



QBE Insurance (Australia) Limited

# Pharmacists Medical Malpractice

Civil liability insurance policy

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## About this booklet

There are two parts to this booklet. The first part is Important Information about this Policy including information about how we'll protect your privacy and how to make a complaint or access our dispute resolution service.

The second part is your Policy Wording which sets out the detailed terms, conditions and exclusions of the Policy.

Because we don't know your own personal circumstances, you should treat any advice in this booklet as purely general in nature. It doesn't consider your objectives, financial situation or needs. You should carefully consider the information provided with regard to your personal circumstances to decide if it's right for you.

### About QBE Australia

QBE Insurance (Australia) Limited ABN 78 003 191 035 AFSL 239545 is a member of the QBE Insurance Group Limited ABN 28 008 485 014 (ASX: QBE). QBE Insurance Group is Australia's largest international general insurance and reinsurance group, and one of the largest insurers and reinsurers in the world.

## Important Information

In this part of the booklet we explain important information about this Policy including how we'll protect your privacy and how to make a complaint or access our dispute resolution service.

### Duty of disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty 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 something

If you do not tell us anything you are required to, 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.

## The General Insurance Code

QBE Australia is a signatory to the General Insurance Code of Practice.

The Code aims to:

- Commit us to high standards of service
- Promote better, more informed relations between us and you
- Maintain and promote trust and confidence in the general insurance industry
- Provide fair and effective mechanisms for the resolution of complaints and disputes between us and you
- Promote continuous improvement of the general insurance industry through education and training.

## Privacy

We'll collect personal information when you deal with us, our agents, other companies in the QBE group or suppliers acting on our behalf. We use your personal information so we can do business with you, which includes issuing and administering our products and services and processing claims. Sometimes we might send your personal information overseas. The locations we send it to can vary but include the Philippines, India, Ireland, the UK, the US, China and countries within the European Union.

Our Privacy Policy describes in detail where and from whom we collect personal information, as well as where we store it and the full list of ways we could use it. To get a free copy of it please visit [qbe.com.au/privacy](http://qbe.com.au/privacy) or contact QBE Customer Care.

It's up to you to decide whether to give us your personal information, but without it we might not be able to do business with you, including not paying your claim.

## Resolving complaints & disputes

At QBE we're committed to providing you with quality products and delivering the highest level of service.

We also do everything we can to safeguard your privacy and the confidentiality of your personal information.

### Something not right?

We know sometimes there might be something you're not totally happy about, whether it be about our staff, representatives, products, services or how we've handled your personal information.

#### Step 1 – Talk to us

If there's something you'd like to talk to us about, or if you'd like to make a complaint, speak to one of our staff. When you make your complaint please provide as much information as possible. They're ready to help resolve your issue.

You can also contact our Customer Care Unit directly to make your complaint. Our aim is to resolve all complaints within 15 business days.

#### Step 2 – Escalate your complaint

If we haven't responded to your complaint within 15 days, or if you're not happy with how we've tried to resolve it, you can ask for your complaint to be escalated for an Internal Dispute Resolution (IDR) review by a Dispute Resolution Specialist.

The Dispute Resolution Specialist will provide QBE's final decision within 15 business days of your complaint being escalated, unless they've requested and you've agreed to give us more time.

#### Step 3 – Still not resolved?

If you're not happy with the final decision, or if we've taken more than 45 days to respond to you from the date you first made your complaint, you can contact the Australian Financial Complaints Authority (AFCA). AFCA is an ASIC approved external dispute resolution body.

AFCA resolves insurance disputes between consumers and insurers, at no cost to you. QBE is bound by AFCA decisions - but you're not. You can contact AFCA directly and they'll advise you if your dispute falls within their Rules.

#### *Disputes not covered by the AFCA Rules*

If your dispute doesn't fall within the AFCA Rules, and you're not satisfied with our decision then you may wish to seek independent legal advice.

#### *Privacy complaints*

If you're not satisfied with our final decision and it relates to your privacy or how we've handled your personal information, you can contact the Office of the Australian Information Commissioner (OAIC).

## Contacting QBE's CCU, AFCA or the OAIC

### How to contact QBE Customer Care

Phone	1300 650 503 (Monday to Friday from 9am to 5pm, Sydney time, except on public holidays). Calls from mobiles, public telephones or hotel rooms may attract additional charges.
Email	<ul style="list-style-type: none"> <li>complaints@qbe.com, to make a complaint.</li> <li>privacy@qbe.com, to contact us about privacy or your personal information.</li> <li>customercare@qbe.com, to give feedback or pay a compliment.</li> </ul>
Post	Customer Care, GPO Box 219, Parramatta NSW 2124

### How to contact AFCA

Phone	1800 931 678 (free call)
Email	info@afca.org.au
Online	www.afca.org.au
Post	Australian Financial Complaints Authority, GPO Box 3, Melbourne VIC 3001

### How to contact the OAIC

Phone	1300 363 992 Calls from mobiles, public telephones or hotel rooms may attract additional charges.
Email	enquiries@oaic.gov.au
Online	www.oaic.gov.au

## Claims made and notified

This Policy operates on a 'claims made and notified' basis. This means that the Policy covers you for claims made against you and notified to us during the period of insurance.

The Policy does not provide cover in relation to:

- acts, errors or omissions actually or allegedly committed prior to the retroactive date of the Policy (if such a date is specified);
- claims made after the expiry of the period of insurance even though the event giving rise to the claim may have occurred during the period of insurance;
- claims notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous Policy;
- claims made, threatened or intimated against you prior to the commencement of the period of insurance;
- facts or circumstances of which you first became aware prior to the period of insurance, and which you knew or ought reasonably to have known had the potential to give rise to a claim under this Policy; and

6. claims arising out of circumstances noted on the proposal form for the current period of insurance or on any previous proposal form.

Where you give notice in writing to us of any facts that might give rise to a claim against you as soon as reasonably practical after you become aware of those facts but before the expiry of the period of insurance, you may have rights under section 40(3) of the Insurance Contracts Act 1984 (Cth) to be indemnified in respect of any claim subsequently made against you arising from those facts notwithstanding that the claim is made after the expiry of the period of insurance. Any such rights arise under the legislation only. The terms of the Policy and the effect of the Policy is that you are not covered for claims made against you after the expiry of the period of insurance.

## Policy Wording

This Policy is underwritten by QBE Insurance (Australia) Limited ABN 78 003 191 035 AFSL 239545.

### Our agreement with you

Your Policy is an agreement between you and us, made up of:

- This Policy Wording
- Your Policy Schedule, which sets out the cover you've chosen and any terms specific to you.

The cover under this Policy is provided during the period of insurance, once you've paid us your premium. There are also:

- Conditions and exclusions which apply to specific covers or sections;
- General exclusions, which apply to any claim you make under this Policy;
- General conditions, which set out your responsibilities under this Policy;
- Claims conditions, which set out our rights and your responsibilities when you make a claim; and
- Other terms, which set out how this Policy operates.

#### Excesses

You must pay any excesses which apply to your claim. The excesses which you have to pay are set out in this Policy Wording or on your Policy Schedule.

#### How much we'll pay

The most we'll pay for a claim is the sum insured which applies to the cover or section you're claiming under, less any excess.

### Your Policy

Your Policy consists of the Policy Wording in this booklet and the Policy Schedule we give you. Please keep them in a safe place for future reference.

Please check the Policy Schedule details to ensure it accurately states what you have insured. Be sure to check that the limits and sums insured are adequate.

The 'general exclusions' and 'general conditions' apply to all sections of this Policy.

### Paying your premium

The ways you can pay your premium, and the frequency you can pay it, are described below:

- to your financial services provider in accordance with their usual business practices.

#### Paying your annual premium

If you are paying your premium in one annual payment, you must pay your premium, GST and other amounts charged for this Policy by the due date.

If we do not receive the premium by this date, or your payment is dishonoured, this Policy will not operate and there will be no cover.

#### Paying your instalment premium

If you are paying your premium for the first time by instalments we will deduct instalments each month on the day of the month that you nominate as your payment date. If this is a replacement Policy and you paid your previous Policy by instalments, we will continue to deduct instalments for your replacement Policy on the day of the month you previously nominated as your payment date, unless you tell us otherwise. If you have nominated the 29th, 30th or 31st of the month as your payment date, we will deduct your instalment

payment on the next day if those dates don't occur in a month.

Details of your instalments are shown on your Policy Schedule.

There is no cover provided to you under this Policy of insurance until the first instalment of the premium is paid to us. We will not pay a claim under this Policy if, at the time the claim occurred, any instalment of premium has remained unpaid for fourteen (14) days or more. If any instalment of premium has remained unpaid for one (1) month, we may cancel this Policy. We will send you a notice giving you details of the action we intend to take and when any cancellation will become effective.

If you are paying your premium in instalments by direct debit from your credit card or financial institution account, you must tell us if those details change. You must do this no later than seven days before your next instalment is due.

## Definitions

Word or Term	Meaning
Aggregate limit of indemnity	the amount shown as the aggregate limit of indemnity in the Policy Schedule.
Application (or Proposal)	the application or proposal made by you to us containing particulars and statements which, together with other information provided by you, are the basis of this Policy and are considered as incorporated herein.
Bodily injury	physical injury, sickness, disease, death, mental injury, mental anguish, nervous shock or emotional distress of any person.
Claim	<ol style="list-style-type: none"> <li>the receipt by you of any notice of demand for compensation made by a third party against you; or</li> <li>any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party the receipt by you of any notice of demand for compensation made by a third party against you; or</li> <li>any penalty; or</li> <li>in respect to the cover afforded under the 'official investigations and enquiries' extension, the notice of any actual or intended official investigation, examination or enquiry.</li> </ol>
Costs and expenses	the reasonable legal costs and other expenses incurred by or on behalf of you or by us in the investigation defence or settlement of a claim.
Deductible	the amount shown in the Policy Schedule. The deductible applies to all amounts payable under this Policy including the indemnity provided under insuring clause B.
Documents	deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but shall not include bearer bonds or coupons, stamps, bank or

Word or Term	Meaning
	currency notes or any other negotiable instrument.
Employee	any person employed under a contract of service or apprenticeship during or prior to commencement of the period of insurance.
Family member	<ol style="list-style-type: none"> <li>any spouse, domestic partner, or companion;</li> <li>any parent, or parent of the spouse, domestic partner or companion;</li> <li>any sibling or child;</li> </ol> of an insured person
Health care	any care, treatment, advice, service or goods provided in respect of the physical or mental health of a person.
Health care incident	an incident that occurs in the course of, or in connection with, the provision of health care by a qualified medical practitioner.
Investigation costs and expenses	<p>legal costs and other expenses incurred by or on behalf of you or by us arising out of:</p> <ol style="list-style-type: none"> <li>any legally compellable attendance by you at any official investigation, examination or enquiry in relation to the conduct of your profession where such investigation, examination or enquiry may lead to a recommendation in respect of proceedings which would be the subject of a claim covered by this Policy; or</li> <li>any attendance at a coronial enquiry in relation to the conduct of your profession where such investigation, examination or enquiry may lead to a recommendation in respect of proceedings which would be the subject of a claim covered by this Policy, and for which we consider your attendance may mitigate the cost of such claim.</li> <li>any attendance at a royal commission or an enquiry conducted by a regulatory authority or any disciplinary committee of any association or professional body of which you are a member, but does not include any investigation, examination or enquiry conducted by a parliament.</li> <li>your attendance or representation before any privacy commissioner, private code adjudicator, administrative tribunal or court in relation to the breach of any privacy law or duty of confidentiality owed to any patient.</li> </ol> <p>'investigation costs and expenses' does not include any fine, penalty or order for the payment of monetary compensation.</p>
Limit of indemnity	the limit of our liability under this Policy as specified in the Policy Schedule.

Word or Term	Meaning
Malpractice	a breach of a professional duty of care in the provision of medical, home care, or alternative therapy services.
Named insured	the person, persons, partnership, company, corporation or other entity specified as the named insured in the Policy Schedule.
Money	money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.
Obstetrics services	any services pertaining to the care and treatment of women in childbirth including the period before or after delivery, or any services associated with the termination of a pregnancy
Penalty	any monetary sum payable by you to any regulatory authority.  This definition does not apply to any items described in the 'fines and penalties' exclusion.
Period of insurance	the period specified in the Policy Schedule
Policy	<ol style="list-style-type: none"> <li>1. the Policy Schedule, insuring clauses, extensions, conditions, definitions, exclusions and other terms contained herein;</li> <li>2. any endorsement attaching to and forming part of this Policy either at inception or during the period of insurance, and</li> <li>3. the application.</li> </ol>
Policy Schedule	the schedule to this Policy.
Pollutants	<ol style="list-style-type: none"> <li>1. any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals; or</li> <li>2. any waste materials including materials recycled, reconditioned or reclaimed; or</li> <li>3. any other air emission, odour, waste water, oil, oil products, infectious or medical waste or any noise emission.</li> </ol>
Premium	the premium specified in the Policy Schedule or in any endorsement thereto.
Qualified medical practitioner	a qualified person registered with a title of 'medical practitioner' or one of the 'medical specialist' categories under the Health Practitioner National Law in force in each state and territory.
Regulatory authority	a person or entity appointed, constituted or acting under a delegation pursuant to any legislation for the purposes of enforcement of such legislation.
Senior Counsel	a barrister in active practice who is entitled to use the post-nominals QC or SC in any

Word or Term	Meaning
	one or more superior court in Australia or New Zealand.
Subsidiary	<ol style="list-style-type: none"> <li>1. any entity which by virtue of any applicable legislation or law is deemed to be a subsidiary of the named insured specified in the Policy Schedule; or</li> <li>2. any entity over which a named insured is in a position to exercise effective direction or control.</li> </ol>
Terrorism	an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological or similar purposes or reasons including the intention to influence any government and/or to put the public, or any section of the public, in fear.
We, our, us	QBE Insurance (Australia) Limited ABN 78 003 191 035.
You, your, yours	<ol style="list-style-type: none"> <li>1. the named insured;</li> <li>2. any person who is, during the period of insurance, a principal, partner or director of the named insured but only in respect of work performed while a principal, partner or director of the named insured;</li> <li>3. any person who is, during the period of insurance, an employee of the named insured but only in respect of work performed while an employee of the named insured; or</li> <li>4. any former principal, partner, director or employee of the named insured, but only in respect of work performed while a principal, partner, director or employee of the named insured.</li> <li>5. any person who is, during or prior to the period of insurance, a member of an ethics committee or advisory council of the Named Insured but only in respect of liability arising from work performed as a member of an ethics committee or advisory council of the named insured.</li> </ol>
Your profession	<p>the profession, as specified in the Policy Schedule, which you conduct and for which you are appropriately registered and licensed as required by law.</p> <p>If the named insured changes its name and there is no other change which materially alters the risk, your profession will continue to be covered by this Policy.</p>



## Section 1: Insuring clauses

### Insuring clause A

#### Civil liability insuring clause

We agree to indemnify you against civil liability for compensation arising from any claim as a result of malpractice in the conduct of your profession:

1. first made against you during the period of insurance; and
2. notified to us during the period of insurance or where applicable, the extended notification period; and
3. not excluded under the 'general exclusions', or elsewhere in the Policy.

### Insuring clause B

#### Costs and expenses insuring clause

We agree to pay costs and expenses incurred with our written consent in the defence or settlement of any claim indemnified by this Policy.

### Insuring clause clarification

For the avoidance of doubt, indemnity is provided in respect of the following in accordance with, and subject to, the terms of this Policy, including insuring clauses A and B.

#### Australian consumer law and similar legislation

We agree to indemnify you against civil liability for compensation arising from any Claim made against you under the *Australian Consumer Law or the Competition and Consumer Act 2010 (Cth)* or any similar legislation enacted by any states or territories in Australia and New Zealand.

#### Defamation

We agree to indemnify you against civil liability for compensation arising from any claim made against you for defamation.

#### Intellectual property

We agree to indemnify you against civil liability for compensation arising from any claim made against you for any unintentional infringement of copyright, trademark, registered design or patent, or any plagiarism or breach of confidentiality.

#### Joint venture liability

We agree to indemnify you in respect of any claim made against you for that proportion of any legal liability arising out of any activities in which you are engaged as a joint venturer or as a partner.

#### Loss of documents

We agree to indemnify you against civil liability for compensation arising from any claim arising from the loss of any documents (including but not limited to your documents) which have been destroyed, damaged, lost or mislaid and, after diligent search or attempts to recover them, cannot be found or recovered.

#### Outgoing principals and employees

We agree to indemnify former principals, partners, directors and employees of the named insured in respect of civil liability insured by insuring clauses A and B provided that the definition of 'You' includes those persons and only in respect of work performed while a principal, partner, director or employee of the named insured.

#### Privacy complaints and claims

We agree to provide indemnity to you against civil liability for compensation arising from any claim or written complaint made

against you for the unintentional breach of any duty of confidentiality owed to any patient arising at law or any unintentional breach of the *Privacy Act 1988 (Cth)*, or any privacy legislation pertaining to health records and information or similar privacy legislation in any state or territories in Australia or New Zealand.

#### Retroactive date

'Unlimited retroactive cover' – if no retroactive date is specified in the Policy Schedule or if the retroactive date is specified in the Policy Schedule as 'unlimited', this Policy will provide indemnity in respect of claim(s) arising from acts, errors or omissions committed or alleged to have been committed irrespective of when such acts, errors or omissions were committed (or were alleged to have been committed).

'Limited retroactive cover' – where a retroactive date is specified in the Policy Schedule, then this Policy will only provide indemnity in respect of claim(s) arising from acts, errors or omissions committed or alleged to have been committed after the retroactive date.

#### Vicarious liability

We agree to provide coverage in respect of any claim made against you arising from any act, error or omission committed or alleged to have been committed by a qualified medical practitioner or any other party for whose acts, errors or omissions you are legally liable provided that such coverage shall not extend to any such qualified medical practitioner or other party.

## Section 2: Policy extensions

We will indemnify you under this section, provided that:

1. the indemnity provided by each Policy extension is subject to the Policy Schedule, insuring clauses, conditions, definitions, exclusions, deductible and other terms of this Policy (unless otherwise expressly stated herein);
2. the inclusion of any Policy extension will not increase the limit of indemnity.

### Continuous cover

We will, notwithstanding the 'Prior or pending' exclusion and claims made notice, provide indemnity in respect of any claim made against you where such claim arises from a fact or circumstance ('circumstance'):

1. of which you first became aware prior to the period of insurance and which you knew, or ought to have reasonably known, had potential to give rise to a claim; and
2. which should have, but was not, notified to us under an earlier policy under which we were indemnifying you.

Provided that:

3. such indemnity will not apply to any claim where your failure to notify such claim is fraudulent;
4. we have continuously insured you between the date when the circumstance should have been notified and the date the claim was actually notified.

### Contractors and consultants

Notwithstanding the 'Vicarious liability' insuring clause clarification, we agree to indemnify contractors and consultants as employees, provided that:

1. at least ninety percent (90%) of such contractor or consultant's regular income in the last twelve (12) months, or reasonably anticipated in the next twelve (12) months, is derived from you; and
2. such contractors are acting under the direct control and supervision of your principal, partner or director in accordance with your standard procedures and risk management framework; and;
3. such indemnity is only provided in respect of work performed for and on your behalf and for which you are legally liable.

### Court attendance costs

We agree to provide up to \$250 per day for court attendance costs incurred by your employees, or \$500 per day for court attendance costs incurred by your partners, principals or directors if they are legally compelled to attend a civil proceeding as a witness in a claim covered by this Policy.

### Emergency first aid

We agree to indemnify you against any claim made against you arising from the provisions or failure to provide medical assistance at the scene of any emergency, accident or disaster by any of your employees provided that the assistance or failure to provide assistance is given at a time when the employee is not engaged in a professional capacity by any other person or entity.

### Estates and legal representatives

We agree to include in the definition of 'You' the estate, heirs, legal representatives or assigns of any insured natural person in the event of the death or incapacity of such insured person in respect of your civil liability that would have been covered by insuring clause A or B if that insured person were alive or had capacity, provided that such estate, heirs, legal representatives or assigns

will observe and be subject to all the terms of this Policy insofar as they can apply.

### Extended reporting period

In the event that this Policy is not renewed or is cancelled for any reason other than non-payment of premium then you have until such time that you effect another malpractice or similar Policy or a period of sixty days following expiry of this Policy, whichever is the lesser period, during which to notify us of any claim first made against you during the period of insurance, provided that this extension:

1. does not reinstate or increase the limit of indemnity or extend the period of insurance; and
2. will only apply to acts, errors or omissions committed or alleged to have been committed by you before the end of the period of insurance or the cancellation date of this Policy where this Policy has been cancelled.

### Fines and penalties

We agree to indemnify you against legal liability which would otherwise be excluded by reason of the 'Fines and penalties' exclusion and the 'Pollutants' exclusion, part (2), for:

1. a penalty arising from any actual or alleged breach of any work, health and safety or environmental legislation; and
2. any costs and expenses incurred with our written consent in the defence or settlement of any penalty indemnified by this extension;
3. any compensatory civil penalty;

provided that:

4. the breach giving rise to the penalty did not arise from gross negligence or an intentional, wilful, reckless, or deliberate act, error, or omission; and
5. our total liability in respect of all claims made under this extension will not exceed \$250,000.

### Locum Tenens

We agree to include in the definition of 'Employee' any locum tenens, but only in respect of work performed while your locum tenens. However, such definition does not include any qualified medical practitioner.

### Loss of documents (not involving a third party claim)

We agree to indemnify you for the loss of any documents (including but not limited to your documents), for which you are legally responsible, that have been unintentionally destroyed, damaged, lost or mislaid in the conduct of your profession and, after diligent search or attempts to recover them, cannot be found or recovered, provided that:

1. the loss is discovered by you during the period of insurance and reported to us during the period of insurance;
2. such indemnity will be limited to reimbursement of reasonable costs and expenses incurred by you to replace or restore such documents and will not extend to any consequential or indirect loss; and
3. we will not be liable under this extension to provide indemnity in respect of:
  - (a) the theft, corruption or erasure of any data by a computer virus or former employee, partner or principal; or
  - (b) damage to documents caused by gradual deterioration, wear and tear, or the action of moths or vermin;
  - (c) documents destroyed, damaged, lost or mislaid outside the

territorial limits of Australia or New Zealand.

Our total liability in respect of all claims made under this extension will not exceed \$250,000.

### Medicare and medical fund fraud

We agree to indemnify you against civil liability for compensation arising from any claim made against you, which would otherwise be excluded by reason of the 'Fraud and dishonesty' exclusion for compensation arising from any claim made against you as a result of a fraudulent or dishonest refund claim made against Medicare Australia or any health fund by an employee, provided that such indemnity will not be provided to any insured natural person who committed or condoned any such act, error or omission.

### Molestation (legal defence costs)

Subject to the agreement of the named insured, we agree to extend 'insuring clause B' and the definition of 'claim' to provide indemnity to you for legal defence costs arising from any criminal prosecution for behaviour that would otherwise be excluded by the 'molestation' exclusion, provided that:

1. the person against whom the allegation was made will reimburse such costs and expenses in the event of an admission or judicial finding confirming that the excluded conduct did in fact occur; and
2. our total liability in respect of all claims made under this Policy extension will not exceed \$1,000,000, or the limit of indemnity, whichever is the lesser.

### Newly created or acquired subsidiaries

We agree to include in the definition of 'You' any subsidiary created or acquired by the named insured during the period of insurance for a period of up to sixty (60) days (but never beyond the expiry date of the period of insurance) from the date of such creation, or acquisition, provided that this extension will only apply in respect of claims against the subsidiary arising from an act, error or omission occurring after the date of creation or acquisition of the subsidiary.

### Official investigations and enquiries – costs and expenses

We agree to pay investigation costs and expenses, provided that:

1. we will be entitled, at our discretion, to appoint legal representation to represent you in the investigation, examination or enquiry;
2. the investigation, examination or enquiry, or notice of intended investigation, examination or enquiry is commenced during the period of insurance and is notified to us during the same period of insurance;
3. in the event that a claim for payment of investigation costs and expenses is withdrawn or indemnity under this Policy is subsequently withdrawn or denied, we will cease to advance investigation costs and expenses and you must refund any investigation costs and expenses advanced by us to the extent that we are satisfied that you were not entitled to such investigation costs and expenses, unless we agree in writing to waive recovery of such investigation costs and expenses; and
4. our total liability in respect of investigation costs and expenses for all claims made under this Policy extension will not exceed \$500,000.

### Public relations expenses

Where you retain the services of a public relations consultant for the sole purpose of protecting your reputation that has been brought to question as a direct result of a claim covered by this Policy, we agree to pay any reasonable fees, costs, and expenses of such public relations consultant, provided that:

1. you notify us within twenty eight (28) days of first becoming aware of your reputation being brought into question, and provide full written details outlining the circumstances surrounding the event; and
2. we have given our prior written consent to retain the services of such public relations consultant; and
3. our total liability for all public relations expenses will not exceed \$50,000.

### QBE legal panel

1. You may contact the QBE professional liability legal panel for a single complimentary session of verbal advice in relation to matters which are covered or potentially covered under this Policy; and
2. in the event of a claim arising from the matter we agree to the appointment of any QBE professional liability legal panel member firm to act on behalf of you in respect of any claim notified us provided there is no existing or potential conflict of interest, in which case we will refer you to another member of the panel.

The terms, conditions and contact details for the QBE professional liability legal panel can be found on our website at [www.qbe.com](http://www.qbe.com).

### Run off Cover

We agree that in the event that the named insured or any other insured entity ceases to exist or operate or is consolidated with, merged into or acquired by any other entity then the coverage provided under this Policy with respect to such insured entity will continue until the expiry date of the period of insurance, provided that such coverage will only apply in respect of claims arising from an act, error or omission occurring prior to the effective date that you or such insured entity ceased to exist or operate or was consolidated with, merged into or acquired by another entity.

### Severability

We agree that where this Policy insures more than one party, any conduct any party:

1. failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984; or
2. made a misrepresentation to us before this contract of insurance was entered into, will not prejudice the right of any other insured party to indemnity as may be provided by this Policy, provided that:
3. such other insured party will be entirely innocent of and have no prior knowledge of any such conduct;

### Students

We agree to include in the definition of 'Employee' any student practitioner who during, or prior to the commencement of, the period of insurance obtains practical work experience with you as part of the academic accreditation of a university, college of advanced education or a technical and further education college, but only in respect of work performed under your supervision.

## Section 3: Optional extension

It is agreed that:

1. the indemnity provided by this optional extension is subject to the Policy Schedule, insuring clauses, conditions, definitions, exclusions, deductible and other terms of this Policy (unless otherwise expressly stated herein);
2. where an optional extension is not specified as included in the Policy Schedule then this Policy will not provide any indemnity in relation to coverage specified under such optional extension.

### Fidelity

We agree to provide indemnity to you against loss of money belonging to you or for which you are legally liable where any such loss is sustained in consequence of any dishonest or fraudulent act or omission of any insured natural person, provided that:

1. such loss is first discovered by you during the period of insurance and is notified in writing to us during the period of insurance;
2. we will not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of person concerned;
3. we will not be liable to indemnify the person who committed or condoned any dishonest or fraudulent conduct in consequence of which the loss occurred;
4. you will bear the burden of proof to substantiate any loss hereunder (including any legal, investigative, accounting or other costs incurred in such process) and we will be under no obligation to provide indemnity to you until such time as we are satisfied that such loss has, in fact, been sustained;
5. dual controls were in place at the start of the period of insurance. Where dual controls are not in place a Sublimit of \$10,000 applies;
6. our liability for each loss under this optional extension and our aggregate liability for all losses under this optional extension will not exceed \$100,000;
7. regardless of the number of years this Policy is in place, our liability will not be cumulative in amounts from year to year or from period to period;
8. no indemnity will be provided for loss of drugs, medicines or any other property.

The deductible specified in the Policy Schedule applies to any one event. Events or series of events caused by acts or omissions of the same person or persons (whether identifiable or not) and events in which such person or persons are involved or implicated will be treated as one event.

### Previous business

We agree to provide indemnity in respect of any claim for compensation made against any person who is or becomes or ceases to be during the period of insurance a principal, partner or director of the named insured for any civil liability arising from a breach of professional duty and incurred on the part of such person in the conduct of the same profession as your profession before that person joined the named insured.

## General Conditions

There are conditions set out in this General conditions section, in the Claims section and under each particular cover and section. If any of these conditions aren't met, we may refuse a claim, reduce the amount we pay or in some circumstances we may cancel your Policy. When making a claim, you must have met and then continue to comply with the conditions of your Policy. Any person covered by your Policy, or claiming under it, must also comply with these conditions.

If you, or someone covered under your Policy, don't meet these conditions or make a fraudulent claim we may:

- Refuse to pay your claim or reduce what we pay for your claim
- Cancel your Policy.

### A claim may be refused

We may refuse to pay or reduce the amount we pay under a claim if you do not comply with the Policy conditions, if you do not comply with your duty of disclosure, or if you make a fraudulent claim.

### Alteration to risk

You shall give us written notice as soon as practicable of any material alteration to the risk during the period of insurance including but not limited to:

1. you going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or you failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
2. any material change in the nature of the professional services offered by you.

Where such notice is given or where there is any material alteration to the risk we shall be entitled to cancel this Policy in accordance with the *Insurance Contracts Act 1984*.

### Assignment of interest

No change in, or modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement to this Policy and signed by an authorised employee of ours.

### Cancellation

You may cancel this Policy at any time by notifying Us in writing and we will allow a pro-rata refund of premium for the unexpired period of insurance, unless a claim or circumstance has been notified to us during the period of insurance in which case no premium will be refunded.

We may cancel this Policy in accordance with the relevant provisions of the *Insurance Contracts Act 1984*. If you have paid your premium in advance we will provide a pro-rata refund of premium for the unexpired period of insurance, unless a claim or circumstance has been notified to us during the period of insurance in which case no premium will be refunded.

### Deductible

In respect of each claim made against you (or loss incurred by you) the amount of the deductible shall be borne by you at your own risk and we shall only be liable to indemnify you for that part of any claim (or any loss incurred by you) which is in excess of the deductible.

In the event of a claim by you under this Policy, you shall, if directed by us, pay to us (or as we direct) the deductible within seven (7) working days. Any delay, failure or refusal by you to pay the deductible will entitle us to deduct such amount from any

amounts required to settle any claim or judgement, order, or any other payment to be made by us under this Policy. In the event that a failure or refusal to grant access to monies for any deductible results in a failure of a settlement or an increase in costs and expenses, our liability in connection with such claim shall not exceed the amount for which the claim could have been so settled plus the costs and expenses incurred with our written consent up to the date of such failure or refusal, less the deductible.

Where we have elected to pay all or part of the deductible in respect of any claim (or any loss or claim), you shall, within seven (7) working days from the date of such payment, reimburse us for such payment.

In respect of any claim (or any loss or claim) where the amount of the claim (or any loss or claim) is less than the amount of the deductible, you shall bear all costs and expenses associated therewith unless we have agreed to meet such costs and expenses pursuant to insuring clause B.

Any costs and expenses incurred by us to determine whether we have a liability to indemnify you under this Policy shall not be subject to the deductible but shall be borne by us.

### Limit of indemnity

We agree to pay defence costs, in addition to the limit of indemnity but only up to an amount equal to the limit of indemnity or \$5,000,000, whichever is the lesser, provided that if a payment in excess of the limit of indemnity is made to dispose of a claim, our liability for such defence costs shall be the same proportion as the amount of the limit of indemnity bears to the amount paid to dispose of the claim.

Our total liability in the aggregate in respect of all claims or losses, excluding costs and expenses, during the period of insurance, will not exceed the aggregate limit of indemnity.

This clause does not increase any sub-limit in the Policy.

### Multiple claims

All causally connected or interrelated acts, errors or omissions shall jointly constitute a single act, error or omission under this Policy.

Where a single act, error, or omission gives rise to more than one claim, all such claims shall jointly constitute one claim under the Policy, and only one deductible shall be applicable in respect of such claim. Furthermore, if there is an aggregate limit of indemnity, only one limit of indemnity will be applicable in respect of such claim.

### Policy construction and interpretation

The construction, interpretation and meaning of the provisions of this Policy shall be determined in accordance with the law of the state, territory or country in which this Policy is issued, being the place of issue specified in the Policy Schedule, and any disputes relating thereto shall be submitted to the exclusive jurisdiction of the courts of such state, territory or country. If no place of issue is shown in the Policy Schedule it is agreed that the place of issue is Sydney, New South Wales, Australia.

The marginal notes and titles of paragraphs in this Policy are included for descriptive purposes only and do not form part of this Policy for the purpose of its construction or interpretation.

Under this Policy, the masculine includes the feminine and the singular includes the plural and vice versa and reference to a person includes a body corporate, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust.

### Streamlined renewal process

We may choose to notify you at least fourteen (14) days prior to the expiry of the period of insurance that we are prepared to automatically renew the Policy by providing a new period of insurance, without a renewal application, subject to:

1. payment of a new premium applicable to the new period of insurance;
2. renewal eligibility criteria that will be communicated by us.

If you are paying your premium by instalments we will continue to deduct instalments each month on the day of the month that you nominate as your payment date, but based on the premium applicable to the new period of insurance.

### General exclusions

We will not be liable under this Policy to provide indemnity in respect of any claim made against you:

#### Aircraft motor vehicles and watercraft

directly or indirectly based upon, attributable to, or in consequence of the ownership, lease, operation or use of any aircraft, motor vehicle or watercraft by you.

#### Asbestos

directly or indirectly based upon, attributable to, or in consequence of the manufacturing, mining, processing, treating, handling, installing, using, removing, transporting, selling, distributing, and/or storage of asbestos, asbestos products or any product containing asbestos.

Provided that this exclusion will not apply to any medical procedure or treatment performed in a hospital, clinic or the like as a result of any injuries arising out of any effects of asbestos.

#### Assumed duty or obligation

directly or indirectly based upon, attributable to, or in consequence of any duty or obligation assumed by you by way of contract, warranty, guarantee or indemnity, to the extent that such liability exceeds the liability you would have incurred in the absence of such contract, warranty, guarantee or indemnity.

#### Fines and penalties

for punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law including but not limited to, civil penalties.

#### Fraud and dishonesty

directly or indirectly based upon, attributable to, or in consequence of:

1. any actual or alleged dishonest, fraudulent, criminal, or malicious act or omission of yours or any other party for whose acts, errors or omissions you are legally liable; or any act or omission of yours or any other party for whose acts, errors or omissions you are legally liable committed, or alleged to have been committed, with a reckless disregard for the consequences thereof; or
2. any wilful breach of any statute, contract or duty by you or any other party for whose acts, errors or omissions you are legally liable.

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

directly or indirectly based upon, attributable to, or in consequence of the sale, storage, supply or distribution of any good or product other than a claim which arises directly from a breach of professional duty during the actual provision of medical services.

## Intoxicants and drugs

directly or indirectly, based upon, attributable to, or in consequence of the rendering of, or failing to render competent services while under the influence of intoxicants or drugs.

### Jurisdictional limits

1. brought in a court of law within the territorial limits of the United States of America or Canada or their territories or protectorates; or
2. arising out of the enforcement of any judgement, order or award obtained within, or determined pursuant to the laws of the United States of America or Canada or their territories or protectorates; or
3. which we are prohibited from paying by law in the jurisdiction concerned.

### Medical Facilities

directly or indirectly based upon, attributable to, or in consequence of:

1. the administration or provision of medicines which, by law, are required to be prescribed by a qualified medical practitioner, unless those medicines have been so prescribed.
2. the provision or failure to provide obstetrics services.
3. the provision of enhancement surgery, enlargement surgery or botulinum toxin (Botox) treatment, and the like.

### Medical Practitioner

where you are a qualified medical practitioner in relation to:

1. health care incidents; or
2. any incident directly attributable to you where you are acting in the capacity of a qualified medical practitioner.

### Molestation

directly or indirectly based upon, attributable to, or in consequence of any actual or alleged act of molestation or physical interference with any person.

### Nuclear

directly or indirectly, based upon, attributable to, or in consequence of ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel, provided always that this exclusion will not apply to legal liability arising from radioisotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively for the provision of medical services.

### Obligations to Employees and Others

directly or indirectly based upon, attributable to, or in consequence of bodily injury of any of your employees or damage to or destruction of any property of any of your employees, including loss of use of property, arising out of, or in the course of, their employment.

### Occupier's liability

directly or indirectly based upon, attributable to, or in consequence of any liability incurred or alleged to have been incurred as a result of occupation, control, management or ownership of any real property by you.

## Pollutants

directly or indirectly from, based upon, attributable to, or in consequence of

1. the actual or alleged discharge, release or escape of pollutants arising from the design or specification of equipment or structures which are critical to, and designed with the intention of, restricting the release of pollutants into the environment; or
2. Any enforcement action or proceeding in connection with the containment, clean up, removal or treatment of such pollutants;

provided that this exclusion does not apply where there has been a sudden and accidental release of pollutants caused by error in design or specification.

### Prior or pending

1. made, threatened or intimated against you prior to the period of insurance; or
2. directly or indirectly based upon, attributable to, or in consequence of any fact or circumstance:
  - (a) of which written notice has been given, or ought reasonably to have been given, under any previous Policy; or
  - (b) of which you first became aware prior to the period of insurance and which such insured knew or ought reasonably to have known had potential to give rise to a claim under this Policy.

### Related or associated entities

brought or maintained by or on behalf of:

1. you or any subsidiary by or parent entity of the named insured; or
2. any person who, at the time the act, error or omission giving rise to the claim was committed, was your family member unless such person is acting without any prior direct or indirect solicitation or co-operation from you.

### Sanctions limitation and exclusion clause

You're not insured under any section of this Policy where a claim payment breaches any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America, or any local autonomous sanctions.

### Terrorism

directly or indirectly based upon, attributable to, or in consequence of any actual or alleged act of terrorism or any action taken in controlling, preventing, suppressing or in any way relating to any actual or alleged act of terrorism.

This exclusion operates in connection with any act of terrorism regardless of any other cause or event and regardless of the sequence of the act of Terrorism and the other cause or event.

However, this exclusion will not apply to any medical procedure or treatment performed by you as a result of any injuries arising from any act of terrorism.

### Trading debts

directly or indirectly based upon, attributable to, or in consequence of any trading debt incurred by you or any guarantee given by you for a debt.

### War

directly or indirectly based upon, attributable to, or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war

be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition of or damage to property by or under the order of any government, public or local authority.

However, this exclusion will not apply to any medical procedure or treatment as a result of any injuries arising out of situations as described above.

## Claims

### Claims mitigation and co-operation

If you, either prior to or during the period of insurance become aware of a situation which could, if not rectified, lead to a claim or increase the quantum of a claim, you shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability under this Policy.

You shall frankly and honestly disclose to us all relevant information and, in addition, shall provide assistance to us as we may require to enable us to investigate and to defend any claim under this Policy to enable us to determine our liability under this Policy.

Other than costs and expenses incurred by us to enable us to determine our liability under this Policy, compliance with this condition shall be at your own cost, unless otherwise agreed in writing by us.

### Defence and settlement

We may:

1. instruct you to conduct the defence of the claim if we believe that any claim will not exceed the deductible, but will reimburse you all reasonable costs and expenses in the event that any payment made to dispose of the claim exceeds the deductible;
2. take over and conduct, in your name, the defence or settlement of any claim at any time, in which case we will then have sole control of the claim.

You agree:

3. not to settle any claim, incur any costs and expenses or investigation costs and expenses, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any claim or loss without our written consent, provided that we shall not unreasonably withhold such consent;
4. that any information that is received by the lawyers retained by us in the course of investigating, defending or settling any claim against you can be provided to us and relied upon by us in relation to any issue that may arise regarding our liability to indemnify you;
5. that the lawyers retained by us to conduct the investigation, defence or settlement of any claim may provide advice to us on any issue regarding our liability to indemnify you and, whilst doing so, may continue to act in the investigation, defence or settlement of the claim on your behalf.

Furthermore, in the circumstances described under items 2, 4 or 5 above, you agree:

6. that our communications with the lawyers retained by us are privileged and that you are not entitled to obtain any such communications;
7. and to waive any entitlement that you may have for legal professional privilege between you and the lawyers retained by us;
8. if any actual or apparent conflict arises between our interests and your interests, the lawyers retained by us to conduct the investigation, defence or settlement of any claim may cease acting on your behalf and may continue to act on our behalf.

## Preventing our right of recovery

If you have agreed not to seek compensation from another person who is liable to compensate you for any loss, damage or liability which is covered by this Policy, we will not cover you under this Policy for that loss, damage or liability.

## Reporting and notice

You shall give to us written notice as soon as practicable of any claim made against you provided that such written notice is given to us during the period of insurance in which the claim is made.

Notice of any claim shall be given in writing to us, and delivered to:

Professional Liability Claims Department  
QBE Insurance (Australia) Limited  
GPO Box 219  
Parramatta NSW 2000

Or by email to [piclaims@qbe.com](mailto:piclaims@qbe.com)

## Senior counsel clause

We shall not require you to contest any claim unless a senior counsel (to be mutually agreed upon by you and us) shall advise that such Claim should be contested.

In formulating such advice, senior counsel shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely costs and expenses and the prospects of you successfully defending the Claim.

The cost of such senior counsel's opinion shall be regarded as part of the costs and expenses.

## Subrogation

In respect of any claim covered by this Policy, and without limiting our rights at law, we shall be subrogated to all your rights of recovery, and you shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of documents necessary to enable us to effectively bring suit in your name. You shall not, without first obtaining our written consent, do anything or fail to do anything which excludes, limits or prejudices our rights of subrogation.

## Taxation implications

If you're a business you must tell us if you're registered, or are required to be registered, for GST. When you do this, we need you to give us:

- Your ABN
- The percentage of any input tax credit you will claim, or will be entitled to claim, on your premium.

When we pay a claim, your GST status will determine the amount we pay you. Your claim settlement amount will be adjusted to allow for any ITC entitlement.

Unless we say otherwise, all amounts in your Policy are inclusive of GST. There may be other taxation implications affecting you, depending upon your own circumstances. We recommend you seek professional advice.

## Your right to contest

In the event that we recommend a settlement in respect of any Claim and you do not agree that such claim should be settled, then you may elect to contest such claim, provided that our liability in connection with such claim shall not exceed the amount for which the claim could have been so settled plus the costs and expenses incurred with our written consent up to the date of such election, less the deductible.

