

# Management liability insurance for private companies

**QBE Insurance (Australia) Limited**

Policy wording



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## Introduction

We understand how important it is to be comfortable with your cover so we are glad you chose QBE to take care of your insurance. As the largest Australian owned general insurer and reinsurer, we have been taking care of the insurance needs of Australians since 1886. Safe, strong and secure, you can be confident you've made a great choice.

Inside, you will find the information you need to know about the Policy. We explain what the Policy covers, information about excesses and importantly, how to make a claim.

Remember, whether you call us for a quote, or to report a claim, or to change your details, you can rely on our friendly team to help you.

Thank you for making QBE your first choice.

## About this booklet

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

### For more information

Please take the time to read through this booklet and if you have any questions or need more information, please contact:

- your financial service provider.

### About QBE Australia

QBE Insurance (Australia) Limited is a member of the QBE Insurance Group (ASX: QBE). QBE Insurance Group is Australia's largest international general insurance and reinsurance group, and one of the top 25 insurers and reinsurers worldwide. The company has been operating in Australia since 1886 and continues to provide insurance solutions that are focused on the needs of policyholders.

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

## Important Information

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

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

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

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

## Duty of disclosure

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

### You do not have to tell us about any matter

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

### If you do not tell us

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

## Privacy

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

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

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

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

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

To obtain further information about our Privacy Policy or to request access to or correct your personal information, please e-mail: [compliance.manager@qbe.com](mailto:compliance.manager@qbe.com). To make a complaint e-mail: [complaints@qbe.com](mailto:complaints@qbe.com).

## The General Insurance Code of Practice

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

The Code aims to:

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

## Dispute resolution

We will do everything possible to provide a quality service to you. However, we recognise that occasionally there may be some aspect of our service or a decision we have made that you wish to query or draw to our attention.

We have a complaints and dispute resolution procedure which undertakes to provide an answer to your complaint within fifteen (15) working days.

If you would like to make a complaint or access our internal dispute resolution service please contact your nearest QBE office and ask to speak to a dispute resolution specialist.

## Policy Wording

This Policy is underwritten by QBE Insurance (Australia) Limited ABN 78 003 191 035, AFS Licence No. 239545 of Level 27, 8 Chifley Square, Sydney NSW 2000.

## Our agreement with you

This Policy is a legal contract between you and us. You pay us the premium and we provide you with the cover you have chosen as set out in the Policy, occurring during the period of insurance shown on your Policy Schedule or any renewal period.

The limits of cover applying to the cover selected by you and the amount of any excess that applies to your Policy, is shown on your Policy Schedule.

## Your Policy

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

Please check the Policy Schedule details to ensure it accurately states what you have insured. Be sure to check that the limits and sums insured are adequate.

## Paying your premium

You must pay your premium by the due date. If we do not receive your premium by the date, or if your payment is dishonoured, this Policy will not operate and there will be no cover.

## Words with special meaning

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

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

Word or term	Meaning
Application form	the written 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. This includes the initial application form and any renewal declarations or additional statements submitted to us.
Back pay	back pay arising from an order of reinstatement or re-employment, but will be limited to the amount of pay the company is legally required to pay an employee from the time of termination of employment to the time of reinstatement of employment.
Claim	any of the following first made during the period of insurance: <ol style="list-style-type: none"> <li>any legal, administrative or regulatory proceeding, whether civil or criminal, commenced against you for a wrongful act; or</li> <li>any written communication or demand, received by you alleging you have committed a wrongful act indicating an intention to claim; or</li> <li>any written communication received by you advising of a complaint against you in respect of a wrongful act to a legal, administrative or regulatory authority; or</li> </ol>

Word or term	Meaning
	<ol style="list-style-type: none"> <li>any investigation; or</li> <li>any extradition proceedings.</li> </ol>
Company	the company specified as the named insured in the Policy Schedule and will include all subsidiary companies.
Crisis	<p>any of the following events which first occurs during the period of insurance and which in the reasonable opinion of the chief executive officer (or equivalent) of the company has the potential to reduce the consolidated annual revenue of the company by more than 30% if left unmanaged:</p> <ol style="list-style-type: none"> <li>the company loses its intellectual property rights including but not limited to patents, trademarks and copyrights;</li> <li>the company loses a major customer, contract or credit facility;</li> <li>any product which is manufactured, produced, packaged or distributed by the company has a recall announced due to its potential for bodily injury or property damage;</li> <li>sudden and unforeseen bodily injury or death happening at the company's premises causing emotional distress to any director, officer, employee or customer of the company;</li> <li>discovery of unauthorised intrusion into the company's computer network or loss or theft of any of the company's computers containing commercial-in-confidence information or information governed by privacy laws; or</li> <li>commencement of a criminal investigation into any director or officer or employee of the company.</li> </ol>
Crisis costs	all reasonable and necessary fees, costs and expenses paid by the company for an independent external crisis management consultant for a period not exceeding thirty calendar days after the crisis first happens to mitigate the effects of the crisis on the company's consolidated annual revenue.
Defence costs	<ol style="list-style-type: none"> <li>all reasonable costs and expenses incurred by us or any insured person with our prior written consent; and</li> <li>investigation costs; and</li> <li>any premiums paid for insurance instruments or for bonds which are required in order to defend proceedings, institute an appeal or be released on bail but without any obligation to furnish or procure such insurance instruments or bonds.</li> </ol>
Director or officer	any natural person holding a management supervisory position or a director or officer, management committee member or member of the board of managers of the company, including the equivalent position in any other jurisdiction or a de facto director, alternate director or shadow director.
Employee	any natural person who acts under a contract of services with the company, is paid by wages, salary or commission and whom the company has the right to govern and direct in the performance of such service. Employee will include apprentices,

Word or term	Meaning
	<p>trainees, casual, part-time, temporary and seasonal employees, but only while that natural person is acting in their capacity as such.</p> <p>Employee does not include any natural person who is an agent, consultant, director, independent contractor, on-hire labour or secondees to the company or any insured person.</p>
Employment practices liability	<p>actual or alleged:</p> <ol style="list-style-type: none"> <li>wrongful dismissal, discharge or termination of employment;</li> <li>breach of oral or written or implied contract of employment;</li> <li>employment-related misrepresentation, discrimination, workplace harassment of any kind (whether sexual or otherwise) including the alleged creation or permission of harassing workplace environment;</li> <li>wrongful failure to employ or promote;</li> <li>wrongful deprivation of career opportunities, wrongful discipline, failure to grant tenure or negligent evaluation, failure to provide accurate references;</li> <li>employment-related invasion of privacy or defamation;</li> <li>wrongful infliction of emotional distress, or retaliation;</li> <li>breach of duty whether arising under statutory law or common law or otherwise</li> </ol> <p>committed by or on your behalf in connection with the employment by the company of any current, former or prospective employee.</p>
Employment related benefit	<ol style="list-style-type: none"> <li>any securities or any entitlement or right to securities under any employee plan of any description;</li> <li>any participation in any employee plan of any description;</li> <li>any severance or redundancy payments or entitlements;</li> <li>any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;</li> <li>any bonus or incentive payments, or any entitlement or right under a bonus or incentive plan (which, for the avoidance of doubt, does not include any payments, entitlement or right under any commission scheme);</li> <li>any payments or contributions in respect of any provident, benefit, superannuation, pension or retirement fund, or</li> <li>any other account, fund, scheme or plan intended to provide benefits, in whole or in part, at retirement or a particular age, or on the happening of a particular event</li> </ol>
Extended reporting period	Subject to such period being exercised, the period following the period of insurance where notice may be given to us of a claim that would have been notified to us prior to the expiry of the period of insurance.
External administrator	any externally appointed trustee or other person administering a compromise or arrangement between the company and someone else, receiver,

Word or term	Meaning
	receiver and manager, liquidator, administrator, mortgagee in possession or the like or any employees of such.
Extradition proceedings	a request for extradition of an insured person or a warrant for arrest in respect of an insured person or other proceedings under the provisions of the <i>Extraditions Act 1988</i> or similar legislation.
Fidelity investigation costs	all reasonable independent third party fees, costs and expenses (not including any remuneration of any insured person or employee of yours) incurred directly with respect to preparing any claim with respect to the 'fidelity' insuring clause.
Independent lawyer	<ol style="list-style-type: none"> <li>where the claim is in a Commonwealth jurisdiction, a Senior Counsel agreed upon by you and us or failing such agreement to be nominated by the chairman for the time being of the Bar Council of New South Wales; or</li> <li>where the claim is in another jurisdiction, a lawyer of more than ten (10) years experience agreed upon by you and us or failing such agreement to be nominated by the chairman of the local law society.</li> </ol>
Insured person	<ol style="list-style-type: none"> <li>any natural person who is, was or during the period of insurance becomes a director or officer including any non-executive director;</li> <li>the director's or officer's estate, heirs, legal representatives or assigns, in the event of his death or incompetence or bankruptcy, but only for a wrongful act or conduct performed by that director or officer in their capacity as such;</li> <li>the lawful spouse or domestic partner (including same sex partner(s)) of any director or officer provided that the claim is to enforce a judgment against that director or officer for a wrongful act or conduct performed in their capacity as such;</li> <li>any natural person acting as a shadow director of the company.</li> <li>any employee of the company not appointed by an external administrator to the company: <ol style="list-style-type: none"> <li>whilst acting in a managerial or supervisory capacity; and</li> <li>named as a co-defendant with any director or officer of a company in any claim in which the employee is alleged to have participated or assisted in the commission of any wrongful act.</li> </ol> </li> </ol>
Investigation	<ol style="list-style-type: none"> <li>any written notice served on you requiring the insured person to attend an interview or provide documentation or otherwise co-operate in an official investigation, where the investigation directly concerns the conduct of the insured person (acting in their capacity as an insured person) or of the affairs of the company.</li> <li>a raid or on-site visit to any company by an official body that involves the production,</li> </ol>

Word or term	Meaning
	<p>review, copying or confiscation of records, or the interview of any insured person; or</p> <p>3. an internal enquiry by the company into the affairs of the company or an insured person requested by a regulator or official body (except for employment practices related bodies).</p> <p>For the avoidance of doubt, investigation will not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulated entity, conducted in a company's or regulator's normal review or compliance process.</p>
Investigation costs	all reasonable fees, costs and expenses (but not including any remuneration of any insured person or employee of the company) incurred with respect to preparing any written notice or reports to any official body or directly attributable to witness attendance.
Loss	<ol style="list-style-type: none"> <li>1. compensatory damages and costs awarded against you by a court or tribunal empowered to do so; or</li> <li>2. exemplary or aggravated damages for defamation awarded against you by a court or tribunal empowered to do so; or</li> <li>3. multiple, exemplary, aggravated or punitive damages (provided these are in addition to compensatory damages) awarded against you by a court or tribunal, where indemnity for this is lawful; or</li> <li>4. settlements compromising any actual or anticipated legal proceedings made with our prior written consent; or</li> <li>5. defence costs incurred with our prior written consent.</li> </ol>
Named insured	is the named insured specified in the policy schedule which is also the company.
Non-executive director	any natural person who serves as a non-executive director.
Outside company	<p>any company or not-for-profit organisation that is not a company as defined by this policy, provided that such outside company:</p> <ol style="list-style-type: none"> <li>1. is not incorporated or domiciled within the United States of America; or</li> <li>2. does not have its securities listed on a security exchange or market;</li> </ol> <p>unless listed by endorsement as an outside company.</p>
Period of insurance	the period shown as such on the policy schedule attaching to this policy.
Policy	this document, the policy schedule and any endorsements attaching to this document or the policy schedule.
Pollutant	any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste. Waste is deemed

Word or term	Meaning
	to include materials to be recycled, reconditioned or reclaimed. Legionella bacteria are deemed not to be pollutants for the purpose of this insurance.
Pollution	<ol style="list-style-type: none"> <li>1. the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of pollutants at any time; or</li> <li>2. any cost, expense, claim or suit arising out of any <ol style="list-style-type: none"> <li>(a) request, demand or order as a result of actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of pollutants; or</li> <li>(b) demand that you test for, monitor, clean up, remove, contain, treat, detoxify, or neutralise or in any way respond to, or assess the effects of pollutants.</li> </ol> </li> </ol>
Securities	any bonds, debentures, notes, options, preference shares, shares, stocks, promissory notes, warrants or any other equity or debt securities issued or given by the company or outside company.
Subsidiary company	<ol style="list-style-type: none"> <li>1. any company in respect of which the company (either directly or indirectly through one or more of its subsidiary companies): <ol style="list-style-type: none"> <li>(a) controls the composition of the board of directors; or</li> <li>(b) controls more than half the voting power at a general meeting of shareholders; or</li> <li>(c) holds more than half of the issued share capital (regardless of class of share),</li> </ol> <p>on or before the inception date of this policy.</p> </li> <li>2. any company as defined above (other than any company part of whose securities are issued or offered to the public or otherwise traded on a recognised exchange anywhere in the world) which is acquired or created on or subsequent to the inception date of this policy and of which the turnover for the prior twelve months does not exceed 50% of the company's turnover for the same period.</li> <li>3. any other company that we have given prior written consent to for its inclusion as a subsidiary company under this policy.</li> </ol>
Takeover or merger	<ol style="list-style-type: none"> <li>1. any sale of the majority of the issued share capital of the company; or</li> <li>2. the company's merger with or acquisition by another entity such that the company is not the surviving entity and no longer: <ol style="list-style-type: none"> <li>(a) controls the composition of the board of directors; or</li> <li>(b) controls more than half the voting power; or</li> <li>(c) holds more than half of the issued share capital.</li> </ol> </li> </ol>
We, our, us	QBE Insurance (Australia) Limited ABN 78 003 191 035.

Word or term	Meaning
Wrongful act	any actual or alleged wrongful act or omission committed by: <ol style="list-style-type: none"> <li>an insured person solely in their capacity as an insured person.</li> <li>the company.</li> </ol> <p>Wrongful act includes employment practices liability.</p>
You, your, yours	the company and the insured persons.

## Claims made and notified

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 period of insurance.

The Policy does not provide cover in relation to:

- acts, errors or omissions actually or allegedly committed prior to the retroactive date of the Policy (if such a date is specified);
- claims made after the expiry of the period of insurance even though the event giving rise to the claim may have occurred during the period of insurance;
- claims notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy;
- claims made, threatened or intimated against you prior to the commencement of the period of insurance;
- facts or circumstances of which you first became aware prior to the period of insurance, and which you knew or ought reasonably to have known had the potential to give rise to a claim under this Policy; and
- claims arising out of circumstances noted on the proposal form for the current period of insurance or on any previous proposal form.

Where you give notice in writing to us of any facts that might give rise to a claim against you as soon as reasonably practical after you become aware of those facts but before the expiry of the period of insurance, you may have rights under section 40(3) of the *Insurance Contracts Act 1984 (Cth)* to be indemnified in respect of any claim subsequently made against you arising from those facts notwithstanding that the claim is made after the expiry of the period of insurance. Any such rights arise under the legislation only. The terms of the Policy and the effect of the Policy is that you are not covered for claims made against you after the expiry of the period of insurance.

## Insuring clauses

We will provide you with the cover you have chosen as set out in the policy, for claims occurring during the period of insurance shown on your policy schedule, arising from the following insuring clauses:

### Directors' and officers' liability

We will, subject to the terms, conditions, limitations and exclusions of this Policy, pay on behalf of an insured person in respect of their liability for loss arising solely from a claim, except to the extent that the company has indemnified the insured person in respect of that claim.

### Company reimbursement

We will, subject to the terms, conditions, limitations and exclusions of this Policy, pay on behalf of the company, to the extent it has lawfully indemnified an insured person for a claim otherwise insured under the insuring clauses for directors' and officers' liability or outside company directors.

## Company liability

We will, subject to the terms, conditions, limitations and exclusions of this Policy, pay on behalf of the company in respect of its liability for loss arising solely from a claim made against the company.

## Employment practices liability

We will, subject to the terms, conditions, limitations and exclusions of this Policy, pay on your behalf in respect of your liability for loss arising as a result of a claim made by a past, present or future employee or prospective employee for employment practices liability.

## Fidelity

We will, subject to the terms, conditions, limitations and exclusions of this Policy pay the company for:

- loss of money or property (including money or property in the care, custody or control of the company and for which it is legally liable) as a result of a fraudulent or dishonest act committed by an employee (acting alone or in collusion with others) with the intent of causing a loss to the company or an improper personal financial gain for themselves; and
- fidelity investigation costs, up to a maximum of 20% of the fidelity limit of indemnity; such amount will form part of and not in addition to the limit of indemnity .

Our maximum liability under this insuring clause will not exceed the fidelity limit of indemnity specified in the Policy Schedule. Where there is no reference to fidelity cover specified in the Policy Schedule, there is no cover under this insuring clause.

## Outside company directors

We will, subject to the terms, conditions, limitations and exclusions of this Policy, pay on behalf of an insured person in respect of their liability for loss incurred by them while acting in their capacity as director or officer of any outside company at the request, order or direction of the company, and arising solely from a claim but only in excess of:

- any valid and collectible insurance policy obtained by the outside company; or
- any indemnification provided by the outside company.

## Extensions

We will, subject to the terms, conditions, limitations and exclusions of this policy, extend the cover under this Policy on the following basis.

All extensions are subject to the sub-limits specified in the Policy Schedule and will form part of and not in addition to the limit of indemnity specified in the Policy Schedule, unless specified otherwise in the respective clause.

### Additional limit for non-executive directors

For claims made against a non-executive director otherwise covered by this Policy but for the limit of indemnity under this policy being exceeded or eroded, we will provide an additional limit of indemnity up to the amount specified in the Policy Schedule to pay on behalf of such non-executive director.



Such additional limit will be payable provided that:

1. the limit of indemnity; and
2. all other applicable insurance whether written as excess over the limit of indemnity of this Policy or otherwise; and
3. all other indemnification for such claim available to such non-executive director, whether from the company or otherwise

have been exhausted.

### Advancement of defence costs

In respect of any claim covered by this Policy, we will, where we have given prior consent, advance defence costs prior to the final settlement of a claim. The advancement of defence costs will:

1. be subject to the application of the deductible specified in the Policy Schedule;
2. not exceed the limit of indemnity or sub-limit as specified in the Policy Schedule; and
3. be repayable to us within thirty days by the insured persons or the company severally according to their respective interests in the event and to the extent that it is determined that you were not entitled under this Policy to payment of such defence costs, or it has been determined by a court, or if we determine that a claim is not covered under this Policy.

### Civil fines and penalties

The meaning of loss is extended to include civil fines and penalties awarded against an insured person where insurable by the law and regulation applicable to us and to the claim.

### Continuous cover

We will, notwithstanding the 'prior or pending litigation' exclusion and 'claims made and notified insurance' notice, to indemnify you for any claim made against you where that claim arises from a fact or circumstance which should have been, but was not, notified to us under an earlier policy under which we were indemnifying you, provided that we have continuously insured you between the date when that circumstance should have been notified and the date the claim was actually notified.

### Crisis costs

We will, subject to the terms, conditions, limitations and exclusions of this Policy, pay on behalf of the company the crisis costs arising from a crisis that occurs during the period of insurance.

### Emergency defence costs

Notwithstanding the 'advancement of defence costs' extension, if our prior written consent cannot be reasonably obtained before defence costs are incurred with respect to any claim, we will give retrospective consent to your incurring of defence costs up to, in the aggregate, fifteen per cent of the limit of indemnity as specified in the Policy Schedule.

### Extended reporting period

1. If we or the company do not renew this Policy, you will be entitled to the extended reporting period specified in the Policy Schedule if:
  - (a) you give us written notice that you wish to exercise your right under this extension;
  - (b) you pay the additional premium specified in the Policy Schedule within thirty days immediately following the expiry of the period of insurance;
2. your right under the 'extended reporting period' extension is not available, and any 'extended reporting period' exercised under the extension will expire, if:
  - (a) a takeover or merger of the company occurs, however, if a takeover or merger of the company occurs, we will, at the written request of the company consider providing such cover, but we will be entitled to fully assess the exposure and issue appropriate terms and conditions; or

- (b) you effect management liability or directors' and officers' liability insurance, or similar insurance, with any other insurer; or
  - (c) an external administrator is appointed to the company.
3. once exercised:
    - (a) the 'extended reporting period' is non-cancellable; and
    - (b) any claim reported during the 'extended reporting period' will be treated as if it was reported during the period of insurance; and
    - (c) the 'extended reporting period' does not apply to the fidelity cover.

### Incurring defence costs

Subject to the 'emergency defence costs' extension, we will only be liable to pay defence costs if we have given our prior written consent to do so. Where the same or a similar claim is made against more than one insured person or against the company and any insured person, the same lawyers will be appointed to defend all of them unless there is conflict of interest between them.

### Infringement of intellectual property rights

We will, subject to the terms, conditions, limitations and exclusions of this Policy, pay on behalf of an insured person any sums due in respect of claims arising against an insured person from any unintentional infringement of intellectual property rights which includes any unintentional infringement of copyright, trademark, registered design or patent, or any plagiarism.

### Investigation costs

We will pay investigation costs for any investigation, regardless of whether a wrongful act has been committed or not.

### OH&S defence and investigation costs

Notwithstanding the 'bodily injury and property damage' exclusion, we will, with our prior consent, indemnify:

1. any insured person in respect of defence costs incurred in defending a claim arising from an actual or alleged breach of occupational health and safety law; or
2. the company in respect of defence costs incurred in defending a claim arising from an actual or alleged breach of occupational health and safety law.

### Pollution defence and investigation costs

Notwithstanding the 'pollution' exclusion, we will, with our prior consent, indemnify:

1. any insured person in respect of defence costs incurred in defending a claim arising out of sudden and accidental pollution; or
2. the company in respect of defence costs incurred in defending a claim arising out of sudden and accidental pollution.

### Prosecution costs

We will pay, where permitted by law, the reasonable legal costs, charges, fees, expenses and advances in respect of the same (other than salaries, commissions, expenses or other employment related benefits of insured persons), incurred by an insured person with our prior written consent to oppose the grant of, or the appeal against or seek the discharge or revocation of:

1. an order to disqualify or temporarily or permanently prohibit an Insured person from holding office as a director or officer; or
2. an interim or interlocutory judicial order;

3. any proceeding concerning the extradition of any insured person, any judicial order entered against an insured person in connection with a claim (but not to include a final order made in the disposition or adjudication of such claim); or any proceeding imposing:
  - (a) confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such insured person;
  - (b) a charge over real property or personal assets of such insured person;
  - (c) temporary or permanent prohibition on such insured person from holding the office of or performing the function of a director or officer;
  - (d) restriction of such insured person's liberty to a specified domestic residence or a confinement of an insured person in secure custodial premises, operated by or on behalf of a governmental or judicial agency, either without charge or without a judicial finding of culpability or liability in that claim;
  - (e) deportation of an insured person following revocation of otherwise proper, current and valid immigration status for any reason other than such insured person's conviction of a crime.
4. In the event of the assets of an insured persons being confiscated, suspended or frozen by an interim or interlocutory order in the connection with a claim as described above, we will further pay schooling, housing, utilities, and personal insurance costs or fees directly to the provider of such services to the insured person.

In event of 4. above any such expenses will only be payable provided that any personal allowances directed by the court to meet such expenses has been exhausted. Such expenses will remain payable after thirty (30) days following the event and payable for up to a period of twelve (12) months.

Our liability under 4. above will not exceed \$100,000 any one claim and in the aggregate and will form part of and not in addition to the limit of indemnity specified in the Policy Schedule.

### Public relations expenses

We will pay the reasonable fees and related expenses of a public relations firm or consultant, crisis management firm or law firm, which you may, in the reasonable exercise of your discretion, engage with our written consent, in order to prevent or limit adverse effects or negative publicity which it is anticipated may arise from a claim during the period of insurance.

### QBE legal panel

1. You may contact the QBE professional liability legal panel for a single complimentary session of verbal advice in relation to matters which are covered or potentially covered under this Policy; and
2. in the event of a claim arising from the matter we agree to the appointment of any professional liability legal panel member firm to act on your behalf in respect of any claim notified to us provided there is no existing or potential conflict of interest, in which case we will refer you to another member of the panel.

The terms, conditions and contact details for the QBE professional liability legal panel can be found on our website at [www.qbe.com](http://www.qbe.com).

### Retired directors and officers

We will indemnify any retired director or officer for claims made against, or involving, such persons during the period of eighty-four months immediately following the expiry of the period of insurance, but only to the extent that such claims are for wrongful acts occurring prior to the effective date of termination or non-renewal. Provided that:

1. this policy is not renewed or replaced with any other policy affording directors and officers liability or management liability cover or insurance similar to the cover provided by this policy; or
2. an 'extended reporting period' extension is not exercised; or
3. a take-over or merger of the company has not taken place; or
4. an external administrator has not been appointed; or
5. this Policy has not been, is to be, or will be cancelled by us during the period of insurance.

### Statutory liability

The definition of loss is extended to include strict liability fines and penalties awarded against you, where insurable by the law and regulation applicable to us and to the claim, in respect of claims alleging a breach of Australian or New Zealand:

1. occupational health and safety legislation; or
2. pollution legislation.

This extension does not cover claims arising from any intentional, wilful, reckless, or deliberate wrongful act.

### Superannuation trustees liability

The definition of insured person is extended to include any insured person in their capacity as a trustee of any pension or superannuation scheme, health and welfare plan, share option scheme or plan, or any other employment related benefit, social benefits system or trust programme established or maintained for the sole benefit of the company's employees.

### Tax liability

The 'directors' and officers' liability' insuring clause is extended to insure any claim against an insured person for their personal liability for unpaid taxes or superannuation contributions of the company where the company has become insolvent.

This extension does not cover any liability which arises from the wilful intent of any insured person(s) to breach any statutory duty governing the payment of taxes and will only apply to unpaid tax liabilities of the company.

## General exclusions

These general exclusions apply to all sections of this Policy.

### Bodily injury and property damage

For any actual or alleged bodily or psychological injury, sickness, disease or death of any person or damage to or destruction of any tangible property, including loss of use thereof, except that this exclusion will not apply to emotional distress or mental anguish brought as part of a claim arising out of any employment practices liability.

### Director employment practices claims

Made against the company by any director or officer of the company arising from an actual or alleged employment practices liability.

### Dishonesty

Directly or indirectly arising out of any actual dishonest, fraudulent or malicious act of any insured person except that this exclusion only applies if it is established through a final adjudication or formal written admission in the relevant claim that such conduct did in fact occur.

### Non-covered acts

Directly or indirectly arising out of wrongful acts, or any investigation:

1. prior to the retroactive date specified in the Policy Schedule;
2. after the date of commencement of the winding up of, or an external administrator being appointed to the company or any outside company;
3. after the date of a takeover or merger; or
4. prior to the date any subsidiary was acquired by the company; or
5. unless otherwise agreed by us in writing.

### Personal gain

Directly or indirectly arising out of any insured person gaining any personal gain or profit or advantage or receiving any remuneration to which they are not legally entitled except that this exclusion only applies if it is established through a final adjudication or formal written admission in the relevant claim that such conduct did in fact occur.

### Pollution

Directly or indirectly arising out of pollution of any sort.

### Prior or pending litigation

Directly or indirectly arising out of the circumstances underlying any claim or any legal, administrative or regulatory proceedings against you first made or commenced prior to the period of insurance.

### Professional services

For any actual or alleged breach of any professional services, except that this exclusion will not apply to any claims alleging a failure to supervise any employee of the company.

### Sanctions

You are not insured under any section of this Policy where a claim payment breaches any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America.

### Stock offerings

Directly or indirectly arising out of any:

1. public or private offer, invitation, sale or issue of securities or any rights to securities;
2. prospectus, information memorandum or any similar document in relation to:
  - (a) securities or the right to any securities;
  - (b) the divestment, sale or transfer of the company or part of the company;
3. share buy-back or the repurchase or offer to repurchase any securities or rights to any securities;
4. act, error, omission, misstatement, misleading statement, neglect, breach of duty, or breach of trust in relation to 1., 2. or 3. above

### United States of America

Brought under the law or jurisdiction of the United States of America or any of its territories or protectorates.

## Company exclusions and limitations

This policy does not cover claims:

### Anti-competitive conduct

Made against the company directly or indirectly arising out of any actual or alleged anti-competitive conduct.

### Breach of patent claims

Made against the company directly or indirectly arising out of any actual or alleged breach of any patent.

### Breach of contract

Made against the company directly or indirectly arising out of any actual or alleged breach of contract, except that this exclusion will not apply to any employment practices liability.

### Company versus insured persons

Brought by or on behalf of the company; except that this exclusion will not apply to any claim:

1. in respect of defence costs; or
2. brought by or at the direction of an external administrator being appointed to the company; or
3. in the form of a shareholder derivative action made without your procurement or instigation.

## Employment practices liability exclusions and limitations

This policy does not cover claims:

### Employment practices claims

1. directly or indirectly out of a breach of an express obligation of yours:
  - (a) to make any payments (including any employment related benefits); or
  - (b) pursuant to any procedural or notification requirements in the event of termination of employment;

whether such obligation arises under statute, regulation, award, contract of employment (including any arrangement or agreement collateral to any contract of employment) or any industrial, workplace or enterprise agreement or otherwise. However, this exclusion will not apply to any back-pay arising from such a claim.

2. any loss which constitutes punitive, aggravated or exemplary damages or fines or penalties imposed by law, including but not limited to civil penalties;
3. any loss which constitutes any costs incurred by you to modify any building, premises, fixtures, fittings, plants, equipment or other property in order to make same more accessible or accommodating to any insured person;
4. any loss which constitutes the costs of compliance with any order for, grant of, or agreement to provide injunctive or non-pecuniary relief other than defence costs arising from such Employment practices liability;
5. any Employment related benefits.

## Fidelity exclusions and limitations

This policy does not cover claims or loss under the 'fidelity' insuring clause:

### Consequential loss

Directly or indirectly arising out of any consequential or indirect loss.

### Director and shareholder dishonesty

Involving a fraudulent or dishonest act by, or complicity in a dishonest or fraudulent act by a director or shareholder owning more than 5% of the company.

## Geographical limits

Arising out of any dishonest or fraudulent act that occurred outside of Australia or New Zealand.

## Intellectual property

Directly or indirectly arising out of the actual or alleged theft of confidential information or intellectual property.

## Knowledge of previous dishonest acts

Involving any employee who has previously committed, or was suspected by a director or officer of having previously committed, a dishonest or fraudulent act. However, this exclusion shall only apply for claims or loss occurring after such knowledge.

## Non-covered acts

For any dishonest or fraudulent act:

1. committed prior to the date when you first purchased fidelity insurance; or
2. discovered prior to the period of insurance; or
3. discovered more than thirty days after expiration of the period of insurance.

## Proof of loss

Where the proof of loss is solely dependent on an inventory, stock-take or profit and loss reconciliation.

## General conditions

These general conditions apply to all sections of this Policy.

## A claim may be refused

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

## Applicable law

This Policy will be governed by and interpreted in accordance with the laws of the Commonwealth of Australia and the jurisdiction of the court in the state where this policy was issued.

## Alteration and assignment

No change in, modification of, or assignment of interest under this Policy will be effective except when made by a written endorsement to this Policy authorised by us.

## Cancelling your Policy

1. The named insured may cancel this Policy at any time by notifying us in writing, and we will allow a pro-rata refund of premium for the unexpired period of insurance, unless a claim or circumstance has been notified to us during the period of insurance in which case no premium will be refunded.
2. We may cancel this Policy in accordance with the relevant provisions of the *Insurance Contracts Act 1984* (Cth).

## Changing your Policy

The named insured may make a change to this Policy, the change becomes effective when:

- we agree to it; and
- we give the named insured a new Policy Schedule detailing the change.

## Confidentiality

You may disclose that you have paid or agreed to pay a premium in respect of a contract insuring all directors' and officers' against a liability. You will not otherwise disclose the existence of this Policy, the nature of the liability indemnified, the limit of indemnity or the amount of the premium paid, to any third party, except to the extent that:

1. such disclosure is made to a professional adviser; or
2. you are required by law to do so; or
3. we have consented, in writing, to such disclosure.

## Consent

Where our prior written consent is required, we will not unreasonably delay or withhold such consent.

## Deductible

1. Where a claim is made under this Policy by the company under the 'company reimbursement' or 'company liability' insuring clauses, we will only indemnify the company for payments in excess of the amount specified in the Policy Schedule as the deductible. The deductible will be applied once to each and every claim.
2. Where a claim is made under this Policy by an insured person under the 'directors' and officers' liability' or 'outside company directors' insuring clauses and the company could have indemnified the insured person under the applicable general law, but does not do so, the company must reimburse us for any indemnity paid by us up to the amount of the deductible specified in the Policy Schedule. However, the company will have no such obligation where its failure to indemnify the insured person is due solely to its insolvency.
3. Where a claim is made under this Policy under the 'fidelity' insuring clause, we will only indemnify the company for payments in excess of the amount specified in the Policy Schedule as the deductible. The deductible will be applied once to each and every claim.

## Limit of indemnity and sub-limits

1. The amount specified in the Policy Schedule as the limit of indemnity is, subject to the additional limit available under the 'additional limit for non-executive directors' extension, the maximum payable by us under the Policy in respect of any one claim and in the aggregate during the period of insurance irrespective of the number of:
  - (a) claims payable under this Policy;
  - (b) employment practices liability claims;
  - (c) insured parties entitled to indemnity;
  - (d) Insured sections or covers within the insured sections under which claims are made under this Policy; or
  - (e) wrongful acts.
2. Any sub-limits specified in the Policy Schedule, except under the 'additional limit for non-executive directors' extension, will be part of and not in addition to the limit of indemnity, and each sub-limit is an aggregate amount for the period of insurance. If more than one sub-limit is applicable to any one claim then the highest single sub-limit only applies. If any sub-limit or the 'additional limit for non-executive directors' exceeds the limit of indemnity, then the limit of indemnity will prevail.
3. The amount specified in the Policy Schedule under the 'additional limit for non-executive directors' extension, will be the maximum payable by us in respect of any one claim and in the aggregate during the period of insurance irrespective of the number of:
  - (a) claims made; or
  - (b) claims made under this policy; or

- (c) non-executive directors entitled to indemnity under this policy; or
- (d) wrongful acts.

and is inclusive of all defence costs and other amounts payable under this policy

4. The limit of indemnity will not be increased by purchase of any 'extended reporting period'.

### Multiple claims

1. All causally connected or interrelated employment practices liability, investigations, or wrongful acts jointly constitute a single claim under this policy which will be deemed to have occurred on the date of the earliest employment practices liability, investigation, or wrongful act.
2. Where a single employment practices liability, investigation, or wrongful act or series of causally connected or interrelated employment practices liability, investigations, or wrongful acts give rise to more than one claim, all such claims will jointly constitute one claim which will be deemed to have been made at the time the first claim was made.

### Non-disclosure

We may reduce our liability under this policy to nil in the case of fraudulent non-disclosure or misrepresentation by you.

### Notice

The company specified as the named insured in the Policy Schedule will act on behalf of all insured parties in all matters with respect to this policy except in the case of a claim in which it has a material conflict of interest with an insured party where it will have no such authority and that insured person will be entitled to communicate directly with us. In the event of a conflict of interest between insured parties, we will be under no obligation to communicate to any insured party our position with regard to any other insured party.

### Order of payments

In the event of any claims which are reasonably likely to exceed the limit of indemnity, we will:

1. first pay any loss under the insuring clauses for directors' and officers' liability and 'outside company directors' insuring clauses;
2. then pay any loss under the 'company reimbursement' insuring clause paid by the company on behalf of any insured person; and
3. then pay any other loss incurred by the company.

The insolvency of the company will not relieve us of any of our obligations to prioritise payment under this Policy.

### Other insurance

If there is any other more specific valid and collectible insurance that is available to you in respect of a claim, other than insurance that is specifically specified to be in excess of this policy, then the insurance afforded by this policy will be in excess of and will not contribute to such other insurance.

### Preventing our right of recovery

If you have agreed not to seek compensation from another person who is liable to compensate you for any loss, damage or liability which is covered by this Policy, we will not cover you under this Policy for that loss, damage or liability.

### Policy period and premium

1. The Policy provides insurance as described in this booklet for the period of insurance provided that the total premium specified in the Policy Schedule is paid to and accepted by us.
2. The premium is deemed paid and accepted on receipt by us or the intermediary appointed to place this insurance with us.

3. If the premium is not paid and accepted by the payment date we may treat this Policy as never having worked and in so doing will have no liability to indemnify any claim or circumstance already notified under the policy.
4. The payment to the named insured specified in the Policy Schedule of any return premium that may be payable under or in respect of this Policy will satisfy our obligation to return such premium.

### Severability

1. The completion of the application form will be construed as a separate application for insurance under this Policy by each insured party. No statements in the application form or knowledge possessed by an insured person will be imputed to any other insured person.
2. For the purpose of determining the applicability of the exclusions and limitations in the 'general exclusions and limitations', 'employment practices liability exclusions and limitations', 'company exclusions and limitations' and the 'fidelity exclusions and limitations' sections;
  - (a) the act or knowledge of an insured person will not be imputed to any other insured person.
  - (b) The act or knowledge of the chairman, chief executive officer, chief operating officer, legal counsel (or equivalent positions) of the company will be imputed to the company.

## Claims

The following conditions apply with respect to any claim under this policy. If you do not comply with such conditions, we may refuse payment of each and every claim affected in whole or in part, as applicable, and, if any payment on account of any such claim has already been made, you will repay immediately all such payments to us.

### When to notify

1. You must give us written notice as soon as practicable of any claim during the period of insurance, and any extended reporting period that may apply.
2. You must at any time during the period of insurance give us written notice of any circumstances that might reasonably be expected to give rise to a claim.

### Who to notify

Notice of any claim or circumstances that may lead to a claim must be given in writing to us, and delivered to:

The Claims Manager  
Professional Liability Claims Department  
QBE Insurance (Australia) Limited  
60 Station Street, Parramatta, NSW, 2150

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

### What to notify

Notice given of a circumstance must include reasons for the anticipation of a claim, with full particulars of the circumstances, dates and persons involved.

### Admission and settlement

You must not admit liability, or attempt to settle or make any admission with respect to any claim without our written consent.

### Allocation

If a claim is made against a party entitled to cover under this policy in respect of loss covered by this policy together with other loss that is not covered by this policy or a claim is made against both a party entitled to cover and a party who is not so entitled, then the following sub-paragraphs will apply:

1. we will pay only such amount as is just and equitable having regard to established judicial allocation principles of the loss covered by this policy compared to other loss which is not covered by this policy

and of the party entitled to cover compared to the party not so entitled;

2. the insured person(s) or where applicable, the company and us will use our best efforts to agree this amount; and
3. in default of an agreement, this amount will be determined by an independent lawyer in accordance with the principles set out in item 1. above. The decision of the independent lawyer will be final and binding on both you and us.

### **Conduct of defence**

1. Unless you elect for us to conduct the defence in writing, it will be solely your obligation to investigate any claim, or circumstance notified, and to undertake the conduct of any proceedings in connection with any claim.
2. In the event that you conduct the defence we will retain the right, but not the obligation, to take over the investigation, defence, mitigation or settlement of any such claim on your behalf.

### **How Goods and Services Tax affects any payments we make**

There may be other taxation implications affecting you, depending upon your own circumstances. We recommend that you seek professional advice.

### **Information and assistance**

You must disclose at your own expense to us all relevant information and provide any assistance we may reasonably require to enable us or our agents to investigate any claim, investigation or circumstance notified. You must also allow us to effectively associate in the defence, mitigation or settlement of any claim.

### **Legal opinion**

We will not require you to contest any claim unless the legal opinion of an independent lawyer, (to be paid for by us) advises that such claim should be contested having given full consideration to:

1. the financial implications, damages and costs likely to be recovered by the claimant;
2. the likely defence costs;
3. the prospects of you successfully defending the claim; and
4. in respect of a criminal or regulatory claim, the reputation of the company.

### **Subrogation**

You will not waive any rights of recourse or recovery against any other person relating to a covered claim under this insurance and will assist us in all respects in exercising such rights if requested to do so by us. In the event of any payment made under this policy, we will be subrogated to the extent of such payment to all your rights of recovery, and you must execute all papers required and do everything necessary to secure and preserve such rights, including the execution of documents necessary to enable us to effectively bring proceedings in your name.

**QBE Australia**

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This policy is underwritten by QBE Insurance (Australia) Limited  
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