

**Community Underwriting**  
Association Liability Insurance Policy



**Community**  
Underwriting

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## Important Notices

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This Policy is a legal contract between the Insured and the Insurer. The Insured has paid, or agreed to pay the Premium and the Insurer provides the cover specified in this Policy and as set out in the Schedule.

The terms, conditions and provisions of the insurance offered are set out in this Policy. It is important that the Insured:

- reads all of the Policy before purchasing to make sure that it gives the Insured the protection it needs;
- is aware of the limits on the cover provided and the amounts that the Insurer will pay (including any Excess that applies); and
- is aware of the definitions in this Policy. The Insured will find definitions throughout this Policy.

The Insured must comply with all provisions of this Policy, otherwise the Insurer may be entitled to refuse to pay a claim or reduce the amount that the Insured is entitled to receive.

This Policy is in force for the period of insurance set out in the Schedule or until cancelled.

For the limits on the cover provided:

- some of these will be stated in the Policy itself (these are the standard policy limits); and
- the remainder will be stated in the Schedule.

In some circumstances the terms and conditions of this Policy may be amended by endorsement. If the Policy is endorsed the Insured will receive notification of the endorsement.

In issuing this Policy to the Insured, the Insurer has relied upon the proposal form that the Insured has already completed.

### About the Insurer

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Calliden Insurance Limited (Calliden) (ABN 47 004 125 268, AFSL 234438) is the Insurer of this Policy. Calliden specialises in manufacturing general insurance products for individuals, the SME sector and groups across metro and regional Australia. To find out more about the Insurer, visit [www.calliden.com.au](http://www.calliden.com.au).

### About the Agent

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Community Underwriting Agency Pty Ltd (ABN 60 166 234 715, AFSL 448274) (Community Underwriting) was set up by NSW Meals on Wheels Association Inc (ABN 87 418 074 604) to specifically cater for insurance to the not for profit community sector in Australia. This product is underwritten by Calliden Insurance Limited (Calliden) (ABN 47 004 125 268, AFSL 234438), the

Insurer. Community Underwriting acts under a binding authority as Agent for Calliden to issue, vary and cancel policies on Calliden's behalf. In all aspects of this Policy, Community Underwriting acts as an Agent for Calliden, the Insurer and not for the Insured.

### How to Contact Community Underwriting or Calliden

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For general enquires regarding the Policy, Premium or to advise the Insurer of any additional information or to cancel the Policy, the Insured should contact Community Underwriting in any of the following ways:

- by telephone on 1300 427 477
- by writing to Community Underwriting at PO Box 173, Balmain, NSW 2041
- by fax +61 2 9555 1886
- by email [enquiries@communityunderwriting.com.au](mailto:enquiries@communityunderwriting.com.au)

The Insured may contact Calliden in any of the following ways:

- by telephone on +61 2 9551 1111
- by fax on +61 2 9551 1155
- by writing to the Insurer at Calliden Insurance Limited, PO Box 348, Milsons Point, NSW 1565
- by email through the Insurer's website [www.calliden.com.au](http://www.calliden.com.au)

If the Insured has a claim, it can contact Calliden in any of the following ways:

- by telephone on 1300 880 037 (option 3)
- by writing to PO Box 348, Milsons Point, NSW 1565
- by fax on +61 2 9551 1010
- by email [claims@calliden.com.au](mailto:claims@calliden.com.au)

### Privacy Statement

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Both Calliden (the Insurer) and Community Underwriting (the Agent) respect the Insured's privacy. Any personal information provided by the Insured will be treated in accordance with the *Privacy Act 1988* (Cth). This privacy notification provides a summary of how the Insurer and Agent treat the Insured's personal information.

The Insurer and Agent collect personal information to assess the Insured's request for insurance, to administer the Insured's Policy, settle an insurance claim, provide other insurance services as requested

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## Important Notices (cont'd)

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by the Insured, and also to notify the Insured about other services or promotions from time to time.

If the Insured does not provide the information requested the Insured may breach its duty of disclosure, the Insured's application may not be capable of being accepted, or the Insured's Policy may not be able to be administered.

In order to provide its insurance services the Insurer and Agent may need to disclose the Insured's personal information to third parties including, but not limited to: agents, underwriters, advisors and brokers, claims management and other service providers, claims adjusters, loss assessors and other claims investigators, lawyers, reinsurers and reinsurance brokers, and the Financial Ombudsman Service, or as required by law (for a full list see the Insurer's and Agent's Privacy Policy). The Insurer and Agent may also disclose the Insured's personal information overseas. The Insurer and Agent will only share this information where the Insurer and Agent reasonably believe it is necessary in providing the products and services requested.

The Insurer's and Agent's Privacy Policies contain information about how to access and correct the personal information about the Insured and also how to complain about a breach of privacy. If the Insured would like additional information about privacy or would like to obtain a copy of the Privacy Policies, please contact the Agent's Privacy Officer by:

**Phone:** +61 2 8045 2580

**Fax:** +61 2 9555 1886

**Email:** [enquiries@communityunderwriting.com.au](mailto:enquiries@communityunderwriting.com.au)

**Mail:** to Privacy Officer  
Unit 24 Waterview Wharf, 37 Nicholson Street,  
Balmain East, NSW 2041

The Insured can download a copy of the Insurer's Privacy Policy by visiting:  
[www.calliden.com.au/docs/PrivacyPolicy.pdf](http://www.calliden.com.au/docs/PrivacyPolicy.pdf)

The Insured can also download a copy of the Agent's Privacy Policy by visiting:  
[www.communityunderwriting.com.au](http://www.communityunderwriting.com.au)

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### Duty of Disclosure

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This Policy is subject to the Insurance Contracts Act 1984. Under that Act the Insured has a duty of disclosure. Before the Insured takes out insurance, the Insured has a duty to tell the Insurer of everything that it knows, or could reasonably be expected to know,

that is relevant to the Insurer's decision to insure the Insured and to the terms of that insurance. If the Insured is not sure whether something is relevant it should inform the Insurer anyway.

This duty applies before the Insured enters into a contract with the Insurer and also before each time the Insured renews, extends, varies or reinstates the Policy. Each person named as the Insured has the same duty.

The Insured's duty however does not require disclosure of matters that:

- reduce the risk
- are common knowledge
- the Insurer knows or, in the ordinary course of its business, ought to know,
- the Insurer has indicated it does not want to know.

If the Insured does not comply with its duty of disclosure, the Insurer may be entitled to:

- reduce its liability for any claim
- cancel the contract
- refuse to pay the claim
- avoid the contract from its beginning, if the Insured's non-disclosure was fraudulent.

If the Insured has a claim, it can contact Calliden in any of the following ways:

- By telephone on 1300 880 037 (option 3)
- By writing to PO Box 348, Milsons Point, NSW 1565
- By fax on +61 2 9551 1010
- By email [claims@calliden.com.au](mailto:claims@calliden.com.au)

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### Dispute Resolution Process

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If the Insured thinks the Insurer has let the Insured down in any way, or the Insurer's service is not what the Insured expects (even if through one of the Insurer's representatives), please tell the Insurer so it can help. The Insurer is committed to resolving the Insured's complaint fairly.

The Insurer will address all complaints, except where specific circumstances apply, in accordance with Calliden's Complaints Handling Process. This process is compliant with the Insurance Council of Australia's Code of Practice. Both the Code of Practice and the Insurer's Complaints Brochure, which contains a guide to the Insurer's process, are available upon request.

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## Important Notices (cont'd)

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If the Insured has a complaint:

### Step 1: On the spot, if the Insurer can!

The Insured can contact the Insurer by:

**Phone:** +61 2 9551 1111

**Fax:** +61 2 9551 1155

**Email:** [servicefeedback@calliden.com.au](mailto:servicefeedback@calliden.com.au)

**Mail:** PO Box 348, Milsons Point, NSW 1565

- If the Insurer can't resolve the Insured's complaint immediately, the Insurer will commit to responding to the Insured's complaint within 15 business days of first being notified of the complaint.
- If the Insurer needs more information or more time to respond properly to the Insured's complaint the Insurer will contact the Insured to agree an appropriate timeframe to respond.

### Step 2: Internal Dispute Resolution

- If the Insured is not happy with the Insurer's response, please tell the Insurer in writing. The Insured may escalate it as a dispute and the Insurer's Internal Dispute Resolution panel (the panel) will review the matter. The panel will be independent of the person who initially considered the Insured's complaint.
- The Disputes Resolution Officer will acknowledge the Insured's dispute in writing within 2 business days of receipt and will investigate all details of the Insured's dispute and will provide the Insured with a written response of the outcome within 15 business days of first being notified of the Insured's dispute.
- In some cases the Insurer may be unable to reach a conclusion within this timeframe, and may request a later response date. If this occurs, the Insurer will keep the Insured's informed of progress of the dispute no less than once every 10 days.

### Step 3: External Dispute Resolution scheme

Should the Insurer be unable to resolve the Insured's complaint (including the IDR process referred to above) within 45 days or the Insured is not happy with the Insurer's response/handling of the Insured's complaint at any given time, the Insured can seek an external review via the Insurer's external dispute resolution scheme, administered by the Financial Ombudsman Service Limited (FOS).

This is an independent national body and its services are free to the Insured. As a member the Insurer agrees to accept the FOS' decision.

The Insured can contact the FOS by:

**Mail:** Financial Ombudsman Service Ltd,  
GPO Box 3, Melbourne, Victoria 3001

**Phone:** 1300 78 08 08

**Fax:** +61 3 9613 6399

**Website:** [www.fos.org.au](http://www.fos.org.au)

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## Financial Claims Scheme

In the event of the insolvency of Calliden, the Insured may be entitled to payment under the Financial Claims Scheme. Access to the scheme is subject to eligibility criteria. Information about the scheme can be obtained from the APRA website at [www.apra.gov.au](http://www.apra.gov.au) and the APRA hotline on 1300 55 88 49.

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## General Insurance Code of Practice

Calliden is a signatory to the General Insurance Code of Practice (the Code). The Code aims to raise standards of service between insurers and their customers. Calliden's service standards are in accordance with the Code.

For any information about the Code, including a copy of the Code, contact the Insurer or the Financial Ombudsman Service on 1300 78 08 08 or visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au)

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## Notice to the Insured

Some sections of this Association Liability Insurance Policy are issued on a 'claims made and notified' basis.

This means that, subject to the Continuous Cover clause, these sections of the Policy respond to claims first made against the Insured during the policy period and notified to the Insurer during the period of insurance. Provided, that the Insured was not aware at any time prior to the policy inception of circumstances which would have put a reasonable person in the Insured's position on notice that a claim may be made against them.

Where the Insured gives notice in writing to the Insurer of any facts that might give rise to a claim against the Insured as soon as they become aware of those facts but before the expiry of the period of insurance, the Insured may have rights under section 40(3) of the Insurance Contracts Act 1984 to be indemnified in respect of any claim subsequently made against the Insured arising from those facts, notwithstanding that the claim is made after the expiry of the period of insurance. Any such rights arise under the legislation only.

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# 1. Insuring Clauses

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## Community Underwriting Association Liability Cover

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In consideration of payment of the premium and in relying upon information provided by the **Insured** to the **Insurer**, the **Insurer** agrees with the **Association** to provide insurance in accordance with the terms of this **Policy**.

The **Insurer** agrees to pay the **Insured** for a **Loss** covered by this **Policy** in relation to any **Claim** indemnified by the following covers if the **Claim** is first made against the **Insured** and reported to the **Insurer** during the **Period of Insurance**.

### 1.1 Association Reimbursement

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The **Insurer** will indemnify the **Association** for **Loss** for which the **Insured Persons** may be legally indemnified by the **Association** on account of any **Claim**, which is:

- a) first made against the **Insured Persons**, jointly or severally, during the **Period of Insurance** and notified to the **Insurer** during the **Period of Insurance**, and is:
- b) by reason of any **Wrongful Act** occurring on or after the commencement of the **Period of Insurance** or any earlier **Retroactive Date** specified in the **Schedule**.

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## 2. Defence Costs

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### Defence Costs

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The **Insurer** will pay **Defence Costs** incurred with the written consent of the **Insurer** in the investigation, defence and/or settlement of any **Claim** for which the **Insured** is entitled to indemnity.

### Additional Costs

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**Defence Costs** are part of and can be included in the **Limit of Indemnity**, however the **Insurer** will indemnify the **Insured** for **Defence Costs** in addition to the **Limit of Indemnity** for up to:

- a) \$5,000,000; or
- b) the **Limit of Indemnity**;

whichever is lesser.

If a judgment or an amount required to settle a **Claim** exceeds the **Limit of Indemnity**, the **Insurer's** liability to pay **Defence Costs** is limited to the proportion the **Limit of Indemnity** bears to the amount required to be paid to dispose of the **Claim** and in all cases will not

### 1.2 Directors and Officers

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The **Insurer** will indemnify the **Insured Persons** for **Loss** for which the **Insured Persons** may not be legally indemnified by the **Association** on account of any **Claim**, which is:

- a) first made against them, jointly or severally, during the **Period of Insurance** and notified to the **Insurer** during the **Period of Insurance**; and is
- b) by reason of any **Wrongful Act** occurring or after the commencement of the **Period of Insurance** or any earlier **Retroactive Date** specified in the **Schedule**.

### 1.3 Professional Indemnity

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The **Insurer** will indemnify the **Insured** for **Loss** arising from any **Claim** which is:

- a) first made against the **Insured** during the **Period of Insurance** and notified to the **Insurer** during the **Period of Insurance**; and is
- b) by reason of any **Wrongful Act** committed by the **Insured** in the conduct of the **Business** on or after the commencement of the **Period of Insurance** or any earlier **Retroactive Date** specified in the **Schedule**.

exceed an amount equivalent to the Additional Costs described in the paragraph above.

### Advancement of Defence Costs

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The **Insurer** will pay **Defence Costs** before final resolution of a **Claim** if:

- a) the **Insurer** confirms in writing that, based on the information available to it in the matter, an indemnity will be extended in respect of that **Claim**; or
- b) the **Insurer** assumes conduct of the defence of the **Claim** in accordance with the provisions of Claims Condition – Conduct of Defence/Representation.

In any other case the **Insurer**, at its discretion, may pay **Defence Costs** before final resolution of a **Claim** subject to the following provisions:

- a) It is agreed that the **Insurer** need not pay **Defence Costs** (or may suspend further payments under any existing exercise of its discretion) before final resolution of any **Claim** where:

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## 2. Defence Costs (cont'd)

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- i. the **Insurer** has reserved its position regarding the **Insured's** entitlement to an indemnity or has any other **Policy** dispute with the **Insured**; or
  - ii. any **Wrongful Act** or other behaviour in respect of any conduct or knowledge the possible subject of the Exclusion – Dishonesty, Fraud & Information Improper Use is alleged, unless a **Senior Counsel** (to be mutually agreed upon by the **Insurer** and the **Insured** or, failing agreement, the President of the Law Society or equivalent body in the State where the **Claim** is being investigated, heard or defended) advises that these allegations are likely to be successfully defended.
- b) Any discretionary advance payment of **Defence Costs** based on a **Senior Counsel's** advice in accordance with Clause a) ii. above can be reviewed from time to time as proceedings progress.

### Reimbursement of Defence Costs Advanced

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If the **Insurer** subsequently refuses to indemnify the **Insured** in respect of any **Claim**, the **Insured** (for their respective rights and **Advanced** interests) must reimburse the **Insurer** for any **Defence Costs** the **Insurer** has paid in advance in respect of that **Claim**.

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## 3. Automatic Extensions

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The **Insurer** agrees to provide cover under these Extensions for no additional premium provided that:

- a) the indemnity is subject to the **Schedule**, **Exclusions**, **Conditions**, **Excess** and all other terms of this **Policy**;
- b) the inclusion of any **Policy** Extension will not increase the **Limit of Indemnity**;
- c) if a limit for an Extension is shown in the **Schedule** then this amount represents the total liability of the **Insurer** for that Extension.

### Crisis Consultancy Costs

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The **Insurer** will pay the **Association** for **Crisis Consultancy Costs** arising from a **Crisis** occurring during the **Period of Insurance**.

### Continuous Cover

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Applicable to Insuring Clause 1.3 only.

Notwithstanding the '**Known Circumstances**' and '**Known Claims**' Exclusions contained in this **Policy**.

The **Insurer** will indemnify the **Insured** for any **Claim** first made against the **Insured** during the **Period of Insurance** arising from circumstances of which the **Insured** were aware prior to the **Period of Insurance** provided that:

- a) The **Insurer** was the **Insured's** professional indemnity insurer at the time that the **Insured** first became aware of the circumstance and the **Insurer** has continued to be the **Insured's** professional indemnity insurer; and

- b) The **Limit of Indemnity** under this Extension will be the lesser available under the terms of the **Policy** in force at the time the **Insured** first became aware of the circumstance and this **Policy**. The terms of this **Policy** will otherwise apply.

### Dishonesty of Employees and Office Bearers

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Applicable to Insuring Clause 1.3 only.

The **Insurer** will indemnify the **Insured** against **Loss** arising from any **Claim** brought about or contributed to by any dishonest or fraudulent act or omission of any **Insured Person** first made against them jointly or severally during the **Period of Insurance** and is notified to the **Insurer** during the **Period of Insurance**.

Provided that the **Insurer** will not provide indemnity to any person permitting or condoning any dishonest, fraudulent, criminal or malicious act or omission.

### Employment Practices

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The **Insurer** will indemnify the **Insured** on account of any **Employment Practices Claim**, which is:

- a) first made against the **Insured** or **Insured Persons** jointly or severally, during the **Period of Insurance** and notified to the **Insurer** during the **Period of Insurance**; and is
- b) by reason of any **Wrongful Employment Act** occurring on or after the commencement of the **Period of Insurance** or any earlier **Retroactive Date** specified in the **Schedule**.

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## 3. Automatic Extensions (cont'd)

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In this Extension:

- **Employment Practices Claim** means a **Claim** as defined in this **Policy** against an **Insured Person** in respect of a **Wrongful Employment Act**.
- **Wrongful Employment Act** means a **Wrongful Act** as defined in this **Policy** in respect of employment-related:
  - i. discrimination on any ground including but not limited to sex, age, disability, race, colour, sexual orientation, marital status or pregnancy;
  - ii. wrongful dismissal or termination of employment;
  - iii. failure to adhere to reasonable employment policies and procedures or workplace harassment;
  - iv. breach of privacy or defamation;
  - v. breach of employment contract or misrepresentations as to terms of employment;
  - vi. refusal to employ;
  - vii. denial of natural justice;
  - viii. demotion, failure to promote, deprivation of career opportunity, refusal of tenure, evaluation or discipline.
- **Insured Person**, in relation to the person claiming, also includes an applicant for employment.
- **Claim** does not include paragraph c) of the **Definition – Claim**.

### Estates

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Applicable to Insuring Clauses 1.2 and 1.3 only.

The **Insurer** will indemnify the estate, heirs, legal representatives or assigns of any deceased, incompetent or insolvent **Insured Person**.

### Fidelity

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The **Limit of Indemnity** under this Extension is \$50,000 for any one **Period of Insurance** in the aggregate.

The **Insurer** will indemnify the **Association** or **Subsidiary Company** against loss of any bearer bonds, money, coupons, bank notes, coin, currency notes, negotiable instruments, or stamps:

- a) which is the **Association** or **Subsidiary Company's** property; or
- b) for which the **Association** or **Subsidiary Company** is legally responsible, arising from any dishonest, fraudulent, malicious or reckless act or omission in the conduct of the **Business** by any **Insured Person**

where the **Association** or **Subsidiary Company** first discovers the loss during the **Period of Insurance**.

However, the **Insurer** is not liable to indemnify the **Association** or **Subsidiary Company** under this Extension if the **Association** or **Subsidiary Company** committed or condoned any act, omission or breach excluded by the Exclusion – Dishonesty, Fraud and Information Improper Use.

The **Insured** must:

- a) notify the **Insurer** of the loss under this Extension as soon as practicable after the **Insured** discovers the loss but in any event within the **Period of Insurance**; and
- b) give the **Insurer** all necessary information and assistance to enable the **Insurer** to pursue the person committing the dishonest, fraudulent, malicious or reckless act or omission.

If this **Policy** is terminated or not renewed for any reason except non- payment of the premium, the **Association** will be entitled to notify the **Insurer** of a loss for a further 30 days immediately following the expiry of the **Period of Insurance** if:

- a) this further discovery period is requested by the **Insured** prior to the expiry of the **Period of Insurance**; and
- b) the loss relates to acts committed or alleged to have been committed during the **Period of Insurance**.

### Fines and Penalties

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Applicable to Insuring Clauses 1.2 and 1.3

The **Insurer** will indemnify the **Association** for **Penalties** arising out of any **Claim**. The Exclusion – Multiple Damages, Fines and Penalties does not apply to this Extension.

### Insured vs Insured

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The **Insurer** will indemnify the **Insured** for a **Claim** made, brought or maintained by or on behalf of any person or entity who is an **Insured** if the **Insured** who makes or on whose behalf the **Claim** is made is not acting with prior direct solicitation, co-operation or assistance from any other **Insured**.

### Libel and Slander

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The **Insurer** will indemnify the **Insured** against **Loss** arising from any **Claim** for libel or slander by reason of words written or spoken by the **Insured** in the course of professional services rendered by the **Insured** provided

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## 3. Automatic Extensions (cont'd)

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the **Claim** is first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance**.

Provided in respect of Insuring Clauses 1.1 and 1.2 that the **Insured** was not aware of the falsity of the words at the time of writing or speaking them.

### Loss of Documents

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Applicable to Insuring Clause 1.1 only.

The **Insurer** will indemnify the **Insured** against **Loss** arising from any **Claim** by reason of loss, destruction, damage or deprivation of any **Documents** which were in the physical custody or control of the **Insured** or any other person to whom such **Documents** have been entrusted, lodged or deposited by the **Insured** in the ordinary course of business within the Commonwealth of Australia or its Territories first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance**.

The **Insurer** will indemnify the **Insured** against all costs, charges and expenses incurred by the **Insured** in replacing and/or restoring such **Documents**. Provided that any **Claim** for costs and expenses incurred by the **Insured** in replacing or restoring **Documents** will be supported by bills or accounts which will be subject to approval by a competent person to be appointed by the **Insurer** with the approval of the **Insured**.

### Work Health and Safety

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The **Insurer** will indemnify the **Insured** for **Defence Costs** for any **Claim** arising from a breach or alleged breach of any Commonwealth, State or Territory Work Health and Safety Act legislation. This Extension does not apply to **Defence Costs** in relation to any **Claim** or proceedings seeking damages or compensation in relation to that breach. The Exclusion – Bodily Injury and Property Damage does not apply to this Extension.

### Outside Directorships, Trusteeships and Committees

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Where an **Insured Person** holds an **Outside Directorship, Trusteeship** or membership of a **Committee**:

- a) at the commencement of the **Period of Insurance**, in any **Organisation** listed in the **Schedule**; or
- b) enters into it during the **Period of Insurance** with an **Organisation**;

the **Insurer** will provide an indemnity under Insuring Clauses 1.1 and 1.2 for any **Claim** if that **Insured Person** is not entitled to an indemnity under any other policy of insurance arranged by the **Organisation**.

Provided that:

- i. this indemnity will not extend to any of the other directors, officers or employees of the **Organisation**; and
- ii. no indemnity is available to the **Organisation** under this **Policy**; and
- iii. indemnity under this Extension is non-cumulative with any other insurance issued by the **Insurer**; and
- iv. for the purposes of this Extension only and for no other purpose, the terms, Exclusions and/or Conditions of this **Policy** apply as if the terms **Association** and **Insured** include **Organisation**; and
- v. the **Period of Insurance** in respect of **Claims** arising under b) above will cease at the earlier of forty-five (45) days commencing from the appointment of the **Outside Directorship, Trusteeship** or membership of the **Committee** or unless:
  - a) notification of the appointment has been given in writing to the **Insurer**, which has the right to request additional information and to charge an additional premium; and
  - b) the **Insurer** has agreed to include the **Organisation** in the **Schedule** as a listed **Organisation**.

### Preservation of Indemnity

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If the **Association** is legally permitted or required to indemnify any **Insured Person** but refuses or fails to do this, the **Insurer** will indemnify the **Insured Person** to the extent (less the **Excess**) that the **Insured Person** is unable to satisfy the right to indemnity against the **Association**.

Provided that the **Insured Person** must provide satisfactory proof to obtain the benefit of this Extension and this proof will include the production of documentary evidence of the **Association's** assets and liabilities and any other information as the **Insurer** requires.

### Reinstatement of Limit of Indemnity

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If the **Limit of Indemnity** set out in the **Schedule** is exhausted or partially exhausted due to payment by the **Insurer** of a **Claim** the **Insurer** agrees to reinstate the **Limit of Indemnity** by the amount by which it is exhausted provided that:

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### 3. Automatic Extensions (cont'd)

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- a) the reinstatement will not apply to **Claims** made prior to the effective date of the reinstatement; and
- b) the aggregate of the amounts reinstated during the **Period of Insurance** will be limited to an amount equal to twice the **Limit of Indemnity** applicable at the start of the **Period of Insurance**; and
- c) the **Limit of Indemnity** reinstated this way will represent the total liability of the **Insurer** for all **Claims** made during the time from the effective date of the reinstatement until the expiry of the **Period of Insurance**; and
- d) if the **Insured Person** has insurance that operates in excess of this **Policy**, a reinstatement will not apply until the amounts payable under that insurance are exhausted; and
- e) this Extension does not apply to any **Claims** indemnified by Automatic Extensions Employment Practices, Fidelity or Tax Audit.

#### Retirement Cover

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Any **Insured Person** who has retired from all employment and holding any office prior to the expiry of the **Period of Insurance** will be entitled to cover under this **Policy** for a period of seventy-two (72) months from the expiry of the **Period of Insurance** but only in respect of **Wrongful Acts** actually or allegedly attempted or committed prior to retirement.

#### Run-off Cover for Outside Directorships Person (Non Profit Organisations)

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The **Insurer** agrees to provide an indemnity in accordance with Insuring Clauses 1.1 and 1.2 only, for any **Claim** against an **Insured** by reason of **Wrongful Act** in any **Outside Directorship** which an **Insured Person** held in any Non Profit **Organisation** and which the **Insured Person** ceased or ceases to hold prior to the commencement of or during the **Period of Insurance**. Provided always that:

- a) the **Wrongful Act** giving rise to a **Claim** occurred before the **Insured Person** ceased holding that position; and
- b) the **Outside Directorship** had previously been covered by the **Insurer** under a previous **Policy** or is now covered under this **Policy**; and
- c) the provisions under Extension – Outside Directorships, Trustees and Committees of the **Policy** will apply to this run-off cover.

#### Severability

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The **Insurer** agrees that the conduct on the part of any **Insured Person**, where that person breached the duty of disclosure or made a misrepresentation to the **Insurer** before this contract was entered into, or failed to comply with a term of this **Policy**, will not prejudice the right of any other **Insured Person** to indemnify under the **Policy**. Provided that the other **Insured Person**:

- a) is innocent of and has no prior knowledge of this conduct; and
- b) will immediately upon becoming aware of any such conduct advise the Insurer in writing of all known facts in relation to such conduct.

This Extension does not relieve any **Insured** from the duty of disclosure owed to the **Insurer**.

#### Tax Audit

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The **Insurer** will pay the **Association** the reasonable and necessary costs that the **Association** incurs following notification received during the **Period of Insurance** of an audit or investigation by a Federal or State Commissioner of Taxation relating to a liability to pay income tax, fringe benefits tax, capital gains tax, wholesale and sales tax, payroll tax, goods and services tax or superannuation contributions tax in respect of the **Business** up to the amount specified in the **Schedule**.

For the purpose of this Extension, 'costs' means professional fees paid to accountants or registered tax agents who are not **Employees**, for work undertaken in connection with the audit or investigation.

The **Insurer** will not be liable under this additional benefit:

- a) for the imposition of any, tax, fines, penalties, court costs, penalty tax or interest;
- b) costs incurred after completion of the audit or investigation;
- c) where any audit or investigation was initiated, threatened or started prior to the commencement of the **Period of Insurance**;
- d) arising from the **Insured's** improper, unwarranted or unjustified refusal or failure to comply with any lawful request made by a Federal or State Commissioner of Taxation for the production of documents or the supply of information. However the **Insurer** will not deem refusal or failure to

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### 3. Automatic Extensions (cont'd)

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- comply to be improper, unwarranted or unjustified if the **Insured** refuses or fails to comply upon the advice of its accountant or tax agent;
- e) for costs from audits or investigations under customs legislation;
  - f) for costs from audits or investigations of income received or earned, or where the source of income is, outside the Commonwealth of Australia or where the services giving rise to the claim are performed by persons or entities ordinarily resident outside Australia;
  - g) arising out of fraud or any fraudulent act or omission committed by the **Insured** or on the **Insured's** behalf;
  - h) arising from audits or investigations which result from the **Insured**, or any person acting on the **Insured's** behalf, becoming aware of any error or deficiency in any return of income or other documentation supplied to a Federal or State Commissioner of Taxation and failing to notify the Commissioner of Taxation without delay.

#### Conditions applicable to this Tax Audit Extension

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The **Association** must lodge taxation and other returns within the time limits applicable to those returns as prescribed by statute or through Extension of time granted by a Federal or State Commissioner of Taxation. The **Association** must make full and complete disclosure of all assessable income (including capital gains), as required by any relevant legislation.

In the event of a **Claim** arising:

- a) the **Insured** must keep the **Insurer** fully and continually informed of all material developments in relation to the **Claim** and in relation to any audit;
- b) the **Insured** must take all necessary and reasonable steps to minimise any delays and the amount of any costs incurred or likely to be incurred in connection with any audit;
- c) the **Insurer** or its duly appointed agent may make its own investigation into any matter which is or may be the subject of a **Claim**;
- d) the **Insured** must ensure that its accountants registered tax agent and/or solicitor cooperate with the **Insurer** and where necessary, assist the **Insurer** in relation to any **Claim**, and assists the **Insurer** with any matter it wishes to pursue with the Commissioner of Taxation which is or may be the subject of a **Claim**.

#### Competition and Consumer Act 2010

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Applicable to Insuring Clause 1.3

The **Insurer** will indemnify the **Insured** against **Loss** for any **Claim** first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance** under the terms of the Competition and Consumer Act 2010 (Commonwealth) or similar legislation in other States, and which arises from misleading or deceptive or unconscionable conduct (not being deliberate or fraudulent conduct). Provided that:

- i. this extension of indemnity will not include **Claims** made under the penal or criminal provisions of those Acts or legislation; and
- ii. the conduct arises from a **Wrongful Act** indemnified by Insuring Clause 1.3.

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## 4. Optional Extensions

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The **Insurer** agrees to provide cover under these Optional Extensions, provided that:

- a) the indemnity provided is subject to the **Schedule**, Exclusions, Conditions, **Excess** and all other terms of this **Policy**;
- b) the inclusion of an Optional Extension will not increase the **Limit of Indemnity**;
- c) where an Optional Extension is not stipulated as 'Included' in the **Schedule**, then this **Policy** does not provide any cover set out under that **Optional Extension**; and
- d) if a limit for an Extension is shown in the **Schedule** then this amount represents the total liability of the **Insurer** for that Extension.

### Extended Reporting Benefit

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If this **Policy** is terminated or not renewed for any reason except non payment of the premium, the **Association** will be entitled to notify the **Insurer** of a **Claim** for:

- a) a further 90 days immediately following the expiry of the **Period of Insurance**; or
- b) until another policy commences which is intended to replace this **Policy**;

Provided that:

- i. this further discovery period is requested by the **Insured** prior to the expiry of the **Period of Insurance**; and
- ii. the **Insured** pays an amount equal to 25% of the total expiring annual premium; and
- iii. the loss relates to acts committed or alleged to have been committed during the **Period of Insurance** and after any **Retroactive Date**; and
- iv. this Extension does not cover **Claims** arising from any facts, circumstances or occurrences which the **Insured** was aware of prior to requesting cover under this Extension (or ought reasonably to have realised) may give rise to a **Claim**.

### Run-off Cover for Subsidiaries

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For the purpose of Insuring Clauses 1.1 and 1.2 only, if an entity ceased to be a **Subsidiary Company** prior to the commencement of the **Period of Insurance**, the **Insurer** will provide an indemnity for any **Claim** against an **Insured Person** which arises out of the **Insured Person** having:

- a) acted in that capacity on behalf of the then former **Subsidiary Company**; and
- b) where that **Insured Person** is not otherwise entitled to an indemnity under any other policy of insurance arranged on behalf of the then **Subsidiary Company**.

Provided that:

- i. this Extension will provide an indemnity only in respect of **Wrongful Acts** while that entity was a **Subsidiary Company**; and
- ii. that **Subsidiary Company** is disclosed to the **Insurer** and its trade or business activities were as currently described as the **Business**.

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## 5. Exclusions

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This **Policy** does not provide any indemnity for **Loss**, in respect of any **Claim**:

### Asbestos

Arising from, attributable to or in any way connected with:

- a) injury arising, directly or indirectly, out of inhalation of, or fears of the consequences of exposure to or inhalation of, asbestos, asbestos fibres or any derivatives of asbestos;
- b) that part of any loss, cost or expense for the cost of cleaning up, or removal of, or damage to, or loss of use of, property arising out of any asbestos, asbestos fibres or any derivatives of asbestos.

### Bodily Injury and Property Damage

Arising from, attributable to or in any way connected with **Bodily Injury** or **Property Damage**. However this Exclusion will not apply to **Claims** for a breach of professional duty by the **Insured** arising out of the conduct of the **Business**.

### Electronic Data

The **Insurer** will not pay for any loss or damage directly or indirectly caused by, resulting from or in connection with:

- a) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of **Electronic Data**;
- b) error in creating, amending, entering, deleting or using **Electronic Data**;
- c) total or partial inability or failure to receive, send, access or use **Electronic Data** for any time or at all; or
- d) the use of an intranet or the internet (including but not limited to the World Wide Web and electronic mail systems) by the **Insured** or on the **Insured's** behalf;

from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

### Consensual Claims

Made, brought or maintained by or on behalf of any person or entity with the solicitation, co-operation or assistance of any **Insured**.

### Contractual Liability

Arising from, attributable to or in any way connected with any duty, obligation or liability assumed by the **Insured** by contract, warranty, guarantee or indemnity, unless such duty, obligation or liability would have existed in the absence of such assumption.

### Dishonesty, Fraud And Information Improper Use

Made against an **Insured Person** where the **Claim** arises directly or indirectly out of or is in any way connected with:

- a) any wilful, reckless, dishonest, fraudulent, criminal or malicious conduct by that **Insured Person**;
- b) any intentional or wilful breach of any statute, contract or duty by that **Insured Person**;
- c) that **Insured Person** having gained any personal advantage to which he/she was not legally entitled;
- d) that **Insured Person** having improperly benefited or attempted to benefit from any securities transactions as a result of information that was not available to other sellers and/or purchasers of those securities;
- e) any improper use of information acquired by that **Insured Person**, by virtue of that **Insured Person's** position with the **Association**, to gain directly or indirectly any advantage, personally or for the **Association** or for another person, to which any of them was not legally entitled;
- f) any conduct referred to in a) to e) above by any person, which conduct that **Insured Person** at any time condoned or became aware of prior to the commencement of the **Period of Insurance**; or
- g) a **Claim** made against the **Association** or any **Subsidiary Company** and arising directly or indirectly out of or in connection with any conduct referred to in a) to e) above by any person, which conduct the **Association** or that **Subsidiary Company** at any time condoned, or of which it became aware prior to the commencement of the **Period of Insurance**.

### Geographical Limits

Arising from, attributable to or in any way connected with any conduct occurring, in whole or part outside the territorial limits of the Commonwealth of Australia.

### Insolvency

First made or intimated subsequent to the date upon which the **Insured** becomes **Insolvent**. Provided always that this Exclusion will not apply where the **Insured** establishes to the satisfaction of the **Insurer**, that the **Claim** would have arisen even if the **Insured** was not **Insolvent**.

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## 5. Exclusions (cont'd)

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### Jurisdiction

Brought in a court outside the Commonwealth of Australia or brought in a court within the Commonwealth of Australia to enforce a judgment handed down in a court outside the Commonwealth of Australia.

### Known Circumstances

Arising from, attributable to or in any way connected with any facts, circumstances or occurrences:

- a) of which notice has been given to any insurer under any previous policy, however expressed; or
- b) of which the **Insured** was aware prior to the commencement of the **Period of Insurance** and knew (or ought reasonably to have realised) may give rise to a **Claim**.

### Known Claims

Made prior to the commencement of the **Period of Insurance**.

### Molestation

For any liability caused by or arising directly or indirectly out of or in connection with the molestation of, or physical or psychological interference with, any person.

### Multiple Damages, Fines and Penalties

For:

- a) exemplary, aggravated, punitive or liquidated damages;
- b) fines or penalties; or
- c) income tax, customs duties, excise duty, sales tax, goods and services tax or other State or Federal tax or duty.

### Nuclear

Arising from, attributable to or in any way connected with:

- a) ionising radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter.

### Occupiers' Liability

Arising from, attributable to or in any way connected with or as a result of the occupation, control, management or ownership of any real property by any **Insured**.

### Pollution

Arising from, attributable to or in any way connected with the actual, alleged or threatened dispersal, release or escape of **Pollutants** into or upon real or personal property, the atmosphere, any water course or body of water, including but not limited to any enforcement action or proceeding in connection with the containment, clean up, removal, treatment or monitoring of such **Pollutants**, or seepage, pollution or contamination howsoever occurring.

### Related Parties

Made, brought or maintained by or on behalf of any person or entity who or which is related to or associated with any **Insured**, unless such person or entity is acting without any prior direct or indirect solicitation, co-operation or assistance from any **Insured**.

### Retroactive Date

Arising from, attributable to or in any way connected with any **Wrongful Act** occurring in whole or part prior to the **Retroactive Date**.

### Rights of Contribution or Indemnity

In connection with which the **Insured** has at any time foregone, waived, excluded or limited any right of indemnity or recovery.

### Subsidiary Company

Arising from, attributable to or in any way connected with any **Wrongful Act** committed by an **Insured Person** while acting on behalf of any entity which was previously a **Subsidiary Company** after the effective date such entity ceased to be a **Subsidiary Company** or was deregistered.

### Terrorism

Directly or indirectly caused by, contributed to by, resulting from or arising out of or in any way connected with any:

- a) **Act of Terrorism**, as defined herein;
- b) action in controlling, preventing, suppressing, retaliating against, or responding to any **Act of Terrorism**, regardless of any other cause or event contributing concurrently or in any other sequence.

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## 5. Exclusions (cont'd)

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### Trading Debt

Arising from, attributable to or in any way connected with any trading or business debt incurred by the **Association, Subsidiary Company** or **Organisation** or any guarantee given by an **Insured Person** for any debt.

### War

Arising from, attributable to or in any way connected with:

- a) war, invasion, acts of foreign enemies, hostilities, or war-like operations (whether war be declared or not) or civil war;

- b) mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, confiscation, nationalisation, requisition, or destruction of or damage to property by or under order of any government, public or local authority or looting, sacking or pillage following any of the above.

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## 6. Definitions

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The meaning of some of the important words used in this **Policy** are shown here.

**Act of Terrorism** means 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:

- i. involves violence against one or more persons;
- ii. involves damage to property;
- iii. endangers life other than that of the person committing the action;
- iv. creates a risk to health or safety of the public or a section of the public; or
- v. is designed to interfere with or to disrupt an electronic system.

**Association** means the Association or other **Organisation** named in the **Schedule**.

**Bodily Injury** means physical injury, sickness, death, disease, and any mental injury or anguish, nervous shock or emotional distress of any person.

**Business** means the business, trade or profession specified in the **Schedule** including the provision and management of canteen, social, sports, welfare and child care facilities by the **Insured** for its **Employees'** benefit.

**Claim** means:

- a) a written complaint, Writ, Statement of Claim, Summons, Application or other originating legal or arbitral process, cross-claim, counter claim or third party or similar notice for compensation;
- b) for the purposes of Insuring Clauses 1.1 and 1.2 only, a notice requiring an **Insured Person** to attend for examination at an **Official Inquiry**; and
- c) for the purposes of the Tax Audit Extension, a notice from the relevant Federal or State Commissioner of Taxation that it intends to audit or investigate the **Association's** tax liability.

**Committee** means for the purpose of Extension – Outside Directorships, Trusteeships and Committees:

- a) any sporting or social club committee;
- b) any fundraising, availability or foundation committee; or
- c) any disciplinary, research or examining committee.

**Crisis**

One of the following crisis events if:

- a) the event was not intended or expected by the **Insured**; and
- b) which in the reasonable opinion of the general manager or other principal of the **Insured** is capable of causing a decrease of more than 30% of the total annual turnover of the **Association** for the last financial year.

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## 6. Definitions (cont'd)

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**Crisis Events** means:

- i. destruction of damage to tangible property of the **Association** not caused by a natural disaster;
- ii. the recall of any product due to its potential of causing property damage or personal injury;
- iii. loss of intellectual property acquired by the **Association** including trademarks, patents and copyright; or
- iv. an act that happens on the premises of the **Association** that causes death or injury to an **Insured Person** or emotional distress to clients of the **Association** who witnessed the act.

### **Crisis Consultancy Costs**

Reasonable costs of a crisis management consultant who is retained by the **Association** to contain or minimise the effects of the **Crisis**. The Crisis Consultancy Costs must be incurred during the first 30 (thirty) days after the **Crisis** occurred.

**Defence Costs** means the reasonable legal costs and expenses (other than regular or overtime wages, salaries or fees of directors, officers or employees of an **Insured**) reasonably incurred by or on behalf of an **Insured** (with the written consent of the **Insurer**) or by the **Insurer** in the investigation, defence and/or settlement of a **Claim**, including attendance by an **Insured Person** at any **Official Inquiry**, covered by this **Policy**.

**Documents** means deeds, wills, agreements, maps, plans, books, letters, certificates, forms, and documents of any nature, whether written, printed or reproduced by any method which is the property of the **Insured** or for which the **Insured** is responsible. Documents does not mean money, negotiable instruments, bearer bonds, or coupons, stamps, bank or currency notes.

**Electronic Data** means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software and other coded instructions for such equipment.

**Employee** means any person employed under a contract of service by or who was or is or may hereafter be a paid or unpaid volunteer helper of the **Association** or any covered **Subsidiary Company**, it does not include a director, principal, officer, partner, consultant, contractor, subcontractor or agent. This definition includes the persons described above whose positions terminate during the **Period of Insurance**.

**Excess** means the amount which must be contributed towards the cost of any claim made. The respective amount(s) are shown in the **Schedule** as 'Excess', which are inclusive of **Defence Costs**.

**Insolvent** means the **Association** or any covered **Subsidiary Company**:

- a) going into bankruptcy, administration, receivership, liquidation or any external administration; or
- b) entering into a scheme of arrangement, a debt agreement or other arrangement with creditors.

**Insured** means:

- a) any entity named in the **Schedule** as the **Association**; and/or
- b) any **Subsidiary Company** in existence at the commencement of the **Period of Insurance**; and/or
- c) any **Insured Person**.

**Insured Persons** means:

- a) any person who is a director, officer, principal, partner, a person who is concerned with the management of the **Association**, or **Employee** of the **Association** or a covered **Subsidiary Company** during the **Period of Insurance** when acting in that capacity on behalf of the **Business**; and
- b) any person who ceases to be a director, officer, principal, partner, a person who is concerned with the management of the **Association**, or **Employee** of the **Association** or a covered **Subsidiary Company** during or prior to the **Period of Insurance** whilst they were acting in that capacity on behalf of the **Business**.

But will not include:

- i. an external auditor, administrator, receiver, receiver and manager, official manager, provisional liquidator, liquidator, trustee or person administering a compromise or scheme of arrangement of the **Association**, **Subsidiary Company** or **Organisation** or any **Employee** of such persons; or
- ii. any trustee, directors, officers or **Employees** of a superannuation or pension fund or organization.

**Insurer** means Calliden Insurance Limited (Calliden) (ABN 47 004 125 268, AFSL 234438).

**Limit of Indemnity** means the amount shown in the **Schedule** against 'Limit of Indemnity' as the total liability of the **Insurer** under the **Policy** for all **Loss** for all **Claims** in the **Period of Insurance**.

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## 6. Definitions (cont'd)

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**Loss** means **Defence Costs** and any other amount which:

- a) for the purpose of Insuring Clause 1.3, an **Insured**; and
- b) for the purpose of Insuring Clauses 1.1 and 1.2, an **Insured Person**;

is legally obliged to pay on account of a **Claim** including damages, judgements, interest, claimant's costs and expenses and settlements entered into with the prior written consent of the **Insurer**.

**Official Inquiry** means any official investigation, examination, inquiry or other regulatory or administrative proceedings ordered or commissioned by an official body or institution, and:

- a) which the **Insured Person** is legally compelled to attend; and
- b) which has as its subject matter the affairs of the **Association**; and
- c) notice of which is first served on the **Insured Person** and notified to the **Insurer** in the **Period of Insurance**; and
- d) which involves an allegation of a **Wrongful Act** against the **Insured Person** which is likely to be the subject of indemnity under this policy.

**Organisation** means any external **Association** not related to the **Association** and that is not a **Subsidiary Company**.

**Outside Directorship** means the position of director, officer, secretary, trustee or equivalent position held by an **Insured Person** in an **Organisation** at the written request or direction of the **Association**.

**Penalties** means monetary sums an **Insured Person** is ordered by a court or tribunal to pay to any **Regulatory Authority** but not:

- a) any amounts payable as compensation;
- b) any tax, rates, duty, fees, levies, charges or other revenue;
- c) any damages, including any exemplary or punitive damages;
- d) any consequential economic loss;
- e) any **Defence Costs** and associated expenses;
- f) any penalty arising from any offence under Sections 182, 183, 601FD, 601FE or 601JD of the Corporations Law or as they may be re-enacted or amended;

- g) any compliance, remedial, reparation or restitution costs;
- h) any penalty arising from gross negligence or recklessness;
- i) any penalty resulting from any wilful, intentional, dishonest or deliberate breach or failure to comply with any legal demand, direction, proceeding or notice issued under any act or regulation enacted by the federal or a state parliament within the Commonwealth of Australia;
- j) any penalty arising from circumstances where the **Insured Person** knew or ought reasonably have known prior to the **Period of Insurance** that the behaviour leading to the order of the penalty was wrong;
- k) any penalty attributable to the period after which the **Insured Person** knew or ought reasonably to have known that the behaviour was wrong; or
- l) any penalty for breach of consumer protection legislation.

**Period of Insurance** means the period shown in the **Schedule** against 'Period of Insurance' unless terminated earlier.

**Policy** means this policy document, its **Schedule** and the endorsements, if any, noted in the **Schedule** or granted by the **Insurer** after inception of the policy, and the information given to the **Insurer** on behalf of the **Insured**.

**Pollutant** means any:

- a) solid, liquid, gaseous or thermal irritant or contaminant, including without limitation smoke, vapour, soot, fumes, acids, alkalis and chemicals; and
- b) waster materials, including materials to be recycled, reconditioned or reclaimed; and
- c) other air emission, odour, waste water, oil, oil products, infectious or medical waster or any noise emissions.

**Property Damage** means destruction of or damage to tangible property including the loss of use of property.

**Regulatory Authority** means a person or entity appointed, constituted or acting under a delegated authority pursuant to any Act or regulation enacted by the Federal or a State Parliament within the Commonwealth of Australia and relating to events taking place within the Commonwealth of Australia.

**Retroactive Date** means the date shown in the **Schedule** against 'Retroactive Date'.

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## 6. Definitions (cont'd)

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**Schedule** means the schedule attaching to and forming part of this **Policy**.

**Senior Counsel** means a barrister in active practice who is entitled to use the post nominals QC or SC in any superior court in the Commonwealth of Australia.

**Subsidiary Company** means any entity (but not a partnership or joint venture) which at inception of the **Period of Insurance** the **Insured** has the authority or ability to control or make decisions about its operations or management.

**Trusteeship** means any position held by an **Insured Person** as trustee or administrator of any superannuation, pension, health and welfare, or other employee benefit plan established or maintained for the purpose of providing benefits to **Employees** of the **Association**.

**Wrongful Act** means:

- a) for the purposes of Insuring Clauses 1.1 and 1.2, any actual or alleged breach of duty, breach of trust, act, error, omission, neglect, misstatement, misleading statement, breach of warranty or authority committed by an **Insured Person** while acting in their individual or collective capacities:
  - i. as an **Insured Person** of the **Association** or **Subsidiary Company**; or
  - ii. in an **Outside Directorship** or **Trusteeship** as provided by Automatic Extension – Outside Directorships, Trusteeships and Committees.
- b) for the purposes of Insuring Clause 1.3, any error or omission by an **Insured** or by any other person or party for whose actions the **Association** is vicariously liable, in the course of carrying out duties on behalf of the **Association** for any third party.

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## 7. Claims Conditions

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### Allocation

If **Loss** covered and **Loss** not covered by this **Policy** are incurred, either because the **Claim** includes both covered and uncovered matters or because it is made against **Insured Persons** and other (including but not limited to the **Association, Subsidiary** or **Organisation** as the case may be), the **Insured** and the **Insurer** will use their best efforts to agree upon a fair and equitable allocation between covered **Loss** and uncovered **Loss** having regard to the relative legal and financial exposures of, and relative benefits obtained by, the **Insured Persons** and those other persons or entities, and/or attributable to the covered and uncovered matters.

If an allocation of **Loss** cannot be agreed, then it will be determined by a **Senior Counsel** to be mutually agreed upon or, in default of agreement, to be nominated by the then President of the Law Society or equivalent body in the State where the **Claim** is being investigated heard or defended. The determination will be based upon written submissions only and will be final and binding. The **Senior Counsel** will make the determination based on the relative legal and financial exposures attributable to covered and uncovered matters and/or parties.

If allocation cannot be agreed in respect of **Defence Costs**, the **Insurer** may advance **Defence Costs** in its discretion, according to its view of an appropriate allocation, until the allocation is determined by agreement, expert determination or judgement. The allocation as determined will apply to **Defence Costs** retrospectively. If any amount advanced by the **Insurer** is not covered by the **Policy**, the **Insured** agrees (for its respective rights and interests) to reimburse the **Insurer** for it immediately on request.

Any agreed or determined allocation of **Defence Costs** will not constitute a presumption as to allocation of **Loss**.

### Claim Settlement

If the **Insured** disagrees with a **Claim** settlement recommended by the **Insurer**, the **Insured** may elect to contest that **Claim**. However, the liability of the **Insurer** in respect of the **Claim** will not exceed the amount for which the **Claim** could have been settled plus the **Defence Costs** incurred up to the date of the election, less the **Excess**, subject always to the **Limit of Indemnity**.

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## 7. Claims Conditions (cont'd)

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### Claims Co-operation and Mitigation

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The **Insured** will not make any offer or payment or admit liability for or settle any **Claim** or incur any costs or expenses or otherwise assume any liability or obligation in connection with a **Claim** without the written consent of the **Insurer**. The **Insured** will not forego, waive, exclude or limit any rights of recovery.

The **Insured** will, at their own cost, diligently do all things reasonably practicable to avoid or minimise any **Loss** or liability under this **Policy**.

The **Insurer** will not be liable for any loss, settlement or other liability assumed, or costs and expenses incurred by the **Insured** without the written consent of the **Insurer** and any offer, payment, admission, loss, settlement made or costs and expenses incurred without that consent will not be **Loss** covered by this **Policy**.

The **Insured** will, at its/their own cost, immediately provide to the **Insurer** any assistance and information the **Insurer** may reasonably require to enable the **Insurer** to determine whether or not the **Insured** is entitled to an indemnity under this **Policy**, and to enable the **Insurer** to investigate and defend any **Claim**, including representation of any **Insured Person** at an **Official Inquiry**.

### Claims Reporting

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The **Insured** must give the **Insurer** notice in writing of any **Claim** against them as soon as practicable, within the **Period of Insurance**, and sent to The Claims Manager, PO Box 348, Milsons Point, NSW 1565.

### Conduct of Defence/Representation

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The **Insurer** will be entitled at any time to take over and conduct in the name of the **Insured**, the investigation, defence and/or settlement of any **Claim**. If the conduct of the defence of a **Claim** is assumed by the **Insurer**; or the **Insured** is permitted by the **Insurer** to incur costs and expenses in the defence of the **Claim**; or the **Insurer** carries out any investigation regarding the **Claim** without prejudice to the question of indemnity until sufficient facts and information are available to make a decision on the question of indemnity; this does not:

- a) indicate an **Insured** is entitled to indemnity under the **Policy**; or
- b) waive or prejudice the **Insurer's** rights under the **Policy**.

### Discharge of Liability

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If in the opinion of the **Insurer** the amount required to dispose of any **Claim** may exceed the available **Limit of Indemnity**, the **Insurer** will be entitled, at its discretion, to discharge its liability by paying (or agreeing to pay upon settlement of the **Claim**) the available **Limit of Indemnity** remaining after paying the **Defence Costs** incurred up to the time of election to discharge its liability to the **Insured** or on the **Insured's** behalf. If at the time of making an election the **Insurer** is conducting the defence of the **Claim**, the **Insurer** will relinquish conduct. The **Insurer** will have no further liability whatsoever under the **Policy**.

### Other Insurance

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If for any **Claim** or **Defence Costs** there is any other insurance or indemnity which may afford indemnity to the **Insured** or a right of contribution from the **Insurer**, the **Insured** will notify the **Insurer** and provide full details of that other insurance or indemnity and any further information as the **Insurer** reasonably requires.

### Representation Issues

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The lawyers instructed by the **Insurer** to act on the **Insured's** behalf can disclose to the **Insurer** any additional information they receive in that capacity, whenever and from wherever it is obtained. The **Insured** agrees to waive any legal professional or client privilege to the extent that privilege may have prevented disclosure to or use of that information by the **Insurer**. By claiming under this **Policy** the **Insured** authorises the lawyers to disclose this information to the **Insurer** and waives any claims for legal professional or client privilege against the **Insurer**.

The lawyers appointed by the **Insured** to conduct the defence of the **Claim** will also continue to advise the **Insurer** on all issues, including but not limited to the right of the **Insured** to indemnity under the **Policy** or any related issue. It is agreed that this will not prevent those lawyers from acting on the defence of the **Claim** on the instructions of the **Insurer**.

If any actual or potential conflict arises between the respective interests of the **Insured** and the **Insurer**, the lawyers appointed by the **Insurer** to investigate, defend or settle a **Claim** are privileged as between the **Insurer** and the lawyers and that the **Insured** is not entitled to demand, access or obtain any such communications or information contained therein.

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## 7. Claims Conditions (cont'd)

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### Senior Counsel

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If a dispute arises between the **Insurer** and **Insured** as to whether or not to contest any **Claim**, neither the **Insurer** nor the **Insured** will be required to contest such **Claim** unless a **Senior Counsel** (to be mutually agreed upon by the **Insurer** and the **Insured** or, failing agreement, the President of the Law Society or equivalent body in the State where the **Claim** is being heard or defended) will advise that the **Claim** should be contested. **Senior Counsel** will advise having regard to the economics of the matter, the damages and costs which are likely to be recovered against the **Insured** and the likely **Defence Costs** that will be incurred in defending the **Claim** and the prospects of successfully defending the **Claim**. The costs of giving this advice will be **Defence Costs**.

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## 8. General Conditions

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### Authorisation

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By acceptance of this **Policy**, the **Association** agrees to act on behalf of **Insured Persons** and each of them agree that the **Association** will act on their behalf, with respect to the giving and receiving of notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under this **Policy** and the acceptance of other notice.

If the **Association** comprises more than one entity, the first named entity listed in the **Policy Schedule** will be deemed the **Association** for the purposes of this condition.

### Cancellation

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This **Policy** may be cancelled by the **Insured** giving written notice to the **Insurer** at any time. This **Policy** may be cancelled by the **Insurer** in accordance with the Insurance Contracts Act (1984).

Upon cancellation by the **Insured** a refund of premium will be allowed, pro-rata for the unexpired portion of the **Period of Insurance**.

The **Insurer** will retain, or be entitled to retain, the premium for the period during which the **Policy** was in force together with any nonrefundable government taxes, levies and duties.

### Confidentiality

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The **Insured** may disclose to any third party the fact that the **Association** has paid, or agreed to pay, a premium for this **Policy**. The **Insured** must not otherwise disclose to any third party any terms of this **Policy**, including but not limited to the **Limit of Indemnity**, the **Insuring Clauses** and the **Exclusions** except to the extent that:

- a) disclosure of the terms of this **Policy** is required by law;
- b) disclosure is to legal advisors for the purposes of the **Insured** obtaining policy or claims advice; or
- c) the **Insurer** may consent in writing to disclosure of the terms of this **Policy**.

### Failure to Pay the Insurance Premium

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It is a condition of this contract of insurance that the **Insured** pays the insurance premium. The **Insurer** may take steps to cancel the contract of insurance for non-payment of the insurance premium.

### Excess

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The **Insurer's** liability under this **Policy** will apply only to that part of the amount, up to the available **Limit of Indemnity** (including **Defence Costs**), required to dispose of a **Claim**, which exceeds the **Excess**. The **Excess** will be borne by the **Insured** and will remain uninsured. The **Excess** is inclusive of **Defence Costs**.

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## 8. General Conditions (cont'd)

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The **Excess** applies to each **Claim** covered by this **Policy**. If more than one **Claim** arises from or is attributable to the same **Wrongful Act** or a series of causally connected or interrelated **Wrongful Acts**, only one **Excess** is payable under the **Policy**.

### Governing Law

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This **Policy** is to be governed by the laws of Australia and the State or Territory where the **Policy** was issued. The relevant courts of the place where the **Policy** was issued will have jurisdiction in any dispute concerning or under this **Policy**.

### GST Basis of Settlement

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The amount that the **Insurer** is liable to pay under this **Policy** will be reduced by the amount of any input tax credit that the **Insured** is or may be entitled to claim for the supply of goods or services covered by that payment.

If the **Insured** is entitled to an input tax credit for the premium, the **Insured** must inform the **Insurer** of the extent of that entitlement at or before the time the **Insured** makes a claim under this **Policy**. The **Insurer** will not indemnify the **Insured** for any GST liability, fines or penalties that arise from or are attributable to the **Insured's** failure to notify the **Insurer** of the **Insured's** entitlement (or correct entitlement) to an input tax credit on the premium. If the **Insured** is liable to pay an **Excess** under this **Policy**, the amount payable will be calculated after deduction of any input tax credit that the **Insured** is or may be entitled to claim on payment of the **Excess**.

### Insolvency

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If, during the **Period of Insurance**, any of the following events occur:

- a) the **Association** going into bankruptcy, administration, receivership, liquidation or any external administration; or
- b) the **Association** entering into a scheme of arrangement, a debt agreement or other arrangement with creditors, then this **Policy** will remain in force until the expiry of the **Period of Insurance**, but only in respect of **Claims** arising from **Wrongful Acts** preceding the date and time when these events occurred.

### Interpretation

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Paragraph Headings are included for convenience only and do not form part of this **Policy** for the purposes of interpretation of this **Policy** except where they are used for identifying the **Insuring Clauses, Exclusions** or **Conditions** being referred to. Words and expressions in the singular include the plural and vice versa. Words (except headings) in bold lettering have a special meaning and are defined in the **Policy**. Words that are not specifically defined in this **Policy** have the meaning normally attributed to them.

### Limit of Indemnity

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The total liability of the **Insurer** under this **Policy** in respect of any one **Claim**, including **Defence Costs**, and in the aggregate for all **Claims**, including **Defence Costs** (including any amounts paid or which have been agreed will be paid in accordance with the Condition – Discharge of Liability), will not exceed the **Limit of Indemnity** specified in the **Policy Schedule**.

The reference to 'all **Claims**' in the '**Excess**' clause included each and every **Claim** made during the **Period of Insurance** in respect of any and all **Insureds** including while any **Insured Persons** are acting on behalf of a **Subsidiary Company** or **Organisation**.

### Material Changes to the Risk

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The **Insured** will immediately advise the **Insurer** of any material alteration to the **Association's Business** including but not limited to:

- a) any change in the nature of the services comprising the **Business**;
- b) any merger with or acquisition by the **Association** of, or acquisition of the **Association** by, any other business;
- c) the **Association** or **Subsidiary Company** going into bankruptcy, administration, receivership, liquidation or any external administration;
- d) the **Association** or **Subsidiary Company** entering into a scheme of arrangement, debt agreement or arrangement with creditors; or
- e) the cancellation or suspension of, or the imposing of special conditions upon, the **Insured's** statutory professional registration or licensing or registration with a professional association.



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