

# Statutory Liability Policy

**QBE Insurance (Australia) Limited**

Insurance Policy



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# IMPORTANT INFORMATION

## 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 of Practice

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 Financial Ombudsman Service Australia (FOS Australia). FOS Australia is an ASIC approved external dispute resolution body.

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

### *Disputes not covered by the FOS Australia Terms of Reference*

If your dispute doesn't fall within the FOS Australia Terms of Reference, 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, FOS 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	complaints@qbe.com, to make a complaint. privacy@qbe.com, to contact us about privacy or your personal information. customercare@qbe.com, to give feedback or pay a compliment.
Post	Customer Care, GPO Box 219, PARRAMATTA NSW 2124
How to contact FOS Australia	
Phone	1800 367 287 (Monday to Friday from 9am to 5pm, Melbourne time, except on public holidays)
Email	info@fos.org.au
Online	www.fos.org.au
How to contact the OAIC	
Phone	1300 363 992 (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	enquiries@oaic.gov.au
Online	www.oaic.gov.au

## Claims Made

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:

1. acts, errors or omissions actually or allegedly committed prior to the retroactive date of the Policy (if such a date is specified);
2. 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;
3. claims notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy;
4. claims made, threatened or intimated against you prior to the commencement of the period of insurance;
5. 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.

## 1. PREAMBLE

In consideration of payment of the Premium, QBE Insurance (Australia) Limited ABN 78 003 191 035 AFSL 239545 (hereinafter referred to as QBE) agrees to provide insurance in accordance with, and subject to, the terms of this Policy.

For the sake of clarity, this Policy does not cover any Loss based upon, attributable to or in consequence of any wilful, intentional or deliberate Wrongful Breach or a Wrongful Breach caused by gross negligence or recklessness by the Insured or any dishonest, fraudulent or malicious act or omission of the Insured.

In this regard, refer to the full terms and effect of the exclusions contained in clause 4.1 of this Policy.

Where a word commences with a capital, it has the meaning set out in 6. DEFINITIONS below.

## 2. INSURING CLAUSE

- 2.1 Subject to clause 2.2 below, QBE agrees to pay to and on behalf of the Insured any Loss arising from any Claim first received by the Insured and notified to QBE during the Period of Insurance.
- 2.2 QBE shall not be liable to indemnify the Insured for Defence Costs under clause 2.1 unless the Insured obtains QBE's written consent.
- QBE shall not be obliged to provide such consent unless QBE is satisfied that the Insured has Reasonable Grounds for Defence.
- 2.3 If QBE refuses to provide the consent set out in clause 2.2, QBE shall give to the Insured reasons for its refusal.
- If after receipt of those reasons the Insured contests QBE's refusal to provide such consent the Insured may obtain the written opinion of a Senior Counsel. The Senior Counsel shall be mutually agreed upon by both parties or failing agreement shall be appointed by the then President of the Law Society or the Law Institute in the relevant State or Territory.
- If the Senior Counsel is of the opinion that the Insured has Reasonable Grounds for Defence then QBE will:
- 2.31 give its consent in accordance with clause 2.2;
- 2.32 be responsible for the Senior Counsel's reasonable fees for providing such opinion.
- 2.4 If the Insured continues to defend a Claim where QBE has refused to provide consent in accordance with clause 2.2 and the Insured is successful in respect of that Claim, then the consent set out in clause 2.2 shall be deemed to have been given at the time it was first requested by the Insured.
- For the purpose of this clause "successful" means that the outcome of the Claim establishes that at the time at which QBE refused consent, the Insured had Reasonable Grounds for Defence.

## 3. LIMIT OF INDEMNITY AND DEDUCTIBLE

- 3.1 QBE's liability under this Policy in respect of all Losses arising out of all Claims covered by this Policy during the Period of Insurance will not exceed the Limit of Indemnity stated in the Schedule.
- 3.2 QBE's liability under this Policy applies only to that part of each Loss in excess of the Deductible.
- 3.3 For the purposes of this Policy, all Losses arising out of any one Wrongful Breach or interrelated Wrongful Breaches are deemed to be one Loss.

## 4. EXCLUSIONS

- 4.1 This Policy does not provide indemnity in respect of any Claim:
- 4.1.1 based upon, attributable to or in consequence of:
    - 4.1.1.1 any wilful, intentional or deliberate Wrongful Breach;
    - 4.1.1.2 a wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any Act;
    - 4.1.1.3 any Wrongful Breach caused by gross negligence or recklessness by the Insured;
    - 4.1.1.4 a dishonest, fraudulent, malicious act or omission of the Insured;
    - 4.1.1.5 the Insured gaining any personal profit or advantage or receiving any remuneration to which he/she was not legally entitled;
    - 4.1.1.6 any Wrongful Breach in connection with any strike, lockout, picket line, stand down or industrial dispute. This exclusion does not apply to Officers and Employees for Claims arising in the performance of their duties as Officers and Employees;
    - 4.1.1.7 a Wrongful Breach of any Consumer Protection Act. This exclusion does not apply to Officers and Employees for Claims arising in the performance of their duties as Officers and Employees;
    - 4.1.1.8 any offence under Sections 182, 183, 601FD, 601FE or 601JD of the Corporations Law; and any amendment, consolidation or re-enactment of any of those Sections.
    - 4.1.1.9 a Wrongful Breach in connection with a requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost;
    - 4.1.1.10 a Wrongful Breach relating to the regulation of vehicular, air or marine traffic;
    - 4.1.1.11 ionising radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel;
    - 4.1.1.12 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
    - 4.1.1.13 war, invasion, act 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 or destruction of or damage to property by or under the order of any Government or Public or Local Authority; or any act of Terrorism.
  - 4.1.2 made, threatened or in any way intimidated against the Insured prior to the Period of Insurance;
  - 4.1.3 arising from any matter disclosed to any insurer (including QBE) prior to the Period of Insurance as either a Claim or circumstance which may give rise to a Claim against the Insured;
  - 4.1.4 arising from any circumstances of which the Insured had become aware prior to the Period of Insurance and which the Insured knew (or ought reasonably to have known) to be circumstances which may give rise to a Claim;
  - 4.1.5 arising from any Wrongful Breach where the Insured knew (or ought reasonably to have known) prior to the Period of Insurance that there had been such a Wrongful Breach;
  - 4.1.6 for any Loss or part of any Loss which is attributable to the period after the Insured knew (or ought reasonably to have known) that its conduct was a Wrongful Breach;
  - 4.1.7 deliberately or intentionally solicited by the Insured. This exclusion does not apply to Officers and Employees where such Claims arise in the discharge of their duties as Officers and Employees;
  - 4.1.8 any Defence Costs incurred or paid before the consent of QBE has been given in accordance with the provisions of this Policy;
  - 4.1.9 for any Loss or part of any Loss arising from or which is attributable to the Insured's participation in any Joint Venture. Provided that this exclusion shall not apply to Outside Directorship as stated in Extension 6.4;
  - 4.1.10 for any Penalty
    - 4.1.10.1 imposed pursuant to any law of any country, state or territory outside the Territorial Limits;
    - 4.1.10.2 imposed within the Territorial Limits but arising out of any act or omission occurring outside the Territorial Limits, and any Defence Costs associated with

such Penalty.

- 4.2 QBE shall not be liable to pay the amount of the Deductible in respect of each Loss.
- 4.3 This Policy does not provide indemnity in respect of any Claim resulting from the existence, mining, handling, processing, manufacture, sale, distribution, storage or use of asbestos, asbestos products and/or products containing asbestos.
- 4.4 This Policy excludes death, injury, illness, loss, damage, liability, cost or expense directly caused by, contributed to by, resulting from or arising out of or in connection with any act of terrorism, as defined herein, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

An act of terrorism includes 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 thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organization(s) or government(s) de jure or de facto, and which:

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

This Policy also excludes death, injury, illness, loss, damage, liability, cost or expense directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any action in controlling, preventing, suppressing, retaliating against, or responding to any act of terrorism.

## 5. DEFINITIONS

- 5.1 "Act" means:
- 5.1.1 any Act of the Parliament of the Commonwealth of Australia and any Act of the Parliaments of the States or Territories of the Commonwealth of Australia, including any subordinate or delegated legislation made under those Acts; and
- 5.1.2 any amendment, consolidation or re-enactment of any of the above Acts or legislation.
- 5.2 "Appointed Representative" means the solicitors, barristers, assessors, consultants or investigators appointed in accordance with this Policy in respect of a Claim.
- 5.3 "Business" means the business conducted by the Named Organisation as described in the Schedule.
- 5.4 "Claim" means any verbal or written notice received by the Insured which alleges a Wrongful Breach and claims that the Insured is liable to pay a Penalty.
- 5.5 "Consumer Protection Act" means any of the following:
- Fair Trading Act 1985 (Vic);  
Fair Trading Act 1987 (NSW);  
Fair Trading Act 1987 (SA);  
Fair Trading Act 1987 (WA);  
Fair Trading Act 1989 (Qld);  
Fair Trading Act 1990 (Tas);  
Fair Trading Act 1992 (ACT);  
Consumer Affairs and Fair Trading Act 1996 (NT);  
Competition and Consumer Act 2010 (Cth)
- and any amendment, consolidation or re-enactment of any of those Acts.
- 5.6 "Deductible" means the amount as stated in the Schedule.
- 5.7 "Defence Costs" means any reasonable legal costs and associated expenses incurred with the written consent of QBE in connection with the investigation, defence (including appeal or resisting appeal) and settlement of any Claim but shall not include wages, salaries or other remuneration of the Insured.
- Provided that where proceedings are commenced to impose a Penalty and those proceedings are also in respect of other matters, then QBE will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in relation to those other matters.
- 5.8 "Employee" means any person employed by the Named Organisation under a contract of service during or prior to the commencement of the Period of Insurance, but does not include any independent contractor or any employee of any independent contractor.
- 5.9 "Insured" means:
- 5.9.1 the Named Organisation;
- 5.9.2 any Officer whilst acting in the performance of their duties to the Named Organisation;

- 5.9.3 any Employee whilst acting in the performance of their employment by the Named Organisation.
- 5.10 "Joint Venture" means any enterprise undertaken jointly by the Named Organisation and another party or parties.
- 5.11 "Limit of Indemnity" means the amount as stated in the Schedule.
- 5.12 "Loss" means any Penalty and Defence Costs.
- 5.13 "Named Organisation" means the organisation described in the Schedule and /or any Subsidiary Company which was a Subsidiary Company prior to the commencement of the Period of Insurance.
- 5.14 "Officer" means any past, present or future director, executive officer (as defined by the Corporations Law) or company secretary of the Named Organisation.
- 5.15 "Outside Directorship" means an executive position held by the Insured in connection with the Business at the specific request of the Named Organisation in any corporation, joint venture, partnership, trust or other enterprise which is not included in the definition of the Named Organisation.
- 5.16 "Penalty" means any monetary sum payable by the Insured to any Regulatory Authority pursuant to any Act for a Wrongful Breach by the Insured but excluding:
- 5.16.1 any amounts payable as compensation;
  - 5.16.2 any compliance, remedial, reparation or restitution costs;
  - 5.16.3 any damages, including any exemplary or punitive damages;
  - 5.16.4 any consequential economic loss;
  - 5.16.5 any legal costs and associated expenses.
- Notwithstanding clause 5.16.5, QBE will pay any reasonable legal costs and associated expenses payable by the Insured to any Regulatory Authority upon the imposition of a Penalty covered by this Policy. Provided that where the proceedings that lead to the imposition of the Penalty also include proceedings in respect of any of the matters set out in sub-clauses 5.16.1 to 5.16.5, QBE will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in respect of those matters set out in sub-clauses 5.16.1 to 5.16.5.
- 5.17 "Period of Insurance" means the period of insurance stated in the Schedule.
- 5.18 "Policy" means:
- 5.18.1 the Policy wording;
  - 5.18.2 the Schedule;
  - 5.18.3 the proposal; and
  - 5.18.4 any endorsements agreed by the parties attaching to and forming part of this Policy either at inception or during the Period of Insurance.
- 5.19 "Premium" means the amount stated in the Schedule.
- 5.20 "Reasonable Grounds for Defence" means:
- 5.20.1 the Insured has reasonable prospects of success in avoiding or reducing any Penalty alleged in the Claim; or
  - 5.20.2 the Insured has reasonable prospects of success in reducing the quantum of any Penalty alleged in the Claim,
- and that having regard to the likely legal costs incurred in defending the Claim it is reasonable for the Claim to be defended. Provided that in either scenario 5.20.1 or 5.20.2 above the Claim is not capable of being avoided or mitigated by a settlement into which a reasonable person in the position of the Insured, properly advised, would enter.
- 5.21 "Regulatory Authority" means a person or entity appointed, constituted or acting under a delegation pursuant to any Act for the purposes of enforcement of such Act or another Act, including a person or entity authorised to collect monies payable to the Consolidated Revenue Fund, Consolidated Fund or any other such fund.
- 5.22 "Retroactive Date" means the date shown in the Schedule. However, unless otherwise agreed in writing by QBE, such date in respect of any entity acquired or created by the Named Organisation shall be the date of acquisition or creation of that entity by the Named Organisation or the date shown in the Schedule, whichever is the later date.
- 5.23 "Subsidiary Company" means any entity in respect of which the Named Organisation:
- 5.23.1 controls the composition of the board of directors; or
  - 5.23.2 is in a position to cast, or control the casting of, more than 50% of the issued voting shares; or

- 5.23.3 holds more than 50% of the issued share capital,  
and shall include any entity which is deemed to be a subsidiary of the Named Organisation by virtue of any legislation or law.
- 5.24 "Schedule" means the document attaching to and forming part of this Policy which is signed by QBE's authorised representative.
- 5.25 "Senior Officer" means any director, chief executive officer, or company secretary of the Named Organisation.
- 5.26 "Territorial Limits" means anywhere in Australia.
- 5.27 "Terrorism" means 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, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic 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.
- 5.28 "Wrongful Breach" means any act, error or omission which occurs:
- 5.28.1 in connection with the Business;
- 5.28.2 within the Territorial Limits; and
- 5.28.3 after the Retroactive Date,
- WHEREBY:
- 5.28.4 the Insured contravenes an Act or is involved in the contravention of an Act;
- 5.28.5 the Insured commits an offence pursuant to an Act; or
- 5.28.6 such conduct is prohibited under an Act or is the subject of the imposition of a Penalty under an Act.
- 5.29 "Merger or Acquisition" means:
- 5.29.1 the Insured consolidating with, merging with, or selling all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert;
- 5.29.2 the Insured becomes a subsidiary of another Entity by virtue of Australian law.
- 5.30. "Receiver" means:
- 5.30.1 a receiver, or receiver and manager of any property of the Insured;
- 5.30.2 an administrator of the Insured; or
- 5.30.3 an administrator of a deed or company arrangement executed by the Insured; or
- 5.30.4 a provisional liquidator or liquidator of the Insured; or
- 5.30.5 a trustee or other person administering a compromise or arrangement made between the insured and someone else; or
- 5.30.6 any other external administrator of the Insured.

## 6. EXTENSIONS

- 6.1 Preamble
- 6.1.1 QBE agrees to provide indemnity in accordance with the following extensions.
- 6.1.2 Each extension is subject to the terms of this Policy except to the extent that they are expressly varied by the extension.
- 6.1.3 The inclusion of any of the extensions shall not increase the Limit of Indemnity.
- 6.2 Acquired Companies
- Provided that notice has been given to QBE as soon as practicable, it is understood and agreed that the definition of the Named Organisation is extended to include any Subsidiary Company acquired or created subsequent to the commencement of the Period of Insurance but the indemnity granted by virtue of this extension shall only apply in respect of any Wrongful Breach committed or alleged to have been committed by the Insured in respect of such Subsidiary Company subsequent to such acquisition or creation.

PROVIDED THAT:

QBE shall be entitled to such additional information as it may require in respect of such acquired or created Subsidiary Company and shall have the right to charge an additional premium.

6.3 Continuous Cover

QBE agrees to provide indemnity to the Insured in respect of any Claim notified to QBE during the Period of Insurance where that Claim arose from circumstances which the Insured knew (or ought reasonably to have known) to have been circumstances which may have given rise to a Claim prior to commencement of the Period of Insurance. PROVIDED ALWAYS THAT:

- 6.31 the Insured has not committed or attempted to commit any fraudulent non-disclosure or fraudulent misrepresentation;
- 6.32 QBE was the Insured's Statutory Liability insurer for a continuous (and uninterrupted) period from the date the Insured first became aware of the circumstances which the Insured knew (or ought reasonably to have known) to be circumstances which may have given rise to such a Claim, up to and including when the Claim was first made against the Insured and notified to QBE;
- 6.33 QBE agrees to indemnify the Insured under this extension in accordance with this Policy held by the Insured with QBE at the time the Insured first became aware that circumstances existed which the Insured knew (or ought reasonably to have known) to be circumstances which may have given rise to such Claim BUT the Insured shall have no greater cover than otherwise available under this Policy; and
- 6.34 QBE reserves the right to reduce its liability in respect of such Claim by the amount which fairly represents the extent to which QBE's interests are prejudiced as a result of the late notification of such circumstances.

6.4 Outside Directorship

QBE shall indemnify the Insured for a Loss in respect of any Outside Directorship held by an Officer;

PROVIDED THAT:

- 6.41 such indemnity shall not be extended to the outside organisation in which such Outside Directorship is held, or to any other director, executive officer, company secretary or employee of such organisation; and
- 6.42 the coverage afforded by this extension shall not apply to any part of any Loss covered by any indemnity given by such outside organisation or any contract of insurance taken out by or on behalf of that outside organisation or its directors, executive officers, company secretary or employees.

## 7. CLAIMS CONDITIONS

7.1 Notification of Claims / Circumstances

- 7.11 The Insured shall as a condition precedent to the Insured's right to be indemnified under this Policy give QBE immediate notice in writing:
  - 7.11.1 of any Claim made against the Insured; and
  - 7.11.2 of any circumstances which the Insured shall become aware which may give rise to a Claim under this Policy, irrespective of whether the Penalty is likely to be within or above the amount of the Deductible.

Send notice to:  
Professional Lines Claims  
GPO Box 219  
PARRAMATTA NSW 2124

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

- 7.12 If a Claim is made against the Insured during the Period of Insurance and the Insured notifies QBE of such Claim within 21 days after the expiry of the Period of Insurance, such Claim shall be deemed to have been notified to QBE during the Period of Insurance.

- 7.13 If during the Period of Insurance the Insured becomes aware of any circumstances which may subsequently give rise to a Claim against the Insured and the Insured gives written notice of such circumstances to QBE during the Period of Insurance (or within 21 days after the expiry of the Period of Insurance), then any Claim which may subsequently be made against the Insured shall be deemed to be a Claim made against the Insured and notified to QBE during the Period of Insurance.

7.2 Settlement / Defence / Co-Operation

- 7.21 The Insured shall use all reasonable care and do and concur to do all things reasonably practicable to avoid a Wrongful Breach or diminish a Loss.
- 7.22 The Insured shall not make any offer, payment, admission, settlement or effect any resolution in respect of any Claim or agree to pay any Penalty or consent to any order directing the Insured to pay any Penalty without the consent of QBE. QBE shall not be liable for any such Penalty incurred without its consent. However, QBE will not unreasonably withhold such consent.

- 7.2.3 QBE shall have the right, but not the obligation, to conduct in the name of the Insured, the investigation, defence (including appeal and resisting appeal) and settlement of any Claim. Any amount incurred by QBE shall be deemed to be part of the Defence Costs.
- 7.2.4 Where QBE recommends to the Insured to agree to pay any Penalty, consent to any order directing the Insured to pay any Penalty or otherwise settle or resolve any Claim, and the Insured does not agree to do so, then QBE is entitled to reduce its liability to the Insured to the extent of any prejudice suffered by QBE by reason of the Insured's failure to so agree.
- 7.2.5 The Insured may request QBE to nominate the Appointed Representative to act on behalf of the Insured. Alternatively, if the Insured wants to nominate the Appointed Representative the Insured must obtain QBE's consent to the appointment of the Appointed Representative, which consent will not be unreasonably withheld.
- However, in any event QBE's maximum liability for any legal fees charged by the Appointed Representative is restricted to five hundred (500) dollars per hour or the Appointed Representative's usual charge out hourly rate, whichever is the lesser.
- QBE may accept or refuse any nomination of any person or firm to act as Appointed Representative without giving any reason. If thereafter agreement cannot be reached on the appointment, the President of the Law Society or Law Institute within the relevant State or Territory will be requested to nominate an Appointed Representative. During the period QBE will be entitled but not bound to instruct an Appointed Representative on the Insured's and/or the Named Organisation's behalf if QBE considers it necessary to do so to safeguard the Insured's and/or the Named Organisation's immediate interests.
- 7.2.6 The Insured shall not enter into any agreement to appoint the Appointed Representative without first obtaining the consent of QBE as to the terms of the appointment of the Appointed Representative, including remuneration terms. Further, the Insured shall not represent to the Appointed Representative that all costs and associated expenses are covered by this Policy.
- 7.2.7 The Insured shall do all things reasonably necessary to allow QBE to obtain from the Appointed Representative any information, report, documents or advice relating to the Claim.
- 7.2.8 The Insured shall upon the request of QBE or the Appointed Representative and at its own expense:
- 7.2.8.1 provide all information and assistance as may be required;
  - 7.2.8.2 give a complete and truthful account of the facts relevant to any Claim;
  - 7.2.8.3 supply all documents and other evidence relevant to the Claim; and
  - 7.2.8.4 obtain and sign all documents reasonably required to be obtained and signed and attend any meeting or conferences when reasonably requested.
- AND in respect of a Claim made against:
- 7.2.8.5 the Named Organisation, the Named Organisation shall, upon the request of QBE or the Appointed Representative and at its own expense ensure that a Senior Officer attends and if necessary gives evidence, on behalf of the Named Organisation, at any conference, hearing, enquiry, investigation, proceeding or review in connection with any Claim made against the Named Organisation;
  - 7.2.8.6 any Officer or Employee, the Officer or Employee shall, upon the request of QBE or the Appointed Representative and at their own expense attend, and if necessary give evidence at any conference, hearing, enquiry, investigation, proceeding or review in connection with any Claim made against such Officer or Employee.
- 7.2.9 For the purpose of clauses 7.2.1 to 7.2.8 any reference to a Claim includes circumstances notified under clause 7.1.1 of this Policy.

## 8. GENERAL CONDITIONS

- 8.1 Reasonable Care
- The Insured shall take reasonable care at all times:
- 8.1.1 to only employ competent Officers, Employees, agents and contractors;
  - 8.1.2 to comply and ensure that its Officers, Employees, agents and contractors comply with the provisions of any Act; and
  - 8.1.3 to maintain all premises, fittings and plant in a safe and sound condition.
- 8.2 Change in Circumstances
- The Insured shall give written notice as soon as practicable of any material alteration to the risk during the Period of Insurance including the Insured going into voluntary bankruptcy, receivership, liquidation or any other form of

external administration of the Insured failing to pay its debts or breaching any other obligation giving rise to the appointment of a Receiver or bankruptcy or winding-up proceedings.

8.3 Notices Under Acts

The Insured shall comply with any lawful notice or direction received from, or any enforcement action taken by, any appropriate Regulatory Authority under any Act within the time specified or if no time is specified, within a reasonable time.

8.4 Governing Law / Jurisdiction

The construction, interpretation and meaning of the provisions of this Policy shall be determined in accordance with the law of the Commonwealth of Australia and the State or Territory where this Policy is issued, and any disputes relating thereto shall be submitted to the exclusive jurisdiction of the courts of Australia.

8.5 Cancellation

8.5.1 QBE may cancel this Policy in accordance with the relevant provisions of the Insurance Contracts Act 1984. Upon cancellation by QBE (except cancellation for fraudulent non-disclosure or fraudulent misrepresentation), QBE shall refund to the Insured that part of the Premium calculated by reference to the unexpired Period of Insurance.

8.5.2 This Policy may be cancelled at any time at the written request of the Insured in which case QBE retains:

8.5.2.1 that part of the Premium calculated by reference to the proportion that the expired part of the Period of Insurance bears to the whole Period of Insurance, plus

8.5.2.2 twenty percent (20%) of that part of the Premium calculated by reference to the proportion that the unexpired part of the Period of Insurance bears to the whole Period of Insurance.

8.6 Confidentiality

It shall be a condition of this Policy that (except to the extent that the Insured is compelled by law to do so) the Insured not release to any third party, or otherwise publish, details of the nature of the liabilities insured by this Policy, the extent of cover provided by this Policy, or the amount of the Premium specified in the Schedule, without the written consent of QBE.

8.7 Severability and Non-Imputation

QBE agrees that where this Policy insures more than one party, any conduct on the part of any party or parties whereby such party or parties:

8.7.1 failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984;

8.7.2 made a misrepresentation to QBE before this Policy was entered into;

8.7.3 failed to comply with any term or condition of this Policy; and /or

8.7.4 acted in a manner which gives rise to the application of an exclusion of this Policy, shall not prejudice the right of the remaining party or parties to indemnity as may be provided by this Policy.

PROVIDED ALWAYS THAT such remaining party or parties shall:

8.7.5 not have participated in and have had no prior knowledge of any such conduct; and

8.7.6 as soon as is reasonably practicable upon becoming aware of any such conduct, advise QBE in writing of all known facts in relation to such conduct.

8.8 Other Insurance

8.8.1 In the event that a policy of insurance or policies of insurance are listed in the Schedule, those policies of insurance will act as primary insurance and this Policy will only apply in excess of such policy(ies) of insurance;

8.8.2 The Insured shall notify QBE immediately upon entering into any other policy(ies) of insurance that provides insurance cover in respect of the risks insured by this Policy.

8.9 Subrogation

If any payment is made under this Policy, QBE shall be subrogated to the extent of such payment to all of the Insured's rights of recovery. In such case the Insured shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable QBE to effectively bring suit in the name of the Insured.

8.10 Assignment or Alteration of Interest

No change in, or modification of, or assignment of interests under this Policy shall be effective except if agreed to

in writing by QBE.

8.11 Authorisation

The organisation described in the Schedule agrees to act on behalf of all the Insureds under this Policy and each Insured agrees that such organisation is authorised to act on their behalf with respect to the giving and receiving of notice of any Claim, the receiving and giving of notice of cancellation or expiry of this Policy, the payment of Premium and the return of any part of the Premium that may become due under this Policy, the negotiation, agreement to and acceptance of endorsements, and the giving and receiving of any other notice provided for in this Policy.

8.12 Preservation

Any provision of this Policy which is illegal, void or unenforceable is only ineffective to the extent of that illegality, voidness or unenforceability, without invalidating the remaining provisions.

8.13 Construction

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

8.14. Merger, Acquisition or Receivership

If the Named Organisation, during the period of Insurance, is the subject of a Merger or Acquisition or has a Receiver appointed then the indemnity provided by this Policy will only apply in respect of a Wrongful Breach occurring prior to such an event, unless otherwise agreed in writing by QBE.

