



# Combined Liability - Aster Pest Controllers Insurance

Your cover and our mutual responsibilities

**QBE Insurance (Australia) Limited**

ABN 78 003 191 035 AFSL 239545



**Need help with a question or claim?**

Contact your financial service provider.

# Combined Liability - Aster Pest Controllers Insurance

## Why you should read this

If you buy this insurance, your contract with us is set out in this document and on your Certificate of Insurance. Together, they explain how far we will go to protect your Business. They also describe your responsibilities. One day, if things go wrong, this Policy could save your Business, so please make it your Business to understand these documents.

## About QBE

QBE Insurance (Australia) Limited ABN 78 003 191 035 AFSL 239545 (QBE) is a member of the QBE Insurance Group of companies. QBE Insurance Group Limited ABN 28 008 485 014 is the ultimate parent entity and is listed on the Australian Securities Exchange (ASX: QBE). We have been helping Australians protect the things that are important to them since 1886.

## How to read this document

### You and us, we and our

Throughout this document we'll refer to 'you', 'your' and 'yours'. You'll find the full definitions and scope of these terms on page 59, but generally we're talking to you as the primary policyholder, as well as other people and entities Insured under this Policy.

The words 'we', 'our' or 'us' means QBE Insurance (Australia) Limited, ABN 78 003 191 035, AFS Licence No. 239545. We are the underwriter of this Policy.

### Definitions

Some words in this Policy have special meanings and begin with a capital letter. We explain these words in the definitions section. When we use a definition in only one section, we explain it where it appears.

# Our agreement

Our agreement is a contract of insurance. You'll pay your premium and other amounts we charge by the due date. If for any reason we don't receive your payment on time, your Policy may not operate, and you won't be covered.

We'll insure you under the terms of this Policy during the Policy Period shown on your Certificate of Insurance.

You'll provide the information and assistance we ask for, so we can assess your Claim.

You need to follow the general conditions and claims conditions set out in this document, particularly if something happens that could lead to a Claim.

We'll handle your Claims promptly and fairly. We'll assess your Claim once we have all the information we need.

Your Policy is made up of this document and your Certificate of Insurance you'll receive when you buy, vary, or renew this insurance.

Read your Policy carefully and if you have any questions contact your financial service provider.



**Your  
Policy**

=



**This  
document**

+



**Your Certificate  
of Insurance**

Your Policy is made up of this document and your Certificate of Insurance you'll receive when you buy, vary or renew this insurance.

Read your Policy carefully and if you have any questions contact your financial service provider.

## The two Sections of your Policy

Your Policy provides two types of cover for Claims against you:

- Section 1 (General Public and Products Liability) covers you for liability for Personal Injury, Property Damage and Advertising Liability that that you first hear about (and tell us about) during your Policy Period.  
Section 1 may cover you for liability for Personal Injury and Property Damage due to a breach of professional duty (see Exclusion 3.12 Professional liability).
- Section 2 (Professional Services) covers you for liability for breaches of your professional duty, that you first hear about (and tell us about) during your Policy Period. Cover is limited to financial loss caused to others.

Section 1 does not cover breaches of professional duty resulting in financial loss. Section 2 excludes Personal Injury, Property Damage and most forms of Advertising Liability.

Full details of your cover are set out in this document and in your Certificate of Insurance. Your financial service provider can answer any questions you have about your cover.

### Claims made

This Policy operates on a 'Claims made and notified' basis. This means that the Policy covers you for Claims made against you and notified to us during the Policy Period.

### Claims not covered under this Policy

This Policy does not cover:

- acts, errors or omissions actually or allegedly committed before the start of the original Policy Period (subject to Automatic Extension 2.4.2 Continuous Cover for Section 2 only), unless your Certificate of Insurance specifies a 'Retroactive Date'
- Claims made after the Policy Period has expired and you do not renew your Policy with us, even though the event that gives rise to the Claim may have occurred during the Policy Period
- Claims, facts or circumstances that were notified (or should reasonably to have been notified) under any previous policy
- Claims made, threatened or intimated against you before the Retroactive Date or your original Policy Period
- facts or circumstances:
  - > you first became aware of before the Retroactive Date or your original Policy Period and
  - > you knew or should reasonably have known could lead to a Claim under this Policy
- Claims arising out of circumstances noted on the Proposal/Application for the current Policy Period or on any previous Proposal/Application.

## Section Head

### **Section 40(3) of the Insurance Contracts Act 1984 (Cth)**

Section 40(3) of the Insurance Contracts Act 1984 may give you rights to be covered for a Claim made against you after the Policy Period ends if you give us written notice of facts that might give rise to the Claim:

- as soon as reasonably practicable after you become aware of those facts and
- before the Policy Period ends.

These rights arise under the legislation only. The terms and effect of this Policy are that you are not covered for Claims made against you after the Policy Period expires if you do not renew your Policy with us.

## Finding your way around



**What you're covered for**

**8**



**What you're not covered for**

**17**



**Claims**

**36**



**Things you need to know**

**43**



**Definitions**

**51**

# 1. Section 1: General Public and Products Liability

## 1.1 What you're covered for under Section 1

We'll cover your legal liability to pay for Compensation and costs awarded against you for:

- (a) Personal Injury
- (b) Property Damage and/or
- (c) Advertising Liability

provided:

- (d) it arises out of an Occurrence in connection with your Business and
- (e) a Claim:
  - (i) is first made against you and
  - (ii) notified to us

during your Policy Period.

### 1.1.1 Personal Injury

means:

- (a) death
- (b) injury, illness or disability, either bodily or mental
- (c) shock, fright and mental anguish
- (d) the effects of:
  - (i) false arrest, false imprisonment or malicious prosecution
  - (ii) trespass onto land, or eviction from land
  - (iii) defamation or disparagement
  - (iv) assault and battery.

We consider latent Personal Injury first happens on the day it was first medically diagnosed provided that it is first diagnosed during your Policy Period.

### 1.1.2 Property Damage

means:

- (a) physical damage to tangible property, including any resulting loss of use of that property or
- (b) loss of use of tangible property caused by an Occurrence, which has not been physically damaged, lost or destroyed.



### 1.1.3 Advertising Liability

means liability arising out of one or more of the following:

- (a) defamation
- (b) infringement of copyright, title or slogan
- (c) unfair competition or misappropriation of advertising ideas or business practices
- (d) actual or alleged invasions of privacy:
  - (i) in any Advertisement and
  - (ii) arising out of your Business's advertising activities or
- (e) unintentional breach of the misleading or deceptive conduct provisions of consumer protection laws.

In this definition, Advertisement means any type of communication to the public. This includes print and electronic media, electronic communication, the world wide web or an exhibit.

### 1.2 Defence of claims

- (a) If we cover you, we will:
  - (i) defend, in your name and on your behalf, any Claim against you seeking Compensation for liability even if the Claim is groundless or fraudulent
  - (ii) investigate, negotiate and settle any Claim or legal action as we see fit
  - (iii) pay all legal costs and expenses we incur and all interest accruing after judgment until we have paid out (to the Claimant or to a court) our liability under the judgment up to the Limit of Liability
  - (iv) pay your reasonable expenses of defending the Claim incurred with our consent
  - (v) pay the premium for appeal bonds, release attachment bonds and bonds for the security of costs in relation to a Claim, but we won't apply for these bonds or pay the bonds themselves
  - (vi) pay up to \$250,000 for your reasonable costs for legal representation at a coronial inquest, Royal Commission or other government enquiry into an Occurrence or Claim that would be covered under this Policy
  - (vii) pay up to:
    - \$250 per day for Court Attendance Costs incurred by Your Employees, or
    - \$500 per day for Court Attendance Costs incurred by Your partners, principals or directors

if they are legally required to attend a civil proceeding as a witness in a Claim covered by this Policy.

The most we will pay for all Court Attendance Costs during any one Policy Period is \$100,000.

If an Occurrence or Claim triggers cover under both Section 1 and Section 2 of this Policy, the most we will pay for Court Attendance Costs will remain \$100,000.

- (viii) pay your reasonable first aid expenses for Personal Injury unless the law prevents us.

## What you're covered for

- (b) We won't pay defence costs or continue to defend the Claim after we have paid out the Limit of Liability.
- (c) If the claim resolves for more than the Limit of Liability, we will only pay that proportion of defence costs that the Limit of Liability bears to the amount for which the claim resolves.  
  
Where this occurs, the amount of defence costs that we will pay may be lower than if the claim was resolved for less than the Limit of Liability.
- (d) In respect of any claims or suits originating in any court in United States of America or Canada, the Limit of Liability shown in the Certificate of Insurance is inclusive of all defence costs and supplementary payments.
- (e) Where we are prevented by law or otherwise from making payments on your behalf, we will indemnify you for any legal liability incurred to the extent that such liability is covered by this Policy.
- (f) In jurisdictions where we may not legally be permitted to, or cannot for any other reason, defend any claim or suit against you, we will reimburse you for the expense of such defence incurred.

### **1.3 Additional benefit - Claims preparation costs**

We will pay up to \$100,000 for reasonable professional fees and such other expenses you incur to prepare a Claim payable under Section 1 of this Policy.

We pay this additional benefit in addition to the cover under Clause 1.2 Defence of Claims above.

### **1.4 Limit of Liability for Section 1**

- (a) The Limit of Liability (on the Certificate of Insurance) is the most we will pay for:
  - (i) any one Claim or series of Claims against you caused by one Occurrence or
  - (ii) the total aggregate liability of all Claims against you caused by your Products during one Policy Period.
- (b) Only amounts paid to settle Claims and to pay costs awarded against you count towards your Limit of Liability. Amounts we pay for defence costs don't count towards the Limit of Liability.

## 2. Section 2: Professional Services Liability

### 2.1 What you're covered for under Section 2

We'll cover you against civil liability for compensation arising:

- (a) from any Claim first made against you during the Policy Period
- (b) as a result of a Wrongful Act and
- (c) notified to us during the Policy Period or where applicable, the Extended Reporting Period.

#### 2.1.1 Claim

means your receipt of:

- (a) a written notice of demand for compensation made by a third party against you
- (b) any writ, statement of claim, summons, application or other originating legal or arbitral process, crossclaim, counterclaim or third- or similar-party notice served upon you which contains a demand for compensation made by a third party against you
- (c) a notice of any actual or intended official investigation, examination, or inquiry, which is covered under Automatic Extension 2.4.10 Official investigations and inquiries - Costs and expenses.

#### 2.1.2 Wrongful Act

means an actual or alleged act or omission in the conduct of your Professional Services, such as:

- (a) breach of professional duty or trust
- (b) neglect or error or
- (c) misstatement,

but not conduct as a trustee.

### 2.2 Defence Costs and Expenses

We agree to pay Costs and Expenses incurred with our written consent in the defence or settlement of any Claim indemnified by this Policy.

If it is established that you are not entitled to indemnity for these Costs and Expenses, you agree to repay to us all of the Costs and Expenses paid by us to the extent it is established that you are not entitled to this indemnity.

### 2.3 Limit of liability for Section 2

- (a) The Limit of Liability (on your Certificate of Insurance) is the most we will pay for any one Claim or loss, including Costs and Expenses under clause 2.2.
- (b) The Aggregate Limit of Liability (on your Certificate of Insurance) is the most we will pay during any one Policy Period for all Claims or losses, including Costs and Expenses under clause 2.2.
- (c) This clause does not increase any sublimit in the Policy.

### 2.4 Automatic extensions

#### When and how they apply

For any Claim payable under Clause 2.1 What you're covered for under Section 2 (Insuring clause), we will also cover you under the following automatic extensions.

These automatic extensions:

- are subject to the terms of this Policy, unless expressly stated otherwise, and
- do not increase the Limit of Liability.

If an automatic extension has a sublimit stated on your Certificate of Insurance, the sublimit is the most we will pay, for either:

- any one Claim or
- all Claims in total ('in aggregate') during any one Policy Period.

#### 2.4.1 Australian Consumer Law and similar legislation

We'll cover you against civil liability for compensation arising from any Claim made against you as a result of a breach of professional duty in the conduct of your Professional Services under:

- (a) the Australian Consumer Law
- (b) the *Competition and Consumer Act 2010 (Cth)* or
- (c) any similar legislation enacted by any State or Territory in Australia or New Zealand,

provided that the act, error or omission giving rise to the Claim made against you is unintentional.

#### 2.4.2 Continuous cover

Despite Exclusion 5.18 Prior or Pending and the Claims Made notice, we'll cover your legal liability to pay compensation arising from any Claim made against you as a result of a breach of professional duty in the conduct of your Professional Services where such Claim arises from a fact or circumstance which:

- (a) you first became aware of before the Policy Period
- (b) you knew, or ought to have reasonably known, might give rise to a Claim
- (c) should have been, but was not, notified to us under an earlier policy under which we indemnified you,

## What you're covered for

provided that:

- (d) We will not cover any Claim where your failure to notify such Claim is fraudulent or intentional.
- (e) We will only cover you if:
  - we have continuously Insured you between the date the circumstance should have been notified and the date the Claim was actually notified and
  - if the fact or circumstance had been notified under the previous policy, you would have been entitled to indemnity under the previous policy when a Claim was made.
- (f) The Limit of Liability shall be the lesser of the Limit of Liability of the previous policy and the Policy.
- (g) We may reduce the amount we pay by the amount your delayed notification prejudices us.
- (h) The terms of this Policy otherwise apply.

### **2.4.3 Court Attendance Costs**

We'll cover you up to:

- (a) \$250 per day for Court Attendance Costs incurred by Your Employees or
- (b) \$500 per day for Court Attendance Costs incurred by Your partners, principals or directors,

if they are legally required to attend a civil proceeding as a witness in a Claim covered by this Policy.

The most we will pay for all Court Attendance Costs during any one Policy Period is \$100,000.

If an Occurrence or Claim triggers cover under both Section 1 and Section 2, the most we will pay for Court Attendance Costs will remain \$100,000.

### **2.4.4 Defamation**

We'll cover you against civil liability for compensation arising from any Claim made against you as a result of a breach of professional duty in the conduct of your Professional Services for unintentional defamation.

### **2.4.5 Estates and legal representatives**

We will include in the definition of 'You' the estate, heirs, legal representatives or assigns of yours in the event of the death or incapacity of you in respect of a civil liability that would have been covered by Clause 2.1 What you're covered for under Section 2 (Insuring clause) if you were alive or had capacity.

Your estate, heirs, legal representatives or assigns must observe and are subject to all the terms of this Policy insofar as they can apply.

#### **2.4.6 Fraud and dishonesty**

We'll cover you against civil liability for compensation arising from any Claim made against you as a result of a breach of professional duty in the conduct of your Professional Services, which would otherwise be excluded under Exclusion 4.7 Fraud and Dishonesty, provided that:

- (a) we will not cover any person who committed or condoned the actual or alleged act or omission, or breach and
- (b) Dual Controls were in place at the time of the actual or alleged act or omission, or breach.

#### **2.4.7 Intellectual property**

We'll cover you against civil liability for compensation arising from any Claim made against you as a result of a breach of professional duty in the conduct of your Professional Services for any:

- (a) unintentional infringement of copyright, trademark, registered design or patent
- (b) any unintentional plagiarism or
- (c) any unintentional breach of confidentiality.

#### **2.4.8 Loss of Documents**

Despite Exclusion 4.5 Cyber, we'll cover you for civil liability for compensation arising from any Claim as a result of a breach of professional duty in the conduct of your Professional Services arising from the loss of any Documents (including but not limited to your Documents) that:

- (a) have been unintentionally destroyed, damaged, lost or mislaid and
- (b) after diligent search or attempts to recover them, cannot be found or recovered.

#### **2.4.9 Loss of Documents (not involving a third-party Claim)**

We'll cover you for the loss of any Documents (including your Documents), for which you are legally responsible, that:

- (a) have been unintentionally destroyed, damaged, lost or mislaid in the conduct of your Professional Services and
- (b) after diligent search or attempts to recover them, cannot be found or recovered.

Provided that:

- (c) you discover the loss during the Policy Period and report it to us during the Policy Period
- (d) we will only cover reimbursement of reasonable Costs and Expenses you incur to replace or restore such Documents and not any consequential or indirect loss and
- (e) we will not cover:
  - the theft, corruption or erasure of any data by a computer virus
  - the theft, corruption or erasure of any data by a former Employee, partner or principal
  - damage to Documents caused by gradual deterioration, wear and tear, or the action of moths or vermin or

## What you're covered for

- Documents destroyed, damaged, lost or mislaid outside the Territorial Limits of Australia or New Zealand.
- (f) Our total liability in respect of all Claims made under this Policy Extension, Loss of Documents (not involving a third-party Claim) shall not exceed \$250,000 any one Claim and in the aggregate.

### **2.4.10 Official investigations and inquiries - Costs and expenses**

We'll cover the Costs and Expenses associated with an Official Investigation or Inquiry, provided that:

- (a) the Official Investigation or Inquiry, or notice of Official Investigation or Inquiry is both commenced and notified to us during the same Policy Period
- (b) we may appoint lawyers to represent you in the Official Investigation or Inquiry
- (c) if a Claim for payment of Costs and Expenses is withdrawn or we withdraw our agreement to cover them:
  - we will cease to advance the Costs and Expenses and
  - you shall refund any Costs and Expenses already advanced by us to the extent that that you were not entitled to such Costs and Expenses, unless we agree in writing to waive recovery of such Costs and Expenses
- (d) we shall not be required to pay Investigation Costs and Expenses of any appeal from the outcome of the official investigation, examination, enquiry or inquiry and
- (e) the most we will pay for all Claims during any one Policy Period is \$100,000.

In this Extension, Official Investigation or Inquiry means:

- (i) an investigation, examination, or inquiry by way of a Royal Commission, Commission of Inquiry or Northern Territory Board of Inquiry or coronial Inquiry or conducted by a regulatory authority such as the Australian Securities and Investments Commission or
- (ii) any disciplinary committee of any association or professional body of which you are a member,

but does not include any investigation, examination or inquiry conducted by an Australian Parliament or Court.

### **2.4.11 Outgoing principals and Employees**

We will include in the definition of 'You' your former principals, partners, directors and Employees in respect of work they perform while your principal, partner, director or Employee.

### **2.4.12 Public relations expenses**

Despite Exclusion 4.5 Cyber, we will pay any reasonable fees, Costs and Expenses of a public relations consultant you retain solely to protect your reputation that has been brought into question as a direct result of an Adverse Publicity Event.

## What you're covered for

Provided that:

- (a) you notify us within 28 days of first becoming aware of your reputation being brought into question and provide written details outlining the circumstances surrounding the Adverse Publicity Event
- (b) we have given our prior written consent to retain the services of such public relations consultant, (such consent shall not be unreasonably withheld) and
- (c) our total liability for all fees, Costs and Expenses of the public relations consultant shall not exceed \$50,000 any one Claim and \$100,000 in the aggregate.

In this Extension, Adverse Publicity Event means an event which, in the reasonable opinion of the Named Insured, or, where a company, a Director of the Named Insured, might cause your reputation to be seriously affected by adverse or negative publicity.

### **2.4.13 Run off cover**

If you or any other insured entity:

- (a) ceases to exist or operate or
- (b) is consolidated with, merged into or acquired by any other entity,

then this Policy will continue to cover that entity until the end of the Policy Period.

We will only cover Claims arising from an act, error or omission that occurs before the date you or the insured entity ceases to exist or operate, or is consolidated, merged or acquired.

### **2.4.14 Social engineering fraud**

Despite Exclusion 4.18 Surrender, we'll cover you against civil liability for compensation arising from any Claim made against you for voluntary giving or surrendering of Money, Tangible Securities, Funds or Property in any exchange or purchase which would otherwise be excluded by reason of that exclusion.

Provided that:

- (a) Dual Controls were in place at the start of the Policy Period
- (b) Verification Procedures were followed prior to the exchange or purchase
- (c) Such indemnity shall not be provided to any insured person who committed or condoned the giving or surrender of Money, Tangible Securities, Funds or Property with knowledge, or reckless disregard, of the fraud or dishonesty and
- (d) Our total liability for any one Claim and in the aggregate under this Policy Extension shall not exceed \$25,000.

### **2.4.15 Vicarious liability**

- (a) We will cover you in respect of any Claims made against you arising from an act, error or omission committed or alleged to have been committed by a third party for whose acts, errors or omissions you are legally liable.
- (b) We will not cover the third party.



## 3. What you're not covered for under Section 1

### 3.1 Advertising Liability

We don't cover liability in respect of Advertising Liability arising from:

- (a) statements made before the start of the Policy Period
- (b) statements made at your direction with knowledge that the statements are false
- (c) failure to perform a contract, but this does not apply to Claims for unauthorised use of advertising ideas contrary to an implied contract
- (d) any incorrect description of your Products or services
- (e) a mistake in the advertised price of your Products or services
- (f) failure of your Products or services to meet advertised standards
- (g) your Business if your Business is advertising, broadcasting, publishing or telecasting.

### 3.2 Aircraft, Aircraft Products, Watercraft and Hovercraft

We don't cover liability in respect of Claims arising out of:

- (a) the ownership, maintenance, operation, or use by you or on your behalf of any Aircraft, unless it is a Remotely Piloted Aircraft System used incidentally in your Business and:
  - (i) it is not used:
    - to provide services for remuneration, financial benefit, hire or reward
    - for military or law enforcement purposes
  - (ii) the operator (if required):
    - holds a valid Remotely Piloted Aircraft Operator's Certificate (ReOC) issued by Civil Aviation Safety Authority (CASA) and
    - complies with its terms and conditions
  - (iii) the remote pilot or controller (if required):
    - holds a valid Remote Pilot Licence issued by CASA and
    - complies with its terms and conditions
  - (iv) its operation doesn't result in the breach of any privacy, surveillance or aviation law and
  - (v) you and any operator, remote pilot or controller fully comply with the relevant Civil Aviation Safety Regulations.
- (b) the ownership, operation or use by you or on your behalf of any Watercraft longer than 10 metres, unless it is:
  - (i) owned and operated by someone else and used by you for Business entertainment or

## What you're not covered for

- (ii) used by an independent contractor for whom you are vicariously liable but not if you have entered into a charter party contract or agreement with the independent contractor or
- (iii) powered by human or wind power and used in Australian waters
- (c) the ownership, operation or use by you or on your behalf of Hovercraft
- (d) your Products that are Aircraft or Aircraft parts used for maintaining an Aircraft in flight or moving on the ground or used in the construction of an Aircraft hull or machinery which you know are incorporated in an Aircraft or aerial device.

In this Exclusion:

- (a) Aircraft means any machine intended to travel in the atmosphere or space.
- (b) Hovercraft means any vessel that transports people or items using a cushion of air.
- (c) Remotely Piloted Aircraft Systems (RPASs) means unmanned aircraft systems used in connection with your Business stated in your Certificate of Insurance and
  - (i) includes:
    - the aircraft
    - remote pilots (also known as controllers) and other personnel associated with the operation of the RPAS
    - pilot stations, command and control links, components specified in the design type and ground support equipment, other than fireworks, rockets, balloons or kites.
  - (ii) does not include RPASs:
    - with a maximum take-off weight greater than two kilograms
    - that are jet propelled
    - with a payload other than fixed photographic, video, surveillance, measuring or monitoring equipment
    - operated or used Beyond Visual Line of Sight (BVLOS) or with an Extended Visual Line of Sight (ELOS) or
    - that are your Products.
- (d) Watercraft means any vessel that floats, travels on water or travels underwater.

### **3.3 Cyber**

We don't cover liability in respect of Claims for any:

- (a) Cyber Act or Cyber Incident
- (b) action taken in controlling, preventing, suppressing or remediating any Cyber Act or Cyber Incident
- (c) communication, display, distribution, or publication of Data, unless these things cause Personal Injury or Advertising Liability
- (d) loss of use, reduction in functionality, destruction, distortion, erasure, corruption, alteration, misinterpretation, misappropriation or theft of Data
- (e) repair, replacement, restoration, reproduction of any Data
- (f) error in creating, amending, entering, deleting, or using Data or

## What you're not covered for

(g) inability or failure to receive, send, access, or use Data for any length of time, regardless of any other cause or event contributing concurrently or in any other sequence thereto.

### **3.4 Defamation**

We don't cover liability in respect of Claims for defamation:

- (a) made before the start of the Policy Period
- (b) made by you or at your direction with knowledge that the statements were false or
- (c) if your Business is advertising, broadcasting, publishing or telecasting.

### **3.5 Exports to United States of America or Canada**

We don't cover Claims in respect of Personal Injury or Property Damage caused by or arising out of your products knowingly exported by you, or on your behalf to the United States of America or Canada.

### **3.6 Faulty workmanship**

We don't cover liability in respect of the cost of performing, completing, correcting, replacing or improving any work done by you or on your behalf.

### **3.7 Hot works, allied processes, & spark producing equipment condition**

We don't cover Claims arising from fire caused by:

- (a) hot works and allied processes including but not limited to:
  - (i) arc, flame, electric, oxy-acetylene, or laser cutting
  - (ii) arc, gas, or electric welding
  - (iii) flame straightening or hardening
  - (iv) hot forming
- (b) use of Spark Producing Equipment

Except where you or someone working on your behalf has taken all reasonably necessary precautions to comply with:

- (c) Australian Standard AS 1674.1 - 1997 Safety in welding and allied processes - Fire precautions or any standard issued by Standards Australia intending to amend or replace; and
- (d) The provisions of any statute or by-laws or regulations imposed by any public authority insofar as it relates to liability arising out of (a) or (b) above.

In this Exclusion "Spark Producing Equipment" means any tool when being utilised in a manner that can generate a spark by friction or impact irrespective of whether such tool is considered or advertised to be a "non-sparking", "spark reduced", "spark-resistant" or "spark-proof" tool.

### 3.8 Loss of use

We don't cover liability in respect of loss of use of tangible property which hasn't been physically damaged, lost or destroyed resulting from:

- (a) a delay in or lack of performance by or on your behalf of any contract or
- (b) your Products' failure to meet express or implied representations about their performance or quality.

This Exclusion 3.8 (b) doesn't apply to loss of use of tangible property caused by the sudden unintended and unexpected physical loss of or damage to your Products after someone other than the Named Insured or its Australian Subsidiaries has put them to use.

### 3.9 Participation

We don't cover liability in respect of Personal Injury or Property Damage of any person caused by or arising out of the participation of such person or their property in any exercise, sport, game, match, race, practice or trial, training, competition, warmups, warm downs and other preliminary activities, or bodily contact with any persons, machines or devices.

### 3.10 Pollution

We don't cover liability in respect of:

- (a) Personal Injury or Property Damage directly or indirectly arising out of Pollution, unless the Pollution:
  - (i) is sudden, identifiable, unexpected and unintended
  - (ii) takes place in its entirety at a specific time and place and
  - (iii) occurs outside of the United States of America or Canada
- (b) any costs and expenses incurred in the prevention, removing, nullifying or clean-up of Pollution unless it:
  - (i) is consequent upon a sudden, identifiable, unexpected, unintended incident
  - (ii) takes place in its entirety at a specific time and place
  - (iii) results in Personal Injury and/or Property Damage and
  - (iv) occurs outside of the United States of America or Canada
- (c) the actual, alleged or threatened Pollution caused by your Products that you or someone on your behalf has discarded.

The most we will pay under Exclusion 3.10 (a) and 3.10 (b) for any one Pollution incident and for all Pollution incidents during any one Policy Period will not exceed \$5,000,000.

### 3.11 Product defect

We don't cover liability in respect of Property Damage to your Products directly attributable to a defect or their harmful nature or unsuitability.

### 3.12 Professional liability

We don't cover liability for Financial Loss in respect of the provision of, or failure to provide, professional advice or services.

In this exclusion, Financial Loss means any loss which is economic in nature and not consequent upon Personal Injury or Property Damage.

### 3.13 Property in custody or control

We don't cover liability in respect of damage to property you own or lease or which is in your physical or legal control.

This exclusion does not apply to liability for Property Damage to:

- (a) premises (including landlord's fixtures and fittings) which are leased or rented to you
- (b) premises (including their contents) that you temporarily occupy for work
- (c) vehicles you don't own or use, but which are damaged in a car park you own or operate, unless you own or operate the car park for reward
- (d) car spare parts and accessories
- (e) the property of your Employees
- (f) other property temporarily in your physical or legal control but we won't cover physical damage or destruction of any property you have been working on and our total liability in respect of all Claims made under this exclusion shall not exceed \$250,000 during any one Policy Period.

These exceptions do not provide any cover for any liability you assume under any agreement that:

- (i) requires you to take out material damage insurance on premises, property or goods you do not own or
- (ii) makes you strictly liable for damage regardless of fault.

### 3.14 Radioactivity and nuclear

We don't cover liability in respect of:

- (a) ionising radiation, unless it is from radioisotopes or radium used:
  - (i) away from where they are manufactured and
  - (ii) only incidentally to ordinary industrial, educational, medical or research activities.
- (b) contamination by radioactivity from:
  - (i) any nuclear fuel or
  - (ii) any nuclear waste from the combustion of nuclear fuel, including any self-sustaining process of nuclear fission
- (c) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or component of it.

### 3.15 Tobacco

We don't cover liability in respect of Claims arising directly or indirectly from tobacco in any form or quantity.

### 3.16 Vehicles

- (a) We don't cover liability in respect of Claims directly or indirectly arising out of the ownership, possession, operation, or use by you or on your behalf of any vehicle:
- (i) registered or required to be registered by any legislation
  - (ii) for which any legislation requires compulsory insurance or statutory indemnity insurance, whether or not that insurance is in effect.
- (b) This exclusion doesn't apply to:
- (i) Personal Injury Claims where compulsory third party insurance or statutory indemnity doesn't cover you for reasons that don't involve you breaching legislation relating to vehicles
  - (ii) Property Damage Claims caused:
    - by and during the loading or unloading of goods to or from any vehicle
    - by the operation of any vehicle designed primarily for lifting, lowering, loading, unloading, while being operated by you or on your behalf within your premises
    - by any vehicle being used as a Tool of Trade
    - by equipment that's part of your vehicle being used as a tool at any worksite
- (c) However, there is no cover for Property Damage:
- (i) caused by a vehicle while it is transporting or carting goods or
  - (ii) to property you own or lease or which is in your legal control, unless also covered by an exception to Exclusion 3.13 Property in custody or control.
- (d) In this Exclusion:
- (i) Vehicle means any machine propelled mechanically including a trailer that can be attached to it.
  - (ii) Tool of Trade means a Vehicle which has a tool attached to it or used in conjunction with it which is used on worksite. Tool of Trade does not include Vehicles used for travelling to and from worksites or to carry goods to any premises.

## 4. What you're not covered for under Section 2

### 4.1 Aircraft and Watercraft

We don't cover liability in respect of any Claim made against you directly or indirectly based upon, attributable to, or in consequence of your ownership, lease, operation or use of any Aircraft, motor vehicle or Watercraft.

In this Exclusion:

- (a) Aircraft means any machine intended to travel in the atmosphere or space.
- (b) Watercraft means any vessel that floats, travels on water or travels underwater.

### 4.2 Amount payable

We don't cover liability in respect of any Claim for an amount more than the lesser of:

- (a) the Limit of Liability stated on your Certificate of Insurance or
- (b) the sublimit(s) of liability stated in your Certificate of Insurance for a Policy Extension.

### 4.3 Assumed duty or obligation

We don't cover liability in respect of any Claim against you directly or indirectly based upon, attributable to or in consequence of duty or obligation assumed by you by way of contract, warranty, guarantee or indemnity, to the extent that such liability exceeds the liability you would have incurred in the absence of such contract, warranty, guarantee or indemnity.

### 4.4 Conflict

We don't cover liability in respect of any Claim against you directly or indirectly based upon, attributable to or in consequence of:

- (a) a conflict of duty and duty, where you act for a client while subject to a contrary interest of another client, or
- (b) a conflict of interest and duty, where you act for a client while subject to a contrary personal advantage interest.

Provided that:

- (c) this exclusion does not detract from or limit Exclusion 4.7 Fraud and dishonesty and
- (d) this exclusion will not apply where:
  - (i) the conflict arises from the provision, or alleged provision, of your Professional Services to more than one client or former client and

## What you're not covered for

- (ii) before you provide your Professional Services, you obtain a signed and dated acknowledgement from each client that you may also be involved with another client whose interests may differ from those of the other client.

### **4.5 Cyber**

We don't cover liability in respect of any Claim made against you directly or indirectly based upon, attributable to, or in consequence of:

- (a) a Cyber Incident
- (b) a Cyber Act or
- (c) a breach of Data Protection Law by you, or parties acting for you, involving access to, processing of, use of or operation of any Computer System or Data, including notification costs, crisis consultancy costs, credit monitoring expenses, replacement of actual credit or payment cards, forensic expenses, public relations expenses or legal advice and services.

Any cover for the costs of reconstituting or recovering lost or damaged documents owned or controlled by you covered under Section 2 Policy Extensions of this Policy shall not apply to Data.

### **4.6 Financial interest**

We don't cover liability in respect of any Claim against you directly or indirectly based upon, attributable to or in consequence of any actual or alleged:

- (a) advice
- (b) inducement
- (c) recommendation
- (d) endorsement or
- (e) other service,

you provide regarding investment in, work for or lending to:

- (f) You or any person named as an Insured
- (g) any entity operated or controlled by you, or any person named as an Insured
- (h) your Subsidiary, nominee, trustee or Family Member or those of any person named as an Insured or
- (i) any entity in which you or any person named as an Insured or any Subsidiary, nominee of you or any person named as an insured, trustee of an insured or Family Member has a direct or indirect financial interest, other than a minor interest.



#### **4.7 Fraud and Dishonesty**

We don't cover liability in respect of any Claim directly or indirectly based upon, attributable to, or in consequence of any:

- (a) actual or alleged act or omission that is:
  - (i) dishonest, criminal, or malicious or
  - (ii) committed, or alleged to have been committed, with a reckless disregard for the consequences or
- (b) wilful breach of any statute, contract, or duty,

by you or anyone for whom you are legally liable.

#### **4.8 Goods sold and supplied**

We don't cover liability in respect of any Claim directly or indirectly based upon, attributable to, or in consequence of:

- (a) the sale, storage, supply or distribution of any goods
- (b) any actual, or alleged, provision of advice associated with the sale, storage, supply or distribution of any goods.

#### **4.9 Insured and related or associated entities**

We don't cover liability in respect of any Claim against you brought or maintained by or on behalf of:

- (a) any person named as an insured (in whatever capacity)
- (b) any Subsidiary or
- (c) any person who, at the time of the Wrongful Act giving rise to the Claim is a Family Member of any person named as an insured (regardless of the capacity in which the Family Member claims), unless they act without any prior direct or indirect solicitation or co-operation of the person named as an insured.

#### **4.10 Manufacturing, construction, installation**

We don't cover liability in respect of any Claim arising out of the physical act of manufacturing, erection, construction, installation, maintenance, or demolition activities, or the supervision of such activities, undertaken by you or on your behalf.

Provided that this exclusion does not apply to:

- (a) any design or specification you complete or
- (b) any advisory or consultancy services you provide during site inspections that relate directly to your engagement to provide design or specification services.

#### **4.11 Obligations to Employees and others**

We don't cover liability in respect of any Claim directly or indirectly based upon, attributable to, or in consequence of Personal Injury to, or Property Damage to any property of, anyone:

- (a) who is your Employee
- (b) who is under your direction, control, or supervision, or
- (c) for whose workplace safety you are responsible.

#### **4.12 Occupier's liability**

We don't cover liability in respect of any Claim directly or indirectly based upon, attributable to, or in consequence of any liability incurred or alleged to have been incurred as a result of your occupation, control, management, or ownership of any real property.

#### **4.13 Personal Injury**

We don't cover liability for any Claim made against you directly or indirectly based upon, attributable to, or in consequence of Personal Injury.

#### **4.14 Pollution**

We don't cover liability for any Claim in respect of:

- (a) the actual or alleged Pollution arising from the design or specification of equipment or structures which are critical to, and designed to, restrict Pollution or
- (b) any enforcement action or proceeding in connection with the prevention, containment, clean up, removal or treatment of Pollution.

Provided that this exclusion does not apply where there has been sudden and accidental Pollution caused by error in design or specification. The most we will pay under this exclusion for any one Pollution incident and for all Pollution incidents during any one Policy Period will not exceed the Section 2 Limit of Liability.

#### **4.15 Property Damage**

We don't cover liability in respect of any Claim directly or indirectly based upon, attributable to or in consequence of Property Damage.

#### **4.16 Radioactivity and Nuclear**

We don't cover liability in respect of:

- (a) ionising radiation
- (b) contamination by radioactivity from:
  - (i) any nuclear fuel or
  - (ii) any nuclear waste from the combustion of nuclear fuel, including any self-sustaining process of nuclear fission
- (c) the radioactive, toxic, explosive, or other hazardous properties of any nuclear assembly or component of it.

#### **4.17 Refund of professional fees**

We don't cover liability in respect of any Claim for or based on the return or refund by you of professional fees, remuneration or charges, whether by way of damages or otherwise.

#### **4.18 Surrender**

We shall not be liable under this Policy to provide indemnity in respect of any Claim made against you directly or indirectly based upon, attributable to, or in consequence of the voluntary giving or surrendering (whether or not induced by deception) of Money, Tangible Securities, Funds or Property in any exchange or purchase.

#### **4.19 Trading debts**

We don't cover liability in respect of any Claim directly or indirectly based upon, attributable to, or in consequence of any trading debt incurred by you or any guarantee given by you for a debt.

#### **4.20 Utility Service Provider**

We don't cover liability in respect of any Claim directly or indirectly based upon, attributable to, or in consequence of the failure of an internet, telecommunications or electricity provider or other utility provider.

## 5. What you're not covered for under Section 1 and 2

### 5.1 Asbestos

We don't cover liability in respect of Claims arising directly or indirectly from asbestos in any form or quantity.

### 5.2 Assault and battery

We don't cover liability in respect of Claims arising from assault or battery committed by you or at your direction.

This exclusion does not apply when the assault and battery is:

- (a) reasonably necessary for the protection of persons or property and
- (b) done at the direction of the Named Insured or its Australian Subsidiaries by:
  - (i) a director, officer, employee, voluntary worker, work experience person, partner or shareholder of the Named Insured or its Australian Subsidiaries, but only while acting within the scope of their duties in such capacity or
  - (ii) an office bearer or members of social and sporting clubs, canteen and welfare organisations, first aid, fire and ambulance services formed with the consent of the Named Insured or its Australian Subsidiaries.

### 5.3 Australian Standards

We don't cover liability in respect of Claims directly or indirectly arising out of, caused by, or in connection with your Business, except where you or someone working on your behalf has taken all reasonably necessary precautions to comply with Australian Standards:

- (a) AS 1674.1 - 1997 Safety in welding and allied processes - Fire precautions
- (b) AS 3660.1:2014 Termite management New building work
- (c) AS 3660.2:2014 Termite management in and around existing buildings and structures
- (d) AS 3660.3:2014 Termite management Assessment criteria for termite management systems
- (e) AS 4349.3-2010 Inspection of buildings Timber pest inspections
- (f) AS 4349.0-2007 Inspection of buildings General requirement
- (g) AS 4349.1 - 2007 Inspection of buildings Pre-purchase inspections - Residential buildings
- (h) AS 4349.2 - 2018 Inspection of buildings Group titled properties
- (i) AS 2507-1998 The storage and handling of agricultural and veterinary chemicals, or
- (j) Any standard issued by Standards Australia intending to amend or replace (a) to (i).

## 5.4 Chemical handling

We don't cover Claims arising directly or indirectly from transportation, storage, loading or unloading of chemicals, unless the transportation, storage, loading or unloading of chemicals is in strict compliance with the relevant legislative and industry requirements and the chemical manufacturer's instructions.

## 5.5 Communicable Disease

We don't cover liability for Personal Injury, Property Damage or Advertising Liability directly or indirectly caused by, contributed to by, resulting from, arising out of, or in connection with:

- (a) a Communicable Disease or
- (b) the fear or threat (whether actual or perceived) of a Communicable Disease,

and any cost to clean-up, detoxify, remove, monitor, or test for a Communicable Disease.

In this Exclusion:

Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- (a) the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
- (b) the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare, or property damage.

## 5.6 Concrete barrier

We don't cover Claims arising directly or indirectly from failure of concrete or masonry work to cure, alleviate, prevent, eliminate or retard the entrance of termites.

## 5.7 Contractual Liability

We don't cover liability in respect of any contractual obligation or agreement.

This exclusion does not apply to:

- (a) liabilities the law implies in the absence of a contract or agreement
- (b) Claims under Section 1 in respect of:
  - (i) liabilities assumed under Incidental Contracts
  - (ii) liability for implied terms regarding the merchantability, quality, fitness or care of your Products or
  - (iii) a contractual obligation under an agreement specified in your Certificate of Insurance.

## What you're not covered for

In this Exclusion, Incidental Contract means any written contract:

- (c) to rent or lease any real or personal property, but not if the contract:
  - (i) requires you to insure property or
  - (ii) makes You strictly liable for damage regardless of fault
- (d) with any supplier of utilities, except for work done for that supplier or
- (e) with any railway authority for the handling of products, including contracts for the operation of railway sidings.

### **5.8 Escape of fire**

We don't cover your liability in respect of the escape of fire which was lit by you, on your Behalf or as directed by you in contravention of the provisions of any statute or by-laws or regulations imposed by any public authority. However, this exclusion does not apply to the extent that cover is available to you by virtue of Exclusion 3.7 Hot works, allied processes, & spark producing equipment condition.

### **5.9 Fines, penalties and liquidated damages**

We don't cover liability in respect of fines, penalties and or liquidated damages including but not limited to, civil penalties.

### **5.10 Firearms**

We don't cover liability in respect of Personal Injury arising directly or indirectly out of, or caused by or in connection with the use or operation of any firearms unless the operator is licensed under all relevant laws relating to use/operation of firearms in relation to their specific occupation.

### **5.11 Laws impacting cover**

We will not be liable to provide any cover, pay any Claim or provide any benefit under this Policy, to the extent that it is unlawful for us to do so.

### **5.12 Manufacturer's instructions**

We don't cover liability in respect of Claims directly or indirectly arising out of, or caused by, or in connection with the use of any product, unless the use of the product is in strict accordance with the manufacturer's instructions.

### **5.13 Non-approved chemicals**

We don't cover liability in respect of Claims directly or indirectly arising out of, caused by or contributed to by your use of chemicals which have not been approved by the relevant Federal, State, Territory and Local Government Authority/ies for use in the eradication of pests.

## 5.14 Non-compliant cladding

We don't cover claims arising directly or indirectly from any:

- (a) insulation and finishing system
- (b) wall panelling
- (c) façade material,

except where the materials listed in (a) to (c) comply with all relevant provisions of:

- (d) the Building Code of Australia
- (e) the National Construction Code of Australia
- (f) Australian Standards
- (g) approved conditions of use or application, and
- (h) any other applicable law or regulation, including any replacement thereof.

## 5.15 Obligations to Employees and others

We don't cover liability in respect of:

- (a) Personal Injury to any of your Employees caused during or by their employment in your Business
- (b) Personal Injury to anyone that workers' compensation legislation deems to be your Employee
- (c) liability that could be covered by a workers' compensation insurance policy, fund, scheme, or self-insurance arrangement that you are entitled to seek cover under (or would have been entitled if you had complied with your obligations under that policy, fund, scheme or arrangement), whether or not you are a party to that policy, fund, scheme, or arrangement
- (d) liability under workers' compensation legislation or any industrial award or agreement or determination or
- (e) Employment Practices or
- (f) any dispute in connection with employment.

In this exclusion, Employment Practices means, in relation to a current, former, or prospective Employee, any actual or alleged:

- (i) failure to employ or promote
- (ii) failure to provide career opportunities, tenure, training, or any other employment-related benefit
- (iii) appraisal, investigation, counselling, or discipline
- (iv) employment-related:
  - misrepresentation, discrimination, or harassment (sexual or otherwise)
  - invasion of privacy
  - defamation or
  - infliction of emotional distress or retaliation
- (v) creation or tolerance of a harassing workplace environment

- (vi) breach of:
  - a statutory, common law or other legal duty in connection with the employment or
  - contract of employment (oral, written, or implied)
- (vii) demotion, redeployment, transfer, retrenchment, or dismissal, or
- (viii) failure to provide accurate references directly or indirectly related to you employing or prospectively employing anyone.

### **5.16 Pathogenic Organism**

We don't cover Claims directly or indirectly caused by or contributed to or arising from any pathogenic organism:

- (a) for loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising from the loss, destruction or damage or any consequential loss, or
- (b) for any legal liability of any nature.

In this Exclusion pathogenic organism includes but is not limited to the following:

- (c) mould or fungi or its spores, bacteria yeasts, mildew, algae, mycotoxins, or any other metabolic products enzymes or protein secreted by the above whether toxic or otherwise.

We will not be under any duty to defend you in any proceedings in connection with any pathogenic organism Claims or incidents.

This Exclusion applies irrespective of when the Claim arose or was made and irrespective of when the exposure to the pathogenic organism occurred.

### **5.17 Pre-existing damage**

We don't cover Claims directly or indirectly arising out of, caused by, or in connection with continuing or additional damage to property for which there is or has been evidence of Pre-Existing Damage.

### **5.18 Prior or Pending**

We don't cover liability in respect of any Claim:

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



### **5.19 Product recall**

We don't cover liability in respect of Claims arising out of any loss, cost, or expense you incur for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of your Products or anything they are a part of, if they are withdrawn from the market or from use because of any known or suspected defect, deficiency, inadequacy, or dangerous condition in them.

### **5.20 Punitive damages**

We don't cover liability in respect of punitive, exemplary, aggravated, or any additional damages resulting from the multiplication of compensatory damages.

### **5.21 Qualified person**

We don't cover Claims directly or indirectly arising out of, caused by or contributed to by any person who has not undertaken relevant training and not obtained the appropriate qualification or license, where required by law and any recognised industry association or body, to carry out work the nature of which is described in your Certificate of Insurance.

### **5.22 Sanctions limitation and exclusion**

We will not be liable to provide any cover, pay any Claim or provide any benefit under this Policy, to the extent that to do so may expose us to any sanction, prohibition or restriction under United Nations resolutions or any applicable trade or economic sanctions, laws, or regulations of any country.

### **5.23 Sexual Abuse**

- (a) We don't cover liability in respect of Claims for Personal Injury arising out of or as a result of the actual or alleged sexual abuse of any person in any circumstances.
- (b) In this exclusion, Sexual Abuse means all acts of a sexual nature whether or not involving physical contact, including but not limited to molestation, indecent exposure, assault, harassment, abuse, and impropriety of any kind.
- (c) For the avoidance of doubt, the definition of Sexual Abuse in paragraph (b) above applies whether the acts were by consent or not, and irrespective of the age of the persons involved in those acts.

### **5.24 Spraying cotton**

We don't cover Claims directly or indirectly arising out of, caused by or contributed to by spraying cotton.

## 5.25 Territorial limits

- (a) We don't cover liability in respect of Claims made or actions started outside of Australia where the local laws require you to have insurance with an insurer or insurance provider licenced in that place.
- (b) We don't cover liability in respect of:
  - (i) Claims made and actions started within the United States of America or Canada or any other territory coming within the jurisdiction of their courts or
  - (ii) the enforcement of any judgment, order or award obtained within, or determined pursuant to, the laws of the United States of America or Canada or their territories or protectorates or
  - (iii) Claims and actions to which the laws of the United States of America or Canada apply.
- (c) We shall not be liable under this Policy to provide indemnity in respect of any Claim made against you which we are prohibited from paying by law in the jurisdiction concerned.
- (d) Exclusion (b), in respect of Section 1 only, does not apply to:
  - (i) Claims and actions caused by the presence of your Employees, directors, or partners normally resident in Australia while they are outside of Australia unless they are doing any kind of manual or supervisory work in the United States of America or Canada or
  - (ii) Claims for liability caused by your Products exported to the United States of America or Canada without your knowledge.

The Limit of Liability for Claims under this exception (d) includes all costs, expenses and interest as set out in Section 1.2 - Defence of Claims.

## 5.26 Terrorism

We don't cover liability in respect of loss, damage, liability, cost, or expense of any nature in connection with:

- (a) any Act of Terrorism, regardless of any other cause or event
- (b) any action taken to control, prevent, suppress or in any way relating to any Act of Terrorism.

In this exclusion, an Act of Terrorism means the use or threat of force by any person or group, motivated by a political, religious, ethnic, or similar Ideology, intended to:

- (i) influence a government or
- (ii) intimidate the public or any section of the public.

### 5.27 Toxic mould

We don't cover Claims directly or indirectly caused by, arising out of or in any way connected with:

- (a) any actual, alleged or threatened inhalation, discharge, dispersal, seepage, migration, absorption, release, exposure to, or escape of any mould, mildew or fungus in any form from any source, at any time
- (b) the prevention of the actual, alleged or threatened inhalation, discharge, dispersal, seepage, migration, absorption, release, exposure to, or escape of any mould, mildew or fungus in any form from any source, or
- (c) any testing, monitoring, clean up, removal, containment, treatment, disposal, detoxifying or neutralizing or in any way responding to or assessing the effects of mould, mildew or fungus in any form from any source, at any time.

### 5.28 War

We don't cover liability in respect of:

- (a) war - including invasion, acts of foreign enemies, hostilities, or war-like operations (whether war is declared or not)
- (b) civil upheaval - including civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military, or usurped power
- (c) government taking property - including confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government or public or local authority.

### 5.29 Wildlife capture, release and/or destruction

We don't cover Claims directly or indirectly arising out of, or caused by, or in connection with the capture, release and/or destruction of wildlife, unless the activity is conducted in strict compliance with the relevant legislative requirements and guidelines.

## 6. Claims

Most of these Claim conditions apply to Claims under both Section 1 and Section 2. Some apply to only Section 1 or Section 2.

### 6.1 What to do if a Claim is made against you

In running your Business, you must take all reasonable precautions to prevent incidents that could result in Claims against you. But if something does go wrong, we ask that you do the following:

#### You must

**Contact your financial service provider as soon as practicable** about any Occurrence, Claim, writ, summons, proceeding, impending prosecution or inquest that could result in a Claim on this Policy, even if you think the Claim amount will be lower than the Deductible.

**Give us written notice as soon as practicable of any Claim made against you**, and (for Claims under Section 2) before the end of the Policy Period in which the Claim is made.

You must notify us of any Claim under Section 2 in writing, addressed to:

Professional Liability Claims Department  
QBE Insurance (Australia) Ltd  
PO Box 219  
Parramatta NSW 2150

or by email to [piclaims@qbe.com](mailto:piclaims@qbe.com)

**Give us any relevant information we ask for** to assess and investigate the Claim.

**Take all reasonable precautions** to prevent further loss or damage.

**Preserve all property, Products, appliances, plant, equipment**, or anything else that might help in the investigation or defence of a Claim or help us recover money from others that contributed to or caused the Claim to be made.

**Co-operate with us** to investigate the Claim, to defend it in court and in any action, we take to recover money payable under this Policy from any other person.

**Pay the Deductible for each Claim within 14 days** of us asking you to pay it.

**Contact your financial service provider** if you need advice on what to do.

#### You must not

**Admit liability, negotiate or make any promise or payment** unless we first agree in writing.

This applies to you and anyone else making a Claim under this Policy. Failure to comply with this clause could jeopardise your Claim.

## 6.2 Sublimits of liability

Where policy extensions are noted as having a sublimit, the sublimits of liability are the most we will pay for all Claims in the aggregate (inclusive of costs and expenses) during any one Policy Period as specified in your Certificate of Insurance. These sublimits do not increase either the Limit of Liability or the total aggregate Limit of Liability.

## 6.3 Defence and settlement

We may:

- (a) instruct you to conduct the defence of the Claim if having regard to the circumstances, it is likely that any Claim will not exceed the Deductible, in which case you will be responsible for your own costs and expenses and any settlement up to the limit of the Deductible. In the event that any costs and expenses or payment made to dispose of the Claim exceeds the Deductible we will reimburse you all reasonable costs and expenses
- (b) take over and conduct, in your name, the defence or settlement of any Claim at any time, in which case we will then have sole control of the Claim subject to us consulting you where appropriate and you being able to seek an update on the status of the Claim,

You agree:

- (c) not to settle any Claim, incur any costs and expenses or Investigation Costs and Expenses, make any admission, offer or payment or otherwise assume any contractual obligation with respect to any Claim or loss without our written consent, provided that we shall not unreasonably withhold such consent
- (d) that any information that our external lawyers receive in the course of investigating, defending, or settling any Claim made against you can be provided to us and relied upon by us in relation to any issue that may arise regarding our liability to indemnify you
- (e) that our external lawyers may provide advice to us on any issue regarding our liability to indemnify you and, whilst doing so, may continue to act in the investigation, defence, or settlement of the Claim,

Furthermore, in the circumstances described under paragraphs (c), (d) or (e) above, you agree:

- (f) that our communications with our external lawyers are privileged and that you are not entitled to obtain any such communications
- (g) to waive any entitlement that you may have for legal professional privilege between you and our external lawyers
- (h) if any actual or apparent conflict arises between our interests and your interests, our external lawyers may cease acting on your behalf and may continue to act on our behalf. Where our external lawyers cease to act for you due to an actual or apparent conflict on a Claim covered under the Policy, we will provide reasonable assistance to you to find alternative lawyers.

## 6.4 Things that can affect your Claim

If:

- you breached your duty of disclosure when you took out or renewed your Policy
- you haven't followed any of the terms and conditions detailed in this Policy or on your Certificate of Insurance, including payment of premiums
- your Claim is in any way fraudulent, including you or anyone acting on your behalf acting fraudulently,

we may be entitled to avoid paying the claim or reduce the amount of the claim settlement. In some circumstances we may also be able to cancel your Policy.

We will pay only once for loss or damage from the same Occurrence covered by this Policy.

## 6.5 Deductible

- You must pay the Deductible shown on your Certificate of Insurance for Claims made on this Policy. We will only cover that part of any Claim or loss you incur which is in excess of the Deductible.
- If more than one Deductible applies for any Claim, or series of Claims caused by one Occurrence (under Section One) or one single act, error, or omission (under Section Two), you need only pay one Deductible, but the highest Deductible will apply.
- If your failure to pay your Deductible means a settlement does not proceed or costs and expenses increase, we will only pay the amount for which the Claim against you could have been settled plus the costs and expenses incurred with our written consent up to the date of your failure, less the Deductible.
- Any costs and expenses we incur to determine whether we are liable to indemnify you under this Policy are not subject to the Deductible but shall be borne by us.

## 6.6 Contribution

- When making a Claim, you must notify us of any other insurance that you're aware will or may, whether in whole or in part, cover any loss insured under your Policy.
- If at the time of any loss, damage, or liability there's any other insurance (whether issued to you or any other person) which covers the same loss, damage, or liability you must provide us with any reasonable assistance we require to make a claim for contribution from any other insurer.

## 6.7 Goods and Services Tax

Amounts in your Policy do not include GST. There may be other taxation implications for you, depending upon your circumstances. We recommend you seek professional tax advice.

Your GST status affects the amount we pay for Claims. We will reduce your Claim settlement to allow for any input tax credit (ITC) entitlement for replacement goods or services. This is regardless of whether you replace those goods or services.

## Claims

If you're a business you must tell us if you're registered, or need to register, for GST. If you do, you need to tell us:

- your ABN if you have one
- the percentage of any input tax credit (ITC) you were entitled to claim on your premium (ITCE)
- any entitlement you may have to claim a GST credit on any goods or services you may buy to satisfy your claim (ITC or ITCE).

### **GST on payments we make**

The amount we pay you or a third party is as below:

<b>If the payment is to:</b>	<b>then:</b>
<b>the supplier of goods or services</b>	we'll pay the GST inclusive amount
<b>you, and:</b>	
<ul style="list-style-type: none"><li>• you aren't registered for GST</li></ul>	we'll pay the GST inclusive amount
<ul style="list-style-type: none"><li>• you are registered for GST and you have a 100% ITC</li></ul>	we'll pay the GST exclusive amount
<ul style="list-style-type: none"><li>• you are registered for GST and you have a partial Input tax credit entitlement</li></ul>	we'll reduce the amount of the payment by amount of ITC you would have been entitled to had you acquired the goods or services
<b>your finance company</b>	we'll treat the payment in the same way as we would treat a payment to you
<b>to a third party (other than a supplier of goods and services) who:</b>	
<ul style="list-style-type: none"><li>• isn't registered (and is not required to be registered) for GST</li></ul>	we'll pay the GST inclusive amount
<ul style="list-style-type: none"><li>• is registered for GST and have a 100% ITC</li></ul>	we'll pay the GST exclusive amount
<ul style="list-style-type: none"><li>• is registered for GST and has a partial ITC</li></ul>	We'll reduce the amount of the payment by amount of ITC the third party would have been entitled to had they acquired the replacement goods or services

### 6.8 Multiple Claims

*Applies to Section 2 only.*

All causally connected or interrelated acts, errors or omissions jointly constitute a single act, error, or omission under this Policy.

Where one act, error, or omission gives rise to more than one Claim:

- those Claims jointly constitute one Claim under the Policy
- only one Deductible applies to that Claim and
- if there is an Aggregate Limit of Liability, only one Limit of Liability applies to that Claim.

### 6.9 Discharge of liabilities

*Applies to Section 1 only.*

For all Claims made against you for any one Occurrence, we can pay to you or on your behalf either:

- the Limit of Liability, less any amounts already paid or
- any lower sum for which the Claim may be settled.

The sum for which the Claim can be settled is either:

- the amount for which the claimants offer to settle all Claims or
- the amount assessed by a Senior Counsel (to be agreed on by you and us).

If we do so:

- the conduct of any outstanding Claim or Claims will become your responsibility and
- we won't be liable for further amounts in relation to that Occurrence other than costs, charges, or expenses that we agreed to pay before or when we made the payment referred to in this general condition.

The sum for which the Claim can be settled is either:

- the amount for which the claimants offer to settle all Claims or
- the amount assessed by a Senior Counsel, taking into account:
  - > the economics of the matter
  - > the damages and costs which the claimants are likely to recover
  - > the likely defence costs and
  - > your prospects of successfully defending the claim.

If you and we cannot agree on the Senior Counsel, we will ask the President of the Bar Association in the relevant State or Territory to nominate one.

We will include the cost of the Senior Counsel's opinion in your defence costs.



## 6.10 We may act in your name

We may take over the defence or settlement of a Claim or sue for damages in your name. This is known as subrogation. you must co-operate by giving us any statements, documents, or assistance we need. We may require you to give evidence in court.

## 6.11 There is disagreement about settling a claim

This clause applies if you and we disagree whether a Claim against you should be settled or defended.

We will ask a Senior Counsel (to be agreed on by you and us) to determine whether the Claim should be contested.

Senior Counsel will consider:

- the economics of the matter
- the damages and costs the Claimants are likely to recover
- the likely defence costs and
- your prospects of successfully defending the Claim.

If you and we cannot agree on the Senior Counsel, we will ask the President of the Bar Association in the relevant State or Territory to nominate one.

We will include the cost of the Senior Counsel's opinion in your defence costs under Section 1 or your Costs and Expenses under Section 2.

## 6.12 Recovery from third parties

- We may exercise your rights, in your name, to recover a loss from a third party. This is also known as subrogation. If we do, you must:
  - > provide us with the reasonable assistance and relevant information we need to secure and preserve such rights and
  - > co-operate with our reasonable requests, including the execution of documents.
- You must assist us even if we've paid your Claim. You must not prevent our right of recovery. That is, if someone is liable to compensate you for a loss, damage or liability you can't agree not to seek compensation from them.
- If you've agreed with or told someone who caused you loss, damage or liability covered by your policy that you won't hold them responsible then, to the extent we've been prejudiced by this act, we won't cover you for that loss, damage or liability.
- We won't seek recovery from anyone insured by this Policy. Additionally, we won't seek recovery from any owner, parent company or majority shareholder of any corporation Insured by this Policy, except to the extent another policy of insurance covers them for the liability this Policy covers.

### 6.13 Contribution

- When making a claim, you must notify us of any other insurance which will or may, whether in whole or in part, cover any loss insured under your Policy.
- If at the time of any loss, damage or liability there's any other insurance (whether effected by you or by any other person) which covers the same loss, damage or liability you must provide us with any reasonable assistance we require to make a claim for contribution from any other insurer.

## 7. Things you need to know

### General conditions

Most of these general conditions apply to Claims under both Section 1 and Section 2. Some apply to only Section 1 or Section 2.

#### 7.1 Acquisition of properties or companies

We will cover properties, assets, companies, firms, entities, or other bodies:

- you form, purchase, or manage while you are Insured by this Policy and
- that undertake activities consistent with the description of your Business or your Professional Services in your Certificate of Insurance.

If a new acquisition represents more than 15% of your current turnover, we may revise the terms of the Policy, which could change your premium. If you don't accept the revised terms, then the new acquisition will not be covered by the Policy.

We won't cover any Claims for Personal Injury, Property Damage, Advertising Liability or Wrongful Act that happened:

- before:
  - > the acquisition, formation, or assumption of management responsibility, even if you learn about it or notify us about it afterwards, or
  - > the Retroactive Date stated on your Certificate of Insurance, or
- more than 60 days after you form, purchase, or start managing the Subsidiary.

You must notify us of any Subsidiary you form, purchase, or start managing during the Policy Period as soon as reasonably practicable.

This extension does not amend the description of the Business or your Professional Services on your Certificate of Insurance.

Please call your financial service provider if you need to:

- change how your Certificate of Insurance describes Business or your Professional Services or
- continue cover for the Subsidiary beyond 60 days.

#### 7.2 Assignment of Interest

No change in, or modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement to this Policy and signed by an authorised employee of Ours.

### 7.3 Cancelling your Policy

- You can cancel your Policy by telling your financial service provider.
- We may cancel this Policy in any of the circumstances permitted by law. If we do, we'll tell you in writing.
- We will refund you any premium for the remaining Policy Period above any agreed minimum premium under Section 1. If your premium is being or has been adjusted, you still need to provide all the required information to enable the adjustment and to pay the amount of adjustment up to the date of cancellation.
- If you have notified a Claim or circumstance to us under Section 2, then no premium will be refunded.

### 7.4 Changes in circumstances

You need to tell your financial service provider in writing as soon as possible if anything has changed since your Policy started that could increase the risk of Personal Injury, Property Damage, Advertising Liability or Wrongful Act. This includes:

- if you go into voluntary bankruptcy, receivership, liquidation, or any other form of external administration
- if you obtain an Australian Financial Services Licence (AFSL)
- losing your entitlement to practice in your Professional Services
- any licencing authority cancels your registration or places any restriction on your registration
- you fail to pay debts or breach any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings or
- a change in the trade or manufacture you carry on or your Professional Services.

Based on this information we may:

- charge additional premium
- amend or impose additional terms or conditions or
- cancel the Policy in accordance with the *Insurance Contracts Act 1984* (Cth).

Any changes to your Policy will take effect when we issue a new Certificate of Insurance or an endorsement schedule, stating the change.

### 7.5 Adjustment of premium

*Applies to Section 1 only.*

Where your Certificate of Insurance shows your premium was wholly or partially calculated on estimates, you must within 30 days of the expiry of the Policy Period provide us or your financial service provider information required to calculate your adjusted premium. The change to your premium could result in you paying additional premium or us refunding you a portion of the premium. In all recalculations any minimum premium specified in your Certificate of Insurance will always be applicable.

You must keep a record of the information you provide and allow us to inspect or make copies of this at a reasonable notice.

## **7.6 Cross liability**

*Applies to Section 1 only*

Where this Policy insures more than one party, we will consider each of the parties separate and distinct units and the words 'you', 'your' or 'yours' will apply to each party in the same way as if they'd each been issued a separate Policy.

Nothing in this general condition will increase our Limit of Liability for any Occurrence or Policy Period.

## **7.7 Inspection of property**

*Applies to Section 1 only.*

We may inspect your property and operations at any time with reasonable notice. You may not use our failure to inspect, or any inspection report made by us or others on our behalf, in any action or proceeding involving us.

We may examine and audit your books and records at any time (with reasonable notice) while you're insured and for three years after, but we will only examine and audit matters that are relevant to the Policy.

## **7.8 Interpretation**

### **Policy Construction and Interpretation**

The construction of this Policy will be in accordance with the law of the State, Territory, or country in which this Policy is issued specified in your Certificate of Insurance. If no place of issue is shown in your Certificate of Insurance the place of issue is Sydney, New South Wales, Australia.

The titles of paragraphs in this Policy are for description only and do not form part of this Policy for the purpose of its construction.

Under this Policy:

- the singular includes the plural and vice versa and
- reference to a person includes a body corporate, an authority, an association, or a joint venture (whether incorporated or unincorporated), a partnership and a trust.

## References to Legislation

Legislation referenced in this Policy includes Subsequent Legislation. Any term this Policy defines by reference to legislation has the meaning given in any replacement definition or definition with materially the same object or purpose in Subsequent Legislation.

'Subsequent Legislation' means:

- an act or regulation as amended, replaced, or re-enacted
- where an act or regulation has been repealed, the current equivalent act or regulation (Commonwealth, State or Territory) with materially the same object or purpose whether in whole or in part.

## 7.9 Jurisdiction

The laws of Australia govern this Policy. All disputes relating to this Policy will be subject to determination by any court of competent jurisdiction within Australia.

If no place of issue is shown in the Certificate of Insurance the place of issue is Sydney, New South Wales, Australia.

## 7.10 Notices

Documents relating to your insurance policy will be sent by post or email. Where you have been given the choice, they will be sent by your chosen delivery method and you can change your preference at any time.

It is your responsibility to make sure your contact details are current (including telephone number, email and mailing address where relevant) and you must update these as soon as they change.

## 7.11 Other insurance

- If a policy of insurance or policies of insurance are listed in your Certificate of Insurance, those policies will act as primary insurance and this Policy will only apply in excess of such policies of insurance.
- You shall notify us as soon as practicable upon entering into any other policies of insurance that provides insurance cover in respect of the risks insured by this Policy.
- You shall maintain the policies noted in your Certificate of Insurance in full effect during the currency of this Policy.

## 7.12 Other interests

*Applies to Section 1 only*

Any person who has an interest in the Policy is noted on your Certificate of Insurance. Transfers of interest in the Policy can only be made with our written consent.

### 7.13 Reasonable care

You must:

- take all reasonable precautions at your own expense to prevent Personal Injury, Property Damage, Advertising Liability, Wrongful Acts or the manufacture, sale or supply of defective Products and to diminish any liability under this Policy
- take reasonable action to trace, recall or modify any of your Products containing any defect or deficiency of which you have knowledge or have reason to suspect, including (but not limited to) any of your Products subject to governmental or statutory ban
- ensure only competent Employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition
- ensure that your Employees, contractors, or anyone else who completes work for you complies with all relevant statutory obligations, by-laws or regulations imposed by all relevant public authorities for the:
  - > safety of persons or property
  - > disposal of waste products and
  - > handling, storage or use of flammable liquids, substances, gases or toxic chemicals.

### 7.14 Retroactive Date

In Section 1:

Where your Certificate of Insurance specifies a Retroactive Date, then this Policy only provides cover in respect of any Personal Injury or Property Damage or Advertising Liability occurring or alleged to have occurred after the Retroactive Date.

In Section 2:

Where your Certificate of Insurance specifies a Retroactive Date, then this Policy only provides cover in respect of Claims as a result of a breach of professional duty in the conduct of your Professional Services arising from acts, errors or omissions committed or alleged to have been committed after the Retroactive Date.

### 7.15 Severability

Where this Policy insures more than one party, any conduct whereby one party:

- failed to comply with the duty of disclosure in terms of the *Insurance Contracts Act 1984* (Cth) or
- made a misrepresentation to us before this contract of insurance was entered into,

will not affect the right of any other insured party to cover under this Policy, but only if they had no prior knowledge of the other insured party's conduct and:

- advise us in writing of everything they know about this conduct as soon as reasonably practicable after they become aware of it
- the conduct of the entities or persons referred to in the definition of 'You' is attributed to the Named Insured.

## Other important information

### 7.16 Duty of Disclosure

Before you enter into an insurance contract, you have a duty under the *Insurance Contracts Act 1984* (Cth) to tell us anything that you know, or could reasonably be expected to know, that may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for, or
- is common knowledge or
- we know or should know as an insurer, or
- we waive your duty to tell us about.

If you do not tell us anything you are required to, we may cancel your Policy or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

### 7.17 Payment of premium

You must pay your premium on time otherwise your Policy may not operate.

You may choose to pay your premium by instalments. If you do so, you must ensure you pay the instalments on time as we may cancel the Policy if any instalment of premium has remained unpaid for one month from the date on which payment was due.

You may have a credit arrangement with your financial services provider. You must comply with the terms of your agreement with your financial services provider.

We will send you a notice giving you details of the action we intend to take and when any cancellation will become effective.

If you are paying your premium in instalments by direct debit from your credit card or financial institution account you must tell us if those details change. You must do this no later than seven days before your next instalment is due.

We are entitled to deduct from any amount we pay you under a claim any unpaid premium or instalment of premium.



## 7.18 The General Insurance Code of Practice

QBE is a signatory to the General Insurance Code of Practice (Code) and is committed to providing high standards of service. The Code covers topics like buying insurance, how claims are handled, what happens if financial hardship occurs, and complaint handling. You can read the Code at [codeofpractice.com.au](http://codeofpractice.com.au)

The Code Governance Committee is an independent body that monitors and enforces insurers' compliance with the Code. For more information about the Code Governance Committee please visit [insurancecode.org.au](http://insurancecode.org.au)

We recognise that family and domestic violence is a complex issue and we take it seriously. For more information about support, our Family and Domestic Violence Customer Support Policy is available at [qbe.com/au](http://qbe.com/au)

## 7.19 Privacy

We take the security of your personal information seriously.

We will collect personal information directly from you when you deal with us, or sometimes through our agents, other companies in the QBE group or suppliers acting on our behalf. We will only ever collect the personal information we need in order to provide our services to you, such as issuing and administering our products and services and processing claims. We will obtain consent before collecting sensitive information, such as health information, unless we are required or permitted by law to collect it without consent. Sometimes we may store and disclose your personal information overseas. When we do this, we ensure your information is retained in accordance with the *Australian Privacy Act 1988* and local privacy laws.

Our Privacy Policy describes in more detail from whom we collect personal information, as well as where we store it and the ways we could use it. You can find it at [qbe.com/au/about/governance/privacy-policy](http://qbe.com/au/about/governance/privacy-policy)

If you would like to access or correct your personal information please contact us at [customercare@qbe.com](mailto:customercare@qbe.com) or on 1300 650 503.

## 7.20 Complaints

We're here to help. If you're unhappy with any of our products or services, or the service or conduct of any of our suppliers, please let us know and we'll do our best to put things right.

### Step 1 - Talk to us

Your first step is to get in touch with the team looking after your Policy, direct debit, or claim. You'll find their contact details on your policy documents, letters, or emails from us.

Please provide our team with as much information as possible so they can try to fix the problem quickly and fairly.

For additional assistance in lodging a complaint, please refer to [qbe.com/au](http://qbe.com/au)

## **Step 2 - Customer Relations**

If your complaint isn't resolved by the team looking after your Policy, direct debit, or Claim, you can ask them to refer your complaint on to our Customer Relations team. A Dispute Resolution Specialist will review your complaint independently and provide you with our final decision.

You can also contact the Customer Relations team directly:

<b>Phone:</b>	1300 650 503
<b>Fax:</b>	(02) 8227 8594
<b>Email:</b>	complaints@qbe.com
<b>Post:</b>	GPO Box 219, Parramatta NSW 2124

## **Step 3 - Still not resolved?**

If we're unable to resolve your complaint to your satisfaction within a reasonable time, or you're not happy with our final decision, you can refer your complaint for external dispute resolution by contacting the Australian Financial Complaints Authority (AFCA). We are a member of AFCA and their decisions are binding on us.

<b>Phone:</b>	1800 931 678
<b>Email:</b>	info@afca.org.au
<b>Post:</b>	GPO Box 3, Melbourne VIC 3001

AFCA will inform you if your complaint falls within its jurisdiction. Time limits apply to most complaints to AFCA. For more information, visit [afca.org.au](http://afca.org.au)

## **More information**

You can find more information about how we deal with complaints on our website at [qbe.com/au](http://qbe.com/au) or you can call us on 133 723 to speak with us or request a copy of our complaints brochure at no charge by us.

## **Complaints just about privacy**

If you're not happy with how we've handled your personal information, call us on 1300 650 503 or email us at [customer@qbe.com](mailto:customer@qbe.com). If you're not satisfied with our response, you can contact the Office of the Australian Information Commissioner (OAIC):

<b>Phone:</b>	1300 363 992
<b>Email:</b>	enquiries@oaic.gov.au
<b>Post:</b>	GPO Box 5218, Sydney NSW 2001

## 8. Definitions

Some of the words and terms used throughout this Policy have specific meanings, which are explained below. Some of these only apply to either the cover under Section 1 or under Section 2.

Where a defined terms only applies to a particular provision of this Policy, it will be defined there.

### 8.1 Advertising Liability

liability arising out of one or more of the following:

- (a) defamation
- (b) infringement of copyright, title, or slogan
- (c) unfair competition or misappropriation of advertising ideas or business practices
- (d) actual or alleged invasions of privacy:
  - (i) in any Advertisement and
  - (ii) arising out of your Business's advertising activities or
- (e) unintentional breach of the misleading or deceptive conduct provisions of consumer protection laws.

In this definition, Advertisement means any type of communication to the public. This includes print and electronic media, electronic communication, the world wide web or an exhibit.

### 8.2 Business

the Business described in your Certificate of Insurance, including:

- (a) promotional events and sponsorship arrangements in connection with your Business
- (b) the provision and management of canteens, social, sports and welfare organisations for your Employees
- (c) first aid, fire and ambulance services (formed with your consent) and
- (d) maintenance of your premises.

### 8.3 Certificate of Insurance

a separate document detailing the individual aspects of your Policy, such as your chosen Deductible amount, your premium and the Policy Period, that you'll receive when you buy, vary or renew this insurance.

Your Certificate of Insurance might be called a Policy Schedule or a Schedule of Insurance.

## 8.4 Claim

means your receipt of:

- (a) a written notice of demand for compensation made by a third party against you
- (b) any writ, statement of claim, summons, application or other originating legal or arbitral process, crossclaim, counterclaim or third- or similar-party notice served upon you which contains a demand for compensation made by a third party against you.

In Section 2, 'Claim' also means a notice of any actual or intended official investigation, examination, or inquiry, which is covered under Automatic Extension 2.4.10 Official investigations and inquiries - Costs and expenses.

## 8.5 Compensation

In Section 1:

money you must pay, or which has been agreed to be paid, for Personal Injury, Property Damage or Advertising Liability.

## 8.6 Computer System

any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.

## 8.7 Costs and Expenses

In Section 2:

reasonable legal costs and other expenses incurred by or on behalf of you or by us in the investigation, defence, or settlement of a Claim.

## 8.8 Court Attendance Costs

the costs incurred by an Employee, partner, principals or director of Yours where they are legally required to attend a civil proceeding as a witness in a matter arising under this Policy.

Court Attendance Costs do not include regular or overtime wages, salaries or fees of the Employee, partner, principals or director of Yours.

## 8.9 Cyber Act

an unauthorised, malicious, or criminal act or series of related unauthorised, malicious, or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.

### 8.10 Cyber Incident

- (a) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System or
- (b) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.

### 8.11 Data

information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.

### 8.12 Data Protection Law

all applicable data protection and privacy legislation, regulations in any country, province, state, territory or jurisdiction which governs the use, confidentiality, integrity, security and protection of personal data, and any guidance or codes of practice issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).

### 8.13 Deductible

the amount you have agreed to contribute towards each Claim made against you, including any costs we incur in accordance with 1.2 Defence of Claims and 2.2 Costs and Expenses, as shown on your Certificate of Insurance.

### 8.14 Documents

deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but shall not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

### 8.15 Dual Controls

- (a) any cheque payment or electronic money transfer from an account over which you have authority to operate receives prior approval by at least two approved signatories
- (b) the person reconciling your bank statements is not the same person that operates your bank accounts and
- (c) if you are required to maintain a trust account by law, it is independently audited on an annual basis.

### 8.16 Employee

- (a) a natural person who:
  - (i) acts under a contract of service with the company
  - (ii) is paid by wages, salary or commission and
  - (iii) you have the right to govern and direct in the performance of their service.
- (b) includes apprentices, trainees, casual, part-time, temporary and seasonal employees, but only while acting in that capacity.
- (c) does not include:
  - (i) agents, consultants, directors, independent contractors, on-hire labour or secondees, or
  - (ii) anyone excluded from the definition of 'Worker' under any workers' compensation legislation.

### 8.17 Extended Reporting Period

In Section 2:

the lesser of a period of 60 days from the expiry of this Policy or such time that you effect another professional indemnity policy.

### 8.18 Family Member

either a:

- (a) spouse or partner
- (b) parent, sibling or child, or
- (c) spouse's or partner's parent.

### 8.19 Funds

amounts representing money held in an account maintained by a person or entity at a financial institution, from which you are authorised by the person or entity to request the transfer, payment or delivery of an amount of money.

### 8.20 Investigation Costs and Expenses

legal costs and other expenses incurred by or on behalf of you or by us arising out of any legally compellable attendance by you at any official investigation, examination, enquiry, or inquiry in relation to the conduct of your Professional Services where such investigation, examination, enquiry, or inquiry may lead to a recommendation in respect of civil liability or civil proceedings which would be the subject of a Claim covered by this Policy.

'Investigation Costs and Expenses' does not include any fine, Penalty or order for the payment of monetary compensation.

## Definitions

### **8.21 Limit of Liability**

the applicable Limit of Liability specified on your Certificate of Insurance.

### **8.22 Money**

money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes. 'Money' does not include any cryptocurrency.

### **8.23 Named Insured**

the person or entity who buys this Policy, named on your Certificate of Insurance.

### **8.24 Occurrence**

In Section 1:

an event resulting in Personal Injury or Property Damage or Advertising Liability, which you neither expected nor intended.

The following count as one Occurrence only:

- (a) any Personal Injury or Property Damage or Advertising Liability caused by continuous or repeated exposure to substantially the same general conditions
- (b) Advertising Liability caused by the same injurious material or act, no matter the number or kind of media involved, frequency or repetition of publication or the number of Claimants.

### **8.25 Penalty**

In Section 2:

any monetary sum payable by you to any Regulatory Authority.

This definition does not apply to Exclusion 5.4 Fines, penalties and liquated damages.

### **8.26 Personal Injury**

- (a) death
- (b) injury, illness or disability, either bodily or mental
- (c) shock, fright and mental anguish
- (d) the effects of:
  - (i) false arrest, false imprisonment or malicious prosecution
  - (ii) trespass onto land, or eviction from land
  - (iii) defamation or disparagement
  - (iv) assault and battery.

## Definitions

We consider latent Personal Injury first happens on the day it was first medically diagnosed provided that it is first diagnosed during your Policy Period.

### **8.27 Policy**

this document, your Certificate of Insurance and any endorsement attached or intended to be attached to it, together with the Proposal/Application.

### **8.28 Policy Period**

the period of time, shown on your Certificate of Insurance, during which your insurance is in place. This might be called the Period of Insurance.

### **8.29 Pollution**

- (a) the discharge, dispersal, release, seepage, migration, or escape
- (b) of any solid, liquid, vapour, fumes, gas, or thermal irritant, contaminant, or waste
- (c) into or upon land, the atmosphere, or any water course or body of water.

### **8.30 Products**

any goods that have left your possession and control which you or the previous owners of your business have (or are deemed to have):

- (a) manufactured, grown, extracted, produced, processed, constructed, or installed
- (b) packaged, bottled, or labelled
- (c) repaired, serviced, or treated or
- (d) sold or distributed,

including any container other than a vehicle.

### **8.31 Professional Services**

In Section 2:

provision of professional advice or service in connection with your Business or Product.

### **8.32 Property**

In Section 2:

any tangible property that is not Money, Tangible Securities or Funds.



### 8.33 Property Damage

- (a) physical damage to tangible property, including any resulting loss of use of that property or
- (b) loss of use of tangible property caused by an Occurrence, which has not been physically damaged, lost or destroyed.

### 8.34 Proposal/Application

the Proposal/Application made by you to us containing particulars and statements which, together with other information provided by you, are the basis of this Policy and are considered as incorporated herein.

### 8.35 Regulatory Authority

In Section 2:

a person or entity appointed, constituted or acting under a delegation pursuant to any legislation for the purposes of enforcement of such legislation.

### 8.36 Retroactive Date

In Section 1:

The date, shown in the Certificate of Insurance, after which cover in respect of any Personal Injury or Property Damage or Advertising Liability may be granted. If no Retroactive Date is shown in the Certificate of Insurance, it will be the inception date of your original Policy Period.

In Section 2:

the date, shown in the Certificate of Insurance, after which cover in respect of a Claim made against you as a result of a breach of professional duty in the conduct of your Professional Services may be granted. If no Retroactive Date is shown in the Certificate of Insurance, it will be the inception date of your original Policy Period.

### 8.37 Senior Counsel

a barrister in active practice who is entitled to use the post-nominals KC, QC or SC in any one or more superior court in Australia or New Zealand.

### 8.38 Subsidiary

if the Named Insured is a company:

- (a) any entity legally recognised as your subsidiary
- (b) any entity over which you can exercise effective direction or control.

### 8.39 Tangible Securities

In Section 2:

all negotiable and non-negotiable instruments or contracts representing either Money or other property but does not include Money.

### 8.40 Territorial Limits

anywhere in the world subject to Exclusion 5.11 Territorial limits.

### 8.41 Verification Procedures

a method of authenticating the contents of a communication between you and:

- (a) an Employee
- (b) a third party with whom you have a genuine third-party relationship
- (c) your offices or
- (d) a bank, credit union, financial institution, or similar entity,

for the purpose of protecting the integrity of the communication or the genuineness of the instruction:

- (e) through a telephone call back procedure consisting of calling the telephone number of such requestor's organisation which is:
  - (i) held on file by you or
  - (ii) verifiable in the public domainor
- (f) where such instruction is in the form of an e-mail or mail or facsimile address, by verifying and ensuring that the genuine requestors' work e-mail or mail address is:
  - (i) held on file by you
  - (ii) verifiable in the public domain and
  - (iii) through a telephone call back procedure consisting of calling the telephone number of the requestor's organisation which is:
    - (A) held on file by you or
    - (B) verifiable in the public domain.

### 8.42 We, our, us

QBE Insurance (Australia) Limited, ABN 78 003 191 035, AFS Licence No. 239545. We are the underwriter of this Policy.

### 8.43 Wrongful Act

In Section 2:

an actual or alleged act or omission in the conduct of your Professional Services, such as:

- (a) breach of professional duty or trust
- (b) neglect or error or
- (c) misstatement,

but not conduct as a trustee.

### 8.44 You, Your, Insured

Includes:

- (a) the person or entity who buys this Policy, named on the Certificate of Insurance ('the Named Insured'). This is the only party to which we have contractual obligations

Third party beneficiaries:

- (b) To the extent applicable under Section 1 and Section 2 and subject to Clause 7.1 Acquisition of properties or companies:
  - (i) your Australian Subsidiaries, including those you divest during the Policy Period.
  - (ii) Your or your Australian Subsidiaries':
    - (A) directors, executive officers, Employees, volunteers, work experience students, partners and shareholders acting within the scope of their duties
    - (B) principals for liability for the acts or omissions of the Named Insured and its Australian Subsidiaries in their performance of work for those principals, subject to this Policy's extent of cover and Limit of Liability and only to the extent of the Named Insured's direct liability
    - (C) partners, joint venture partners, co-venturers or joint lessees for liability incurred as the partnership, joint venture, co-venture or joint lease, but only where you assume active control of, or are required to arrange insurance for, the partnership, joint venture, co-venture or joint lease
    - (D) office bearers and members of social and sporting clubs, canteen and welfare organisations, first aid, fire and ambulance services formed with your consent for liability arising from their duties as office bearers and members
    - (E) directors and senior executives for private work undertaken by your Employees for such directors or senior executives
    - (F) directors, executive officers and Employees and their accompanying Family Members on any commercial trip or function in connection with your Business
    - (G) Employee superannuation funds or pension schemes the Named Insured manages (or is managed on its behalf), including the trustees and directors of the corporate trustee of any these funds or schemes unless it has a corporate fund manager.

'You, Your, Insured' does not include the interest of any other person other than as described in this definition.

**Need help with a question or claim?**

Contact your financial service provider.

**QBE Insurance (Australia) Limited**

For enquiries, claims and customer service call your financial service provider.

QM9616-0123

