

Work health & safety statutory liability insurance policy

QBE Insurance (Australia) Limited



CONTENTS

About this booklet	2
Important Information	3
Duty of disclosure	3
Privacy	3
How to make a claim	3
The General Insurance Code of Practice	3
Dispute resolution	3
Policy Wording	4
Our agreement with you	4
This Policy	4
Paying your premium	4
1. Definitions	4
2. Insuring clauses	6
3. Limit of liability and deductible	6
4. Extensions	6
General conditions	6
General exclusions	7
Claims	8

About this booklet

This document contains important information to help you understand the insurance. It is up to you to choose the cover you need. Any advice in this booklet is general nature only and has not considered your objectives, financial situation or needs. You should carefully consider the information provided having regard to your personal circumstances to decide if it is right for you.

For more information

Please take the time to read through this booklet and if you have any questions or need more information, 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 worldwide. The company has been operating in Australia since 1886 and continues to provide insurance solutions that are focused on the needs of policyholders.

QBE is a respected name in Australian insurance, backed by sizeable assets, and well known as a strong and financially secure organisation.

About Employsure

Emloysure Pty Ltd ABN 40 145 676 026 is an authorised agent of QBE. Employsure is a market leading workplace relations consultancy, providing employers across Australia with advice and assistance on workplace relations issues arising in their business. Employsure is part of the Peninsula Group of Companies, the largest provider of employment law consultancy services in the United Kingdom. The Peninsula Group has over 30,000 clients worldwide.

Important Information

The information provided in this section includes high level information about this Policy including your duty of disclosure, privacy, how to make a claim, our dispute resolution process and other relevant information. This section may also set out other information such as options in cover you can choose from, factors that affect the cost and any cooling off rights.

The Policy Wording section sets out the detailed terms, conditions and exclusions relating to the insurance.

If we issue you with a Policy, you will be given a Policy Schedule. The Policy Schedule sets out the specific terms applicable to your cover and should be read together with the Policy Wording.

The Policy Wording and Policy Schedule form your legal contract with us so please keep them in a safe place for future reference. You should check the Policy Schedule, or renewal schedule if you are issued one, when you receive it to ensure it accurately states what you have insured.

Duty of disclosure

Under the *Insurance Contracts Act 1984* (Cth), you have a duty of disclosure. You are required before you enter into, renew, vary, extend or reinstate your Policy, to tell us everything you know and that a reasonable person in the circumstances could be expected to know, is a matter that is relevant to our decision whether to insure you, and anyone else to be Insured under the policy, and if so, on what terms.

You do not have to tell us about any matter

- that diminishes the risk;
- that is of common knowledge;
- that we know or should know or, in the ordinary course of our business, we ought to know or
- which we indicate we do not want to know.

If you do not tell us

If you fail to comply with your duty of disclosure, we may be entitled to reduce our liability under the insurance in respect of a claim or may cancel the insurance.

Privacy

When collecting and handling your personal information. QBE has a privacy policy which explains what sort of personal information we collect and hold about you and what we do with it. QBE collects personal information from or about you for the purpose of assessing your application for insurance and administering your policy, including any claims you make or claims made against you. QBE will only use and disclose your personal information for a purpose you would reasonably expect. We will request your consent for any other purpose.

Without this personal information we may not be able to issue insurance cover, administer your insurance or process your claim. Our aim is to always have accurate and up-to-date information. When you receive a Certificate of Insurance or other document from us, you should contact us if the information is not correct.

QBE uses the services of a related company located in the Philippines to provide call centre sales and claims handling, accounting and administration services to QBE in Australia.

QBE may need to disclose personal information to its reinsurers (who may be located overseas), insurance intermediaries, insurance reference bureaux, credit reference agencies, QBE's advisers and those involved in the claims handling process (including assessors, investigators and other insurers), for the purposes of assisting it and them in providing relevant services and products, or for the purposes of recovery or litigation. QBE may disclose personal information to people listed as co-insured on your Policy and to family members or agents authorised by you. Computer systems and

support services may be provided to QBE companies that may be located overseas. We may also disclose information to organisations which conduct customer service surveys on our behalf.

To obtain further information about our Privacy Policy, to request access to or correct your personal information, or to make a complaint e-mail: complaints@qbe.com.

How to make a claim

Full details of what you must do for us to consider your claim are provided in the 'Claims' section at the end of this booklet. To make a claim under this Policy please contact:

- your financial services provider.

The General Insurance Code of Practice

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

The Code aims to:

- promote more informed relations between insurers and their customers;
- improve consumer confidence in the general insurance industry;
- provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- commit insurers and the professionals they rely upon to higher standards of customer service.

Dispute resolution

Our commitment to you

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

We also know that sometimes there might be something about our products or service that you're not totally happy about.

Step 1 - Talk to us

If there's something you want to talk to us about, or if you would like to make a complaint, our staff are there to work with you to try and resolve your issue.

If you're not happy with our staff, or if you're unhappy with how our staff have responded to your complaint you can ask to speak to their Manager.

You can also make your complaint directly to our Customer Care Unit.

Phone	1300 650 503 (Office Hours Mon-Fri: 8.30-18.00)
Email	complaints@qbe.com
Post	Customer Care GPO Box 219 PARRAMATTA NSW 2124

Step 2 - Escalate your complaint

Whenever you make a complaint we will try and resolve it within 15 business days. If this hasn't happened, or if you're not happy with how our staff tried to resolve it, you can ask that your complaint be escalated to one of our Dispute Resolution Specialists.

Our Dispute Resolution Specialists will contact you with our final decision within 15 business days of your complaint being escalated.

Step 3 - Still not resolved?

If you're not satisfied with our decision, you may wish to seek independent legal advice.

Policy Wording

This Policy is underwritten by QBE Insurance (Australia) Limited ABN 78 003 191 035, AFS Licence No. 239545 of Level 5, 2 Park Street, Sydney NSW 2000.

Our agreement with you

This Policy is a legal contract between the named organisation and us. The named organisation pay us the premium and we provide the cover the named organisation has chosen as set out in the Policy to the persons eligible to claim under Policy, occurring during the period of insurance shown on the Policy Schedule or any renewal period.

This Policy

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

Please check the Policy Schedule details to ensure it accurately states what you expect to be insured. Be sure to check that the sum insured for the various areas of cover are adequate.

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

Paying your premium

The named organisation must pay premium to their financial services provider in accordance with the financial services provider's usual business practices. The named organisation must premium on time otherwise this Policy may not operate and there will be no cover.

1. Definitions

Some key words and terms used in this Policy have a special meaning. If words and terms are only used in one (1) section of the Policy, we will describe their special meaning in that section.

Wherever the following words or terms are used in the Policy, they mean what is set out below:

Word or term	Meaning
Act	(b) any Act, Regulation or Code of Practice pertaining to work, health and safety applicable nationally or in the states or territories of Australia, including any subordinate or delegated legislation made under those Acts and (d) any amendment, consolidation or re-enactment of any of the above Acts or legislation.
Appointed Representative	the solicitors, barristers, assessors, consultants or investigators appointed in accordance with this Policy in respect of a claim.
Business	the business conducted by the named organisation as described in the Schedule.
Claim	any verbal or written notice received by the insured which alleges a wrongful breach and claims that the insured is liable to pay a penalty.
Deductible	the amount as stated in the Schedule.
Defence Costs	any reasonable legal costs and associated expenses incurred with our written consent in connection with the investigation, defence (including appeal or resisting appeal) and settlement of any claim but shall not include wages, salaries or other remuneration of the insured.

Word or term	Meaning
	Provided that where proceedings are commenced to impose a penalty and those proceedings are also in respect of other matters, then we will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in relation to those other matters.
Employee	any person employed by the named organisation under a contract of service during or prior to the commencement of the period of insurance, but does not include any independent contractor or any employee of any independent contractor.
Employsure	Employsure Pty Limited ABN 40 145 676 026.
Insured	(b) the named organisation; (d) any officer whilst acting in the performance of their duties to the named organisation; (f) any employee whilst acting in the performance of their employment by the named organisation.
Joint Venture	any enterprise undertaken jointly by the named organisation and another party or parties.
Limit of Indemnity	the amount as stated in the Schedule.
Loss	any penalty and defence costs.
Merger or Acquisition	(b) the insured consolidating with, merging with, or selling all or substantially all of its assets to, any other person or entity or group of persons and/or entities acting in concert; (d) the insured becomes a subsidiary of another entity by virtue of Australian law.
Named Organisation	the organisation described in the Schedule.
Officer	any past, present or future director, managerial or executive office (as defined by the <i>Corporations Act 2001</i>) or company secretary of the named organisation.
Outside Directorship	an executive position held by the insured in connection with the business at the specific request of the named organisation in any corporation, joint venture, partnership, trust or other enterprise which is not included in the definition of the named organisation.
Penalty	any monetary sum payable by the insured to any regulatory authority pursuant to any act for a wrongful breach by the insured but excluding: (b) any amounts payable as compensation; (d) any compliance, remedial, reparation or restitution costs; (f) any damages, including any exemplary or punitive damages; (h) any consequential economic loss; (j) any legal costs and associated expenses.

Word or term	Meaning
	notwithstanding item (e) above, we will pay any reasonable legal costs and associated expenses payable by the insured to any regulatory authority upon the imposition of a penalty covered by this Policy. Provided that where the proceedings that lead to the imposition of the penalty also include proceedings in respect of any of the matters set out in items (a) to (e) above, we will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in respect of those matters set out in items (a) to (e).
Period of Insurance	the period of insurance stated in the Schedule.
Policy	(b) the Policy wording; (d) the Schedule; (f) the proposal; and (h) any endorsements agreed by the parties attaching to and forming part of this Policy either at inception or during the period of insurance.
Premium	the amount stated in the Schedule.
Reasonable Grounds for Defence	(b) the insured has reasonable prospects of success in avoiding or reducing any penalty alleged in the claim; or (d) the insured has reasonable prospects of success in reducing the quantum of any penalty alleged in the claim, and that having regard to the likely legal costs incurred in defending the claim it is reasonable for the claim to be defended. provided that in either scenario (a) or (b) above the claim is not capable of being avoided or mitigated by a settlement into which a reasonable person in the position of the insured, properly advised, would enter.
Receiver	(b) a receiver, or receiver and manager, of any property of the insured; (d) an administrator of the insured; (f) an administrator of a deed of company arrangement executed by the insured; (h) a provisional liquidator or liquidator of the insured; (j) a trustee or other person administering a compromise or arrangement made between the insured and someone else; or (l) any other external administrator of the insured.
Regulatory Authority	a person or entity appointed, constituted or acting under a delegation pursuant to any Act for the purposes of enforcement of such Act or another Act, including a person or entity authorised to collect monies pursuant to such Act.
Retroactive Date	the date shown in the Schedule. However, unless otherwise agreed by us, such date in respect of any entity acquired or created by the named organisation shall be

Word or term	Meaning
	the date of acquisition or creation of that entity by the named organisation or the date shown in the Schedule, whichever is the later date.
Subsidiary Company	any entity in respect of which the named organisation: (b) controls the composition of the board of directors; (d) is in a position to cast, or control the casting of, more than 50% of the issued voting shares; or (f) holds more than 50% of the issued share capital, and shall include any entity which is deemed to be a subsidiary of the named organisation by virtue of any legislation or law.
Schedule	the document attaching to and forming part of this Policy.
Senior Officer	any director, chief executive officer, or company secretary of the named organisation.
Territorial Limits	anywhere in Australia.
Terrorism	an act, including but not limited to the use of force or violence and /or the threat thereof, of any person or group(s) of persons, 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.
We / Us / Our	QBE Insurance (Australia) Limited ABN 78 003 191 035, AFSL 239545.
Wrongful Breach	means any act, error or omission which occurs: (b) in connection with the business; (d) within the territorial limits; and (f) after the retroactive date, whereby: (b) the insured contravenes an Act or is involved in the contravention of an Act; (d) the insured commits an offence pursuant to an Act; or (f) such conduct is prohibited under an Act or is the subject of the imposition of a penalty under an Act.

2. Insuring clauses

- (b) We agree to pay to and on behalf of the insured any penalty and defence costs arising from any verbal or written notice received by the insured which alleges a wrongful breach and claims that the insured is liable to pay a penalty, provided that such notice is first received by the insured and notified to us during the period of insurance.
- (d) We will not be liable to indemnify the insured for defence costs under this clause unless the insured obtains our written consent. We will only provide such consent if we are satisfied that the insured has reasonable grounds for defence.
- (f) If we do not provide the consent, we will give to the insured reasons for the refusal. If the insured contests our refusal to provide such consent the insured may obtain the written opinion of a Senior Counsel. The Senior Counsel must be mutually agreed upon by both parties or failing agreement will be appointed by the President of the Law Society or the Law Institute in the relevant state or territory. If the Senior Counsel is of the opinion that the insured has reasonable grounds for defence then we will:
 - (ii) give our consent; and
 - (iv) be responsible for the Senior Counsel's reasonable fees for providing such opinion.
- (e) If the insured continues to defend a claim where we have refused to provide consent and the insured is successful in respect of that claim, then the consent shall be deemed to have been given at the time it was first requested by the insured. For the purpose of this clause, successful means that the outcome of the claim establishes that at the time at which we refused consent, the insured had reasonable grounds for defence.

3. Limit of liability and deductible

- (a) Our liability under this Policy in respect of all losses arising out of all claims covered by this Policy during the period of insurance will not exceed the limit of indemnity stated in the Schedule.
- (b) Our liability under this Policy applies only to that part of each loss in excess of the deductible.
- (c) All losses arising out of any one wrongful breach or interrelated wrongful breaches are deemed to be one loss.
- (d) We will not be liable to pay the amount of the deductible in respect of each loss.

4. Extensions

We agree to provide indemnity in accordance with the following extensions.

Acquired companies

Provided that we have been notified as soon as practicable, we agree to extend the definition of the named organisation to include any subsidiary company acquired or created subsequent to the commencement of the period of insurance but the indemnity granted by virtue of this extension will only apply in respect of any wrongful breach committed or alleged to have been committed by the insured in respect of such subsidiary company subsequent to such acquisition or creation.

Provided that we will be entitled to such additional information as we may require in respect of such acquired or created subsidiary company and will have the right to charge an additional premium.

Continuous cover

We agree to provide indemnity to the insured in respect of any claim notified to us during the period of insurance where that claim arose from circumstances which the insured knew (or ought reasonably to have known) to have been circumstances which may have given rise to a claim prior to commencement of the period of insurance.

Provided always that:

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

Outside directorship

We will indemnify the insured for a loss in respect of any outside directorship held by an officer, provided that:

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

Subsidiary companies

We agree to extend indemnity to any subsidiary company existing at or prior to the commencement of the period of insurance. Such indemnity will extend to any officer or employee whilst acting in the performance of their duties or employment of any subsidiary company.

General conditions

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

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

- (b) refuse to pay your claim or reduce what we pay for your claim;
- (d) cancel your Policy.

A claim may be refused

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

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 us.

Authorisation

The named organisation in the Schedule agrees to act on behalf of all the insureds under this Policy and each insured agrees that such organisation is authorised to act on their behalf with respect to the giving and receiving of notice of any claim, the receiving and giving of notice of cancellation or expiry of this Policy, the payment of premium and the return of any part of

the premium that may become due under this Policy, the negotiation, agreement to and acceptance of endorsements, and the giving and receiving of any other notice provided for in this Policy.

Cancellation

- (a) We may cancel this Policy in accordance with the relevant provisions of the *Insurance Contracts Act 1984*. Upon cancellation (except cancellation for fraudulent non-disclosure or fraudulent misrepresentation), we shall refund to the named organisation that part of the premium calculated by reference to the unexpired period of insurance.
- (b) This Policy may be cancelled at any time at the written request of the named organisation in which case we will retain:
 - (i) That part of the premium calculated by reference to the proportion that the expired part of the period of insurance bears to the whole period of insurance, plus
 - (ii) Twenty percent (20%) of that part of the premium calculated by reference to the proportion that the unexpired part of the period of insurance bears to the whole period of insurance.

Change in circumstances

The insured must give to us written notice as soon as practicable of any material alteration to the risk during the period of insurance including the insured going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or the insured failing to pay its debts or breaching any other obligation giving risk to the appointment of a receiver or bankruptcy or winding-up proceedings.

Confidentiality

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

Construction

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

Notices

Any notice we give you will be in writing, and it will be effective:

- If it is delivered to you personally; or
- It is delivered to you at your address (including an electronic address) last known to us.

It is important for you to tell us of any change of address as soon as possible.

Notices under Acts

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

Governing Law / Jurisdiction

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

Merger, acquisition or receivership

If the named organisation, during the period of insurance, is the subject of a merger or acquisition or has a receiver appointed then the indemnity provided by this Policy shall only apply in respect of a wrongful breach occurring prior to such an event, unless otherwise agreed in writing by us.

Severability and non-imputation

We agree 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*;
- (b) made a misrepresentation to us before this Policy was entered into;
- (c) failed to comply with any term or condition of this Policy; and /or
- (d) acted in a manner which gives rise to the application of an exclusion of this Policy, shall not prejudice the right of the remaining parties to indemnity as may be provided by this Policy.

Provided always that such remaining parties must:

- (e) not have participated in and have had no prior knowledge of any such conduct; and
- (f) as soon as is reasonably practicable upon becoming aware of any such conduct, advise us in writing of all known facts in relation to such conduct.

Other insurance

- (a) In the event that a policy of insurance or policies of insurance are listed in the Schedule, those policies of insurance will act as primary insurance and this Policy will only apply in excess of such policy(ies) of insurance;
- (b) The insured must notify us immediately upon entering into any other policy(ies) of insurance that provides insurance cover in respect of the risks insured by this Policy.

Preservation

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

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, agents and contractors comply with the provisions of any Act; and
- (c) to maintain all premises, fittings and plant in a safe and sound condition.

Subrogation

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

General exclusions

This Policy does not provide indemnity in respect of any claim:

- (a) Based upon, attributable to or in consequence of:
 - (i) any wilful, intentional or deliberate wrongful breach;
 - (ii) a wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any Act;
 - (iii) any wrongful breach caused by gross negligence or recklessness by the insured;
 - (iv) a dishonest, fraudulent, malicious act or omission of the Insured;
 - (v) the insured gaining any personal profit or advantage or receiving any remuneration to which he/she was not legally entitled;

- (vi) any wrongful breach in connection with any strike, lockout, picket line, stand down or industrial dispute. This exclusion does not apply to officers and employees for claims arising in the performance of their duties as officers and employees;
 - (vii) a wrongful breach in connection with a requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost;
 - (viii) a wrongful breach relating to the regulation of vehicular, air or marine traffic;
 - (ix) ionising radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel;
 - (x) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
 - (xi) war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any Government or Public or Local Authority;
 - (xii) any act of terrorism; or
 - (xiii) resulting from the existence, mining, handling, processing, manufacture, sale, distribution, storage or use of asbestos, asbestos products and/or products containing asbestos;
- (b) based upon, attributable to or in consequence of any fact or circumstance if the insured has not:
- (i) sought and followed advice from EmploySURE as soon as the fact that gave rise to the claim arose or became reasonably apparent; and
 - (ii) continued to seek and follow advice from EmploySURE until the conclusion of the claim;
- (c) made, threatened or in any way intimated against the insured prior to the period of insurance;
- (d) arising from any matter disclosed to any insurer (including us) prior to the period of insurance as either a claim or circumstance which may give rise to a claim against the insured;
- (e) arising from any circumstances of which the insured had become aware prior to the period of insurance and which the insured knew (or ought reasonably to have known) to be circumstances which may give rise to a claim;
- (f) arising from any wrongful breach where the insured knew (or ought reasonably to have known) prior to the period of insurance that there had been such a wrongful breach;
- (g) for any loss or part of any loss which is attributable to the period after the insured knew (or ought reasonably to have known) that its conduct was a wrongful breach;
- (h) deliberately or intentionally solicited by the insured. This exclusion does not apply to officers and employees where such claims arise in the discharge of their duties as officers and employees;
- (i) any defence costs incurred or paid before our consent has been given in accordance with the provisions of this Policy;
- (j) for any loss or part of any loss arising from or which is attributable to the insured's participation in any joint venture. Provided that this exclusion shall not apply to the indemnity provided by the Outside Directorship extension;
- (k) for any penalty:
- (i) imposed pursuant to any law of any country, state or territory outside the territorial limits;
 - (ii) imposed within the territorial limits but arising out of any act or omission occurring outside the territorial limits, and any defence costs associated with such penalty;
- (l) where a claim payment breaches any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America.

Claims

Notification of Claims / Circumstances

- (a) The insured shall give us immediate notice in writing:
 - (i) of any claim made against the insured; and
 - (ii) of any circumstances which the insured shall become aware which may give rise to a claim under this Policy, irrespective of whether the penalty is likely to be within or above the amount of the deductible.
- (b) If a claim is made against the insured during the period of insurance and the insured notifies us of such claim within 21 days after the expiry of the period of insurance, such claim shall be deemed to have been notified to us during the period of insurance.
- (c) If during the period of insurance the insured becomes aware of any circumstances which may subsequently give rise to a claim against the insured and the insured gives written notice of such circumstances to us during the period of insurance (or within 21 days after the expiry of the period of insurance), then any claim which may subsequently be made against the insured shall be deemed to be a claim made against the insured and notified to us during the period of insurance.

Settlement, defence and co-operation

- (a) The insured shall use all reasonable care and do and concur to do all things reasonably practicable to avoid a wrongful breach or minimise a loss.
- (b) The insured shall not make any offer, payment, admission, settlement or effect any resolution in respect of any claim or agree to pay any penalty or consent to any order directing the insured to pay any penalty without our consent. We will not be liable for any such penalty incurred without our consent which will not unreasonably be withheld.
- (c) We shall have the right, but not the obligation, to conduct in the name of the insured, the investigation, defence (including appeal and resisting appeal) and settlement of any claim. Any amount we incur shall be deemed to be part of the defence costs.
- (d) Where we recommend to the insured to agree to pay any penalty, consent to any order directing the insured to pay any penalty or otherwise settle or resolve any claim, and the insured does not agree to do so, then we are entitled to reduce our liability to the insured to the extent of any prejudice suffered by us by reason of the insured's failure to so agree.
- (e) The insured may request us to nominate the appointed representative to act on their behalf. Alternatively, if the insured wishes to nominate the appointed representative they must obtain our consent to their appointment, which shall not be unreasonably withheld.
 - (i) However, our maximum liability for any legal fees charged by the appointed representative shall not exceed five hundred dollars per hour or their usual charge out hourly rate, whichever is the lesser.
 - (ii) We 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 we shall be entitled but not bound to instruct an appointed representative on the insured's and/or the named organisation's behalf if we consider it necessary to do so to safeguard the insured's and/or the named organisation's immediate interests.
- (f) The insured shall not enter into any agreement to appoint the appointed representative without first obtaining our consent as to the terms of the appointment of the appointed representative, including remuneration terms. Further, the insured shall not represent to the appointed representative that all costs and associated expenses are covered by this Policy.

- (g) The insured shall do all things reasonably necessary to allow us to obtain from the appointed representative any information, report, documents or advice relating to the claim.
- (h) The insured shall upon our request or the appointed representative and at its own expense:
 - (i) provide all information and assistance as may be required;
 - (ii) give a complete and truthful account of the facts relevant to any claim;
 - (iii) supply all documents and other evidence relevant to the claim; and
 - (iv) obtain and sign all documents reasonably required to be obtained and signed and attend any meeting or conferences when reasonably requested,and in respect of a claim made against:
 - (v) the named organisation, the named organisation shall, upon our request or the appointed representative and at its own expense ensure that a senior officer attends and if necessary gives evidence, on behalf of the named organisation, at any conference, hearing, enquiry, investigation, proceeding or review in connection with any claim made against the named organisation;
 - (vi) any officer or employee, the officer or employee shall, upon our request or the appointed representative and at their own expense attend, and if necessary give evidence at any conference, hearing, enquiry, investigation, proceeding or review in connection with any claim made against such officer or employee.
- (i) For the purpose of clauses (a) to (h) any reference to a claim includes circumstances notified under the Notification of Claims / Circumstances clause (a) of this Policy.

QBE Insurance (Australia) Limited

2 Park Street
Sydney NSW 2000 Australia
www.qbe.com.au

This policy is underwritten by QBE Insurance (Australia) Limited
ABN 78 003 191 035, AFSL 239545, of 2 Park Street, Sydney.