

**New South Wales Barristers  
Approved Indemnity Insurance with Optional  
Public Liability Extension**

# New South Wales Barristers Approved Indemnity Insurance with Optional Public Liability Extension

## 1. INSURING CLAUSE

1.1 The proposal, schedule, definitions, provisos, exclusions, conditions and endorsements to this Contract of Insurance shall constitute one contract of insurance and are to be read together. Any word or expression to which a specific meaning has been given in any part shall bear that meaning in every other part unless this Contract of Insurance specifically provides otherwise. In this contract, the singular includes the plural and vice versa. Headings wherever appearing in this Contract of Insurance do not form part thereof but are used solely for the purpose of identification.

1.2 The person named in the schedule herein (hereinafter called "the Insured") has made to the Insurer a written proposal and declaration, bearing the date stated in the schedule and containing particulars and statements which it is hereby agreed are the basis of this contract.

### 1.3 Legal Liability

The Insurer agrees, subject to payment of the Premium and subject to the terms, conditions and limitations of this Contract of Insurance, to indemnify the Insured up to an amount not exceeding the Sum Insured against each and every Loss to the Insured whenever occurring and arising from:

#### Claims

1.3.1 any Claim first made against the Insured during the Period of Insurance and reported to the Insurer during the Period of Insurance, in respect of any:

Civil Liability

a) civil liability incurred in connection with the Practice; or

Conduct of Employees

b) liability arising from the conduct of any Employee of the Insured in connection with the Practice; or

Fraud and dishonesty of Employee

c) dishonest, fraudulent, criminal or malicious act or omission of an Employee of the Insured in connection with the Practice; or

#### Disciplinary Proceedings

1.3.2 any Disciplinary Proceedings first notified to the Insured during the Period of Insurance and reported to the Insurer during the Period of Insurance.

### 1.4 Loss of Documents

The Insurer agrees, subject to payment of the Premium and subject to the terms, conditions and limitations of this Contract of Insurance, that if during the Period of Insurance the Insured shall discover and shall as soon as reasonably practicable thereafter give written notice thereof to the Insurer that any Documents have been destroyed or damaged or lost or mislaid and after diligent search cannot be found, this Contract of Insurance shall indemnify the Insured up to the Sum Insured for all Contract Claims for Loss in replacing and/or restoring such Documents.

PROVIDED always that:

a) the amount of any Contract Claim for Loss shall be supported by bills and/or accounts which shall be subject to approval by a competent person to be nominated by the Insurer with the approval of the Insured. In the event that the Insured and Insurer are unable to agree on such a competent person, a competent person will be appointed by the Chairman, President or Head of the Bar Association of the state or territory of Australia in which the Insured conducts his or her principal Practice.

b) no liability shall attach hereto for any Loss brought about by wear, tear, vermin, mould or mildew or any other gradually operating cause,

- c) the Insured shall subrogate to the Insurer its right of prosecution against any other person or persons for the recovery thereof.

## 1.5 Costs Orders

The Insurer agrees, subject to payment of the Premium and subject to the terms, conditions and limitations of this Contract of Insurance, to indemnify the Insured up to the Sum Insured against Loss arising from Costs Orders first made against the Insured during the Period of Insurance and reported to the Insurer during the Period of Insurance.

## 1.6 Third Party Data Security Breach & Client Network Infection

The Insurer agrees, subject to payment of the Premium and subject to the terms, conditions and limitations of this Contract of Insurance to indemnify the Insured for Damages and Defence Costs resulting from any Claim directly or indirectly arising out of or in connection with any Data Security Breach and any Client Network Infection, provided:

- a) the Claim is first made against the Insured during the Period of Insurance and reported to the Insurer in writing during the Period of Insurance;
- b) the Insurer's liability for all claims made under this Insuring Clause shall not exceed \$50,000 in the aggregate (including all costs and expenses incurred) and any sums paid by the Insurer are part of and not in addition to the Sum Insured;
- c) the Insurer may engage, at its own expense, a computer forensics specialist or security specialist to investigate an alleged Data Security Breach or Client Network Infection, and the Insured shall cooperate fully with such specialist's investigation;
- d) the Insured have maintained:
- i) anti-virus and malware prevention solutions on the Insured's computer systems and updated the protection at regular intervals;
  - ii) firewalls on their computer systems;
  - iii) and implemented ongoing patch management process to ensure timely patching of the Insured's computer systems;
- e) for the purpose of this Insuring Clause the following definitions shall apply:

**"Client Network Infection"** means the actual or alleged transmittal from the Insured's computer system to the Insured's client's computer system in connection with the Practice, of a computer virus or other electronic infection which causes damage to that client's computer or computer network or disrupts that client's business.

**"Damages"** means Loss, judgments and settlements, but does not include fines, penalties, punitive or exemplary damages, or the return, withdrawal or reduction of professional fees or commissions, or any equitable relief, or any award of legal costs and expenses.

**"Data Security Breach"** means the actual or alleged breach, violation, unauthorised interception, unauthorised use, or misuse by any person of any security systems or procedures maintained by the Insured for storage of the Insured's client's confidential information in connection with the Practice.

**"Defence Costs"** means all reasonable costs, charges, fees and expenses (including but not limited to legal costs and expenses) incurred by or on behalf of the Insured, with the Insurer's written consent (such consent not to be unreasonably withheld), in defending any Claim covered under this Insuring Clause, but does not include the Insured's wages, salaries or fees.

- f) for the purpose of this Insuring Clause, in addition to the exclusions set out in section 5, or restrictions to the cover provided under this Contract of Insurance, the Insurer's shall not be liable for any claim under this Insuring Clause directly or indirectly arising out of or in connection with:

- i) any Claim arising from the actual or alleged intentional release or disclosure of confidential information by the Insured which is alleged to be in violation of any statute, regulation, ethical rule, court or arbitral order, or confidentiality agreement;
- ii) any Claim arising from the Insured's actual or alleged intentional transmittal of a computer virus or other electronic infection;
- iii) the costs of repairing, replacing, or modifying the Insured's data security system or clearing the Insured's computers or network of viruses and electronic infections, either preventatively or in response to a Claim against the Insured;
- iv) war, riot, civil commotion, insurrection, or usurpation of governmental power;
- v) any governmental authority seizing or gaining access to the Insured's computer or computer network;
- vi) any proceedings against the Insured before a governmental agency in connection with a Data Security Breach or Client Network Infection, including any audit or other investigation by such governmental agency;
- vii) any Claim, Damages or Defence Costs for which the Insured are entitled to an indemnity under any other part of this Contract of Insurance.

## 1.7 Public Liability Optional Extension

1.7.1 If cover for Public Liability is stated in the schedule as being "Included", the Insurer agrees, subject to payment of the Premium and subject to the terms, conditions and limitations of this Contract of Insurance, including clause 1.7.3, to indemnify the Insured up to the Public Liability Sum Insured stated in the schedule against all sums which the Insured shall become legally liable to pay by way of Compensation for:

- a) Bodily Injury as defined in Clause 3.2 a); or
- b) physical loss of or damage to property happening during the Period of Insurance and caused by an Occurrence in connection with the Practice.

1.7.2 Additional Benefits under clause 1.7 Public Liability Optional Extension  
Subject to the provisions of clause 1.7.1, cover under section 1.7 includes:

- a) **Occupier's Liability**  
the Insured's legal liability to pay Compensation for Bodily Injury to, or physical loss of or damage to the property of, invitees happening during the Period of Insurance and caused by an Occurrence in connection with the Practice.
- b) **Site Visit**  
the Insured's legal liability to pay Compensation for Bodily Injury or physical loss of or damage to property happening at a site during a Site Visit by the Insured during the Period of Insurance and caused by an Occurrence in connection with the Practice.
- c) **Defence Costs**  
Defence Costs incurred by the Insurer, or with its prior written consent, in the defence or settlement of a Claim indemnified under this extension, subject to the Public Liability Sum Insured not being exceeded and as part of that sum insured.

1.7.3 PROVIDED THAT this Public Liability Optional Extension 1.7 shall not cover and the Insurer shall not be liable under this Public Liability Optional Extension for Claims, or liability, or Defence Costs, arising out of an Occurrence happening in connection with:-

- a) any actual or alleged breach of a professional duty in the conduct of the Practice;
- b) the Insured's products liability.

## 2. COSTS AND EXPENSES UNDER CLAUSES 1.3.1 and 1.3.2 and 1.5

- 2.1 Subject to Clause 4.1 of this Contract of Insurance, the Insurer shall pay in addition to the Sum Insured the costs and expenses incurred by or on behalf of the Insured, with the Insurer's written consent (such consent not to be unreasonably withheld):
- a) in the investigation, defence or settlement of any Claim, which is subject to indemnity under Insuring Clause 1.3.1
  - b) in the defence of any Disciplinary Proceedings, which are subject to indemnity under Insuring Clause 1.3.2,
  - c) in the defence of any Cost Order, which is subject to indemnity under Insuring Clause 1.5.
- 2.2 If payment greater than the Sum Insured has to be made to resolve or otherwise dispose of a Claim, Disciplinary Proceedings or Costs Order against the Insured, the Insurer's liability in respect of costs and expenses under Clause 2.1 shall be such proportion of the total costs and expenses incurred as the amount payable by the Insurer as Loss under this Contract of Insurance bears to the payment made to resolve or otherwise dispose of the Claim, Disciplinary Proceedings or Costs Order.

## 3. DEFINITIONS AND INTERPRETATION

### 3.1 Definitions

Subject to clause 3.2, the following words have the following meanings in this Contract of Insurance:

- a) **"Bodily Injury"**, for the purpose of exclusion clause 5.1(b), means anguish, emotional distress or any other psychological, psychiatric or related physical condition contracted or suffered by a party to whom the Insured has a civil liability.
- b) **"Claim"** means:
  - viii) the receipt by the Insured of any written notice or demand for compensation made by a third party against the Insured; or
  - ix) any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, or counterclaim served upon the Insured; or
  - x) any circumstance that might lead to a Claim under (i) or (ii) above if the Insured chooses to notify the Insurer of it in accordance with the Insured's statutory rights under section 40(3) of the Insurance Contracts Act.
- c) **"Contract"** or **"Contract of Insurance"** means this Contract including the schedule, any endorsements and the proposal form and underwriting information provided to the Insurer.
- d) **"Contract Claim"** means a written demand by or on behalf of the Insured to the Insurer for payment of Loss under Insuring Clause 1.4 of the Contract of Insurance.
- e) **"Costs Order"** means any order against the Insured that the Insured pay the costs of any party in any proceeding in which the Insured has appeared or has been instructed to appear. The term Costs Order also includes any contempt orders against the Insured in any proceeding in which the Insured has appeared or been instructed to appear.
- f) **"Disciplinary Proceedings"** means:
  - i) any investigation of the Insured by an authorised body which has the responsibility for the supervision of barristers or legal practitioners in relation to the Insured's conduct as a barrister or suitability to practice as a barrister;
  - ii) any proceedings of a disciplinary nature against the Insured before a tribunal, court or authorised body which has jurisdiction to hear proceedings of that type against barristers.
- g) **"Documents"** means deeds, wills, agreements, maps, magazines, plans, records, books, letters, insurances, computer tapes, computer discs, forms and documents of any nature whatsoever (other than bearer bonds,

coupons, bank-notes, currency notes and negotiable instruments) whether written, printed or capable of being reproduced by any other method (but excluding any computer or electronic data which is destroyed or damaged, lost or mislaid by manual, electronic or mechanical act, error or omission) PROVIDED THAT such items are:

- i) the property of (or entrusted to) the Insured or the Insured's predecessor in the business; and
  - ii) now or hereafter (or are believed by the Insured to be) in the Insured's hands or in the hands of any other party or parties to or with whom such items have been entrusted, lodged or deposited by the Insured in the ordinary course of business.
- h) **"Employee"** means any Barrister's clerk, the services of whom are utilised by the Insured, as well as any person, company or trust or any employee of such person, company or trust, engaged by the Insured in the conduct of the Insured's Practice.
- i) **"Insurance Broker"** means Marsh Pty Limited.
- j) **"Insurer"** means Arch Underwriting at Lloyd's (Australia) Pty Ltd, acting on behalf of certain underwriters at Lloyd's.
- k) **"Insured"** means the barrister named in the schedule and the barrister's estate and / or personal legal representative(s).
- l) **"Loss"** means those amounts that are necessary to dispose of a Claim, Disciplinary Proceedings, Contract Claim or Costs Order which is subject to indemnity under Insuring Clauses 1.3, 1.4, 1.5 or 1.6, including:
- i) In connection with a Claim under Insuring Clause 1.3.1, Loss means the amount, whether determined by judgment, verdict, award or settlement, for which the Insured is legally liable to a third party and includes damages, interest and the claimant's costs and expenses.
  - ii) In connection with Disciplinary Proceedings under Insuring Clause 1.3.2, Loss means any fines, penalties or damages, including the costs and expenses of the investigating body, ordered to be paid by the Insured.
  - iii) In connection with a Contract Claim under Insuring Clause 1.4, Loss means the costs, damages, charges and expenses of whatsoever nature incurred by the Insured in replacing and/or restoring the destroyed, damaged, lost or mislaid Documents.
  - iv) In connection with Costs Orders under Insuring Clause 1.5, Loss means the amount necessary to satisfy the Costs Order(s).
  - v) In connection with a Claim under Insuring Clause 1.6, Loss means the amount, whether determined by judgment, verdict, award or settlement, for which the Insured is legally liable to a third party and includes damages and interest.

Loss does not include costs and expenses under Clause 2.1.

- m) **"Period of Insurance"** means the period specified in the schedule.
- n) **"Practice"** means the business of practising as a Barrister in any Australian state or territory in which the Insured is legally entitled to practise and extends to the acceptance of obligations as Arbitrator, Conciliator, Mediator, Expert in the Law, Attorney-under-Power and any other dispute resolution role and includes advice given or services performed by the Insured.
- o) **"Premium"** means the premium(s) specified in the schedule.
- p) **"Sum Insured"** means the Sum Insured specified in the schedule and subject to the Insuring Clause shall not be increased by the inclusion of any Extension.

- q) **"Wrongful Act"** means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted by an Insured person individually or otherwise.
- r) **"Wrongful Employment Act"** means any Wrongful Act committed by the Insured in connection with the employment by the Insured of a person including but not limited to: wrongful dismissal; denial of natural justice relating to wrongful termination; discharge or termination of employment: breach of any oral or written employment contract or quasi-employment contract; employment discrimination laws (including workplace and sexual harassment); wrongful failure to employ or promote; wrongful discipline; wrongful deprivation of a career opportunity; negligent evaluation of that person's performance; invasion of that person's privacy; and employment-related defamation of that person (including by way of an advertisement).

### 3.2 **Additional Definitions Applying to Clause 1.7 Public Liability Optional Extension**

For the purpose only of the cover provided under clause 1.7 (Public Liability Optional Extension), the following words have the following meanings:

- a) **"Bodily Injury"** means bodily injury, sickness, disease, emotional distress, or any other mental, psychiatric, emotional or physical injury, or death of any person.
- b) **"Compensation"** means money paid or payable by way of compensatory damages pursuant to a judgement of any competent Court or Tribunal or by reason of any settlement negotiated with the Insurer's written consent.
- c) **"Defence Costs"** are all reasonable costs, charges, fees (including but not limited to legal fees and expert's fees) incurred in connection with the investigation, defence or settlement of any Claim or in investigating circumstances notified to the Insurer. Defence Costs do not include any wages, salaries or fees of the Insured or costs incurred by the Insurer solely for the purposes of making a decision as to the Insured's entitlement to indemnity under this Contract.
- d) **"Occurrence"** means an unexpected and unintended event (including continuous and repeated exposure to conditions) which results in Bodily Injury or physical loss of or damage to property. All exposure to substantially the same conditions shall be deemed to be one Occurrence.
- e) **"Public Liability Sum Insured"** means the Public Liability Sum Insured specified in the schedule if cover for Public Liability is stated in the schedule as being "Included".
- f) **"Site Visit"** means an attendance by the Insured at a building or place or location to perform professional services in connection with the Practice.

## 4. **EXCESS AND SUM INSURED**

### **Excess**

4.1 This Contract of Insurance shall not indemnify the Insured in respect of the first amount of Loss in connection with Disciplinary Proceedings, and the first amount of liability under Clauses 1.6 and 1.7, which amounts are called the "Excess" and are identified as such in the schedule. Unless otherwise specified in the schedule, the Excess shall be:

4.1.1 \$5,000 (Five Thousand Australian Dollars) in respect of:

- a) Disciplinary Proceedings; or
- b) costs and expenses under Clause 2.1 (net of any GST input tax credit entitlement) relating to Disciplinary Proceedings.

Provided that the Excess shall apply first to costs and expenses under Clause 2.1 b) and then to Loss; and

4.1.2 A\$500 (Five hundred Australian dollars) in respect of liability under Clauses 1.6 and 1.7.

**Sum Insured**

- 4.2 The Insurer's liability
- 4.2.1 for Loss for each Claim, Disciplinary Proceedings, Contract Claim or Costs Order, whether covered by one or more of Insuring Clauses 1.3 to 1.5 (inclusive), shall be the Sum Insured.
- 4.2.2 for all claims covered by Insuring Clause 1.6 shall not exceed \$50,000 in the aggregate (including all costs and expenses incurred) and any sums paid by the Insurer are part of and not in addition to the Sum Insured;
- 4.2.3 under Clause 1.7 shall be the Public Liability Sum Insured if specified in the schedule as "Included".

**5. EXCLUSIONS APPLYING TO ALL SECTIONS OF THIS CONTRACT**

- 5.1 This Contract of Insurance shall not indemnify the Insured for Loss or costs and expenses under Clause 2, in respect of any Claim, Disciplinary Proceedings, Contract Claim or Cost Order, or for Damages or Defence Costs under Clause 1.6, or for liability or Defence Costs under Clause 1.7, in respect of, arising from, relating to, brought about by, or in any way connected with, directly or indirectly:

**Director/Officer of Corporation**

- a) the Insured's activities as a Director or officer of any body corporate other than a service, administration trustee or nominee company the sole business of which is conducted in connection with the Insured's Practice.

**Bodily Injury/Property Damage**

- b) death, disease, personal injury, physical injury or Bodily Injury [(i) other than Bodily Injury arising out of a civil liability incurred in connection with the Practice or (ii) except to the extent covered under Clause 1.7] or physical loss or physical damage to property of any kind whatsoever [(i) other than property in the care, custody and control of the Insured in connection with the Practice for which the Insured is responsible, not being property occupied and used by the Insured for the purpose of the Practice or (ii) except to the extent covered under Clause 1.7]

**Trading Debts**

- c) the payment of a trading debt incurred by the Insured.

**Nuclear / War etc.**

- d) ionizing radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from combustion of nuclear fuel, the radio-active, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof, directly occasioned by pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds, or from war, invasion, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power.

**Territorial Limitation**

- e) acts or omissions of the Insured or an Employee of the Insured committed or omitted inside the United States of America or the Dominion of Canada or any protectorate or territory thereof at a time when the Insured was domiciled in the United States of America or the Dominion of Canada or any protectorate or territory thereof.

**Fines and Penalties**

- f) any fines, penalties, exemplary or punitive damages, other than fines, penalties or other orders:
- i) made by a tribunal, court or other body having jurisdiction to deal with Disciplinary Proceedings; or
- ii) made by a tribunal or court in connection with contempt orders which are covered under Insuring Clause 1.5.

**Fraud and Dishonesty of Insured**

- g) the dishonesty or fraudulent act or omission of the Insured.



Personal Affairs

- h) any investigation or enquiry by the Australian Taxation Office or other government agency into the personal affairs of the Insured.

Contractual and Assumed Liability

- i) any liability:
- a) under a contractual term, warranty, guarantee or indemnity (unless liability would have existed regardless of the contractual term, warranty, guarantee or indemnity); or
  - b) in circumstances where the Insured has conducted the Practice pursuant to any agreement by which the Insured has surrendered or waived any right of contribution or indemnity, to which the Insured would otherwise have been entitled at law.

Wrongful Employment Acts

- j) any actual or alleged Wrongful Employment Act.

Intentional or Reckless Conduct

- k) acts, errors or omissions by the **Insured** with the intention of causing a third party loss, damage or injury, or with reckless disregard for the consequences.

5.2 This Contract of Insurance shall not indemnify the Insured for Loss or costs and expenses under Clause 2, or for Damages or Defence Costs under Insuring Clause 1.6, in respect of any:

Prior Claims and Circumstances

- i) Claim made against the Insured prior to the commencement of the Period of Insurance nor in respect of any Claim or circumstance notified under any previous policy or Contract of Insurance, nor in respect of any Claim or circumstance which might give rise to a Claim which was known to the Insured at the inception date of this insurance or which is stated on the proposal form, declaration or underwriting information being the basis of this insurance. This exclusion relates to the act, error or omission from which the Claim or circumstance known to the Insured arises irrespective of how or whether that Claim or circumstance is declared to the Insurer or not. For the purpose of this exclusion, the term "circumstance" means facts or circumstances, known to the Insured, which subsequently give rise to a Claim. Any reference to the term Claim in this exclusion also covers the terms Disciplinary Proceedings, Contract Claim and Costs Order.
- ii) notwithstanding exclusion 5.2.1 (i), in the absence of fraudulent non-disclosure and fraudulent misrepresentation and subject to clauses 5.2.1 (ii)(b) and 5.2.1 (ii)(c) below, where:
- a) a Claim is made against the Insured by reason of an act, error or omission by or on behalf of the Insured which occurred prior to the Period of Insurance; and
  - b) the Insurer which for the purpose of this clause b) shall include Arch Underwriting at Lloyd's (Australia) Pty Ltd (acting on behalf of certain underwriters at Lloyd's), was the Insured's professional indemnity insurer at the time when the Insured first became aware of the circumstance which subsequently gave rise to the Claim; and
  - c) the Insurer which for the purpose of this clause c) shall include Arch Underwriting at Lloyd's (Australia) Pty Ltd (acting on behalf of certain underwriters at Lloyd's), continued without interruption as the Insured's professional indemnity insurer from the time when the Insured first became aware of the circumstance up until such time as the Claim is made against the Insured and notified to the Insurer,

the Insurer agrees to indemnify the Insured against the Claim subject to and on the same terms and conditions (including the sum insured and excess) applicable to the policy or Contract of Insurance under which the notification should have been given.

- iii) the Insurer reserves the right to reduce its liability in respect of the Claim by the amount which fairly represents the extent to which the Insurer's interests are prejudiced as a result of the late notification or non-disclosure of the circumstance to the Insurer.
- iv) where clause 5.2.1 (ii) applies, the Insurer agrees that it will not deny indemnity for the Claim as a consequence of any non-disclosure on the part of the Insured with respect to the Claim subject always to the reservation contained in clause 5.2.1 (iii).

**5.3 This Contract of Insurance shall not indemnify the Insured for Loss or costs and expenses under Clause 2, or for Damages or Defence Costs under Clause 1.6, or for liability or Defence Costs under Clause 1.7, in respect of any:**

Related Party Claims

- a) Claims by, or liability to:
  - i) any Family member of an Insured;
  - ii) any entity, facility arrangement of any description which, at the date the liability arises or Claim is made against the Insured or at the time the events giving rise to the Claim occurred:
    - a) was managed or controlled wholly or in part by the Insured or any nominee(s) of the Insured, or any Family member of the Insured; and
    - b) in which the Insured or any Family member of the Insured had a direct or indirect Financial Interest.

For the purpose of the exclusion:

"Family" means the spouse (or other person who lives with the Insured as a domestic partner), parent, parent of the spouse, any sibling or any of the children of the Insured or spouse.

"Financial Interest" means any financial interest other than a financial interest of less than 10% of the issued capital in a company or less than 10% of the value of any other enterprise.

Fee Disputes

- b) Claim or liability under Clauses 1.3, 1.4, 1.6 and 1.7 in respect of a dispute as to or refund of, or damages calculated by reference to, any fee or disbursement, including any associated costs of such Claim.

Bankruptcy or Insolvency

- c) Disciplinary Proceedings in respect of, arising from, relating to, brought about by, or in any way connected with, directly or indirectly, the Insured:
  - i) committing a bankruptcy-related event as defined in the **Legal Profession Uniform Law (NSW)** and **Legal Profession Uniform Law (VIC)**; or
  - ii) becoming bankrupt or insolvent, as defined under any other statute.

References to the **Legal Profession Uniform Law (NSW)** and the **Legal Profession Uniform Law (Vic)** in clause i) above include legislation which repeals and replaces those laws and any rules and regulations made thereunder.

Sanction Limitation

- d) loss or claim made under this Contract if and to the extent that an indemnity for that loss or claim would render an Insurer liable to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, New Zealand, the European Union, United Kingdom or United States of America.

For the purpose of this exclusion, Insurers means those Underwriters at Lloyd's who have subscribed their name(s) to this Contract

#### 5.4 Additional Exclusions Applying to Clause 1.7 Public Liability Optional Extension

Without limiting the operation of any of the exclusions applying to all Sections of this Contract, the Insurer shall not be liable under Clause 1.7 Public Liability Optional Extension for Claims, liability or Defence Costs arising directly or indirectly from or in connection with:

##### Vehicle

- a) the ownership, possession, operation, use or legal control by the Insured of any vehicle:
  - i) which is registered; or
  - ii) in respect of which insurance is required by virtue of any legislation relating to motor vehicles; or
  - iii) which is otherwise insured in respect of the same liability.

##### Aircraft, Vehicle and Watercraft

- b) the ownership, possession, operation, use or legal control by or on behalf of the Insured of any vehicle, aircraft or aerial device or watercraft.

##### Boilers

- c) the explosion of boilers or other vessels under pressure in respect of which a certificate is required to be issued under the terms of any statute or regulation thereunder.

##### Erection or Demolition

- d) the erection of, demolition of, alteration of, or addition to, buildings by or on behalf of the Insured.

##### Faulty Workmanship

- e) faulty workmanship of any kind.

##### Vibration

- f) damage to any land or property arising directly or indirectly from vibration or from the removal or weakening of or interference with the support to land or buildings or any other property.

##### Property Ownership

- g) ownership by the Insured of properties other than those at the Insured's Practice.

##### Goods, products or merchandise

- h) any goods, products or merchandise (including containers thereof).

##### Claims and indemnity under Clauses 1.3 to 1.6

- i) an Occurrence or circumstance, the Insured's liability, or loss, in respect of, or in connection with which:
  - i) is indemnified, wholly or in part, by Clauses 1.3 to 1.6 of this Contract or would be so indemnified if the Insured sought indemnity under Clauses 1.3 to 1.6 of this Contract; or
  - ii) would be indemnified, wholly or in part, under Clauses 1.3 to 1.6 of this Contract if:
    - a) a Claim were made against the Insured and notified to the Insurer during the Period of Insurance; or
    - b) the Insured gave notice to the Insurer of the facts relating to the Occurrence or circumstance or loss during the Period of Insurance; or
  - iii) is indemnified by the Insurer or would be indemnified by the Insurer, wholly or in part, if the Insured sought indemnity under provisions equivalent or similar to Clauses 1.3 to 1.6 of any renewal of this Contract for a period subsequent to the Period of Insurance.

##### Completion or Rectification Work

- j) completion or rectification work by or for the Insured.

##### Recall of products etc

- k)) any recall, withdrawal, inspection, repair or replacement of the Insured's products including investigation or other associated costs and loss of use of the products.

##### Terrorism

- l) any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss. For the purpose of this exclusion an act of terrorism means an act, including but not limited to

the use of force or violence and/or the threat thereof, of any person or groups(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

## 6. CONDITIONS

### Underwriters' Obligations

6.1 Each subscribing underwriter's obligations under this Contract to which he or she subscribes is several and not joint and is limited solely to the extent of his or her individual subscription. No subscribing underwriter is responsible for the subscription of any co-subscribing underwriter who for any reason does not satisfy all or part of his or her obligations.

### Sum Insured

- 6.2 a) Clauses 1.3 to 1.5  
The Insurer's total liability in respect of each Loss under Clauses 1.3 to 1.5 of this Contract shall not exceed the Sum Insured specified in the schedule subject to Clause 2.
- b) Clause 1.6  
The Insurer's total liability for all claims covered by Insuring Clause 1.6 shall not exceed \$50,000 in the aggregate (including all costs and expenses incurred) and any sums paid by the Insurer are part of and not in addition to the Sum Insured specified in the schedule;
- b) Clause 1.7 Public Liability Optional Extension  
The Insurer's liability to indemnify the Insured under this Contract for all Claims, liability and Defence Costs indemnified under Clause 1.7 Public Liability Optional Extension if "Included", shall not exceed in respect of any one Occurrence the Public Liability Sum Insured stated in the schedule inclusive of Defence Costs,.

### Multiple Claims or Occurrences

6.3 Where more than one Claim or Occurrence or loss arises out of the same act or omission or causally connected or interrelated acts or omissions, or the same originating cause, or where a series of Occurrences have a common source or cause, all of those Claims or Occurrences or losses will together constitute one Claim or Occurrence or loss for the purpose of this Contract and determining the Excess and the Insurer's liability.

### Alteration to Risk

6.4 The Insured must give notice to the Insurer in writing as soon as practicable of any material change to the risk. A material change to the risk includes without limitation activities that are materially different from those declared in the proposal form or that are outside the normal activities of or a material change to the Practice.

### Admission of Liability / Settlement

6.5 The Insured shall not admit liability for, or settle, any Claim, Disciplinary Proceedings, Costs Order or liability under Clause 1.7 or incur any costs or expenses or Defence Costs in connection therewith, without the written consent of the Insurer (such consent not to be unreasonably withheld).

### Conduct of Defence / Settlement by Insurer

6.6 Subject to Condition 6.7 of this Contract of Insurance and provided always that the Insured remains liable for its Excess under clause 4.1, the Insurer shall be entitled at any time to take over the conduct in the name of the Insured, the defence or settlement of any such Claim, Disciplinary Proceedings Costs Order or liability under Clause 1.7.

### Dispute over Contesting Proceedings

6.7 a) The Insured or the Insurer shall not be required to contest any Claim, Disciplinary Proceedings, Costs Order or liability under Clause 1.7, unless a Queen's Counsel or Senior Counsel (to be mutually agreed upon by the Insured and the Insurer or failing agreement to be appointed by the Chairman, President or Head of the Bar Association of the state or territory of Australia in which the Insured conducts his or her principal Practice), shall advise that such proceedings should be contested.

- b) In formulating such advice, Queen's Counsel or Senior Counsel shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff (or other litigant in the case of Costs Orders), the likely costs and expenses under Clause 2 and Defence Costs and the prospects of the Insured successfully defending the Claim, Disciplinary Proceedings, Costs Order or liability under Clause 1.7.
- c) The cost of Queen's Counsel or Senior Counsel's opinion shall be regarded as part of costs and expenses under Clause 2 or Defence Costs.

#### Notification

- 6.8 The Insured shall immediately notify the Insurance Broker in writing of any Claim, Disciplinary Proceedings, Contract Claim, or Costs Orders during the Period of Insurance.

#### Non-Repudiation, Avoidance or Reduction of Liability

- 6.9 Subject to Condition 6.10 the Insurer will not:
- a) seek to avoid, repudiate or rescind this Contract of Insurance upon any ground whatsoever, including non-disclosure or misrepresentation.
  - b) exercise any rights under sub-section 28(3) of the Insurance Contracts Act unless the non-disclosure or misrepresentation is fraudulent.
  - c) This Condition 6.9 does not apply to:
    - i) Claims arising from civil liability or the conduct of any Employee where the civil liability was incurred or the conduct occurred, prior to the Insured obtaining a professional indemnity policy or Contract of Insurance, which has been renewed or replaced with the Insurer or another Insurer, without gaps between the period(s) of insurance until the commencement date of this Contract of Insurance;
    - ii) Public Liability Optional Extension Clause 1.7.

#### Dishonesty and Fraud As Against the Insurer

- 6.10 If the Insured dishonestly or fraudulently requests indemnity under any section of this Contract of Insurance (including for matters about which there has been a fraudulent non-disclosure by the Insured to the Insurer), the Insurer may refuse such indemnity, but where only part of the request for indemnity is dishonest or fraudulent, the Insurer shall not refuse indemnity in respect of that part of the request which is not dishonest or fraudulent.

#### Reimbursement by Insured

- 6.11 Where the Insured's breach of or non-compliance with any condition of this Contract of Insurance has resulted in substantial prejudice to the handling or settlement of any Claim, Disciplinary Proceedings, Contract Claim, Costs Order or liability under Clause 1.7 in respect of which the Insured is indemnified hereunder the Insured shall reimburse to the Insurer the difference between the sum payable by the Insurer in respect of that Claim, Disciplinary Proceedings, Contract Claim, Costs Order or liability under Clause 1.7 and the sum which would have been payable in the absence of such prejudice. Provided always that it shall be a condition precedent to the right of the Insurer to seek such reimbursement that the Insurer shall have fully indemnified the Insured in accordance with the terms hereof.

#### Non-Cancellation

- 6.12 a) The Insurer agrees that it will not cancel this Contract of Insurance for any reason other than non-payment of the Premium. Subject to the proviso that for the purpose of Clause 1.7 the Insurer shall be entitled to cancel coverage under that Clause pursuant to the provisions of the Insurance Contracts Act 1984.
- b) The Insured may not cancel this Contract of Insurance

#### Dispute Resolution

- 6.13 Save as provided in Condition 6.7 hereof and provided that the parties have agreed to refer the dispute or disagreement to arbitration after the dispute or disagreement has arisen, any dispute or disagreement between the Insured and the Insurer arising out of or in connection with this Contract of Insurance may, at the request of either of them, be referred to the sole arbitrament of a person to be appointed (failing agreement between them) by the Chairman, President or Head of the Bar Association of the state or territory

of Australia in which the Insured conducts his or her principal Practice whose decision shall be final and binding upon both parties.

#### Subrogation

6.14 In respect of any Claim, Disciplinary Proceedings, Contract Claim, Costs Order or liability under Clause 1.7 covered by this Contract of Insurance, the Insurer shall be subrogated to any rights of the Insured and shall be entitled to prosecute to the extent of the law for its own benefit and in the Insured's name any claim for indemnity or damages. The Insured must co-operate fully with the Insurer in any proceedings which the Insurer may take and the Insurer shall have full discretion in the conduct and settlement of those proceedings.

However, the Insurer shall not exercise this right against any Employee of the Insured unless the Claim has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the Employee.

#### Cooperation

- 6.15 a) The Insured shall use due diligence to do and concur in doing all things reasonably practicable to avoid or diminish any liability in respect of which the Insurer may be liable under this Contract of Insurance.
- b) The Insured shall openly and honestly disclose to the Insurer all relevant information and shall provide such assistance and cooperation as the Insurer may require to enable the Insurer to investigate and/or defend any Claim, Disciplinary Proceedings, Contract Claim, Costs Order or liability under Clause 1.7 under this Contract of Insurance or to enable the Insurer to determine its liability under this Contract of Insurance. If requested to do so by the Insurer, the Insured shall provide the Insurer an estimate of costs from the Insured's legal advisor and shall update such estimate where a variation in the original estimate, is, or ought reasonably be, suspected. The Insured's duty to cooperate extends to the Insurer's investigation of circumstances notified by the Insured pursuant to section 40(3) of the Insurance Contracts Act.
- c) Compliance with this condition shall be at the Insured's own expense.

#### Additional Condition Applying to Clause 1.7 Public Liability Optional Extension

##### Dispute over Contesting Proceedings

6.16 For the purpose of Clause 1.7 Public Liability Optional Extension if the Insured shall refuse to consent to or accept any proposed settlement or recommendation made by the Insurer, or continues any legal proceedings in connection therewith, then the Insurer's liability to indemnify the Insured shall be limited to the amount for which the Claim or liability could have been so settled plus the costs and expenses (including Defence Costs) incurred up to the date of such refusal minus the Excess.

## **7. RUN OFF COVER**

7.1 This Run Off cover applies where:

- a) The Insured has ceased Practice during or within one day after the expiry of the Policy Period, for any reason including death, and ceases to hold a practising certificate issued by an Australian Bar Association.
- or
- b) The Insured has ceased Practice during or within one day after the expiry of the Policy Period and become a "government lawyer" (as defined by section 6 of the Legal Profession (Uniform Law) (NSW)) who holds a practising certificate issued by an Australian Bar Association.

7.2 The Insurer agrees, for no additional premium, to indemnify the Insured for any Claim arising from the Insured's Practice which is first made and notified to the Insurer after the Insured has ceased Practice in accordance with Clause 7.1 a) or b) and during the period of seven (7) years from the date of the Insured ceasing Practice PROVIDED THAT:

- a) The Claim relates to acts, errors or omissions of the Insured or an Employee prior to the date on which the Insured ceased Practice.
- b) The Insured has notified the Insurer in writing, within 21 days after the expiry of the Period of Insurance, that the Insured has ceased Practice. The Insured must also give written notice to the Insurer if the Insured's practising certificate is cancelled, suspended or terminated, or has had conditions imposed during the Period of Insurance.

- c) The Insured shall, upon receiving the Insurer's written request, provide to the Insurer a declaration of every known Claim, Disciplinary Proceedings, Contract Claim, or Costs Order.
- d) Under this Run Off Cover, the Sum Insured is limited to \$1,500,000 any one Claim and \$4,500,000 in the aggregate and the Excess is deemed to be \$1,000 inclusive of costs for each Claim. PROVIDED that the Insurer's liability for all claims made under Insuring Clause 1.6 shall not exceed \$50,000 in the aggregate (including all costs and expenses incurred) and any sums paid by the Insurer are part of and not in addition to the aggregate Sum Insured of \$4,500,000 under this Run Off Cover.
- e) This Run Off Cover is otherwise subject to all the terms, conditions, limitations and exclusions of this Contract of Insurance.
- f) For the avoidance of any doubt, this Run Off Cover does not apply to Clause 1.7 should cover have been taken out under that Clause.

## IMPORTANT NOTICES UNDER THE INSURANCE CONTRACTS ACT 1984

### **"Claims made and notified" general information**

The information under this heading is provided for general information purposes only and does not:

- form part of the Contract of Insurance
- impose any contractual obligations on any Insured or create contractual rights between us.

Certain insuring clauses in this Contract Wording operate on a "Claims made and notified" basis, which means that they:

- cover claims made against the relevant Insured and notified to Underwriters in writing during the Period of Insurance.
- do not provide cover in relation to:
  - claims made against an Insured 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 (unless specified otherwise);
  - claims made against an Insured 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 an Insured prior to the commencement of the Period of Insurance;
  - facts or circumstances of which an Insured first became aware prior to the Period of Insurance, and which they knew, or ought reasonably to have known, had the potential to give rise to a claim under the Contract ;
  - claims arising out of circumstances noted on the proposal for the current Period of Insurance or on any previous proposal form;
  - claims arising from civil, administrative, criminal or regulatory proceeding, investigation, arbitration or adjudication that existed prior to, or was pending before, the commencement of the Period of Insurance.

If the Insured gives notice in writing to Underwriters of any facts that might give rise to a Claim against them as soon as reasonably practicable after they become aware of those facts, but before the expiry of the Period of Insurance, they may have rights under Section 40(3) of the Insurance Contracts Act 1984 (the Act) to be indemnified in respect of any claim subsequently made against them arising from those facts, notwithstanding that the Claim is made after the expiry of the Period of Insurance. Such rights arise under the Act only. The terms of the Contract and the effect of the Contract is that the Insured is not covered for claims made against them after the expiry of the Period of Insurance, unless specified otherwise.

### **Duty of Disclosure**

Before any person/s enter into an insurance Contract with us, they have a duty under the Insurance Contracts Act 1984 to disclose to Underwriters every matter that they know, or could reasonably be expected to know, is relevant to our decision whether to accept the risk of the insurance and if so, on what terms.

They have the same duty to disclose those matters to Underwriters before they renew, extend, vary or reinstate the Contract.

The duty applies until the Contract is entered into, or where relevant, renewed, extended, varied or reinstated (Relevant Time). If anything changes between the time disclosures are made and the Relevant Time, the person/s need to tell Underwriters.

### ***What we do not need to know***

A person does not need to tell Underwriters about any matter that:

- diminishes our risk;
- is of common knowledge;
- we know or should know in our business as Underwriters;
- we tell the person we do not need to know.

### ***Who does the duty apply to?***

The duty of disclosure applies in relation to everyone who is insured under the Contract.

**What happens if the duty of disclosure is not complied with?**

If the duty of disclosure is not complied with we may cancel the Contract and/or reduce our liability under the Contract in respect of a claim. If fraud is involved, we may treat the Contract as if it never existed, and pay nothing.

**Retroactive liability**

The Contract does not provide cover in relation to events that occur before the retroactive date stated in the Schedule.

**Average provision and Allocation of loss between the Insured and Underwriters**

One of the Contract terms provides that if the Insured incur loss covered by the Contract with other loss that is not covered by the Contract, or if a claim is made against the Insured and it is impossible to identify whether loss is attributable exclusively or primarily to a covered cause, or the claim against the Insured, as appropriate, then the Insured together with Underwriters shall use our best efforts to agree a fair and proper allocation of the loss between Underwriters and the Insured. Please refer to the Contract wording for full details.

The Contract may also provide that, where the amount required to dispose of a claim exceeds the limit of the sum insured in the Contract, Underwriter shall be liable only for a part of the total costs and expenses which shall be the same proportion of the total expenses as the Contract limit bears to the total amount required to dispose of the claim.

**Liability assumed under agreement**

Cover provided by this form of liability insurance does not cover liability which you have agreed to accept, unless you would have been so liable in the absence of such agreement.

**Utmost good faith**

The Contract is based on the utmost good faith requiring Underwriters and the proposer/insured(s) (including third party beneficiaries after the Contract is entered into) to act towards each other with the utmost good faith in respect of any matter relating to the Contract. A failure to comply is a breach of the Insurance Contracts Act 1984.

**Underwriters' sanction limitation and exclusion clause**

We shall not be liable to pay or indemnify the Insured for any loss or claim made under the Contract which would expose any of the Underwriters to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, New Zealand, the European Union, United Kingdom or United States of America.

**Notices**

We will send all notices in relation to the Contract to:

- the Insured's nominated insurance intermediary, until Underwriters receive written notice to the contrary from the Insured named in the Schedule;
- if there is no nominated intermediary, the Insured named in the Schedule, acting on behalf of the Insureds.

**About the Contract**

Where Underwriters agree to enter into a Contract, it is a contract between Underwriters and the Insured (see the definition of "Insured" for details of who is covered by this term). The Contract is entered into subject to the payment or agreement to pay Underwriters the premium by the Insured, including government taxes and charges, and the Policy terms and conditions (including limits and the Excess/es).

The Contract is made up of this Contract Wording which sets out our standard terms, the Certificate of Insurance and Schedule which we issue to confirm the issue of the Contract and which contain additional information specific to the Insured and the Contract, any agreed endorsements and the Proposal. These are all important documents and should be carefully read together and kept in a safe place for future reference.

**General Insurance Code of Practice**

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au).

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to [www.insurancecode.org.au](http://www.insurancecode.org.au)



## Complaints and Disputes

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact:

*The Complaints Manager,  
Arch Underwriting at Lloyd's (Australia) Pty Ltd,  
Level 10, 155 Clarence Street  
Sydney NSW 2000*

or telephoning us at (02) 8284 8400  
or emailing us at [complaints@archinsurance.com.au](mailto:complaints@archinsurance.com.au)

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

*Lloyd's Australia Limited  
Email: [ldraustralia@lloyds.com](mailto:ldraustralia@lloyds.com)  
Telephone: (02) 8298 0783  
Post: Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000*

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

*Telephone: 1800 931 678  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Post: GPO Box 3 Melbourne VIC 3001  
Website: [www.afca.org.au](http://www.afca.org.au)*

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

The Underwriters accepting this Contract agree that:

- (i) if a dispute arises under this Contract, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- (ii) any summons notice or process to be served upon the Underwriters may be served upon:

*Lloyd's Underwriters' General Representative in Australia  
Suite 1603  
Level 16  
1 Macquarie Place  
Sydney NSW 2000*

who has authority to accept service on the Underwriters' behalf;

- (iii) if a suit is instituted against any of the Underwriters, all Underwriters participating in this Contract will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this Contract notice should be given as soon as possible to:

*Arch Underwriting at Lloyd's (Australia) Pty Ltd  
Suite 11.02, Level 11,  
360 Collins Street, Melbourne VIC 3000  
or by email at: [claims@archinsurance.com.au](mailto:claims@archinsurance.com.au)*