

# Directors & Officers Liability and Company Reimbursement Insurance Policy

Please read this policy in conjunction with the  
Certificate of Insurance



## Contents

---

Ansvar Insurance – Insurance products with flexible solutions.....	1
Our history .....	1
Why insure through Ansvar Insurance?.....	1
Developing our young Australians .....	1
Our insurance advantage .....	1
Who is the insurer and how can we be contacted? .....	1
Cooling off period .....	1
Costs .....	2
Code of Practice and Privacy Act .....	2
Complaints.....	2
What if we don't resolve your problem?.....	3
Important notices to Policyholders.....	3
Duty of disclosure .....	4
Goods and Services Tax (GST).....	4
Claims made.....	4
Certificate of insurance .....	4
Employment practices liability (EPL) .....	4
Retroactive liability.....	4
The contract between you and Ansvar Insurance.....	5
Advancement of defence costs.....	5
Allocation .....	5
Arbitration clause .....	5
Attendance at official investigations or inquiries .....	6
Authorisation clause .....	6
Cancellation .....	6
Confidentiality .....	6
Estates and legal representatives.....	6
Excess .....	6
Gender and number.....	6
Jurisdiction.....	6
Merger or consolidation .....	6
Settlement procedure .....	7
Severability and non imputation.....	7
Subrogation .....	7
Waiver of any rights .....	7
Definitions.....	7
Cover.....	10
Insuring clause A – Directors and officers liability.....	10
Insuring clause B – Company reimbursement.....	10
Limits of liability .....	10
Continuity of cover .....	11
Current outside directorships (not for profit organisations) .....	11
Extended reporting period .....	11
New subsidiaries .....	12
Occupational health and safety .....	12
Preservation of indemnity .....	12
Run-off cover for subsidiaries .....	12
Spousal liability cover .....	12
Exclusions .....	13
Claims procedures.....	15

Notification of claims..... 15  
Defence and settlement of claims..... 15  
Claims co-operation..... 16  
Fraudulent claims ..... 16

# Ansvar Insurance – Insurance products with flexible solutions

## Our history

Ansvar Insurance has been a trusted name in Australia since 1961. Owned by UK Insurance company, Ecclesiastical Insurance Office plc, we enjoy substantial financial backing and are proud to meet the rigorous regulatory requirements of an insurer serving Australians.

## Why insure through Ansvar Insurance?

With almost 50 years of experience in Australia we understand what customers are seeking in their insurance company: a trusted, responsible and professional organisation where you are treated with respect and care and offered choice and flexibility. Offering value for money, personal service and a demonstrated commitment to community programs explains why we are the insurer of choice for our Australia wide customers.

## Developing our young Australians

We are honoured to provide support to many community organisations throughout Australia. Each organisation provides valuable support to improve and enrich the lives of Australian youth so that they may contribute positively to the community in which they live. To find out more about our grants to Community Education Program please visit our website [ansvar.com.au](http://ansvar.com.au)

## Our insurance advantage

Ansvar Insurance is a specialist insurance company with a deep understanding of the issues confronting our customers.

We believe in offering more than just insurance. Our dedicated staff are committed to helping clients protect their assets by providing:

- specialist insurance advice in our core markets
- flexibility in underwriting
- independent, on-site, risk management inspections and expert advice to find solutions
- risk management seminars and advice on helping clients develop their risk management programs

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

Ansvar Insurance Limited, ABN 21007 216 506, is the issuer of this insurance policy. The registered office of Ansvar Insurance is Level 12, Ansvar House, 432 St Kilda Road, Melbourne, Victoria 3004. The Ansvar Insurance Australian Financial Services Licence number is 237826.

You can contact us by:

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

## Cooling off period

We will refund the entire premium you have paid for cover under this insurance policy if you cancel the policy within 21 days of its commencement. To do this, you must advise us in writing and return the insurance policy and certificate of insurance to your nearest Ansvar Insurance office.

You will **not** receive a refund if you have made a claim, or intend to make a claim, under the insurance policy.

## Terrorism

This policy excludes cover as a result of terrorism.

In the event that property damage and/or property owners liability occur linked to an event declared a terrorism incident by the responsible Minister, then you may be afforded protection within the limits of indemnity of this policy by virtue of the Terrorism Insurance Act 2003. The operations of this Act may also serve to reduce the settlement of your loss to a percentage of the otherwise recoverable loss. In the event that the settlement is reduced then this will be at the direction of the Minister.

A more detailed explanation of the operation of the Terrorism Insurance Act 2003 can be obtained at [www.arpc.gov.au](http://www.arpc.gov.au).

## Costs

The premium payable by you is shown in your Certificate of Insurance. The factors used to determine the premium payable under this policy include:

- the organizational structure of the insured entity and its subsidiaries;
- the nature and age of the business and any merger & acquisition history;
- the number of directors and officers required to be insured;
- the extent of directors' & management control in the operations;
- the nature and value of assets under management;
- the adequacy of property and other liability insurance in place;
- the period of insurance (short-term/annual), and length of retroactive cover;
- the sums insured or limits of liability;
- the excess selected;
- past claims, incidents, proceedings and disciplinary history.

The 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.

Premiums and fees are subject to Commonwealth and State taxes and levies which include the Goods and Services Tax and Stamp Duty, if applicable to your state. All are shown on your Certificate of Insurance

## 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.

The Privacy Act 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.

## Complaints

If you are not satisfied with our service we recommend that you use the complaints procedure set out below. The type of complaint could relate to the behaviour of or advice given by an Ansvr Insurance employee or authorised representative, a decision on a claim, the privacy of your personal information or any other matter relating to your insurance that is of concern to you. These procedures are available free of charge to you.

First, contact the employee or authorised representative with whom you have had contact to see if he or she can resolve the problem. If that is not possible, then contact the Regional Manager in your state. The Regional Manager will review the information and give you a response as quickly as possible; but no later than three working days from the date when the complaint is received.

If you are not satisfied with the response given by the Regional Manager, then please put your unresolved complaint in a letter and address it to:

The Secretary  
Internal Dispute Resolution Committee  
Ansvar Insurance Limited  
GPO Box 1655, Melbourne VIC 3001

You can also telephone the Secretary with your complaint on (03) 8630 3100, fax it on (03) 9804 5001, or choose to email your complaint to the Secretary at [insure@ansvar.com.au](mailto:insure@ansvar.com.au)

The Secretary will refer your complaint to the Committee which comprises the CEO, one Executive Manager and one of the non executive directors of Ansvar Insurance Limited, for a decision.

The Internal Dispute Resolution Committee has appropriate authority to deal with unresolved complaints. You will receive a response within seven (7) working days from the time the Internal Dispute Resolution Committee receives your unresolved complaint, or alternatively you will be asked for further information. If further information is required, you will receive a decision within seven (7) working days from the time Ansvar Insurance receives the additional information.

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

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

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

Financial Ombudsman Service  
GPO Box 3, Melbourne VIC 3001  
Ph: 1300 78 08 08 (National toll free)  
Ph: (03) 9613 7366  
Fax: (03) 9613 6399  
Email: [info@fos.org.au](mailto:info@fos.org.au)  
Website: [www.fos.org.au](http://www.fos.org.au)

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

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

## Important notices to Policyholders

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

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

### **Duty of disclosure**

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

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

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

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

### **Goods and Services Tax (GST)**

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

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

### **Claims made**

This insurance operates on a 'claims made' basis which means that you are covered for:

1. claims 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. circumstances 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 circumstances;
3. claims made against you in the last seven days of the period of insurance and reported to us within 30 days of the expiry date of the period of insurance.

### **Certificate of insurance**

Please refer to the certificate of insurance for information about the excess, period of insurance, name of insured and retroactive date.

### **Employment practices liability (EPL)**

This policy does not cover employment practices liability, either for an individual director or officer, the company or other entity. Such cover is available under a separate EPL policy by completion of the appropriate application form, which is available on request.

### **Retroactive liability**

This insurance does not provide cover in relation to claims arising out of acts, errors, omissions or conduct that occurred prior to the retroactive date shown in the certificate of insurance. The act, error omission or conduct which is the subject of any claim against any director or officer must have occurred on or after the retroactive date for cover to exist under this insurance policy.

## The contract between you and Ansvar Insurance

When we receive your premium, we will insure you against any wrongful act described in this insurance policy. This insurance covers any wrongful act happening anywhere in Australia. Your insurance commences and concludes at 4.00pm local time on the dates shown.

This is a claims made policy and only covers claims first made against the director or officer during the period of insurance.

If the terms of this agreement are not observed, cover under this policy may be reduced or cancelled.

### Advancement of defence costs

Where we elect not to take over and conduct the defence or settlement of any claim in the name of any director or officer and /or the company, we will meet the defence costs of any director or officer in defending or settling any claim made against them as they are incurred and prior to the finalisation of the claim provided always that indemnity in respect of such claim has been confirmed in writing by us.

Where we have not confirmed indemnity and we elect not to take over and conduct the defence or settlement of any claim, we may, at our discretion, pay defence costs as they are incurred and, prior to the finalisation of the claim.

We reserve the right to recover any defence costs from the directors or officers and/or the company severally according to their respective interests in the wrongful act and to the extent that it is subsequently established by judgement or other final adjudication that the directors and officers and/or the company were not entitled to the defence costs so advanced.

### Allocation

In the event of a claim which is made against a director or officer of the company and which is covered only partly by this policy, we will use our best efforts to ensure a fair and proper allocation of the claim for insured and uninsured portions.

We will also advance defence costs on a similar basis, which will apply to all defence costs unless otherwise agreed to by all parties.

### Arbitration clause

Neither we nor the directors and officers will be required to contest any legal proceedings unless a Senior Counsel (mutually agreed upon by us and the directors and officers of the company or in default of such agreement, selected by the chairman or president of the local Bar Council) shall advise that such proceedings should be contested. In formulating his or her advice, counsel shall take into consideration the economics of the matter, having regard to the damages and costs which are likely to be recovered by the plaintiff, the likely defence costs and the prospects of the directors or officers successfully defending the action.

The costs of such counsel's opinion shall, for the purpose of this policy, be regarded as part of the defence costs. In the event that counsel advises that, having regard to all the circumstances, the matter should not be contested but should be settled, providing settlement can be achieved within certain limits which, in counsel's opinion, are reasonable, then the directors or officers shall not object to any such settlement and shall co-operate with us to effect such settlement in accordance with this policy.

## **Attendance at official investigations or inquiries**

We will pay defence costs incurred with our prior written consent by or on behalf of a director or officer in attending any official investigation, examination, inquiry or other proceedings ordered or commissioned by any official body or institution, where a director or officer 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 against a director or officer which is covered under this policy.

## **Authorisation clause**

By acceptance of this policy, the company named in the certificate of insurance agrees to act on behalf of the directors and officers with respect to the giving and receiving of notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under the policy and the acceptance of endorsements or other notices provided for in this policy; and the directors and officers agree that the company shall act on their behalf.

## **Cancellation**

You may cancel this insurance policy at any time by notifying us in writing. We can cancel this insurance policy in accordance with the Insurance Contracts Act 1984. We will be entitled to retain premium for the period during which the insurance policy has been in force. You may be required to pay a cancellation fee if you cancel the insurance policy.

## **Confidentiality**

Neither a director, officer nor the company shall disclose in the annual report of the company the nature of the liabilities covered by this policy or the premium shown in the policy, unless required by law.

## **Estates and legal representatives**

The estates, heirs or legal representatives of deceased, incompetent or insolvent directors or officers shall be indemnified in like manner to such directors and officers provided always that they shall be subject to all the terms and conditions of this policy insofar as they are applicable.

## **Excess**

Your financial contribution if you have a claim is known as the excess. Our liability shall apply only to that part of any loss in respect of each claim which exceeds any applicable excess amount shown in the certificate of insurance.

## **Gender and number**

Except where the context otherwise requires it, words importing a gender include every other gender, words in the singular shall include the plural and words in the plural shall include the singular.

## **Jurisdiction**

This insurance policy shall be governed and construed in accordance with the laws of Australia. Any dispute under this insurance policy shall be resolved in accordance with the laws of Australia.

## **Merger or consolidation**

Where the company merges or is consolidated with or becomes the subsidiary company of another company or entity during the period of insurance, we will continue to provide indemnity in respect of

the company, its subsidiary companies and their directors and officers, but only in respect of claims for wrongful acts preceding the time of such merger, consolidation or acquisition.

## Settlement procedure

Subject otherwise to the provisions of the Insurance Contracts Act 1984 the directors or officers shall as a condition precedent to the right to be indemnified under this policy not admit liability for or settle any claim or incur any costs or expenses in connection therewith or enter into settlement without our written consent and we will be entitled at any time to take over and conduct in the name of the director or officer the defence or settlement of any claim. However, if the director or officer shall refuse to consent to any settlement recommended by us and shall 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 plus the defence costs incurred up to the date of such refusal.

## Severability and non imputation

For the sake of determining cover under this policy:

1. The written application shall be construed to be a separate application for cover by each of the directors or officers and no statement or representation in or with respect to the application by a director or officer shall be imputed to any other director or officer;
2. This policy shall, subject to the non accumulation general condition, be construed to be a separate policy between us for the one part and each director or officer for the other part and no breach of any term or condition of this policy or other misconduct by any director or officer shall be imputed to any other director or officer;
3. No fact or knowledge possessed by one director or officer shall be imputed to any other director or officer.

## Subrogation

If any payment is made under this policy in respect of a claim we will be subrogated to all rights of recovery of the company and any director or officer, and shall be entitled to pursue and enforce such rights in the name of the company and the director or officer, who shall provide us with all reasonable assistance and co-operation.

## Waiver of any rights

We will not pay any claim where you have agreed not to recover from persons liable to compensate you in respect of such claim.

## Definitions

In this insurance policy:

<b><i>certificate of insurance</i></b>	means the certificate of insurance attaching to this policy or any certificate of insurance subsequently issued during the period of insurance.
<b><i>claim</i></b>	means any writ, summons, application or other originating legal or written demand or arbitral proceedings, cross claim or counter-claim or written demand alleging any wrongful act, which is served upon a director or officer.

<b>computer or electronic equipment</b>	means any computer or other equipment or system for processing, storing or retrieving data and shall include but shall not be limited to any computer hardware, firmware or software, media, microchip, integrated circuit or similar device.
<b>company</b>	means the company insured under this policy and shown in the certificate of insurance including all its subsidiary companies.
<b>defence costs</b>	means all reasonable costs, charges and expenses relative to claims covered by this policy (other than wages or overtime, salaries or fees of any director or officer) incurred with our prior written consent in defending, investigating, attending or monitoring any claim or proceedings, including but not limited to official investigations, examinations, inquiries and the like, or from any subsequent appeals, together with all reasonable costs of bringing such appeals.
<b>director and/or officer</b>	means: <ol style="list-style-type: none"> <li>1. any natural person who was, is currently or may become a director, secretary, executive officer or employee of the company by whatever name called and whether or not validly appointed to occupy or duly authorised to act in such position; or</li> <li>2. any director or officer being a natural person and who by virtue of any applicable legislation, is deemed to be a director or officer of the company.</li> </ol>
<b>discrimination</b>	means any actual, alleged or attempted sexual discrimination, racial discrimination or vilification, disability discrimination, intimidation, workplace bullying or harassment.
<b>insurer, we, us, our</b>	means Ansvar Insurance Limited (A.B.N. 21 007 216 506).
<b>internet operations</b>	means: <ol style="list-style-type: none"> <li>1. use of electronic mail systems by the Insured's employees, including part-time and temporary staff, and others within the Insured's organisation;</li> <li>2. access through the Insured's network to the world wide web or a public internet site by the Insured's employees, including part-time and temporary staff, and others within the Insured's organisation;</li> <li>3. access to the Insured's intranet (meaning internal company information and computing resources) which is made available through the world wide web for the Insured's customers or others outside the Insured's organisation; and</li> <li>4. the operation and maintenance of the insured's web site.</li> </ol>
<b>known circumstance</b>	means any fact, situation or circumstance which: <ol style="list-style-type: none"> <li>1. any director or officer was aware of prior to the inception of this policy; or</li> <li>2. a reasonable director or officer would have considered at any time prior</li> </ol>

to the period of insurance might result in a person making an allegation against a director or officer in respect of a loss that might be covered under this policy.

***limit of liability***

means:

1. the limit for any one claim shown in the certificate of insurance
2. the limit for all claims in the annual aggregate shown in the certificate of insurance

***loss***

means the total amount payable in respect of a claim made against a director and/or officer for a wrongful act and shall include damages, judgements, settlements, interest, costs and defence costs.

***not for profit organisation***

means any company, entity, body, committee, council, club, association, trust or other enterprise whether incorporated or unincorporated that is exempt from the payment of income tax under State or Federal law.

***outside directorship***

means the position of director, officer, secretary, trustee or equivalent position held by a director or officer in a not for profit organisation at the request or direction of the company.

***policy***

means:

1. all the terms, conditions, definitions, exclusions and limitations contained herein;
2. the certificate of insurance;
3. any endorsements attaching to and forming part of this policy, either at inception or during the period of insurance.

***sexual abuse***

means any actual, alleged or attempted assault or abuse of a sexual nature, molestation, indecent exposure, sexual harassment or intimidation, including any verbal or non verbal act, communication, contact or other conduct of lewdness whether any of these are the subject of criminal investigation or not.

***subsidiary company***

means any company or other incorporated entity which at the inception of the period of insurance by virtue of Australian law was or is, either directly or indirectly, a subsidiary of the company insured under this insurance policy and shown in the certificate of insurance. Provided always that the accounts of any subsidiary company are consolidated into those of the company in accordance with the relevant accounting period.

**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:

- involves force or violence against one or more persons, or threat thereof; or
- involves damage to property; or
- endangers life other than that of the person committing the action; or
- creates a risk to health or safety of the public or a section of the public; or
- is designed to interfere with or disrupt an electronic system.

**wrongful act**

means any actual or alleged breach of duty, breach of trust, neglect, error, misstatement, misleading statement, omission, breach of warranty of authority or other act done or wrongly attempted by any director or officer or any liability asserted against them while acting in their individual or collective capacities as directors or officers.

## Cover

### Insuring clause A – Directors and officers liability

We will pay on behalf of the director or officer for loss arising from any claim, first made against such director or officer jointly or severally during the period of insurance and notified to us during the period of insurance, for any wrongful act committed by them in their capacity as directors or officers of the company, except that we will not pay under this insuring clause when and to the extent that the directors or officers are entitled to be indemnified by the company.

### Insuring clause B – Company reimbursement

We will pay on behalf of the company for loss arising from any claim first made against the director or officer during the period of insurance and notified to us during the period of insurance for any wrongful act committed by them in their capacity as directors or officers of the company, but under this insuring clause we will only pay when and to the extent that the company has indemnified the director or officer for such loss.

### Limits of liability

Our total liability under this policy including defence costs shall not exceed the respective limits shown in the certificate of insurance.

For the purposes of this policy, all claims arising out of one wrongful act and/or causally inter-related wrongful acts of any director or officer shall be deemed to be one claim made in the period of insurance in which the claim is first made or deemed to be made against any director or officer.

The coverage extensions of this policy shall form part of and not be in addition to our aggregate liability.

## Continuity of cover

In the absence of fraudulent non disclosure or misrepresentation, this insurance policy will indemnify a director or officer for any claim arising from a known circumstance:

1. if we were the directors and officers liability insurer of the director or officer when that person first knew of such known circumstance; and
2. if we continued without interruption to be the directors and officers liability insurer of the director or officer up until this policy came into effect; and
3.
  - a. had we been notified by the director or officer of the known circumstance when he/she first knew or ought to have known of it that person would have been covered under the policy in force at that time but is not now covered by that policy; and
  - b. the director or officer would have been covered by this policy but for the known circumstance exclusion; and
  - c. the claim or known circumstance had not previously been notified to us or to any other insurer.

Our liability under this cover is the lesser of:

1. the sum insured under the insurance policy in force at that earlier time; or
2. the sum insured under this policy.

The terms of this insurance policy otherwise apply.

## Current outside directorships (not for profit organisations)

We will provide indemnity for outside directorships which a director or officer holds in any not for profit organisation at the commencement of or during the period of insurance provided always that:

1. such indemnity will not extend to any of the other directors or officers (by whatever name called) of the said not for profit organisation who are not also directors or officers of the company insured under this insurance policy;
2. no indemnity whatsoever is available to the said not for profit organisation under insuring clause B;
3. cover under this extension shall be non cumulative with any other insurance issued by us.

## Extended reporting period

If we refuse to offer renewal at the expiry date of this insurance policy, we will cover the company and/or directors and officers for any wrongful act committed or alleged to have been committed or attempted during the past period of insurance and not reported within that period providing all of the following conditions are met:

1. the claim against the company or its directors and officers is reported to us within 12 months of the expiry date of this insurance policy; and
2. the company has paid a premium equal to 50% of the total expiring annual premium shown in the certificate of insurance; and
3. this extension is exercised prior to the expiry of this insurance policy.

This extended reporting period is not available if the company has been subject to any merger, takeover, sale or winding up during the period of insurance.

## New subsidiaries

Where the company creates or acquires a subsidiary company during the period of insurance, we will provide indemnity in respect of such subsidiary company and its directors and officers but only in respect of wrongful acts actually or allegedly committed or attempted from or after the time when such entity becomes a subsidiary company.

In the case of a subsidiary company whose consolidated asset value exceeds, as at its last balance date or date of its creation, 10% of the total consolidated asset value of the company:

1. notification of such subsidiary company shall be given in writing to us within 60 days after such acquisition or creation; if notification is not given to us within 60 days after the acquisition or creation, cover will cease at 4.00pm, 60 days after the acquisition or creation;
2. we may at our discretion, provide cover for such subsidiary company pursuant to such additional terms and/or premium as may be agreed.

## Occupational health and safety

Notwithstanding the bodily injury exclusion and the insured versus insured exclusion, we will pay on behalf of a director or officer or the company, any defence costs incurred in defending a claim alleging a wrongful act consisting of a breach of an occupational health and safety law. However, any payments under this extension shall only apply to claims made in the courts of Australia or New Zealand. Furthermore, the total of all payments under this extension shall not exceed \$500,000 for all claims in the annual aggregate.

## Preservation of indemnity

If a director or officer is unable to satisfy a right to indemnity against the company to which he or she is entitled, whether under common law or statute, or otherwise, by reason only of the company being placed in liquidation (other than voluntary liquidation) and having insufficient funds available so to indemnify the director or officer, then it is hereby agreed that we will indemnify the director or officer to the extent that the director or officer is unable to satisfy the right to indemnity against the company.

The burden of adducing satisfactory proof to obtain the benefit of this extension shall rest entirely with the director or officer and shall include the production of documentary evidence of the company's assets and liabilities and any official statements issued by the liquidator.

## Run-off cover for subsidiaries

Where an entity ceases to be a subsidiary company during the period of insurance we will provide indemnity in respect of such subsidiary company and its directors and officers but only in respect of claims for wrongful acts preceding the time when such entity ceased to be a subsidiary company.

## Spousal liability cover

We agree to pay on behalf of the lawful spouse of a director or officer all loss in respect of a wrongful act by the director or officer. Provided always that we will only indemnify the spouse for loss arising from a claim which:

1. is made against the spouse only because he or she is the lawful spouse of the director or officer; and
2. relates to property either jointly held by the director or officer and his or her lawful spouse, or transferred by that director or officer to his or her lawful spouse for legitimate purposes only.

## Exclusions

We will not cover any claim arising from or attributable to:

1.
  - a. bodily injury, sickness, disease, or death of any person; or
  - b. destruction of or damage to tangible property (including the loss of use thereof);
2.
  - a. a wilful breach of duty, the dishonest, fraudulent or malicious act or omission or other act or omission committed with criminal intent of any director or officer; or
  - b. any director or officer having improperly benefited from securities transactions as a result of information that was not available to other sellers and/or purchasers of such securities; or
  - c. any director or officer having gained any personal advantage to which he/she was not legally entitled;

However, this exclusion shall only apply to the extent that the subject conduct has been established by a judgement or other final adjudication adverse to the director or officer;

3. actual or alleged failure or inability of any computer or electronic equipment, whether the property of the company or not, and whether occurring before, during or after the year 2000:
  - a. to correctly or satisfactorily recognise any date as its true calendar date or any period of time as its true period of time; or
  - b. to capture, save or retain, or correctly or satisfactorily to manipulate, interpret or process, any data or information or command or instruction as a result of treating any date otherwise than as its true calendar date, or any period of time otherwise than as its true period of time; or
  - c. to capture, save or retain, or correctly or satisfactorily to process any data as a result of the operation of any command which has been programmed into any computer or electronic equipment being a command which causes the loss of data or the failure or inability to capture, save or retain or correctly or satisfactorily to process such data on or after any date;

In the event of any inconsistency between this exclusion and other terms of this policy, this exclusion shall prevail;

4. action brought by or on behalf of the company or any director or officer or their estates heirs representatives successors or assigns against any other director or officer;
5. action brought by or on behalf of any shareholder holding directly or beneficially 10% or more of the voting shares or rights of the company;
6.
  - a. atomic energy operations employing the process of nuclear fission or fusion or handling radioactive material which operations include but are not limited to:
  - b. the use of nuclear reactors such as atomic piles, particular accelerators or generators or similar devices; or
  - c. the use handling or transportation of radioactive materials; or
  - d. the use handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion;

Provided always that this nuclear risks exclusion shall not apply to any claim arising from radio-isotopes or radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits;

7. any known circumstance;

8.
  - a. a breach or alleged breach of duty in respect of the rendering or failure to render professional services and/or professional advice; or
  - b. a breach or alleged breach of any contract for the provision of professional services and/or professional advice;
9. the issue of any prospectus type document and or initial public offering of securities of the company;
10. any wrongful act committed, attempted, or alleged to have been committed or attempted prior to the retroactive date shown in the certificate of insurance;
11. 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**;
12. war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power or 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;
13. loss which would not have arisen but for the existence of asbestos;
14. the failure of investments to perform in accordance with company and/or market expectations;
15. any sexual abuse;
16. any discrimination;
17. operations or any activities in the United States of America and/or Canada.  
However, this exclusion shall not apply to any wrongful act committed by any director or officer resident outside the United States of America and/or Canada, who is temporarily visiting the United States of America and/or Canada;
18.
  - a. bodily injury or financial loss or loss of, damage to, or loss of use of property directly or indirectly arising out of the discharge, dispersal, release or escape of pollutants;
  - b. the cost of removing, nullifying or cleaning up pollutants;
  - c. fines, penalties, punitive or exemplary damages arising directly or indirectly out of the discharge, dispersal, release or escape of pollutants.

However, we will cover liability otherwise excluded under paragraphs (a) and (b) above which:

- arises from a sudden identifiable, unintended and unexpected happening which takes place in its entirety at a specific time and place; and
- is indemnified under not more than one annual period of insurance.

19. fines, penalties imposed by law, civil penalties, liability for group or sales tax, punitive, aggravated or exemplary damages or matters uninsurable under law pursuant to which this policy is construed.

20. a. the insured's "internet operations". This exclusion does not apply to bodily injury or property damage arising out of any material which is already in print by a manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site. Coverage does not include bodily injury or property damage arising out of any other advice or information located on the site that is used for the purpose of attracting customers;
- b. property damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
- i. the use of any computer hardware or software;
  - ii. the provision of computer or telecommunications services by or on behalf of the insured;
  - iii. the use of computer hardware or software of any third party, whether authorised or unauthorised, including any damage caused by any computer virus.

Nothing in this exclusion shall be construed to extend coverage under this policy to any liability which would not have been covered in its absence.

## Claims procedures

### Notification of claims

You must forward to us every originating process, whether by way of writ, summons, third party notice or cross claim, immediately upon receipt or service thereof and notice of any prosecution, inquest or fatal accident inquiry which you receive. This must be notified to us during the period of insurance. If this is not done your right to cover under this policy may be affected.

You are required, at your expense, to take all reasonable steps to minimise any claim and to prevent further claims arising out of the same or similar conditions.

All notices to us under any provisions of this policy shall be validly and lawfully given if it is given in writing and delivered, given by courier, certified mail or facsimile properly addressed to the appropriate party at the address or to the facsimile number stated in the certificate of insurance.

### Defence and settlement of claims

You must not make any admission of liability, offer, promise of payment, take any action that may be considered to be an admission of liability, settle or repudiate a claim without our prior written consent.

We shall have full discretion in the conduct and defence, in your name and on your behalf, 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. We shall be entitled to attend any inquest or fatal accident inquiry in respect of which there may arise any liability under this policy.

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

Unless these terms are complied with, our liability in respect of any claim shall be reduced by the amount that fairly represents the extent to which our interests have been prejudiced thereby.

## Claims co-operation

The directors and officers shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any loss hereunder, and shall immediately give all such information and assistance to us as we may reasonably require to enable us to investigate and to defend the claim and/or to enable us to determine our liability under this policy.

We may, on request from the director or officer for indemnity under this policy, take whatever action that we consider appropriate to protect the directors' and officers' position in respect of the claim against the director or officer and such action by us will not be regarded in any way prejudicing our position under this policy and no admission of the directors' and officers' entitlement to indemnity under this policy shall be implied.

## 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 insurance policy.

**Ansvar Insurance**

1300 650 540

[ansvar.com.au](http://ansvar.com.au)

**Victoria**  
**AD** GPO Box 1655  
Melbourne 3001  
**FX** +61 3 9804 5129

**South Australia**  
**AD** PO Box 630  
Fullarton 5063  
**FX** +61 8 8338 1920

**New South Wales**  
**AD** PO Box 1410  
Parramatta 2124  
**FX** +61 2 9687 9564

**Western Australia**  
**AD** PO Box 840  
West Perth 6872  
**FX** +61 8 9324 2013

**Queensland**  
**AD** GPO Box 747  
Brisbane 4001  
**FX** +61 7 3011 8999

**Tasmania**  
**AD** PO Box 330  
Launceston 7250  
**FX** +61 3 9804 5129

**EM** [insure@ansvar.com.au](mailto:insure@ansvar.com.au)

**Ansvar Insurance Ltd.**

ABN 21 007 216 506 **AFSL** 237826

Member of the Ecclesiastical Insurance Group

