are in breach of your Duty of Disclosure or any of the conditions of this Policy, including any endorsements noted on or attached to the Policy Schedule.

We pay only once for loss or damage from the same event covered by this Policy even if it is covered under more than one section of the Policy.

If we recommend that you pay any penalty, consent to any order directing you to pay any penalty or otherwise settle or resolve any claim under this Policy, and you do not agree to do so, then we are entitled to reduce our liability to you to the extent of any prejudice suffered by us by reason of your failure to so agree.

We may be entitled to refuse to pay or to reduce the amount of a claim if:

- it is in any way fraudulent, or
- any fraudulent means or devices are used by you or anyone acting on your behalf to obtain any benefits under this Policy.





