



Corporate Practices
Protection Policy Wording

Corporate Practices Protection

INSURER:

Berkley Insurance Australia
ABN 53 126 559 706





**CORPORATE PRACTICES PROTECTION
EMPLOYMENT PRACTICES LIABILITY
POLICY WORDING**

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CORPORATE PRACTICES PROTECTION POLICY

EMPLOYMENT PRACTICES LIABILITY

IMPORTANT NOTICE

Specialist Underwriting Agencies Pty Ltd (ABN 18 010 862 745) ("SUA") give notice that this Policy is issued under an authority given to Specialist Underwriting Agencies Pty Ltd by Berkley Insurance Australia ABN 53 126 559 706 ("Berkley").

Furthermore Specialist Underwriting Agencies Pty Ltd will be acting as agent of Berkley and not as an agent for the Insured.

THIS POLICY IS A CLAIMS MADE POLICY

This means that the Policy will respond to Claims first made against the Insured and notified to SUA or Berkley (the "Insurer") during the Policy Period as shown on the Schedule/Certificate of Currency. This Policy does not cover Claims made against or brought by the Insured prior to the commencement of the Policy Period.

PRIVACY STATEMENT

Protecting your privacy

We are committed to protecting your privacy and the privacy of any personal information provided to us. We comply with the Australian Privacy Principles set out in the Privacy Act 1988. A full version of our **Privacy Policy** is available (see the link below) which sets out details about how we manage and what we do with your personal information. In summary:

What personal information will we collect and why do we need it?

We may need to collect personal information from you so that we can provide you with the insurance services you are seeking from us.

How do we collect the personal information?

Information is primarily collected through brokers or directly from you. It might also be collected on occasion in person by investigators or to the officers or service providers of ours, in writing, by telephone and by other electronic communication channels.

We may need to obtain personal information from others to ensure that we are fully informed in relation to the issues that we need to address with regard to your insurance and any claim that you may make.

Who will see or have access to your personal information?

Unless we are required to provide your personal information to others by law, by court order or to administer or investigate an application for insurance or a claim, your information will only be seen or used by persons working within the Specialist Underwriting Agencies group of companies.

Security of Information

Our information systems and files are kept secured from unauthorised access and our staff and contracted agents and service providers have been informed of the importance we place on protecting your privacy and their role in helping us to do so. Information will be stored and disposed of in a secure environment, which may only be accessed by authorised personnel.

What if I want to check what personal information you hold about me?

We are happy to advise you what personal information we hold about you and share this information with you. This will be the case unless there is a relevant exception under the Privacy Act 1998 that applies.

Can I correct the information?

If you believe there are errors in our records about you, please let us know and we will be happy to investigate and correct any inaccuracies.

Cookies

Our website may use cookies to provide a better browsing experience. If you prefer not to have cookies collected, you can disable this option in your browser settings.

Direct Marketing

Apart from notifying you of our service offerings, we do not, without your consent, sell, rent, license or otherwise disclose your information to any party for the purposes of direct marketing.

Cross Border Storage

In order for us to provide our services, we may receive and share personal information with the Specialist Underwriting Agencies group of companies, third parties and we may also store that information on servers that are not in Australia. We will ensure that any party with whom we share personal information overseas will be required to comply with the Privacy Act 1988.

Further information

If you would like further information, please review our full **Privacy Policy** at www.sua.com.au or if you have any complaints or concerns over the protection of the information you have given to us or that we have collected from others, contact the privacy officer at:

Specialist Underwriting Agencies Pty Ltd

255 Sandgate Road
ALBION QLD 4010

PO Box 324
CLAYFIELD QLD 4011
Ph: 07 3624 9419

Email: info@sua.com.au

COPYRIGHT NOTICE

This Policy is copyright. Apart from any use permitted under the Copyright Act 1968, no part may be reproduced by any process, nor may any other exclusive right be exercised, without the permission of:

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255 Sandgate Road,
Albion 4010
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EMPLOYMENT PRACTICES LIABILITY

PREAMBLE

The Policy Wording, Schedule/Certificate of Currency, and Endorsements (collectively described as the Policy) are to be read together and any word or expression to which a specific meaning has been given in any part of this Policy shall bear that meaning wherever it may appear.

Subject to the payment of the premium set out in the Schedule/Certificate of Currency, the Insurer agrees to provide insurance subject to the terms of the Policy and the Limit of Liability set out in this Policy or its Endorsements. Coverage is provided for those sections where a Limit of Liability is shown on the Schedule/Certificate of Currency.

In issuing this Policy, the Insurer relies on the information contained in the Proposal and any written or printed statements or other information provided by the Insured or by any one acting on behalf of the Insured.

AGGREGATE LIMIT OF LIABILITY

The total aggregate limit of the Insurer's liability to the Insured in respect of all Employment Practice Claims made under this Policy during any one Policy Period shall not exceed the Aggregate Limit of Liability.

The Insurer's liability in respect of this Policy shall apply only to that part of any Employment Practice Claim which exceeds any applicable Deductible.

Where the total amount of any payments in respect of any Employment Practice Claim exceeds the available Limit of Liability then the order of entitlement to indemnity up to the available Limit of Liability shall be in the following priority:

- (a) the Named Organisation;
- (b) the Named Organisation where the Named Organisation grants indemnity to any principals, Partners, directors, Officer and Employees as permitted or required by law;
- (c) any principal, Partner, director, Officer or Employee

The Aggregate Limit of Liability shall not accumulate from one Policy Period to another.

INSURING CLAUSE

The Insurer agrees to pay on behalf of the Insured:

- (a) Damages; and
- (b) Legal Costs

which the Insured is legally obliged to pay arising from any Employment Practice Claim first received by the Insured and notified to the Insurer during the Policy Period.

Provided that the Insurer is not liable for Employment Practice Claims that arise from or are in relation to any:

- (a) Employment Practice Breach that occurred before the Retroactive Date;
- (b) Known Circumstances.

LIMIT OF LIABILITY

For the purposes of this section of the Policy, all Employment Practice Claims arising out of any Related Employment Practice Breach of any Insured shall be deemed to be one Employment Practice Claim.

The maximum liability of the Insurer in respect of any one Employment Practice Claim shall be limited to the Limit of Liability specified in the Schedule/Certificate of Currency in excess of the Deductible.

DEFINITIONS

Wherever appearing in this section of the Policy or any Endorsement attached to this section of the Policy, the following terms shall have the meaning set out below:

Act of Parliament

means:

- (a) 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 of Parliament; and
- (b) any amendment, consolidation or re-enactment of any of the above acts of Parliament or legislation; and
- (c) any regulations made pursuant to any of the above acts of Parliament or legislation.

Aggregate Limit of Liability

means the aggregate limit of liability specified in the Schedule/Certificate of Currency.

Appointed Representative

means the solicitors, barristers, assessors, consultants or investigators appointed by the Insured in accordance with the terms of this Policy.

Back-pay

means the amount the Insured is legally obliged to pay an Employee for the period between the date of termination of the Employee's employment, and the date the Employer is ordered to reinstate or re-employ.

Business

means the business conducted by the Named Organisation as described in the Schedule/Certificate of Currency.

Claim

means any:

- (a) Employment Practice Claim as defined in this Policy; or
- (b) amounts payable under the Extensions of this Policy

Compensation

means any compensation or damages.

Damages

means compensatory monetary amounts which the Insured is legally obliged to pay for an Employment Practice Breach including Back-pay arising from an order for reinstatement or re-employment.

Damages does not include:

- (a) any Penalties;
- (b) any relief or recovery other than monetary amounts.

Deductible

means the first amount of each and every Claim to be borne by the insured as specified in the Schedule/Certificate of Currency.

The terms of this Policy apply irrespective of the application of the Deductible, including those terms concerning:

- (a) the Insurer's right to defend any Claim; and
- (b) the Insured's duties in the event of a Claim.

The application of the Deductible does not erode the Aggregate Limit of Liability under this Policy.

Where a Claim is payable under more than one section of this Policy the highest of any applicable Deductible only will apply.

Deemed Employee

means any person deemed to be an employee or worker for the purpose of workers compensation under any Act of Parliament.

Employee

means a person who during or prior to the commencement of the Policy Period was:

- (a) employed by the Named Organisation for remuneration; or
- (b) employed by the Named Organisation under a contract of service, but does not include any Independent Contractor or any employee of any Independent Contractor, or
- (c) a director, board member or Officer of the Named Organisation
- (d) a Partner of the Named Organisation
- (e) any voluntary worker whilst acting under the direction of an otherwise defined Employee of the Named Organisation
- (f) a Deemed Employee

Employment Practice Breach

means any of the following practices by any Insured directed against any Employee, former Employee, Contractor, Labour Hire Worker or any applicant for employment:

- (a) wrongful refusal to employ an applicant for employment;
- (b) wrongful failure to promote an Employee;
- (c) wrongful demotion, negligent evaluation, negligent reassignment or negligent disciplinary action;
- (d) wrongful termination of employment, including constructive dismissal;
- (e) unlawful workplace harassment, unlawful discrimination or unlawful workplace bullying;
- (f) oral or written publication of material that slanders, defames or libels an Employee or violates or invades an Employee's right of privacy.

Employment Practice Claim

means any verbal or written notice that has been:

- (a) addressed to or served upon the Insured;
- (b) sent or served by or on behalf of any Employee, Contractor, Labour Hire Worker, former Employee or applicant for employment by the Named Organisation;

and alleges an Employment Practice Breach.

Such Employment Practice Claim shall be deemed to have originated on the earliest date on which such verbal or written notice of an Employment Practice Breach is made against any Insured.

Endorsement

means any written endorsement to the Policy issued by the Insurer.

Independent Contractor

means a person or company engaged by the Named Organisation to perform a contract for services.

Insured

means:

- (a) the Named Organisation;
- (b) any former, current and future principals, Partners, directors, Officers and Employees of the Named Organisation but only with respect to their duties as principals, Partners, directors, Officers and Employees of the Named Organisation; and
- (c) any heirs, executors, administrators, assignees or legal representatives of any Insured referred to in paragraphs (a) or (b) above, in the event of the death, bankruptcy or incapacity of such Insured, but only to the extent that cover under this Policy would have been available to such Insured.

Insurer

means Berkley Insurance Australia ABN 53 126 559 706.

Insurer's Nominated Representative

means the legal representative nominated by the Insurer to manage any Claim.

Known Circumstances

means:

- (a) circumstances occurring prior to the inception of this Policy and which the Insured knew or ought reasonably to have known were likely to give rise to a Claim or prosecution being brought against the Insured; or
- (b) a Claim first made or threatened or in any way intimated against the Insured prior to the inception of the Policy; or
- (c) a Claim against an Insured arising from anything disclosed in the Proposal or any declaration, being the basis of this Policy

Labour Hire Worker

means a person engaged by the Named Organisation under an agreement with a labour hire firm to perform duties related to the conduct of the Business shown on the Schedule/Certificate of Currency.

Legal Costs

means any reasonable fees, costs and associated expenses reasonably incurred by the Insured following the written consent of the Insurer or paid by the Insurer after a Claim is notified to the Insurer and are incurred solely and exclusively in the:

- (a) investigation, defence (including appeal or resisting appeal) and settlement of any Claim
- (b) in representing the Insured in relation to any Claim

however shall not include wages, salaries or other remuneration or benefits paid by the Named Organisation to its principals, Partners, directors, Officers and Employees.

Provided that in any event the liability of the Insurer for legal fees and costs for an Appointed Representative where legal fees are charged on a time costed basis the hourly rate will be the lesser of:

- (a) the usual hourly charge out rate of the Appointed Representative;
- (b) the hourly charge out rate of the Insurer's Nominated Representative for work performed for the Insurer at the time the legal services are provided.

Limit of Liability

means the limit of liability for a Claim specified in the Schedule/Certificate of Currency, subject to the Aggregate Limit of Liability.

Named Organisation

means the Named Organisation described in the Schedule/Certificate of Currency including any Subsidiary Company or controlled entity.

Officer

means any director or alternate director of the Named Organisation appointed before or during the Policy Period, or any company secretary of the Named Organisation appointed before or during the Policy Period, or any officer employed by the Named Organisation before or during the Policy Period excluding:

- (a) A receiver, receiver and manager, official manager, liquidator, administrator, trustee or other person administering a compromise or scheme of arrangement between the Named Organisation or any other person or persons;
- (b) any company, organisation or other body corporate.

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, partnership, trust or other enterprise which is not included in the definition of the Named Organisation.

Partner

means:

- (a) any individual employed under a deed of partnership; or
- (b) any individual who is a party to the partnership agreement.

Policy

means the contract of insurance that is comprised of the Policy Wording, the Schedule/Certificate of Currency and each Endorsement.

Policy Period

means the period from the inception of this Policy until its expiry as shown on the Schedule/Certificate of Currency subject to prior termination in accordance with this Policy.

Policy Wording

means this document.

Prior & Pending Date

means the date specified in the Schedule/Certificate of Currency. Unless otherwise agreed in writing by the Insurer, 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 Prior & Pending Date shown in the Schedule/Certificate of Currency, whichever is the later.

Production Costs

means:

- (a) the fees, expenses and disbursements reasonably, necessarily and properly incurred by the Named Organisation with the Insurer's consent in the production of documents, and
- (b) the value of time reasonably, necessarily and properly incurred with the Insurer's consent, expended by the Named Organisation's employees in preparing for, providing information to and/or attendance at any Inquiry. The "value of time" will be calculated at the Named Organisation's normal hourly rate for the relevant personnel

Proposal

means the proposal form completed by or on behalf of the Insured and includes any attachment, documents or information.

Reasonable Grounds for Defending

means:

- (a) the Insured has reasonable prospects of success in avoiding or reducing any liability that will result from the Claim or proceedings made or brought against the Insured: or
- (b) the Insured has reasonable prospects of success for mitigating any sentence or reducing the quantum of any Penalties that will be imposed in the Claim or proceedings made or brought against the Insured;

and that having regard to the likely Legal Costs thereof it is reasonable for the Claim and the proceedings to be defended.

Provided that the Claim or proceedings are not capable of being avoided or terminated by a settlement into which a reasonable person in the position of the Insured, properly advised, would enter.

Related Employment Practice Breach

means any interrelated and/or causally connected Employment Practice Breach.

Regulatory Authority

means a person, body or entity appointed, constituted or acting under a delegation or power pursuant to any Act of Parliament for the purposes of enforcement of any Act of Parliament and prosecution of Offences, including a person or entity authorised to collect monies payable to the Consolidated Revenue Fund, Consolidated Fund or any other such fund and includes but is not limited to:

- (a) Statutory authorities;
- (b) Statutory corporations;
- (c) Government agencies;
- (d) Local councils and municipal authorities.

Retroactive Date

means the date specified in the Schedule/Certificate of Currency. Unless otherwise agreed in writing by the Insurer, 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 Retroactive Date shown in the Schedule/Certificate of Currency, whichever is the later.

Schedule/Certificate of Currency

means the schedule and/or Certificate of Currency attaching to this Policy.

Subsidiary Company

means any entity that is controlled by the Named Organisation through ownership or control of more than 50% of the issued voting shares or issued share capital or through the control of the composition of the board of directors but such term shall include any organisation whose financial accounts are incorporated in those of the Named Organisation by virtue of accounting standard AASB 1024 or any equivalent standard.

SUA

means Specialist Underwriting Agencies Pty Ltd (ABN 18 010 862 745).

Territorial Limits

means the Territorial Limits as described in the Schedule/Certificate of Currency.

Wilful or Wilfulness

means acting with intentional or reckless disregard for the consequences of the act, error, omission or failure.

Workers Compensation Benefits

means benefits payable to any Employee pursuant to any workers compensation legislation.

Wrongful

means wrongful, unfair or unlawful.

EXCLUSIONS

Under this section of the Policy, the Insurer has no liability for and does not provide indemnity in respect of:

Asbestos

any Claim for Compensation of any nature which is directly or indirectly based upon, attributable to or in any way connected with asbestos.

Building Modification Requirement

any Employment Practice Claim arising from any requirement for physical modifications to the Insured's premises, fixtures, fittings, plant or equipment or changes to the Insured's usual business operations.

Compensation for Physical Injury

any Employment Practice Claim:

- (a) made against the Insured for Compensation other than for mental injury, anxiety, stress, emotional upset or nervous shock; and/or
- (b) for Workers Compensation Benefits.

Competition and Consumer Law

any Claim directly or indirectly arising from or in any way connected with any unfair or restrictive trade practices, including but not limited to misleading and deceptive conduct, price fixing, cartels or tortious interference in any other business or contractual relationships.

However this exclusion will not apply to any Employee whilst acting in their capacity as an Employee of the Named Organisation.

Failure to comply with a Government Order or Regulation

any Wilful, intentional or deliberate failure to comply with any lawful notice, order, direction, enforcement action or proceeding under any Act of Parliament.

Failure to Gain Insurer's Consent

any Claim for Legal Costs where the legal services were provided or the legal fees, costs and associated expenses were incurred or paid:

- (a) without the consent of the Insurer;
- (b) before the Insurer provided consent to incur Legal Costs in accordance with the provisions of this Policy.

Failure to Maintain Insurance

any Claim based upon, attributable to or in any way connected with any actual or alleged failure to effect or maintain any insurance, reinsurance or bond.

Fraudulent, Reckless and Wilful Acts

any Claim based upon, attributable to, or in any way connected with:

- (a) any fraudulent act or omission of the Insured;
- (b) any Wilful, intentional, dishonest or malicious act or omission committed by an Insured;
- (c) conduct of the Insured that without reasonable excuse, exposes an individual to a risk of harm and the Insured is reckless as to the risk of harm;
- (d) reckless conduct on the part of any Insured;
- (e) any act, error or omission which is committed by an Insured with criminal intent.

Provided that this Exclusion will only apply where it is established by an admission of an Insured, court judgment or other final adjudication that the subject conduct did in fact occur.

Insolvency & Acquisition

any Claim which occurs when, or after:

- (a) the Named Organisation is placed in any liquidation, receivership, bankruptcy or insolvent administration; or
- (b) the Named Organisation ceases to be controlled by the person, entity or group of persons or entities that exercised control over the Named Organisation at the beginning of the Policy Period;

unless the Insured complies with Policy Condition - Change in Control of Named Organisation' and the Insurer at its sole discretion agrees in writing to continue cover.

Intentional Libel & Slander

any Claim arising from any written or verbal publication of material, if such material:

- (a) was published by or at the direction of the Insured with knowledge that it was false; or
- (b) was first published before the Retroactive Date shown on the Schedule/Certificate of Currency.

Known Circumstances

any Claim based upon, attributable to, or in any way connected with Known Circumstances.

Obligations to Make Payments

any amount payable by the Insured pursuant to:

- (a) any express obligation to make payments, whether under any Act of Parliament, award or contract;
- (b) any court order, award or agreement requiring the Insured to make payment under a fixed term or fixed task contract of employment or contract for service;
- (c) an obligation that arises in consequence of a contract for service.

Provided that this Exclusion shall not apply to any:

- (a) liability for Damages that the Insured would have in the absence of the contract or agreement;
- (b) Legal Costs to defend any action brought under the Fair Work Act 2009 (Cth) (or any re-enactment thereof) relating to any express obligation to make payments under any Act of Parliament, award or contract.

Other Insurance

any liability which forms the subject of insurance by any other policy and this Policy shall not be drawn into contribution with such other insurance.

Personal Gain & Dishonesty

any contravention of sections 182, 183, 601FD, 601FE or 601JD of the Corporations Act 2001 (Cth) and any amendment, consolidation or re-enactment of any of those sections or any Claim directly or indirectly based upon or attributable to the Insured gaining any personal profit, advantage or receiving any remuneration to which the Insured was not legally entitled, or otherwise arising out of the dishonesty of the Insured.

Provided that this Exclusion will only apply where it is established by an admission of an Insured, court judgment or other final adjudication that the subject conduct did in fact occur.

Prior & Pending

any Claim made or proceedings commenced against the Insured prior to the Prior and Pending date specified in the Schedule/Certificate of Currency, or arising from or attributable to any facts or circumstances notified or disclosed to the Insurer (or any other insurer) prior to the Prior & Pending date specified in the Schedule/Certificate of Currency.

In the case of cover for Outside Directorships, the Prior & Pending date shall be the date specified in the Schedule/Certificate of Currency or the date at which cover first commenced in respect of the Outside Directorship, whichever is the later.

Punitive, Aggravated & Exemplary Damages, Uninsurable Liabilities

any punitive, aggravated or exemplary damages or any uninsurable liability under the laws pursuant to which the Policy is construed.

Radioactivity

any loss or destruction of or damage to any property or injury to any person whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss, or any legal liability of whatsoever nature, directly or indirectly caused by or contributed to, by, or arising from:

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

Provided that these Exclusions will not apply to any Claims made arising from radio isotopes or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

Reasonable Grounds for Defending

any Legal Costs where it is determined at any time by the Appointed Representative that there are no Reasonable Grounds for Defending.

Strikes & Lockouts

any Claim in connection with any strike, lockout, picket line, stand down, related worker replacement(s) or other similar actions resulting from industrial disputes or negotiations.

Provided that this Exclusion does not apply to directors, principals, Partners, Officers and Employees for Claims arising out of the performance of their duties as directors, principals, Partners, Officers and Employees.

Territorial Limits

any Claim:

- (a) made, commenced or brought outside the Territorial Limits;
- (b) made pursuant to any law of any country, state or territory outside the Territorial Limits;
- (c) made within the Territorial Limits but arising out of any Inquiry or Statutory Breach occurring outside the Territorial Limits.

War, Civil Commotion & Terrorism

Death, injury, illness, loss, damage, cost or expense of any nature directly or indirectly caused by, resulting from, or in connection with, any of the following regardless of any other contributing cause or event:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, 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
- (b) any act of Terrorism.

For the purposes of this Exclusion, **Terrorism** means any act including but not limited to the use or threat of force or violence by any person or group or groups of persons, whether acting alone or on behalf of or in connection with any organisation or government which from its nature or context is committed for, or in connection with any 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.

Death, injury, illness, loss, damage, cost or expense of any nature directly or indirectly caused by, or resulting from, or in connection with, any action taken in controlling, preventing, suppressing or in any way relating to, this Exclusion is also excluded.

In addition, the Insurer shall not be deemed to provide cover and shall not be liable to pay any Claim or provide any benefit under this Policy to the extent that the provision of such cover, payment of such Claim or provision of such benefit would expose the Insurer or its employees to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanction, laws or regulations of the European Union, Australia, United Kingdom, United States of America or Bermuda.

EXTENSIONS

The Insurer agrees to provide indemnity in accordance with the following Extensions. Each Extension is subject to the terms of this Policy except to the extent that they are expressly varied by the Extension. The inclusion of any of the Extensions shall not increase the Aggregate Limit of Liability.

Acquired Companies

Notice having been given to the Insurer 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 Policy Period but the indemnity granted by virtue of this Extension shall only apply in respect of:

- (a) any act, error or omission committed or alleged to have been committed by the Subsidiary Company subsequent to the acquisition or creation of the Subsidiary Company; and
- (b) any Inquiry that relates to the investigation, examination or consideration of an act, error or omission of the Subsidiary Company which occurred subsequent to the acquisition or creation of the Subsidiary.

Provided that:

- (a) the Insurer 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; and
- (b) coverage will only apply where the total assets of the Subsidiary Company at the time of creation or acquisition are less than 20% of the total assets of the Named Organisation at the time of creation or acquisition of the Subsidiary Company.

Continuity of Cover

Notwithstanding 'General Exclusion - Known Circumstances' and any other similar provision, this Policy will respond to Claims that:

- (a) arise from Known Circumstances that could or should have been notified to SUA under a Previous Policy; and
- (b) would be covered under that Previous Policy had the Known Circumstances been notified to SUA prior to the expiration of that Previous Policy; and
- (c) no cover is available from that Previous Policy because the Known Circumstances were not notified to SUA prior to the expiration of that Previous Policy.

Provided that:

- (a) the Previous Policy has been continually renewed without any interruption such that the Insured has maintained a policy of insurance with SUA in terms similar to the Policy at all times from the date the Known Circumstances could or should have been notified to SUA to the date the Claim is notified to SUA; and
- (b) the earliest date on which the Known Circumstances could have been notified to SUA is after the Prior & Pending date noted in the schedule/ Certificate of Currency applicable to the Previous Policy; and
- (c) there is an absence of fraudulent noncompliance with the Insured's duty of disclosure and an absence of fraudulent misrepresentation by the Insured in respect of such facts or circumstances;
- (d) the Insurer may reduce liability to the extent of any prejudice the Insurer may suffer in connection with the Insured's failure to notify the facts or circumstances giving rise to a Claim prior to the Policy Period;
- (e) the Indemnity Limit provided for any Claim covered by this extension is the lesser available under the terms of the Policy in force at the earlier time referred to in paragraph (a) above, or under this Policy. The Deductible available is the higher available under the terms of the Policy in force at the earlier time referred to in paragraph (a) above, or under this Policy. The terms of this policy otherwise apply.

For the purpose of this Extension:

Previous Policy means a contract of insurance between SUA and the Insured that was entered into before the Policy containing substantially the same terms as the Policy.

Employee Costs

The Insurer shall indemnify the Insured for any reasonable costs reasonably incurred by the Insured to assist the Insurer at the Insurer's request, in the investigation of any Claim under this Policy including actual loss of earnings up to \$1,000 per day for time off work for an Employee.

Provided that the maximum payable by the Insurer under this Extension shall not exceed the amount noted on the Schedule/Certificate of Currency during any one Policy Period.

Extended Reporting Period

In the event of the non-renewal of this Policy (other than due to the non-payment of the premium), and upon payment of 25% of the expiring premium, the Named Organisation shall be entitled to extend the period of time for reporting a Claim under Claims Condition – Notification of Claims for 90 days immediately following the expiry of the Policy Period.

Provided that:

- (a) the Named Organisation has not replaced the cover with similar insurance;
- (b) the Named Organisation gives written notice prior to the expiration of the Policy Period;
- (c) there is no cover under this clause for any Claim arising out of a Statutory Breach, Inquiry, Employment Practice Breach or Wrongful Act that occurs after the expiry of the Policy Period; and
- (d) there is no cover under this clause for any Optional Extension;

Preservation of Indemnity

Provided notification of a circumstance has been received during the Policy Period, and if:

- (a) the Named Organisation is legally obliged to indemnify the Insured for Legal Costs incurred by an Insured (other than the Named Organisation); and
- (b) the Named Organisation is in Insolvent Administration; and
- (c) the Named Organisation is placed in liquidation (other than voluntary liquidation) and has insufficient funds available to indemnify the Insured (other than the Named Organisation),

then it is agreed that the Insurer shall indemnify the Insured for those Legal Costs arising out of any Claim subject to all other terms of the Policy.

Provided that the burden of providing satisfactory proof to obtain the benefit of this Extension shall rest entirely with the Insured and shall include the production of documentary evidence of the Named Organisation's amalgamation, assets and liabilities and any official statements issued by the liquidator.

Reputation Protection Expenses

The Insurer agrees to pay on behalf of the Insured the reasonable fees, costs and expenses reasonably incurred by the Insured with the Insurer's prior written consent (not to be unreasonably withheld) in the Insured retaining a professional communications consultant to limit, mitigate or prevent the effects of negative publicity on the Insured's reputation in connection with an Event that may result in a Claim under an Insured Section of this Policy.

Provided that:

- (a) this extension will not respond if the Event is notified to the Insurer more than two business days after the Event occurred
- (b) the maximum payable by the Insurer under this Extension during any one Policy Period shall not exceed the amount noted on the Schedule/ Certificate of Currency in excess of the Deductible.

For the purpose of this Extension:

Event means an incident in connection with the Insured's Business that results in:

- (a) the attendance of an Emergency Service Agency or a Regulatory Authority at a site occupied by the Insured; or
- (b) the Insured being contacted by one or more journalist(s) and/or media outlet in connection with that incident.

Insured Section means any section of this Policy for which a premium consideration has been paid, and as noted on the Schedule/Certificate of Currency.

Retirement of Employees

In the event that the Named Organisation does not renew this Policy or replace the cover with similar insurance, it is agreed that an Employee will be automatically entitled to 12 months Extended Reporting Period at no additional premium after the expiry of the Policy Period, provided that the Employee retired from all employment or office prior to the expiry of the Policy Period.

CLAIMS CONDITIONS

Allocation of Loss

If any Claim against an Insured involves both matters which are covered by this Policy and matters which are not covered by this Policy, the Insurer and Insured agree to use their best efforts to agree on a fair and proper allocation of any loss between the Insured and the Insurer, taking into account the relative legal and other exposures attributable to the covered and non-covered matters.

Appeal Procedure

If the Insured is dissatisfied with any decision made by a court or tribunal and wish to appeal against that decision, they must make a further application for the Insurer's consent at least six (6) clear business days prior to the expiry of the time for instituting an appeal. Such application shall be in writing and shall state the reasons as fully as possible for making an appeal. In the event that the time allowed by law to file an appeal is fewer than six (6) business days, the Insured shall advise the Insurer as soon as practicable that they wish to appeal and provide their reasons for making the appeal. The Insurer shall inform the Insured in writing as to whether they consent to the bringing of an appeal.

If the Insurer is dissatisfied with any decision made by a court or tribunal and wishes to appeal against that decision, the Insured shall reasonably co-operate with the Insurer in the bringing of such an appeal. In this event, the Insurer shall pay all costs involved.

Appointment of Appointed Representative

Unless and until the Insured submits the name and address of a solicitor to the Insurer, the Appointed Representative shall be the Insurer's Nominated Representative.

If the Insured wishes to nominate their own solicitor to act for the Insured in connection with any Claim they must submit the name and address of the solicitor to the Insurer. The Insured has freedom of choice in nominating any Appointed Representative and they may request the Insurer to nominate an Appointed Representative to act on their behalf.

The Insurer 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 shall be requested to nominate an Appointed Representative. During this period the Insurer shall be entitled, but not bound, to instruct the Insurer's Nominated Representative on the Insured's behalf if the Insurer considers it necessary to do so to safeguard the Insured's or the Named Organisation's immediate interests.

The Insured must not without the Insurer's prior written approval enter into any agreement with the Appointed Representative as to the level of Legal Costs to be charged. The Insured must not represent to any Appointed Representative that any Legal Costs charged to their account are covered by this Policy.

Co-Operation and Mitigation of Loss

The Insured must co-operate with the Insurer in the investigation, settlement or defence of a Claim and all proceedings commenced against the Insured.

The Insured shall do all things reasonably necessary to allow the Insurer to obtain from the Appointed Representative any information, report documents or advice relating to a Claim and all proceedings commenced against the Insured. However, the Insured shall not be prejudiced if the Appointed Representative refuses to make such information, report document or advice available to the Insurer on the grounds that to do so might prejudice the Insured's interests in any litigation that is involved or may be commenced.

The Insured must forward to the Insurer all bills of costs or other communications relating to a Loss as soon as practicable after receipt by the Insured. If requested by the Insurer, the Insured shall instruct the Appointed Representative to submit the bills of costs for taxation or adjudication by any relevant professional body, court or other tribunal.

The Insured must assist the Insurer, upon its request, in the enforcement of any right against any person or organisation which may be liable to the Insured as a result of any Claim or proceedings commenced against the Insured where the Insured has made a Claim under this Policy in connection with that Claim or proceedings.

The Insured shall use all reasonable care, and do, and concur in doing all things reasonably practicable to diminish any Claim, loss or Penalties.

The Insured shall not, except at its own expense, make any offer, payment, admission, settlement or effect any resolution, assume any obligation, or incur any costs without the Insurer's prior written consent in respect of any Claim or agree to make any payment or consent to any order directing the Insured to make a payment without the Insurer's prior written consent. The Insurer shall not be liable for any such payment incurred without its consent. However, the Insurer will not unreasonably withhold such consent.

The Insured shall upon the request of the Insurer or the Appointed Representative and at its own expense:

- (a) provide all information and assistance as may be required;
- (b) give a complete and truthful account of the facts relevant to any Claim;
- (c) supply all documents and other evidence relevant to the Claim; and
- (d) authorise the Appointed Representative to release to the insurer all information concerning the Claim and provide to the Insurer all written advices provided by the Appointed Representative and any legal counsel engaged by the Appointed Representative in relation to the Claim; and
- (e) obtain and sign all documents reasonably required to be obtained and signed and attend any meeting or conferences when reasonably requested.

In respect of any Claim made or proceedings commenced against:

- (a) the Named Organisation, the Named Organisation shall, upon the request of the Insurer or the Appointed Representative and at its own expense ensure that an 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 or proceedings commenced against the Named Organisation;
- (b) any Officer or Employee, the Officer or Employee shall, upon the request of the Insurer 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 or proceedings commenced against such Officer or Employee.

Defence

The Insurer shall have the right, but not the obligation, to conduct in the name of the Insured the investigation, defence including appeals and resisting appeals, and settlement of any claim within the applicable Limit of Liability. Any amount incurred by the Insurer shall be deemed to be part of the Legal Costs

When the Insurer controls the defence of the Claim made or proceedings commenced against the Insured, the Insurer will pay the Legal Costs subject to the provisions of this Policy.

Where the Insurer has agreed to the Insured assuming control of the defence of any Claim made or proceedings commenced against the Insured, the Insurer will reimburse the Insured for reasonable Legal Costs incurred in accordance with and subject to the provisions of this Policy.

The Insurer reserves the right to recover any Legal Costs advanced in the event and to the extent that it is agreed or subsequently established by judgement or other final adjudication that the Insured was not entitled to be indemnified under this Policy.

The Insurer shall not be liable to indemnify the Insured for Legal Costs unless the Insured obtains the Insurer's written consent to engage the Appointed Representative to provide the legal services. The Insurer shall not be obliged to provide such consent unless the Insurer is satisfied that the Insured has Reasonable Grounds for Defending.

If the Insurer refuses to provide the consent set out in this Condition, the Insurer shall give to the Insured reasons for its refusal.

If, after receipt of those reasons, the Insured contests the Insurer'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 Defending a Claim then the Insurer will give its consent in accordance with this Condition and be responsible for the Senior Counsel's reasonable fees for providing such opinion. If the Senior Counsel is of the opinion that the Insured does not have Reasonable Grounds for Defending a Claim or any proceedings commenced then the Insured shall be solely liable for the reasonable fees of Senior Counsel.

If the Insured continues to defend any Claim or proceedings where the Insurer has refused to provide consent in accordance with this Condition and the Insured is Successful in respect of that Claim or proceedings, then the consent set out in this Condition 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 or proceedings establishes that at the time at which the Insurer refused consent, the Insured had Reasonable Grounds for Defending.

Notification of Claim

The Insured shall as a condition precedent to the Insured's right to be indemnified under this Policy give the Insurer immediate notice in writing during the Policy Period of:

- (a) any Claim made or proceedings commenced against the Insured; and
- (b) any circumstances which the Insured shall become aware of and which may give rise to a Claim under this Policy,

irrespective of whether any such Claim is likely to be within or above the amount of the Deductible.

If a Claim is made or proceedings are commenced against the Insured, the Insured must:

- (a) send the Insurer as soon as possible copies of any documents in connection with the Claim;
- (b) authorise the Insurer to obtain records and other information.

Notification of Claims or circumstances to SUA shall be deemed to be notification to the Insurer of such Claims or circumstances.

The Insured must not, except at its own expense, make a payment, assume any obligation, or incur any costs without the Insurer's prior written consent.

Notification of Other Insurance

In the event of any Claim under this Policy the Insured must notify the Insurer of all other insurance effected by them providing the same or similar cover.

Settlement

The Insured must inform the Insurer as soon as practicable after the Insured receives any offer to settle any Claim made or proceedings commenced against an Insured. No agreement to settle which may result in a Claim for indemnity under this Policy may be made without the Insurer's prior approval which will not be unreasonably withheld. The Insurer, where the Insured unreasonably withholds their agreement to any settlement, reserves the right to decline further indemnity from the date when such agreement is unreasonably withheld.

If the Insured:

- (a) refuses to consent to any available settlement recommended by the Insurer; and
- (b) against the advice of a Senior Counsel (whose appointment is to be mutually agreed upon by the Insurer and the Insured and paid for by the Insurer) that the settlement is appropriate, elects to contest or continue proceedings in connection with a Claim,

then the Insurer's liability is limited to the amount of the Insurer's recommended settlement, plus Legal Costs at the date the Insured refused to consent to the recommended settlement.

POLICY CONDITIONS

Application of Loss Recovered From Other Party

Where the Insurer makes a recovery, then the amount of that recovery will be distributed as follows:

- (a) firstly, the Insurer will be reimbursed for the actual costs it has incurred in making the recovery;
- (b) secondly, the Insured will be reimbursed for any uninsured loss, other than the Deductible;
- (c) thirdly, the Insurer will be reimbursed for the amount it has paid to the Insured pursuant to the provisions of this Policy;
- (d) fourthly, the Insured will be reimbursed for the Deductible;
- (e) fifthly, the Insurer will retain any remaining amount recovered including all interest recovered.

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 the Insurer.

Authorisation

The Named Organisation agrees to act on behalf of all the Insureds under this Policy and each Insured agrees that the Named 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.

Bankruptcy

The liquidation, receivership, bankruptcy or Insolvent Administration of the Insured will not relieve the Insurer of its obligations under this Policy.

Cancellation

The Insurer may cancel this Policy in accordance with the relevant provisions of the Insurance Contracts Act 1984 (Cth). Upon cancellation by the Insurer, except cancellation for fraudulent non-disclosure or fraudulent misrepresentation, the Insured is entitled to a refund of premium for the unexpired Policy Period.

This Policy may be cancelled at any time at the written request of the Insured in which case the Insurer will refund the premium for the unexpired Policy Period, less 10% as an administration fee.

Change in Circumstances

The Insured shall give written notice as soon as possible to the Insurer of any change in any of the facts or circumstances existing at the commencement of this Policy which materially changes the nature or extent of the risk insured by this Policy.

Change in Control of Named Organisation

If during the Policy Period:

- (a) the Named Organisation is placed in any liquidation, receivership, bankruptcy or insolvency administration; or
- (b) the Named Organisation ceases to be controlled by the person, entity or group of persons or entities that exercised control over the Named Organisation at the beginning of the Policy Period;

then the cover provided under this Policy is amended to apply only to Claims prior to the effective date of the occurrences set out in (a) and (b) above.

The Insured must give the Insurer written notice of any of the occurrences set out in (a) or (b) above not later than 30 days after the occurrence and the Insurer may at its sole discretion elect to continue cover by providing written notice to the Insured.

Confidentiality

The Insured shall not, except to the extent that the Insured is compelled by law to do so, 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/Certificate of Currency, without the written consent of the Insurer.

Foreign Currency Settlements

All amounts under this Policy are expressed and payable in Australian currency. If judgment is given or settlement is made in a currency other than Australian dollars, payment under this Policy will be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars by the Reserve Bank of Australia published in the Australian Financial Review on the date the final judgment is reached or in the event of a settlement, the date upon which the amount of the settlement is agreed upon.

Governing Law

This Policy shall be governed in accordance with the applicable Laws of the Commonwealth of Australia and its States or Territories. Any disputes relating to the application or interpretation of this Policy shall be determined in accordance with the Law of the State or Territory of Australia in which the Policy was issued.

Maintenance of Other Insurance

The Policy or Policies referred to as Other Insurance in the Schedule/Certificate of Currency or renewal or replacements thereof, shall be maintained in full effect during the currency of this Policy, irrespective of any payment of Claims made by the Insurer during the Policy period. Failure of the Insured to comply with the foregoing shall not invalidate this Policy but in the event of such failure, the Insurer shall only be liable to the same extent as if the Insured had complied with this condition.

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 of Parliament within the time specified or if no time is specified, within a reasonable time.

Reasonable Care

The Insured shall take reasonable care at all times:

- (a) to only employ competent Officers, Employees, agents and contractors;
- (b) to comply and ensure that its Officers, Employees, Labour Hire Workers, agents and contractors comply with the provisions of any Act of Parliament;
- (c) to ensure all premises, fittings and plant are regularly maintained and kept in a good state of repair; and
- (d) not to pursue a course of action which they know, or ought reasonably to know, will bring about any Claim or proceedings against an Insured.

Recovery from Insured

In the event that any Exclusion under any Section, or any General Exclusion applies, the Insurer shall have the right to recover from the Insured all amounts paid to the Insured and an amount equivalent to all payments made on behalf of the Insured.

Recovery of Costs from Other Party

Where the Insured are awarded costs, the Insured must provide all co-operation reasonably required by the Insurer to recover any Legal Costs which would be the subject of indemnity under this Policy. All amounts actually recovered shall be taken into account when the Insurer is calculating its liability under this Policy. If the Insurer has already paid the Loss, the amount recovered shall then be paid by the Insured to the Insurer.

Reporting

Any notice or report to be given to the Insurer shall be given in writing to the Insurer and delivered to:

Specialist Underwriting Agencies Pty Ltd

255 Sandgate Road
ALBION QLD 4010
PO Box 324
CLAYFIELD QLD 4011

Email: claims@sua.com.au

Severability and Non-Imputation

The Proposal shall be construed to be a separate application for each of the Insured. With respect to the declarations and statements contained in the Proposal no statement in the Proposal or knowledge possessed by any of the Insured shall be imputed to any other of the Insured for the purpose of determining the availability of coverage with respect to Claims made or proceedings commenced against any of the Insured.

The Insurer agrees that where the 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 (Cth);
- (b) made a misrepresentation to the Insurer before this Policy was entered into;
- (c) failed to comply with any provision of this Policy; and/or
- (d) acted in a manner which gives rise to the application of an Exclusion of this Policy;

will not prejudice the right of the remaining party or parties to indemnity as may be provided by this Policy.

Provided that such remaining party or parties shall:

- (a) not have participated in and has no prior knowledge of any such conduct; and
- (b) as soon as is reasonably practicable upon becoming aware of any such conduct, advise the Insurer in writing of all known facts in relation to such conduct.

Subrogation

If any payment is made under this Policy, the Insurer 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 the Insurer to effectively bring suit in the name of the Insured.



always thinking.

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INSURER:



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