Ansvar Management Liability
Policy Wording
Table of Contents

About Ansvar

Insurance from one of Australia’s leading specialist insurers 4
Our approach 4
Supporting our community 4

About this insurance policy wording 4
Who is the insurer and how can we be contacted 4
Cooling off period 4

Important information 5
Changes to the insurance policy wording 5
Costs 5
Code Of Practice and Privacy Act 5
Complaints and disputes 5
Critical documents 6
Your duty of disclosure 6
Goods and Services Tax (GST) 6
Retroactive liability 6
Subrogation 6

The Policy: Management Liability Insurance

Definitions applicable to the policy 7
The contract between you and Ansvar Insurance 12
Operative clause 12
Interpretation 12
Claims made and notified 12

Insuring clauses applicable to the policy 12
Entity Liability 12
Directors And Officers Liability 12
Entity Reimbursement 12
Employment Practices Liability 12
Trustees Liability 12
Statutory Liability 12
Internet Liability 13
Entity Crisis Cover 13

Limit of liability and excess applicable to the policy 13

Automatic extensions applicable to the policy 14
Advancement of defence costs 14
Attendance at official investigations or inquiries 14
Continuity of cover 14
Court attendance costs 15
Deprivation of assets expenses 15
Dishonesty of others 15
Estates and legal representatives 15
Extended claim and reporting period 15
Insured versus insured cover 15
Joint venture cover 16
Occupational health and safety 16
Directorships (non-profit organisations) 16
Pollution defence costs 16
Preservation of indemnity 16
Retirement cover for insured persons 16
Runoff cover for subsidiary organisations 17
Runoff cover for outside directorships 17
Spousal liability cover 17
Waiver of excess 17
Reinstatement in the event of a recovery 17
Emergency defence costs 17
Civil or bail bond expenses 17
Third party discrimination and sexual harassment 17
Current outside directorships including non-profit organisations 17
Mitigation costs 18
Run-off after merger or consolidation 18
Personal injury cover for trustees 18
Employee fidelity 18
Third party fidelity 18
Fidelity investigation expenses 18
Data reproduction expenses 19
Identity fraud expenses 19
Public relations expenses 19
Dedicated excess limit of liability for insured person 19
Tax audit 19
Free legal consultation 19

Exclusions applicable to the policy 20
Asbestos 20
Breach of professional duty 20
Computer virus liability 20
Contractual liability 20
Fraud and dishonesty 20
Employment liability 20
Failure of investments 20
Financial institutions 20
Fines and penalties  20
Insolvency and change of ownership  20
Insured versus insured  20
Intellectual property rights  20
Known claims or prior acts  21
Lawful compliance  21
Nuclear risks  21
Personal injury and property damage  21
Pollution  21
Property use or ownership  21
Prospectus liability and securities  21
Sexual abuse  21
Subsidiaries and related entity claims  21
Trade and administration transactions  21
Trade practices  21
Trustee liability  21
Waiver of rights  21
War and terrorism  21
Third party discrimination or sexual harassment  21
Illegal copies of programs  22
Additional exclusions applicable to employment practices liability  22
Exclusions applying to employee fidelity and third party fidelity  22
Exclusions applicable to tax audit  23

Conditions applicable to the policy  24
Allocation  24
Assignment  24
Authorisation clause  24
Cancellation  24
Confidentiality  24
Court jurisdiction and applicable law  24
Geographic limits  24
Goods and Services Tax  24
Investigatory costs and payments  24
Legal enforceability  24
Merger or consolidation  24
Non-accumulation  24
Notice  25
Payment of premium  25
Severability and non imputation  25

Claims conditions and procedures applicable to the policy  25
Additional parties  25
Other insurance  25
Subrogation  25
Notification of claims  25
Mitigation  25
Settlement of claims, co-operation and conduct of proceedings  26
Senior counsel  26
Election to contest claim  26
Alteration to risk  26
Fraudulent claims  26
Notification of direct financial loss  26
Basis of valuation of direct financial loss  26
Settlement of direct financial loss  26
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 Ansvar

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 December 2018.

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, Victoria. The Ansvar Insurance Australian Financial Services Licence number is 237826.

Our contact details are:

Ansvar Insurance
Phone: 1300 650 540
Post: GPO Box 1655, Melbourne, Victoria 3001
Email: insure@ansvar.com.au
Website: www.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, Ansvar 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 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 organisational structure of the insured entity and its subsidiaries;
- the nature and age of the business and any merger/ acquisition history;
- the number of individual insured persons required to be insured;
- the extent of corporate control in the operations;
- the nature and value of assets under management;
- the adequacy of other insurance in place to protect your assets and liabilities;
- the period of insurance (short-term/annual), and extent of retroactive cover required;
- the sums insured or limits of liability per claim or in the aggregate;
- 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 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.

Complaints and disputes

Ansvar is committed to resolving any complaint you may have in relation to our products, services or handling of your personal information. Our process has 3 key stages.

1. Make a complaint

Please refer your complaint to us using one of the following options:

Phone: 1300 650 540

Email: insure@ansvar.com.au

Post: Ansvar Customer Disputes Resolution

GPO Box 1655, Melbourne, Victoria 3001

Your complaint will be reviewed and a response provided to you within 7 business days of us receiving notice of the complaint. Please ensure you provide a telephone number at which you may be contacted.

2. Refer for internal dispute resolution

If you are not satisfied with our response, you may ask us to refer your complaint to our Internal Dispute Resolution Committee. The committee is made up of representatives from across our organisation that have the appropriate knowledge and authority to deal with your complaint. The committee will review your complaint and provide their decision in writing to you within 7 business days from the date of receiving all necessary information about your concerns.
3. Refer for external dispute resolution

Ansvar is a member of the Australian Financial Complaints Authority (AFCA). AFCA was established in 2018 as an independent service to deal with complaints from consumers and small business about financial services and products. If we are unable to resolve your complaint, you may seek advice from AFCA.

Contact the Australian Financial Complaints Authority
Website: www.afca.org.au
Phone: 1800 931 678
Email: info@afca.org.au
Post: GPO Box 3, Melbourne, Victoria 3001

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.

Your duty of disclosure

Before you enter into an insurance contract, you have a duty of disclosure under the Insurance Contracts Act 1984. If we ask you questions that are relevant to our decision to insure you and on what terms, you must tell us anything that you know and that a reasonable person in the circumstances would include in answering the questions. You have this duty until we agree to insure you.

You have the same duty to disclose these matters to us before you renew, extend, vary or reinstate an insurance contract.

If you do not tell us something

If you do not tell us anything you are required to tell us, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

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.
The Policy: Management Liability 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:

*Act of Parliament* means any Act of the Parliament of the Commonwealth of Australia or the State or Territories of Australia, including any subordinate or delegated legislation or regulation made under and any amendment, consolidation or re-enactment of any of those Acts.

*aggregate limit of liability* means the maximum amount under each particular *insuring clause* or *automatic extension* as shown in the certificate of insurance or as may be expressly stated in the *automatic extension* that we are liable to pay in respect of the aggregate of all liability for *loss* and *claims* the subject of cover under the respective *insuring clause* or *automatic extension*.

*aggregate policy limit* means the lesser of $25,000,000 or 1.5 times the *limit of liability* applicable to Insuring Clause 2 - Directors and Officers Liability. The *aggregate policy limit* is the maximum amount that we will pay under the policy in respect of the aggregate of all payments we would otherwise be liable to make under policy.

*APRA* means the Australian Prudential Regulation Authority.

*auditor* means an authorised *officer* under Commonwealth, State or Territory legislation to conduct a *tax audit*.

*automatic extension* means the automatic extensions listed on your *certificate of insurance* and applies to an *insuring clause* of this policy shown in the *certificate of insurance* with a *limit of liability* and *aggregate limit of liability* of greater than zero. We accept no liability under any *insuring clause* or any automatic extension which applies to that *insuring clause* where a zero amount or “not taken” is shown in the *limit of liability* and *aggregate limit of liability* section of the *certificate of insurance* for that *insuring clause*.

*back-pay* means the amount you are obliged to pay an *employee* for the period between the time of incorrect termination of the *employee’s* employment and the time the *employee* is reinstated or re-employed, following an order of reinstatement or re-employment made upon you.

*business* means the business, activities or services specified in the *certificate of insurance* carried out in your operations from Australia.

*certificate of insurance* means the document so named attaching to the policy and any further certificate of insurance issued subsequently by us, extending or varying the policy showing;

i. the selected *insuring clause* selected by you for insurance under the policy;

ii. the *excess* applicable to each selected *insuring clause* and *automatic extension* to the selected *insuring clause*;

iii. any special terms applicable to your policy;

iv. the *limit of liability* and the *aggregate limit of liability* applicable to each *insuring clause*;

v. the *aggregate policy limit*; and

vi. the premiums payable for this insurance.

*civil or bail bond expenses* means the reasonable premium (but not collateral) for a bond or other financial instrument to guarantee an *insured person’s* contingent obligation for bail required by a Court hearing in respect of an *extradition proceeding*.

*claim* means:

i. any writ, summons, application cross claim, counter-claim or other legal or arbitral proceedings or process, or written demand seeking monetary or non-monetary relief and alleging any *wrongful act*, or *employment practice breach*;

ii. any written notice of any proceedings, *investigation* or inquiry which may give rise to the imposition of a *penalty*;

iii. any *extradition proceeding* against an *insured person*;

iv. any criminal proceeding.

*Claim* does not mean an action solely for declaratory or injunctive relief where there is no demand for *compensation* or damages.

*client* means a customer to whom the *insured* provide goods or services for a fee or not.

*compensation* means monies payable or agreed with your consent to be paid (including damages) by judgment, award or settlement including all charges, expenses and legal costs recoverable from you or an *insured person*. It does not include the costs of complying with any non-monetary relief.

*computer virus* means an executable program or computer code segment that is self-replicating or self-propagating designed to modify, alter, damage, destroy or delete *electronic data* without the operator’s authorisation, to contaminate other computer programs or *electronic data*, consume computer resources or usurp the operation of an internet site causing undesired program or computer operation.

*constructive dismissal* for the purposes of an *employment practices breach* means requiring an *employee* to cease their employment with you because of what you say, do or fail to do.

*contract worker* means a person engaged by you through a labour hire firm, under an agreement between you and the labour hire firm, to perform duties related to the conduct of your *business*.

*crisis* means an unforeseen event which in the reasonable professional opinion of your managing director or chief executive officer and us has the potential to cause *loss* of your reputation and/or imminent *loss* of annual revenue to your *business* in the twelve (12) month period immediately following the event and exceeding 30% of your reasonably expected annual revenue for such period if left unmanaged and including, but not limited to:

i. the *loss* of your intellectual property rights including existing patents, trademarks, or copyrights;

ii. the *loss* of a major customer or major contract of yours for the supply of goods and/or services;

iii. the traumatic death or significant impairment of a person on your premises causing emotional distress to *insured persons* or *employees* or members of the public having witnessed the injury;

iv. substantial destruction of or damage to your property other than caused by a natural disaster;

v. the first apparent unauthorised intrusion into the computer facilities of the *insured*;

vi. a recall or boycott of any product;

vii. any criminal or fraud investigation.

*Crisis* is not an event that affects generally the industry in which the *insured* conducts its *business*.
**crisis loss** means the reasonable fees, costs and expenses of a crisis management consultant retained by you to minimise the effects of a crisis, and such costs and expenses recommended by the crisis management consultant, but only for such advice received and steps taken within the sixty (60) day period immediately following the day on which the crisis first occurs.

**data** means information contained in records or accounts.

**defence costs** means all reasonable costs and expenses (other than regular or overtime wages, salaries or fees of any insurer person or employee) incurred by you or an insured person with our prior written consent (such consent not to be unreasonably withheld), for:

i. legal representation in defending, investigating, attending or monitoring any claim or proceedings, investigations, examinations, inquiries and the like;

ii. any subsequent appeals, together with all reasonable costs of bringing such appeals; or

iii. legal or professional advice or assistance incurred in the settlement of a claim.

**deprivation of assets expenses** means the payment of the following services, directly to the provider of such services, in the event of an interim or interlocutory order confiscating, controlling, suspending or freezing rights of ownership of real property or personal assets of an insured person or creating a charge over real property or personal assets of the insured person during the period of insurance:

i. housing;

ii. utilities;

iii. personal insurances; and

iv. schooling.

Such expenses will only be payable provided that a personal allowance has been directed by the court to meet such payments and such personal allowance has been exhausted.

Expenses will be payable after thirty (30) days following the event above for a period of up to six (6) months.

**direct financial loss** means loss of money, securities or property belonging to you or in your care, custody or control, for which you are legally liable.

**director** means:

i. any natural person who was, is currently or during the period of insurance becomes a director of any legal organisation included in the definition of insured (by whatever name called) and whether or not such person is validly appointed to occupy or duly authorised to act in such position; and

ii. any natural person who by virtue of any applicable legislation, is deemed to be acting in such a capacity;

but does not include:

i. a liquidator, external auditor, receiver, receiver and manager, official manager, administrator, trustee or person administering a compromise or scheme of arrangement of your organisation.

**discrimination** means any actual or alleged breach of applicable State or Federal discrimination laws of Australia.

**discovered** means when any director (who is not in collusion with an employee who has committed or is attempting to commit a dishonest act) becomes aware of any facts which would cause a reasonable person to assume that a direct financial loss has been incurred, even though the exact amount or details of the direct financial loss are not known at the time of discovery. Such discovery constitutes discovery by you.

**dishonest act** means any dishonest, fraudulent, criminal or malicious act committed by an employee or third party (whether acting alone or in collusion with any other person) with the intent to cause the insured to sustain a loss or to obtain financial benefit for that employee or third party or for any other person or organisation intended by that employee or third party to receive the financial benefit.

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

**employee** means any person who is or was at the time of an event or circumstance for which cover is provided under this policy:

i. employed by you under a contract of service or apprenticeship as a full-time, casual or temporary employee;

ii. under a contract of service or apprenticeship with another employer and is or was seconded to work for you;

iii. under a work experience scheme with you and is or was deemed by legislation in respect of work related accident compensation or occupational health and safety to be an employee of yours or a worker in relation to you.

**employment practice breach** means any actual or alleged:

i. wrongful refusal to employ a prospective employee;

ii. misleading conduct or misrepresentation in advertising the terms and conditions of a position of employment with the insured;

iii. wrongful failure to promote, wrongful demotion of, wrongful disciplinary action against an employee;

iv. wrongful termination of employment of an employee including constructive dismissal;

v. retaliatory treatment against an employee or a contract worker following an exercise of his or her rights and victimisation;

vi. unlawful workplace harassment of an employee or a contract worker including racial, religious, sexual and other harassment as prohibited by the applicable laws of Australia or the permitting of a workplace environment which is conducive to harassment;

vii. unlawful discrimination of any kind directed towards an employee or a prospective employee;

viii. infliction of emotional distress, anguish or humiliation of any employee, a contract worker or an unlawful interference with privacy; or

ix. denial of natural justice to an employee concerning their employment.

For the purpose of this definition only, the term employee shall include any officer or volunteer.

**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 aggregate policy limit or any other term of the policy, except to the extent expressly provided in the endorsement.
excess means the amount you must contribute towards each and every claim under the policy and shown in the certificate of insurance in respect of each insuring clause or automatic extension (as applicable and if selected by you).

extended notification period means the thirty (30) days following immediately after the expiry of the period of insurance or such longer period as may apply pursuant to automatic extensions 8 or 15 or 26.

extradition proceeding means:
   i. a written request for extradition of an insured person, a warrant for the arrest of an insured person or other proceedings commenced by a writ, complaint, summons or other originating process against an insured person under the provisions of the Extradition Act 1988 (Cth) and/or any associated regulations; and
   ii. any associated appeals, including but not limited to the pursuit of judicial review proceedings, against the decision of the Attorney General or other appropriately authorised representative of the Australian Government to issue a surrender warrant under the Extradition Act 1988 (Cth); and
   iii. the equivalent of the above in any other jurisdiction.

geographic limits means the limits stated in Condition 7 - geographic limits or as otherwise stated in the policy.

identity fraud expenses means any reasonable fees, costs and expenses incurred by you in establishing that a fraudulent misrepresentation has occurred, where a third party first seeks to enforce an agreement against you during the period of insurance.

insured means you, your and/or yours as defined below.

insurer means:
   i. a director; or
   ii. an officer; or
   iii. employee; or
   iv. a trustee.

insuring clause means any of Insuring Clauses 1 to 8 of the policy provided the insuring clause is selected by you and shown in the certificate of insurance with a limit of liability and aggregate limit of liability of greater than zero. We accept no liability to make any payment under the policy pursuant to or under an insuring clause if a zero amount or “not taken” is shown in the limit of liability and aggregate limit of liability section of the certificate of insurance for that insuring clause.

internet activities means all or any of the following:
   i. use of electronic mail systems by you and other persons working on your behalf;
   ii. access through your network to the world wide web or a public internet site by you and other persons working on your behalf;
   iii. access to your intranet (internal company information and computing resources which is made available through the world wide web) by customers or other persons you authorise outside your organisation; and
   iv. the operation and maintenance of an internet site owned or operated by you or on your behalf, but not any third party internet site accessed via links to or from your internet site.

investigation means an inquiry, administrative or regulatory authority investigation, examination or hearing commenced by an official body:
   i. which the insured person is legally compelled to attend; and
   ii. which has as its subject matter the affairs of the insured or the conduct of an insured person in that capacity, or the capacity of the business; and

iii. notice of which is first served on the insured person and notified to us in the period of insurance.

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

known circumstance means any fact, situation or circumstance which you or any insured person were aware of prior to the commencement of each period of insurance and which a reasonable person in the circumstances would have considered might give rise to a claim covered under this policy.

limit of liability means the maximum amount for each particular insuring clause or automatic extension in the policy and as shown in the certificate of insurance or if applicable as expressly stated in the automatic extension that we are liable to pay for all liability under the respective insuring clause or automatic extension in respect of each and every claim.

loss means compensation for which you and/or an insured person are legally liable and defence costs incurred by you or an insured person.

   i. In respect of Insuring Clause 4 - Employment Practices Liability, loss also includes back-pay;
   ii. In respect of Insuring Clause 6 - Statutory Liability,- loss also includes any penalty;
   iii. In respect of Automatic Extension 28 - employee fidelity, loss also includes direct financial loss.
   iv. In respect of Automatic Extension 29 - third party fidelity, loss also includes direct financial loss.
   v. In respect of Automatic Extension 35 - tax audit, loss also includes tax audit fees.

but loss does not include crisis loss.

malicious falsehood means an intentionally false statement made to cause damage to another person’s reputation.

managed investment has the meaning provided in the Corporations Act 2001 (Cth).

mitigation costs means any costs or expenses reasonably and necessarily incurred by you and incurred predominantly in order to avoid, diminish, reduce or limit any liability for a claim which but for such payment was otherwise likely to be covered under the policy.

money means only currency, current coin, bank notes, bullion, negotiable and non negotiable instruments, either belonging to or in the care, physical custody or control of the insured and for which the insured is legally liable, other than property excluded by this policy.

non-profit organisation means any organisation (but not a subsidiary organisation) that is exempt from the payment of income tax under the state and/or federal laws of Australia.

officer means any natural person who was, is currently or becomes during the period of insurance an office bearer, a person who holds an executive or managerial office (as defined by the 2001 Corporations Act (Cth.)), a company secretary or a management committee member of yours or other person elected by you or by your governing body to represent your organisation in directing, managing or supervising your business but does not include a trustee or a liquidator, external auditor, receiver, receiver and manager, official manager, administrator, or person administering a compromise or scheme of arrangement of your organisation.

official body means any regulatory authority, government or administrative body or agency, official trade body or self-regulatory body legally empowered to investigate the affairs of the organisation or outside entity or the conduct of an insured person in such capacity.
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.

outside director or outside directorship means the position of director, officer, secretary or equivalent position held by either a director or an officer in the governing body of an outside entity at your request.

outside entity means another organisation including a non-profit organisation not included in the definition of you, your, yours or insured but excluding any entity that had negative net assets or a negative net worth at the inception date of the policy.

penalty means any monetary sum payable by you or an insured person and required by an order of a court of competent jurisdiction, to any regulatory authority pursuant to any Act of Parliament but excluding:

i. any amounts payable as compensation;
ii. any compliance, remedial, reparation or restitution costs;
iii. any amounts payable for income tax, customs duties, excise duty, stamp duty, sales tax or any other State or Federal tax or duty;
iv. any exemplary or punitive damages;
v. liabilities that are not insurable at law;
vi. any legal and other costs associated with the penalties levied on you or the insured person; and
vii. any consequential or economic loss.

period of insurance means the time and date cover under the policy starts to the time and date cover under the policy expires as shown in the certificate of insurance and any subsequent period which we agree by endorsement.

personal injury means:

i. bodily injury, illness, disease, disability, shock, fright, mental anguish (which occurs as a direct result of an accident), mental illness, psychological injury or death;
ii. false arrest, wrongful detention, false imprisonment, malicious prosecution or humiliation;
iii. wrongful entry upon, wrongful eviction from or other invasion of right to private occupancy of property or invasion of privacy;
iv. defamation, libel, slander and malicious falsehood where the first publication or utterance happened after the commencement of the policy; or
v. assault or battery, including use of reasonable force by you or your direction for the sole purpose of preventing or eliminating danger to persons or property.

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 air 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.

professional fees means the costs, fees and disbursements which are reasonably and necessarily incurred in connection with a tax audit which are payable by you to an accountant or other financial adviser, registered tax agent or legal adviser for work carried out in connection with a tax audit.

property means tangible property other than money and securities.

property damage means physical loss of, destruction of or damage to tangible property, including loss of use or any other consequential losses flowing from such loss, destruction or damage.

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 that is incorporated into the policy.

public relations expenses means the reasonable fees and expenses of a public relations firm which you or an insured person engages with our prior written consent (not to be unreasonably withheld) for the purpose of preventing or limiting potential adverse or negative publicity in respect of a covered claim or official investigation.

registered tax agent means a professional or group of professionals registered with the Australian Government Tax Agents’ Board.

regulatory authority means instrumentalities, entities or persons appointed to act pursuant to any Act of the Commonwealth of Australia or the States or Territories of Australia for the purposes of enforcement of such Act or any other Act.

retroactive date means the date set out in the certificate of insurance relevant to each insuring clause and the policy does not provide cover in respect of any wrongful act, and/or employment practice breach as applicable which occurred prior to such date.

securities means for Automatic Extension 28 - employee fidelity and 29 - third party fidelity, any negotiable or non-negotiable instruments or contracts representing money or other property including but not limited to any shares, debentures, stocks, notes, warrants, options, or any security for debt or equity issued or given by you but excluding money and property.

senior counsel means a barrister in active practice who is entitled to use the post-nominals Q.C. or S.C. in any one or more superior courts in Australia.

sexual abuse means any assault or abuse of a sexual nature, sexual molestation, indecent exposure, sexual harassment or intimidation, whether such act is the subject of criminal investigation or not.

subsidiary organisation 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 organisation(s) named as the insured in the certificate of insurance and whose accounts are consolidated with such entity in accordance with Australian accounting standards. Control or controlled has the same meaning as the definition of control in the Corporations Act 2001 (Cth.).

tax audit means the carrying out of an audit on a return submitted by you, or on your behalf, by the Australian Tax Office or any other Australian Commonwealth, State or Territory department, relevant body or agency, or authority which is authorised to conduct such an audit, and includes any inquiry or investigation by the Australian Taxation Office aimed at determining the insured's compliance with the record keeping requirements of relevant taxation legislation, other than a return to APRA.

tax minimisation schemes means the arrangement of taxation and other returns, by you or on your behalf, which are designed to reduce the tax payable by you.

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;
ii. involves damage to property;
iii. endangers life other than that of the person committing the action;
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.

third party means any natural person or entity other than an insured. For the sake of clarity, a third party can include a client.

third party discrimination means discrimination by an insured person against a third party referencing race, colour, creed, religion, age, sex disability, marital status, national origin, pregnancy, sexual orientation or preference which is protected to any law anywhere in the world.

third party sexual harassment means sexual harassment by an insured person against a third party including unwelcomed sexual advances, or conduct of a sexual nature. For the purpose of this definition only third party sexual harassment does not include cover for any actual or alleged act of sexual abuse.

trust means a trust set up to manage real and other assets belonging to you and/or a retirement or superannuation or pension fund for the benefit of your officers and/or employees.

trustee means you if validly appointed to act or any natural person who is elected to administer the trust, but does not include a professional trust company or organisation or an employee of such company or organisation.

trustee responsibility breach means any actual or alleged wrongful act or omission committed, attempted or allegedly attempted by a trustee in such capacity in respect of the administration of the trust.

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 who receives no remuneration or monetary consideration for the services rendered.

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

wrongful act means any actual or alleged act, error or omission including but not limited to any unfair or unlawful act or omission, any misstatement, misleading statement, neglect, error, breach of trust, breach of duty or offence pursuant to an Act of Parliament or common law;

provided such act or omission is relevantly committed or allegedly committed or attempted in respect of each selected insuring clause as follows:

i. Insuring Clauses 1, 2, 3, 4, 6 and 7: by a director and/or officer solely in their capacity as such a director or officer;
ii. Insuring Clauses 1, 4, 6 and 7: by you;
iii. Insuring Clauses 4, 5, 6 and 7: by a trustee in the course of the administration of the trust.

you, your, yours, or insured means:

i. the incorporated entity, entities or organisation(s) named as the insured in the certificate of insurance;
ii. each organisation that is a subsidiary organisation at the commencement date of the period of insurance and which was disclosed by you to us at the time of entering into the policy;

iii. any new subsidiary organisation formed or acquired by you during the period of insurance through consolidation, merger or purchase of its assets and in respect of which you assume control during the period of insurance provided:

• such organisation is carrying on substantially the same business as yours;
• any acquisition or assumption of control increasing your total gross assets under management by more than 20% is reported to us within ninety (90) days after it is effected; and
• that the policy does not provide cover to the organisation which has become the subsidiary organisation or to any person who has consequently become a director or officer in respect of any wrongful act, employment practice breach, direct financial loss or crisis which occurred prior to the date of such formation or acquisition.
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 and automatic extension and listed in the certificate of insurance and, if applicable, any endorsement to the policy.

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 out of any wrongful act, employment practice breach or trustee responsibility breach which 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 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

The maximum we will pay under each of the following insuring clauses is the relevant:

- limit of liability (as further defined in the policy), or
- aggregate limit of liability,

shown in the certificate of insurance in respect of each insuring clause and always subject to all of the terms and conditions of the policy including the aggregate policy limit.

1. Entity Liability

   We will indemnify you for liability for loss arising out of any claim by reason of any wrongful act in the management of your business, which claim is first made against you during the period of insurance and notified to us during either the period of insurance or the extended notification period.

2. Directors and Officers Liability

   We will indemnify any director or officer, for liability incurred in their capacity as such a director or officer, for loss arising out of any claim by reason of any wrongful act, which claim is first made against them during the period of insurance and notified to us during either the period of insurance or the extended notification period and provided such director or officer is not indemnified by you.

3. Entity Reimbursement

   We will indemnify you for any payment which you are required and are legally permitted to make to or on behalf of any director or officer for their liability for loss incurred in their capacity as such a director or officer and arising out of any claim by reason of any wrongful act, which claim is first made against them during the period of insurance and notified to us during either the period of insurance or the extended notification period.

4. Employment Practices Liability

   We will indemnify you and/or an insured person for liability for loss arising out of any claim alleging an employment practice breach, which claim is first made against you or the insured person during the period of insurance and notified to us during either the period of insurance or the extended notification period.

5. Trustees Liability

   We will indemnify a trustee for liability for loss arising from any claim alleging a trustee responsibility breach, first made against the trustee during the period of insurance and notified to us during either the period of insurance or the extended notification period.

6. Statutory Liability

   We agree to indemnify you and/or an insured person for:

   • any penalty which is insurable at law arising from a wrongful act by you, insured person or trustee in the jurisdictions of, and under the laws of Australia; and
   • any defence costs incurred directly in connection with any legal proceedings, investigations or inquiry which may give rise to the imposition of such penalty.

Provided always that:

- written notice of such legal proceedings, investigation or inquiry was first received by you or the insured person during the period of insurance and notified to us during either the period of insurance or the extended notification period.

- involves an allegation of a wrongful act committed after the retroactive date and which would lead to a claim covered under this policy.
7. Internet Liability

We will indemnify you and/or an insured person for liability for loss arising from a claim as a direct result of a wrongful act carried out without your consent and incurred solely in the conduct of your internet activities which claim is first made against you and/or the insured person during the period of insurance and notified to us during either the period of insurance or the extended notification period, and for which cover is not provided under your general public and products liability insurance.

8. Entity Crisis Cover

We agree to pay on your behalf any crisis which you incur by reason of a crisis which first occurs during the period of insurance and is notified to us during either the period of insurance or the extended notification period in the course of your operations that would otherwise be covered by the policy.

**Limit of liability and excess applicable to the policy**

1. We shall not be liable under the policy to pay any more than the amount of the aggregate policy limit in respect of the aggregate of all payments that we would otherwise be liable to make under the policy.

2. Subject to the aggregate policy limit, the total amount payable under each of Insuring Clauses 1 to 8, each automatic extension including all amounts payable in respect of all loss, claims, defence costs, crisis loss and penalties shall not exceed the aggregate limit of liability stated in the certificate of insurance as applying to that particular insuring clause or to the relevant insuring clause applicable to the particular automatic extension unless the automatic extension expressly provides otherwise.

3. Except as provided for in Automatic Extension 34 - dedicated excess limit of liability for Insured Person and subject to the aggregate policy limit and the applicable aggregate limit of liability unless we state otherwise in writing, the total amount payable by us under each insuring clause of the policy and any automatic extension shall not exceed the limit of liability in respect of any one claim stated in the certificate of insurance as applying to that particular insuring clause or to the relevant insuring clause applicable to the particular automatic extension unless the automatic extension expressly provides otherwise.

Such limit of liability forms part of and is not in addition to the relevant aggregate limit of liability and aggregate policy limit shown in the certificate of insurance.

4. Where more than one insuring clause covers any claim or loss then only one insuring clause shall apply. The insuring clause including the applicable limit of liability and aggregate limit of liability which in that event shall apply shall be the insuring clause which first appears in the following order:

- Insuring Clause 1 - Entity Liability;
- Insuring Clause 2 - Directors and Officers Liability;
- Insuring Clause 3 - Entity Reimbursement;
- Insuring Clause 4 - Employment Practices Liability;
- Insuring Clause 5 - Trustees Liability;
- Insuring Clause 6 - Statutory Liability;
- Insuring Clause 7 - Internet Liability;
- Insuring Clause 8 - Entity Crisis Cover.

5. If in respect of any one or more insuring clause and automatic extension an excess is shown in the certificate of insurance then subject to all of the terms and conditions of the policy including the applicable limit of liability, aggregate limit of liability and aggregate policy limit we shall only be liable for amounts otherwise covered by the policy exceeding that excess.

6. Should any one wrongful act, trustee responsibility breach or employment practice breach result in more than one claim being made against you or an insured person only one excess will apply. This excess will be the highest of any excess noted in the certificate of insurance which applies to any relevant insuring clause or automatic extension under which cover is available in respect of those claims.

7. With respect to Automatic Extension 28 - employee fidelity, 29 - third party fidelity and 30 - fidelity investigation expenses, a series of related, repeated or continuous dishonest acts shall be treated as giving rise to a single direct financial loss and, as such, a single excess is payable.
8. In the event of a claim being based on separate, different or additional wrongful acts, trustee responsibility breaches or employment practice breaches then the applicable excess shall apply in respect of each wrongful act, trustee responsibility breach or employment practice breach.

9. Defence costs are subject to the excess applicable to each selected insuring clause or automatic extension under which they are otherwise covered.

10. All claims arising from:

   • a single wrongful act, trustee responsibility breach or employment practice breach of the insured or an insured person;
   • multiple but interrelated wrongful acts, trustee responsibility breaches or employment practice breaches of the insured or an insured person; or
   • wrongful acts, trustee responsibility breaches or employment practice breaches of the insured or an insured person which arise from the same or a related source;

shall be deemed one claim and such claim shall be deemed to have been made at the time when the earliest of the claims was first made against you or an insured person.

11. You will be responsible for the first 20% of each crisis loss in respect of Insuring Clause 8 - Entity Crisis Cover, such amount not exceeding $5,000 or such other maximum excess for this coverage as shown in the certificate of insurance. All interrelated crises shall be deemed as one and the same crisis and also deemed to have occurred at the earliest time of the first crisis.

Automatic extensions applicable to 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 defence costs associated with that claim as and when they are incurred provided that:

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

   We reserve the right to recover any defence costs paid under this automatic extension from you and/or an insured person severally according to the respective liabilities for such defence costs, 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 defence costs.

2. Attendance at official investigations or inquiries

   We will pay defence costs incurred with our prior consent by an insured person in attending any official investigation, examination, inquiry or other proceedings ordered or commissioned by any official body or institution, where the insured person is legally compelled by such body or institution to attend such investigation, examination, inquiry or proceeding and which involves an allegation of a wrongful act committed after the retroactive date and which would lead to a claim covered under the policy.

   Provided always that:

   • written notice requiring such attendance is received by the insured person during the policy period and is notified to us during either the period of insurance or the extended notification period; and
   • the total amount we will pay under the policy for all defence costs covered pursuant to this extension is sub-limited to $500,000 in the aggregate. This sub-limit forms part of and is not in addition to the aggregate policy limit and the limit of liability and the aggregate limit of liability applicable to any insuring clause under which cover is available.

3. Continuity of cover

   In the absence of fraudulent non-disclosure or misrepresentation by you or an insured person, we will extend cover to you or an insured person under the policy for liability for loss to the extent it would be covered but for the existence of a known circumstance provided always that:

   • we were the management liability or directors & officers liability insurers (however designated) of you and the insured person when you or the insured person first knew of such known circumstance;
   • we continued without interruption to be the management liability or directors & officers liability insurers of you and the insured person since you or the insured person first knew of such known circumstance up until the time when the policy came into effect;
   • had we been notified of the known circumstance when you or the insured person first knew or ought to have known of it, you or the insured person would have been covered under the policy in force at that time, but are not now covered by the policy;
**4. Court attendance costs**

We agree to provide up to $500 per day for court attendance costs incurred by the insured person, if the insured person is legally compelled to attend a civil proceeding as a witness in a claim which is covered under Insuring Clause 2 - Directors and Officers Liability.

Provided always that:

1. The total amount will pay under the policy in any day of $500.
2. This sub-limit forms part of and is not in addition to the aggregate policy limit and the limit of liability applicable to any insuring clause under which cover is available.

**5. Deprivation of assets expenses**

We agree to extend cover under the policy by including deprivation of assets expenses arising from any claim covered by the policy.

Provided always that:

1. The total amount will pay under the policy in any day of $500.
2. This sub-limit forms part of and is not in addition to the aggregate policy limit and the limit of liability applicable to any insuring clause under which cover is available.

**6. Dishonesty of others**

Notwithstanding Exclusion 5 - fraud and dishonesty, we will extend cover to an insured person for liability for loss to the extent it would be covered under the policy provided always that:

1. The insured person seeking cover pursuant to this automatic extension, did not engage in, permit, knowingly assist or condone such dishonest, fraudulent, malicious or illegal act or omission;
2. The indemnity does not extend to loss of property, money, bearer bonds, coupons, stamps, bank notes, currency notes or negotiable instruments of any kind belonging to the insured person or for damage to property for which the insured person is legally responsible;
3. The loss sustained is in consequence of any act or omission occurring after the insured person seeking cover pursuant to this automatic extension acquired reasonable cause for suspicion of dishonest, fraudulent, malicious or illegal conduct on the part of the defaulting insured person concerned and had the opportunity to act on the available information; and
4. Indemnity is not provided to the insured person which committed the dishonest, fraudulent, malicious or illegal conduct.

**7. Estates and legal representatives**

The estates, heirs or legal representatives of any deceased or incompetent insured person shall be indemnified in respect of liabilities of that insured person covered by the policy provided always that any such indemnity shall be subject to all the terms and conditions of the policy in so far as they are applicable.

**8. 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:

1. An extension of the extended notification period to a period being the period of twelve (12) months immediately following the expiry of the period of insurance; and
2. Any claim made and reported to us during this endorsed extended notification 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 a wrongful act, trustee responsibility breach or employment practice breach which occurred prior to the expiry of the period of insurance and there is no cover for any claim arising out of a wrongful act, trustee responsibility breach or employment practice breach which occurred after the expiry of the period of insurance.

**9. Insured versus insured cover**

Notwithstanding Exclusion 11 - insured versus insured, we will extend cover otherwise available under the policy to any individual director or officer in respect of the following:

1. A claim for contribution or indemnity by another director or officer for in respect of a liability for loss which is covered under Insuring Clause 2 - Directors and Officers Liability of this policy;
2. A claim for contribution or indemnity by another trustee for in respect of a liability for loss which is covered under Insuring Clause 5 - Trustees Liability of this policy;
3. Any shareholder derivative action brought or maintained in his/her/its own right or on behalf of the insured provided the shareholder was not a director, officer or a trustee at the time of any wrongful act or trustee responsibility breach;
4. Any derivative action brought or maintained by a liquidator, administrator, receiver or administrative receiver on behalf of the insured;
5. Any claim brought against the director, officer or trustee by any regulatory authority of competent jurisdiction on behalf of the insured;
6. Any claim brought or maintained against the director, officer or trustee by another director, officer or trustee alleging an employment practice breach or discrimination, harassment or defamation but only if such conduct occurred in the performance of their duties as a director, officer or trustee;
7. Any claim made and reported to us during the extended notification 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 a wrongful act, trustee responsibility breach or employment practice breach which occurred prior to the expiry of the period of insurance and there is no cover for any claim arising out of a wrongful act, trustee responsibility breach or employment practice breach which occurred after the expiry of the period of insurance.

Provided always that:

1. The person or organisation bringing, making or controlling the claim acts without any prior direct or indirect solicitation or enticement of or with any other director or officer under the policy (other than co-operation legally required by any statutory or regulatory authority);
2. The claim is not brought about by or contributed to by and does not involve industrial disputes (whether between the insured and employees or their union or otherwise), strike, picket, lock out, go slow or work to rule;
the claim does not arise from any act or omission in respect of which liability for loss is covered by another insuring clause or automatic extension of this policy;

the claim does not arise as a result of any act or omission the subject of an exclusion in this policy; and

a claim by reason of an employment practice breach is subject to the limit of liability for Insuring Clause 4 - Employment Practices Liability stated in the certificate of insurance.

10. Joint venture cover

We agree to extend cover under the policy to an insured person in respect of any claim made against that insured person arising from any joint venture but cover shall not extend to any claim brought by or on behalf of any party to the joint venture or any organisation or trust established to conduct, control or manage such joint venture.

11. Occupational health and safety

Notwithstanding Exclusion 16 - personal injury and property damage, where you or a director or any officer are legally compelled by written notice received during the period of insurance, to attend any official investigation, examination, inquiry or other proceedings ordered or commissioned by any official body or institution alleging a breach of occupational health & safety laws of any State or Territory of Australia; we agree to extend cover for any defence costs reasonably and necessarily incurred, with our prior written consent.

Provided always that:

- This automatic extension does not provide cover for any criminal fines, any claim for compensation by an employee or any liability for a loss in respect of a claim otherwise excluded by the policy;
- the total amount we will pay under the policy under this automatic extension is sub-limited to $1,000,000 in the aggregate. This sub-limit forms part of and is not in addition to the aggregate policy limit and the limit of liability applicable to any insuring clause under which cover is available.

12. Directorships (non-profit organisation(s))

We agree to extend cover under the policy by including in the definition of director and officer any director or officer who is required to hold a position in the governing body of any non-profit organisation at your request prior to or during the period of insurance;

Provided always that:

- any wrongful act giving rise to a claim occurred before the director or officer ceased holding such position;
- cover pursuant to this automatic extension will not extend to any other director or officer (by whatever name called) of the non-profit organisation if they are not otherwise covered under the policy;
- no cover whatsoever is available to the non-profit organisation under the policy.

- for the purpose of applying Automatic Extension 9 - insured versus insured cover, to the cover provided in this automatic extension and for no other purpose, the term ‘insured’ will be deemed to include the non-profit organisation;
- the cover available by reason of this automatic extension shall only apply in excess of the indemnity available to the director or officer under the management liability or directors and officers policy (however designated) held by the non-profit organisation with another insurer covering the liability of that person; and

- where we have issued another insurance policy to the non-profit organisation providing similar coverage allowed under the policy, this automatic extension shall only apply in excess of such separate coverage.

13. Pollution defence costs

Notwithstanding Exclusion 17 - pollution, we will extend cover to include defence costs incurred in respect of any claim against you or any director or officer arising out of the discharge, dispersal, release or escape of pollutants in the course of your operations that would otherwise be covered by the policy.

Provided always that:

- the total amount we will pay under the policy under this automatic extension is sub-limited to $1,000,000 in the aggregate. This sub-limit forms part of and is not in addition to the aggregate policy limit and the limit of liability applicable to any insuring clause under which cover is available; and
- cover is not provided for any pollution occurring in the United States of America, the Dominion of Canada or the Territories or Protectorates of those Countries.

14. Preservation of indemnity

If an insured person is not able to obtain payment pursuant to a lawful right of indemnity from an organisation insured under the policy by reason only of the organisation having been placed in liquidation and such payment is in respect of a liability for loss that would otherwise be covered by Insuring Clause 2 - Directors and Officers Liability, then we will extend cover under Insuring Clause 2 - Directors and Officers Liability to that insured person, provided the burden of furnishing satisfactory proof to obtain the benefit of this automatic extension shall rest entirely with the insured person.

15. Retirement cover for insured persons

If you do not renew the policy or do not replace it with any other insurance providing coverage similar to that provided under Insuring Clause 2 - Directors and Officers Liability and do not purchase an extension to the extended notification period pursuant to Automatic Extension 8 - extended claim and reporting period, then any insured person who retired from all employment or office prior to expiry of the period of insurance shall but only in respect of a claim against them be entitled under this automatic extension to:

- an extension of the extended notification period to a period being the period of 84 months immediately following the expiry of the period of insurance; and
- any such claim made and reported to us during this extended extended notification period shall be deemed to have been made and reported to us immediately prior to the expiry of the period of insurance provided always that the claim arises out of a wrongful act, or employment practice breach which occurred prior to the date of their retirement and there is no cover for any claim arising out of a wrongful act, or employment practice breach which occurred after the date of their retirement.

This automatic extension confers no entitlement or benefit on you or any other insured person.
16. Runoff cover for subsidiary organisations

In the event that a subsidiary organisation ceases to be a subsidiary organisation during the period of insurance, then the policy shall continue to apply with respect to any claim made against such subsidiary organisation and any insured person during the period of insurance or the extended notification period (if applicable);

Provided always that:

- cover is only provided in respect of any wrongful act or employment practice breach committed prior to the date such entity ceased to be a subsidiary organisation and committed during the time such entity was a subsidiary organisation;
- cover is only provided for any direct financial loss resulting from dishonest acts committed prior to the date such entity ceased to be a subsidiary organisation and committed during the time such entity was a subsidiary organisation or otherwise covered by this policy;
- cover is not provided for any wrongful act or employment practice breach preceding the retroactive date shown in the certificate of insurance.

17. Runoff cover for outside directorships

In the event that an insured person ceases to act as an outside director of an outside entity (as defined within this policy) at any time prior to or during the period of insurance, then the policy shall continue to apply with respect to any claim first made against such insured person during the period of insurance or the extended notification period (if applicable);

Provided always that:

- cover is only provided with respect to wrongful act or employment practice breach committed prior to the date such person ceased to be an outside director of such outside entity and committed during the time such person was an outside director of such outside entity;
- cover is not provided for any wrongful act or employment practice breach preceding the retroactive date shown in the certificate of insurance.

18. Spousal liability cover

We agree to pay on behalf of the lawful spouse of an insured person their liability for all loss as a result of an alleged wrongful act:

Provided always that:

We shall only indemnify the spouse in respect of loss:

- arising from a claim made against the lawful spouse only because he or she is the lawful spouse of the insured person;
- which is not brought by reason of the lawful spouse being knowingly or recklessly party to or involved in any wrongful act; and
- relating to property either jointly held by the insured person and his or her lawful spouse, or transferred by that insured person to his or her lawful spouse for legitimate purposes only.

Where a conflict arises between this automatic extension and Exclusion 11 - Insured versus Insured of the policy, the provisions of this automatic extension shall prevail.

19. Waiver of excess

No excess shall apply or we agree to reimburse an insured person for any payments made within the excess, in relation to a claim where final judgement is obtained and no insured person is 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 judgement being obtained.

20. 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 impairment of the limit of liability.

21. Emergency defence costs

If it is not possible for the insured to obtain our consent prior to incurring defence costs 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 defence costs being incurred.

Provided always that:

the total amount 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 aggregate policy limit and the limit of liability and the aggregate limit of liability applicable to any insuring clause under which cover is available.

22. Civil or bail bond expenses

We agree to pay on behalf of an insured person, civil or bail bond expenses incurred by an insured person during the period of insurance in connection with a claim that is covered under the policy.

Provided always that:

the total amount we will pay under the policy under this automatic extension is sub-limited to $250,000 in the aggregate. This sub-limit forms part of and is not in addition to the aggregate policy limit and the limit of liability and the aggregate limit of liability applicable to any insuring clause under which cover is available.

23. Third party discrimination and sexual harassment

We will indemnify you or an insured person for liability for loss arising out of any third party claim alleging any third party discrimination or third party sexual harassment, which third party claim is first made against you or an insured person during the period of insurance and notified to us during either the period of insurance or the extended notification period.

Provided always that:

the total amount we will pay under the policy under this automatic extension is sub-limited to $1,000,000 in the aggregate. This sub-limit forms part of and is not in addition to the aggregate policy limit and the limit of liability and the aggregate limit of liability applicable to any insuring clause under which cover is available. The policy excess applicable to Insuring Clause 4 - Employment Practices Liability will apply for any claim made under this automatic extension.

24. Current outside directorships (including non-profit organisations)

Where a director or officer holds an outside directorship with your permission at the commencement of the period of insurance in any outside entity named in the certificate of insurance, or any non-profit organisation associated to the outside entity, we will extend cover to that director or officer of the outside entity or non-profit organisation under Insuring Clause 2 – Directors and Officers Liability and to you under Insuring Clause 3 – Entity Reimbursement.
Provided always that:

• cover is not to be provided for any wrongful act preceding the retroactive date shown in the certificate of insurance;
• cover will not extend to any director or officer (by whatever name called) of the outside entity or non-profit organisation under this policy;
• no indemnity whatsoever is available to the said outside entity or non-profit organisation under this policy;
• the cover available by reason of this automatic extension shall only apply in excess of the indemnity available to the director or officer under the management liability policy (however designated) held by the non-profit organisation with another insurer covering the liability of that person; and
• this automatic extension shall only apply where there is no other insurance issued by us to the said outside entity.

We will extend the indemnity granted by this automatic extension to any director or officer entering into such an outside directorship with your permission during the currency of the policy for an initial period being the period of sixty (60) days from the commencement date of any such appointment or until the expiry of the policy whichever is shorter; and we will maintain such coverage beyond this initial period where:

• such outside directorship is reported to us within sixty (60) days after it is effected; and
• we confirm continuation of the interim cover for such outside directorship, by endorsement of this policy.

25. Mitigation costs

We will pay mitigation costs reasonably incurred by you;

Provided always that:

the total amount we will pay under the policy for any mitigation costs covered pursuant to this extension is sub-limited to $100,000 in the aggregate. This sub-limit forms part of and is not in addition to the aggregate policy limit and the limit of liability and the aggregate limit of liability applicable to any insuring clause under which cover is available.

26. Run-off after merger or consolidation

If the insured merges or is consolidated with or becomes the subsidiary of another incorporated organisation, or sells all or substantially all its assets to another incorporated organisation, the insured and all insured persons shall have jointly (but not separately) the option to:

• an extension of the extended notification period to a period being period of twelve (12) months immediately following the expiry of the period of insurance; and
• any such claim made and reported to us during this extended notification period shall be deemed to have been made and reported to us immediately prior to the expiry of the period of insurance provided always that the claim arises out of a wrongful act, or employment practice breach which occurred prior to the date of such merger, consolidation or sale and there is no cover for any claim arising out of a wrongful act, or employment practice breach which occurred after the date of such merger, consolidation or sale.

Provided always that:

• the right to this automatic extension is exercised in writing prior to the expiry of the period of insurance;
• there has been and is no known circumstance or claim against any insured or insured person to which the policy may respond;
• you agree to pay each year the premium we require; and
• in the event this automatic extension is exercised, Automatic Extension 8 - extended claim and reporting period will not apply.

27. Personal Injury Cover For Trustees

Notwithstanding Exclusion 16 - personal injury and property damage, Insuring Clause 5 - Trustees Liability extends to cover liabilities for personal injury incurred by a trustee including involuntary defamation, libel or slander in the course of the administration of the trust;

Provided always that:

• this cover has not been provided by a general public and products liability insurance policy purchased by the trustee;
• the total amount we will pay under the policy under this automatic extension is sub-limited to $1,000,000 in the aggregate. This sub-limit forms part of and is not in addition to the aggregate policy limit and the limit of liability and the aggregate limit of liability applicable to any insuring clause under which cover is available.

28. Employee fidelity

We will indemnify you for liability for any direct financial loss by an employee committing a dishonest act against the insured, first discovered during the period of insurance.

Provided always that:

the total amount we will pay under this automatic extension shall not exceed the amount of the Employee Fidelity & Third Party Fidelity sub-limit specified in The Schedule. This sub-limit forms part of and is not in addition to the aggregate policy limit and the limit of liability and the aggregate limit of liability applicable to any insuring clause under which cover is available.

29. Third party fidelity

We will indemnify you for liability for any direct financial loss by a third party committing a dishonest act against the insured, first discovered during the period of insurance.

Provided always that:

the total amount we will pay under this automatic extension and Automatic Extension 28 - employee fidelity shall not exceed the amount of the Employee Fidelity and Third Party Fidelity sub-limit specified in The Schedule. This sub-limit forms part of and is not in addition to the aggregate policy limit and the limit of liability and the aggregate limit of liability applicable to any insuring clause under which cover is available.

30. Fidelity investigation expenses

We will pay any reasonable expenses incurred by you with our written consent for the purposes of establishing the existence and amount of the direct financial loss covered under Automatic Extension 28 - employee fidelity and 29 - third party fidelity of this policy.

For sake of clarity reasonable costs payable under this automatic extension shall not include wages, salaries, time costs and expenses or other remuneration of any insured person, or the time or expenses incurred by your clients.

The total amount we will pay 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 aggregate policy limit and the limit of liability and the aggregate limit of liability applicable to any insuring clause under which cover is available. No excess shall apply to this automatic extension.
31. Data reproduction expenses

We will pay any reasonable expenses incurred by you with our written consent to reproduce or duplicate damaged or destroyed electronic data or computer programs directly arising from any direct financial loss covered under Automatic Extension 28 - employee fidelity and 29 - third party fidelity of this policy.

If such electronic data or computer programs cannot be duplicated from other electronic data or computer programs then we will pay any reasonable expenses incurred by you with our written consent for reasonable costs incurred to purchase the replacement computer program software, or if it cannot be purchased, for the time taken for computer programmers, technical experts or consultants to restore such electronic data or computer programs to substantially the same level of operational capability existing immediately before the covered loss.

The total amount we will pay 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 aggregate policy limit and the limit of liability and the aggregate limit of liability applicable to any insuring clause under which cover is available. No excess shall apply to this automatic extension.

32. Identity fraud expenses

We will pay any reasonable identity fraud expenses incurred by you with our written consent if any party other than the insured enters into any agreement with any third party fraudulently representing themselves as the insured; then we shall pay identity fraud expenses.

The total amount we will pay 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 aggregate policy limit and the limit of liability and the aggregate limit of liability applicable to any insuring clause under which cover is available. No excess shall apply to this automatic extension.

33. Public relations expenses

We agree to pay any reasonable and necessary public relations expenses incurred by you or an insured person against which or whom a claim is made and which is covered by the policy.

The total amount we will pay 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 aggregate policy limit and the limit of liability and the aggregate limit of liability applicable to any insuring clause under which cover is available. No excess shall apply to this automatic extension.

34. Dedicated excess limit of liability for insured person

Insuring Clauses 2, 3 and 4 are extended as follows:

In the event that the limit of liability and the aggregate limit of liability applicable to any insuring clause and all other indemnification available to an insured person is exhausted (including but not limited to by you or an outside entity) and any other insurance (including any policy taken out on behalf of or for the benefit of the insured person, including policies specifically excess of this policy) in respect of such loss resulting from a claim for a wrongful act, we will pay on behalf of any insured person, loss up to $1,000,000.

The aggregate limit of liability of the insurer under this automatic extension will not exceed during the period of insurance:

- the aggregate policy limit specified in the certificate of insurance for all loss paid on behalf of all insured persons.

35. Tax audit

We will refund you for professional fees incurred by you following completion of a tax audit and/or in connection with such tax audit commenced or completion of a tax audit and notified to us during the policy period, provided you:

- lodged any taxation and other returns for the period that is the subject of the tax audit and have paid all taxes within ninety (90) day of the time limits prescribed by relevant legislation, or if an extension is granted by the Commissioner of Taxation, within the further period granted; and
- have made full and complete declarations of all relevant liabilities, income and capital gains derived by you and of all Commonwealth, State or Territory taxation liabilities due to be paid or remitted by you during the audited period, and all deductions including capital losses or other amounts claimed by you in respect of the same period; and
- respond to letters, requests and enquiries from the auditor within a reasonable time.

For the purpose of this automatic extension, the tax audit commences at the time you or your accountant or other financial adviser, registered tax agent or legal adviser first receive notice that an auditor proposes to conduct a tax audit and is completed at the earlier of when either:

- the auditor has given written notice to that effect; or
- the auditor notifies you that it has made a concluded decision; or
- the auditor has issued an assessment or an amended assessment of your returns; or
- in the absence of any of the above, where you declare in writing that such a tax audit has been concluded.

The total amount we will pay under this automatic extension is sub-limited to amount specified in the schedule. This sub-limit forms part of and is not in addition to the aggregate policy limit and the limit of liability and the aggregate limit of liability applicable to any insuring clause under which cover is available. No excess shall apply to this automatic extension.

36. Free legal consultation

During the period of insurance the insured is entitled to up to two (2) hours free legal advice from the appointed firm and nominated practitioner as prescribed by us, on any matter relating to the insured's professional business.

This automatic extension is subject to the following:

- the legal advice will be of a general nature;
- any unused hours or consultations cannot be aggregated from one period of insurance to another;
- we reserve the right to change the appointed firm or nominated practitioner at any time. These changes will be notified to the insured upon request;
- the insured may not seek legal advice on this policy or other indemnity issues concerning insurance policies issued by us under this automatic extension.
Exclusions applicable to the policy

The policy does not cover, and we are not required to make any payment in respect of, any loss, crisis loss or claim directly or indirectly arising out of, attributable to or in connection with:

1. Asbestos
Asbestos or asbestos products or materials in any form or quantity or for defending any claim for such actual or alleged liability.

2. Breach of professional duty
   - The rendering or failure to render professional services and/or professional advice to a third party; or
   - a breach or alleged breach of any contract or duty for the provision of such professional services and/or professional advice;

   provided always that this exclusion does not apply to such services provided by an insured person in his or her capacity as director, officer or trustee and in circumstances where such professional services or professional advice is provided to the insured and not to third parties in the course of the your professional business.

3. Computer virus liability
   The transmission of a computer virus.

4. Contractual liability
   Any actual or alleged liability assumed by the insured or an insured person under any contract, warranty or guarantee, except to the extent such liability would attach to such party in the absence of such contract, warranty or guarantee. Other than in respect of a warranty or guarantee, this exclusion does not apply to employment contracts.

5. Fraud and Dishonesty
   - Any dishonest, fraudulent, criminal or malicious act or omission;
   - an act committed with the intention of causing harm or loss of any kind or conduct intended to mislead or deceive a claimant;
   - any act or omission committed with a reckless disregard for the consequences of such act or omission;
   - the condoning of acts or omissions of the type referred to in this clause;
   - any deliberate breach of any statute or regulation;
   - improperly benefiting from securities transactions as a result of information that was not available to other sellers and/or purchasers of such securities; or
   - gaining an illegal advantage;

   by you or any person seeking the benefit of the policy; provided always that this exclusion shall not apply to cover provided to you or an innocent insured person under Automatic Extension 6 - dishonesty of others.

   This exclusion will only apply where the conduct in question has been established by admission, court judgment or other final adjudication. No fact pertaining to conduct of, or knowledge possessed by, an insured person will be imputed to any other insured person to determine whether any part of this exclusion applies.

   This exclusion shall not apply in relation to defence costs, Automatic Extension 2 - attendance at official investigations or inquiries or Automatic Extension 11 - occupational health and safety.

6. Employment liability
   Any claim by an employee arising from the employment of the person by you or arising from any employment dispute, or arising from any leave, worker’s compensation, disability benefits, unemployment benefits, redundancy or severance payments, retirement benefits, social security benefits, superannuation benefits or any similar employment obligation, other than as provided under Insuring Clause 4 - Employment Practices Liability.

7. Failure of investments
   The failure of your investments or investments to perform to expectations, except where the failure is a direct result of a wrongful act unconnected with the performance of the investments and not otherwise excluded under this policy.

8. Financial institutions
   Your operation of or involvement in the conduct of any merchant or investment bank, building society, credit union, finance company, insurance or reinsurance company, mortgage bank, savings or loan association, stock broker, fund manager, asset management company, superannuation fund or banking business as defined in the Banking Act 1959 (Cth.).

9. Fines and penalties
   - Any fine and/or penalty imposed by law;
   - punitive, exemplary or aggravated or multiple damages;
   - income tax and other fiscal taxes and duties or any surcharges/penalties applicable;

   provided that this exclusion will not apply to cover provided under Insuring Clause 6 - Statutory Liability other than if the penalty is attributable to any circumstances of which you or the insured person were aware that may give rise to the imposition of a penalty and steps could have been taken after such awareness to avoid any liability to have a penalty imposed.

10. Insolvency and change of ownership
   Any act, error or omission which:
   - whether actual or alleged would constitute insolvent trading contrary to the Corporations Act 2001 (Cth.);
   - occurs after you enter liquidation, administration, receivership or any other insolvent administration; or
   - occurs after any other entity acquires a majority or controlling interest in your organisation.

11. Insured versus insured
   Any claim brought by you, or on your behalf, against any insured person or their estates, heirs, representatives, successors or assigns or brought by any insured person against you or any other insured person, other than as provided in Automatic Extension 9 - insured versus insured Cover of the policy.

12. Intellectual property rights
   Any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights, provided that this exclusion shall only apply to the cover provided to you under Insuring Clause 1 - Entity Liability.
13. Known claims or prior acts

- Any wrongful act, trustee responsibility breach or employment practice breach occurring prior to the retroactive date applicable to each of Insuring Clauses 1 to 8;
- any known circumstance; or
- facts or circumstances which were notified to your insurer under the provisions of any insurance policy in force prior to the commencement of the policy.

14. Lawful compliance

Any liability in respect of which we are legally prohibited from indemnifying you or an insured person under the Laws of Australia or any other country in which a claim arises.

15. Nuclear risks

- Ionising radiations or contamination by radioactivity from any nuclear waste or the combustion or self-sustaining process of nuclear fission of nuclear fuel; or
- the hazardous properties of any nuclear explosive assembly or component; or
- the use handling or transportation of radioactive materials or any weapon of war or explosive device employing nuclear fission or fusion; or
- work upon or services supplied to any site using nuclear reactors such as atomic piles, particle accelerators or generators or similar devices or any site using atomic energy.

16. Personal injury and property damage

- Personal injury or death of or harassment of or discrimination against any person; or
- property damage or the sale, supply, storage or manufacture of goods of any kind;

provided that this exclusion does not apply to the cover provided by Insuring Clause 4 - Employment Practices Liability and Automatic Extension 23 - third party discrimination and sexual harassment.

17. Pollution

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

Provided this exclusion shall not apply to the Automatic Extension 13 - pollution defence costs.

18. Property use or ownership

- Land, buildings, machinery and other fixed assets; or
- aircraft, watercraft or vehicle of any kind.

19. Prospectus liability and securities

The offer, issue, sale, purchase or transfer of your securities or the making of any representation for or in connection with such securities or any public or private offering of securities.

20. Sexual abuse

Any actual or alleged act of sexual abuse, provided this exclusion shall not apply to any alleged sexual harassment in connection with an employment practice breach.

21. Subsidiaries and related entity claims

Any claim brought by or on behalf of:

- an organisation or entity which is a subsidiary organisation; or
- an outside entity where the claim is made against you upon direct or indirect solicitation or enticement by an insured person occupying a directorship position on the board of such outside entity.

22. Trade and administration transactions

Any claim based upon or in consequence of:

- any trading or business debt incurred by you; or
- the failure to collect contributions for any superannuation or pension fund or to remit such monies to any superannuation or pension fund.

23. Trade practices

Any actual or alleged violation of the Competition and Consumer Act 2010 (Cth.) or any State Fair Trading Acts of Australia or similar legislation in any other jurisdiction relating to:

- penal or criminal provisions; or
- provisions applying to business competition, unfair trade practices or tortious interference with any business or contractual relationships.

24. Trustees liability

Any liability as a trustee or the failure of the organisation to pay into, or collect contributions for, a fund or trust as required by law and/or a fund trust deed except as provided under Insuring Clause 5 - Trustees Liability and Automatic Extension 27 - personal injury cover for trustees.

25. Waiver of rights

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

26. War and terrorism

- War, invasion, act of foreign enemy, hostilities or warlike activities (whether war is formally declared or not), civil war, insurrection, rebellion, civil commotion assuming the proportions of or amounting to a popular rising, mutiny, military rising, military or usurped power, revolution;
- 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, except to the extent that such an order arises as a result of any wrongful act committed by any director or officer; or
- 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.

27. Third party discrimination or sexual harassment

Arising from, attributable to or in connection with third party discrimination and third party sexual harassment, other than as provided under Automatic Extension 23 - third party discrimination or sexual harassment.
28. Illegal copies of programs

Any data reproduction fees, costs or expenses claimed under Automatic Extension 31 - data reproduction costs where the reconstitution of data is required as a result of an insured person knowingly using illegal copies of programs.

29. Additional exclusions applying to employment practices liability

In respect of the cover provided under Insuring Clause 4 - Employment Practices Liability, the policy does not cover loss or make any payment in connection with any claim made against you or an insured person for or in respect of:

- a contract of employment alleged to be unfair, harsh, unconscionable or contrary to public interest;
- the seeking of relief pursuant to Section 127A of the Workplace Relations Act (Cth.) or similar industrial relations legislation in the other states or territories of the Commonwealth of Australia or in New Zealand;
- in relation to any Workers’ Compensation or Occupational Health and Safety Acts or similar workplace legislation;
- for the cost of physical modifications to premises, plant or equipment owned or occupied by you;
- brought about by, contributed to by or which involves industrial disputes (whether between the entity or the insured persons or between employees or their union or generally), strike, picket, lockout, go slow or work to rule; or
- any amount which you are or an insured person is required to pay pursuant to a specific obligation imposed under a contract of employment, employment agreement, statute, award or otherwise.

30. Exclusions applying to employee fidelity and third party fidelity

We will not pay for loss consisting of or which arises from or in connection with:

- **direct financial loss** arising out of or in any way connected with any dishonest acts committed, in whole or part, outside of Australia or New Zealand.

- **direct financial loss:**
  - first discovered prior to the commencement of the period of insurance, or
  - first discovered after the end of the period of insurance, or the discovery period if applicable; or
  - in any way connected with any employee or third party from the time any director or officer (who is not in collusion with such employee or third party) had actual knowledge that the employee or third party had committed or was suspected of having committed any fraudulent or dishonest act, even if it does not constitute a dishonest act as defined; or
  - caused by any employee if a director or officer possessed at any time knowledge of any act or acts of theft, fraud or dishonesty committed by such employee prior to employment by the insured provided the act(s) involved money, securities or property valued at $10,000 or more, or such director or officer failed to make reasonable enquiries prior to employment of such employee.

- **direct financial loss** arising out of or in any way connected with any fraudulent or dishonest activities, or involving collusion by or complicity of:
  - a director who at the time of the dishonest act owns or controls more than 5% of the issued share capital of the insured; or
  - any shareholder who, at the time of committing such acts, had direct or indirect ownership of or control over more than 5% of the voting share capital of the insured or any of its subsidiaries or any associated insured.

- Any indirect or consequential loss of any nature, including but not limited to:
  - any loss of income (such as interest and dividends) not realised by the insured or any other person or organisation; or
  - any costs incurred by the insured in re-writing or amending the insured’s software programs or systems where such re-writing or amending is necessary to correct the programs or systems; or
  - any contractual penalties incurred by the insured; or
  - any liability to a third party; or
  - any costs, fees or other expenses incurred by the insured in establishing a right under this policy (except as provided for under Claims Conditions and Procedures 12 - notification of direct financial loss); or
  - any costs, fees or other expenses incurred by the insured in prosecuting or defending any demand, claim or legal proceeding resulting from a direct financial loss which is covered under this policy.

- **direct financial loss** the proof of which is dependent solely upon:
  - a profit and loss computation; or
  - a comparison of inventory records with an actual physical count.

If, however, an employee is identified as having caused a direct financial loss, then inventory records and actual physical count of inventory can be submitted as partial evidence in support of proof of the direct financial loss as required by Claims Conditions and Procedures 12 Notification of Direct financial loss.

- **direct financial loss** arising out of or in any way connected with the accessing, use or dissemination of any confidential information including, but not limited to, proprietary information, trade secrets, computer programs, customer information, patents, trademarks, copyrights or processing methods.

- **direct financial loss** arising out of or in any way connected with:
  - the voluntary giving or surrendering of money, securities or other property in any exchange or purchase, unless such direct financial loss is directly caused by dishonest acts committed; or
  - the complete or partial non-payment or default under any credit arrangement including any payments made or withdrawals from any customer account involving items which are not finally paid for any reason; or
  - any trading in securities, whether or not in the name of the insured and whether or not in a genuine or fictitious account; or
  - the forgery or alteration or fraudulent use of any credit card, store card, fuel card or other form of credit issued by the insured to employees, unless the provisions, conditions and other terms under which such credit card, store card or fuel card issued have been fully complied with by the insured.
31. Exclusions applicable to tax audit

**Tax audit** does not cover, and we are not required to make any payment directly or indirectly arising out of, attributable to or in connection with:

- any direct financial loss occurring following forcible or violent entry to any premises occupied by an **insured** by any third party where such third party is acting alone and not in collusion with any **employee**.
- any direct financial loss connected with the issuing and drawing of cheques, account withdrawals or funds transfers sustained by the **insured** by reason of the absence of or failure to have a clear segregation of duties and procedures in connection with the issuing and drawing of cheques, account withdrawals or fund transfers in excess of $5,000 in value.

Such cheques, account transactions or fund transfers must be counter signed or authorised by another authorised officer who must, independently of the employee drawing the cheque, making account withdrawals or fund transfers, examine the supporting vouchers or requisitions or verify against an authorised payment list prepared and checked independently of the drawer of the cheque, or person making the account withdrawals or fund transfers.

- 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.).
- fines, penalties or damages including aggravated or exemplary damages for which the **insured** is legally liable.
- resulting or arising out of any computer virus or loss caused by a mechanical failure and/or programming error.
- arising directly or indirectly from or based upon or attributable to or in consequence of 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.
- damage or destruction of any land or buildings and/or fixtures and fittings thereon.

Any routine enquiries, or enquiries from the **auditor**, which are not identified as being either preliminary to, or relating to a tax audit of a return.

Any tax audit where a return has been prepared lodged or submitted dishonestly or fraudulently, and where the supporting documents have been falsely created or collected.

Prior circumstances

- any claim for professional fees under this automatic extension arising from any circumstances known to you, or any official, employee, or volunteer acting on your behalf, prior to the period of insurance; or
- verbal or written notice of an impending tax audit given to you, or any person or agent acting on your behalf, prior to the period of insurance; or
- a tax audit with a commencement date prior to the period of insurance.

Any form of managed investment.

**Professional fees** which:

- form part of an annual fixed fee or cost arrangement for taxation or accounting needs of your operations; or
- are incurred after the tax audit has been completed, including fees incurred in connection with any further review; or
- are ordinarily associated with the maintenance and upkeep of your business, accounts, returns, taxation and financial records and the preparation prior to lodgement of accounts, returns, taxation and financial records as required by any relevant legislation.

Any tax minimisation schemes.
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 defence costs. The allocation shall apply also to payments made before the determination.

2. Assignment
The policy cannot be assigned by you or any insured person entitled to indemnity under the policy.

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 (other than those which derogate from the covers given under Automatic Extension 34 - dedicated excess limit of liability for insured person).

4. Cancellation
You may cancel the policy at any time by notifying us in writing. 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. Court jurisdiction and applicable 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.

7. Geographic limits
Except for claims arising under Insuring Clause 4 - Employment Practices, Insuring Clause 6 - Statutory Liability, Automatic Extension 28 - employee fidelity and Automatic Extension 29 - third party fidelity, cover is restricted to wrongful acts, employment practices breaches and direct financial losses occurring within Australia.

Any country where you are required by the law of that country to have in force a local policy of insurance covering liability arising from any such wrongful acts.

For claims arising under Insuring Clause 4 - Employment Practices, Insuring Clause 6 - Statutory Liability, Automatic Extension 28 - employee fidelity and Automatic Extension 29 - third party fidelity, cover is restricted to wrongful acts, employment practices breaches and direct financial losses occurring within Australia.

8. 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.

9. 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 defence costs 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.

10. 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.

11. Merger or consolidation
If the insured merges or is consolidated with or becomes the subsidiary company of another entity during the period of insurance, we will continue to provide the indemnities available under the policy to you, your subsidiary companies and insured persons, until the expiry of the period of insurance or prior cancellation of the policy in respect of wrongful acts preceding the time of such merger, consolidation or acquisition.

12. Non-accumulation
Where you or an insured person are covered under the policy in respect of a claim or loss and are also entitled to cover under another insurance policy issued by us then our liability under the policy shall not be increased and our maximum liability under all such policies in the aggregate shall not exceed the highest limit of liability (and subject to any applicable aggregate limit) available under those policies in respect of such claim or loss.
13. 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.

14. 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 (Cth.).

15. Severability and non imputation

In determining cover under the policy:

- the written proposal shall be construed to be a separate application for cover by you and by each of the insured persons. No statement or representation in or with respect to the proposal by an insured person shall be imputed to any other insured person;
- no breach of any term or condition of the policy or other misconduct by any insured person shall be imputed to any other insured person;
- no fact or knowledge possessed by one insured person shall be imputed to any other insured person; and
- any fact or knowledge possessed by any past or present director, chief executive officer, chief operating officer or chief financial officer shall be imputed to the insured.

Claims conditions and procedures 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:

- comply with the duty of disclosure in terms of the Insurance Contracts Act 1984 (Cth); or
- comply with any obligation in terms of this policy; or
- 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

i. 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.

ii. In respect of Automatic Extensions 28 - employee fidelity and 29 - third party fidelity we may at any time and at our own expense exercise our rights of subrogation against any third party or employee where it has been found they have committed dishonest acts resulting in a direct financial loss that we have paid or will be liable to pay under the policy.

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 to 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

You must not make any admission of liability, offer, and 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.

We will have full discretion in the conduct and defence, in your name and on your behalf (including to take over and 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.

You must immediately give all such information and assistance to us as we may reasonably require to enable us to investigate and to defend claim and/or to enable us to determine our liability under the policy.

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.

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

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 defence costs associated with the claim.

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.

The costs of senior counsel are included in the defence costs 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 defence costs incurred up to the date of such refusal.

9. 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.

If during the period of insurance you undergo any material alteration to the insured risk, then the cover provided by the policy shall only apply in respect of wrongful acts or other conduct occurring prior to the effective date of such any material alteration to the insured risk.

10. Fraudulent claims

As a protection for all insurance policy holders we will take legal action against any person who makes a fraudulent claim.

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.

11. Notification of direct financial loss

You, as a condition precedent to our obligations under this policy, give written notice to us of any direct financial loss as soon as practicable within the period of insurance, or within the discovery period if applicable, but in any event not later than sixty (60) days after any direct financial loss is first discovered. The insured may offer a comparison between the insured's inventory records and actual physical counts of its inventory to prove the amount of loss only where the insured establishes that, wholly apart from such comparison, it has sustained a covered loss caused by an employee.

The insured must, at its own cost, also:

i. provide us with affirmative proof of the direct financial loss with full particulars within six (6) months of the direct financial loss being first discovered, and

ii. provide us with all requested information and documents and co-operate with us in all matters pertaining to the direct financial loss.

12. Basis of valuation of direct financial loss

For any direct financial loss covered under this policy, we are not liable for more than:

i. the actual market value of securities and money at the close of business on the day the direct financial loss was first discovered (determined by the value published in the Australian Financial Review), or the actual cost of replacing securities and money, whichever is less;

ii. the actual cash value of other property (not referred to in (i) above) at the close of business on the day the direct financial loss was first discovered, or the actual cost of replacing the property of like quality or value, whichever is less;

iii. the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data furnished by the insured in order to reproduce books of account and other records.

13. Settlement of direct financial loss

If the insured notifies us of a direct financial loss and we accept the notification under this policy, subject to the insured's compliance with Exclusion 13 - known claims or prior acts above, a loss adjustor will be appointed by us to establish proof of any element or part of the direct financial loss not yet accepted by us.

The loss adjustor shall:

i. investigate the facts behind such unproven direct financial loss; and

ii. determine the quantum of such unproven direct financial loss, and

iii. advise when and how the insured's controls were or may have been breached; and

iv. provide recommendations which may prevent future similar direct financial loss; and

v. issue their findings in a report format approved by us; and

vi. provide a copy of the report to the insured to us.
The report of the loss adjustor will not be binding and definitive as to the facts and quantum of such unproven direct financial loss.

We will pay for the reasonable and necessary fees, costs and expenses of the loss adjustor provided the unproven direct financial loss is ultimately determined to be covered under this policy. If that part of the direct financial loss is determined not to be covered under this policy, the insured will pay the said fees, costs and expenses of the loss adjustor.

Any amount of the loss adjusting fees paid by us under this section of the policy will be paid in addition to the limit of liability, and will not be the subject of any excess.