



VICTORIAN BARRISTERS

**TOP UP PROFESSIONAL INDEMNITY
INSURANCE POLICY**

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Section 1

How to read this Insurance Policy

- 1.1** Some of the words in this insurance **Policy** have special meanings. These meanings can be found in Section 11 of the **Policy** ("Words with special meanings"). If a word has a special meaning, it appears in the **Policy** in bold type and with a capital letter.

Section 2

The Insurance Contract

- 2.1** **We** agree to provide the **Cover** described in this **Policy** upon full payment of the Gross Premium as stated in the **Policy** Schedule.
- 2.2** Before this **Policy** came into effect, **We** were provided with information by or on behalf of the **Insured** (and those referred to in Section 4.2 of this **Policy**) in the **Proposal**, and perhaps in other ways. **We** have relied on this information to decide whether to enter into this contract and on what terms.
- 2.3** If any of that information is wrong or false, it may affect entitlement to **Cover** under this **Policy**.
- 2.4** This **Policy** is in force for the Period of Insurance stated in the Schedule.
- 2.5** If full payment of the Gross Premium as stated in the Schedule is not made, there is no **Cover**.
- 2.6** This **Policy** is subject to the provisions of the **Primary Policy** and the provisions of this **Policy**.
- 2.7** In the event of a conflict between the provisions of the **Primary Policy** and the provisions of this **Policy**, the provisions of this **Policy** shall prevail.
- 2.8** Subject to the **Specific Cover Limits** for specific types of **Cover** under this **Policy**, under no circumstances shall this **Policy** provide **Cover** which is broader than the indemnity provided by the **Primary Policy**.
- 2.9** Subject to the **Specific Cover Limits** for specific types of **Cover** under this **Policy**, **We** shall not be liable under this **Policy** unless and until the insurers of the **Primary Policy** have granted indemnity or have been held liable in respect of indemnity by final judgment, award, finding or other adjudication of a court, tribunal, commission or arbitrator.

Section 3

The Cover We Provide

3.1 The Cover We Provide

We Cover the **Insured** in excess of the **Primary Policy** up to the **Policy Limit** (see Section 5) for any **Civil Liability** to any third party which is incurred by the **Insured** arising from the provision of **Professional Services** and which **Claims**:

- a) are made against the **Insured** (or, those referred to in Section 4.2 of this **Policy**) while this **Policy** is in force; and
- b) **We** are told about in writing as soon as reasonably possible while this **Policy** is in force; and
- c) arise from an act, error or omission on or after the Retroactive Date specified in the Schedule.

3.2 The types of Claims We Cover

The **Civil Liability We** provide **Cover** for in this **Policy** includes (but is not limited to) the following types of **Civil Liability Claims** arising from the provision of the **Professional Services**:

- a) breach of duty (including a duty of confidentiality, a breach of privacy or a breach of fiduciary duty).
- b) unintentional defamation.
- c) loss of or damage to **Documents** which were in the **Insured's** physical custody or control at the time of loss or damage.
- d) vicarious liability of the **Insured** arising from the dishonest, fraudulent, criminal or malicious acts or omissions by persons entitled to **Cover** (but there is no **Cover** to that person for these **Claims**).
- e) unintentional infringement of **Intellectual Property**.
- f) unintentional breaches of the Misleading & Deceptive Conduct provisions of Div 2 Part 2 of the Australian Securities and Investments Commission Act 2001, the consumer protection provisions of the Competition and Consumer Act 2010 (Cwlth) and corresponding consumer protection provisions of New Zealand and Australian State Fair Trading legislation (but not for criminal liability).
- g) breach of warranty of authority committed, by or on behalf of the **Insured**, in good faith and in the reasonable belief that appropriate authority was held.
- h) **Compensation Order** arising from an **Enquiry**.
- i) **Costs Order**.

3.3 Claim Investigation Costs

In respect of **Claims** or **Covered Claims**, **We** also pay inclusive of the **Policy Limit** (but only up to the **Policy Limit**) **Claim Investigation Costs**.

We only pay these, however, if either:

- a) **We** incur them; or

- b) the **Insured** incurs them after first obtaining **Our** agreement in writing and the costs and expenses are reasonable and necessary.

We are not obliged to defend, or to continue to defend, any **Claim** (or **Covered Claim**) or pay, or continue to pay, any costs or expenses associated with such defence, once the **Policy Limit** has been exhausted.

3.4 Employment Practices Liability Cover

Notwithstanding Section 6.9, **We Cover** the **Insured**, and each **Employee** (subject to the **Specific Cover Limit** set out in the Schedule for 'Employment Practices Liability' and the special provisions in Section 9 of this **Policy**), for **Claims** brought against the **Insured** or an **Employee** (including **Claims** brought by principals, partners, directors, officers and employees, contract or temporary workers of the **Insured**) for that **Loss** which the **Insured** is legally obliged to pay arising from:

- a) discrimination against any **Employee**, former **Employee** or applicant for employment because of race, colour, age, sex, disability, pregnancy, marital status, sexual orientation, sexual preference or otherwise;
- b) wrongful dismissal of any **Employee**;
- c) workplace harassment (whether sexual or otherwise) of an **Employee**;
- d) breach of an implied term of an oral or written employment contract;
- e) wrongful demotion, failure to promote, wrongful deprivation of career opportunity, wrongful discipline, negligent evaluation or failure to grant tenure of employment to an **Employee**;
- f) wrongful refusal to employ a potential **Employee**;
- g) defamation arising from employment related matters;
- h) misleading misrepresentation or advertising as to the terms and conditions of employment;
- i) denial of natural justice to an **Employee** in respect of any issue concerning his or her employment.
- j) failure to provide or adhere to adequate employment policies or procedures;
- k) violation of any Federal, State or Local statute or regulation governing employment practices;
- l) from an act, error or omission on or after the 1st July 2010.

Notwithstanding Section 3.1, **Cover** provided by this Section 3.4 is not subject to and is not in excess of the **Primary Policy**.

If no **Specific Cover Limit** is indicated in the Schedule for 'Employment Practices Liability', then no **Cover** is provided by this **Policy** for 'Employment Practices Liability'.

3.5 Enquiries

For those **Enquiries** which the **Insured** first becomes aware of and of which **We** are told about in writing as soon as reasonably possible while this **Policy** is in force, **We** also **Cover** the **Insured** and **Employees** (subject to the terms of Section 4.2 of the **Policy** and the **Specific Cover Limits** set out in the Schedule for 'Enquiries') for legal costs and expenses (incurred with **Our** prior written approval and which are reasonable and necessary) for

the representation of the **Insured** and **Employees** at any **Enquiry**. This **Cover** does not extend to paying the **Insured's** regular or overtime wages, salaries or fees, or those of **Employees**.

If no **Specific Cover Limit** is indicated in the Schedule for 'Enquiries', then no **Cover** is provided by this **Policy** for **Enquiries**.

Notwithstanding Section 3.1, **Cover** provided by this Section 3.5 is not subject to and is not in excess of the **Primary Policy**.

3.6 Run-off Cover for Insured until the end of the Policy period

In the event that a **Run-Off Event** occurs during the Period of Insurance stated in the Schedule to the **Insured**, the **Cover** provided by this **Policy** with respect to such **Insured** shall continue until the expiry date of this **Policy** in respect of any **Claim** otherwise **Covered** by this **Policy** arising from any act, error or omission prior to the date of the **Run-Off Event**.

Section 4 Who is Covered

4.1 Insured

We Cover the **Insured** named in the Schedule (and as defined in Section 12 of the **Policy**) for **Claims** or **Covered Claims** of the type and on the basis specified in Section 3, arising from the provision of the **Professional Services** on behalf of the **Insured**.

The provision of **Professional Services** by or on behalf of the **Insured** includes, for the purpose of this **Policy**, acts, errors or omissions of agents or consultants of the **Insured** in the provision of **Professional Services** on behalf of the **Insured** and for which the **Insured** is liable. Such agents and consultants, however, are not **Covered** by this **Policy**.

4.2 Others

In addition, **We Cover** the following for **Claims** or losses and costs of the type and on the basis specified in Section 3 of this **Policy**:

a) Employees (and former Employees)

Employees (and former **Employees**) of the **Insured** in respect of **Civil Liability** arising from the provision of **Professional Services** on behalf of the **Insured** but not in respect of **Claims** or losses under Section 3.2 d) of this **Policy**.

b) Service or Administration Company

Each service, clerking or administration company, trustee or nominee company (other than a **Responsible Entity**) including its employees, in relation to the provision of administration and management services to the **Insured's** who is engaged in legal practice solely as a **Barrister**.

We only provide **Cover** to the persons, firms or incorporated bodies described in Section 4.2 (a) to (b) above if the persons, firms or incorporated bodies claiming **Cover** each agree in writing, within a reasonable time of notification of the **Claim** or **Covered Claims** to **Us**:

- i. to be bound by this **Policy**; and
- ii. to be liable individually, and together with the **Insured**, for paying the **Excess** (or any other payment due to **Us** under this **Policy**) in respect of any **Cover** provided to them under this **Policy**.

4.3 Cover to Estates and Legal Representatives

If an **Insured**, or anyone entitled to **Cover** under this **Policy**, dies or becomes legally incompetent or insolvent, **We Cover** the estate, legal representative or assigns of the **Insured**, or the party entitled to **Cover**, to the same extent as **Cover** would otherwise be available to the **Insured**.

Section 5

Limits to the amount of Cover

5.1 The Policy Limit

The **Policy Limit** applies to any one **Claim** and, subject to this Section 5, it applies to the total of all **Claims Covered** by this **Policy**.

5.2 Reinstatement of the Policy Limit

The **Policy Limit** is the maximum amount **We** will **Cover** the **Insured** for in respect of any one **Claim**. Subject to the following limitations, **We** will provide **Cover** to a maximum of twice the **Policy Limit** for all **Claims Covered** by this **Policy**.

However:

- a) **We** do not provide **Cover** for an amount in the aggregate more than the **Policy Limit** (or the **Specific Cover Limits**) for losses under Section 3.4 or 3.5.
- b) The aggregate **Cover** under this **Policy** shall not exceed the **Policy Limit** for any one **Claim** or series of **Claims** (including **Covered Claims**) arising from the same act(s), error(s) or omission(s).
- c) If there is extra insurance in excess of the limit of this **Policy**, then **Cover** in excess of one **Policy Limit** (up to a maximum of twice the **Policy Limit**) is only available for so much of the liability (otherwise **Covered** by this **Policy**) which is not covered by the extra insurance.

5.3 Limit if multiple persons insured

The **Policy Limit** does not increase if there is more than one person, firm or incorporated body **Covered** under this **Policy**, or if more than one insured person, firm or incorporated body causes or contributes to the **Claim**.

5.4 Specific Cover Limits

If the Schedule indicates any **Specific Cover Limits** for specific types of **Cover** under this **Policy**, then these **Specific Cover Limits** apply only to **Claims** and **Covered Claims** under that **Specific Cover**. The **Policy Limit** itself still applies to all other **Claims** individually and to the total of all **Claims** and **Covered Claims** added together (including **Claims** and **Covered Claims** for which **Specific Cover Limits** apply, which are included within and not in addition to the **Policy Limit**).

5.5 GST Input Tax Credits

- a) Where and to the extent that **We** are entitled to claim an Input Tax Credit for a payment made under the **Policy**, then any monetary limit in the **Policy** on **Our** obligation to make such a payment, shall be net of **Our** entitlement to the Input Tax Credit.
- b) Where and to the extent that the **Insured** is entitled to claim an Input Tax Credit for a payment required to be made by the **Insured** as an **Excess**, then the **Excess** shall be net of the entitlement of the **Insured** to the Input Tax Credit.
- c) Where payment is made under this **Policy** for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that the **Insured** is, or will be, entitled to under A New Tax System (Goods and Services Tax) Act 1999 in relation to that acquisition, whether or not that acquisition is made.
- d) Where payment is made under this **Policy** as compensation instead of payment for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that the **Insured** would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

Section 6

What is not Covered

We do not **Cover** any of the following **Claims**, (or losses or liabilities) or any associated costs:

6.1 Known Claims and Known Circumstances

- a) **Known Claims** (or losses) as at the inception date of this **Policy**; or
- b) **Claims** (or losses) arising from a **Known Circumstance**; or
- c) **Claims** (or losses) directly or indirectly based upon, attributed to or in consequence of any **Known Circumstance** or **Known Claims** (or losses); or
- d) **Claims** (or losses) disclosed in the **Proposal** or arising from facts or circumstances disclosed in the **Proposal**; or

- e) if the **Policy** is endorsed or amended mid term, for any **Claim** that arose from a **Known Circumstance** (as at the effective date of the amendment/endorsement) to the extent that that **Claim** would not have been **Covered** by the **Policy** before such amendment/endorsement.

6.2 Foreign Courts

Claims:

- a) first brought in a court in the United States of America or Canada or their territories or protectorates; or
- b) to enforce a judgement handed down in a court in the United States of America or Canada or their territories or protectorates; or
- c) where the proper law of the United States of America or Canada or their territories or protectorates is applied to any of the issues in any **Claim** or loss **Covered** by this **Policy**.

6.3 Assumed duty or obligation

Claims:

- a) alleging a liability under a contractual warranty, guarantee or undertaking (unless liability would have existed regardless of the contractual warranty, guarantee or undertaking); or
- b) about circumstances where a right of contribution or indemnity has been given up by an **Insured** but only to the extent of the prejudice suffered by **Us** in those circumstances; or
- c) about circumstances where someone has done work or provided services under an arrangement or an agreement with the **Insured** which limits any potential right for the **Insured** to receive contribution or indemnity from that person, but only to the extent that **We** are prejudiced in those circumstances; or
- d) arising from any **Civil Liability** which the **Insured** agrees to accept which is more onerous than that which the **Insured** would otherwise have at common law, in the course of the provision of **Professional Services**; or
- e) arising from any business not conducted for or on behalf of the **Insured** firm or incorporated body.

6.4 Related parties

Claims:

- a) against the **Insured** brought by or on behalf of:
 - i. any of the persons or parties specified in Section 4 of the **Policy**; or
 - ii. any company in respect of which the **Insured** or any person or party specified in a) i. above holds (beneficially or otherwise) more than 10% of the voting shares or rights and/or an executive role; or
 - iii. any trust in respect of which the **Insured** or any person or party specified in a) i. above is a trustee and/or beneficiary and/or has a direct or indirect financial interest; or
 - iv. any other person, firm or incorporated body having control of over 10% or more of the voting shares or rights or has an executive role in the operation of the **Insured**.

- b) by or on behalf of the **Insured** and/or any person or entity entitled to be **Covered** by this **Policy**, against any person or entity entitled to be **Covered** by this **Policy**.

6.5 Refund of professional fees and trading debts

Claims:

- a) for the refund of professional fees or charges (by way of damages or otherwise); or
- b) for the costs and expenses incurred by or on behalf of the **Insured** in complying with any contractual obligations or making good any faulty product; or
- c) arising directly or indirectly from the provision of cost guarantees, estimates of probable costs, estimates of probable financial savings or contract price or cost estimates being exceeded; or
- d) arising from a liability to pay trading debts or the repayment of any loan.

6.6 Profit

Loss or expense incurred by or on behalf of the **Insured** (other than as **Covered** by Sections 3.3 and 3.5 of this **Policy**) which is not a liability to a third party. In particular, there is no **Cover** under this **Policy** for any component of profit derived or derivable by the **Insured** from the sale or supply of any goods, services or rights by or on behalf of the **Insured**.

6.7 Insolvency

Claims directly or indirectly arising out of or in any way connected with the **Insured's** insolvency, bankruptcy or liquidation.

6.8 Employers' Liability, Directors' & Officers' Liability, Occupier's Liability, Motor, Marine, etc

Claims:

- a) Directly or indirectly based upon, attributable to or in consequence of the **Insured's** liability as an employer or bodily injury (including mental anguish or emotional distress), sickness, disease or death of any employee, apprentice, contractor, volunteer or any worker who is under the direction, control and/or supervision of the **Insured** or for whose workplace safety the **Insured** is responsible;
- b) arising out of or in respect of actual or alleged unlawful discrimination (or other unlawful act, error or omission) by any **Insured** against any **Employee** or employment applicant;
- c) if an **Insured** is either an incorporated body or a director or officer of an incorporated body arising from any act, error or omission of a director or officer of that incorporated body while acting in that capacity; or
- d) arising from occupation (or alleged occupation) of land or buildings by an **Insured**; or
- e) arising from or in respect of an **Insured's** liability as an owner or operator of any aircraft, marine craft or motor vehicles of any kind.

6.9 Punitive & Exemplary Damages

Claims for punitive, aggravated or exemplary damages or for fines or penalties. In addition, this **Policy** does not provide **Cover** for any investigation or defence costs associated with such **Claims**.

6.10 Intentional Damage

Subject to Section 3.2(e):

- a) **Claims** arising from acts, errors or omissions by the **Insured** with the intention of causing a third party loss, damage or injury, or with reckless disregard for the consequences; or
- b) any wilful breach of any statute, contract or duty by an **Insured**.

6.11 Deregistration

In so far as the **Insured** is required by law to have and maintain a statutory registration in order to be entitled to practice or provide the **Professional Services**, **Claims** arising from acts, errors or omissions by or on behalf of the **Insured** subsequent to the non-existence, cancellation or suspension of such statutory registration.

6.12 Asbestos

Claims which would not have arisen but for the existence of asbestos.

6.13 Radioactivity & nuclear hazards

Claims arising from:

- a) ionising radiations or contamination by radioactivity from any nuclear material; or
- b) the hazardous properties of any nuclear explosive, assembly or component.

6.14 War and uprising

Claims arising directly from:

- a) war, invasion, acts of foreign enemies, civil or military uprisings, hostilities (even if war is not declared), or government power being taken unlawfully; or
- b) property being taken, damaged or destroyed by a government or public or local authority.

6.15 Terrorism

Claims directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with:

- a) any act of **Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss, damage, illness, injury, death, cost or expense; or
- b) any action in controlling, preventing, suppressing, retaliating against, or responding to any act of **Terrorism**.

6.16 Pollution

Claims arising directly or indirectly from the discharge, dispersal, release or escape of **Pollutants** into or upon land, the atmosphere, or any water course or body of water, except to the extent that such **Claims** are made in respect of financial or economic loss alleged to have been caused or contributed to by the **Insured** in the conduct of the **Professional Services**.

6.17 Financial Auditing

Claims arising directly or indirectly from the provision of auditing services required to prepare financial reports in accordance with Chapter 2M of the Corporations Act 2001 (Cwlth).

6.18 Responsible Entity

Claims arising directly or indirectly from any activities as an agent for, or introducer to, a **Responsible Entity**. For the purposes of this **Policy**, '**Responsible Entity**' shall mean a responsible entity of a managed investment scheme within the meaning of Chapter 5C of the Corporations Act 2001 (Cwlth);

6.19 Fidelity Fund

Claims where the **Insured** or the claimant is entitled to compensation from the Legal Practitioners' Fidelity Fund maintained under the Legal Profession Act 2004 (Vic) or the equivalent statutory provision in any other state, territory or jurisdiction.

Section 7

Investigation, defence and settlement of Claims

7.1 Obligation to Notify

- a) The **Insured** must tell **Us** in writing about a **Claim** or loss as soon as reasonably possible and while this **Policy** is in force. If this is not done the **Insured's** right to **Cover** under this **Policy** may be affected.
- b) The **Insured** must also tell Chair of the Professional Indemnity Insurance Committee Victorian Bar Council in writing about such **Claim** or loss. Such notification should be to the attention of the Chair at the following address:

Confidential Attention of the Chair
of the PI Insurance Committee
Victorian Bar Council
205 William Street
Melbourne VIC 3000

The information thereby provided to Victorian Bar Inc shall be strictly confidential to the Victorian Bar's General Manager and the Chair from time to time of the Victorian Bar Council's Professional Indemnity Insurance Committee and any staff member or consultant who undertakes like obligations of

confidentiality and subject to their keeping confidential your identity and that of the other parties involved in the claim or notification, the information supplied may be used by Victorian Bar Inc only for the purposes of:

- i. providing you with such assistance in connection with the claim or notification as may be appropriate;
 - ii. maintaining a comprehensive and up to date claims history data base;
 - iii. developing risk management strategies;
 - iv. obtaining and maintaining professional indemnity insurance for Victorian barristers; and
 - v. establishing and maintaining a professional standards scheme for the Victorian Bar Inc.
- c) The **Insured** shall as soon as reasonably possible give notice in writing to **Us** of any of the following events:
- i. any **Primary Policy** is cancelled or avoided;
 - ii. the insurer of the **Primary Policy** denies indemnity or reduces the amount payable on a claim under the **Primary Policy**; or
 - iii. where there has been a request to amend or endorse the **Primary Policy**.

7.2 Claims co-operation and participation

- a) Each **Insured** must:
- i. diligently do, and allow to be done, everything reasonably practicable to avoid or lessen the **Insured's** liability in relation to a **Claim** (or **Covered Claim**) or loss otherwise **Covered** by this **Policy**;
 - ii. as soon as reasonably possible, give **Us** the help and information that **We** reasonably require to:
 1. investigate and defend a **Claim** or loss; and
 2. determine out **Our** liability under this **Policy**.
- b) **We** may, at **Our** sole discretion, elect to participate in the investigation, settlement or defence of any **Claim** made against an **Insured** which is **Covered** under this **Policy** even if the **Underlying Insurance** has not been exhausted.

7.3 Reduction or Exhaustion of the Primary Policy

Notwithstanding Section 3.1 of this **Policy**, if the **Primary Policy** is reduced or exhausted as a result of payment for losses thereunder, this **Policy** will:

- a) in the event of reduction, **Cover** subsequent losses as excess insurance over and above the amount of the indemnity remaining in the **Primary Policy**, provided that such losses are not excluded by the provisions of this **Policy**; or
- b) in the event of exhaustion of the **Primary Policy**, apply in place of the **Primary Policy**.

7.4 Primary Retention

If this **Policy** applies in place of the **Primary Policy** as a result of the **Primary Policy** being exhausted, then any self-insured retention, deductible or excess specified to apply under the **Primary Policy** shall also apply under this **Policy**.

7.5 Inability of the Primary Policy to Pay

The inability of the any insurer to meet its financial obligations under the **Primary Policy**, for whatever reason, does not reduce or exhaust the **Primary Policy** and **We** shall only be liable to the extent that **We** would have been liable had such insurer(s) been able to meet those financial obligations.

7.6 We can protect Our position

When **We** receive a notification of a **Claim**, or **Covered Claims**, then **We** can take whatever action **We** consider appropriate to protect **Our** position.

This does not, however:

- a) indicate that any **Insured** is entitled to be **Covered** under this **Policy**; or
- b) prejudice **Our** rights under the **Policy** or at law.

7.7 Disclosure of information to Us in respect of the Cover and the Claim (or Covered Claim)

- a) The solicitors instructed by **Us** for any **Claim** (or **Covered Claim**) can disclose to **Us** any information they receive in that capacity, wherever they obtain it from. By claiming under this **Policy** the **Insured** authorises such solicitors to disclose this information to **Us**.

7.8 Disclosure of information to the Victorian Bar Inc.

We shall make available from time to time to Victorian Bar Inc through the Chair of the Victorian Bar Council's Professional Indemnity Insurance Committee and the Bar's General Manager, (without expense to Victorian Bar Inc or any member of it and without waiver of privilege) within 28 days from written request by either of them, any information they request relating to the level of insurance cover held by the **Insured**, the applicable **Excess** and the Premium paid and any **Claim** or notification, past, present or future made against the **Insured** or given by the **Insured** as the case may be, including:

- a) the **Claim** number;
- b) the relevant policy year;
- c) the **Insured** name;
- d) the expiring Premium inclusive of charges;
- e) full details of the nature of the **Claim** including a copy of any Court material filed or served in connection with the **Claim** and any witness statement or instructions from the **Insured**;
- f) the type of **Claim**, whether compensation, disciplinary charge, both or a notification only;
- g) the date **We** were notified of a **Claim**;
- h) the date of the alleged act, error or omission committed by the **Insured**;
- i) the then current amount, if any, paid on the **Claim**;
- j) the current reserve on the **Claim**;
- k) the status of the **Claim** or notification, whether open or closed;
- l) if the **Claim** has been closed, how the **Claim** was disposed of, namely whether by judgment, settlement or the **Claim** not being proceeded with;

- m) the name of the claimant or potential claimant against the **Insured**;
- n) the name of the instructing solicitor in the original brief to the **Insured**;
- o) the name of the solicitors' firm handling the defence of the **Claim** on your behalf;
- p) the **Claims Investigation Costs** incurred to date.

In this clause, the expression "**Claim** or notification" includes any **Claim** or notification disclosed by an **Insured** in any **Proposal** for insurance made under this **Policy**.

The Chair and General Manager and any of their staff or professional advisers who may be specifically authorised will keep confidential the **Insured's** identity and that of the other parties involved in the **Claim** or notification and the information supplied will be used by the Victorian Bar Inc. only for the purposes stated in Section 7.1 b).

7.9 We can manage the Claim (or Covered Claim) on the Insured's behalf

We can:

- a) take over and defend or settle any **Claim** (or **Covered Claim**) in the **Insured's** name; and
- b) claim in the **Insured's** name, any right the **Insured** may have for contribution or indemnity.

7.10 An Insured must not admit liability for or settle any Claim (or Covered Claim)

An **Insured** must not:

- a) admit liability for, or settle any **Claim** (or **Covered Claim**); or
- b) incur any costs or expenses for a **Claim** (or **Covered Claim**) without first obtaining **Our** consent in writing. If **Our** prior consent is not obtained, the **Insured's** right to **Cover** under this **Policy** may be affected.

7.11 Insured's right to contest

If an **Insured** elects not to consent to a settlement that **We** recommend and wants to contest or continue the legal proceedings, then **We** only **Cover** the **Insured** (subject to the **Policy Limit**) for:

- a) the amount **We** could have settled the matter for; less
- b) the relevant **Excess** listed in the Schedule; plus
- c) the **Claim Investigation Costs** calculated to the date the **Insured** elected not to consent to the settlement.

7.12 Senior Counsel

- a) Unless a Senior Counsel, that **We** and the **Insured** both agree to instruct, advises that the **Claim** proceedings should be contested, then neither **We** nor the **Insured** can require the other to contest any legal proceedings about a **Claim** if the other does not agree to do so.
- b) In formulating his or her advice, Senior Counsel must be instructed to consider:

- i. The economics of the matter having regard to, but not limited to the;
 - 1. damages and costs likely to be recovered; and
 - 2. likely costs of defence; and
 - ii. **Insured's** prospects of successfully defending the **Claim**.
- c) the cost of Senior Counsel's opinion will form part of the **Claim Investigation Costs**.
- d) if Senior Counsel advises that the matter should be or is appropriate to be settled and if the terms of settlement which **We** recommend are within limits which are reasonable (in Senior Counsel's opinion and in the light of the matters he/she is required to consider), then the **Insured**:
- i. cannot (subject to Section 7.11) object to the settlement; and
 - ii. will be required to pay the relevant **Excess** listed in the Schedule as soon as reasonably possible.

7.13 Payments to settle potential Claims

Any money **We** pay to settle anything which might give rise to a **Claim**, is taken to be:

- a) a payment to settle a **Claim**, and in addition,
- b) a payment for the purpose of calculating the total of all **Claims** under this **Policy**.

7.14 Recovering money from Employees

We must not recover any amount paid out in respect of a **Claim** or loss under this **Policy** from any **Employee** or former **Employee** of the **Insured** unless the **Claim** or loss arose from dishonest, fraudulent, criminal or malicious acts or omissions of the **Employee** or former **Employee**.

7.15 Offsetting of costs & expenses the Insured owes Us against what We owe the Insured

If **We** incur costs or expenses above **Our** liability under the **Policy** for **Claim Investigation Costs**, then the **Insured** must pay whatever amount is above that liability, as soon as reasonably possible after **We** ask for it. **We** will not offset that payment due from the **Insured** against any amount **We** must pay to or on behalf of the **Insured** under this **Policy**.

7.16 The Excess

- a) **We** only **Cover** the **Insured** (up to the **Policy Limit**) for that part of the **Covered Claim** above the **Excess**.
- b) There are different **Excesses** that may be applicable, depending on the type of **Covered Claim** involved, which the **Insured** must pay:
 - i. the **Insured** will be required to pay the amount of the **Excess** for costs of **Enquiries** specified in the Schedule for legal costs and expenses associated with an **Enquiry** which **We** **Cover** under Section 3.5 of this **Policy**.

- ii. the **Insured** will be required to also pay the amount of the **Excess** for 'Employment Practices Liability' specified in the Schedule for an Employment Practices Liability **Claim** which **We Cover** under Section 3.4 of this **Policy**. The **Insured** will also be required to pay this **Excess** for **Claim Investigation Costs** for this **Covered Claim** under Section 3.4.
- iii. in respect of points i. and ii. above the **Insured** will only be required to pay one **Excess** for all **Covered Claims** or losses **Covered** by this **Policy** arising from the same act, error or omission.
- c) In the event of a **Claim, Covered Claim** or loss arising from separate acts, errors or omissions, then an **Excess** shall apply in respect of each such act, error or omission.

Section 8

Special Provisions for Dishonesty and Fraud

8.1 When the **Claim** under Section 3.2 d) involves theft or misappropriation of money, then **We** only provide **Cover** if:

- a) the **Insured** kept a separate trust account for that money, and the account was audited at least annually by a qualified independent accountant; and
- b) all cheques prepared on that trust account are required to be signed by a **Principal** or two authorised people.

8.2 The **Insured** must take all reasonable precautions to prevent any loss and continue to prevent any loss and continue to perform all the supervision, controls, checks and audits reasonably practicable to avoid or lessen a **Claim Covered** by Section 3.2 d).

8.3 **We** deduct from any money **We** pay for a **Claim** or loss under Section 3.2 d):

- a) the amount of any money which the **Insured** would have paid to the fraudulent, dishonest, criminal or malicious person entitled to **Cover** under this **Policy**, if they had not been fraudulent, dishonest, criminal or malicious; and
- b) the amount of any of the person referred to in paragraph a) above which the **Insured** holds (if **We** can do so by law).

8.4 Notwithstanding Sections 3.2 d), there is no **Cover** under this **Policy** to any person entitled to indemnity under this **Policy**, for any **Claim** or loss directly or indirectly based upon, or attributable to, or in consequence of any dishonest, fraudulent, criminal or malicious acts or omissions of which an **Insured** had knowledge or had reason to suspect at or prior to the time of such acts or omissions and failed to take any reasonable action to prevent such or omissions or any loss arising therefrom.

8.5 There is no **Cover** under this **Policy** for any **Claim** or loss arising from or related to any dishonest, fraudulent, criminal, malicious acts, errors or omissions other than pursuant to Section 3.2 d) of this **Policy**.

Section 9

Additional Special Provisions for Employment Practices Liability Cover

In relation to Section 3.4 only:

9.1 Loss

'**Loss**' means the amount payable in respect of a **Claim** made against the **Insured** and any of its **Employees** under a contract of service and shall include damages, judgments, settlements, interest, costs, defence costs and back pay where reinstatement by a court or tribunal is ordered. **Loss** excludes any amount which the **Insured** is or was required to pay pursuant to a specific obligation imposed under a contract of employment, employment agreement, or pursuant to statute, award or otherwise.

9.2 Claim

'**Claim**' means the receipt by the **Insured** of:

- a) any originating process (in a legal proceeding or arbitration), cross claim or counter claim or third party or similar notice claiming compensation against the **Insured**; or
- b) any written demand from a third party claiming compensation against the **Insured**.

9.3 Special Exclusions

We do not **Cover** any of the following **Claims** (or losses or liabilities) or legal proceedings or any associated costs:

a) Strikes, lock-outs etc

Claims brought about by, contributed to by, or which involve acts committed during or in connection with any industrial dispute (whether between employer and **Employee** or between **Employees** or their unions or generally), strike, picket, lock-out, go slow or work to rule action;

b) Insolvency

Claims brought after the appointment of any liquidator, receiver and manager, official manager, administrator, official trustee in bankruptcy, or trustee administering a compromise or scheme of arrangement of the **Insured** but this exclusion is not to apply to **Claims** notified prior to the appointment;

- c) **Workers Compensation/Occupational Health and Safety Legislation Claims** brought about by, contributed to by or which involve claims arising under, or pursuant to, or in relation to any Workers' Compensation or Occupational Health and Safety Acts or similar legislation;
- d) **Bodily Injury**
Claims arising from bodily injury (except emotional distress or mental anguish), sickness, disease or death of any person;
- e) **Physical Modifications to Premises**
Claims for the cost of physical modifications to premises, plant or equipment owned or occupied by the **Insured**;
- f) **Unfair Contract Claims**
 - i. **Claims** or proceedings for or in respect of a contract of employment alleged to be unfair; or
 - ii. the seeking of relief pursuant to Section 127A of the Workplace Relations Act (Commonwealth) or Section 106 of the Industrial Relations Act (NSW) 1996 or Section 276 of the Industrial Relations Act (Queensland) 1999 or similar legislation in the other states or territories of the Commonwealth of Australia or in New Zealand.

- iii. to give instructions to solicitors or counsel that **We** appoint or agree to, and to receive advice from them and to act on that advice; and
- iv. to consent to any settlement **We** recommend; and
- v. to do anything **We** or **Our** legal advisers think might help with the procedures set out in this **Policy** for settling and defending **Claims** or **Covered Claim**; and
- vi. to give **Us** information relevant to this **Policy**, which **We** can rely on when **We** decide whether to accept the risk, and set the **Policy** terms or the premium.

10.3 Singular & Plural

The singular includes the plural and the plural includes the singular, except if the context requires otherwise.

10.4 Payment in Australian dollars in Australia

All premiums and **Claims** must be paid in Australian dollars in Australia.

10.5 Law of Policy

This **Policy** is governed by the law of the Territory or State where the **Policy** was issued, which is stated in the Schedule. The courts of that place have jurisdiction in any dispute about or under this **Policy**.

10.6 Territory Covered by this Policy

Cover under this **Policy** is not restricted by where anything giving rise to the **Claim** occurred. However, **Our** cover is restricted to **Claims** brought under the legal jurisdiction of the courts of Australia and New Zealand (or any country specified in the Schedule, under the heading "Jurisdictional Limits").

10.7 Schedule must be included

This **Policy** is only legally enforceable if it includes a Schedule signed by one of **Our** officers.

10.8 Paragraph Headings

The paragraph headings in this **Policy** are included for the purpose of reference only and do not form part of this **Policy** for interpretation purposes.

10.9 Alteration to this Policy

No alteration, change or amendment to any **Primary Policy** shall alter, change or amend this **Policy** unless expressly agreed to in writing by **Us**.

10.10 Maintenance of Underlying Insurance

This **Policy** only provides **Cover** while the **Primary Policy** is maintained in full force and effect during the currency of this **Policy**.

Section 10 Other Matters

10.1 Non-Imputation

The **Proposal We** were given by or on behalf of the **Insured** before this **Policy** commenced, is taken to be a separate **Proposal** for each natural person **Covered** under this **Policy**.

If there is any fact or misstatement in the **Proposal** that relates to one natural person who is an **Insured**, **We** do not attribute it to any other natural person who is an **Insured**, for the purposes of this **Policy**.

10.2 Authority to accept notices & to give instructions

The persons listed as the **Insured** in the Schedule are appointed individually and jointly as agent of:

- a) each **Insured**; and
- b) any person who is entitled to a benefit under this **Policy** (when they request **Cover** or suffer a loss under this **Policy**) in all matters relating to this **Policy**, and to **Claims** or losses **Covered** by it.

In particular (but without limitation) the persons listed in the Schedule as the **Insured** are agents for the following purposes:

- i. to give and receive notice of **Policy**, cancellation, to pay premiums and to receive any return premiums that may become due under this **Policy**; and
- ii. to accept endorsements or other notices provided for in this **Policy**; and

Section 11

Cancelling the Policy

11.1 We can cancel the Policy

- a) **We** will not cancel this **Policy** for any reason other than non-payment of the Premium.
- b) **We** may deliver this notice to the **Insured** personally, or post it by registered or certified mail (to the **Insured's** broker or to the address the **Insured** last gave **Us**). Proof that **We** mailed the notice is sufficient proof that the **Insured** received the notice.
- c) **We** will not avoid the **Policy** for any reason other than pursuant to Section 28(2) of the Insurance Contracts Act 1984.
- d) **We** will not exercise **Our** rights under Section 28(3) of the Insurance Contracts Act 1984 other than for fraudulent non-disclosure or misrepresentation to **Us** prior to the inception of this **Policy**.

11.2 After cancellation pursuant to Section 11.1, **We** will refund the premium for the time remaining on the **Policy**, less any non-refundable duties.

Section 12

Words with special meanings

12.1 Whenever the following words are used in this **Policy** in bold type and with a capital letter, they have the special meanings set out below. These words may appear without bold type in endorsements on the **Policy** Schedule.

12.2 Barrister

Shall mean a natural person who has been admitted as a barrister by the Supreme Court under the Legal Profession Act 2004 (Vic) or by a Supreme Court under a corresponding law and who is engaged in legal practice solely as a barrister.

12.3 Civil Liability

Liability for the damages, costs and expenses which a civil court orders the **Insured** to pay on a **Claim** (as opposed to criminal liability or penalties). It includes the legal costs of the person making the **Claim**, for which the **Insured** becomes liable.

12.4 Claim

Shall mean the receipt by the **Insured** of:

- a) any originating process (in a legal proceeding or arbitration), cross claim or counter claim or third party or similar notice claiming compensation against and served on an **Insured**; or
- b) any written or verbal demand from a third party claiming compensation against the **Insured**.

12.5 Claim Investigation Costs

The legal costs and expenses of investigating, defending or settling any **Claim** or **Covered Claim**, which would be **Covered** by this **Policy** at the time the legal costs and expenses arise. (Refer Section 3.3, **Claim Investigation Costs**).

12.6 Compensation Orders

Shall mean any order made against you pursuant to Part 4.2.14 of the Legal Profession Act 2004 (Vic) or the equivalent statutory provision in any other state, territory or jurisdiction, by any tribunal, court or other body having the jurisdiction to deal with any **Enquiry**.

12.7 Cost Orders

Shall mean any order made against you (other than an order for the whole or any part of the costs arising from legal services you provided that were found to be without reasonable prospects of success), by any tribunal, court or other body having the jurisdiction to deal with such order, that you pay costs:

- a) in relation to proceedings in which you have appeared or have been instructed to appear; or
- b) made pursuant to the Legal Profession Act 2004 (Vic), arising from the conduct of the **Professional Services**.

12.8 Cover

Shall mean indemnity and indemnity shall not include any component of profit.

12.9 Covered Claim

The term **Covered Claim** means the **Claims**, liabilities, losses, costs or circumstances which may give rise to a **Claim**, which **We** may agree to **Cover** under this **Policy**.

12.10 Documents

Documents of any nature including the electronically stored data, software or computer programs for or in respect of any computer system, but not including bearer bonds, coupons, bank notes, currency notes or negotiable instruments.

Loss or damage to **Documents** does not include loss or damage (including rearrangement) to such electronically stored data, software or computer programs arising from any computer virus or from any design or programming defect in any computer program or computer operating system.

12.11 Employee

A natural person who is not a **Principal**, but who is or was at the time of the relevant act, error or omission giving rise to the **Claim** a person who:

- a) has entered into a contract of service with the **Insured** firm or incorporated body and is or was remunerated by the **Insured** for that service; or
- b) is neither a party to a contract of service with the **Insured** firm or incorporated body, nor an independent contractor, but a party to a contract for service with the **Insured** firm or incorporated body for the provision of services to the **Insured** for reward;

and, in respect of a) and b) above is under the **Insured's** direction, control and supervision in the provision of the **Professional Services**.

12.12 Enquiry

Any legal or quasi legal enquiry (into a matter arising directly out of the conduct of the **Professional Services** and such matter is the subject of and is not excluded from **Cover** under this **Policy**) in respect of which the **Insured** is legally required to participate by reason of the fact that the body conducting the enquiry (including a regulatory, licensing or statutory body) has legal jurisdiction over the **Insured** (either by reason of a statutory power or by reason of the **Insured's** membership of a professional association which has the power to discipline its members).

12.13 Excess

The part the **Insured** must pay of each **Covered Claim**. See also Section 7.16 of this **Policy**.

12.14 Former Principal

A person who has been, but is no longer:

- a) a **Principal** of an **Insured**; or
- b) the **Principal** of any firm or incorporated body declared in the **Proposal**, which previously conducted the business which is now the **Professional Services**.

12.15 Insured

Each of the following, individually and jointly:

- a) each person, firm or incorporated body identified in the Schedule as an **Insured** and each current or **Former Principal** of them; and
- b) any entity which is engaged in the provision of the **Professional Services** and which is created and controlled, while this **Policy** is in force, by anyone identified in the Schedule as an **Insured**; and
- c) anyone who becomes a **Principal** of the **Insured** while this **Policy** is in force (but only in respect of work undertaken for or on behalf of the **Insured** firm or incorporated body).

12.16 Intellectual Property

Copyright, design, patent, trade mark or moral right including false attribution of authorship (under the Copyright Act 1968 Cwlt).

12.17 Known Circumstance

Any fact, situation or circumstance which:

- a) an **Insured** was aware of at any time before this **Policy** began or before this **Policy** was amended/endorsed; or
- b) a reasonable person in the **Insured's** professional position would have thought, before this **Policy** began, or before this **Policy** was amended/endorsed

might result in someone making an allegation against an **Insured** in respect of a liability, loss or costs, that might be **Covered** by this **Policy** or the amendment/endorsement to this **Policy**.

For the purposes of this Section 12.17 only, '**Insured**' shall also mean any of the persons or parties specified in Sections 4.2 or 4.3 of this **Policy**.

12.18 Policy

The insurance **Policy** made up of:

- a) this **Policy** document;
- b) the Schedule to this **Policy**;
- c) the endorsements, if any, contained in the Schedule.

12.19 Policy Limit

The limit stated in the Schedule as the 'Total Sum Insured'. See also Section 5 of this **Policy**.

12.20 Pollutants

Shall mean any solid, liquid, gases or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkali, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

12.21 Primary Policy

Means the primary layer Certificate of Insurance of \$2,000,000 issued to the **Insured** (for the Period of Insurance stated in this **Policy** Schedule), by Legal Practitioners Liability Committee established under the Legal Profession Act 2004 (Vic).

12.22 Principal

A sole practitioner, a partner of a firm, or a director of a company, which firm or company is **Covered** by this **Policy**.

12.23 Proposal

The written **Proposal** form (the date of which is stated in the Schedule) together with any supplementary material completed by or on behalf of the **Insured**, that was given to **Us**, and relied on by **Us** to affect this **Policy**.

12.24 Run-Off Event

Means an **Insured** entity ceasing to exist or operate, or which is disposed of or merged with or acquired by another entity.

12.25 Specific Cover

The **Cover** outlined in Section 3.4 and 3.5 of this **Policy**.

12.26 Specific Cover Limit(s)

The limit of **Our** insurance **Cover** for the matter listed in the Schedule under "**Specific Cover Limit**". See Section 3.4 and 3.5 of this **Policy**.

12.27 Terrorism

Terrorism includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- a) involves violence against one or more persons; or
- b) involves damage to property; or
- c) endangers life other than that of the person committing the action; or
- d) creates a risk to health or safety of the public or a section of the public; or
- e) is designed to interfere with or to disrupt an electronic system.

12.28 We or Us or Our

CGU Professional Risks, CGU Australia Pty Ltd
ABN 62 004 478 960 AFSL 700014 trading as
CGU Insurance.

We may share this information with companies within our group, government and law enforcement bodies if required by law and others who provide services to us or on our behalf, some of which may be located outside of Australia.

For more details on how we collect, store, use and disclose your information, please read our Privacy Policy located at www.cgu.com.au/privacy. Alternatively, contact us at privacy@cgu.com.au or 13 15 32 and we will send you a copy. We recommend that you obtain a copy of this policy and read it carefully.

By applying for, using or renewing any of our products or services, or providing us with your information, you agree to this information being collected, held, used and disclosed as set out in this policy.

Our Privacy Policy also contains information about how you can access and seek correction of your information, complain about a breach of the privacy law, and how we will deal with your complaint.

General Insurance Code of Practice

We proudly support the General Insurance Code of Practice (Code). The purpose of the Code is to raise the standards of practice and service in the general insurance industry.

The objectives of the Code are:

- to commit us to high standards of service;
- to promote better, more-informed relations between us and you;
- to maintain and promote trust and confidence in the general insurance industry;
- to provide fair and effective mechanisms for resolving complaints you make about us; and
- to promote continuous improvement of the general insurance industry through education and training.

The Code Governance Committee is an independent body that monitors and enforces insurers' compliance with the Code.

Our Commitment to you:

We have adopted and support the Code and are committed to complying with it. Please contact us if you would like more information about the Code or the Code Governance Committee.

Our service commitment

CGU Insurance is proud of its service standards and supports the General Insurance Code of Practice. In an unlikely event that you are not satisfied with the way in which we have dealt with you, as part of our commitment to customer service, we have an internal dispute resolution process in place to deal with any complaint you may have.

Section 13

Important Information

How CGU protects your privacy

We use information provided by our customers to allow us to offer our products and services. This means we may need to collect your personal information, and sometimes sensitive information about you as well (for example, health information for travel insurance). We will collect this information directly from you where possible, but there may be occasions when we collect this information from someone else.

We will only use your information for the purposes for which it was collected, other related purposes and as permitted or required by law. You may choose not to give us your information, but this may affect our ability to provide you with insurance cover.

Please contact your nearest CGU Insurance office if you have a complaint, including if you are not satisfied with any of the following:

- one of our products
- our service
- the service of our authorised representatives, loss adjusters or investigators; or
- our decision on your claim.

Our staff will help you in any way they can. If they are unable to satisfy your concerns, they will refer the matter to their supervisor or manager. If the manager cannot resolve the matter, the manager will escalate the matter to our Internal Dispute Resolution Department.

Further information about our complaint and dispute resolution procedures is available by contacting Us.

Intermediary remuneration and relationship

CGU Insurance pays remuneration to Affinity Risk Partners (Brokers) Pty Ltd trading as Affinity Insurance Brokers (Affinity) when we issue, renew or vary a policy Affinity has arranged or referred to us. The type and amount of remuneration varies and may include commission and other payments. If you require more information about remuneration we may pay Affinity you should ask Affinity. In arranging this insurance policy, Affinity is acting on behalf of CGU Insurance and not as your agent.

Interest on unallocated premium

If we are unable to issue your insurance when we receive your application, we are required to hold your premium in a trust account on your behalf until your insurance can be issued.

We will retain any interest payable by our bank to meet, among other things, bank fees and other bank costs we incur in operating the account.

Notes

CONTACT DETAILS

ENQUIRIES 13 24 81
CLAIMS 13 24 80

MAILING ADDRESS
GPO BOX 9902 IN YOUR CAPITAL CITY



CGU.COM.AU

SYDNEY

GPO Box 244
Sydney
NSW 2001

MELBOURNE

181 William St
Melbourne
VIC 3000

BRISBANE

189 Grey St
South Bank
QLD 4101

PERTH

46 Colin St
West Perth
WA 6005

ADELAIDE

80 Flinders St
Adelaide
SA 5000



Insurer
CGU Australia Pty Ltd
ABN 62 004 478 960 AFSL 700014
trading as CGU Insurance