

# Trustees liability

**QBE Insurance (Australia) Limited**

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.

## For more information or to make a claim

Please take the time to read through this booklet and if you have any questions, need more information or to confirm a transaction, please contact:

your financial services provider. The contact details for your financial services provider are set out in the documentation they give you.

The section titled 'Claims' at the end of this booklet tells you the full details about what you need to do in the event of a claim. If you'd like to make a claim or to enquire about an existing claim please contact:

your financial services provider.

## 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 top 25 insurers and reinsurers in the world.

## Important information

In this first 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.

## 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.

## 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.

## Resolving complaints & disputes Clause

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 Customer Care, 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	<ul style="list-style-type: none"> <li>• <a href="mailto:complaints@qbe.com">complaints@qbe.com</a>, to make a complaint.</li> <li>• <a href="mailto:privacy@qbe.com">privacy@qbe.com</a>, to contact us about privacy or your personal information.</li> <li>• <a href="mailto:customercare@qbe.com">customercare@qbe.com</a>, to give feedback or pay a compliment.</li> </ul>
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	<a href="mailto:info@fos.org.au">info@fos.org.au</a>

Online	<a href="http://www.fos.org.au">www.fos.org.au</a>
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#### 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	<a href="mailto:enquiries@oaic.gov.au">enquiries@oaic.gov.au</a>
Online	<a href="http://www.oaic.gov.au">www.oaic.gov.au</a>

## 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.

## Policy Wording

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

## Our Agreement

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.

## Paying your premium

You must pay your premium by the due date shown on your Policy Schedule. If we don't receive your premium by the date, or if your payment is dishonoured, this Policy won't operate and there will be no cover.

## Section 1: Insuring Clauses

### Insuring Clause A

#### 1.1 Trustees Liability Insuring Clause

QBE agrees to indemnify each Trustee against all Loss for which the Trustee shall become legally obligated to pay on account of any Claim first made against such Trustee during the Period of Cover, and which is notified to QBE during the Period of Cover.

### Insuring Clause B

#### 1.2 Trust/Employer Liability Insuring Clause

QBE agrees to indemnify the Trust/Employer against all Loss for which the Trust/Employer shall become legally obligated to pay on account of any Claim first made against such Trust/Employer during the Period of Cover, and which is notified to QBE during the Period of Cover.

### Insuring Clause C

#### 1.3 Trust/Employer Reimbursement Insuring Clause

QBE agrees to reimburse the Trust/Employer for all Loss for which the Trust/Employer grants indemnification to a Trustee, as permitted or required by law, arising from any Claim first made against such Trustee during the Period of Cover, and which is notified to QBE during the Period of Cover.

### Insuring Clause D

#### 1.4 Defence Costs Insuring Clause

QBE agrees to pay, in addition to the Limit of Indemnity, Defence Costs in relation to any Claim.

Provided always that if a payment in excess of the amount of indemnity available under this Policy is made to dispose of a Claim, QBE's liability for such Defence Costs shall be such proportion thereof as the amount of indemnity available under this Policy bears to the amount paid to dispose of the Claim.

#### 1.5 Additional Notification Period

QBE agrees that the Insured may notify a Claim (in accordance with Condition 5.1 Reporting and Notice) either during the Period of Cover or within twenty-eight (28) days after its expiry.

Provided always that such Claim was made against the Insured during the Period of Cover.

#### 1.6 Retroactive Date

- (a) "Unlimited Retroactive Cover" - unless a Retroactive Date is specified in the Schedule, this Policy shall provide cover in respect of Wrongful Acts committed (or alleged to have been committed) irrespective of when such Wrongful Acts were committed (or were alleged to have been committed).
- (b) "Limited Retroactive Cover" - where a Retroactive Date is specified in the Schedule, then this Policy shall only provide cover in respect of Wrongful Acts committed or alleged to have been committed after the Retroactive Date.

### Insuring Clause Clarification

For the avoidance of doubt, the following coverage is provided in accordance with, and subject to, the terms of this Policy.

#### 1.7 Superannuation Legislation

QBE agrees to provide coverage in respect of any Claim made against an Insured where such Claim arises from a breach or alleged breach of the Superannuation Industry (Supervision) Act 1993, the Superannuation (Resolution of Complaints) Act 1993, the Superannuation Entities (Taxation) Act 1987 (formerly the Occupational Superannuation Standards Act 1987), and their regulations.

#### 1.8 Breach of Contract

QBE agrees to provide coverage in respect of any Claim made against an Insured for breach or alleged breach of contract, provided that such breach or alleged breach occurs in the course of executing any of the functions of the Trust.

#### 1.9 Libel and Slander

QBE agrees to provide coverage in respect of any Claim made against an Insured for libel or slander by reason of words written or spoken by an Insured, provided that such libel or slander occurs in the course of executing any of the functions of the Trust.

## Section 2: Automatic Extensions

### 2.0 Preamble

QBE agrees to provide indemnity as is available under this Section, for nil additional premium, provided always that:

- (a) each Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Policy (unless otherwise stated herein);
- (b) the inclusion of any Extension shall not increase the Limit of Indemnity.

### 2.1 Advance Payment of Defence Costs

QBE agrees that in relation to any Claim under this Policy:

- (a) where indemnity has been confirmed in writing by QBE, then QBE will pay Defence Costs arising from such Claim.
- (b) where indemnity has not been confirmed in writing by QBE then:
  - (i) where QBE elects to conduct the defence or settlement of such Claim, QBE will pay Defence Costs arising from such Claim.
  - (ii) in any other case QBE may, at its discretion, pay Defence Costs arising from such Claim.

Provided always that in the event that the Claim is withdrawn or that indemnity under this Policy is subsequently withdrawn or denied, QBE shall cease to advance Defence Costs and the Insured shall refund any Defence Costs advanced by QBE to the extent that QBE is satisfied that the Insured was not entitled to such Defence Costs, unless QBE agrees in writing to waive recovery of such Defence Costs.

### 2.2 Official Investigations and Enquiries

QBE agrees to pay Defence Costs arising out of any legally compellable attendance by a Trustee at any official investigation, examination or enquiry in relation to the affairs of the Trust where such investigation, examination or enquiry may lead to a recommendation in respect of civil or criminal liability or civil or criminal proceedings and which would be the subject of a Claim under this Policy.

Provided always that:

- (a) QBE shall be entitled, at its discretion, to appoint legal representation to represent the Trustee or Trustees involved in the investigation, examination or enquiry;
- (b) the investigation, examination or enquiry, or notice of intended investigation, examination or enquiry is made during the Period of Cover and is notified to QBE during the same Period of Cover;
- (c) in the event that a claim for payment of Defence Costs is withdrawn or that indemnity under this Policy is subsequently withdrawn or denied, QBE shall cease to advance Defence Costs and the Insured shall refund any Defence Costs advanced by QBE to the extent that QBE is satisfied that the Insured was not entitled to such Defence Costs, unless QBE agrees in writing to waive recovery of such Defence Costs.

For the purpose of this Extension, an official investigation, examination or enquiry includes an investigation, examination or enquiry by way of Royal Commission or conducted by a regulatory authority such as the Australian Securities Commission but does not include any investigation, examination or enquiry conducted by a parliament or any committee of a parliament.

### 2.3 Insured v Insured

QBE agrees to provide coverage in respect of any Claim made against any Insured which is brought or maintained by or on behalf of any other Insured.

Provided always that the insured in whose name the Claim is brought or maintained is acting without any prior direct or indirect solicitation or enticement of or with any other Insured.

### 2.4 Fraud and Dishonesty

QBE agrees to provide coverage in respect of any Claim which would otherwise be excluded by reason of Exclusion 4.5 (Fraud and Dishonesty)

Provided always that:

- (a) such coverage shall not be provided to any person committing or condoning any act, omission or breach excluded by reason of Exclusion 4.5 (Fraud and Dishonesty);
- (b) such coverage shall not apply to loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

### 2.5 Loss of Documents

QBE agrees to provide coverage arising from the loss of any Documents (including but not limited to Documents which are the property of the Insured) which have been destroyed, damaged, lost or mislaid and, after diligent search, cannot be found.

Provided always that:

- (a) the discovery of such loss of Documents occurred during the Period of Cover and was notified in writing to QBE within twenty-eight (28) days after the date of such discovery;
- (b) such coverage shall be limited to the costs, charges and expenses of whatsoever nature incurred by the Insured in replacing and/or restoring such Documents and any claim for such costs, charges and expenses shall be supported by bills and/or accounts which shall be subject to approval by a competent person nominated by QBE with the approval of the Insured;
- (c) such coverage shall be limited to the loss of any Documents:
  - (i) which were in the physical custody or control of the Insured or any other person to whom the Insured entrusted, lodged or deposited such Documents in the ordinary course of business;
  - (ii) which occurred within the territorial limits of the Commonwealth of Australia or the Dominion of New Zealand.

### 2.6 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:

- (a) failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984; or
- (b) made a misrepresentation to QBE before this contract of insurance was entered into; or
- (c) failed to comply with any terms or conditions 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:

- (a) be entirely innocent of and have had no prior knowledge of any such conduct; and
- (b) 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.

### 2.7 Estates and Legal Representatives

QBE agrees to provide coverage to the estate, heirs, legal representatives or assigns of any Insured in the event of the death or incapacity of such Insured.

Provided always that such persons shall observe and be subject to all the terms of this Policy insofar as they can apply.

## Section 3: Optional Extensions

### 3.0 Preamble

QBE agrees to provide indemnity as may be available under this Section, provided always that:

- (a) each Extension is subject to the Schedule, Insuring Clauses, Conditions, Definitions, Exclusions, Deductible and other terms of this Policy (unless otherwise stated herein);
- (b) where an Extension is not specified in the Schedule then this Policy shall not provide any indemnity in relation to coverage specified under such Extension;
- (c) the inclusion of any Extension shall not increase the Limit of Indemnity (unless otherwise stated herein);
- (d) the granting of any Extension is at the sole and absolute discretion of QBE who reserves the right to charge any additional premium as it may require.

### 3.1 Increased Aggregate Limit of Indemnity

QBE agrees to increase the Limit of Indemnity under this Policy by an amount equal to the Limit of Indemnity.

Provided always that QBE's total liability under this Policy shall not exceed:

- (a) in respect of any one Claim, the Limit of Indemnity as specified in the Schedule; and
- (b) in respect of all Claims, an amount equal to twice such Limit of Indemnity.

### 3.2 Fidelity

QBE agrees to reimburse the Trust in respect of any direct financial loss suffered by the Trust, where such loss is sustained in consequence of any dishonest or fraudulent act or omission of any Insured.

Provided always that:

- (a) such loss is first discovered by the Insured during the Period of Cover and is notified in writing to QBE within twenty-eight (28) days after the date of such discovery;
- (b) QBE shall not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or of reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the Insured concerned;
- (c) QBE shall not be liable to indemnify any Insured committing or condoning any dishonest or fraudulent conduct;
- (d) the Insured shall bear the burden of adducing satisfactory proof to substantiate any loss hereunder (including any costs incurred in such process) and QBE will be under no obligation to provide indemnity to the Insured until such time as QBE is satisfied that such loss has, in fact, been sustained;
- (e) the Deductible shall apply to each and every individual dishonest or fraudulent act or omission.

## Section 4: Exclusions

QBE shall not be liable under this Policy to make any payment for Loss arising from any Claim against any Insured:

### 4.1 Prior or Pending

- (a) made, threatened or intimidated against such Insured prior to the Period of Cover;
- (b) directly or indirectly based upon, attributable to, or in consequence of any fact or circumstance:
  - (i) of which written notice has been given, or ought reasonably to have been given, under any previous policy; or
  - (ii) of which any Insured first became aware prior to the Period of Cover, and which the Insured knew or ought reasonably to have known had the potential to give rise to a Claim under this Policy.

### 4.2 Pollution and Nuclear Risk

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

- (a) (i) the actual, alleged or threatened discharge, release, escape or disposal of Pollutants into or upon land, the atmosphere, or any watercourse or body of water; or
  - (i) any enforcement, action or proceeding in connection with the containment, clean up, removal, or treatment of such Pollutants;
- (b) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel.

### 4.3 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 or public local authority.

### 4.4 Bodily Injury and Property Damage

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

- (a) bodily injury, sickness, disease or death of any person, however this Exclusion shall not apply to mental injury, mental anguish, nervous shock or emotional distress not associated with bodily injury;
- (b) physical loss of, damage to, or destruction of, any tangible property (other than any Document), including loss of use thereof or any consequential loss.

### 4.5 Fraud and Dishonesty

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

- (a)
  - (i) any actual or alleged dishonest, fraudulent, criminal, or malicious act or omission; or
  - (ii) any act or omission committed or alleged to have been committed with a reckless disregard for the consequences thereof; or
  - (iii) any wilful violation or wilful breach of any statute or regulation, or any wilful breach of any contract;

by such Insured where such act, omission, violation or breach is established in fact.

- (b) such Insured having improperly benefited from securities transactions as a result of information that is/was not available to other sellers or purchasers of such securities;
- (c) such Insured having gained any personal profit, remuneration or advantage to which such Insured was not legally entitled.

### 4.6 Terrorism

4.6.1 Arising directly or indirectly from, or in any way connected with, an act of Terrorism or any action taken in controlling, preventing, suppressing or in any way relating to an act of Terrorism ("the Terrorism exclusion").

4.6.2 An act of Terrorism means an act, including but not limited to the use of force or violence and/or 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.

4.6.3 The Terrorism exclusion operates in connection with any act of Terrorism regardless of any other cause(s) or event(s) and regardless of the sequence of the act of Terrorism and the other cause(s) or event(s).

4.6.4 If QBE asserts that the Terrorism exclusion applies, then in any action, suit, proceedings or claim brought by or on behalf of the Insured in connection with the Terrorism exclusion, the burden of proving that the Terrorism exclusion does not operate shall be upon the Insured. QBE is not required to prove that the Terrorism exclusion applies.

4.6.5 If the Insured brings any action, suit, proceedings or claim on the Policy in connection with the operation of the Terrorism exclusion, and the Insured does not prove that the Terrorism exclusion does not apply, the Insured shall pay QBE's costs of responding to the action, suit, proceedings or claim on an indemnity basis.

## Section 5: Claims Conditions

### 5.1 Reporting and Notice

- (a) The Insured shall give to QBE written notice as soon as practicable of any Claim made against the Insured,

Provided always that such written notice is given to QBE during the same Period of Cover or within twenty-eight (28) days after its expiry.

- (b) Notice of any Claim shall be given in writing to QBE, and delivered to:

Professional Lines Claims  
QBE Insurance (Australia) Limited  
GPO Box 219  
Parramatta NSW 2124

### 5.2 Defence and Settlement

- (a) The Insured agrees not to settle any Claim, incur any Defence Costs, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any Claim without QBE's written consent, such consent not to be unreasonably withheld. QBE shall not be liable for any settlement, Defence Costs, admission, offer or payment, or assumed obligation to which it has not consented.
- (b) QBE shall be entitled at any time to conduct, in the name of the Insured, the defence or settlement of any Claim.
- (c) QBE may, if it believes that any Claim will not exceed the Deductible, instruct the Insured to conduct the defence of the Claim. In such situation, QBE will reimburse the Insured for all reasonable Defence Costs incurred in the defence of the Claim in the event that any payment made to dispose of the Claim exceeds the Deductible.

### 5.3 Insured's Right to Contest

In the event that QBE recommends settlement in respect of any Claim and the Insured does not agree that such Claim should be settled, then the Insured may elect to contest such Claim.

Provided always that QBE's liability in connection with such Claim shall not exceed the amount for which the Claim could have been so settled plus the Defence Costs incurred with QBE's written consent up to the date of such election.

### 5.4 Senior Counsel Clause

- (a) QBE shall not require the Insured to contest any Claim unless a Senior Counsel (to be mutually agreed upon by the Insured and QBE) shall advise that such Claim should be contested.
- (b) 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 Defence Costs and the prospects of the Insured successfully defending the Claim.
- (c) The cost of such Senior Counsel's opinion shall be regarded as part of the Defence Costs.

### 5.5 Claims Mitigation and Co-Operation

- (a) The Insured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any Loss hereunder.
- (b) The Insured shall frankly and honestly disclose to QBE all relevant information and, in addition shall provide assistance to QBE, as it may require to enable it to investigate and to defend any Claim under this Policy and/or to enable QBE to determine its liability under this Policy.
- (c) Other than Costs and Expenses incurred to enable QBE to determine its liability under this Policy, compliance with this Condition shall be at the Insured's own cost, unless otherwise agreed in writing by QBE.

### 5.6 Subrogation

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

## Section 6: General Conditions

### 6.1 Limit of Indemnity

- (a) QBE's total liability under this Policy for any one Claim and in the aggregate in respect of all Claims shall not exceed the Limit of Indemnity specified in the Schedule except that (subject to the provisions of Insuring Clause D) QBE will, in addition to the Limit of Indemnity, pay the Defence Costs in respect of any Claim.
- (b) Where QBE has agreed to provide an Increased Aggregate Limit of Indemnity in accordance with Optional Extension 3.1, then QBE's total liability under this Policy in respect of all Claims shall not exceed the aggregate Limit of Indemnity specified in the Schedule except that (subject to the provisions of Insuring Clause D) QBE will, in addition to the Limit of Indemnity, pay the Defence Costs in respect of any Claim.

### 6.2 Deductible

- (a) QBE's liability under this Policy shall only apply to that part of each Loss in respect of each Claim which is in excess of the Deductible and such Deductible shall be borne by the Insured at their own risk.
- (b) Any Costs and Expenses incurred by QBE to determine whether QBE has a liability to indemnify the Insured under this Policy shall not be subject to the Deductible but shall be borne by QBE.

### 6.3 Multiple Claims

- (a) All causally connected or interrelated Wrongful Acts shall jointly constitute a single Wrongful Act under this Policy.
- (b) Where a single Wrongful Act gives rise to more than one Claim, all such Claims shall jointly constitute one Claim under this Policy, and only one Deductible shall be applicable in respect of such Claim.

### 6.4 Worldwide Territorial Cover

The indemnity provided under this Policy shall extend to a Wrongful Act occurring anywhere in the world.

### 6.5 Jurisdictional Cover

The indemnity provided under this Policy shall extend to any Claim made anywhere in the world but shall not include:

- (a) any Claim made in, or determined pursuant to the law of, the United States of America or the Dominion of Canada or their territories or protectorates; or
- (b) any Claim arising out of the enforcement of judgements, orders or awards obtained within, or determined pursuant to the law of, the United States of America or the Dominion of Canada or their territories or protectorates.

### 6.6 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 QBE.

### 6.7 Cancellation

- (a) The Insured may cancel this Policy at any time by notifying QBE in writing, and QBE will allow a pro-rata refund of Premium for the unexpired Period of Cover.
- (b) QBE may cancel this Policy in accordance with the relevant provisions of the Insurance Contracts Act 1984 and QBE will provide a pro-rata refund of Premium for the unexpired Period of Cover.

### 6.8 Policy Construction and Interpretation

- (a) 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, and any disputes relating thereto shall be submitted to the exclusive jurisdiction of the courts of such state, territory or country.

- (b) 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.
- (c) Under this Policy, the masculine includes the feminine, and the singular includes the plural and vice versa.

### 6.9 GST

Where the Insured pays an amount for any acquisition relevant to a Claim covered under this insurance which includes GST, or where the Insured would pay such an amount were the Insured to make a relevant acquisition, QBE will indemnify the Insured for that GST less any input tax credit the Insured is or would be able to claim for it (the "GST amount").

QBE will pay the GST amount in addition to the Limit of Indemnity shown in the Schedule.

Where the amount paid by QBE in respect of the Claim is less than the total amount of the Claim, QBE will only provide indemnity to the Insured for the GST amount that relates to QBE's proportion of the Insured's Claim. This means that in the event that the Limit of Indemnity is not sufficient to cover the total amount of the Claim, QBE will only provide indemnity to the Insured for the GST that relates to the Insured's agreed payment under the Policy.

QBE will not indemnify the Insured for any GST liability that arises due to the Insured's failure to notify QBE of the Insured's entitlement or correct entitlement to an input tax credit on the Premium.

"GST", "input tax credit" and "acquisition" have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax) Act 1999.

## Section 7: Definitions

### 7.1 Claim

"Claim" shall mean:

- (a) a written or verbal allegation of any Wrongful Act communicated to any Insured; or
- (b) a civil proceeding commenced by the service of a complaint, summons, statement of claim or similar pleading against any Insured alleging any Wrongful Act; or
- (c) a criminal proceeding commenced by a summons or charge against any Insured alleging any Wrongful Act.

### 7.2 Deductible

"Deductible" shall mean the amount of deductible as specified in the Schedule.

### 7.3 Defence Costs

"Defence Costs" shall mean costs, charges and expenses (other than regular or overtime wages, salaries or fees of any Insured) incurred by QBE or with the prior written consent of QBE (such consent not to be unreasonably withheld):

- (a) in defending, investigating or monitoring any Claim, or proceedings and appeals therefrom together with the costs of appeal;
- (b) in relation to any legally compellable attendance by an Insured at any official investigation, examination or enquiry pursuant to Extension 2.3 (Official Investigations and Enquiries).

### 7.4 Documents

"Documents" shall mean 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 currency notes or any negotiable instrument.

### 7.5 Employer

"Employer" shall mean each corporation or entity (or any predecessors of such corporation or entity), which contributes to, or participates in, the Trust, and which is specified in the Schedule.

### 7.6 Insured

"Insured" shall mean, either in the singular or plural, the Trust, the Employer, and any Trustee.

### 7.7 Limit of Indemnity

"Limit of Indemnity" shall mean the limit of liability under this Policy as specified in the Schedule.

### 7.8 Loss

"Loss" shall mean the total amount which an Insured becomes legally obligated to pay in respect of a Claim made against such Insured for a Wrongful Act and shall include damages, judgements, settlements, legal costs and expenses awarded against the Insured to any claimant, and Defence Costs.

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

### 7.9 Period of Cover

"Period of Cover" shall mean the period specified in the Schedule.

### 7.10 Policy

"Policy" shall mean:

- (a) the Schedule, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and other terms contained herein; and

- (b) any endorsement attaching to and forming part of this Policy either at inception or during the Period of Cover; and
- (c) the Proposal.

### 7.11 Pollutants

"Pollutants" shall mean:

- (a) any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals; or
- (b) any waste materials including material to be recycled, reconditioned or reclaimed; or
- (c) any other air emission, odour, waste water, oil, oil products, infectious or medical waste, asbestos, asbestos products, or any noise emission.

### 7.12 Premium

"Premium" shall mean the premium specified in the Schedule or in any endorsement to the Schedule.

### 7.13 Proposal

"Proposal" shall mean the written proposal made by the Insured to QBE containing particulars and statements which, together with other information provided by the Insured, are the basis of this Policy and are considered as incorporated herein.

### 7.14 QBE

"QBE" shall mean QBE Insurance (Australia) Limited (ABN 78 003 191 035)

### 7.15 Schedule

"Schedule" shall mean the Schedule to this Policy.

### 7.16 Senior Counsel

"Senior Counsel" shall mean a barrister in active practice who is entitled to use the post nominals Q.C. or S.C. in any one or more superior court in Australia or New Zealand.

### 7.17 Trust

"Trust" shall mean each superannuation plan, fund or trust (or any predecessors of such plan, fund or trust) which is specified in the Schedule.

### 7.18 Trustee

"Trustee" shall mean:

- (a) any natural person who was, is or may hereafter be a duly appointed trustee of the Trust; or
- (b) any body corporate (including any past, present or future director, officer, secretary or employee of such body corporate), who was, is or may hereafter be a duly appointed trustee of the Trust; or
- (c) any member of any policy or management committee which has been established pursuant to the governing rules of the Trust; or
- (d) any natural person who by virtue of any applicable legislation or law is deemed to be a trustee of the Trust.

### 7.19 Wrongful Act

"Wrongful Act" shall mean any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act committed or attempted by an Insured, individually or otherwise, in the course of executing any of the functions of the Trust.

