

# Professional Indemnity Insurance

POLICY WORDING

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# Contents

<b>About Ansvar</b>	<b>3</b>	<b>The Policy:</b>	
<b>Insurance from one of Australia's specialist insurers</b>	<b>3</b>	<b>Management Liability Insurance</b>	<b>6</b>
Giving Back	3	<b>The contract between you and Ansvar Insurance</b>	<b>6</b>
Our Approach	3	Definitions applicable to the policy	6
		Operative Clause	8
<b>About this insurance policy wording</b>	<b>3</b>	Claims made and notified	8
Contact Us	3	Interpretation	8
		<b>Insuring Clauses applicable to the policy</b>	<b>8</b>
<b>Important Information</b>	<b>4</b>	<b>Limit of liability applicable to the policy</b>	<b>8</b>
<b>Changes to the insurance policy wording</b>	<b>4</b>	Excess applicable to the policy	8
Code Of Practice	4	Insurance clarifications applicable to the policy	8
Costs	4	<b>Automatic Extensions applicable to the policy</b>	<b>9</b>
Critical documents	4	<b>Exclusions applicable to the policy</b>	<b>13</b>
Goods and Services Tax (GST)	4	<b>Conditions applicable to the policy</b>	<b>15</b>
Resolving Complaints and Disputes	5	<b>Claims conditions applicable to the policy</b>	<b>16</b>
Retroactive liability	5		
Subrogation	5		
Your Duty of Disclosure	5		
Your privacy	5		

# About Ansvar

## Insurance from one of Australia's specialist insurers

With 60 years of experience in the Australian insurance industry, Ansvar has become a leading specialist provider of insurance and risk management solutions for the Care Services, Community Services (Not for Profits), Education and Learning, Faith Communities, Arts, Culture and Heritage and Commercial Property Owner sectors.

A highly respected and ethical insurer, Ansvar is owned by the Benefact Group, a leading insurer of heritage, religious and charitable organisations in the UK. Established in 1887, the Benefact Group gives all available profits to good causes. In recent years, the Benefact Group has given €100m to good causes and has committed to giving back €250m to good causes by 2025, truly making a real difference to the world we live in.

### GIVING BACK

For over 25 years, Ansvar has played a small part in making a positive impact on the world through our Community Education Program (CEP). As part of our mission to give back to the community, Ansvar will continue to donate a percentage of our profits to organisations that provide valuable support to improve and enrich the lives of disadvantaged young Australians, so that they may contribute positively to the community in which they live.

Since starting in 1994, Ansvar's Community Education Program has provided a range of grants contributing over \$15 million to help fund over 100 different charities and not for profit organisations with a focus on supporting the education and life skill development needs of disadvantaged young Australians. Through a program focussed on Empowerment and Education and Outreach and Support, Ansvar has reached and made a genuine difference to the lives of thousands of young Australians in need.

### OUR APPROACH

As a sector specialist, Ansvar has developed a deep understanding of clients' needs, the risks and challenges they face and the complex environments in which they operate. We understand

that fully protecting our clients requires a holistic approach and that being protected isn't simply about insuring against events that might happen but where possible taking steps to prevent or minimise the impact of those events in the first place.

Ansvar has a dedicated team of risk management specialists that can assist brokers and clients in assessing effectiveness of current approaches to risk management and guide opportunities for improvement.

With our sector expertise and knowledge combined with a flexible underwriting approach, Ansvar offers tailored insurance solutions to provide the right cover to suit the unique needs of clients within our core sectors. We believe however that the real moment of truth is in the way we respond to claims. Ansvar has a dedicated team of claims specialists focused on quickly solving the problems of our clients and going the extra mile to ensure the client is looked after in the best way possible. With a compassionate and strong ethical approach, our claims team is well experienced and knowledgeable in handling both sensitive and intricate claims.

## 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 any **endorsements we** issue upon acceptance of **your** proposal, the policy wording 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 the terms, conditions and limitations of **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 any **endorsements we** issue for a full understanding of these terms, conditions and limitations.

This insurance policy wording was prepared in April 2024.

### CONTACT US

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.

Call us on 1300 650 540, email us at [insure@ansvar.com.au](mailto:insure@ansvar.com.au) or visit us at [www.ansvar.com.au](http://www.ansvar.com.au)

# 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](http://www.ansvar.com.au) to find out what changes might have occurred;

If changes have occurred, we will be pleased to provide you with a paper copy of them on request.

## CODE OF PRACTICE

The General Insurance Code of Practice (the Code) was developed by the Insurance Council of Australia to further raise standards of practice and service across the insurance industry.

**You** can obtain information on the Code and how it assists you by contacting us on 1300 650 540.

The Code Governance Committee is an independent body that monitors and enforces insurers' compliance with the Code.

For more information on the Committee please go to the following website [insurancecode.org.au](http://insurancecode.org.au)

## COSTS

The premium payable by you is shown in your **certificate of insurance**. 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 operations 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.

## 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.

## 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

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## Important information (continued)

### RESOLVING COMPLAINTS AND DISPUTES

Ansvar is committed to resolving any complaints in relation to our products, services or handling of personal information.

Our process has three key stages.

#### 1. Talk to us

Discuss **your** complaint with us by calling 1300 650 540 or sending an email outlining your concerns to [insure@ansvar.com.au](mailto:insure@ansvar.com.au) and one of **our** team members will assist **you**. We will acknowledge receipt of **your** complaint within one business day. The team member will refer **you** to a manager if they are unable to resolve the matter for **you**. If **you** are not satisfied with the response, please go to step 2.

#### 2. Contact our service centre

You may request a review of your complaint by our Dispute Resolution Committee.

Contact us on 1300 650 540, or by email: [insure@ansvar.com.au](mailto:insure@ansvar.com.au) or post: Ansva Disputes Resolution GPO Box 1655, Melbourne, Victoria 3001. Our service team will contact **you** if they require further information and they will provide **you** with an outcome within 30 calendar days of us receiving notice of the complaint. Please ensure you provide us with your preferred contact details.

#### 3. Refer for external dispute resolution

If we are unable to resolve your complaint you may seek advice from the Australian Financial Complaints Authority (AFCA).

Website: [afca.org.au](http://afca.org.au)

Phone: 1800 931 678 (free call)

### RETROACTIVE LIABILITY

The **policy** does not provide cover in relation to any **loss** or **claim** directly or indirectly arising out of, attributable to or in connection with any actual or alleged breach, act, error or omission which occurs prior to the **retroactive date** as shown in the **certificate of insurance** and applicable to the insuring clause under which cover would otherwise be available.

### SUBROGATION

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

### 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.

#### **You do not need to tell us anything that:**

- reduces the risk **we** insure **you** for; or
- is common knowledge; or
- **we** know or should know as an insurer; or
- **we** waive **your** duty to tell us about.

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.

### YOUR PRIVACY

Ansvar places the highest priority on protecting the privacy of **your** personal information.

#### Why we collect personal information

The information **we** collect is used to assist **us** to provide **our** products and services, including to process and settle **claims**; to manage **our** relationship with **you**; and to meet **our** legislative obligations as an insurer.

If **you** do not provide the personal information **we** require, **we** may not be able to provide **you** with **our** products and services.

#### How we collect personal information

Information is generally collected from **you** or **your** insurance broker when **you** are applying for or enquiring about **our** insurance products, or when making a **claim**. We may also collect **your** personal information from people who are involved in a **claim**, or assist **us** in investigating or processing **claims**.

#### Who we disclose your personal information to

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 agreements and are prohibited from using the information for any other purpose. These service providers are aware of their obligations under the Privacy Act 1988 (Cth) and the General Insurance Code of Practice.

**We** are unlikely to provide **your** personal information to overseas recipients.

# The Policy: Management Liability Insurance

## The contract between you and Ansvar Insurance

### Definitions applicable to the policy

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

Where used in the **policy**:

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

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

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

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

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

**costs and expenses** means all reasonable legal costs and other expenses incurred by or on behalf of the **insured** with **our** prior written consent (such consent which shall not be unreasonably withheld) and extends to solicitors' fees, counsels' fees, experts'

fees and disbursements in the investigation, defence, appeal and settlement of a **claim**.

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

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

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

- i. any current or former principal, partner or director of the **insured** but only in respect of work performed while a principal, partner or director of the **insured**;
- ii. consultants, subcontractors or agents.

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

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

**foster care** means services to children who cannot live with their birth families, where a child is placed in the home of a foster carer or kinship carer or in a voluntary care arrangement.

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

**insured, you, your** means:

- i. insured person;
- ii. the incorporated entity or **organisation**, company or corporation specified as the **insured** in the **certificate of insurance**, including any predecessor in the **business** or **practice**;
- iii. any **subsidiary** at inception of this **policy** or as otherwise agreed by **us** to be covered under Automatic Extension 16 - New created/ acquired **subsidiary**.

**insured person** means:

- i. any predecessor in the **business** or **practice** of the **insured**;
- ii. any person who is, at inception of the **period of insurance**, a principal, partner or director of the **insured** but only in respect of work performed while a principal, partner or director of the **insured**;
- iii. any person who becomes, during the **period of insurance**, an **employee** of the **insured** but only in respect of work performed while an **employee** of the **insured**;

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## The Policy: Professional Indemnity Insurance (continued)

### Definitions applicable to the policy (continued)

- iv. any former principal, partner, director or **employee** of the **insured**, but only in respect of work performed while such person was a principal, partner, director or **employee** of the **insured**; and/or
- v. any consultant, sub-contractor or agent but only to the extent that they are indemnified under Automatic Extension 12 - Consultants, subcontractors and agents.

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

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

**joint venture** means any incorporated enterprise undertaken jointly by **you** and a third party or parties or parties in connection with the **business** or **practice**.

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

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

**national law** means the Health Practitioner Regulation National law established under the Health Practitioner Regulation National law Act 2009 (Cth) or equivalent legislation enacted in any state or territory of Australia.

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

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

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

**policy** means the policy wording, **certificate of insurance** and any **endorsement** attaching at inception or during the **period of insurance**.

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

**proposal** means the written or electronic insurance application form or renewal declaration document together with any supplementary material completed by or on behalf the **insured** that was given to **us**, and relied on by us to effect this **policy**.

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

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

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

**retroactive date** means the retroactive date shown in the **certificate of insurance**. **We** do not provide cover under the **policy** for any act, error or omission occurring or committed prior to the **retroactive date**.

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

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

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

**spouse** means a lawful spouse, domestic partner or any person deriving similar status by reason of the common law or statute.

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

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

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

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

## 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, if applicable, any **endorsement** to the **policy** subject to the **aggregate limit of liability** and the **limit of liability** listed in the **certificate of insurance**.

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

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

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

## CLAIMS MADE AND NOTIFIED

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

1. **claims** first made against **you** and notified to **us** during the **period of insurance** provided that **you** were not aware at any time prior to the start of the **period of insurance** of any fact, situation, event or circumstance which could lead to a **claim** being made against **you**; and
2. **claims** first made against **you** after the **period of insurance**, provided that the facts that gave rise to the **claim** are facts **you** first became aware of during the **period of insurance** and **you** notified **us** in writing of those facts during the **period of insurance**.

## INTERPRETATION

Where headings are used in the **policy**, they are purely descriptive in nature and are not intended to be used for interpretative purposes.

Words importing the singular number shall include the plural and vice versa.

## Insuring clauses applicable to the policy

### 1. Civil Liability

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

### 2. Supplementary Payments: Costs and Expenses

**We** agree to pay **costs and expenses** incurred by or on behalf of **you** with **our** prior written consent (such consent will not be unreasonably withheld) in connection with the **investigation**, defence and/or settlement of any **claim** indemnified by Insuring Clause 1 - **Civil liability** of, and otherwise covered by, **the policy**.

## Limit of liability applicable to the policy

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

## EXCESS APPLICABLE TO THE POLICY

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

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

## INSURANCE CLARIFICATIONS APPLICABLE TO THE POLICY

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

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

**Claims** for **civil liability** for compensation resulting from any breach in the conduct of the professional activities of **your business** or **practice** of the provisions of the Competition and Consumer Act 2010 (Cth), the Fair Trading Act 1987 (NSW) or similar legislation in other states, but not being **claims** arising:

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

### 2. Libel, slander, defamation

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



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## The Policy: Professional Indemnity Insurance (continued)

### 3. Intellectual property

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

### 4. Duties owed

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

### 5. Contractual liability

Contractual liability in the conduct of the professional activities of **your business** or **practice**, provided always that **we** will not be liable to provide indemnity for any liability assumed by the **insured** under any contract or agreement unless such liability would have attached to the **insured** in the absence of such contract or agreement.

## Automatic extensions applicable to the policy

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

### 1. Defence costs

**We** agree that, in relation to any **claim** for which indemnity may be provided under this **policy**, **we** will pay defence costs:

- Where **we** have confirmed indemnity based on our assessment of the **claim** or the findings from an independent review **we** may reasonably require, **we** will pay the defence costs as they are incurred; or
- 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 to which **we** have consented as they are incurred.

Excepting where **we** have consented to pay defence costs under b) above, **we** reserve the right to recover any defence costs paid under this extension from **you** to the extent that is established by final adjudication, that **you** were not entitled to under this **policy**.

### 2. Dishonesty of employees

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

### 3. Estates, heirs or legal representatives

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

### 4. Continuous cover

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

Provided always that:

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

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

### 5. Malpractice cover

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

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

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

### 6. Loss or damage to documents

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

Provided always that:

- such **loss** or damage is sustained during the **period of insurance** while the **documents** are on **your** premises or in transit anywhere in the world (other than the United States of America or Canada or their territories

## The Policy: Professional Indemnity Insurance (continued)

or protectorates) or in **your** custody or the custody of any person to whom **you** have entrusted them in the conduct of the professional activities of **your business** or **practice**; and

- b) the amount of any indemnity for such costs, charges and expenses shall be supported by bills and accounts which shall be subject to approval by a competent person to be nominated by **us** with **your** consent; and
- c) **we** shall not be liable in respect of **loss** or damage caused by riot or civil commotion; and
- d) the total **we** will pay under the **policy** under this automatic extension is sub-limited to \$2,000,000 in the aggregate. This sub-limit forms part of and is not in addition to the **limit of liability** and the **aggregate limit of liability**.

### 7. Investigations and inquiries

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

### 8. Waiver of excess

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

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

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

### 10. Joint venture cover

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

### 11. Good samaritan acts

**We** agree to pay on behalf of any of **your employees** in respect of legal liability otherwise covered under the **policy** arising from the rendering of emergency first aid assistance, known as **good samaritan acts** in connection with **your business** or **practice**, to any person other than **relatives** of the **employees** who reside with them provided, however, **we** shall not be liable

where the **employee** was acting at the time under a contract of employment with any employer other than **you**.

### 12. Consultants, subcontractors and agents

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

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

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

Provided always that cover as afforded under this automatic extension shall not apply to any **medical practitioner**, midwife or healthcare professional.

### 13. Court attendance costs

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

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

### 14. Public relations expenses

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

- a) **you** must notify **us** within a reasonable period of first becoming aware of **your** reputation being brought into question and provide full written details outlining the circumstances surrounding the event; and
- b) **we** must have given prior written consent to retain the services of such public relations consultants and **our** consent shall not be unreasonably withheld; and
- c) the total **we** will pay under the **policy** under this automatic extension is sub-limited to \$100,000 in the aggregate. This sub-limit forms part of and is not in addition to the **limit of liability** and the **aggregate limit of liability**.

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

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

- a) **you** are subject to a merger, takeover, sale; or
- b) the appointment of a receiver, controller, administrator or liquidator to the **insured** or the commencement of a

## The Policy: Professional Indemnity Insurance (continued)

scheme of arrangement or compromise or a winding up process in respect of the **insured**.

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

### 16. New created/acquired subsidiary

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

Provided always that:

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

### 17. Past subsidiary organisations

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

Provided always that:

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

### 18. Claims preparation costs

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

Provided always that:

- a) the total **we** will pay under the **policy** under this automatic extension is sub-limited to \$25,000 in the aggregate. This sub-limit forms part of and is not in addition to the **limit of liability** and the **aggregate limit of liability**.
- b) Notwithstanding the **excess** shown in the **certificate of insurance**, payment under this clause will be subject to an **excess** of \$1,000 each and every **claim**.
- c) Payments provided under this clause, shall not include any payments made under Insuring Clause 2 of the **policy**.

### 19. Emergency defence costs

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

Provided always that:

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

### 20. Sixty day reporting period

The **insured** may continue to notify the **insurer** of **claims** up to 60 days after the expiry of the **period of insurance**, but only **claims** first made against the **insured** during the **period of insurance** and based on any conduct of the professional activities of **your business** or **practice** committed or alleged to have been committed prior to expiry of the **period of insurance**.

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

### 21. Extended claim and reporting period

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

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

### 22. Spousal liability

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

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

## The Policy: Professional Indemnity Insurance (continued)

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

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

### 23. Privacy breach response costs

**We** agree to pay any reasonable fees, **costs and expenses** incurred by the **insured** during the **period of insurance**, with our prior consent, (which shall not be unreasonably withheld) to notify any client, third party or regulator in accordance with the **insured's** legal liability as a result of any actual, alleged or suspected breach of privacy or duty of confidentiality in relation to personal information collected during, or in the course of carrying on, **your business** or **practice**, regardless of whether a **claim** has been made against the **insured**.

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

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

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

### 24. Severability and non-imputation

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

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

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

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

### 25. Vicarious liability

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

## Exclusions applicable to the policy

This insurance shall not provide cover for losses, liability, cost or expense of whatever nature directly or indirectly arising from, contributed to by, or in connection with:

#### 1. Retroactive date

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

#### 2. Directors and officers liability

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

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

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

#### 4. Fraud and dishonesty

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

#### 5. Jurisdictional and territorial limit

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

#### 6. Radioactivity and nuclear waste

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

#### 7. Pollution

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

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## The Policy: Professional Indemnity Insurance (continued)

### 8. Prior claims

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

### 9. War and mutiny

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

### 10. Terrorism

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

### 11. Asbestos

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

### 12. Employer's liability

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

### 13. Financial institution

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

### 14. Fines, penalties and exemplary damages

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

### 15. Industrial awards

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

### 16. Investment performance/advice

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

### 17. Related controlling interests and subsidiaries

Work undertaken for or on behalf of:

- a) any company or firm in which **you** or **your employees** exercise or have exercised a controlling interest; or
- b) **your** parent company (if any), any **subsidiary** company, or any other company in which **you** or **your** parent company has or has held at least a 20% financial interest unless such **claim** or costs or expenses emanates from an independent third party.

### 18. Discrimination

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

### 19. Sexual abuse

Any actual or alleged **sexual abuse**.

### 20. Criminal acts, sterility, drugs and anaesthesia

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

### 21. Medical practitioners, health professionals and midwives

**Claims** made against any person who is:

- a) a medical practitioner, as defined under the **national law**;
- b) a self-employed registered health professional as defined in the **national law**; or
- c) a midwife or any person performing midwifery, where the **claim** is in connection with such person acting in their capacity as medical practitioner, registered health professional or midwife.

### 22. North American Operations

Any **claim** arising **from any civil liability incurred** in the United States of America or Canada or any of their territories or protectorates.

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## The Policy: Professional Indemnity Insurance (continued)

### 23. Intoxicants and drugs

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

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

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

### 24. Goods sold, stored, supplied or distributed

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

### 25. Insolvency

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

### 26. Legal advice

The provision of any form of legal services.

### 27. Tax advice

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

### 28. Manufacturing/construction/property development

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

### 29. Licensing inquires

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

### 30. Worldwide Punitive Damages Clause

Notwithstanding anything to the contrary contained herein, it is understood and agreed that punitive damages and/ or exemplary damages and/ or aggravated damages and/ or any additional damages resulting from the multiplication of compensatory damages against **you**:

- a) in respect of any **claim** arising under this **policy**
- b) in respect of any judgement award or settlement made within the legal jurisdiction of the United States of America and/ or Canada to any order made anywhere in the world to enforce such judgement award or settlement in whole or in part.

Shall be excluded from recovery hereon, except for damages arising from libel, slander or defamation actions.

### 31. Waiver of rights

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

### 32. Communicable Disease

Contributed to by, or in connection with (in each case whether directly or indirectly):

- a) Highly pathogenic avian influenza in humans; or
- b) Any disease(s) determined to be a listed human disease pursuant to subsection 42(1) of the Biosecurity Act 2015 (Cth), or any subsequent amendment, replacement or successor legislation of the Commonwealth of Australia, including delegated legislation; or
- c) Any pandemic or epidemic, as declared as such by the World Health Organisations; or
- d) Any mutation of the diseases described in a) to c) inclusive,

including any fear or threat thereof (whether actual or perceived) or action taken by a competent public authority in controlling, preventing or suppressing such disease.

### 33. Internet technology hazards exclusion

Any losses, liability, costs or expense arising, directly or indirectly, out of, or in any way, involving:

- a) The use or design of computer systems or programs by **you**. However, this exclusion will not apply to **civil liability** arising out of normal, everyday use of the internet for email, intranet and associated activity, or arising out of any material on **your** website in support of the conduct of the professional activities of **your business** or **practice**.
- b) Property damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, caused though 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 **you**.
  - iii. the use of computer hardware or software of any third party, whether authorised or unauthorised, or
  - iv. any computer virus.

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

### 34. Foster Care

All **claims** arising out of **foster care** including but not limited to physical or **sexual abuse** or general neglect or denial of opportunity regarding the emotional, mental and educational development of any person in **foster care**.

## Conditions applicable to the policy

### 1. Allocation

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

Any allocation or advancement on account of any **claim** made under this **policy** will not create any presumption with respect to the final allocation of a **claim** or **loss**.

### 2. Assignment

The **policy** cannot be assigned without **our** prior written consent. **Our** decision shall be based on **our** business guidelines and shall not be unreasonably withheld.

### 3. Authorisation

The persons, entities or **organisations** named as the **insured** in the **certificate of insurance** agree to act on behalf of all other persons, entities or **organisations** insured by this **policy**, and each of those other persons, entities or **organisations** agree that the persons, entities or **organisations** named as the **insured** in the **certificate of insurance** may act on their behalf with respect to the giving and receiving of any notice of cancellation, the payment of **premiums**, the receiving of any return **premiums** that may become due and the acceptance of **endorsements** or other notices provided for; and **you** warrant that these individuals and entities have authorised **you** to act on their behalf.

### 4. Cancellation

**You** may cancel the **policy** at any time by notifying **us** in writing. If **you** pay **your premium** by monthly instalments, **you** will be required to pay **us** any unpaid instalments that are due up to the date of the **policy** cancellation.

**We** may cancel this **policy** in accordance with the Insurance Contracts Act 1984.

In the event of cancellation, **we** will be entitled to retain **premium** for the period during which this **policy** has been in force. **We** may also retain any government taxes, duties or levies we cannot recover.

If **you** have made a **claim** under this **policy** and **we** have paid or agreed to pay the full limit of liability applicable to the **period of insurance** for any cover under a Section of this **policy**, no **return** of premium will be payable for any unused portion of the **period of insurance** for that cover.

### 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 **certificate of insurance**, unless required by law.

### 6. Goods and Services Tax

Where **we** make a payment under the **policy** for the acquisition of goods, services or other supply, **we** will reduce the amount of the payment by the amount of any input tax credit that **you** or the **insured person** are or will be entitled to under A New Tax System (Goods and Services Tax) Act 1999 (Cth), 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 (Cth) 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 (Cth) in respect of such liability or **loss** then the amount of that input tax credit shall not be taken to erode the **excess** for the purposes of the **policy**.

### 7. Governing law and jurisdiction

This insurance **policy** shall be governed by and construed in accordance with the laws of the Commonwealth of Australia and the State or Territory where the **policy** was issued. Any disputes shall be exclusively subject to determination by the courts of that State or Territory or of the Commonwealth of Australia.

### 8. Investigatory costs and payments

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

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

### 9. Legal enforceability

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

### 10. Non-accumulation

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

### 11. Notice

Any provision of the **policy** requiring notices and communications to be given in writing will be deemed to be complied with if delivered to the recipient electronically.

### 12. Payment of premium

**You** must pay the premium specified in the **certificate of insurance** within 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).

## Claims conditions applicable to the policy

### 1. Additional parties

Where this **policy** insures more than one party, any failure on the part of any of the parties to:

- comply with the duty of disclosure under the Insurance Contracts Act 1984 (as amended or replaced) ; or
- comply with any obligation under this **policy** (other than the obligation to pay premium); or
- refrain from conduct which is dishonest, fraudulent, criminal or malicious; or
- refrain from making a misrepresentation, shall not prejudice the right of the remaining party or parties to indemnity under this **policy**, provided that such remaining party or parties shall:
- no prior knowledge of any such failure; and
- as soon as practicable after becoming aware of any such failure, advise **us** in writing of all its relevant circumstances.

Where this **policy** insures more than one party, it shall apply to each party in the same manner as if a separate **policy** had been issued to each of them, provided that, in so doing, our **limit of liability** or the sum insured shown in the **certificate of insurance** in respect of any one event or **claim** (and any **aggregate limit of liability** that may be applicable) for the **period of insurance** shall not be increased.

**We** agree to waive all rights of subrogation or action which we may be entitled to against any party to whom cover under this **policy** extends.

### 2. Other insurance

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

### 3. Subrogation

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

### 4. Notification of claims

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

All notices to us under any provisions of the **policy** must be given in writing to: GPO Box 1655 Melbourne VIC 3001 or email 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

- a) As a condition precedent to cover under the **policy**, **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.
- b) **We** will have full discretion in the conduct and defence, in **your** name and on **your** behalf (including to take over and assume conduct), of any proceedings in connection with, and in the settlement of any **claim** and **you** shall give all such information and assistance as **we** may require.
- c) **You** must immediately give all such information and assistance to **us** as **we** may reasonably require to enable **us** to investigate and to defend the **claim** and/or to enable **us** to determine our liability under the **policy**.
- d) **We** may take whatever action that **we** consider appropriate in respect of the **claim** against **you** and such action by **us** will not be regarded in any way prejudicing **our** position under the **policy** and no admission of the entitlement to indemnity under the **policy** shall be implied.
- e) **We** will be entitled to attend any **investigation** or fatal accident inquiry in respect of which there may arise any liability under the **policy**.

### 7. Senior counsel

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



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## The Policy: Professional Indemnity Insurance (continued)

### 8. Election to contest claim

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

### 9. Multiple claims

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

### 10. Alteration to risk

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

### 10. Fraudulent claims

- a) As a protection for all insured parties **we** reserve the right to take legal action against any person who makes a fraudulent **claim**.
- b) If a fraudulent **claim** is made **we** will not pay it and **we** reserve the right to take action to recover any moneys already disbursed in respect of the **claim**. **We** will also reserve the right to cancel the **policy**, as allowed under the Insurance Contracts Act 1984 (Cth).

### 12. Sanctions

**We** shall not be required to perform any transaction to pay any **claim** or provide any benefit hereunder to the extent that the execution of such transaction would contravene any sanction, prohibition or restriction applicable to **us** under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, New Zealand, United States of America, European Union or United Kingdom.



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