



Corporate Practices  
Protection Policy Wording

# Corporate Practices Protection

**Insurer:**  
Berkley Insurance Australia  
ABN 53 126 559 706





# CORPORATE PRACTICES PROTECTION POLICY WORDING

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# CORPORATE PRACTICES PROTECTION POLICY

## IMPORTANT NOTICE

Specialist Underwriting Agencies Pty Ltd (ABN 18 010 862 745) ("SUA") give notice that this Policy is issued under an authority given to Specialist Underwriting Agencies Pty Ltd by Berkley Insurance Australia ABN 53 126 559 706 ("Berkley").

Furthermore Specialist Underwriting Agencies Pty Ltd will be acting as agent of Berkley and not as an agent for the Insured.

### This Policy is a Claims Made Policy

This means that the Policy will respond to Claims first made against the Insured and notified to SUA or Berkley (the "Insurer") during the Policy Period as shown on the Schedule. This Policy does not cover Claims made against the Insured prior to the commencement of the Policy Period.

## PRIVACY STATEMENT

### Protecting your privacy

We are committed to protecting your privacy and the privacy of any personal information provided to us. We comply with the Australian Privacy Principles set out in the Privacy Act 1988. A full version of our **Privacy Policy** is available (see the link below) which sets out details about how we manage and what we do with your personal information. In summary:

### What personal information will we collect and why do we need it?

We may need to collect personal information from you so that we can provide you with the insurance services you are seeking from us.

### How do we collect the personal information?

Information is primarily collected through brokers or directly from you. It might also be collected on occasion in person by investigators or to the officers or service providers of ours, in writing, by telephone and by other electronic communication channels.

We may need to obtain personal information from others to ensure that we are fully informed in relation to the issues that we need to address with regard to your insurance and any claim that you may make.

### Who will see or have access to your personal information?

Unless we are required to provide your personal information to others by law, by court order or to administer or investigate an application for insurance or a claim, your information will only be seen or used by persons working within the Specialist Underwriting Agencies group of companies.

### Security of Information

Our information systems and files are kept secured from unauthorised access and our staff and contracted agents and service providers have been informed of the importance we place on protecting your privacy and their role in helping us to do so. Information will be stored and disposed of in a secure environment, which may only be accessed by authorised personnel.

### What if I want to check what personal information you hold about me?

We are happy to advise you what personal information we hold about you and share this information with you. This will be the case unless there is a relevant exception under the Privacy Act 1998 that applies.

### Can I correct the information?

If you believe there are errors in our records about you, please let us know and we will be happy to investigate and correct any inaccuracies.

### Cookies

Our website may use cookies to provide a better browsing experience. If you prefer not to have cookies collected, you can disable this option in your browser settings.

### Direct Marketing

Apart from notifying you of our service offerings, we do not, without your consent, sell, rent, license or otherwise disclose your information to any party for the purposes of direct marketing.

### Cross Border Storage

In order for us to provide our services, we may receive and share personal information with the Specialist Underwriting Agencies group of companies, third parties and we may also store that information on servers that are not in Australia. We will ensure that any party with whom we share personal information overseas will be required to comply with the Privacy Act 1988.

### Further information

If you would like further information, please review our full **Privacy Policy** at [www.sua.com.au](http://www.sua.com.au) or if you have any complaints or concerns over the protection of the information you have given to us or that we have collected from others, contact the privacy officer at:

Specialist Underwriting Agencies Pty Ltd  
255 Sandgate Road  
Albion QLD 4010  
Ph: 07 3624 9419  
Fax: 07 3624 9433  
Email: [info@com.au](mailto:info@com.au)

## COPYRIGHT NOTICE

This Policy is copyright. Apart from any use permitted under the Copyright Act 1968, no part may be reproduced by any process, nor may any other exclusive right be exercised, without the permission of:

Specialist Underwriting Agencies Pty Ltd (ABN 18 080 862 745)  
255 Sandgate Road,  
Albion 4010  
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## PREAMBLE

The Policy Wording, Schedule, and Endorsements (collectively described as the Policy) are to be read together and any word or expression to which a specific meaning has been given in any part of this Policy shall bear that meaning wherever it may appear.

Subject to the payment of the premium set out in the Schedule, the Insurer agrees to provide insurance subject to the terms of the Policy and the Limit of Liability set out in this Policy or its Endorsements. Coverage is provided for those sections where a Limit of Liability is shown on the Schedule.

In issuing this Policy, the Insurer relies on the information contained in the Proposal and any written or printed statements or other information provided by the Insured or by any one acting on behalf of the Insured.

## AGGREGATE LIMIT OF LIABILITY

The total aggregate limit of the Insurer's liability to the Insured in respect of all Claims made under this Policy during any one Policy Period shall not exceed the Aggregate Limit of Liability.

The Insurer's liability in respect of this Policy shall apply only to that part of any Claim which exceeds any applicable Deductible.

Where the total amount of any payments in respect of any Claim exceeds the available Limit of Liability then the order of entitlement to indemnity up to the available Limit of Liability shall be in the following priority:

- (a) the Named Organisation;
- (b) the Named Organisation where the Named Organisation grants indemnity to any principals, Partners, directors, Officer and Employees as permitted or required by law;
- (c) any principal, Partner, director, Officer or Employee

The Aggregate Limit of Liability shall not accumulate from one Policy Period to another.

## SECTION 1 – BROADFORM STATUTORY LIABILITY

### INSURING CLAUSE

The Insurer agrees to pay to and on behalf of the Insured:

- (a) Penalties;
- (b) Enforceable Undertaking Expenses;
- (c) Legal Costs
- (d) Prosecution Costs

for a Statutory Liability Claim

### CLAIMS MADE AND NOTIFIED

The cover provided operates on a "Claims made and notified" basis and the Insurer is only liable for Claims that result from written notice of originating legal proceedings first received by the Insured and notified to the Insurer during the Policy Period. The Insured is not covered for Claims that arise from or are in relation to:

- (a) any Statutory Breach before the Retroactive Date;
- (b) Known Circumstances.

### LIMIT OF LIABILITY

For the purposes of this Section of the Policy, all Statutory Liability Claims arising out of any Related Breach are deemed to be one Statutory Liability Claim.

Such Statutory Liability Claim shall be deemed to have originated on the earliest date on which notice of originating legal proceedings was provided to an Insured.

The maximum liability of the Insurer in respect of any such Statutory Liability Claim shall be limited to the Limit of Liability specified in the Schedule in excess of the Deductible.

### DEFINITIONS APPLICABLE TO SECTION 1

#### Enforceable Undertaking Expenses

means any monetary sum outlaid by the Insured to satisfy the conditions of any enforceable undertaking given by the Insured and accepted by any Regulatory Authority or sanctioned or imposed by any court as a result of a Statutory Breach by the Insured but excluding:

- (a) any compliance and/or implementation costs accrued to rectify or improve systems and/or processes;
- (b) any amounts that relate to improvement of risk management measures or procedures of the Insured;
- (c) any legal fees, costs and associated expenses.

**Provided that** if the Enforceable Undertaking contains a condition that requires the Insured to pay any monetary sum to a not-for-profit organisation by way of a charitable donation, then the Insurer's liability will be limited to 50% of that charitable donation, unless agreed in writing beforehand by the Insurer.

#### Penalties

means any monetary sum payable by the Insured to any Regulatory Authority for a Statutory Breach by the Insured but excluding any legal fees, costs and associated expenses.

#### Prosecution Costs

means any reasonable legal fees, costs and associated expenses payable by the Insured to any Regulatory Authority for proceedings that result in the imposition of Penalties or Enforceable Undertaking Expenses or a finding that an Offence has been committed by an Insured.

**Provided that** the Statutory Breach is covered by this Policy.

#### Related Breach

means:

- (a) each Statutory Breach resulting or arising from, or in consequence of, or in connection with:
  - i. the same act, error or omission or series of acts, errors or omissions which occur in connection with the Business;
  - ii. an interrelated Statutory Breach;
  - iii. common acts, errors or omissions;
  - iv. a series of acts, errors or omissions;

- (b) Each Statutory Breach revealed by or the subject of an Inquiry as defined in Section 2 of this Policy.

#### Statutory Liability Claim

means any written notice of originating legal proceedings issued against or served upon the Insured by a Regulatory Authority during the Policy Period that alleges a Statutory Breach

#### Statutory Breach

means any act, error or omission which occurs in connection with the Business which causes the Insured to:

- (a) contravene any Acts of Parliament or to be involved in the contravention of any Acts of Parliament; or
- (b) commit an Offence pursuant to any Acts of Parliament; or
- (c) engage in conduct prohibited under any Acts of Parliament; or
- (d) engage in conduct which will result in the imposition of Penalties under any Acts of Parliament.

### EXCLUSIONS APPLICABLE TO SECTION 1

Under this Section the Insurer has no liability for and the Policy does not provide indemnity in respect of:

#### Air & Marine Traffic

any Statutory Liability Claim arising from a Statutory Breach relating to the regulations of air or marine traffic.

#### Drivers of Vehicles

any Statutory Liability Claim by the driver of a vehicle where the use or operation of that vehicle gives rise to a Statutory Breach.

#### Failure to comply with an Enforceable Undertaking

any Statutory Liability Claim arising from or attributable to any failure to comply with any conditions of any enforceable undertaking.

#### Remedial Order

any part of any Penalties or Enforceable Undertaking Expenses that requires the Insured to:

- (a) remedy any matter caused by the commission of an Offence or a contravention of any Acts of Parliament;
- (b) pay an amount as compensation for damage caused in consequence of an Offence;
- (c) pay an amount as compensation for loss of time or expense incurred in consequence of an Offence;
- (d) pay any remedial, repair or restitution costs including but not limited to the cost of cleaning-up pollution and contamination;
- (e) pay Compensation.

Where the proceeding that lead to the imposition of any Penalties or Enforceable Undertaking Expenses also include proceeding in respect of any of the matters set out in paragraphs (a) to (e) above, the Insurer will not be liable for that proportion of the Legal Costs, and Prosecution Costs that may be reasonably attributed to the proceeding in respect of those matters set out in paragraphs (a) to (e) above.

#### Training

any order of a Regulatory Authority or court or tribunal requiring the Insured to undertake or arrange for any Insured to undertake training.

### EXTENSIONS APPLICABLE TO SECTION 1

#### Initial Investigation Extension

The Insurer shall indemnify the Named Organisation for Legal Costs that are incurred as a result of an Inquiry as defined in Section 2 of this Policy.

**Provided that** the maximum liability of the Insurer in respect of any one Policy Period under this Extension shall be limited to \$100,000 in excess of the Deductible.

## SECTION 2 - INQUIRY COSTS INDEMNITY

### INSURING CLAUSE

The Insurer agrees to pay reasonable Legal Costs for an Inquiry into acts, errors, omissions of the Insured that occur after the Retroactive Date.

**Provided that** an Inquiry Costs Claim is first made against the Insured and notified to the Insurer during the Policy Period.

### CLAIMS MADE AND NOTIFIED

The cover provided operates on a "Claims made and notified" basis and the Insurer is only liable for Claims that arise from a notice compelling the Insured to attend at or participate in the Inquiry first received by the Insured and notified to the Insurer during the Policy Period. The Insured is not covered for Claims that arise from or are in relation to an Inquiry into:

- (a) any act, error or omission that occurred before the Retroactive Date;
- (b) Known Circumstances.

### LIMIT OF LIABILITY

For the purposes of this Section of the Policy, all Inquiry Costs Claims arising out of any Related Inquiries shall be deemed to be one Inquiry Costs Claim.

Such Inquiry Costs Claim shall be deemed to have originated on the earliest date on which verbal or written notice of an Inquiry is provided to an Insured.

The maximum liability of the Insurer in respect of any one Inquiry Costs Claim shall be limited to the Limit of Liability specified in the Schedule in excess of the Deductible.

## DEFINITIONS APPLICABLE TO SECTION 2

### **Inquiry**

means any

- (a) investigation, examination, inquiry, coronial inquest, royal commission or other proceedings before any court, tribunal, professional body or Regulatory Authority where attendance is required at the direction of that court, tribunal, professional body or Regulatory Authority
- (b) request for information, audit or review by any Regulatory Authority as a result of a Notifiable Incident.

### **Inquiry Costs Claim**

means any written or verbal notice communicated to the Insured requiring the legally compellable attendance of the Insured at and/or to an Inquiry in connection with the Business.

### **Notifiable Incident**

means any incident, event or circumstance that requires compulsory notification to any Regulatory Authority.

### **Related Inquiry**

means each Inquiry that investigates, examines or considers:

- (a) the same act, error or omission or series of acts, errors or omissions which have been or were proposed by a Regulatory Authority to be investigated, examined or considered;
- (b) an act, error or omission or series of acts, errors or omissions investigated, examined or considered in a previous Inquiry;
- (c) an interrelated Inquiry.

## EXCLUSIONS APPLICABLE TO SECTION 2

Under this Section the Insurer has no liability for and the Policy does not provide indemnity in respect of:

### **Compensation**

any civil proceedings for Compensation.

### **Employment Practices**

any Inquiry Costs Claim relating to any Employment Practices Breach.

### **Failure to comply with an Enforceable Undertaking**

any Inquiry Costs Claim arising from or attributable to any failure to comply with any conditions of any enforceable undertaking.

### **Prosecutions**

any prosecution of any Offence.

## EXTENSIONS APPLICABLE TO SECTION 2

### **Cost to Produce Documents**

The Insurer shall indemnify the Named Organisation for Production Costs that are incurred as a result of an Inquiry.

**Provided that** the maximum liability of the Insurer in respect of any one Policy Period under this Extension shall be limited to \$50,000 in excess of the Deductible.

## SECTION 3 - EMPLOYMENT PRACTICES LIABILITY

### INSURING CLAUSE

The Insurer agrees to pay on behalf of the Insured:

- (a) Damages; and
- (b) Legal Costs

which the Insured is legally obliged to pay arising from any Employment Practice Claim first received by the Insured and notified to the Insurer during the Policy Period.

**Provided that** the Employment Practice Breach occurred after the Retroactive Date.

### LIMIT OF LIABILITY

For the purposes of this Section of the Policy, all Employment Practice Claims arising out of any Related Employment Practice Breach of any Insured shall be deemed to be one Employment Practice Claim.

Such Employment Practice Claim shall be deemed to have originated on the earliest date on which an Employment Practice Claim is made against any Insured.

The maximum liability of the Insurer in respect of any one Employment Practice Claim shall be limited to the Limit of Liability specified in the Schedule in excess of the Deductible.

### DEFINITIONS APPLICABLE TO SECTION 3

#### Back-pay

means the amount the Insured is legally obliged to pay an Employee for the period between the date of termination of the Employee's employment, and the date the Employer is ordered to reinstate or re-employ.

#### Employment Practice Breach

means any of the following practices by any Insured directed against any Employee, former Employee, Labour Hire Worker or any applicant for employment:

- (a) wrongful refusal to employ an applicant for employment;
- (b) wrongful failure to promote an Employee;
- (c) wrongful demotion, negligent evaluation, negligent reassignment or negligent disciplinary action;
- (d) wrongful termination of employment, including constructive dismissal;
- (e) unlawful workplace harassment, unlawful discrimination or unlawful workplace bullying;
- (f) oral or written publication of material that slanders, defames or libels an Employee or violates or invades an Employee's right of privacy.

#### Employment Practice Claim

means any written or verbal notice that has been:

- (a) addressed to or served upon the Insured;
- (b) sent or served by or on behalf of any Employee, Labour Hire Worker, former Employee or applicant for employment by the Named Organisation;

and alleges an Employment Practice Breach.

#### Damages

means compensatory monetary amounts which the Insured is legally obliged to pay for an Employment Practice Breach including Back-pay arising from an order for reinstatement or re-employment.

Damages does not include:

- (a) any fines or Penalties;
- (b) any relief or recovery other than monetary amounts.

#### Related Employment Practice Breach

means any interrelated and/or causally connected Employment Practice Breach.

### EXCLUSIONS APPLICABLE TO SECTION 3

Under this Section the Insurer has no liability for and the Policy does not provide indemnity in respect of:

#### Obligations to Make Payments

any amount payable by the Insured pursuant to:

- (a) any express obligation to make payments, whether under any Acts of Parliament, award, or contract;
- (b) any court order, award or agreement requiring the Insured to make payment under a fixed term or fixed task contract of employment or contract for service;
- (c) an obligation that arises in consequence of a contract for service.

**Provided that** this Exclusion shall not apply to any liability for Damages that the Insured would have in the absence of the contract or agreement.

#### Compensation for Physical Injury

any Employment Practice Claim:

- (a) made against the Insured for Compensation other than for mental injury, anxiety, stress, emotional upset or nervous shock; and/or
- (b) for Workers Compensation Benefits.

#### Building Modification Requirement

any Employment Practice Claim arising from any requirement for physical modifications to the Insured's premises, fixtures, fittings, plant or equipment or changes to the Insured's usual business operations.

## SECTION 4 – DIRECTORS PERSONAL LEGAL COSTS

### INSURING CLAUSES

The Insurer agrees to pay on behalf of the Insured Person, Legal Costs incurred by the Insured Person in respect of any Directors Personal Legal Costs Claim for a Wrongful Act that occurs after the Retroactive Date.

#### **Provided that:**

- (a) the Directors Personal Legal Costs Claim is first made against the Insured Person and notified to the Insurer during the Policy Period;
- (b) this Section will only respond to the extent that, and for so long as, the insurer(s) listed on the Schedule as the insurer(s) of the Overlying Insurance Policy has declined to provide Legal Costs due to the Overlying Insurance Policy being the subject of a legal charge as described in section 6 of the Law Reform (Miscellaneous Provisions) Act 1946 (NSW) or other similar legislation in other States or Territories;
- (c) the cover provided by this Section will cease to apply if and to the extent that the legal charge ceases to operate as an impediment to the Insured Person obtaining Legal Costs from the Overlying Insurance Policy; and
- (d) the Insured Person agrees to repay to the Insurer the amount it has advanced in Legal Costs under this Section from the amounts that the Insured Person recovers from the insurer(s) of the Overlying Insurance Policy.

### LIMIT OF LIABILITY

For the purposes of this Section of the Policy, all Legal Costs arising out of any interrelated Wrongful Acts of any Insured Person, or any Related Inquiry shall be deemed to be one Directors Personal Legal Costs Claim. Such Directors Personal Legal Costs Claim shall be deemed to have originated on the earliest date on which a Directors Personal Legal Costs Claim is made against any Insured Person.

The maximum liability of the Insurer in respect of any one Directors Personal Legal Costs Claim shall be limited to the amount specified in the Schedule in excess of the Deductible.

### DEFINITIONS APPLICABLE TO SECTION 4 ONLY

**Directors Personal Legal Costs Claim** means:

- (a) any originating legal proceedings issued against or served upon the Insured Person that alleges that the Insured Person committed a Wrongful Act; or
- (b) any written or verbal demand communicated to the Insured Person under any circumstance or by whatever means that alleges that the Insured Person committed a Wrongful Act.

#### **Insured Person**

means a person who before or during the Policy Period is:

- (a) a director, Officer, executive officer, principal or partner of the Named Organisation, but only with respect to their duties as a director, executive officer, principal or partner of the Named Organisation.
- (b) an Employee of the Named Organisation but only to the extent that such Employee is acting in a managerial, supervisory or other like position of responsibility that enables the Employee to influence the Named Organisation.

#### **Overlying Insurance Policy**

means the overlying insurance policy as specified in the Schedule

#### **Related Inquiry**

means Related Inquiry as defined in Section 2 of this Policy

#### **Wrongful Act**

means any actual or alleged breach of duty, breach of trust, neglect, error, misstatement, misleading statement, breach of warranty of authority or other act or omission committed or allegedly committed by an Insured Person, or by any other person for which an Insured Person is legally liable, in their capacity as an Insured Person engaged by the Named Organisation;

### EXTENSIONS APPLICABLE TO SECTION 4 ONLY

The Insurer agrees to provide indemnity in accordance with the following Extensions. Each Extension is subject only to the terms of this Policy except to the extent that they are expressly varied by the Extension. The inclusion of any of the Extensions shall not increase the Aggregate Limit of Liability.

#### **Spousal Property**

The Insurer will pay for Legal Costs in respect of a written demand for monetary compensation or civil proceedings, first made against the lawful spouse of an Insured Person and notified to the Insurer during the Policy Period.

**Provided that** such written demand or civil proceeding:

- (a) is made solely because of his or her status as the lawful spouse of that Insured Person; and
- (b) results directly from a Directors Personal Legal Costs Claim made against the Insured Person which is covered under this Policy; and
- (c) seeks damages recoverable from marital community property, or from property jointly held by that Insured Person and the lawful spouse, or from property transferred from that Insured Person to the lawful spouse.

### EXCLUSIONS APPLICABLE TO SECTION 4 ONLY

Under this Section the Insurer has no liability for and the Policy does not provide indemnity in respect of:

#### **Compensation Exclusion**

any amounts payable as Compensation

#### **Inadequate Acquisition Price**

any Directors Personal Legal Costs Claim which alleges that the price or consideration paid or proposed to be paid for the acquisition or completion of the acquisition of all, or substantially all, the ownership interest in, or assets of, any entity or business is inadequate, the amount of any judgment or settlement representing the amount by which such price or consideration is effectively increased nor any amount for the claimant's costs and expenses

#### **Insured Vs Insured Exclusion**

any Directors Personal Legal Costs Claim made against an Insured Person by or on behalf of the Named Organisation.

**Provided that** this Exclusion does not apply to any Directors Personal Legal Costs Claim brought in the name of the Named Organisation by any legally authorised individual or entity, other than the Named Organisation itself,

**Provided also that** they are acting without any direct or indirect consent, solicitation, enticement or co-operation from any Insured Person.

#### **Obligations to Employee**

any Directors Personal Legal Costs Claim based upon an obligation, non-observance of an obligation or breach of an obligation arising out of, based upon, attributable to, under or in any way connected with:

- (a) any law or regulation providing for paid or unpaid leave of any kind;
- (b) any Employment Agreement;
- (c) any source in respect of redundancy or severance..

#### **Other Sections**

- (a) any Statutory Liability Claim as defined in Section 1 of this Policy;
- (b) any Inquiry Costs Claim as defined in Section 2 of this Policy;
- (c) any Employment Practice Claim as defined in Section 3 of this Policy.

#### **Shareholders Exclusion**

any Directors Personal Legal Costs Claim brought against an Insured Person by, at the instigation of, or on behalf of, any past or present shareholder who had or has direct or indirect ownership of, or control over, 15% or more of the voting share capital of the Named Organisation.

#### **Trading whilst Insolvent**

Directors Personal Legal Costs Claim based upon, attributable to or in any way connected with any:

- (a) contravention of section 588G of the Corporations Act 2001(Cth) and any amendment, consolidation or re-enactment of that section; or
- (b) insolvent trading offence.

#### **Workers Compensation and Occupational Health & Safety**

any Directors Personal Legal Costs Claim made against an Insured Person arising out of injury, disease or death of any of the Named Organisation's Employees or of any Deemed Employee of the Named Organisation.



## AUTOMATIC EXTENSIONS

The Insurer agrees to provide indemnity in accordance with the following Extensions. Each Extension is subject to the terms of this Policy except to the extent that they are expressly varied by the Extension. The inclusion of any of the Extensions shall not increase the Aggregate Limit of Liability.

### Acquired Companies

Notice having been given to the Insurer as soon as practicable, it is understood and agreed that the definition of the Named Organisation is extended to include any Subsidiary Company acquired or created subsequent to the commencement of the Policy Period but the indemnity granted by virtue of this Extension shall only apply in respect of:

- (a) any act, error or omission committed or alleged to have been committed by the Subsidiary Company subsequent to the acquisition or creation of the Subsidiary Company; and
- (b) any Inquiry that relates to the investigation, examination or consideration of an act, error or omission of the Subsidiary Company which occurred subsequent to the acquisition or creation of the Subsidiary.

### Provided that:

- (a) the Insurer shall be entitled to such additional information as it may require in respect of such acquired or created Subsidiary Company and shall have the right to charge an additional premium; and
- (b) coverage will only apply where the total assets of the Subsidiary Company at the time of creation or acquisition are less than:
  - i. \$5,000,000; and
  - ii. 20% of the total assets of the Named Organisation at the time of creation or acquisition of the Subsidiary Company.

### Advance Payment of Legal Costs

Except to the extent that the Insurer has denied indemnity, and subject to the Limit of Liability and applicable Deductible, the Insurer will advance to the Insured, the Legal Costs incurred in respect of any claim prior to final resolution of that Claim.

Such payments must be repaid to the Insurer by any Insured severally, according to their respective interests, in the event and to the extent that the Claim is ultimately determined not to be covered, or is resolved on terms or in a manner which exclude it from coverage under this Policy.

### Continuity of Cover

Notwithstanding 'General Exclusion - Known Circumstances' and any other similar provision, this Policy will respond to Claims that:

- i. arise from Known Circumstances that could or should have been notified to SUA under a Previous Policy; and
- ii. would be covered under that Previous Policy had the Known Circumstances been notified to SUA prior to the expiration of that Previous Policy; and
- iii. no cover is available from that Previous Policy because the Known Circumstances were not notified to SUA prior to the expiration of that Previous Policy,

### Provided that

- (a) the Previous Policy has been continually renewed without any interruption such that the Insured has maintained a policy of insurance with SUA in terms similar to the Policy at all times from the date the Known Circumstances could or should have been notified to SUA to the date the Claim is notified to SUA; and
- (b) the earliest date on which the Known Circumstances could have been notified to SUA is after the Prior & Pending date noted in the schedule applicable to the Previous Policy; and
- (c) there is an absence of fraudulent noncompliance with the Insured's duty of disclosure and an absence of fraudulent misrepresentation by the Insured in respect of such facts or circumstances;
- (d) we may reduce Our liability to the extent of any prejudice We may suffer in connection with the Insured's failure to notify the facts or circumstances giving rise to a Claim prior to the Policy Period;
- (e) the Indemnity Limit provided for any Claim covered by this extension is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph (i) above, or under this policy. The Excess available is the higher available under the terms of the policy in force at the earlier time referred to in paragraph (i) above, or under this policy. The terms of this policy otherwise apply.

In this Section of the Policy "Previous Policy" means a contract of insurance between SUA and the Insured that was entered into before the Policy containing substantially the same terms as the Policy.

### Employee Costs

The Insurer shall indemnify the Insured for any reasonable costs reasonably incurred by the Insured to assist the Insurer at the Insurer's request, in the investigation of any Claim under this Policy including actual loss of earnings up to \$1,000 per day for time off work for an Employee.

**Provided that** the maximum we will pay under this Extension shall not exceed \$50,000 during any one Policy Period.

### Extended Reporting Period

In the event of the non-renewal of this Policy (other than due to the non-payment of the premium), and upon payment of 25% of the expiring premium, the Named Organisation shall be entitled to extend the period of time for reporting a Claim under Claims Condition – Notification of Claims for 90 days immediately following the expiry of the Policy Period

### Provided that:

- (a) the Named Organisation has not replaced the cover with similar insurance;
- (b) the Named Organisation gives written notice prior to the expiration of the Policy Period;
- (c) there is no cover under this clause for any Claim arising out of a Statutory Breach, Inquiry, Employment Practice Breach or Wrongful Act that occurs after the expiry of the Policy Period; and
- (d) there is no cover under this clause for any Optional Extension;

### Extradition Costs

The Insurer shall indemnify any natural person that is also an Insured reasonable Legal Costs incurred to lawfully challenge, defend or oppose any request for extradition in connection with the Insured's Business.

### Provided that:

- (a) the request for extradition is first made against the Insured during the Policy Period, and
- (b) the maximum we will pay under this extension shall not exceed \$100,000 during any one Policy Period.

### Outside Directorship

The Insurer shall indemnify the Insured for any Claim in respect of any Outside Directorship held by an Officer.

### Provided that:

- (a) such indemnity shall not be extended to the outside organisation in which such Outside Directorship is held, or to any other director, executive officer, company secretary or employee of such organisation; and
- (b) the coverage afforded shall not apply to any part of any amount covered by any indemnity given by such outside organisation or any contract of insurance taken out by or on behalf of that outside organisation or its directors, executive officers, company secretary or employees.

### Preservation of Indemnity

Provided notification of a circumstance has been received during the Policy Period, and if:

- (a) the Named Organisation is legally obliged to indemnify the Insured for Legal Costs incurred by an Insured (other than the Named Organisation); and
- (b) the Named Organisation is in Insolvent Administration; and
- (c) the Named Organisation is placed in liquidation (other than voluntary liquidation) and has insufficient funds available to indemnify the Insured (other than the Named Organisation),

then it is agreed that the Insurer shall indemnify the Insured for those Legal Costs arising out of any Claim subject to all other terms of the Policy.

**Provided that** the burden of providing satisfactory proof to obtain the benefit of this Extension shall rest entirely with the Insured and shall include the production of documentary evidence of the Named Organisation's amalgamation, assets and liabilities and any official statements issued by the liquidator.

### Retirement of Employees

In the event that the Named Organisation does not renew this Policy or replace the cover with similar insurance, it is agreed that an Employee will be automatically entitled to 12 months Extended Reporting Period at no additional premium after the expiry of the Policy Period, provided that the Employee retired from all employment or office prior to the expiry of the Policy Period.

**Reputation Protection Expenses**

The Insurer agrees to pay on behalf of the Insured the reasonable fees, costs and expenses reasonably incurred by the Insured with the Insurer's prior written consent (not to be unreasonably withheld) in the Insured retaining a professional communications consultant to limit, mitigate or prevent the effects of negative publicity on the Insured's reputation in connection with an Event that may result in a Claim under an Insured Section of this Policy.

**Provided that:**

- (a) The maximum liability of the Insurer in respect of any one Policy Period shall be limited to \$50,000 in excess of the Deductible.
- (b) this extension will not respond if the Event is notified to the Insurer more than two business days after the Event occurred

For the purpose of this Extension:

**Event** means an incident in connection with the Insured's Business that results in:

- (a) the attendance of an Emergency Service Agency or a Regulatory Authority at a site occupied by the Insured; or
- (b) the Insured being contacted by one or more journalist(s) and/or media outlet in connection with that incident.

**Insured Section** means any section of this Policy for which a premium consideration has been paid, and as noted on the Schedule.

## GENERAL DEFINITIONS

Wherever appearing in this Policy or any Endorsement attached to this Policy, the following terms shall have the meaning set out below unless a different meaning is set out in the Definitions applicable to each of the Sections.

### Acts of Parliament

means:

- (a) any Act of the Parliament of the Commonwealth of Australia and any Act of the Parliaments of the States or Territories of the Commonwealth of Australia, including any subordinate or delegated legislation made under those Acts of Parliament; and
- (b) any amendment, consolidation or re-enactment of any of the above Acts of Parliament or legislation; and
- (c) any regulations made pursuant to any of the above Acts of Parliament or legislation.

### Admission of an Insured

means an admission by statement, representation or conduct and includes an express or implied admission.

### Aggregate Limit of Liability

means the aggregate limit of liability specified in the Schedule.

### Appointed Representative

means the solicitors, barristers, assessors, consultants or investigators appointed by the Insured in accordance with the terms of this Policy.

### Business

means the business conducted by the Named Organisation as described in the Schedule.

### Claim

means any:

- (a) Statutory Liability Claim as defined in Section 1 of this Policy; or
- (b) Inquiry Costs Claim as defined in Section 2 of this Policy; or
- (c) Employment Practice Claim as defined in Section 3 of this Policy; or
- (d) Directors' Personal Legal Costs Claim as defined in Section 4 of this Policy; or
- (e) amounts payable under the Extensions of this Policy

### Compensation

means any compensation or damages.

### Deductible

means the first amount of each and every Claim to be borne by the insured as specified in the Schedule.

The terms of this Policy apply irrespective of the application of the Deductible, including those terms concerning:

- (a) the Insurer's right to defend any Claim; and
- (b) the Insured's duties in the event of a Claim.

The application of the Deductible does not erode the Aggregate Limit of Liability under this Policy.

Where a Claim is payable under more than one section of this Policy the highest of any applicable Deductible only will apply.

### Deemed Employee

means any person deemed to be an employee or worker for the purpose of workers compensation under any Acts of Parliament.

### Employee

means a person who during or prior to the commencement of the Policy Period was:

- (a) employed by the Named Organisation for remuneration; or
- (b) employed by the Named Organisation under a contract of service, but does not include any Independent Contractor or any employee of any Independent Contractor, or
- (c) a director, board member or Officer of the Named Organisation
- (d) a Partner of the Named Organisation
- (e) any Voluntary Worker whilst acting under the direction of an otherwise defined Employee of the Named Organisation
- (f) a Deemed Employee

### Employment Practice Breach

means an Employment Practice Breach defined in Section 3 of this Policy

### Endorsement

means any written endorsement to the Policy issued by the Insurer.

### Independent Contractor

means a person or company engaged by the Named Organisation to perform a contract for services.

### Insured

means:

- (a) the Named Organisation;
- (b) any former, current and future principals, Partners, directors, Officers and Employees of the Named Organisation but only with respect to their duties as principals, Partners, directors, Officers and Employees of the Named Organisation; and
- (c) any heirs, executors, administrators, assignees or legal representatives of any Insured referred to in paragraphs (a) or (b) above, in the event of the death, bankruptcy or incapacity of such Insured, but only to the extent that cover under this Policy would have been available to such Insured.

### Insurer

means Berkley Insurance Australia ABN 53 126 559 706.

### Insurer's Nominated Representative

means the legal representative nominated by the Insurer to manage any Claim.

### Known Circumstances

means:

- (a) circumstances occurring prior to the inception of this Policy and which the Insured knew or ought reasonably to have known were likely to give rise to a Claim or prosecution being brought against the Insured; or
- (b) a Claim first made or threatened or in any way intimated against the Insured prior to the inception of the Policy; or
- (c) a Claim against an Insured arising from anything disclosed in the Proposal or any declaration, being the basis of this Policy

### Labour Hire Worker

means a person engaged by the Named Organisation under an agreement with a labour hire firm to perform duties related to the conduct of the Business shown on the Schedule.

### Legal Costs

means any reasonable fees, costs and associated expenses reasonably incurred by the Insured following the written consent of the Insurer or paid by the Insurer after a Claim is notified to the Insurer and are incurred solely and exclusively in the:

- (a) investigation, defence (including appeal or resisting appeal) and settlement of any Claim
- (b) in representing the Insured in relation to any Claim

however shall not include wages, salaries or other remuneration or benefits paid by the Named Organisation to its principals, Partners, directors, Officers and Employees.

**Provided that** in any event the liability of the Insurer for legal fees and costs for an Appointed Representative where legal fees are charged on a time costed basis the hourly rate will be the lesser of:

- (a) the usual hourly charge out rate of the Appointed Representative;
- (b) the hourly charge out rate of the Insurer's Nominated Representative for work performed for the Insurer at the time the legal services are provided.

### Limit of Liability

means the limit of liability for a Claim specified in the Schedule, subject to the Aggregate Limit of Liability.

### Named Organisation

means the Named Organisation described in the Schedule including any Subsidiary Company or controlled entity.

### Offence

means a breach or contravention of any Acts of Parliament.

#### **Officer**

means any director or alternate director of the Named Organisation appointed before or during the Policy Period, or any company secretary of the Named Organisation appointed before or during the Policy Period, or any officer employed by the Named Organisation before or during the Policy Period excluding:

- (a) A receiver, receiver and manager, official manager, liquidator, administrator, trustee or other person administering a compromise or scheme of arrangement between the Named Organisation or any other person or persons;
- (b) any company, organisation or other body corporate.

#### **Outside Directorship**

means an executive position held by the Insured in connection with the Business at the specific request of the Named Organisation in any corporation, partnership, trust or other enterprise which is not included in the definition of the Named Organisation.

#### **Partner**

means:

- (a) any individual employed under a deed of partnership; or
- (b) any individual who is a party to the partnership agreement.

#### **Penalties**

means Penalties as defined in the Statutory Liability Section of this Policy.

#### **Policy**

means the contract of insurance that is comprised of the Policy Wording, the Schedule and each Endorsement.

#### **Policy Period**

means the period from the inception of this Policy until its expiry as shown on the Schedule subject to prior termination in accordance with this Policy.

#### **Policy Wording**

means this document.

#### **Prior & Pending Date**

means the date specified in the Schedule. Unless otherwise agreed in writing by the Insurer, such date in respect of any entity acquired or created by the Named Organisation shall be the date of acquisition or creation of that entity by the Named Organisation or the Prior & Pending Date shown in the Schedule, whichever is the later.

#### **Production Costs**

means:

- (a) the fees, expenses and disbursements reasonably, necessarily and properly incurred by the Named Organisation with the Insurer's consent in the production of documents, and
- (b) the value of time reasonably, necessarily and properly incurred with the Insurer's consent, expended by the Named Organisation's employees in preparing for, providing information to and/or attendance at any Inquiry. The "value of time" will be calculated at the Named Organisation's normal hourly rate for the relevant personnel

#### **Proposal**

means the proposal form completed by or on behalf of the Insured and includes any attachment, documents or information.

#### **Prospectus**

means a prospectus including any information memorandum, registration statement or similar document regardless of whether or not it has been, or is required to be, filed or registered with the Australian Securities & Investments Commission or any other similar authority in any other jurisdiction.

#### **Reasonable Grounds for Defending**

means:

- (a) the Insured has reasonable prospects of success in avoiding or reducing any liability that will result from the Claim or proceedings made or brought against the Insured; or
- (b) the Insured has reasonable prospects of success in reducing the quantum of any Penalties that will be imposed in the Claim or proceedings made or brought against the Insured;

and that having regard to the likely Legal Costs thereof it is reasonable for the Claim and the proceedings to be defended.

**Provided that** the Claim or proceedings are not capable of being avoided or terminated by a settlement into which a reasonable person in the position of the Insured, properly advised, would enter.

#### **Regulatory Authority**

means a person, body or entity appointed, constituted or acting under a delegation or power pursuant to any Acts of Parliament for the purposes of enforcement of Acts of Parliament and prosecution of Offences, including a person or entity authorised to collect monies payable to the Consolidated Revenue Fund, Consolidated Fund or any other such fund and includes but is not limited to:

- (a) Statutory authorities;
- (b) Statutory corporations;
- (c) Government agencies;
- (d) Local councils and municipal authorities.

#### **Retroactive Date**

means the date specified in the Schedule. Unless otherwise agreed in writing by the Insurer, such date in respect of any entity acquired or created by the Named Organisation shall be the date of acquisition or creation of that entity by the Named Organisation or the Retroactive Date shown in the Schedule, whichever is the later.

#### **Schedule**

means the schedule issued by the Insurer for the Policy.

#### **Subsidiary Company**

means any entity that is controlled by the Named Organisation through ownership or control of more than 50% of the issued voting shares or issued share capital or through the control of the composition of the board of directors but such term shall include any organisation whose financial accounts are incorporated in those of the Named Organisation by virtue of accounting standard AASB 1024 or any equivalent standard.

#### **SUA**

means Specialist Underwriting Agencies Pty Ltd (ABN 18 010 862 745).

#### **Territorial Limits**

means the Territorial Limits as described in the Schedule.

#### **Wilful or Wilfulness**

means acting with intentional or reckless disregard for the consequences of the act, error, omission or failure.

#### **Workers Compensation Benefits**

means benefits payable to any Employee pursuant to any workers compensation legislation.

#### **Wrongful**

means wrongful, unfair or unlawful.

## GENERAL EXCLUSIONS

The Insurer has no liability for and the Policy does not provide indemnity in respect of:

### Asbestos

any Claim of any nature which is directly or indirectly based upon, attributable to or in any way connected with asbestos.

### Competition and Consumer Law

any Claim directly or indirectly arising from or in any way connected with any unfair or restrictive trade practices, including but not limited to misleading and deceptive conduct, price fixing, cartels or tortious interference in any other business or contractual relationships.

However this exclusion will not apply to any Employee whilst acting in their capacity as an Employee of the Named Organisation.

### Failure to Gain Insurer's Consent Exclusion

any Claim for Legal Costs where the legal services were provided or the legal fees, costs and associated expenses were incurred or paid:

- (a) without the consent of the Insurer;
- (b) before the Insurer provided consent to incur Legal Costs in accordance with the provisions of this Policy.

### Failure to Maintain Insurance

any Claim based upon, attributable to or in any way connected with any actual or alleged failure to effect or maintain any insurance, reinsurance or bond.

### Fraudulent, Reckless and Wilful Acts

any Claim based upon, attributable to, or in any way connected with:

- (a) any fraudulent act or omission of the Insured;
- (b) any Wilful, intentional, dishonest or malicious act or omission committed by an Insured;
- (c) conduct of the Insured that without reasonable excuse, exposes an individual to a risk of harm and the Insured is reckless as to the risk of harm;
- (d) reckless conduct on the part of any Insured;
- (e) any act, error or omission which is committed by an Insured with criminal intent.

**Provided that** this Exclusion will only apply where it is established by an Admission of an Insured, court judgment or other final adjudication that the subject conduct did in fact occur.

### Failure to comply with a Government Order or Regulation

any Wilful, intentional or deliberate failure to comply with any lawful notice, order, direction, enforcement action or proceeding under any Acts of Parliament.

### Insolvency & Acquisition

any Claim which occurs when, or after:

- (a) the Named Organisation is placed in any liquidation, receivership, bankruptcy or insolvent administration; or
- (b) the Named Organisation ceases to be controlled by the person, entity or group of persons or entities that exercised control over the Named Organisation at the beginning of the Policy Period;

**unless** the Insured complies with 'General Condition - Change in Control of Named Organisation' and the Insurer at its sole discretion agrees in writing to continue cover.

### Intentional Libel & Slander Exclusion

any Claim arising from any written or verbal publication of material, if such material:

- (a) was published by or at the direction of the Insured with knowledge that it was false; or
- (b) was first published before the Retroactive Date shown on the Schedule.

### Known Circumstances

any Claim based upon, attributable to, or in any way connected with Known Circumstances.

### Personal Gain & Dishonesty

any contravention of sections 182, 183, 601FD, 601FE or 601JD of the Corporations Act 2001 (Cth) and any amendment, consolidation or re-enactment of any of those sections or any Claim directly or indirectly based upon or attributable to the Insured gaining any personal profit, advantage or receiving any remuneration to which the Insured was not legally entitled, or otherwise arising out of the dishonesty of the Insured.

**Provided that** this Exclusion will only apply where it is established by an Admission of an Insured, court judgment or other final adjudication that the subject conduct did in fact occur.

### Prior & Pending

any Claim made or proceedings commenced against the Insured prior to the Prior and Pending date specified in the Schedule, or arising from or attributable to any facts or circumstances notified or disclosed to the Insurer (or any other insurer) prior to the Prior & Pending date specified in the Schedule.

In the case of cover for Outside Directorships, the Prior & Pending date shall be the date specified in the Schedule or the date at which cover first commenced in respect of the Outside Directorship, whichever is the later.

### Punitive, Aggravated & Exemplary Damages, Uninsurable Liabilities

any punitive, aggravated or exemplary damages or any uninsurable liability under the laws pursuant to which the Policy is construed.

### Radioactivity

any loss or destruction of or damage to any property or injury to any person whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss, or any legal liability of whatsoever nature, directly or indirectly caused by or contributed to, by, or arising from:

- (a) ionising, radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

**Provided that** these Exclusions will not apply to any Claims made arising from radio isotopes or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

### Share Issue & Prospectus

any Claim made against an Insured directly or indirectly arising out of, based upon, attributable to or in any way connected with:

- (a) any public or private issue of shares, preference shares (redeemable or otherwise), debentures of whatever kind, promissory notes or any other form of negotiable or non-negotiable security for the raising of capital by equity, debt or any other means;
- (b) the issue of any Prospectus or similar document or the making of any written or oral representations, in connection with (a) above.

### Strikes & Lockouts

any Claim in connection with any strike, lockout, picket line, stand down, related worker replacement(s) or other similar actions resulting from industrial disputes or negotiations.

**Provided that** this Exclusion does not apply to directors, principals, Partners, Officers and Employees for Claims arising out of the performance of their duties as directors, principals, Partners, Officers and Employees.


### Taxes

any Claim related to or in any way connected with a Tax including, but not limited to, income tax, group tax, sales tax, fringe benefits tax, any amounts payable pursuant to A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related Acts of Parliament imposing such tax or legislation that is enacted to validate, recapture or recoup such tax, payroll tax, and any rate, duty, levy, charge, fee or any other revenue charge or impost imposed by any Regulatory Authority.

### Territorial Limits

any Claim:

- (a) made, commenced or brought outside the Territorial Limits;
- (b) made pursuant to any law of any country, state or territory outside the Territorial Limits;
- (c) made within the Territorial Limits but arising out of any Inquiry or Statutory Breach occurring outside the Territorial Limits.



### War, Civil Commotion & Terrorism

Death, injury, illness, loss, damage, cost or expense of any nature directly or indirectly caused by, resulting from, or in connection with, any of the following regardless of any other contributing cause or event:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike 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 of or damage to property by or under the order of any Government or Public or Local Authority; or
- (b) any act of Terrorism.

For the purposes of this Exclusion, **Terrorism** means any act including but not limited to the use or threat of force or violence by any person or group or groups of persons, whether acting alone or on behalf of or in connection with any organisation or government which from its nature or context is committed for, or in connection with any 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.

Death, injury, illness, loss, damage, cost or expense of any nature directly or indirectly caused by, or resulting from, or in connection with, any action taken in controlling, preventing, suppressing or in any way relating to, this Exclusion is also excluded.

In addition, the Insurer shall not be deemed to provide cover and shall not be liable to pay any Claim or provide any benefit under this Policy to the extent that the provision of such cover, payment of such Claim or provision of such benefit would expose the Insurer or its employees to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanction, laws or regulations of the European Union, Australia, United Kingdom, United States of America or Bermuda.

## CLAIMS CONDITIONS

### Notification of Claim

The Insured shall as a condition precedent to the Insured's right to be indemnified under this Policy give the Insurer immediate notice in writing during the Policy Period of:

- (a) any Claim made or proceedings commenced against the Insured; and
- (b) any circumstances which the Insured shall become aware of and which may give rise to a Claim under this Policy,

irrespective of whether any such Claim is likely to be within or above the amount of the Deductible.

If a Claim is made or proceedings are commenced against the Insured, the Insured must:

- (a) send the Insurer as soon as possible copies of any documents in connection with the Claim;
- (b) authorise the Insurer to obtain records and other information.

Notification of Claims or circumstances to SUA shall be deemed to be notification to the Insurer of such Claims or circumstances.

The Insured must not, except at its own expense, make a payment, assume any obligation, or incur any costs without the Insurer's prior written consent.

### Appointment of Appointed Representative

Unless and until the Insured submits the name and address of a solicitor to the Insurer, the Appointed Representative shall be the Insurer's Nominated Representative.

If the Insured wishes to nominate their own solicitor to act for the Insured in connection with any Claim they must submit the name and address of the solicitor to the Insurer. The Insured has freedom of choice in nominating any Appointed Representative and they may request the Insurer to nominate an Appointed Representative to act on their behalf.

The Insurer may accept or refuse any nomination of any person or firm to act as Appointed Representative without giving any reason. If thereafter, agreement cannot be reached on the appointment, the President of the Law Society or Law Institute within the relevant State or Territory shall be requested to nominate an Appointed Representative. During this period the Insurer shall be entitled, but not bound, to instruct the Insurer's Nominated Representative on the Insured's behalf if the Insurer considers it necessary to do so to safeguard the Insured's or the Named Organisation's immediate interests.

The Insured must not without the Insurer's prior written approval enter into any agreement with the Appointed Representative as to the level of Legal Costs to be charged. The Insured must not represent to any Appointed Representative that any Legal Costs charged to their account are covered by this Policy.

### Co-Operation and Mitigation of Loss

The Insured must co-operate with the Insurer in the investigation, settlement or defence of a Claim and all proceedings commenced against the Insured.

The Insured shall do all things reasonably necessary to allow the Insurer to obtain from the Appointed Representative any information, report documents or advice relating to a Claim and all proceedings commenced against the Insured. However, the Insured shall not be prejudiced if the Appointed Representative refuses to make such information, report document or advice available to the Insurer on the grounds that to do so might prejudice the Insured's interests in any litigation that is involved or may be commenced.

The Insured must forward to the Insurer all bills of costs or other communications relating to a Loss as soon as practicable after receipt by the Insured. If requested by the Insurer, the Insured shall instruct the Appointed Representative to submit the bills of costs for taxation or adjudication by any relevant professional body, court or other tribunal.

The Insured must assist the Insurer, upon its request, in the enforcement of any right against any person or organisation which may be liable to the Insured as a result of any Claim or proceedings commenced against the Insured where the Insured has made a Claim under this Policy in connection with that Claim or proceedings.

The Insured shall use all reasonable care, and do, and concur in doing all things reasonably practicable to diminish any Claim, loss or Penalties.

The Insured shall not, except at its own expense, make any offer, payment, admission, settlement or effect any resolution, assume any obligation, or incur any costs without the Insurer's prior written consent in respect of any Claim or agree to make any payment or consent to any order directing the Insured to make a payment without the Insurer's prior written consent. The Insurer shall not be liable for any such payment incurred without its consent. However, the Insurer will not unreasonably withhold such consent.

The Insured shall upon the request of the Insurer or the Appointed Representative and at its own expense:

- (a) provide all information and assistance as may be required;
- (b) give a complete and truthful account of the facts relevant to any Claim;
- (c) supply all documents and other evidence relevant to the Claim; and
- (d) authorise the Appointed Representative to release to the insurer all information concerning the Claim and provide to the Insurer all written advices provided by the Appointed Representative and any legal counsel engaged by the Appointed Representative in relation to the Claim; and
- (e) obtain and sign all documents reasonably required to be obtained and requested and attend any meeting or conferences when reasonably required.

In respect of any Claim made or proceedings commenced against:

- (a) the Named Organisation, the Named Organisation shall, upon the request of the Insurer or the Appointed Representative and at its own expense ensure that an Officer attends and if necessary gives evidence, on behalf of the Named Organisation, at any conference, hearing, enquiry, investigation, proceeding or review in connection with any Claim made or proceedings commenced against the Named Organisation;
- (b) any Officer or Employee, the Officer or Employee shall, upon the request of the Insurer or the Appointed Representative and at their own expense attend, and if necessary give evidence at any conference, hearing, enquiry, investigation, proceeding or review in connection with any Claim made or proceedings commenced against such Officer or Employee.

### Defence

The Insurer shall have the right, but not the obligation, to conduct in the name of the Insured the investigation, defence including appeals and resisting appeals, and settlement of any claim within the applicable Limit of Liability. Any amount incurred by the Insurer shall be deemed to be part of the Legal Costs

When the Insurer controls the defence of the Claim made or proceedings commenced against the Insured, the Insurer will pay the Legal Costs subject to the provisions of this Policy.

Where the Insurer has agreed to the Insured assuming control of the defence of any Claim made or proceedings commenced against the Insured, the Insurer will reimburse the Insured for reasonable Legal Costs incurred in accordance with and subject to the provisions of this Policy.

The Insurer reserves the right to recover any Legal Costs advanced in the event and to the extent that it is agreed or subsequently established by judgement or other final adjudication that the Insured was not entitled to be indemnified under this Policy.

The Insurer shall not be liable to indemnify the Insured for Legal Costs unless the Insured obtains the Insurer's written consent to engage the Appointed Representative to provide the legal services. The Insurer shall not be obliged to provide such consent unless the Insurer is satisfied that the Insured has Reasonable Grounds for Defending.

If the Insurer refuses to provide the consent set out in this Condition, the Insurer shall give to the Insured reasons for its refusal.

If, after receipt of those reasons, the Insured contests the Insurer's refusal to provide such consent, the Insured may obtain the written opinion of a Senior Counsel. The Senior Counsel shall be mutually agreed upon by both parties or, failing agreement, shall be appointed by the then President of the Law Society or the Law Institute in the relevant State or Territory.

If the Senior Counsel is of the opinion that the Insured has Reasonable Grounds for Defending a Claim then the Insurer will give its consent in accordance with this Condition and be responsible for the Senior Counsel's reasonable fees for providing such opinion. If the Senior Counsel is of the opinion that the Insured does not have Reasonable Grounds for Defending a Claim or any proceedings commenced then the Insured shall be solely liable for the reasonable fees of Senior Counsel.

If the Insured continues to defend any Claim or proceedings where the Insurer has refused to provide consent in accordance with this Condition and the Insured is Successful in respect of that Claim or proceedings, then the consent set out in this Condition shall be deemed to have been given at the time it was first requested by the Insured. For the purpose of this clause "Successful" means that the outcome of the Claim or proceedings establishes that at the time at which the Insurer refused consent, the Insured had Reasonable Grounds for Defending.



### **Settlement**

The Insured must inform the Insurer as soon as practicable after the Insured receives any offer to settle any Claim made or proceedings commenced against an Insured. No agreement to settle which may result in a Claim for indemnity under this Policy may be made without the Insurer's prior approval which will not be unreasonably withheld. The Insurer, where the Insured unreasonably withholds their agreement to any settlement, reserves the right to decline further indemnity from the date when such agreement is unreasonably withheld.

If the Insured:

- (a) refuses to consent to any available settlement recommended by the Insurer; and
- (b) against the advice of a Senior Counsel (whose appointment is to be mutually agreed upon by the Insurer and the Insured and paid for by the Insurer) that the settlement is appropriate, elects to contest or continue proceedings in connection with a Claim,

then the Insurer's liability is limited to the amount of the Insurer's recommended settlement, plus Legal Costs at the date the Insured refused to consent to the recommended settlement.

### **Appeal Procedure**

If the Insured is dissatisfied with any decision made by a court or tribunal and wish to appeal against that decision, they must make a further application for the Insurer's consent at least six (6) clear business days prior to the expiry of the time for instituting an appeal. Such application shall be in writing and shall state the reasons as fully as possible for making an appeal. In the event that the time allowed by law to file an appeal is fewer than six (6) business days, the Insured shall advise the Insurer as soon as practicable that they wish to appeal and provide their reasons for making the appeal. The Insurer shall inform the Insured in writing as to whether they consent to the bringing of an appeal.

If the Insurer is dissatisfied with any decision made by a court or tribunal and wishes to appeal against that decision, the Insured shall reasonably co-operate with the Insurer in the bringing of such an appeal. In this event, the Insurer shall pay all costs involved.

### **Allocation of Loss**

If any Claim against an Insured involves both matters which are covered by this Policy and matters which are not covered by this Policy, the Insurer and Insured agree to use their best efforts to agree on a fair and proper allocation of any loss between the Insured and the Insurer, taking into account the relative legal and other exposures attributable to the covered and non-covered matters.



## POLICY CONDITIONS

### Application of Loss Recovered From Other Party

Where the Insurer makes a recovery, then the amount of that recovery will be distributed as follows:

- (a) firstly, the Insurer will be reimbursed for the actual costs it has incurred in making the recovery;
- (b) secondly, the Insured will be reimbursed for any uninsured loss, other than the Deductible;
- (c) thirdly, the Insurer will be reimbursed for the amount it has paid to the Insured pursuant to the provisions of this Policy;
- (d) fourthly, the Insured will be reimbursed for the Deductible;
- (e) fifthly, the Insurer will retain any remaining amount recovered including all interest recovered.

### Assignment or Alteration of Interest

No change in, or modification of, or assignment of interests under this Policy shall be effective except if agreed to in writing by the Insurer.

### Authorisation

The Named Organisation agrees to act on behalf of all the Insureds under this Policy and each Insured agrees that the Named Organisation is authorised to act on their behalf with respect to the giving and receiving of notice of any Claim, the receiving and giving of notice of cancellation or expiry of this Policy, the payment of premium and the return of any part of the premium that may become due under this Policy, the negotiation, agreement to and acceptance of endorsements, and the giving and receiving of any other notice provided for in this Policy.

### Bankruptcy

The liquidation, receivership, bankruptcy or Insolvent Administration of the Insured will not relieve the Insurer of its obligations under this Policy.

### Cancellation

The Insurer may cancel this Policy in accordance with the relevant provisions of the Insurance Contracts Act 1984 (Cth). Upon cancellation by the Insurer, except cancellation for fraudulent non-disclosure or fraudulent misrepresentation, the Insured is entitled to a refund of premium for the unexpired Policy Period.

This Policy may be cancelled at any time at the written request of the Insured in which case the Insurer will refund the premium for the unexpired Policy Period, less 10% as an administration fee.

### Change in Circumstances

The Insured shall give written notice as soon as possible to the Insurer of any change in any of the facts or circumstances existing at the commencement of this Policy which materially changes the nature or extent of the risk insured by this Policy.

### Change in Control of Named Organisation

If during the Policy Period:

- (a) the Named Organisation is placed in any liquidation, receivership, bankruptcy or insolvency administration; or
- (b) the Named Organisation ceases to be controlled by the person, entity or group of persons or entities that exercised control over the Named Organisation at the beginning of the Policy Period;

then the cover provided under this Policy is amended to apply only to Statutory Breaches committed or allegedly committed prior to the effective date of the occurrences set out in (a) and (b) above.

The Insured must give the Insurer written notice of any of the occurrences set out in (a) or (b) above not later than 30 days after the occurrence and the Insurer may at its sole discretion elect to continue cover by providing written notice to the Insured.

### Confidentiality

The Insured shall not, except to the extent that the Insured is compelled by law to do so, release to any third party, or otherwise publish, details of the nature of the liabilities insured by this Policy, the extent of cover provided by this Policy, or the amount of the premium specified in the Schedule, without the written consent of the Insurer.

### Foreign Currency Settlements

All amounts under this Policy are expressed and payable in Australian currency. If judgment is given or settlement is made in a currency other than Australian dollars, payment under this Policy will be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars by the Reserve Bank of Australia published in the Australian Financial Review on the date the final judgment is reached or in the event of a settlement, the date upon which the amount of the settlement is agreed upon.

### Governing Law

This Policy shall be governed in accordance with the applicable Laws of the Commonwealth of Australia and its States or Territories. Any disputes relating to the application or interpretation of this Policy shall be determined in accordance with the Law of the State or Territory of Australia in which the Policy was issued.

### Maintenance of Other Insurance

The Policy or Policies referred to as Other Insurance in the Schedule or renewal or replacements thereof, shall be maintained in full effect during the currency of this Policy, irrespective of any payment of Claims made by the Insurer during the Policy period. Failure of the Insured to comply with the foregoing shall not invalidate this Policy but in the event of such failure, the Insurer shall only be liable to the same extent as if the Insured had complied with this condition.

### Notices under Acts

In the event of any Claim for indemnity under this Policy the Insured and the Named Organisation must notify the Insurer of all other insurance effected by them providing the same or similar cover.

### Other Insurance

In the event of any Claim for indemnity under this Policy the Insured and the Named Organisation must notify the Insurer of all other insurance effected by them providing the same or similar cover.

To the extent permitted by the Insurance Contracts Act 1984 (as amended) or any successor legislation and subject to the provisions of this Policy, this Policy covers the Insured to the extent that the amount of the Claim is in excess of the amount of the payment from any other insurance effected by or on behalf of the Insured whether such other insurance is stated to be primary or excess, unless such other insurance is written only as specific insurance over the Limit of Liability under this Policy.

### Reasonable Care

The Insured shall take reasonable care at all times:

- (a) to only employ competent Officers, Employees, agents and contractors;
- (b) to comply and ensure that its Officers, Employees, Labour Hire Workers, agents and contractors comply with the provisions of any Acts of Parliament;
- (c) to ensure all premises, fittings and plant are regularly maintained and kept in a good state of repair; and
- (d) not to pursue a course of action which they know, or ought reasonably to know, will bring about any Claim or proceedings against an Insured.

### Recovery from Insured

In the event that any Exclusion under any Section, or any General Exclusion applies, the Insurer shall have the right to recover from the Insured all amounts paid to the Insured and an amount equivalent to all payments made on behalf of the Insured.

### Recovery of Costs from Other Party

Where the Insured are awarded costs, the Insured must provide all co-operation reasonably required by the Insurer to recover any Legal Costs which would be the subject of indemnity under this Policy. All amounts actually recovered shall be taken into account when the Insurer is calculating its liability under this Policy. If the Insurer has already paid the Loss, the amount recovered shall then be paid by the Insured to the Insurer.

### Reporting

Any notice or report to be given to the Insurer shall be given in writing to the Insurer and delivered to:

Specialist Underwriting Agencies Pty Ltd  
255 Sandgate Road  
ALBION QLD 4010  
PO Box 324 CLAYFIELD QLD 4011  
Facsimile 07 3262 1347



### **Severability and Non-Imputation**

The Proposal shall be construed to be a separate application for each of the Insured. With respect to the declarations and statements contained in the Proposal no statement in the Proposal or knowledge possessed by any of the Insured shall be imputed to any other of the Insured for the purpose of determining the availability of coverage with respect to Claims made or proceedings commenced against any of the Insured.

The Insurer agrees that where the Policy insures more than one party, any conduct on the part of any party or parties whereby such party or parties:

- (a) failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984 (Cth);
- (b) made a misrepresentation to the Insurer before this Policy was entered into;
- (c) failed to comply with any provision of this Policy; and/or
- (d) acted in a manner which gives rise to the application of an Exclusion of this Policy;

will not prejudice the right of the remaining party or parties to indemnity as may be provided by this Policy.

**Provided that** such remaining party or parties shall:

- (a) not have participated in and has no prior knowledge of any such conduct; and
- (b) as soon as is reasonably practicable upon becoming aware of any such conduct, advise the Insurer in writing of all known facts in relation to such conduct.

### **Subrogation**

If any payment is made under this Policy, the Insurer shall be subrogated to the extent of such payment to all of the Insured's rights of recovery. In such case the Insured shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Insurer to effectively bring suit in the name of the Insured.



always thinking.

Specialist Underwriting Agencies Pty Ltd  
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**INSURER:**

**Berkley**  
INSURANCE AUSTRALIA  
a W. R. Berkley Company

Berkley Insurance Australia  
ABN 53 126 559 706

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