



Protecting and supporting your community



# Professional Indemnity Insurance

## Policy Wording

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# About Ansvar

## Insurance from one of Australia's leading specialist insurers

Ansvar is a leading specialist commercial and consultative insurer offering tailored insurance products and services to the Care, Community Service (including Not-for-Profit), Education, Faith and Heritage sectors. With more than 50 years of experience in the Australian insurance industry we've developed a deep understanding of our clients' needs, risks and challenges they face, as well as the environments in which they operate.

Ansvar is owned by the Ecclesiastical Insurance Office plc, est. 1887, a leading insurer of heritage, religious and charitable organisations in the UK.

### Our approach

Service is paramount at Ansvar, and our team is committed to consistently providing the best client experience possible.

Our dedicated claims team is focused on quickly solving the problems of our clients. With a compassionate approach they are always mindful of the reputation of our clients, particularly when handling sensitive claims.

Because Ansvar understands the varied and vast risk exposure of our clients in our core sectors, we offer expert Risk Management advice and practical solutions to help our clients protect their assets and importantly, their people.

Through our expertise and flexible underwriting approach, Ansvar offers tailored insurance solutions to provide the right cover to suit the unique needs of our clients within our core sectors.

### Supporting our community

Our goal is to be a valued and recognised contributor to the community. This has been the ethos of Ansvar since our inception.

Each year, through our Community Education Program, Ansvar donates a percentage of our profits to organisations that provide valuable support to improve and enrich the lives of young Australians, so that they may contribute positively to the community in which they live.

## About this insurance policy wording

This insurance policy wording is an important document. You should read it carefully before making a decision to purchase this insurance.

In conjunction with the certificate of insurance and/or The Schedule and any endorsements we issue upon acceptance of your proposal, it provides a full description of the terms, conditions and limitations of the insurance cover.

The financial product offered in the insurance policy wording is provided by Ansvar Insurance Limited.

The Table of Contents provides a summary of the content of the insurance policy wording. The purpose of this insurance policy wording is to assist you to understand your insurance policy and enable you to make an informed choice about your insurance requirements.

You will need to read the entire insurance policy wording, certificate of insurance and/or The Schedule for a full understanding of these terms, conditions and limitations.

This Insurance Policy Wording was prepared in June 2015.

### Who is the insurer and how can we be contacted?

Ansvar Insurance Limited (Ansvar Insurance), ABN 21 007 216 506, is the issuer of this insurance policy. The registered office of Ansvar Insurance is Level 5, 1 Southbank Boulevard, Southbank, VIC 3006.

The Ansvar Insurance Australian Financial Services Licence number is 237826.

You can contact us by:

- calling in person at any Ansvar Insurance office
- telephoning 1300 650 540
- facsimile on 03 9804 5001
- writing to any office of Ansvar Insurance
- email to [insure@ansvar.com.au](mailto:insure@ansvar.com.au)

### Cooling off period

We will refund the entire premium you have paid for cover under this insurance policy if you cancel the policy within twenty-one (21) days of its commencement. To do this, you must advise us in writing and return the certificate of insurance and/or The Schedule to your nearest Ansvar Insurance office. The policy will be cancelled with effect from the inception date. You will not receive a refund if you have made a claim or intend to claim under the insurance policy.

## Important information

### Changes to the insurance policy wording

Information in this insurance policy wording is subject to change from time to time.

Changes in your insurance policy wording will be communicated to you in several ways and these are:

- if a change will affect you adversely, Ansvär Insurance will issue you with a new insurance policy wording or a supplementary insurance policy wording prior to the renewal of the insurance each year;
- for minor changes which are not materially adverse to you, we will communicate the changes to you in writing at the earliest opportunity;
- information can be obtained by telephoning our toll free number (1300 650 540), calling at one of our offices or visiting our website at [www.ansvar.com.au](http://www.ansvar.com.au) to find out what changes might have occurred;
- if changes have occurred, we will be pleased to provide you with a paper copy of them on request.

### Costs

The premium payable by you is shown in your Certificate of Insurance and/or The Schedule. The premium payable will be determined considering factors such as those listed below.

Your premium may alter if you make changes to your insurance cover or your circumstances change during the period of insurance.

The factors used to determine the premium payable under this policy include, but are not limited to:

- the nature, age and size of the business;
- the main occupation of the insured and the activities the business are engaged in;
- the extent and nature of professional services supplied and any contractual liabilities assumed by the business;
- the qualification of personnel and extent of supervision/delegation;
- the risk management in place;
- the extent of cover and any extensions required;
- the period of insurance (short-term/annual), and length of retroactive cover;
- the sums insured or limits of liability;
- the excess selected;
- past claims, incidents, proceedings and disciplinary history.

The above list of factors is not exhaustive and we may take other factors into consideration when determining the premium payable under this policy.

Premiums and fees are subject to Commonwealth and State taxes and levies which include the Goods and Services Tax and Stamp Duty and all are shown in the certificate of insurance.

The premium is payable either when the product is purchased or by direct bank debit when you elect to pay it monthly. If you elect to pay monthly there is an additional fee. A cancellation fee may apply if you cancel your insurance policy before expiry.

### Code of Practice and Privacy Act

As a signatory to the General Insurance Code of Practice we are committed to raising standards of service to our customers. This voluntary code sets out the minimum standards we will uphold in the services we provide to you. More information can be found at [www.codeofpractice.com.au](http://www.codeofpractice.com.au) or by contacting us.

Our Privacy Policy sets out how we are to collect, use, disclose and protect your personal information. It also describes the circumstances for you to access and, if necessary, correct your personal information.

It is unlikely that we will disclose any of your personal information overseas.

You may access your personal information and, if necessary, to seek to correct your personal information by contacting any of our offices. The information we collect is used to assist us to provide you with our general insurance products and to manage our relationship with you.

At times we rely on third party suppliers (agents, lawyers, other insurance companies, assessors, investigators, loss adjusters, market research and mailing houses) to perform specialised activities for us. Your personal information may be provided to them so that they can carry out their agreed activities.

They are bound by confidentiality and non-disclosure agreements and are prohibited from using the information for any other purpose. These service providers are aware of their obligations under the Privacy Act and the General Insurance Code of Practice.

If you do not wish to provide us with your personal information, we will not be able to supply our policy to you.

### The easy solution to a problem

Ansvär Insurance Limited places the highest priority on providing prompt, efficient and friendly service including the protection of your privacy.

If you have a problem contact the employee with whom you were dealing. They will attempt to clarify/address your enquiry or concern.

If you are not satisfied, we will refer your complaint to the Chief Operations Officer, or a nominated senior employee. They will review the complaint and make a decision as quickly as possible. This will not be later than fifteen (15) working days from the day the complaint is received (provided all necessary information has been received and we have completed any investigation required).

The decision will be confirmed in writing.

### Internal Disputes Resolution Committee (IDRC)

If you are not satisfied with the decision provided by Ansvär's Chief Operations Officer, or the nominated senior employee, we will refer your unresolved complaint (dispute) to the Secretary of the IDRC.

We will request that you note your dispute in writing, to assist us in clarifying and considering all the facts. This request can be sent to:

- Post: The Secretary, Internal Dispute Resolution Committee, Ansvär Insurance Limited, GPO Box 1655, Melbourne VIC 3001
- Fax: (03) 9804 5001
- Email: [insure@ansvar.com.au](mailto:insure@ansvar.com.au)

Alternatively, if you require assistance in putting your complaint in writing, you can telephone (03) 8630 3100 and the Secretary of the IDRC will assist you.

The Secretary will refer your dispute to Ansvär's IDRC.

The IDRC has appropriate authority to deal with your dispute.

You will receive a response within seven (7) working days from the time your dispute was received, provided all the necessary information has been collected and we have completed any investigation required. If additional information or more time is required, we will discuss and agree alternative time frames with you.

### What if we don't resolve your problem?

Once the Internal Dispute Resolution Committee gives you an answer, we will provide you with information about external dispute resolution if that is available.

For many complaints that is the Financial Ombudsman Service (FOS). FOS provides a free and independent dispute resolution service for consumers which have general insurance disputes that are covered by its Terms of Reference. If you wish your dispute to be reviewed by FOS, you must refer your dispute to FOS within three calendar months of receiving the Internal Disputes Resolution Committee's decision. You can do this by contacting FOS at:

Financial Ombudsman Service

GPO Box 3, Melbourne VIC 3001

Ph: 1300 78 08 08 (National toll free)

Ph: (03) 9613 7366

Fax: (03) 9613 6399

Email: [info@fos.org.au](mailto:info@fos.org.au)

Website: [www.fos.org.au](http://www.fos.org.au).

Alternatively, you may further pursue your unresolved complaint through a formal legal process such as the courts, mediation, or arbitration.

For privacy complaints you may approach the Federal Privacy Commissioner. A copy of the General Insurance Code of Practice and privacy principles can be obtained from our website [www.ansvar.com.au](http://www.ansvar.com.au) or from one of our offices.

### Critical documents

It is important to read/retain the following documents and keep them in a safe and convenient place:

- this document;
- your current certificate of insurance;
- any endorsements.

Remember to regularly review your insurance policy, particularly at renewal to ensure your insurance policy provides the cover that you currently need.

### Duty of disclosure

Before you enter into an insurance contract with us, you are required to tell us every matter that is known to you, being a matter that:

- you know to be relevant to the decision by us to accept the risk and if so, on what terms; or
- a reasonable person in the circumstances could be expected to know to be a matter so relevant.

If you have not disclosed all relevant information, or if you have misinterpreted the facts, then we may be entitled to cancel the policy, reduce the sum insured, or treat the policy as never having existed.

If you do not tell us all relevant matters we can reduce the amount we pay for any claim or cancel this insurance policy. If your non disclosure is fraudulent we can void the insurance policy from the beginning.

### Goods and Services Tax (GST)

This insurance policy has provision for payment of Goods and Services Tax:

- by you in relation to premiums
- by us in relation to claims

### Retroactive liability

The policy does not provide cover in relation to any loss, crisis loss or claim directly or indirectly arising out of, attributable to or in connection with any wrongful act, employment practice breach or trustee responsibility breach (as such terms are defined in the policy) which occurs prior to the retroactive date as shown in the certificate of insurance and applicable to the insuring clause under which cover would otherwise be available.

### Subrogation

The policy contains provisions which provide that following any payment under the policy we will be subrogated to your rights to recovery from others in respect of such payment. The provisions also provide that you must do everything necessary to secure and preserve such rights of subrogation and you must do all things reasonably practicable to avoid or diminish loss covered by the policy. If you fail to do so we may be entitled to refuse or reduce a payment under this policy.

# The Policy: Professional Indemnity Insurance

## Definitions applicable to the policy

Certain words and phrases that appear in the *policy* in bold have special meanings as set out below

Where used in the *policy*:

**aggregate limit of liability** means the maximum amount payable by *us* in the aggregate in respect of all *losses* and *claims* the subject of cover, and any other payments required, under the *policy* specified in the *certificate of insurance*.

**business or practice** means the business or practice conducted by the *insured* and described in the *certificate of insurance*.

**certificate of insurance** means the certificate of insurance attaching to this wording or any certificate of insurance subsequently issued during the *period of insurance*.

**civil liability** means any actual or alleged breach of a duty, misstatement or negligent act owed in a professional capacity under any form of civil law by *you* or any of *your employees* arising out of any act, error or omission occurring or committed in the conduct of the *business or practice*. It also extends to breach of contract and breach of fiduciary duty in *your* or any of *your employee's* professional capacity in the conduct of the *business or practice*.

**claim** means a demand or assertion of a right to compensation made by a third party which is contained in any oral or written demand and/or legal proceeding or process claiming compensation against and served on *you*.

**control or controlled** has the same meaning as the definition of control in the Corporations Act 2001 (Cth.).

**costs and expenses** means all reasonable legal costs and other expenses incurred by or on behalf of the *insured* with *our* prior written consent (such consent which cannot be unreasonably withheld) and extends to solicitors' fees, counsels' fees, experts' fees and disbursements in the *investigation*, defence, appeal and settlement of a *claim*.

**documents** means deeds, wills, agreements, maps, plans, records, written or printed books, letters, certificates, written or printed documents or forms of any nature (excluding any bearer bonds, coupons, bank or currency notes or other negotiable instruments) not being *your* property but in *your* physical custody or control and for which *you* are legally responsible.

**electronic data** means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software and other coded instructions for such equipment.

**employee** means a natural person (other than an *insured person*) employed under a contract of service or apprenticeship by *you* and includes any trainee, *volunteer*, casual, part-time, seasonal, temporary and work experience personnel. This definition does not include:

- i. any current or former principal, partner or director of the *insured*;
- ii. consultants, subcontractors or agents.

**endorsement** means any document so designated and issued by *us*, that amends the *policy* wording or any details specified in the *certificate of insurance*. An endorsement does not affect the *limit of liability*, *aggregate limit of liability* or any other term of the *policy*, except to the extent expressly provided in the endorsement.

**excess** means the amount shown in the certificate of insurance payable by the insured.

**good samaritan act** means treatment administered at the scene of a medical emergency, accident or disaster, by *your employee*, who is present either by chance or in response to an S.O.S. call following a disaster.

**insured, you, your** means:

- i. *insured person*;
- ii. the incorporated entity or *organisation*, company or corporation specified as the *insured* in the *certificate of insurance*, including any predecessor in the *business or practice*;
- iii. any *subsidiary* at inception of this *policy* or as otherwise agreed by *us* to be covered under extension of new created/acquired *subsidiary*.

**insured person** means:

- i. any predecessor in the business of the *insured*;
- ii. any person who is, at inception of the *period of insurance*, a principal, partner or director of the *insured* but only in respect of work performed while a principal, partner or director of the *insured*;
- iii. any person who becomes, during the period of insurance, an *employee* of the insured but only in respect of work performed while an *employee* of the *insured*;
- iv. any former principal, partner, director or *employee* of the *insured*, but only in respect of work performed while such person was a principal, partner, director or *employee* of the *insured*; and/or
- v. any consultant, sub-contractor or agent but only to the extent that they are indemnified under Automatic Extension 12 - Consultants, subcontractors and agents.

**insurer, we, us, our** means Ansvar Insurance Limited ABN 21 007 216 506, AFS Licence No. 237826.

**joint venture** means any incorporated enterprise undertaken jointly by *you* and a third party or parties.

**investigation** means a formal civil, criminal, administrative or regulatory investigation, examination, hearing or enquiry commenced by an *official body*.

**limit of liability** means the maximum amount payable by *us* in respect of each and every *claim* or *investigation*, the subject of cover under the *policy* specified in the *certificate of insurance*.

**loss** means compensation payable in respect of *your civil liability* to a claimant, including the claimant's reasonable legal costs and other expenses and extends to solicitors' fees, counsel's fees, expert's fees and disbursements. **Loss** does not mean and the *policy* does not cover fines, penalties, liquidated damages, punitive, exemplary, and aggravated or multiplication of compensatory damages, taxes, levies, imposts or duties imposed by a court of law or under any statute or government regulation.

**national law** means the Health Practitioner Regulations National Law (Victoria) Act 2009 (Vic) and equivalent legislation enacted in any other state or territory of Australia.

**official body** means any regulator, government or administrative body or agency, official trade body or self-regulatory body legally empowered to investigate the affairs of the *insured*.

**organisation** means any company or other incorporated entity under the laws of Australia but excluding any entity whose *securities* are traded on a primary, secondary or other market in the United States of America or its territories and/or protectorates;

**period of insurance** means the period of insurance shown in the **certificate of insurance**.

**policy** means the **certificate of insurance**, this document (Insuring Clauses, Definitions, Limit of Liability and excess, policy extensions, policy exclusions, claims conditions and all other terms contained therein), and any **endorsement** attaching at inception or during the **period of insurance**.

**pollutant** means any solid, liquid, gaseous, biological or thermal irritant or contaminant including but not limited to: smoke, vapour, fumes, noise, odour or any other emission, electric or magnetic or electromagnetic fields, soot, acids, alkalis, chemicals, waste or material to be recycled, reconditioned or reclaimed, waste water, oil or oil products, infectious or medical waste.

**proposal** means the completed, signed and dated insurance application form or renewal declaration document provided to **us** by the **insured** which contains information supplied by the **insured**.

**premium** means the amount specified as such in the **certificate of insurance**.

**relative** means an **insured's**:

- i. **spouse**;
- ii. parent;
- iii. children or siblings.

**retroactive date** means the retroactive date shown in the **certificate of insurance**. **We** do not provide cover under the **policy** for any liability or **loss** arising from the conduct of the professional activities of **your business or practice** when the conduct occurred prior to the **retroactive date** shown in the **certificate of insurance**.

**securities** means any share, debenture, stock, note, warrant, option, or any security for debt or equity issued or given by **you**.

**senior counsel** means a barrister holding a current practising certificate entitled to practise as a Queen's Counsel or senior counsel in Australia.

**sexual abuse** means any attempted or committed physical or verbal act, communication, contact or other conduct of a sexual nature including but not limited to assault, intimidation, bullying, harassment, discrimination, lewdness or any type of molestation whether such act is the subject of criminal investigation or not.

**spouse** means a lawful spouse, domestic partner (including without limitation same sex partner) or any person deriving similar status by reason of the common law or statute.

**subsidiary** means any company or other incorporated entity under the laws of Australia or other organisation which is either directly or indirectly controlled by any incorporated entity, entities or organisations named as the **insured** in the **certificate of insurance** and whose accounts are consolidated with such entity in accordance with Australian Accounting Standards.

**terrorism act** means any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division of that nation, or in pursuit of political, religious, ideological, ethnic or similar purposes or reasons to intimidate the public or a section of the public of any nation, by any person or groups of persons whether acting alone or on behalf of or in connection with any organisation or government de jure or de facto, and which:

- i. involves force or violence against one or more persons, or threat thereof; or
- ii. involves damage to property; or
- iii. endangers life other than that of the person committing the action; or

iv. creates a risk to health or safety of the public or a section of the public; or

v. is designed to interfere with or disrupt an electronic system.

**volunteer** means any person engaged by **you** to work or to provide services to **you** or on **your** behalf for **your** benefit in the carrying out of **your business or practice** who receives no remuneration or monetary consideration for the services rendered.



## The contract between you and Ansvar Insurance

### Operative Clause

In consideration of **your** payment of the premium and subject to the terms and conditions of the **policy**, **we** will provide cover under each **insuring clause**, **automatic extension** and, if applicable, any **endorsement** to the **policy** subject to the **aggregate limit of liability** and the **limit of liability** listed in the **certificate of insurance**.

This insurance contract will commence from the time **we** provide written acceptance of **your proposal** and cover will conclude at 4.00pm local standard time on the date shown in the **certificate of insurance**.

**We** do not provide cover under the **policy** for any liability or **loss** arising from the conduct of the professional activities of **your business or practice** when the conduct occurred prior to the **retroactive date** shown in the **certificate of insurance**.

If the terms of the **policy** are not observed, cover may be reduced or cancelled. No variation of the **policy** will be effective, except where made by written **endorsement**.

### Claims made and notified

The **policy** operates on a 'claims made and notified' basis which means that subject to the terms and conditions of the **policy you** are covered for:

1. **Claims** first made against **you** during the **period of insurance** and notified to **us** during such period providing **you** were not aware at any time prior to the commencement of such period of any circumstances which could lead to a **claim** being made against **you**; and
2. facts **you** first became aware of during the **period of insurance** which may lead to a future claim providing **you** notify **us** during such period of such facts pursuant to s.40(3) of the Insurance Contracts Act 1984 (Cth) which provides:

"Where the insured gave notice in writing to the Insurer of facts that might give rise to a claim against the insured as soon as reasonably practicable after the insured became aware of those facts but before the insurance cover provided by the contract expired, the Insurer is not relieved of liability under the contract in respect of the claim, when made, by reason only that it was made after the expiration of the period of the insurance cover provided by the contract".

### Interpretation

Where headings are used in the **policy**, they are purely descriptive in nature and are not intended to be used for interpretative purposes. Words importing the singular number shall include the plural and vice versa.

## Insuring Clauses applicable to the policy

### 1. Civil Liability

**We** agree to indemnify **you** for **loss** in connection with **your civil liability** to pay compensation (including claimant's legal costs and expenses), arising from any **claim** both first made against **you** and notified to **us** during the **period of insurance** in the conduct of the professional activities of **your business or practice**.

### 2. Supplementary Payments: **Costs and Expenses**

**We** agree to pay **costs and expenses** in connection with the **investigation**, defence and/or settlement of any **claim** indemnified by Insuring Clause 1 - Civil Liability of, and otherwise covered by the **policy**.

## Limit of liability applicable to the policy

1. The total amount payable by **us** under the **policy** shall not exceed the **limit of liability** for each and every **claim** and the **aggregate limit of liability** for all **claims** in the aggregate as set out in the **certificate of insurance**.
2. Unless otherwise specified in the **certificate of insurance** or by **endorsement** to this **policy**, the **limit of liability** specified in the **certificate of insurance** is exclusive of **costs and expenses** and **we** agree to pay **costs and expenses** in addition to the **limit of liability**. Provided always that if a payment is made to dispose of a **claim** which is in excess of the **limit of liability** available under this **policy**, **our** liability for such **costs and expenses** shall be such proportion thereof as the **limit of liability** available under this **policy** bears to the amount paid to dispose of the **claim**.
3. For the avoidance of doubt, where the amount required to satisfy a **loss** exceeds the **limit of liability** shown in the **certificate of insurance** only the unexpired portion of the **aggregate limit of liability** shall remain available for cover subject to the terms and conditions of the **policy**.

## Excess applicable to the policy

**We** shall only pay for the amount of any **loss** which is greater than the **excess**. The **excess** is the amount shown in the **certificate of insurance** and represents the first amount which is payable by you in respect of any **loss** arising out of any one **claim** made against **you**. The **excess** is inclusive of **costs and expenses**.

For the purposes of determining if more than one **excess** applies, all **claims** that arise from or are attributable to the same **loss** or series of **losses** consequent upon or attributable to one source or original cause shall be regarded as one **claim**.

## Insurance clarifications applicable to the policy

For the sake of clarity, the scope of cover under Insuring Clauses 1 - Civil Liability and 2 - Supplementary Payments: Costs and Expenses of this **policy, civil liability** includes:

### 1. Competition and Consumer Act 2010 (Cth)

Claims for **civil liability** for compensation resulting from any breach of the provisions of the Competition and Consumer Act 2010 (Cth) (formerly the Trade Practices Act 1974 (Cth), the Fair Trading Act 1987 (NSW) or similar legislation in other states, but not being **claims** arising:

- a) under the penal or criminal provisions of any of those statutes; or
- b) from **your** conduct or any of **your employees** which is fraudulent or intended to mislead or deceive.

### 2. Libel, slander, defamation

Any unintentional libel, unintentional slander or unintentional defamation committed by **you** or by any of **your employees** in the conduct of the professional activities of **your business or practice**.

### 3. Intellectual property

Any actual or alleged unintentional infringement of trademark, registered design, copyright or patent right or plagiarism or unintended breach of privacy or duty of confidentiality in the conduct of the professional activities of **your business or practice**.

### 4. Duties owed

Breach of fiduciary duty owed by the **insured** to a third party in the conduct of the professional activities of **your business or practice**.

### 5. Contractual liability

Contractual liability in the conduct of the professional activities of **your business or practice**, provided always that:

- a) **we** will not be liable to provide indemnity for any liability assumed by the **insured** under any contract unless such liability would have attached to the **insured** in the absence of such agreement; and
- b) where a **claim** is an alleged breach of contract **we** will not reduce **our** liability by the mere fact that contributory negligence is not available as a defence.

## Automatic Extensions applicable to the Policy

The automatic extensions below are subject to all of the terms and conditions of the **policy** including the **limit of liability**, the **aggregate limit of liability** and coverage under Insuring Clauses 1 - Civil Liability and 2 - Supplementary Payments: Costs and Expenses of the **policy**.

### 1. Advancement of defence costs

If **we** elect not to take over and conduct the **investigation**, defence or settlement of any **claim**, **we** will pay all reasonable **costs and expenses** associated with that **claim** as and when they are incurred provided that:

- a) **we** have not denied indemnity for the **claim**; and
- b) **our** written consent is obtained prior to **you** or the **insured person** incurring such **costs and expenses** (such consent not to be unreasonably withheld).

**We** reserve the right to recover any **costs and expenses** paid under this automatic extension from **you** and/or an **insured person** severally according to the respective liabilities for such **costs and expenses**, in the event and to the extent that facts are subsequently established by judgment or other final adjudication which confirm that there was otherwise no entitlement to cover under the **policy** for such **costs and expenses**.

### 2. Dishonesty of employees

Notwithstanding the Exclusion 4 - fraud and dishonesty, **we** will agree to indemnify **you** against **civil liability** for **costs and expenses** in respect of any **claim** or **claims** first made against the **insured** and notified to the **insurer** during the **period of insurance** resulting from any dishonest, fraudulent, criminal or malicious act or omission by any **employee** occurring or committed in connection with the professional **business or activities**. Provided that nothing in this automatic extension shall require the **insurer** to indemnify any **employee** who has perpetrated any such dishonest, fraudulent, criminal or malicious act or omission.

### 3. Estates, heirs or legal assigns

**We** agree to indemnify the estate, heirs or legal assigns of any natural person **insured** under this in the event of the death or legal incapacity of such person, but only to the extent to which such person would have been entitled to indemnity under Insuring Clauses 1 - Civil Liability and 2 - Supplementary Payments: Costs and Expenses of the **policy** had such death or legal incapacity not occurred.

### 4. Continuous cover

Notwithstanding exclusion 8 - prior claims of the **policy**, **we** agree to indemnify **you** for any **claim** that arises out of facts which first became known to **you** prior to the **period of insurance**:

Provided always that:

- a) **we** were **your** professional indemnity insurer when **you** first knew of the relevant facts or circumstances; and
- b) **we** have continued without interruption to be **your** professional indemnity insurer up until this current **period of insurance** and the date of notification of the **claim** to **us**; and
- c) had **we** been notified by **you** of the known circumstances when **you** first knew of them, **you** would have been covered under the policy issued by **us** in force at that time; and
- d) the claim or known circumstance has not previously been notified to **us** or any other insurer; and
- e) the non-disclosure or misrepresentation to **us** of such facts or circumstances was not fraudulent.

**We** are only liable to indemnify **you** under this automatic extension to the extent **we** would have been required to indemnify **you** under the terms and conditions of the policy issued by **us** (including its **limit of liability**) existing at the time **you** first knew of those facts or circumstances.

#### 5. Malpractice cover

**We** agree to indemnify **you** for:

- a) any act, error or omission or conduct for professional services rendered by any nurse, technician or **volunteer** (but not a medical practitioner or a midwife) for whom **you** are legally liable; or
- b) any act, error, omission or conduct of a registered medical practitioner or healthcare professional, but only in respect of liability attaching to **you** only.

in the conduct of the professional activities of **your business or practice** which gives rise to bodily or mental injury or death.

#### 6. Loss or damage to documents

**We** agree to indemnify **you** and any of **your employees** in the event of **loss** of or damage to **documents** in respect of all costs, charges and expenses reasonably incurred by **you** or any of **your employees** in replacing or restoring such **documents**;

Provided always that:

- a) such **loss** or damage is sustained during the **period of insurance** while the **documents** are on **your** premises or in transit anywhere in the world (other than the United States of America or Canada or their territories or protectorates) or in **your** custody or of any person to whom **you** have entrusted them in the conduct of the professional activities of **your business or practice**; and
- b) the amount of any indemnity for such costs, charges and expenses shall be supported by bills and accounts which shall be subject to approval by a competent person to be nominated by **us** with **your** consent; and
- c) **we** shall not be liable in respect of **loss** or damage caused by riot or civil commotion; and
- d) the total **we** will pay under the **policy** under this automatic extension is sub-limited to \$2,000,000 in the aggregate. This sub-limit forms part of and is not in addition to the **limit of liability** and the **aggregate limit of liability**.

#### 7. Investigations and inquiries

- a) **We** agree to indemnify **you** and any of **your employees** for **costs and expenses** incurred in connection with attendance at an **investigation** where formal notice requiring such attendance was served on them and notified to **us** within the **period of insurance**, provided that such **costs and expenses** are incurred with **our** prior written consent.
- b) For the avoidance of doubt, the indemnity provided by this clause applicable to the **policy** does not include any fine, penalty or order for monetary compensation or such other sum that is otherwise excluded by Exclusion 14 - fines and penalties of the **policy**.

#### 8. Waiver of excess

No **excess** shall apply or **we** agree to reimburse **you** for any payments made within the **excess**, in relation to a **claim** under the **policy** where final judgment is obtained and **you** are found not liable in respect of that **claim** provided always that this automatic extension does not apply to any **claim** that is settled prior to such final judgment being obtained.

#### 9. Reinstatement in the event of a recovery

Any amounts recovered by **us** (net of **our** reasonable expenses associated with such recovery) following a paid **claim** under the **policy** shall proportionally reduce the erosion of the **limit of liability** and **aggregate limit of liability** shown in the **certificate of insurance**.

#### 10. Joint venture cover

**We** agree to indemnify **you** and any of **your employees** under the **policy** in respect of any **claim** otherwise covered under the **policy** arising from any **joint venture** in the conduct of the professional activities of **your business or practice** but cover shall not extend to any **claim** brought by or on behalf of any party to the **joint venture** or any organisation established to conduct, control or manage such **joint venture**.

#### 11. Good Samaritan Acts

**We** agree to pay on behalf of any of **your employees** in respect of legal liability otherwise covered under the **policy** arising from the rendering of emergency first aid assistance, known as **good samaritan acts**, to any person other than relatives of the **employees** who reside with him/her provided, however, **we** shall not be liable where the **employee** was acting at the time under a contract of employment with any employer other than **you**.

#### 12. Consultants, subcontractors and agents

**We** agree to indemnify **you** in respect of any **claim** otherwise covered under the **policy** as a result of the conduct of any of **your** consultants, sub-contractors or agents for which **you** are legally liable in the conduct of the professional activities of **your business or practice**.

Furthermore **we** agree to indemnify any such consultant, sub-contractor or agent themselves, provided always that the relevant act, error or omission giving rise to the **claim** occurred:

- a) in the course of the conduct, by the consultant, sub-contractor or agent, of the professional activities and duties of **your business or practice** for and on behalf of **you**; and
- b) at the time when the consultant, sub-contractor or agent was under your direct control and supervision.

#### 13. Court attendance costs

**We** agree to provide up to \$500 per day for court attendance costs incurred by **you** or any of **your employees**, if **you** or any of **your employees** is legally compelled to attend a civil proceeding as a witness in a **claim** which is covered under the **policy**;

Provided always that:

the total **we** will pay under the **policy** under this automatic extension is sub-limited to \$100,000 in the aggregate. This sub-limit forms part of and is not in addition to the **limit of liability** and the **aggregate limit of liability**.

#### 14. Public relations expenses

Where the **insured** retains the services of a public relations consultant for the sole purpose of protecting the **insured's** reputation that has been brought to question as a direct result of a claim covered by the **policy**, **we** agree to pay any reasonable fee, **costs and expenses** of such public relations consultant.

Provided always that:

- a) **you** must notify **us** within thirty (30) days of first becoming aware of **your** reputation being brought into question and provide full written details outlining the circumstances surrounding the event; and
- b) **we** must have given prior written consent to retain the services of such public relations consultants; and

- c) the total **we** will pay under the **policy** under this automatic extension is sub-limited to \$100,000 in the aggregate. This sub-limit forms part of and is not in addition to the **limit of liability** and the **aggregate limit of liability**.

#### 15. Merger/takeover/sale/winding-up of insured

If, during the **period of insurance**, any of the following events occur:

- a) **you** are subject to a merger, takeover, sale; or
- b) the appointment of a receiver, controller, administrator or liquidator to the **insured** or the commencement of a scheme of arrangement or compromise or a winding up process in respect of the **insured**,

then this **policy** shall remain in force until the expiry of the **period of insurance** but only in respect of **claims** for which **you** are legally liable in the conduct of the professional activities of **your business or practice** when such conduct occurred prior to the effective date of the event described in parts (a) or (b) of this automatic extension.

#### 16. New created/acquired subsidiary

**We** agree to extend the definition of **you** in the **policy** to include any new **subsidiary** created or acquired by **you** during the **period of insurance**.

Provided always that:

- a) cover only applies in the conduct of the professional activities of **your business or practice** provided by the new **subsidiary** occurring within a period of thirty (30) days from the date of the creation or acquisition of the **subsidiary**;
- b) cover only applies to **claims** in the conduct of the professional activities of your **business or practice** by the new **subsidiary** when such conduct occurred subsequent to the date of acquisition or creation of the **subsidiary**;
- c) within the period specified in sub-paragraph a) above, **you** shall supply such additional information relating to the new **subsidiary** as may be required by **us** and pay any additional premium as may be required to enable **us** to continue coverage to the expiry of the **period of insurance**.

#### 17. Past subsidiary organisations

In the event that a **subsidiary** ceases to be a **subsidiary** during the **period of insurance**, then cover under the **policy** shall continue to apply with respect to any **claim** made against such **subsidiary** during the **period of insurance**;

Provided always that:

cover only applies to such **claims** in the conduct of the professional activities of **your business or practice** provided by the **subsidiary** prior to the date such entity ceased to be a **subsidiary** and committed during the time such entity was a **subsidiary**.

#### 18. Claims preparation costs

**We** agree to pay on **your** behalf reasonable and necessary out of pocket costs incurred by **you** at **our** request in the preparation of the submission of a **claim** for cover under the **policy** and the submitted **claim** is covered under the **policy**.

Provided always that:

- a) the total **we** will pay under the **policy** under this automatic extension is sub-limited to \$25,000 in the aggregate. This sub-limit forms part of and is not in addition to the **limit of liability** and the **aggregate limit of liability**.
- b) Notwithstanding the **excess** shown in the **certificate of insurance**, payment under this clause will be subject to an **excess** of \$1,000 each and every **claim**.

- c) Payments provided under this clause, shall not include any payments made under Insuring Clause 2 of the **policy**.

#### 19. Emergency defence costs

If it is not possible for the **insured** to obtain **our** consent prior to incurring **costs and expenses** for a **claim** covered under this **policy**, **we** will waive prior consent provided **our** consent is obtained within thirty (30) days of the first of such **costs and expenses** being incurred.

Provided always that:

- a) the total **we** will pay under the **policy** under this automatic extension is sub-limited to \$100,000 in the aggregate. This sub-limit forms part of and is not in addition to the **limit of liability** and the **aggregate limit of liability**.
- b) If it is established that there is no entitlement to indemnity under this **policy** for the **costs and expenses** advanced under this **extension**, the **insured** must repay such amounts to **us** immediately.

#### 20. Sixty (60) day reporting period

The **insured** may continue to notify the **insurer** of **claims** up to sixty days after the expiry of the period of insurance, but only **claims** first made against the **insured** during the **period of insurance** and based on any conduct of the professional activities of **your business or practice** committed or alleged to have been committed prior to expiry of the **period of insurance**.

Any notification to the **insurer** during this sixty (60) day reporting period will be deemed to have been first notified to the **insurer** during the **period of insurance**.

#### 21. Extended claim and reporting period

If **we** refuse at expiry of this insurance to offer any renewal terms and conditions, **you** and any **insured person**, shall jointly (but not separately) have the right to request prior to the expiry of the **period of insurance** and upon payment of an amount equal to 100% of the total expiring annual premium stated in the **certificate of insurance** to an **endorsement** to the **policy** providing for:

- a) an extension of the extended notification period to a period being the period of 12 months immediately following the expiry of the **period of insurance**; and
- b) any **claim** made and reported to **us** during this endorsed extended reporting period being deemed to have been made and reported to **us** immediately prior to the expiry of the **period of insurance** provided that the **claim** arises out of **civil liability** in the conduct of the professional activities of your **business or practice** which occurred prior to the expiry of the **period of insurance** and there is no cover for any **claim** arising out of **civil liability** in the conduct of the professional activities of **your business or practice** which occurred after the expiry of the **period of insurance**.

#### 22. Spousal liability

If a **claim** against an **insured** includes a **claim** against an **insured's spouse** solely by reason of:

- a) such **spouse's** legal status as a **spouse** of such **insured**; or
- b) such **spouse's** ownership interest in property which the claimant seeks as recovery for **claims** made against such **insured**,

then the **spouse's** legal liability for compensation resulting from such **claim** will be treated for the purposes of this **policy** as the liability of the **insured**.

This automatic extension does not apply to the extent the **claim** alleges **you** are legally liable in the conduct of the professional activities of **your business or practice** by such **insured's spouse**.

### 23. Privacy breach response costs

*We* agree to pay any reasonable fees, *costs and expenses* incurred by the *insured*, with *our* prior consent, to notify any client, third party or regulator in accordance with the *insured's* legal liability as a result of any actual, alleged or suspected breach of privacy or duty of confidentiality in relation to personal information collected during the in the course of carrying on *your business or practice*, regardless of whether a *claim* has been made against the *insured*.

Provided always that *we* shall not be liable for:

- a) public relations expenses;
- b) wages, overtime, salaries or fees of *you or your employees*;
- c) cost to comply with any injunctive relief;
- d) fines, penalties, sanctions and taxes.

The total *we* will pay under the *policy* under this automatic extension is sub-limited to \$50,000 in the aggregate. This sub-limit forms part of and is not in addition to the *limit of liability* and the *aggregate limit of liability*.

### 24. Severability and non imputation

*We* agree that where this *policy* insures more than one party, any failure on the part of any of the parties to:

- a) comply with the duty of disclosure under the Insurance Contracts Act 1984;
- b) comply with any obligation under this *policy* (other than the obligation to pay premium); or
- c) refrain from conduct which is dishonest, fraudulent, criminal or malicious,

shall not prejudice the right of the remaining party or parties to indemnity under this *policy*, provided that such remaining party or parties shall:

- a) be entirely innocent of and have had no prior knowledge of any such failure; and
- b) as soon as practicable after becoming aware of any such failure, advise *us* in writing of all its relevant circumstances.

### 25. Vicarious liability

*We* agree to indemnify *you* in respect of any *claim* made against *you* arising from any act, error or omission committed or alleged to have been committed by any third party in the course of carrying on *your business or practice*, for whose acts, errors or omissions *you* are legally liable, provided that such coverage shall not extend to any such third party.

## Exclusions applicable to the policy

*We* are not liable to indemnify *you*, in respect of any *claim, loss, investigation, loss* or damage to *documents* or *costs and expenses* arising from or attributable to:

#### 1. Retroactive date

Any act, error or omission occurring or committed prior to the *retroactive date*.

#### 2. Directors and officers liability

Any breach of duty by *you or your employees* where the act, error or omission out of which such breach of duty arose, occurred or was committed in *you or your employee's* capacity as a director, *employee*, sub-contractor or agent of the *insured* or any legal entity, corporation or other incorporated body.

#### 3. Trading debts, guarantees and professional fees

- a) Any trading debt incurred, or any guarantee in respect of such debt given, by *you or your employees*; or
- b) professional fees or charges rendered by *you*.

#### 4. Fraud and dishonesty

Any dishonest, fraudulent, criminal or malicious breach of duty by *you or your employees*, consultants, sub-contractors or agents, or any person condoning such act, including a reckless disregard for the consequences, or any deliberate breach of any statute or regulation by *you* or any of *your employees*, consultants, sub-contractors or agents with *your* knowledge, approval or consent.

#### 5. Jurisdictional and territorial limit

- a) Any action for compensation brought or first brought against *you or your employees* in the United States of America or Canada, or their territories or protectorates.
- b) The enforcement of any judgment, order or award obtained within or determined pursuant to the laws of the United States of America or Canada, or their territories or protectorates.

#### 6. Radioactivity and nuclear waste

- a) Ionising radiation 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 device or assembly, or a nuclear component thereof.

#### 7. Pollution

- a) The discharge, dispersal, release or escape of pollutants into or upon land, the atmosphere, or any watercourse or body of water; or
- b) the cost of removing, nullifying or cleaning up pollutants; or
- c) the cost of preventing the escape of pollutants.

#### 8. Prior claims

- a) Any *claim* first made against *you or your employees* prior to the inception of the *period of insurance*; or
- b) any *claim* arising out of facts or circumstances which were:
  - i. known to *you or your employees* prior to the inception of the *period of insurance* and which a reasonable person in *your* position would have known might give rise to a *claim*; or
  - ii. notified under any insurance which was in force prior to the inception of the *period of insurance*.

9. War and mutiny

- a) War, invasion, act of foreign enemy, hostilities, rebellion or warlike activities (whether war is formally declared or not) and civil war.
- b) Mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, or any act of any person acting on behalf of or in connection with any **organisation** the objects of which include the overthrowing or influencing of any de jure or de facto government by violent means.

10. Terrorism

Any **terrorism act**, regardless of any other cause or event contributing concurrently or in any other sequence to the **loss**, or any action taken in controlling, preventing, suppressing, retaliating against, responding to or in any way relating to a **terrorism act**.

11. Asbestos

Liability arising from asbestos or asbestos products in any form or quantity or for defending any **claim** for such actual or alleged liability. However, this **policy** exclusion shall not apply if any injury sustained is unrelated to the inherently hazardous nature of asbestos.

12. Employer's liability

- a) The death, bodily injury, disease or illness of any **insured** arising out of or in the course of or in respect of their employment; or
- b) a breach of any obligation owed by an **insured** to an **insured**.

13. Financial institution

Liability arising from **your** operation of or involvement in the conduct of any bank, building society, credit union, finance company, superannuation fund or banking business as defined in the Banking Act 1959 (Cth.).

14. Fines, penalties and exemplary damages

Liability for fines, penalties, liquidated damages, punitive, exemplary, aggravated or multiplication of compensatory damages, taxes, levies, imposts or duties imposed by a court of law or under any statute or government regulation.

15. Industrial awards

Liability to or caused by **your employees** imposed by the provision of any industrial award, agreement or determination.

16. Investment performance/advice

- a) Any investment advice or information or opinion regarding investment or failure to provide investment advice or information; or
- b) depreciation (or failure to appreciate) in value of any investments, including but not limited to **securities**, commodities, currencies, options and futures transactions.

17. Related controlling interests and subsidiaries

Work undertaken for or on behalf of:

- a) any company or firm in which **you** or **your employees** exercise or have exercised a controlling interest; or
- b) **your** parent company (if any), any **subsidiary** company, or any other company in which **you** or **your** parent company

has or has held at least a 20% financial interest unless such **claim** or costs or expenses emanates from an independent third party.

18. Discrimination

Actual or alleged unlawful discrimination (or other unlawful act, error or omission) by **you** or **your employees** against any **employee** or employment applicant.

19. Sexual abuse

Any actual or alleged **sexual abuse**.

20. Criminal acts, sterility, drugs and anaesthesia

Liability in respect of:

- a) any criminal act or any act committed while in violation of any law or ordinance; or
- b) the performance or recommendation of any operation to produce sterility, unless pathologically indicated; or
- c) the use of drugs for weight reduction; or
- d) the performance by dentists and dental surgeons of:
  - i. general anaesthesia; or
  - ii. any procedure carried out under general anaesthetic.

21. Medical practitioners and health professionals

Any **claims** made against any person who is:

- a) a medical practitioner, as defined under the **national law**; or
- b) a self-employed registered health professional as defined in the **national law**;

where the **claim** is in connection with such person acting in their capacity as medical practitioner or prescribed registered health professional.

However this exclusion will not exclude the vicarious liability which may attach to:

- a) the **insured**; or
- b) any **insured person** whilst acting in a capacity other than as a medical practitioner.

22. Intoxicants and drugs

Services rendered by any person while that person is under the influence of intoxicants or drugs or from any failure to render services competently or at all because of such influence, if such services were performed with the knowledge or connivance of the **insured**.

For the purpose of this exclusion the term 'drug' does not include pharmaceutical drugs prescribed by a registered medical practitioner to such person.

However, this exclusion will not apply to the rendering of or failure to render first aid and assistance in an emergency situation or accident.

23. Goods sold, stored, supplied or distributed

The sale, storage, supply or distribution of any good or product which arises directly from the conduct of the professional activities of **your business or practice**.

24. Insolvency

The insolvency, liquidation, administration or receivership of an **insured**.

25. Legal advice

The provision of any form of legal services.

26. Tax advice

Tax advice or information or opinion or failure to provide tax advice or information.

27. Manufacturing/construction/property development

- a) Defects or alleged defects in any product manufactured, supplied, installed assembled, erected or maintained by **you** or on **your** behalf; or
- b) any construction, assembly, installation, erection, maintenance; or
- c) supervision of construction, assembly, installation, erection or maintenance; or
- d) **your business or practice** as a property developer, construction manager or project manager.

28. Licensing inquires

Any prosecution, inquiry, hearing, commission or other investigation in relation to the **insured** failing to be properly licensed, registered or accredited to provide professional activities of **your business or practice** as required by any Acts, rules, regulations or industry codes of practice.

29. Waiver of rights

Any liability for which **you** have at any time by deed or agreement forgone, excluded or limited a right of recovery.

## Conditions applicable to the policy

1. Allocation

If a **claim** or **loss** is covered only partly by the **policy**, and the parties are unable to agree upon an allocation between **insured** and uninsured portions, the allocation shall be referred for determination to a **senior counsel** (to be agreed upon or in default of agreement to be nominated by the Chair or President of the local Bar Council) whose determination shall be binding upon the parties and whose fee shall for the purpose of the **policy** be regarded as part of the **costs and expenses**. The allocation shall apply also to payments made before the determination.

2. Assignment

The **policy** cannot be assigned without **our** prior written consent.

3. Authorisation Clause

By acceptance of the **policy**, **you** and the **insured persons** have agreed that **you** will act on their behalf for the giving and receiving of any notice of cancellation, the payment of premiums and receiving any return premiums that may become payable under the **policy** and the acceptance of **endorsements** or other notice provided for in the **policy**.

4. Cancellation

You may cancel the **policy** at any time by notifying **us** in writing, and **we** will refund to **you** the pro-rata portion of the premium for the unexpired **period of insurance**, unless **you** have made a **claim** or notified **us** of circumstances which might give rise to a **claim** during the **period of insurance** in which case no refund of premium will be made.

**We** can cancel the **policy** in accordance with s.60 of the Insurance Contracts Act 1984 (Cth). **We** will be entitled to retain premium for the period during which the **policy** has been in force.

5. Confidentiality

Neither **you** nor an **insured person** shall disclose the nature of the liabilities covered by the **policy** or the premium specified in the **policy**, unless required by law.

6. Goods and Services Tax

Where **we** make a payment under the **policy** for the acquisition of goods, services or other supply, **we** will reduce the amount of the payment by the amount of any input tax credit that **you** or the **insured person** are or will be entitled to under A New Tax System (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made.

Where **we** make a payment under the **policy** as compensation instead of payment for the acquisition of goods, services or other supply, we will reduce the amount of payment by the amount of any input tax credit that **you** would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

If any **excess** applies to a liability or **loss** otherwise covered under the **policy** and **you** or the **insured person** are entitled to **claim** an input tax credit under A New Tax System (Goods and Services Tax) Act 1999 in respect of such liability or **loss** then the amount of that input tax credit shall not be taken to erode the **excess** for the purposes of the **policy**.

7. Jurisdiction and governing law

The **policy** shall be governed by and the construction, interpretation and meaning of the provisions of the **policy** shall be determined in accordance with the law applicable to the state or territory in which the **policy** was issued by **us**.

All disputes arising out of or under the **policy** shall be exclusively subject to determination by any court of competent jurisdiction within Australia.

8. Investigatory costs and payments

Any costs incurred by **us** investigating any fact, situation or circumstance which may give rise to a **claim** shall be deemed for all purposes of the **policy** to be **costs and expenses** incurred under the **policy**.

Any amount paid by **us** in settlement of a dispute which may otherwise become a **claim**, shall be deemed for all purposes of the **policy** to be a **loss** incurred under the **policy**.

9. Legal enforceability

The **policy** or any of the indemnities set out are not operative or enforceable unless **our** agreement to provide such indemnity and the amount thereof is evidenced by a **certificate of insurance** or **endorsement** issued by **us** and signed on **our** behalf by an authorised person.

10. Non-Accumulation

Where **you** are covered under the **policy** in respect of a **claim** and are also entitled to cover under another insurance policy issued by **us** then **our** liability under the **policy** shall not be increased by virtue of the existence of such other insurances and **our** maximum liability under all such policies in the aggregate shall not exceed the highest limit of liability available under those policies in respect of such **claim**.

11. Notice

Any notice required to be given under the **policy** to **us** shall be validly and lawfully given if it is given to **us** in writing at the address for service stated in **our certificate of insurance**.

12. Payment of premium

**You** must pay the premium specified in the **certificate of insurance** within thirty (30) days of the inception of the **policy** or such other time as **we** agree in writing. If **you** fail to pay the premium within that period, **we** are entitled to cancel the **policy** in accordance with the Insurance Contracts Act 1984.



## Claims Conditions applicable to the policy

### 1. Additional parties

Where the **policy** insures more than one party, the **policy** operates as a composite **policy**. Any failure on the part of any of the parties to:

- a) comply with the duty of disclosure in terms of the Insurance Contracts Act 1984 (Cth); or
- b) comply with any obligation in terms of the **policy**; or
- c) refrain from conduct which is dishonest, fraudulent, criminal or malicious,

does not prejudice the right of the remaining party or parties to indemnity in terms of the **policy**, provided that such remaining party or parties shall be entirely innocent of and have had no prior knowledge of any such failure and/or non-compliance and as soon as practicable after becoming aware of any such failure advise **us** in writing of all its relevant circumstances.

### 2. Other insurance

If at the time any **claim** arises under the **policy** there is any other insurance in force covering the same liability, **you** must promptly notify **us** of the full details of such other insurance, including the identity of the **insurer** and the **policy** number, and such further information as **we** may reasonably require.

### 3. Subrogation

If any payment is made under the **policy** in respect of a **claim**, **we** will be subrogated to all **your** rights and will be entitled to pursue and enforce such rights in **your** name and **you** are required to provide **us** with all reasonable assistance and co-operation.

### 4. Notification of claims

**You** must notify **us** in writing of any **claim** made against **you** during the **period of insurance** and forward to **us** every letter of demand, originating process (whether by way of writ, summons, statement of **claim**, third party notice, counterclaim or cross **claim**), notice of any prosecution, inquiry, **investigation** or inquest which **you** receive as soon as practicable after the **claim** has been made.

All notices to **us** under any provisions of the **policy** must be given in writing to GPO Box 1655, Melbourne, VIC 3001 or email [insure@ansvar.com.au](mailto:insure@ansvar.com.au)

### 5. Mitigation

**You** are required, at **your** expense, to use all due diligence and take all reasonable steps to minimise any **claim** and to prevent further **claims** arising out of the same or similar conditions and avoid or diminish any **loss** hereunder.

### 6. Settlement of claims, co-operation and conduct of proceedings

- a) As a condition precedent to cover under the **policy**, **you** must not make any admission of liability, offer, promise of payment, take any action that may be considered to be an admission of liability, settle or repudiate a **claim** or incur any **costs and expenses** without **our** prior written consent, such consent which cannot be unreasonably withheld.
- b) **We** will have full discretion in the conduct and defence, in **your** name and on **your** behalf (including to take over and assume conduct), of any proceedings in connection with, and in the settlement of any **claim** and **you** shall give all such information and assistance as **we** may require.

- c) **You** must immediately give all such information and assistance to **us** as **we** may reasonably require to enable **us** to investigate and to defend the **claim** and/or to enable **us** to determine **our** liability under the **policy**.
- d) **We** may take whatever action that **we** consider appropriate in respect of the **claim** against **you** and such action by **us** will not be regarded in any way prejudicing **our** position under the **policy** and no admission of the entitlement to indemnity under the **policy** shall be implied.
- e) **We** will be entitled to attend any investigation or fatal accident inquiry in respect of which there may arise any liability under the **policy**.

### 7. Senior counsel

- a) Neither **we** nor **you** shall be required to contest or settle a **claim** unless a **senior counsel** shall advise such a **claim** should be contested or settled. In formulating his or her advice, the **senior counsel** must have regard to **your** prospects of successfully defending the **claim**, the likely damages awarded and costs recovered by the claimant, and the likely **costs and expenses** associated with defending the **claim**.
- b) **We** may nominate a **senior counsel** to provide the advice and **you** must notify **us** if **you** agree to the appointment of the individual nominated. If **you** do not agree to the appointment within a reasonably practicable time, **senior counsel** will be appointed by the president of the relevant Bar Association in the state or territory in which the **claim** has been made.
- c) The costs of **senior counsel** are **costs and expenses** in respect of the **claim**.

### 8. Election to contest claim

If **you** refuse to consent to any settlement recommended by **us** and elect to contest or continue any legal proceedings in connection therewith, **our** liability for the **claim** shall not exceed the amount for which the **claim** could have been so settled, less the applicable **excess**, plus **costs and expenses** incurred up to the date of such refusal.

### 9. Multiple claims

All **claims** that arise from or are attributable to the same **loss** or series of **losses** consequent upon or attributable to one source or original cause shall be regarded as one **claim**.

### 10. Alteration to risk

**You** must notify **us** as soon as practicable in writing of any material alteration to the insured risk during the **period of insurance** including insolvency, bankruptcy, appointment of a receiver, **your** inability to pay debts as and when they fall due, winding-up proceedings or any other material change in the nature of the **business or practice**, including the professional services provided.

### 11. Fraudulent claims

- a) As a protection for all insurance policy holders **we** will take legal action against any person who makes a fraudulent **claim**.
- b) If a fraudulent **claim** is made **we** will not pay it and **we** will take action to recover any moneys already disbursed in respect of the claim. **We** will also cancel the **policy**.



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