

Financial Institutions

Civil Liability Professional Indemnity
Insurance Policy

POLICY



About this booklet

This booklet contains 2 separate parts:

General Information and the Policy Terms and Conditions.

General Information

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

Policy Terms and Conditions

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

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

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

If you require further information about this product, please contact your Financial Services Provider.

About QBE Australia

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

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

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GENERAL INFORMATION FOR FINANCIAL INSTITUTIONS CIVIL LIABILITY 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.

Claims Made Policy

This proposal is for a “claims made and notified” policy of insurance. This means that the proposed insurance covers the insured for claims made against the Insured during the indemnity period and notified to QBE during the reporting period. The proposed insurance does not provide cover in relation to:

- (a) events that occurred prior to the retroactive date of the proposed insurance (if such a date is specified);
- (b) claims made after the expiry of the indemnity period even though the event giving rise to the claim may have occurred during the indemnity period;
- (c) claims notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy;
- (d) claims made, threatened or intimated against the insured prior to the commencement of the indemnity period;
- (e) facts or circumstances which the insured first became aware prior to the indemnity period, and which knew or ought reasonably to have known, had the potential to give rise to a claim under the proposed insurance;
- (f) claims arising out of circumstances noted in this proposal, or other application form for the proposed insurance or on any previous proposal or application form.

However, the proposed insurance needs to be read in conjunction with Section 40(3) of the Insurance Contract Acts 1984. The effect of this Section of the Act is that where the Insured gives notice in writing to QBE of any facts that might give rise to a claim against the insured as soon as reasonably practicable after the insured becomes aware of those facts but before the expiry of the proposed insurance, QBE is not relieved of any liability under the proposed insurance by reason only that such claim was made after the expiration of the indemnity period of the proposed insurance where such claim is the manifestation of facts so notified.

The insured should familiarise themselves with QBE's standard form of policy for this type of cover before submitting this proposal.

Average Provision

If the proposed insurance provides that where a payment in excess of the limit of indemnity available under the proposed insurance has to be made to dispose of a claim, QBE's liability for costs and expenses incurred with its consent shall be in the same proportion as the amount of indemnity available under the proposed insurance bears to the amount paid to dispose of the claim.

Privacy

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

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

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

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

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

The General Insurance Code of Practice

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

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

Dispute Resolution

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

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

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

Preventing QBE's 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, QBE will not cover you under this Policy for that loss, damage or liability.

POLICY TERMS AND CONDITIONS FOR FINANCIAL INSTITUTIONS CIVIL LIABILITY POLICY

Preamble

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

Please Check the Policy Schedule Details

Please check that the Policy Schedule accurately states what you have insured. Especially check that the limits of liability are adequate.

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 indemnity or the other limits of insurance cover including GST.
- (b) registered for GST, we will pay the sum insured/limit of indemnity 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 & 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 indemnity 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.

Section 1: Insuring Clauses

1.1 Insuring Clause A - Civil Liability Insuring Clause

QBE agrees to indemnify the **Insured** against civil liability for compensation arising from any **Claim** first made against the **Insured** during the **Period of Cover** and notified to **QBE** during the **Period of Cover** as a result of a breach of professional duty in the conduct of the **Financial Service**.

1.2 Insuring Clause B - Legal Expenses Insuring Clause

QBE agrees to pay **Legal Expenses** incurred with the written consent of **QBE** in the defence or settlement of any **Claim** indemnified by this **Policy**.

Insuring Clause Clarification

For the avoidance of doubt, indemnity is provided in respect of the following in accordance with, and subject to, the terms of this **Policy**, including Insuring Clauses A and B (Clauses 1.2 and 1.3).

1.3 Retroactive Date

(a) Unlimited Retroactive Cover

If no retroactive date is specified in item 7 of the **Schedule** or if the retroactive date is specified in item 7 of the **Schedule** as "unlimited", this **Policy** shall provide indemnity in connection with acts, errors or omissions committed (or alleged to have been committed) irrespective of when such acts, errors or omissions were committed (or were alleged to have been committed).

(b) Limited Retroactive Cover

Where a retroactive date is specified in item 7 of the **Schedule**, then this **Policy** shall only provide indemnity in connection with acts, errors or omissions committed or alleged to have been committed after the Retroactive Date.

Section 2: Policy Extensions

2.1 Preamble

QBE shall provide indemnity as is available under this section, for no additional premium, PROVIDED ALWAYS THAT:

- (a) the indemnity provided by each extension is subject to the **Schedule**, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this **Policy** (unless otherwise expressly stated herein);
- (b) the inclusion of any extension shall not increase the **Limit of Indemnity**; and
- (c) where a Policy Extension is not specified as included in the **Schedule** then this **Policy** shall not provide any indemnity in relation to coverage specified under such Policy Extension.

2.2 Fraud & Dishonesty

QBE agrees to indemnify the **Insured** against civil liability for compensation arising from any **Claim** made against that **Insured** which would otherwise be excluded by reason of Exclusion 4.8 (Fraud and Dishonesty) PROVIDED ALWAYS THAT:

- (a) such indemnity shall not be provided to any person committing or condoning any act, omission or breach excluded by reason of Exclusion 4.8 (Fraud and Dishonesty);
- (b) at the **Insured's** expense, the **Insured** must take or cause to be taken all reasonable steps to obtain reimbursement from any such person who acted dishonestly or fraudulently or from the legal representatives of any such person in the event of their death; and
- (c) the **Insured** shall cause any reimbursement so obtained to be paid to **QBE** after deducting any expenditure reasonably incurred by the **Insured** in obtaining such reimbursement.

2.3 Loss of Documents

QBE agrees to indemnify the **Insured** in respect of certain loss described in this clause arising from the loss of any **Documents** (including but not limited to **Documents** which are the property of the **Insured**) which have been destroyed, damaged, 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 Cover** and was notified in writing to **QBE** within twenty eight (28) days after the date of such discovery (but never beyond the expiry date of the **Period of Cover**); and
- (b) such indemnity shall be limited to the costs, charges and expenses of whatsoever nature incurred by the **Insured** 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 **QBE** with the approval of the **Insured**; and

- (c) **QBE** shall not be liable under this Policy 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 of the **Insured** or held by the **Insured** wholly or partly caused by:
 - (iv) any computer virus; or
 - (v) any person who is not a current partner, **Director** or **Employee** of the **Insured** where such costs, charges and expenses relate to the **Insured** 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 the physical custody or control of the **Insured** or any person to whom the **Insured** entrusted, lodged or deposited such **Documents** in the ordinary course of business; and
 - (ii) which occurred within the territorial limits of the Commonwealth of Australia or the Dominion of New Zealand.
- (e) **QBE's Aggregate** liability in respect of all losses under this Policy Extension shall not exceed:
- (i) the sub-limit shown in the **Schedule** for **loss of Documents**; or
 - (ii) if no amount is shown, the sum of \$100,000.

2.4 Newly Created Subsidiary

QBE agrees to include in the definition of **Insured** of this **Policy** any **Subsidiary** created by the **Named Insured** during the **Period of Cover** for a period of up to fourteen (14) days (but never beyond the expiry date of the **Period of Cover**) from the date of such creation. PROVIDED ALWAYS THAT this Extension will only apply in respect of **Claims** against the **Subsidiary** arising from an act, error or omission occurring subsequent to the date of creation of the **Subsidiary**.

QBE may, at its sole and absolute discretion, extend the period granted by this **Policy** Extension to the expiry date of the **Period of Cover** upon receipt and consideration of a **QBE** Financial Institutions Civil Liability Professional Indemnity Proposal form duly completed together with any other information **QBE** may require in respect of the **Subsidiary** so created.

2.5 Severability

QBE agrees that:

- (a) where this **Policy** insures more than one **Named Insured**, any conduct on the part of any party who is an **Insured** whereby such party:
- (i) failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984; or
 - (ii) made a misrepresentation to **QBE** before this contract of insurance was entered into,
shall not prejudice the right of any other **Named Insured** to indemnity as may be provided by this Policy. PROVIDED ALWAYS THAT:
 - (iii) such other **Insured** shall be entirely innocent of and have no prior knowledge of any such conduct;
 - (iv) such other **Insured** shall, as soon as is reasonably practicable upon becoming aware of any such conduct, advise **QBE** in writing of all known facts in relation to such conduct; or
- (b) where this **Policy** insures one or more **Named Insured(s)** any conduct on the part of any party who is an **Insured** within a **Named Insured** whereby such party:
- (i) failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984; or
 - (ii) made a misrepresentation to **QBE** before this contract of insurance was entered into,
shall not prejudice the right of any other **Insured** to indemnity as may be provided by this **Policy**. PROVIDED ALWAYS THAT:
 - (iii) such other **Insured** shall be entirely innocent of and have no prior knowledge of any such conduct;
 - (iv) such other **Insured** shall, as soon as is reasonably practicable upon becoming aware of any such conduct, advise **QBE** in writing of all known facts in relation to such conduct; and
 - (v) enquiry has been made, before the contract of insurance was entered into with **QBE**, of the entities and persons referred to in clause 7.26(c)(i) and 7.26(c)(ii) of the definition of the **Insured** 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 the **Insured's** duty of disclosure owed by the entities or persons referred to in clause 7.26(c)(i) and 7.26(c)(ii).

Section 3: Optional Extensions

3.1 Preamble

It is agreed that:

- (a) each Optional Extension is subject to the **Schedule**, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this **Policy** (unless otherwise expressly stated herein);
- (b) other than by operation of Optional Extension 3.3, the inclusion of any Optional Extension shall not increase the **Limit of Indemnity**; and
- (c) where an Optional Extension is not specified as included in the **Schedule** then this **Policy** shall not provide any indemnity (or **Legal Expenses**) in relation to coverage specified under such Optional Extension.

3.2 Compliance Committee

QBE agrees to indemnify any **Compliance Committee Member**, as if a **Named Insured**, against civil liability arising from any **Claim** first made against any **Compliance Committee Member** and notified to **QBE** during the **Period of Cover** as a result of a breach of professional duty in the conduct of the **Financial Service**.

PROVIDED ALWAYS THAT **QBE** shall not be liable under this Optional Extension to provide indemnity in respect of any current or past **Compliance Committee Member** against a liability incurred by the **Compliance Committee Member** as a member of the compliance committee which arises out of conduct involving a wilful breach of the **Compliance Committee Member's** duties, including but not limited to, a duty to:

- (a) act honestly;
- (b) exercise the degree of care and diligence that a reasonable person would exercise if they were in the **Compliance Committee Member's** position;
- (c) not make use of information acquired through being a member of the compliance committee in order to gain an improper advantage for him or herself or another person; or cause detriment to the members of any **Scheme**;
- (d) not make improper use of his or her position as a member of the compliance committee to gain, directly or indirectly an advantage for him or herself or for any other person or cause detriment to the members of any **Scheme**.

PROVIDED ALWAYS THAT where a conflict arises between the provisions of this Optional Extension, if operative, and **Policy** Extension 2.2 (Fraud & Dishonesty) the provisions of this Optional Extension shall prevail.

3.3 Financial Industry Complaints Service Limited Scheme

QBE agrees to indemnify the **Insured** to meet an **Award** arising from any **Claim** under the Financial Industry Complaints Service Limited Scheme. PROVIDED ALWAYS THAT:

- (a) **QBE** shall be entitled, at its discretion, to appoint legal representation to represent the **Insured** and shall have the right to assume conduct of the defence or settlement of any **Claim**; and
- (b) the liability of **QBE** shall not exceed \$100,000, including all **Legal Expenses**, unless otherwise agreed by **QBE**. This sub-limit is part of and not in addition to the **Limit of Indemnity**.

3.4 Increased Aggregate Limit of Indemnity

QBE agrees to indemnify the **Insured** under this **Policy** up to the **Aggregate Limit of Indemnity** PROVIDED ALWAYS THAT **QBE's** total liability under this **Policy** shall not exceed:

- (a) in respect of any one **Claim** indemnified by this **Policy**, the **Limit of Indemnity** as specified in item 8 of the **Schedule**; and
- (b) in respect of all **Claims** indemnified by this **Policy**, the **Aggregate Limit of Indemnity** as specified in item 9 of the **Schedule**.

3.5 Official Investigation Costs

QBE agrees to indemnify the **Insured** for **Official Investigation Costs** arising from an official investigation, examination or inquiry by a **Regulatory Authority** ('Investigation') PROVIDED ALWAYS THAT:

- (a) **QBE** shall be entitled, at its discretion, to appoint legal representation to represent the **Insured** in the investigation;
- (b) the notice of investigation or notice of intended investigation is served on the **Insured** and notified to **QBE** during the **Period of Cover**;
- (c) in the event that a claim for payment of **Official Investigation Costs** is withdrawn or indemnity under this **Policy** is subsequently withdrawn or denied, **QBE** shall cease to advance **Official Investigation Costs** and the **Insured** shall refund any **Official Investigation Costs** advanced by **QBE** to the extent that **QBE** is satisfied that the **Insured** was not entitled to such **Official Investigation Costs**, unless **QBE** agrees in writing to waive recovery of such **Official Investigation Costs**;
- (d) **QBE's** total liability in respect of **Official Investigation Costs** for all **Claims** made under this Optional Extension shall not exceed the amount of the sub-limit stated in item 12.4.1 of the **Schedule** or, if no amount is shown, the amount of \$250,000; and
- (e) the excess applicable to this Optional Extension is the amount stated in item 12.4.2 of the **Schedule** notwithstanding a different amount may be stated as the **Deductible** referred to in item 10 the **Schedule**.

3.6 Product Disclosure Statements

QBE agrees to indemnify the **Insured**, against civil liability arising from any **Claim** first made against the **Insured** and notified to **QBE** during the **Period of Cover** arising from any **Product Disclosure Statement**, Prospectus, Information Memorandum, **Financial Services Guide** or similar document specified in item 12.5.1 of the **Schedule** issued by or on behalf of the **Insured**.

PROVIDED ALWAYS THAT where a conflict arises between the provisions of this Optional Extension, if operative, and **Policy** exclusion 4.17 (Product Disclosure Statements) the provisions of this Optional Extension shall prevail.

3.7 Responsible Entity

QBE agrees to indemnify the **Responsible Entity** of a **Scheme** pursuant to the provisions of Chapter 5C (Managed Investment Schemes) of the **Act**, as if a **Named Insured**, against civil liability arising from any claim first made against the **Responsible Entity** and notified to **QBE** during the **Period of Cover**. PROVIDED ALWAYS THAT:

- (a) such liability is a result of a breach of professional duty in the conduct of the **Financial Service**;
- (b) such liability is a consequence of any act, error or omission in respect of the **Scheme** and for which the **Responsible Entity** is legally liable;
- (c) this Optional Extension shall only provide indemnity in respect of any act, error or omission committed or alleged to have been committed after the RE Retroactive Date stated in item 12.6.2 of the **Schedule**;
- (d) the Sub-Limit of Indemnity for this Optional Extension is the amount stated in item 12.6.3 of the **Schedule** inclusive of **Legal Expenses** payable in accordance with and subject to the **Policy** terms and conditions. This Sub-Limit of Indemnity forms part of and is not in addition to the **Limit of Indemnity**.

Section 4: Exclusions

QBE shall not be liable under this **Policy** to provide indemnity in respect of any **Claim** against any **Insured**:

4.1 Assumed Duty or Obligation

Directly or indirectly based upon, attributable to, or in consequence of any duty or obligation assumed by the **Insured** by way of contract, warranty, guarantee or indemnity, to the extent that such liability exceeds the liability the **Insured** would have incurred in the absence of such contract, warranty, guarantee or indemnity.

4.2 Bodily Injury

Directly or indirectly based upon, attributable to, or in consequence of **Bodily Injury** when such **Bodily Injury** occurs at any time during the actual provision of the **Financial Service** by or on behalf of the **Insured**.

4.3 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 4.8 (Fraud and Dishonesty); and
- (b) this exclusion shall not apply where the **Conflict** arises from the **Insured's** provision, or alleged provision, of a **Financial Service** to more than one client (which term in this sub-paragraph includes former clients) and the **Insured** obtains a signed and dated document from each client prior to providing the **Financial Service** acknowledging that the **Insured** may also be involved with another client whose interests may be different from those of the client in question.

4.4 Date Conformity

Directly or indirectly based upon, attributable to, or in consequence of the fact that the performance or functionality of any **Computer Equipment** has been or may be affected because that **Computer Equipment** does not meet **Date Conformity**.

4.5 Directors' & Officers' Liability

Directly or indirectly based upon, attributable to, or in consequence of any liability of an **Insured** arising solely from any actual or alleged act, error, omission or conduct by a **Director** or **Officer** of a body corporate comprising the **Insured** while acting in the capacity as such. But does not mean the prior written authorisation of a transaction with a client or customer of the **Insured** that may be subject to the approval of one or more **Directors** of the board exercised in the normal course of the provision of the **Financial Service**.

Where a conflict arises between the provisions of this exclusion and the Insuring Clause A - Civil Liability of this **Policy** the provisions of the Insuring Clause A shall prevail.

4.6 Financial Interest

Directly or indirectly based upon, attributable to, or in consequence of any actual or alleged advice, inducement, recommendation, endorsement, or service provided by the **Insured** regarding investment in, work for, or lending to:

- (a) an **Insured**;
- (b) any entity operated or controlled by an **Insured**;
- (c) any **Subsidiary**, nominee, trustee or **Family Member** of an **Insured**; or
- (d) any entity in which an **Insured** or any **Subsidiary**, nominee of an **Insured**, trustee of an **Insured** or **Family Member** has a direct or indirect financial interest, other than a **Minority Interest**.

4.7 Fines & Penalties

For punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law including but not limited to, civil penalties.

4.8 Fraud & Dishonesty

Directly or indirectly based upon, attributable to, or in consequence of:

- (a) any actual or alleged dishonest, fraudulent, criminal, or malicious act or omission of any **Insured** or their consultants, sub-contractors, or agents; or
- (b) any act or omission of any **Insured** or their consultants, sub-contractors, or agents committed or alleged to have been committed with a reckless disregard for the consequences thereof; or
- (c) wilful breach of any statute, contract or duty by an **Insured** or their consultants, sub-contractors or agents.

4.9 Jurisdictional Limits

- (a) brought in a court of law within the territorial limits of the United States of America or Canada or their territories or protectorates; or
- (b) 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 protectorates.

4.10 Market Fluctuations

Directly or indirectly based upon attributable to or in consequence of the depreciation, or failure to appreciate, or loss of investment or value of any investments including but not limited to any:

- (a) securities, commodities, currencies, options and futures transactions; or
- (b) real estate investment, including but not limited to return on investment, capital appreciation or tax benefits; or
- (c) loss of value, surrender value or cancellation value of any leased product or service as a result of fluctuations in value of any leased product or service as a result of fluctuations in the value of such product or service; or

- (d) profit projections or financial forecasts;

as the result of any actual or alleged representation, advice or guarantee provided by or on behalf of the **Insured** as to the performance of any such investments.

PROVIDED ALWAYS THAT this exclusion shall not apply in respect of any **Claim** arising from the **Insured's** failure in the execution or implementation of any financial product or **Financial Service** advice or related investment decisions.

4.11 Merger or Acquisition

Directly or indirectly based upon, attributable to, or in consequence of any actual or alleged acts of the **Insured** or agents and/or professional advisers of the **Insured** in connection with any purchase, merger or acquisition of or by the **Insured**, or any **Subsidiary** or affiliate of the **Insured** (whether or not such transaction is actually completed) or in connection with transactions concerning shares in the capital of the **Insured**.

4.12 Money Laundering

Directly or indirectly based upon, attributable to, or in consequence of any actual or alleged acts of **Money Laundering** which are in breach of or constitute an offence under any **Money Laundering** legislation or any provisions and/or rules or regulations made by any regulatory body or authority there under.

The burden of proving that any **Claim** does not fall within this **Money Laundering** Exclusion shall be upon the **Insured**.

4.13 Nuclear

Directly or indirectly based upon, attributable to, or in consequence of ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel.

4.14 Obligations to Employees

Directly or indirectly based upon, attributable to, or in consequence of **Bodily Injury** of any **Employee** of the **Insured** or damage to or destruction of any property of any **Employee**, including loss of use, arising out of, or in the course of, their employment.

4.15 Pollutants

Directly or indirectly based upon, attributable to, or in consequence of:

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

PROVIDED ALWAYS THAT:

Exclusions 4.15(a) and 4.15(b) do not apply where there has been a sudden and accidental release of **Pollutants** caused by error in design or specification.

4.16 Prior or Pending

- (a) Made, threatened or intimated against the **Insured** prior to the **Period of Cover**;
- (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 the **Insured** first became aware prior to the **Period of Cover**, and which the **Insured** knew or ought reasonably to have known had potential to give rise to a **Claim** under this **Policy**.

4.17 Product Disclosure Statements

Directly or indirectly based upon, attributable to, or in consequence of the provision by or on behalf of the **Insured** of any **Product Disclosure Statement**, Prospectus, Information Memorandum, Financial Services Guide or similar document other than any document as may be indemnified by Optional Extension 3.6 – **Product Disclosure Statements**, if operative.

4.18 Property Damage

Directly or indirectly based upon, attributable to, or in consequence of physical loss of, or damage to, or destruction of, any tangible property (other than any **Document**), including loss of use thereof or any consequential loss other than a **Claim** arising directly from a breach of professional duty by the **Insured**.

4.19 Related or Associated Entities

Brought or maintained by or on behalf of:

- (a) any **Insured** or any **Subsidiary** of the **Insured**; or
- (b) any person who, at the time of the act, error or omission giving rise to the **Claim** is a **Family Member** unless such person is acting without any prior direct or indirect solicitation or co-operation of any **Insured**.

4.20 Shareholder

Directly or indirectly based upon, attributable to, or in consequence of any actual or threatened suit or legal proceeding by or on behalf of or at the behest of a shareholder or shareholders of the **Insured** in their capacity as such.

4.21 Territorial Limits

Directly or indirectly based upon, attributable to, or in consequence of an act, error or omission occurring within the territorial limits of the United States of America or Canada or their territories or protectorates.

4.22 Terrorism

Directly or indirectly based upon, attributable to, or in consequence of any actual or alleged act of **Terrorism** or any action taken in controlling, preventing, suppressing or in any way relating to any actual or alleged act of **Terrorism**.

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

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

4.23 Trading Debts

Directly or indirectly based upon, attributable to, or in consequence of any trading debt incurred by the **Insured** or any guarantee given by the **Insured** for a debt.

4.24 Unauthorised Transactions

In connection with:

- (a) the **Financial Service** provided by the **Insured** or any **Representative, Authorised Representative** or other agent while without:
 - (i) an **Australian Financial Services Licence (AFSL)**, including but not limited to the suspension, non-renewal, withdrawal or cessation of an AFSL; or
 - (ii) an appropriate authorisation for the provision of the **Financial Service** under an AFSL, unless the **Insured, Representative, Authorised Representative** or agent is exempt from having an AFSL or an authorisation under the AFSL for the provision of the **Financial Service** where such **Licence** is required by law.
- (b) A transaction being set aside, void, voidable or of no effect as a result of a matter in 4.24(a)(i) and/or 4.24(a)(ii) above.

4.25 War

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

Section 5: Claims Conditions

5.1 Claims Mitigation & Co-Operation.

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

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

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

5.2 Defence & Settlement

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

QBE shall be entitled at any time to conduct, in the name of the **Insured**, the defence or settlement of any **Claim**.

QBE may, if it believes that any **Claim** will not exceed the **Deductible**, instruct the **Insured** to conduct the defence of the **Claim**. In such situation, **QBE** will reimburse the **Insured** for all reasonable **Legal Expenses** in the defence of the **Claim** in the event that any payment made to dispose of the **Claim** exceeds the **Deductible**.

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

The lawyers retained by **QBE** to conduct the investigation, defence or settlement of any **Claim**, may provide advice to **QBE** on any issue regarding **QBE's** liability to indemnify the **Insured** and, whilst doing so, may continue to act in the investigation, defence or settlement of the **Claim** on behalf of both **QBE** and the **Insured**.

The **Insured** agrees that all communications between **QBE** and lawyers retained by **QBE** to act in the conduct of the investigation, defence or settlement of any **Claim** which relate to the **Insured's** entitlement to indemnity from **QBE** are privileged as between **QBE** and the lawyers and the **Insured** agrees that it is not entitled, under any circumstances, to access or obtain any such communications.

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

5.3 Insured's Right to Contest

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

5.4 Multiple Claims

All causally connected or interrelated acts, errors or omissions shall jointly constitute a single act, error or omission under this **Policy**.

Where a single act, error or omission gives rise to more than one **Claim**, all such **Claims** shall jointly constitute one **Claim** under the **Policy**, and only one **Deductible** and, if there is an **Aggregate Limit of Indemnity**, only one **Limit of Indemnity** shall be applicable in respect of such **Claim**.

5.5 Reporting & Notice

The **Insured** shall give to **QBE** written notice as soon as practicable of any **Claim** made against the **Insured** PROVIDED ALWAYS THAT such written notice is given to **QBE** during the **Period of Cover** in which the **Claim** is made.

Notice of any **Claim** shall be given in writing to **QBE**, and delivered to:

The Claims Manager
Professional Liability Division
QBE Insurance (Australia) Ltd
82 Pitt St, Sydney NSW 2000

5.6 Senior Counsel Clause

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

In formulating such advice, **Senior Counsel** shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely **Legal Expenses** and the prospects of the **Insured** successfully defending the **Claim**.

The cost of such **Senior Counsel's** opinion shall be regarded as part of the **Legal Expenses**.

5.7 Subrogation

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

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

Section 6: General Conditions

6.1 Alteration to Risk

The **Insured** shall give to **QBE** written notice as soon as practicable of any material alteration to the risk during the **Period of Cover** including:

- (a) the **Insured** going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or the **Insured** failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- (b) any material change in the nature of the **Financial Service**;
- (c) the statutory registration or licence of any **Insured** relevant to the **Financial Service** being not renewed, cancelled, suspended or terminated.

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

6.2 Assignment of Interest

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

6.3 Cancellation

The **Insured** may cancel this **Policy** at any time by notifying **QBE** in writing, and **QBE** will allow a pro-rata refund of **Premium** less 20% of the **Premium** for the unexpired **Period of Cover**.

QBE may cancel this **Policy** in accordance with the relevant provisions of the Insurance Contracts Act 1984 and **QBE** will provide a pro-rata refund of **Premium** for the unexpired **Period of Cover** but such refund will never be greater than 75% of the **Premium**.

6.4 Deductible

In respect of each **Claim** made against the **Insured** the amount of the **Deductible** shall be borne by the **Insured** at their own risk and **QBE** shall only be liable to indemnify the **Insured** for that part of any **Claim** which is in excess of the **Deductible**.

Where **QBE** has elected to pay all or part of the **Deductible** in respect of any **Claim**, the **Insured** shall, within seven (7) days from the date of such payment, reimburse **QBE** for such payment.

In respect of any **Claim** where the amount of the **Claim** is less than the amount of the **Deductible**, the **Insured** shall bear all **Legal Expenses** associated therewith unless **QBE** shall have agreed to meet such **Legal Expenses** pursuant to the relevant Insuring clause of this **Policy**.

Where the **Deductible** is expressed in the **Schedule** to be inclusive of **Legal Expenses** then the **Insured** will pay all **Legal Expenses**, up to the amount of the **Deductible**, incurred by **QBE** pursuant to the engagement of advisers considered necessary by **QBE** to determine the liability of the **Insured** and to resolve the **Claim**.

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

6.5 GST

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

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

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

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

6.6 Limit of Indemnity

Where there is no **Aggregate Limit of Indemnity** specified in the **Schedule**, **QBE's** total liability under this **Policy** for any one **Claim**, including **Legal Expenses** and in the aggregate in respect of all **Claims**, including **Legal Expenses** shall not exceed the **Limit of Indemnity** specified in the **Schedule**.

Where **QBE** has agreed to provide an **Aggregate Limit of Indemnity** in accordance with the Optional Extension of this **Policy** then **QBE's** total liability under this **Policy** for any one **Claim**, including **Legal Expenses** shall not exceed the **Limit of Indemnity** specified in the **Schedule**, and **QBE's** total liability in the aggregate in respect of all **Claims**, including **Legal Expenses** shall not exceed the **Aggregate Limit of Indemnity** specified in the **Schedule**.

Where the **Limit of Indemnity** is expressed in the **Schedule** to be exclusive of **Legal Expenses** **QBE** agrees to pay **Legal Expenses** in addition to the **Limit of Indemnity**. Provided always that if a payment is made to dispose of a **Claim** which is in excess of the **Limit of Indemnity** available under this **Policy**, **QBE's** liability for such **Legal Expenses** shall be such proportion thereof as the **Limit of Indemnity** available under this **Policy** bears to the amount paid to dispose of the **Claim**.

6.7 Policy Construction & Interpretation

- (a) The construction, interpretation and meaning of the provisions of this **Policy** shall be determined in accordance with the law of the state, territory or country in which this **Policy** is issued, being the Place of Issue specified in the **Schedule**, and any disputes relating thereto shall be submitted to the exclusive jurisdiction of the courts of such state, territory or country. If no Place of Issue is shown in the **Schedule** it is agreed that the place of issue is Sydney, New South Wales, Australia.
- (b) The marginal notes and titles of paragraphs in this **Policy** are included for descriptive purposes only and do not form part of this **Policy** for the purpose of its construction or interpretation.
- (c) Under this **Policy**, the masculine includes the feminine and the singular includes the plural and vice versa and reference to a person includes a body corporate, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust.

Section 7: Definitions

7.1 Acquisition

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

7.2 Act

Act shall mean the Corporations Act 2001.

7.3 Aggregate Limit of Indemnity

Aggregate Limit of Indemnity shall mean the amount shown as the **Aggregate Limit of Indemnity** stated in item 9 of the **Schedule**. If no amount is shown the **Aggregate Limit of Indemnity** in respect of all **Claims** under this **Policy** is no greater than the **Limit of Indemnity**.

7.4 Australian Financial Services Licence

Australian Financial Services Licence shall mean a licence under section 913b of the **Act** that authorises a person to provide financial services.

7.5 Authorised Representative of a Licensee

Authorised Representative of a Licensee shall mean a person authorised in accordance with section 916a or 916b of the act to provide a **Financial Service** or **Financial Services** on behalf of the licensee.

7.6 Award

Award shall mean monetary amount, inclusive of any costs, awarded against the **Insured** by **FICS**.

7.7 Bodily Injury

Bodily Injury shall mean physical injury, sickness, disease, death, mental injury, mental anguish, nervous shock or emotional distress of any person.

7.8 Claim

Claim shall mean:

- (a) the receipt by the **Insured** of any written notice of demand for compensation made by a third party against the **Insured**.
- (b) any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counter claim or third or similar party notice served upon the **Insured** which contains a demand for compensation made by a third party against the **Insured**.

7.9 Compliance Committee Member

Compliance Committee Member shall mean any **External Compliance Committee Member** and any **Internal Compliance Committee Member** of the **Scheme** compliance committee established pursuant to the provisions of section 601JA of the **Act**.

7.10 Computer Equipment

Computer Equipment shall mean **Computer Equipment** and shall include but not be 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.

7.11 Conflict

Conflict shall mean:

- (a) a **Conflict** of interest and duty, where an **Insured** acts for a client whilst being subjected to a contrary interest, being an interest of another client; or
- (b) a **Conflict** of interest and duty, where an **Insured** acts for a client whilst being subjected to a contrary interest, being a personal advantage interest.

7.12 Criminal Conduct

Criminal Conduct shall mean conduct which constitutes (or would constitute) an offence in any part of the world.

7.13 Criminal Property

Criminal Property shall mean property which constitutes a benefit obtained from or as a result of or in connection with **Criminal Conduct** or represents such a benefit (in whole or part and whether directly or indirectly) which the **Insured** (or any person or entity acting on their behalf) knows or suspects or reasonably should have known or suspected that it constitutes or represents such a benefit.

7.14 Date Conformity

Date Conformity shall mean the standard which requires that neither performance nor functionality is affected by dates prior to, during or after the year 2000 and, in particular but without limitation that:

- (a) no value for current date will cause any interruption in operation;
- (b) date based functionality must behave consistently for dates prior to, during and after year 2000;
- (c) in all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithms or inferencing rules;
- (d) year 2000 must be recognised as a leap year in terms of handling both 29 February and day 366; and
- (e) 9 September 1999 must be recognised as that date.

The above definition of "Year 2000 conformity" is based on a definition contained in a document published by Standards Australia and Standards New Zealand under reference no. SAA/SNZMP77:1998 and shall be interpreted in accordance with that document.

7.15 Deductible

Deductible shall mean the amount shown as the **Deductible** in the **Schedule**.

7.16 Director

Director shall mean:

- (a) a natural person who:
 - (i) is appointed to the position of a director of the incorporated bodies referred to in sub-clauses 7.26(a) and 7.26(b) of the definition of **Insured**; or
 - (ii) is appointed to the position of an alternate director of the incorporated bodies referred to in sub-clauses 7.26(a) and 7.26(b) of the definition of **Insured**.
- (b) but does not mean:
 - (i) a receiver, or receiver and manager, of the property of the **Insured**; or
 - (ii) an administrator of the **Insured**; or
 - (iii) an administrator of a deed of company arrangement executed by the **Insured**; or
 - (iv) liquidator of the **Insured**.

7.17 Documents

Documents shall mean deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but shall not include bearer bonds or coupons, stamps, any other negotiable instrument.

7.18 Employee

Employee shall mean a natural person employed under contract of service with the **Insured** during or prior to commencement of the **Period of Cover** who was or is, pursuant to the contract of service, subject to the direct control and supervision of the **Insured** in the provision of the **Financial Service**. PROVIDED ALWAYS THAT such term shall not include an agent.

7.19 External Compliance Committee Member

External Compliance Committee Member shall mean a **Compliance Committee Member** who does not otherwise fall within the definition of **Insured** under this **Policy** and whose name appears in item 12.1.1 of the **Schedule**.

7.20 Family Member

Family Member shall mean:

- (a) any spouse, domestic partner, or companion;
 - (b) any parent, or parent of the spouse, domestic partner or companion;
 - (c) any sibling or child;
- of an **Insured** who permanently resides with that **Insured**.

7.21 FICS

FICS shall mean the Financial Industry Complaints Service Limited Scheme.

7.22 Financial Service

Financial Service shall mean the **Financial Service** provided by the **Insured**, as specified in item 6 of the **Schedule**. If the **Insured** should change its name and there is no other change which materially alters the risk, the **Financial Service** will continue to be indemnified by this **Policy**.

7.23 Financial Services Guide

Financial Services Guide shall mean a **Financial Services Guide** required by section 941A or 941B to be given in accordance with Division 2 of Part 7.7 of the **Act**.

7.24 GST

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

7.25 Input Tax Credit

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

7.26 Insured

Insured shall mean:

- (a) the incorporated body stated in item 4.1 of the **Schedule**;
- (b) any **Subsidiary** specified in item 4.2 of the **Schedule**, and declared in the **Proposal** form as constituting the proponent, engaged in the provision of the **Financial Service** in part or in whole;
- (c) any person who is or was:
 - (i) a **Director, Officer** or **Employee**; or
 - (ii) a **Representative, Authorised Representative** or **Proper Authority Holder** who is, or was, also a **Director, Officer** or **Employee** of the incorporated bodies referred to in sub-clauses 7.26(a) and 7.26(b) of this definition but only in respect of work performed while a **Director, Officer** or **Employee** of the incorporated bodies referred to in sub-clauses 7.26(a) and 7.26(b) of this definition.

7.27 Internal Compliance Committee Member

Internal Compliance Committee Member shall mean a **Compliance Committee Member** who also falls within the definition of **Insured** under this **Policy**.

7.28 Legal Expenses

Legal Expenses shall mean the legal costs and other expenses incurred by or on behalf of the **Insured** or by **QBE** in the investigation or defence of a **Claim** and shall include legal costs and disbursements.

7.29 Licensee

Licensee shall mean a person who holds an **Australian Financial Services Licence**.

7.30 Limit of Indemnity

Limit of Indemnity shall mean the limit of **QBE's** liability under this **Policy** as specified in the **Schedule**.

7.31 Minority Interest

Minority Interest shall mean a direct or indirect control or ownership of less than 10% of the issued share capital and/or options in an entity.

7.32 Money Laundering

Money Laundering shall mean:

- (a) the concealment or disguise or conversion, or transfer, or removal of **Criminal Property**, (including concealing or disguising its nature, source, location, disposition, movement or ownership or any rights relating thereto); or
- (b) the entering into or becoming in any way concerned in an arrangement which is known or suspected to facilitate (by whatever means) the acquisition, retention, use or control of **Criminal Property** by or on behalf of another person; or
- (c) the acquisition, use or possession of **Criminal Property**; or
- (d) any act which constitutes an attempt, conspiracy or incitement to commit any act or acts mentioned in the foregoing sub-clauses 7.32(a), 7.32(b) or 7.32(c) of this definition; or
- (e) any act which constitutes aiding, abetting, counselling or procuring the commission of any act or acts mentioned in the sub-clauses 7.32(a), 7.32(b) or 7.32(c) of this definition.

7.33 Named Insured

Named Insured shall mean the person, persons, partnership, company, corporation or other entity specified as the **Named Insured** in the **Schedule**.

7.34 Officer

Officer shall mean:

- (a) a **Director** or secretary of the **Insured**; or
- (b) a person:
 - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the **Insured**; or
 - (ii) who has the capacity to affect significantly the **Insured's** financial standing; or
 - (iii) in accordance with whose instructions or wishes the **Directors** of the **Insured** are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the **Directors** or the **Insured**).

(c) But does not mean:

- (i) a receiver, or receiver and manager, of the property of the **Insured**; or
- (ii) an administrator of the **Insured**; or
- (iii) an administrator of a deed of company arrangement executed by the **Insured**; or
- (iv) a liquidator of the **Insured**; or
- (v) a trustee or other person administering a compromise or arrangement made between the **Insured** and someone else.

7.35 Official Investigation Costs

Official Investigation Costs shall mean the legal costs and other expenses of representation incurred by or on behalf of the **Insured** or **QBE** pursuant to Optional Extension 3.5 of this **Policy** and does not include salaries, wages, compliance costs or other expenses of the **Insured** of that nature.

7.36 Period of Cover

Period of Cover shall mean the period specified in item 5 of the **Schedule**.

7.37 Policy

Policy shall mean:

- (a) the **Schedule**, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and other terms contained herein;
- (b) any endorsement attaching to and forming part of this **Policy** either at inception or during the **Period of Cover**.

7.38 Pollutants

Pollutants shall mean:

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

7.39 Premium

Premium shall mean the **Premium** specified in item 13 of the **Schedule** or in any endorsement to the **Schedule**.

7.40 Product Disclosure Statement

Product Disclosure Statement shall mean a **Product Disclosure Statement**, Prospectus, Information Memorandum, Financial Services Guide or similar document stated in item 12.5.1 of the **Schedule**.

7.41 Proper Authority Holder

Proper Authority Holder shall mean a natural person holding a copy of a **Licence** on which is endorsed by the **Licensee** a statement:

- (a) that sets out the name of the **Licensee**; and
- (b) states that the **Proper Authority Holder** is employed by, or acts for or by arrangement with, the **Licensee**; and
- (c) certifying the copy to be a true copy of the **Licence**; and
- (d) signed by the **Licensee**.

7.42 Proposal

Proposal shall mean the written proposal made by the **Insured** to **QBE** containing particulars and statements together with other information provided by the **Insured** to **QBE**.

7.43 QBE

QBE shall mean QBE Insurance (Australia) Limited (ABN 78 003 191 035)

7.44 Regulatory Authority

Regulatory Authority shall mean:

- (a) Australian Competition and Consumer Commission;
- (b) Australian Prudential Regulation Authority;
- (c) Australian Securities & Investment Commission;
- (d) Australian Stock Exchange Limited,

but shall not mean any investigation, examination or inquiry conducted by a parliament or any committee or Royal Commission.

7.45 Representative

Representative shall mean:

- (a) an **Authorised Representative** of the **Licensee**; or
- (b) an **Employee** or **Director** of the **Licensee**; or
- (c) an **Employee** or **Director** of a related body corporate of the **Licensee**; or
- (d) any other person acting on behalf of the **Licensee**.

7.46 Responsible Entity

Responsible Entity shall mean the company named in the Australian Securities and Investments Commission's record of the **Scheme's** registration as the **Responsible Entity** or temporary **Responsible Entity** of the **Scheme** and who's name appears in item 12.6.1 of the **Schedule**.

7.47 Responsible Officer

Responsible Officer shall mean a **Director**, **Officer**, **Employee** or **Compliance Committee Member** of the **Insured** who does or will perform duties in connection with the holding of an **Australian Financial Services Licence**.

7.48 Schedule

Schedule shall mean the Schedule to this **Policy**.

7.49 Scheme

Scheme shall mean a managed investment **Scheme(s)**:

- (a) registered under section 601EB of the **Act**; and
- (b) named in item 12.6.4 of the **Schedule**; and
- (c) managed by or on behalf of the **Insured**; and
- (d) established pursuant to and in accordance with Chapter 5C of the **Act**; and
- (e) in respect of which all necessary approvals, **Licences** and authorisations have been obtained and for which the **Insured** has obtained all necessary legal approvals, **Licences** and authorisations to manage.

7.50 Senior Counsel

Senior Counsel shall mean a barrister in active practice who is entitled to use the post-nominals QC or SC in any one or more superior court in Australia or New Zealand.

7.51 Subsidiary

Subsidiary shall mean:

- (a) any entity which by virtue of any applicable legislation or law is deemed to be a **Subsidiary** of the **Insured** specified in item 4.1 of the **Schedule**; or
- (b) any entity over which the **Insured** specified in item 4.1 of the **Schedule** is in a position to exercise effective direction or control through ownership or control of more than fifty percent (50%) of the issued voting shares of such entity.

PROVIDED ALWAYS THAT such subsidiary is engaged in the provision of the **Financial Service**.

7.52 Terrorism

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

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This Policy is underwritten by QBE Insurance (Australia) Limited
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**Financial Institutions
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