

20 April 2016

To the Agricultural and Environment Committee Hendra Vaccine Inquiry  
Co/-Mr Rob Hansen  
Parliament House  
Brisbane Qld 4000

To Mr Hansen

Re: veterinarian submission to hendra virus vaccine inquiry

I am an equine veterinarian working in south east Queensland. I still treat unvaccinated horses but am highly aware of the risks to both my life and livelihood as I do. I am actually appalled by the attitudes of some horse owners to the hendra vaccination and equine veterinarians. Whereas some horse owners have legitimate concerns when vaccinating elderly or immunocompromised horses the majority of owners are simply being combative to suit their own agendas.

I have continued to treat unvaccinated horses because I am primarily concerned with the horses' welfare. Over the years the clinical signs of hendra virus have become more insidious. Prior to 2008 all horses developed acute, severe respiratory signs so vets took extra precautions with respiratory cases. After the Redlands event in 2008, vets were warned that respiratory signs may not be present but all horses at that stage still presented with fevers. Vets were then aware that any horse with a fever may be a hendra case despite lack of any other clinical signs and extra precautions must be taken when treating these horses. In 2010 a horse that died from hendra did not present with a fever so now any sick horse had to be considered infected with hendra virus as there were no obvious clinical signs which could differentiate an infected horse from an unaffected one. Vets then took extra precautions with any sick horse but were mostly able to differentiate an infected horse by history and speed of onset of clinical signs. In recent years the virus has become even more insidious and horses presenting with simple lameness now need to be considered as potentially infected. Horses can also shed virus for up to 5 days prior to exhibiting clinical signs so even a visit to a seemingly healthy horse for routine procedures can lead to deadly infection and/or an open ended legal liability for that vet if the horse subsequently tests positive to hendra. Why should vets willingly take this risk when there is a very effective preventative measure such as vaccine?

Although I have continued to treat unvaccinated horses recent changes to my insurance coverage has made me increasingly cautious when I do. After receiving a newsletter, in November, from Veterinary Defence Association stating a complete refusal to insure vets against anything to do with hendra, I contacted my insurer, Guild, to verify their position with regard to hendra. I was informed their policy had been amended and a copy was sent to me. The new policy states that exclusions to the policy include highly pathogenic diseases or any other quarantinable diseases unless "you or others acting on your behalf have complied with all relevant published professional and/or government protocols and standards for the treatment of animals referred to". As all unvaccinated horses need to be

considered as potential hendra virus carriers then testing of all unvaccinated, and sick vaccinated horses, must occur to maintain insurance coverage under the new policy. Guidelines clearly state if hendra cannot be ruled out, it must be ruled in, at least until precluded by testing. A copy of the new policy will be included for your perusal along with the Veterinary Defence Association newsletter.

Since receiving this information I will only treat unvaccinated horses if the owner agrees to have the horse tested for hendra at the same time when any contact with body fluids might occur. I do perform, within safety limits, all necessary treatment for the horse at the time of the visit and inform the owner that there must be no unnecessary contact with the horse until the test results are received. Any necessary contact must be in full PPE. Biosecurity Queensland runs these tests at 2 pm Monday to Friday excluding public holidays so if a horse is treated in the morning and the samples can be transported to Coopers Plains before 2pm then results should be available the same day. If the sample does not reach the laboratory prior to 2 pm then results will not be available until the following evening. If a horse is tested on a Friday there will be no results until the following Monday evening. Public holidays mean a longer wait and for those vets in remote areas the courier times may vary meaning an even longer wait again for results. Over the Christmas period the lab was closed from Christmas eve until January 4<sup>th</sup> so no test results were available during the entire period which means strict limitations on the procedures that can be performed without the vet risking prosecution and/ or litigation.

Biosecurity Queensland does not subsidise tests for horses with wounds or eye injuries, unless due to neurological issues, but the treating vet must assume that hendra transmission is possible from these animals via contact with body fluids. Biosecurity Queensland will not subsidise the test unless they deem the clinical picture to be consistent with hendra virus. Their definition of suspect hendra is different to the vet in the field who must suspect all unvaccinated horses of being possibly infected despite the clinical picture.

This morning I received a call from an owner with an unvaccinated horse having difficulty walking. The owner stated she was not willing to pay for hendra testing. What happens to this horse now?

I receive many of these phone calls, especially on weekends. I am expected to drive hundreds of kilometers to treat unvaccinated horses for people who are aware that by choosing to not vaccinate they are limiting the availability of veterinary care for their horses. Almost every owner of these unvaccinated horses insists their horse could not possibly have hendra including an owner whose horse was agisted on a creek frontage with trees that bats commonly feed on. I did treat this horse despite the owner's refusal to test as the horse had laminitis and treatment did not require contact with body fluids. The same owner refused to treat when the horse had colic as contact with body fluids during treatment would mandate testing. The same owner continues to insist there is no hendra on her or her neighbours' property so there is no need to test. It was explained to her that there have been positive hendra cases in the area and that every person who has had a

positive case since the vaccine became available all thought they were not at risk which is why they did not vaccinate.

In the last 5 months I have vaccinated horses that I refused to vaccinate 3 years ago due to age or underlying health issues. Although I am not advising the owners they have to vaccinate, I am advising that vet care may be limited if I am unavailable to treat their animals. Of all the elderly animals I have vaccinated none have showed any major reaction to the vaccine. Delayed reactions due to type IV hypersensitivities are possible but very hard to link to the vaccination. I still believe the benefits of the vaccination outweigh the risks.

To illustrate the difficulty of proving or disproving vaccination reactions a recent case comes to mind. An elderly horse was vaccinated and 5 days later became vaguely unwell. The following week the horse became critically unwell and, after treating the horse, I advised the owner to contact the vet who vaccinated as the illness may be due to a vaccination reaction. At the same time another horse on the property became unwell with similar clinical signs. The second horse was unvaccinated so a vaccination reaction in the first horse was deemed less likely but not impossible. Around a week later another horse owned by the same person but on a different property developed the same clinical picture as the first horse which then made vaccination reaction highly unlikely. Had the other horses not been present then this would have been considered a vaccination reaction and recorded as such. Given the epidemiology of disease in the other horses this was highly unlikely to have any connection to the vaccination. Many supposed vaccine reactions cannot be ruled out in this way due to inadequate information. Many vaccine reactions may just be horses becoming unwell with diseases that they are subject to everyday but happen to coincide with recent vaccination. Horses with underlying health issues are obviously at higher risk of reactions due to exacerbation of those underlying conditions by a product that is designed to create an inflammatory reaction. The inflammatory reaction is necessary to produce memory cells and antibodies. The level of reaction and the individual horse's response will obviously vary.

Of all the horses I have vaccinated only one has required veterinary treatment after vaccination. A minority have had localised swelling or other minor signs. The majority have had no issues post vaccination. A list of reported reactions should be available from zoetis with my details.

I inform owners daily that any vaccine can make any animal sick. The hendra vaccine is not exclusive in this respect. The risk of a reaction is very real but also very low. The risk of not receiving prompt veterinary treatment for an unvaccinated horse is very high. The risk of a reaction to any medication is real and an antibiotic or anti-inflammatory injection may cause illness or death in an animal. Therefore do we just stop treating animals completely? No. We assess the risk and the benefits of any treatment and if the benefits outweigh the risk we recommend the treatment. I believe this is the case with hendra vaccination.

I am not a supporter of overvaccination and believe yearly vaccination may not be necessary for complete protection but to not vaccinate at all in an endemic area is foolhardy. I also believe that having to revaccinate with 2 initial vaccinations for horses who have lapsed more than a year with their initial program makes absolutely no sense from a scientific basis and have had employees of Zoetis agree on this point. The difficulty here is the sparse duration of immunity data which is limited by the biosecurity and welfare issues of testing a class 4 pathogen. So to stay on the Hendra registry yearly vaccination is required. As the other vets in this area are satisfied with yearly vaccinations then my clients' horses will have access to veterinary care if I am unavailable. When the APVMA give approval for yearly duration of immunity then perhaps Zoetis will allow a longer grace period again as they have done now by allowing the six month duration of immunity registration to be six months overdue.

Horse owners will continue to distribute misinformation via social media which then creates a fear about the vaccine by other horse owners. I believe actively encouraging others to not vaccinate is socially irresponsible. Not only are they risking the horse's life but their own, their families and anyone else in contact with that animal. People seem to be mistaking "not highly contagious" with "not highly pathogenic". The virus is hard to contract but the consequences are devastating for those who do. Until people are personally affected they appear to be complacent how their actions affect others. Whenever I treat an unvaccinated horse I ask the horse owner why they have not vaccinated. Other than one horse owner who had not vaccinated due to the age of her horse, no legitimate reason for not vaccinating has been given by any owner. All others have referred to Facebook posts of reactions, which have not been validated, and lack of research on the vaccine, which is untrue.

Although I do continue to treat unvaccinated horses, I fully support those vets who wish to protect themselves and their staff by refusing to attend. The stress of dealing with hostile horse owners and bureaucratic regimes is having a negative impact on both my physical and emotional health. I did consider not renewing my registration as a veterinarian at the end of last year and will obviously reconsider carefully when it is due again at the end of this year. Practicing as an equine veterinarian in Queensland is a low reward/ high risk position and increasing stress levels of practicing vets should not be justified under any circumstances.

Prosecutions and litigation against vets is a daily threat which has led to many reconsidering their future in the industry. Many horse owners will continue to disregard the difficult position vets are facing daily. Many horse owners refuse to pay their bills at all which means that vets are not being compensated for the products they are using, their time and the extra risks they are taking but also the added costs of Hendra testing and courier costs. Many horse owners completely disregard the advice of the vet. When treating horses I am expected to watch the horse, which is often highly agitated, control the behaviour of the owner or handler and all those within the vicinity while at the same time keeping myself safe. Add the extra risk of Hendra virus to that mix and staying safe becomes increasingly difficult.

All horse owners and those employed in equine industries are at risk of hendra virus infection. The cost of disease prevention needs to be accepted by those responsible for all other costs of owning a horse. The cost of vaccinating against hendra virus is negligible when compared to the yearly cost of keeping a horse. If economics are a consideration then it would be apparent that not vaccinating would bear considerable greater cost due to the consequences that arise when illness occurs. I am also a horse owner and have always accepted the financial responsibility of owning horses. It is the government's responsibility to control zoonotic disease. More responsibility needs to be accepted by the Queensland government in relation to preventing and controlling the zoonotic potential of hendra virus. Private veterinarians have been under attack from horse owners, the media, the government, insurance companies and the vaccine manufacturer. These attacks on a largely overworked industry are unwarranted and have led to further alienation of an already undersupported profession.

Sincerely Donna McSweeney BVSc, CVA, CMAVA

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## VETERINARY DEFENCE ASSOCIATION



### Barks 'n Bytes

Issue 39 — 2015 \* 25 November 2015

## Hendra - the virus that keeps on giving.

Currently in Queensland, Australia, three veterinarians are being prosecuted under the Workplace Health and Safety Act, for not ensuring that they and all the horse handlers they worked with wear full personal protective equipment whilst examining horses who may be infected with the Hendra virus. They are liable for fines up to \$100,000 each. (Yes, \$100,000. That's not a misprint).

The problem with Hendra is that it can present in many different guises from lameness to colic, and so any horse with any illness or condition is potentially a Hendra case. In other words, every treatment in a horse is a potential Hendra case. The second problem with Hendra is that it can infect all humans that are in contact with the affected horse.

Dr A contacted the VDA for advice and input, since she believes the Queensland government has placed veterinarians in a tight corner when it comes to testing and treating horses for Hendra virus.

Dr A had treated two horses recently – one presenting with chronic respiratory illness and the other with lameness. Both of these horses then tested positive for Hendra virus.

Dr A then examined a third horse who presented with lameness. Dr A and her team took the necessary precautions and sent samples to Biosecurity Queensland (BQ) for testing. The BQ laboratory team phoned Dr A the following day and informed her that they were no longer doing surveillance testing for Hendra virus and would only test if Dr A thought that the horse had contracted the disease. Since Hendra may cause any illness or condition, all illnesses and conditions need to be screened for Hendra. BQ clearly does not understand or appreciate the situation.

Following a recent meeting between the Queensland Government, BQ, WHS (Workplace Health and Safety), Queensland Health and members of the Equine Veterinary Association, the following announcements were made:

1. BQ states that Government-based mandatory Hendra vaccination of horses is not possible.
2. BQ will be reducing their involvement in Hendra surveillance. BQ's position is that if members of the public wish to report a suspected HeV case, the correct avenue is to go to a private veterinarian.
3. BQ also makes it clear that there is NO compulsion for a veterinarian to attend a suspected HeV case. There are NO ramifications for that vet if they decide NOT to attend.
4. The Qld Government Hendra virus Guidelines for Veterinarians are the official, legal guidelines that support the Workplace Health and Safety Act and regulations. WHS, Queensland, reiterated that the guidelines must be followed.
5. Qld Health stated that, on a differential diagnosis, if Hendra cannot be ruled out, then it MUST be ruled in. Therefore examining veterinarians are required to adopt a high level of infectious disease control. This includes wearing appropriate Personal Protective Equipment (PPE) by the veterinarian, the horse handler and any other veterinary staff involved.
6. WHSQ Guidelines state that: "Non-veterinary staff should not be requested to administer invasive treatments, including giving injections, until Hendra virus infection is excluded." The Eq-

quine Veterinary Association (EVA) endorses this statement entirely and recommends that veterinarians DO NOT EVER leave medication for the client to administer in a Hendra virus exclusion case.

7. EVA also recommends that veterinarians should ensure that any communications they have with the client with regard to a suspect or live Hendra virus case is appropriately documented.

Dr A's dilemma with regard to her current lame horse case is that, even though the horse was lame, (the third most frequent sign of Hendra virus infection according to the BQ website), BQ are not prepared to test for it. According to Queensland Health, if Hendra cannot be ruled out, then it MUST be ruled in, leaving veterinarians stranded without a positive course of action to take.

So, what do veterinarians do when the government refuses to test for the disease but veterinarians are potentially in breach of the WHS act if they examine and treat horses without knowing positively whether the horses are infected with Hendra or not?



The Queensland Government and the various players in this scenario have created an open-ended liability, exacerbated by a lack of leadership on the part of the authorities and lack of decisive protest action by the veterinary profession.

Clearly, it is unreasonable to expect insurers to carry the risk when the liability is very large and unknown but the premium base is very small.

This article serves as a reminder to our members that your VDA membership and Lloyd's insurance cover are really two components (whereas with mere insurance from other sources, you only have one component).

- The first component is defence services, and the VDA will provide you with defence services no matter what the situation.
- However, the second component is insurance cover and the insurer will not indemnify you for claims and costs in relation to anything to do with Hendra. So if, for example, you were sued because a horse died that turned out to be Hendra-negative, you would not be covered because the death of the horse was indirectly related to Hendra.

But the VDA would still defend you with all its might, regardless.

Civil claims are never simple in real life and there are many intervening and complicating factors that can play a role and can enhance the defence of claims. The VDA defence services are independent of the insurance cover in the sense that we would still defend you even if it was a case related directly or indirectly to Hendra. The VDA successfully defends most large civil claims (>98%). In Australia, only the VDA has this level of expertise.

The bottom line is simply this: under current circumstances, with the government and the politicians placing the veterinary profession in an untenable position, the veterinary profession should simply refuse to be involved with anything to do with Hendra virus until the issues are properly sorted out and dealt with.

The dangers are four-fold:

1. Hendra is fatal and any veterinarian that contracts Hendra may die. When we 'signed up' to our profession, we did not agree to willingly and recklessly put our lives on the line for our profes-

sion. Doctors and nurses that went to Africa to fight Ebola placed their lives at risk voluntarily. The other 99.99 % of the medical and nursing professions chose not to do so. Any veterinarian that chooses to treat horses in Hendra areas are voluntarily placing their lives at risk, just like the medical professionals that went to Africa to fight Ebola. If you choose not to place your life at risk, then you have the right to refuse to treat horses in Hendra areas. This right has been confirmed by the QLD government.

2. Hendra is highly contagious to all humans. By treating a horse with potential Hendra infection, the veterinarian may become liable for the safety of all the humans around the horse, including owners, stable hands and others. This creates massive and open-ended liability that no right-thinking veterinarian would incur - and no right-thinking insurance company would indemnify.
3. There are numerous indirect and consequential risks surrounding Hendra, for which the veterinarian may be held liable, like the death of horses on the same or surrounding properties or the death or loss of value of a horse initially suspected of being infected with Hendra, but being later found to be negative, due to no or inadequate treatment.
4. Unless you wear full PPE every time you examine a horse, you risk hefty fines and a statutory criminal record imposed by the government.

There is only one way to avoid Hendra and all the liabilities that go with the disease and that is to avoid treating horses at all. One blessing when you train to be a vet is that you become qualified to treat many different animals. You are not stuck with only being able to treat horses.

If equine veterinarians boycotted the horse industry, public pressure on the government would change government attitudes and equine veterinarians would very soon get the attention and respect they deserve. After all, zoonotic disease control is the primary responsibility of government, not of private equine veterinary practitioners.

And one of the terms for ending such a boycott should be that the ridiculous prosecution of our three colleagues be brought to an immediate halt.



The VDA's 24/7 help line is available to all VDA members.

Please dial the number below for your country for 24 hour assistance:

USA & Canada: 705-990-5000

Australia: 02-8355-9900

Hong Kong: 5808-5451

South Africa: 087-550-9000



# Veterinarians Liabilities Insurance Policy

# Making a Choice That's Right for You

With over 50 years' experience, we understand the needs of professionals and deliver insurance that lives up to the high standards of your profession. With Guild Insurance, you have the confidence of knowing you're with a leading Australian insurer who understands the risks you face.

This policy-booklet details everything you need to know about what's covered under your policy, and any exclusions or limitations that apply. Please read it carefully and keep it in a safe place with your policy schedule.

## The value of insurance to a practising professional is undeniable.

### Welcome to Guild Insurance

Thank you for insuring with Guild Insurance. We are pleased to provide you with your policy documentation.

### Don't trust your livelihood to just any insurer

Established in 1963, Guild Insurance has partnered with Australian professionals for over 50 years. We provide comprehensive insurance solutions tailored to their needs. As a Guild Insurance customer, you are supported by an award winning risk management program and a dedicated team of qualified legal experts. So if the time comes to make a claim, you can enjoy the confidence and peace-of-mind that comes with insuring with one of Australia's leading insurance providers.

### Cover you can rely on

As a professional, you are exposed to a number of risks each day, and worrying about them is the last thing you need. With Guild Insurance you've got peace-of-mind knowing our comprehensive, high-quality insurance is helping to protect your livelihood so you can get on with doing what you do best.

### About Guild Insurance

This Policy is underwritten by Guild Insurance Limited, ABN 55 004 538 863 and AFS Licence number 233791, of 5 Burwood Road, Hawthorn, Victoria, 3122. Guild Insurance Limited (hereafter referred to as We, Us or Our) is part of the Guild Group of Companies, a wholly owned subsidiary of the Pharmacy Guild of Australia.

If you need assistance at any time, please call us on **1800 810 213**.

# Making a Claim

**When you need to make a claim remember we're here to help. Contact us 24 hours, 7 days on 1800 810 213.**

## Registering your claim with us

As soon as you experience any loss covered by your policy, or if a claim is made against you by a third party, you need to call our National Claims Office to lodge your claim.

It's important that we know what's happening as soon as possible so that we can help you deal with the situation and manage your claim efficiently. We will immediately offer you support, advice and guidance on what further action to take.

Please follow the points outlined below so the process is easier for you, and for us.

1. **Take all reasonable steps** to minimise the loss or liability and to prevent any further problems arising.
2. **Contact our National Claims Office on Freecall number 1800 810 213** – 24 hours, 7 days a week.
3. **When you contact** us, you will be asked to provide us with the following:
  - > details of the incident (when, where, how);
  - > your policy number, if available;
  - > details of the loss or liability and, where possible, an estimate of the cost of the loss.

Where appropriate we may appoint a solicitor.

## What you must do

To protect our mutual interests in defending a claim, you must do the following:

- > **Make sure you comply** with the general conditions and claims conditions of the policy.
- > **Do not admit liability**, no matter what your own views are concerning the incident.
- > **Forward every letter, demand, writ, summons or other legal process** to us as soon as practicable after you receive it.
- > **Pay any applicable excess** that is stated in the schedule or in this policy-booklet in relation to your claim under this policy.

If the person notifying us of a claim is not a person listed as an insured on this policy, they must obtain your written authority before the claim can proceed.

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# Introduction

## Applying for Cover with Us

Prior to this Policy coming into effect You have provided Us with information in support of Your request for Cover with Us. The information that You have provided to Us is referred to as Your Application for this Policy and the information You have provided is set out in the Schedule and any addendum attached to the Schedule.

You must ensure the information provided to Us is accurate and that You have complied with Your duty of disclosure. We have relied on Your Application to decide whether to issue this Policy and, if We do so or have, the terms and conditions upon which We do/did so.

When You have paid the Premium, or agreed to pay the Premium, We will issue You with a Schedule, any addendum to the Schedule and this policy-booklet. If payment of the Premium as stated in the Schedule is not made then there is no Cover provided under this Policy.

## Your Policy

Your Policy consists of:

- the Policy wording;
- a Schedule and any addendum attached to the Schedule; and
- other documentation indicating a change to Your Policy, including Endorsements.

The Policy wording, together with the Schedule and any addendum attached to the Schedule, form the legal contract of insurance between You and Us.

This policy-booklet consists of:

- important information that You need to know before You take out a Policy with Us; and
- the Policy wording, which forms part of Your legal contract with Us and tells You:
  - what Your Policy Covers;
  - what Your Policy does not Cover;
  - Excesses that apply to claims under this Policy; and
  - conditions that relate to Your Cover and to claims You may make under this Policy.

The Schedule will state the details of the insurance Cover which You have selected and which are particular to You and includes any Endorsement that changes or limits the Cover stated in the Policy wording.

When We change Your Policy details during the Period of Cover We will send You a new Schedule. This Schedule will be titled 'Policy Change' and will contain details of the Endorsement to Your Policy.

We will also provide You with a new Schedule at each renewal of Your Policy Cover.

We will only provide insurance Cover for those Sections of the Policy and for the Period of Cover stated in the Schedule.

Please read this policy-booklet together with the Schedule, any addendum attached to the Schedule and any accompanying documents carefully and keep them in a safe place for future reference.

## Your Policy Renewal

Prior to each anniversary date of this Policy We will send You a notice to advise You that Your Policy Cover will expire on the anniversary date.

If We invite continuation of this Policy beyond the anniversary date We will send You a renewal invitation. That invitation will be in the form of a Schedule similar to the one We provided to You at the start of Your insurance Cover with Us and will set out the terms and conditions of Cover and the Premium for the next Period of Cover.

We will also provide You with a copy of any addendum to Your Schedule from either the commencement of this Policy or from the last renewal of this Policy, whichever is the later. We will ask You to check the information contained in any addendum to make sure the information which You have previously provided to Us, and which We have relied upon to provide Cover to You, has not changed. You will be asked to advise Us of any changes to the information contained in any addendum. It is important that You advise Us of any changes to that information as We will rely on that information to offer You renewal of this Policy.

**Your failure to advise Us of any change to the information contained in any addendum may breach Your duty of disclosure to Us and may subsequently affect the Cover under this Policy in a significant way.**

The renewal invitation may contain changes to Your Cover and, if so, those changes will apply to the following Period of Cover. Your payment of the renewal Premium will signify Your acceptance of those changes to Your Cover.

Once You have paid the Premium for the next Period of Cover the renewal invitation will be the Schedule for Your next Period of Cover and will form part of this Policy.

If it is Our intention not to invite renewal of this Policy We will advise You and We will provide You with the reason why. If You are dissatisfied with Our reason for declining to offer continuing insurance You have the right to ask that We review that decision. Please contact Us if You wish to exercise that right.

## Complaints and Disputes Resolution

We work hard at building strong relationships with Our clients. However, complaints and disputes may still arise and when that happens Our objective is to resolve any disagreement as amicably and quickly as possible.

We have a formal complaints and dispute resolution process that is fair, efficient and accessible to all Our clients. This service is free of charge to You. Please do not hesitate to contact Us should You have any matter which You feel has not been satisfactorily resolved.

If You would like to make a complaint please call Us during office hours and speak to one of Our staff who will assist You.

If Your complaint cannot be resolved You can request that the matter be referred to Our Dispute Resolution Manager who will endeavour to resolve it through Our internal dispute resolution process.

If Our internal dispute resolution facility is unable to resolve Your dispute and You wish to take the matter further We will provide You with information regarding a free external and independent dispute resolution service or other external dispute resolution options (if any) that may be available to You. Alternatively You may seek independent legal advice at Your own expense.

You can view Our complaints resolution procedures at [www.guildinsurance.com.au](http://www.guildinsurance.com.au).

## General Insurance Code of Practice

We are a signatory to and fully support the General Insurance Code of Practice. The objectives of this Code are to commit insurers and the professionals they rely upon to higher standards of customer service.

Please contact Us if You would like further information about the Code of Practice. Alternatively, You can view the Code of Practice at [www.codeofpractice.com.au](http://www.codeofpractice.com.au).

## Privacy

We are committed to complying with privacy laws and protecting Your personal information. By entering into a contract with Us, You agree to:

- > the collection, use and disclosure of Your personal information to evaluate, effect, manage and administer Your insurance Cover, financial service or product provided to You by Us, any related company, or in conjunction with Us. This applies to personal information provided previously, currently and in the future;
- > the collection, use and disclosure of Your personal information to inform You of other products and services offered by Us, Our related entities or Your representative;

- > the use and disclosure of Your personal information to test and improve upon the systems used to manage Your Policy or financial product;
- > the collection from, and/or disclosure of, Your personal information to a third party which may include Your professional association, Your employer and Our service providers (including but not limited to other insurers, medical practitioners, lawyers, claims consultants, loss assessors and investigators), where this is relevant for the administration of Your Policy, financial product or a claim under this Policy;
- > the disclosure of Your personal information to overseas recipients, where relevant, such as some of Our reinsurers; and
- > the disclosure of Your personal information to a person, regulatory bodies or other entities if We are required or permitted to do so by law.

If You do not provide the requested personal information We may not be able to evaluate, effect, manage or administer Your Policy and You may also be in breach of Your duty of disclosure.

We will ensure that Your personal information is accurate, up-to-date and complete. You may access personal information We hold about You by contacting Us.

If You would like to make a complaint about how We have handled Your personal information please contact Us and speak to one of Our staff who will assist You.

Our privacy policy contains further information on access, correction and complaints handling procedures and can be accessed online at [www.guildinsurance.com.au/privacy-policy](http://www.guildinsurance.com.au/privacy-policy). Alternatively, You can write to Us at Locked Bag 7, Hawthorn VIC 3122 or contact Us during office hours and We will arrange for a copy of the privacy policy to be provided to You.

# Important Information

**The following important information applies to all Sections of this Policy. Please read this information carefully and if You are in any doubt as to how this information may affect You please contact Us and ask for an explanation.**

## Alteration of Risk

This Policy Covers Your Professional Services and Your Business as You have represented these to Us. It is important for You to advise Us immediately of any changes to Your Professional Services or Business that may result in an increased risk of liability to third parties.

For example, You should advise Us when there is a change in:

- > Your Business name;
- > the nature of Your Professional Services or Business activities;
- > Your address or the location of risk from where You conduct Your Professional Services or Business;
- > Your professional registration status including but not limited to cancellation, restriction or lapse of Your professional registration;
- > Your or Your Business' products or services not previously disclosed to Us;
- > Your or Your Business' financial status due to being placed into bankruptcy, receivership, liquidation or administration or becoming insolvent or wound-up; or
- > any other change to Your Professional Services or the Business whereby the risk Covered under any Section of this Policy is increased.

You should also advise Us if Your Business is sold or otherwise permanently discontinued.

When We receive Your notification of a change We may:

- > adjust the Premium or terms of this Policy; or
- > cancel this Policy, in accordance with the provisions of the Insurance Contracts Act 1984 should We not wish to continue with this insurance.

## Claims Happening Outside of Australia and/or Legal Proceedings in Foreign Courts and/or Legal Jurisdiction

There are very limited circumstances in which this Policy provides Cover in respect of a Claim for any actual or alleged act, error, omission, conduct, Bodily Injury or damage to property happening outside of Australia and We will only Cover You in respect of any such Claim when that Claim is brought in a court within Australia.

If You are carrying on Your Business or Your Professional Services overseas for any period of time contact Us to ensure You are Covered.

## Commencement of Cover

The Cover provided under this Policy does not commence until We have accepted Your Application or We have otherwise confirmed We have accepted Your insurance and You have paid the Premium to Us.

## Your Duty of Disclosure

Before You enter into an insurance contract, You have a duty to tell Us anything that You know, or could reasonably be expected to know, may affect Our decision to insure You and on what terms.

You have this duty until We agree to insure You.

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

You do not need to tell Us anything that:

- > reduces the risk We insure You for; or
- > is common knowledge; or
- > We know or should know as an insurer; or
- > We waive Your duty to tell Us about.

## If You Do Not Tell Us Something

If You do not tell Us anything You are required to, We may cancel Your contract or reduce the amount We will pay You if You make a claim, or both.

If Your failure to tell Us is fraudulent, We may refuse to pay a claim and treat the contract as if it never existed.

## Excess

An Excess may apply to Your claim under this Policy. The amount of any Excess applicable is stated in the Schedule or in this policy-booklet.

We will deduct the amount of any Excess from the amount We pay in relation to any claim under this Policy. The Excess will be deducted from Your claim before the Limit of Liability amount is applied.

### Financial Support for Associations

Where We have a referral agreement with a professional association We may provide financial support to that association. Such support can include:

- > sponsorship;
- > marketing assistance;
- > a referral fee of up to ten per-cent (10%) of Your annual Policy Premium before government charges.

If You would like to know if Your association has entered into a referral agreement with Us or require further information please contact Us.

### GST – Goods and Services Tax

This Policy has a GST provision in relation to Premiums and to payments We may make in respect of claims under this Policy.

Your Policy contains claims conditions in respect of:

- > GST and claim payments for compensation;
- > GST and claim payments for legal and other costs; and
- > Our limitation for GST payment.

You should read the claims conditions contained in this policy-booklet to make sure You understand both Our and Your obligations in respect of how GST will be treated in respect of the payment of claims under this Policy.

### Interests of Other Parties

This Policy will only Cover the insurable interest of the person or entity stated in the Schedule unless otherwise specifically Covered under any Section of this Policy.

### Limits of Liability

Cover under this Policy is limited to the Limits of Liability stated in the Schedule. The Limits of Liability applicable to this Policy represent the full extent of Our maximum liability to You in relation to all claims under this Policy.

### Limitations of Cover

#### Claims Made and Notified Cover

This Policy operates on a 'claims made' basis of Cover.

A 'claims made' basis of Cover means that We only Cover Claims first made against You during the Period of Cover. You must advise Us during the Period of Cover of any Claim first made against You by another party. If You do not notify Us during the Period of Cover You may not be Covered under this Policy.

You should refer to this policy-booklet for the full description of the 'claims made' Cover provided under this Policy.

This Policy **does not** provide Cover in relation to:

- > acts, errors, omissions or conduct occurring or committed by You prior to the Retroactive Date of the Policy Section Cover as stated in the Schedule (if such a date is actually specified in the Schedule);
- > a Claim made after the expiry of the Period of Cover even though the act, error, omission or conduct giving rise to the Claim may have occurred during the Period of Cover;
- > Claims made, threatened or intimated against You prior to the commencement of the Period of Cover;
- > facts or circumstances of which You first became aware prior to the Period of Cover and which You knew or ought reasonably to have known had the potential to give rise to a Claim or other claim Covered under this Policy; or
- > any Claim, fact or circumstance that may give rise to a Claim or Inquiry disclosed or reported to Us or any other insurer under any insurance policy prior to the Period of Cover.

Where You have given notice in writing to Us of any facts or circumstances that might give rise to a Claim against You as soon as reasonably practicable after You become aware of those facts or circumstances but before the expiry of the Period of Cover You may have rights under Section 40(3) of the Insurance Contracts Act 1984 to be indemnified in respect of any Claim subsequently made against You arising from those facts or circumstances notwithstanding that the Claim is made after the expiry of the Period of Cover.

Any such rights arise under the Insurance Contracts Act 1984 legislation only. The terms and effect of this Policy are that You are not Covered for Claims made against You after the expiry of the Period of Cover.

### Premiums

Your Premium will be subject to the inclusion of:

- > GST in accordance with relevant taxation legislation; and
- > stamp duty as imposed by the relevant legislation of each Australian State or Territory.

### Premium Payments by Instalments

When You pay Your Premium by instalments, then:

- > if an instalment Premium payment is overdue for a period exceeding fourteen (14) days We will refuse to pay any claim under this Policy arising from an event happening after the due date of the instalment Premium;
- > if an instalment Premium payment is overdue for a period exceeding one (1) calendar month We will cancel this Policy without notice to You; and

- if We have to pay Your claim under this Policy We will deduct any outstanding instalment Premium from the claim payment.

### **Waiver of Rights and Subrogation**

#### **Waiver of Rights**

No provision of this Policy, either in whole or in part, shall be considered to have been waived by Us unless the provision is expressly stated in writing to be waived by Us.

Where We do waive Our rights to subrogation that waiver will be stated in any relevant Section of this Policy. You should refer to the Policy wording for those Sections where such a waiver applies.

#### **Subrogation - Preventing Our Right to Recovery**

If You have agreed not to seek compensation from another person who is liable to compensate You for any liability which is Covered under this Policy We may not Cover You under this Policy for that liability.

# Your Policy

This policy-booklet together with the Schedule We provide to You and any addendum to the Schedule and any Endorsement form Your insurance Policy with Us.

## **Our Agreement with You**

We agree to provide You with the Cover set out in this Policy which You have selected and which is stated in the Schedule.

The Cover is in force for the Period of Cover stated in the Schedule.

You have paid or agreed to pay Us the Premium set out in the Schedule for the Period of Cover.

## **Exclusions, General Conditions, Claims Conditions and Definitions**

This Policy has:

- > exclusions;
- > general conditions;
- > claims conditions; and
- > definitions;

that will apply to this Policy.

## **Grammatical Forms**

A number of the defined words or terms in this Policy have different grammatical forms. The meaning given to them in their definition applies specifically to one of their grammatical forms but their other grammatical forms have a corresponding meaning.

## **Headings**

This policy-booklet contains headings which are used for reference only and must not be used when interpreting this Policy.

## **Singular and Plural Words**

In this Policy, a reference to the singular includes the plural and vice versa.

# Section – Professional Indemnity

## What is Covered

We will Cover You for Your civil liability in respect of any Claim as a result of a breach of professional duty by You in the provision of the Professional Services where such Claim is first made against You and notified to Us during the Period of Cover.

The Cover provided includes but is not limited to Your civil liability in respect of any Claim as a result of any of the following in the provision of the Professional Services:

Your actual or alleged unintentional:

- a. defamation, libel or slander;
- b. unlawful discrimination;
- c. breach of Australian Consumer Law under the Competition and Consumer Act 2010 (Cth) and other legislation enacted for the protection of consumers in any State or Territory;
- d. infringement of any copyright, trademark, registered design or patent;
- e. breach of any duty of confidentiality arising at law; and
- f. breach of any privacy legislation in Australia or of any other applicable legislation in Australia in respect of privacy of personal information.

### Defence Costs

Where We agree to provide Cover to You for a Claim Covered under this Section We will also pay Defence Costs.

### Limit of Liability

Our maximum liability under this Section in respect of:

- a. any one Claim will be limited to an amount not exceeding the Limit of Liability amount for Limit of Liability any one Claim or where applicable to the sub-limit amount in respect of any specific Cover under this Section; and
- b. to the extent that this Policy Covers more than one entity Our total liability under this Section during the Period of Cover for any one Claim will not exceed the Limit of Liability any one Claim; and
- c. all Claims in the aggregate during the Period of Cover will be limited to an amount not exceeding the Limit of Liability amount for Limit of Liability in the Aggregate any one Period of Cover or where applicable to the sub-limit amount in respect of any specific Cover under this Section.

The Limit of Liability amount in respect of each of clauses a., b. and c. above **is inclusive of Defence Costs and any amounts**

**payable** under any and all of the additional benefits under this Section or of any other extension of Cover under this Section.

We will not be liable to defend or to continue to defend any Claim or pay or continue to pay any Defence Costs associated with such defence once We have paid an amount equivalent to the Limit of Liability amount in each of clause a., b. or c. above.

The Limit of Liability amount for each of clause a., b. or c. above will not be reduced by the Excess amount payable by You.

### Multiple Claims

All acts, errors, omissions or conduct which are in any way related to or originate from one source or original cause shall jointly constitute a single act, error, omission or conduct. Where a single act, error, omission or conduct or causally connected or interrelated acts, errors, omissions or conduct result in more than one Claim or a series of Claims all such Claims shall jointly constitute one Claim and the Limit of Liability any one Claim and one Excess shall apply to that Claim.

## Additional Benefits

We will, subject to all of the provisions of this Policy, Cover You in relation to the following additional benefits.

Our liability will be limited to the amount stated in the relevant additional benefit or, if no amount is stated, the Limit of Liability amount stated in the Schedule.

### Artificial Breeding Material

Notwithstanding exclusion 'Artificial Breeding Material' We will Cover You for Your civil liability in respect of any Claim as a result of a breach of professional duty by You in the collection, transfer, transit or storage of any Artificial Breeding Material where such Claim is first made against You and notified to Us during the Period of Cover.

Our maximum liability under this additional benefit for any one Claim and all Claims in the aggregate during the Period of Cover will be limited to an amount not exceeding \$100,000 unless otherwise stated in the Schedule.

### Claims Preparation Costs

When We agree to Cover You for a Claim We will also Cover You for Your necessary and reasonable out-of-pocket expenses, not including Defence Costs, incurred by You at Our request in the preparation of Your defence to such Claim:

### Provided that:

We will not reimburse You for any loss of earnings, salary or other lost remuneration or associated expenses.

Our maximum liability under this additional benefit for any one Claim during the Period of Cover and for all Claims in the aggregate during the Period of Cover will be limited to an amount not exceeding \$25,000 unless otherwise stated in the Schedule.

No Excess will apply to this additional benefit.

### Continuous Cover

Notwithstanding exclusion 'Known Circumstances or Known Claims' We will Cover You for Your civil liability in respect of a Claim first made against You or an Inquiry or Criminal Proceeding first served on You during the Period of Cover where such Claim, Inquiry or Criminal Proceeding arises from a fact or circumstance:

- a. You first became aware of prior to the Period of Cover and You knew or ought to have reasonably known might give rise to a Claim, Inquiry or Criminal Proceeding; and
- b. You did not notify Us of such fact or circumstance under the Policy in force with Us at the time when You first became aware of such fact or circumstance:

### Provided that:

- i. there is an absence of fraud in Your not notifying Us of such fact or circumstance;
- ii. We have continued to be Your professional indemnity insurer without interruption between the date when the fact or circumstance could have been first notified to Us and the date the Claim, Inquiry or Criminal Proceeding was actually notified to Us;
- iii. other than the Limit of Liability amount Cover is subject to all of the provisions and Excess of this Section;
- iv. Cover is limited to the Limit of Liability amount of the policy for the period of cover in force at the time when You could have first notified Us of such fact or circumstance; and
- v. We may reduce Our liability under this Section to the extent of any prejudice suffered by Us due to Your not notifying Us of such fact or circumstance when You first became aware of it.

### Fraud and Dishonesty

Notwithstanding exclusion 'Fraudulent, Dishonest, Criminal, Malicious or Wilful or Intentional Acts', We will Cover You for Your civil liability in respect of any Claim as a result of any fraudulent, dishonest, criminal or malicious act, error, omission or conduct in the provision of the Professional Services where the Claim was first made against You and notified to Us during the Period of Cover:

### Provided that:

### We will not Cover:

- i. any of You or any other person who committed or condoned the act, error, omission or conduct excluded under exclusion 'Fraudulent, Dishonest, Criminal, Malicious or Wilful or Intentional Acts'; or
- ii. any Claim relating to:
  - Money or electronic funds or records of electronic funds; or
  - the unauthorised or illegal transfer of Money, land or other property by any means.

### Good Samaritan Acts

We will Cover Your civil liability in respect of any Claim as a result of Good Samaritan Acts where:

- a. such Claim is first made against You during the Period of Cover and notified to Us during the Period of Cover; and
- b. You were not acting under the terms of a contract for service or apprenticeship with another employer, entity or practice at the time of the Good Samaritan Acts.

### Import and/or Export of Animals Certification

Notwithstanding exclusion 'Animals - Import and Export of Animals' We will Cover You for Your civil liability in respect of any Claim as a result of a breach of professional duty by You in Your certification of any animal as being fit for the purpose of its export or import to or from Australia where such Claim is first made against You and notified to Us during the Period of Cover.

Our maximum liability under this additional benefit for any one Claim and all Claims in the aggregate during the Period of Cover will be limited to an amount not exceeding \$1,000,000 unless otherwise stated in the Schedule.

### Inquiries and Proceedings

### Inquiry Legal Costs

We will Cover You for Your Inquiry Legal Costs incurred by Us or by You with Our prior written consent in Your legal representation at any Inquiry:

### Provided that:

- i. notice of the Inquiry is first served on You and notified to Us during the Period of Cover; and
- ii. You are legally required to respond to and/or attend the Inquiry.

### **Criminal Proceeding Legal Costs**

Notwithstanding exclusion 'Fraudulent, Dishonest, Criminal, Malicious or Wilful or Intentional Acts' We will Cover You for Your Criminal Proceeding Legal Costs incurred by Us or by You with Our prior written consent in Your legal representation relating to a Criminal Proceeding and where the findings of such Criminal Proceeding may lead to a Claim Covered under this Section being made against You:

#### **Provided that:**

- i. notice of the Criminal Proceeding is first served on You and notified to Us during the Period of Cover; and
- ii. You are legally required to respond to and/or attend the Criminal Proceeding:

#### **Provided further that:**

**We will not Cover** You under this additional benefit for:

- iii. an act, error, omission or conduct arising from Your provision of the Professional Services when You were unregistered, unauthorised, ineligible, not accredited or disqualified to practise or to provide the Professional Services at the time of such act, error, omission or conduct;
- iv. any Criminal Proceeding:
  - arising out of any criminal act once You have been found guilty of or have admitted to any such criminal act;
  - against any of You who have committed or condoned any dishonest, fraudulent or criminal act, error, omission or conduct forming the subject of the Criminal Proceeding;
  - arising out of any vehicular traffic offences; or
  - arising out of any breach of any taxation legislation in Australia.

Our maximum liability in respect of any one Inquiry and/or Criminal Proceeding and in the aggregate for all Inquiries and/or Criminal Proceedings Covered under this additional benefit during the Period of Cover will be limited to the amount stated in the Schedule for Inquiries and Proceedings.

### **Loss of Documents**

We will Cover You for Your civil liability in respect of any Claim for the loss of or damage to Business Documents not owned by You but which are in Your custody or control in the ordinary course of Your Professional Services and for which Business Documents You are legally responsible:

#### **Provided that:**

- i. the loss or damage occurred and was first discovered by You during the Period of Cover;

- ii. the loss or damage occurred within the territorial limits of Australia;
- iii. You notified Us within thirty (30) days from first discovery of the loss of or damage to such Business Documents and prior to the expiry of the Period of Cover;
- iv. You must provide Us with invoices and accounts in support of the costs and expenses incurred by You in replacing or restoring such Business Documents for Our consideration and approval; and
- v. any Business Document held in electronic format is duplicated via daily back-up of material capable of restoring any lost or damaged document to its original status:

#### **Provided further that:**

**We will not Cover** You for:

- vi. loss of or damage to Business Documents arising from computer virus or the theft, corruption or erasure of any data by a former Insured;
- vii. loss of or damage to Business Documents brought about by wear and tear, vermin, mould or mildew or any other gradual deterioration; or
- viii. consequential or indirect loss of any kind.

Our maximum liability under this additional benefit for any one Claim and all Claims in the aggregate during the Period of Cover will be limited to an amount not exceeding \$250,000 unless otherwise stated in the Schedule.

An Excess of \$1,000 costs inclusive will apply to this additional benefit.

### **Pre-purchase Inspections**

Notwithstanding exclusion 'Animals – Pre-purchase Inspection Reports' We will Cover You for Your civil liability in respect of any Claim as a result of a breach of professional duty by You in the provision of any pre-purchase inspection report on the condition, health or otherwise of any animal where such Claim is first made against You and notified to Us during the Period of Cover.

Our maximum liability under this additional benefit for any one Claim and all Claims in the aggregate during the Period of Cover will be limited to an amount not exceeding \$1,000,000 unless otherwise stated in the Schedule.

### Reinstatement of Limit of Liability

Where the Limit of Liability amount is exhausted partially or totally by the payment of a Claim or Claims Covered under this Section We will reinstate the Limit of Liability amount up to the maximum aggregate Limit of Liability for Section – Professional Indemnity during the Period of Cover to Cover You for any subsequent Claim or Claims Covered under this Section:

#### Provided that:

- i. We will only reinstate the Limit of Liability amount for any such subsequent Claim or Claims arising from acts, errors, omissions or conduct unrelated to any Claim or Claims already Covered (whether in whole or in part) within the original Limit of Liability amount;
- ii. Our aggregate liability for all Claims Covered under Section – Professional Indemnity will not exceed the Limit of Liability in the Aggregate;
- iii. notwithstanding the aggregate Limit of Liability amount available Our maximum liability in respect of any one Claim or Claims arising from the same or interrelated acts, errors, omissions or conduct will be limited to an amount not exceeding the Limit of Liability amount for Section – Professional Indemnity inclusive of any additional benefits or other amounts Covered and Defence Costs; and
- iv. this additional benefit will not apply to the extent that there is other insurance cover available to You in excess of the original Limit of Liability amount under this Section.

### Run-off Cover

We will Cover You if, during the Period of Cover You:

- a. permanently retire from the provision of the Professional Services;
- b. permanently cease to provide the Professional Services; or
- c. are subject to a merger, takeover, sale, winding-up or other permanent cessation of the Professional Services;

for Claims first made against You or a notice of an Inquiry or Criminal Proceeding first served on You and notified to Us on or after the happening of any of the matters listed in clauses a. to c. above;

#### Provided that:

- i. such Claim, Inquiry or Criminal Proceeding arises out of an act, error, omission or conduct which occurred prior to the date of the happening of any of the matters listed in clauses a. to c. above but on or after the Retroactive Date; and
- ii. We were Your professional indemnity insurer at the time the act, error, omission or conduct forming the subject of the Claim, Inquiry or Criminal Proceeding occurred:

#### Provided further that:

all Cover under this additional benefit shall cease if:

- iii. You cease retirement;
- iv. You resume Your conduct of any of the Professional Services;
- v. You are no longer subject to a merger, takeover, sale, winding-up or other permanent cessation of the Professional Services; or
- vi. another policy of insurance is arranged to insure any liability arising from the retirement, permanent cessation of the Professional Services, merger, takeover, sale or winding-up.

### Statutory liability

Notwithstanding exclusions:

- > 'Employer's Liability';
- > 'Fines and Penalties or Liquidated, Punitive, Exemplary or Aggravated Damages'; and
- > 'Pollution and/or Contamination':

We will Cover You:

- a. for legal costs incurred in defending legal proceedings issued against You for a breach of Australian workplace health and safety law or environment law in Your provision of the Professional Services where notice of such legal proceedings is first served on You and notified to Us during the Period of Cover; or
- b. to the extent permitted at law for any pecuniary penalties or compensatory civil penalties imposed on You arising from any legal proceedings for a breach of Australian workplace health and safety law or environment law in Your provision of the Professional Services and where such legal proceedings are first served on You and notified to Us during the Period of Cover:

#### Provided that:

the act, error, omission or conduct forming the subject of the legal proceedings and the breach:

- i. occurred on or after the Retroactive Date; and
- ii. did not arise from gross negligence.

Our maximum liability under this additional benefit in respect of any one legal proceeding, civil penalty or pecuniary penalty and all legal proceedings, civil penalties and pecuniary penalties in the aggregate will be limited to an amount not exceeding \$50,000 for any one Period of Cover unless otherwise stated in the Schedule.

#### **Vicarious Liability for Consultants, Agents and Contractors**

We will Cover You for Your civil liability in respect of a Claim as a result of Your vicarious liability for the acts, errors, omissions or conduct of Your consultants, agents or contractors whilst performing the Professional Services for or on Your behalf and where such Claim is first made against You and notified to Us during the Period of Cover:

#### **Provided that:**

**We will not Cover** any consultant, agent or contractor under this additional benefit for their own liability in respect of a Claim.

# Section – Public and Products Liability (claims made)

## What is Covered

### Public Liability

We will Cover You for Your civil liability in respect of any Claim for Bodily Injury or Property Damage where such Claim is first made against You and notified to Us during the Period of Cover as a result of an Occurrence happening in connection with Your Business:

#### Provided that:

**We will not Cover** You under Public Liability for any Bodily Injury or Property Damage as a result of an Occurrence happening in connection with Your Products other than food or beverages sold or supplied by You to visitors for consumption at Your Business premises.

### Products Liability

We will Cover You for Your civil liability in respect of any Claim for Bodily Injury or Property Damage where such Claim is first made against You and notified to Us during the Period of Cover as a result of an Occurrence happening in connection with the nature, condition or quality of Your Products:

#### Provided that:

**We will not Cover** You under Products Liability for any Bodily Injury or Property Damage which is Covered or could be Covered under Public Liability.

### Defence Costs

Where We agree to provide Cover to You for a Claim Covered under either Public Liability or Products Liability We will also pay Defence Costs.

### Limit of Liability

#### Public Liability

Our maximum liability under this Section for Public Liability in respect of:

- a. any one Claim will be limited to an amount not exceeding the Limit of Liability amount stated in the Schedule for Public Liability for Limit of Liability any one Claim or where applicable to the sub-limit amount stated in the Schedule in respect of any specific Cover under this Section; and
- b. to the extent that this Policy Covers more than one entity Our total liability under this Section during the Period of Cover for any one Claim will not exceed the Limit of Liability any one Claim; and
- c. all Claims in the aggregate during the Period of Cover will be limited to an amount not exceeding the Limit of Liability amount stated in the Schedule for Public Liability for Limit of Liability in the Aggregate any one Period of Cover or where

applicable to the sub-limit amount in respect of any specific Cover under this Section.

The Limit of Liability amount in respect of each of clauses a., b. and c. above **is inclusive of Defence Costs and any amounts payable** under any and all of the additional benefits under this Section or of any other extension of Cover:

#### Provided that:

- i. We will not be liable to defend or to continue to defend any Claim or pay or continue to pay any Defence Costs associated with such defence once We have paid an amount equivalent to the Limit of Liability amount in each of clause a., b. or c. above; and
- ii. the Limit of Liability amount for each of clause a., b. or c. above will not be reduced by the Excess amount payable by You.

### Products Liability

Our maximum liability under this Section for Products Liability in respect of:

- a. any one Claim will be limited to an amount not exceeding the Limit of Liability amount stated in the Schedule for Products Liability for Limit of Liability any one Claim or where applicable to the sub-limit amount stated in the Schedule in respect of any specific Cover under this Section; and
- b. to the extent that this Policy Covers more than one entity Our total liability under this Section during the Period of Cover for any one Claim will not exceed the Limit of Liability any one Claim; and
- c. all Claims in the aggregate during the Period of Cover will be limited to an amount not exceeding the Limit of Liability amount stated in the Schedule for Products Liability for Limit of Liability in the Aggregate any one Period of Cover or where applicable to the sub-limit amount in respect of any specific Cover under this Section.

The Limit of Liability amount in respect of each of clauses a., b. and c. above **is inclusive of Defence Costs and any amounts payable** under any and all of the additional benefits under this Section or of any other extension of Cover:

#### Provided that:

- i. We will not be liable to defend or to continue to defend any Claim or pay or continue to pay any Defence Costs associated with such defence once We have paid an amount equivalent to the Limit of Liability amount; and

- ii. the Limit of Liability amount for each of clause a., b. or c. above will not be reduced by the Excess amount payable by You.

### Multiple Claims

Where in respect of each of:

- > Public Liability; or
- > Products Liability;

a single Occurrence results in more than one Claim or a series of Claims against You all such Claims shall jointly constitute one Claim and one Limit of Liability and one Excess shall apply.

## Additional Benefits

We will, subject to all of the provisions of this Policy, also Cover You in relation to the following additional benefits.

Our liability will be limited to the amount stated in the relevant additional benefit or, if no amount is stated, the Limit of Liability amount stated in the Schedule.

### Claims Preparation Costs

When We agree to Cover You for a Claim under this Section We will also Cover You for Your necessary and reasonable out-of-pocket expenses, not including Defence Costs, incurred by You at Our request in the preparation of Your defence to such Claim:

#### Provided that:

**We will not** reimburse You for any loss of earnings, salary or other lost remuneration or associated expenses.

Our maximum liability under this additional benefit for any one Claim during the Period of Cover and for all Claims in the aggregate during the Period of Cover will be limited to an amount not exceeding \$25,000 unless otherwise stated in the Schedule.

No Excess will apply to this additional benefit.

### Conferences, Training, Teaching

We will Cover You for Your civil liability in respect of any Claim for Bodily Injury or Property Damage as a result of an Occurrence happening in connection with Your attendance at any professional conference, training or teaching facility during the course of Your Business and where such Claim is first made against You and notified to Us during the Period of Cover.

### Continuous Cover

Notwithstanding exclusion 'Known Circumstances or Known Claims' We will Cover You for Your civil liability in respect of a Claim first made against You during the Period of Cover where such Claim arises from an Occurrence:

- a. You first became aware of prior to the Period of Cover and You knew or ought to have reasonably known might give rise to a Claim; and
- b. You did not notify Us of such Occurrence under the policy in force with Us at the time when You first became aware of such Occurrence:

#### Provided that:

- i. there is an absence of fraud in Your not notifying Us of such Occurrence;
- ii. We have continued to be Your public and products liability insurer without interruption between the date when the Occurrence could have been first notified to Us and the date the Claim was actually notified to Us;
- iii. other than the Limit of Liability amount Cover is subject to all of the provisions and Excess of this Section;
- iv. Cover is limited to the Limit of Liability amount of the policy for the Period of Cover in force at the time when You could have first notified Us of such Occurrence; and
- v. We may reduce Our liability under this Section to the extent of any prejudice suffered by Us due to Your not notifying Us of such Occurrence when You first became aware of the Occurrence.

### Cross Liabilities

Where more than one legal entity or natural person comprises You under this Section each entity or natural person will be considered as separate and distinct from each other and the word 'You' will apply to each entity and each natural person as if a separate Policy had been issued to each entity or natural person:

#### Provided that:

nothing in this clause will increase Our Limit of Liability in respect of any one Claim or for all Claims in the aggregate made during the Period of Cover.

### Reinstatement of Limit of Liability

#### Public Liability

Where the Limit of Liability is exhausted partially or totally by the payment of a Claim or Claims Covered under this Section in respect of Public Liability We will reinstate the Limit of Liability amount up to the maximum aggregate Limit of Liability for Public Liability during the Period of Cover to Cover You for any subsequent Claim or Claims Covered under Public Liability:

**Provided that:**

- i. We will only reinstate the Limit of Liability amount for any such subsequent Claim or Claims arising from any Occurrence unrelated to any Claim or Claims already Covered (whether in whole or in part) within the original Limit of Liability amount;
- ii. notwithstanding the aggregate Limit of Liability available Our maximum liability in respect of any one Claim or in the aggregate for all Claims arising from the same or interrelated Occurrence will be limited to an amount not exceeding the Limit of Liability amount for Public Liability inclusive of any additional benefits or other amounts Covered and Defence Costs;
- iii. Our aggregate liability for all Claims Covered under Public Liability will not exceed the Limit of Liability amount for Limit of Liability in the Aggregate any one Period of Cover; and
- iv. this additional benefit will not apply to the extent that there is other insurance cover available to You in excess of the original Limit of Liability amount of this Section.

**Products Liability**

There is no reinstatement of the original Limit of Liability available for any Claim Covered under this Section in respect of Products Liability.

**Run-off Cover**

We will Cover You if, during the Period of Cover, You:

- a. permanently retire;
- b. permanently cease to conduct the Business;
- c. cease to legally own the Business; or
- d. are subject to a merger, takeover, sale, winding-up or other permanent cessation of the Business;

for Claims Covered under Public Liability or Products Liability which are first made against You and notified to Us on or after the happening of any of the matters listed in clauses a. to d. above:

**Provided that:**

- i. such Claim arises out of an Occurrence happening prior to the date of the happening of any of the matters listed in clauses a. to d. above but on or after the Retroactive Date; and
- ii. We were Your public and products liability insurer at the time the Occurrence forming the subject of the Claim happened:

**Provided further that:**

all Cover under this additional benefit shall cease immediately if:

- iii. You cease retirement;

- iv. You resume Your conduct of the Business;
- v. You resume legal ownership of the Business;
- vi. You are no longer subject to a merger, takeover, sale, winding-up or other permanent cessation of the Business; or
- vii. another policy of insurance is arranged to cover any liability arising from the retirement, permanent cessation of the Business, merger, takeover, sale or winding-up.

**Vicarious Liability for Consultants, Agents and Contractors**

We will Cover You for Your civil liability in respect of any Claim for Bodily Injury or Property Damage which arises from Your vicarious liability for the conduct of Your consultants, agents or contractors a result of an Occurrence happening in connection with Your Business and where such Claim is first made against You and notified to Us during the Period of Cover.

# Exclusions

**The following exclusions apply to this Policy. Please read them carefully.**

This Policy does not Cover and We will not be liable for any claim under this Policy for, directly or indirectly arising out of or in any way connected with:

## Aircraft

- a. Your ownership, maintenance, service, operation, use or legal control of an Aircraft or Aircraft landing area; or
- b. any of Your Products that are used or incorporated in or connected with Aircraft or which You could be reasonably expected to know are or would be incorporated or used in Aircraft.

Aircraft landing area includes any land, building or structure in an area where Aircraft take off or land or are housed, maintained, operated or refuelled.

## Animals

in respect of the Cover provided under Section – Professional Indemnity and Section – Public and Products Liability:

### Artificial Breeding Material

the collection, transfer, transit or storage of Artificial Breeding Material other than as Covered under additional benefit 'Artificial Breeding Material' under Section – Professional Indemnity.

### Import or Export of Animals

the import to or export from Australia of any animal other than as Covered under additional benefit 'Import and/or Export of Animals Certification' under Section – Professional Indemnity.

### Pre-purchase Inspection Reports

the preparation and/or provision of any pre-purchase inspection report on the condition, health or otherwise of any animal other than as Covered under additional benefit 'Pre-Purchase Inspections' under Section – Professional Indemnity.

## Asbestos

the existence or presence of asbestos in whatever form or quantity.

## Bankruptcy, Insolvency or Business Sold

Your Business or You being placed into bankruptcy, receivership, liquidation or administration or becoming insolvent or wound-up.

## Computer, Electronic Equipment, Electronic Data and/or Software

in respect of the Cover provided under Section – Public and Products Liability:

- a. total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data;
- b. error in creating, amending, entering, deleting or using Electronic Data; or
- c. total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all;

from any cause whatsoever regardless of any other contributing cause or event contributing concurrently or in any other sequence:

### Provided that:

- i. this exclusion shall not apply to Claims for Bodily Injury or Property Damage caused by or arising out of the ownership, possession, operation, control or use by You of Electronic Data; and
- ii. such Claims do not arise out of or are in any way connected with any of Your Products:

### Provided further that:

**We will not Cover** You for the costs of restoration, repair, recovery, reconfiguration or loss of Electronic Data.

## Contract Works

any alteration, renovation or addition work to or of any buildings or structure by You or on Your behalf where the total contract price or estimated commercial value of such works exceeds \$500,000.

## Contractual Liability

liability assumed:

- a. under any contract, warranty, guarantee, indemnity or agreement unless such liability would have attached to You regardless of the existence of the contract, warranty, guarantee, indemnity or agreement; and/or
- b. which is outside the normal course of Your Professional Services or conduct of Your Business:

### Provided that:

this exclusion will not apply when such liability:

- i. is assumed under any statutory guarantee of fitness or quality regarding Your Products as required by any legislation in Australia in respect of product safety;

- ii. has been specifically agreed to by Us and stated in the Schedule; or
- iii. in respect of the Cover provided under Section – Public and Products Liability, in respect of Public Liability Cover only, is assumed under any Incidental Contract.

#### **Defamation, Libel, Slander**

in respect of the Cover provided under Section – Public and Products Liability:

the publication or utterance of a libellous, slanderous or defamatory remark:

- a. made prior to the Period of Cover;
- b. made by You or at Your direction and/or with knowledge of its falsity; or
- c. related to advertising, broadcasting, publishing, telecasting activities or on-line social media activities conducted by You or on Your behalf.

#### **Directors and Officers**

in respect of the Cover provided under Section – Professional Indemnity:

Your acting in the capacity of a director or officer of any legal entity, corporation or other incorporated body.

#### **Employer's Liability**

- a. Bodily Injury to any Employee arising out of or sustained in the course of their employment with You;
- b. Bodily Injury to any individual who is deemed to be Your Employee pursuant to any workers' compensation legislation or similar law or who is deemed to be Your Employee at common law;
- c. Bodily Injury to an Employee for which You are indemnified or entitled to be indemnified under any policy of insurance or self-insurance licence arrangement required to be taken out pursuant to any workers' compensation legislation or accident compensation legislation, whether or not You are a party to such policy;
- d. liability imposed by the provisions of any workers' compensation legislation;
- e. liability imposed by the provisions of any industrial award, agreement or determination; or
- f. property or Money belonging to or in the physical or legal control of any Employee.

#### **Employment Practices Liability**

any wrongful or unfair dismissal, discrimination, harassment of any kind, misleading or deceptive representation, mis-statement, denial of natural justice, defamation, demotion or failure to promote or hire, relating to or in respect of:

- a. the employment; or
- b. the prospective employment;

of any person by You.

#### **Error in Design**

in respect of the Cover provided under Section – Public and Products Liability:

an error or omission in design, plan or specifications or failure of design in Your Products.

#### **Experiments or Testing**

the participation in any clinical trial or clinical research.

#### **Failure to Take Reasonable Precautions**

failure to take all reasonable precautions for the maintenance and protection of the Business property.

#### **Faulty Workmanship**

the cost of performing, re-performing, correcting, improving, rectifying or completing any work undertaken by You or on Your behalf.

#### **Fines and Penalties or Liquidated, Punitive, Exemplary or Aggravated Damages**

- a. fines and/or penalties;
- b. liquidated damages, punitive, exemplary or aggravated damages or additional damages resulting from the multiplication of compensatory damages; or
- c. non-compensatory damages or taxes;

other than as specifically Covered under additional benefit in Section – Professional Indemnity in respect of Statutory Liability Cover.

#### **Fraudulent, Dishonest, Criminal, Malicious or Wilful or Intentional Acts**

any actual or alleged:

- a. dishonest, fraudulent, criminal or malicious act or conduct;
- b. wilful act or intentional conduct intended to cause loss, damage, harm or liability or committed with a reckless disregard for the consequences thereof; or

- c. wilful or intentional breach of any regulation, statute or other law, contract or duty;

committed by You or any person acting with Your knowledge, consent or connivance.

#### Hovercraft

- a. Your ownership, maintenance, service, operation, use or legal control of a Hovercraft or Hovercraft landing area; or
- b. any of Your Products that are used or incorporated in or connected with Hovercraft or which You could be reasonably expected to know are or would be incorporated or used in Hovercraft.

Hovercraft landing area includes any land, building or structure in an area where Hovercraft take off or land or are housed, maintained, operated or refuelled.

#### Infectious and/or Transmissible Diseases

- a. Transmissible Spongiform Encephalopathy (TSE) including but not limited to Bovine Spongiform Encephalopathy (BSE) or new Variant Creutzfeldt-Jakob Disease (VCJD); or
- b. the existence or suspected existence of any infectious disease where an infectious disease is defined as Highly Pathogenic Avian Influenza or any other diseases which are deemed to be quarantinable diseases under the Australian Quarantine Act 1908 (Cth) and subsequent amendments irrespective of whether it was discovered on Your Business premises or elsewhere:

#### Provided that:

this exclusion shall not apply where You or others acting on Your behalf have complied with all relevant published professional and/or government protocols and standards for the treatment of animals with conditions referred to in clauses a. and b. above.

#### Jurisdiction and Territorial Limits

- a. any event or any actual or alleged act, error, omission, conduct, Bodily Injury or damage to property happening outside of Australia other than as specifically Covered under this Policy;
- b. any Claim, action or matter brought in a court outside of Australia;
- c. any Claim, action or matter brought in a court within Australia to enforce a judgment handed down by a court outside of Australia; or
- d. any Claim, action or matter where You have agreed to submit to the legal jurisdiction of a court outside of Australia:

#### Provided that:

clause a. shall not apply in respect of:

- i. additional benefit 'Good Samaritan Acts' as Covered under Section – Professional Indemnity; or
- ii. Your attendance at any conference, training or teaching facility as Covered under additional benefit 'Conferences, Training, Teaching' under Section – Public and Products Liability.

#### Known Circumstances or Known Claims

any Known Circumstance and/or Known Claim.

#### Loss of Use

in respect of the Cover provided under Section – Public and Products Liability:

loss of use of real or tangible property that has not been physically damaged, destroyed or lost as a result of:

- a. a delay in or lack of performance by You or on Your behalf of any contract or agreement; or
- b. the failure of Your Products to meet the level of performance, quality, fitness or durability warranted or represented by You:

#### Provided that:

clause b. of this exclusion will not apply to loss of use of other real or tangible property not being Your Products resulting from sudden and accidental physical loss, destruction of or damage to any of Your Products after Your Products have been put to use by any person or organisation other than You.

#### Manufacturing Activities

any Bodily Injury or Property Damage directly or indirectly related to any of Your Products or goods manufactured or wholesaled by You other than where prepared by You for sale, supply or distribution in the normal course of Your Business.

#### Nuclear Material

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

**Provided that:**

this exclusion will not apply to any claim under this Policy arising from the use of radioisotopes when used away from the place where such are made or produced and used solely for the purpose of medical, industrial or scientific services in the conduct of Your Business or Professional Services.

**Occupier's and Owner's Liability**

in respect of the Cover provided under Section – Professional Indemnity:

Your occupation, ownership, lease or management of any land, building, structure or other real or tangible property.

**Pollution and/or Contamination**

- a. the actual or threatened discharge, dispersal, release, seepage, migration or escape of any Pollutant or harmful substance into or upon any property, land, watercourse, body of water or the atmosphere;
- b. costs and expenses incurred in the prevention, removal, nullifying or clean-up of contamination or pollution or harmful substance caused by Pollutants into or upon any property, land, watercourse, body of water or the atmosphere; or
- c. the actual or threatened discharge, dispersal, release, seepage, migration or escape of any contamination, Pollutant or harmful substance occurring in the United States of America, Canada or any other territory coming within or subject to the jurisdiction of the courts of the United States of America or Canada:

**Provided that:**

in respect of the Cover provided under Section – Public and Products Liability:

- i. clauses a. and b. above shall not apply where the discharge, dispersal, release or escape of any contamination, pollution or harmful substance was sudden, identifiable, unexpected and unintended and took place in its entirety at a specific time and place; and
- ii. in such circumstances Our total aggregate liability for any one Claim and all Claims Covered under this Policy in connection with Pollutants or harmful substances shall not exceed the Limit of Liability amount stated in the Schedule for Public Liability or the Limit of Liability amount stated in the Schedule for Products Liability. **We will not Cover** You for more than one Limit of Liability for all such Claims.

**Product Defect**

damage to Your Products if the damage arises from:

- a. any defect contained within Your Products;
- b. Your Products' harmful nature or unsuitability for intended purpose; or
- c. Your Products' inherent ineffectiveness:

**Provided that:**

this exclusion shall not apply to any resultant damage to third party goods caused by Your Products that are found to be defective, harmful, unsuitable or ineffective.

**Product Recall**

any recall, including but not limited to the withdrawal, inspection, repair, replacement, adjustment, removal, disposal or loss of use of:

- a. any goods or products manufactured, sold, supplied or distributed by You; or
- b. any of Your Products or any other property of which Your Products form a part if Your Products are recalled or withdrawn from the market or from use because of any known or suspected defect or deficiency in Your Products.

**Products**

in respect of the Cover provided under Section – Professional Indemnity:

the manufacture, preparation, modification, repair, sale or supply, maintenance, wholesale, distribution or treatment by You of any goods or products.

**Professional Liability**

in respect of the Cover provided under Section – Public and Products Liability:

the rendering of or failure to render professional advice or services or any act, error, omission or conduct connected with such professional advice or service by You.

**Professional Registration Breach**

in respect of the Cover provided under Section – Professional Indemnity:

any Professional Services provided by You at a time:

- a. when You were not registered to practise the Professional Services and such registration is required under any legislation in Australia; or

- b. when You were not permitted to provide such Professional Services under the terms, conditions, undertakings or limitations of Your professional registration.

### Property in Care, Custody or Control

any damage to property owned by, leased or rented to You or property in Your physical or legal control:

#### Provided that:

in respect of the Cover provided under Section – Public and Products Liability this exclusion will not apply to:

- i. premises leased or rented by You for the carrying on of Your Business;
- ii. premises not owned, leased or rented by You but temporarily occupied by You for the purpose of carrying out work in connection with Your Business;
- iii. property temporarily in Your possession for the purpose of being worked upon however We will not Cover You for damage to that part of any property upon which You are or have been working if the damage arises solely out of such work;
- iv. any Vehicle, or the contents thereof, not belonging to You, leased or hired by You or on loan or rented to You or used by You or on Your behalf or in Your custody or control while within a car park owned or operated by You for the purpose of parking:

#### but excluding:

any Vehicle or its contents in any part of a car park owned or operated by You or Your Business for fee or reward; or

- v. any other property, being property not described in clauses i. to iv. above, not owned, leased or rented by You but in Your temporary physical or legal control.

Our total liability payable for any one Claim and in the aggregate for all Claims during any one Period of Cover in respect of the Cover provided under clause v. above will not exceed the amount stated in the Schedule for Care, Custody or Control.

### Railways, Tramways and Trolleybuses

the construction and/or operation and/or ownership and/or structural maintenance of railways, tramways or trolleybuses:

#### Provided that:

in respect of the Cover provided under Section – Public and Products Liability:

this exclusion will not apply where rail loops, spurs or sidings are owned or operated by You in connection with Your Business for

the sole purpose of loading or unloading of Your Business stock, goods or Your Products.

### Related Entities

in respect of the Cover provided under Section – Professional Indemnity:

Claims made against You by or on behalf of:

- a. any other one of You or any other legal entity Covered under this Section;
- b. any subsidiary company or parent company of Yours;
- c. any joint venture partner of Yours; or
- d. any entity operated, controlled, owned or managed by You.

### Retroactive Date

any act, error, omission or conduct committed or alleged to have been committed or any Occurrence happening prior to the Retroactive Date stated in the Schedule.

### Terrorism

any act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the Property Damage, Bodily Injury or Claim or for any cost or expense including any action taken in controlling, preventing, suppressing or in any way relating to any act of Terrorism.

### Trading Debts, Profit, Refund of Fees

the refund or payment to You of:

- a. a trading debt;
- b. loss of profit; or
- c. fees or other remuneration or other consideration;

paid or due to You or Your agent or contractor or any person or party Covered under this Policy.

### Vehicle

Your ownership, possession, or use by You of any Vehicle:

- a. which is registered or required to be registered under any legislation; and
- b. for which compulsory liability insurance or statutory indemnity is required by law whether or not such insurance has been effected or a statutory indemnity provided:

**Provided that:**

in respect of the Cover provided under Section – Public and Products Liability, this exclusion will not apply to:

- i. Bodily Injury:
  - directly or indirectly arising out of or in any way connected with a Vehicle which does not require to be registered and have compulsory third party insurance or similar statutory indemnity under any legislation;
  - directly or indirectly arising out of or in any way connected with a Vehicle which is registered under legislation and by legislation is not required to have compulsory third party insurance or similar statutory indemnity and does not have compulsory third party insurance or similar statutory indemnity; or
  - where the compulsory liability insurance or statutory indemnity does not provide indemnity and the reason why that indemnity is not provided does not involve a breach by You of legislation relating to Vehicles;
- ii. liability caused by or arising out of the delivery or collection of goods to or from any Vehicle or during the loading and unloading of goods to or from any Vehicle; or
- iii. Property Damage to any Vehicle, or the contents thereof, not belonging to You, leased or hired by You or on loan or rented to You or used by You or on Your behalf or in Your custody or control while within a car park owned or operated by You for the purpose of parking:

**but excluding:**

any Vehicle or its contents in any part of a car park owned or operated by You or Your Business for fee or reward; or

- iv. Bodily Injury or Property Damage caused by or arising out of the use of any Vehicle including any tool or plant forming part of or attached to or used in connection with such Vehicle whilst being operated by You or on Your behalf as a Tool of Trade.

**Vibration, Weakening of Support**

Property Damage resulting from:

- a. vibration; or
- b. removal or weakening of, or interference with, support to land, buildings or any other property.

**War or Appropriation**

any war, invasion, acts of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or confiscation, nationalisation, requisition or destruction of or damage to property by or under the order of any government or public or local authority.

**Watercraft**

Your ownership, use or operation of any Watercraft other than as specifically Covered under this Policy.

# General Conditions

The following general conditions apply to this Policy. Please read them carefully.

It is important that these conditions are observed.

If You or any other person or party Covered under this Policy do not comply with these conditions the Cover under this Policy may be cancelled or We may reduce any claim payment to You or refuse to pay Your or their claim under this Policy.

## Alteration of Risk

You must advise Us immediately if, during the Period of Cover, there is a change in:

- a. Your Business name;
- b. the nature of Your Business activities or Professional Services;
- c. Your address or the location of risk from where You conduct Your Business or Professional Services;
- d. Your professional registration status including but not limited to cancellation, restriction or lapse of Your professional registration;
- e. Your Products or services not previously disclosed to Us;
- f. Your financial status due to being placed into bankruptcy, receivership, liquidation or administration or becoming insolvent or wound-up; or
- g. any other change to the Business or Professional Services whereby the risk Covered under any Section of this Policy is increased.

We may cancel this Policy or alter the Premium and/or the terms of this Policy once You advise Us of the change. We may do this with effect from the date You knew, or should have known, of the change in Your Business, Your Professional Services or of the other increase in risk.

If You do not advise Us about a change in the Business, Your Professional Services or of other changes in the risk Covered under any Section of this Policy We may refuse to pay Your claim under this Policy.

## Cancellation

### Cancellation by You

You may cancel this Policy at any time by giving Us written notice. If You pay Your Premium by instalments You must pay Us any unpaid instalments that are due up to the date of the Policy cancellation.

### Cancellation by Us

We may cancel this Policy when We are entitled to do so in accordance with the Insurance Contracts Act 1984.

In the event of cancellation by You or by Us:

- a. We will retain from the Premium You have paid to Us an amount that represents the period You were Covered by Us up to the date of cancellation and refund the balance of the Premium paid by You; and
- b. We may deduct from Your refund amount any reasonable administrative and transaction costs incurred by Us that are reasonably related to the acquisition and termination of this Policy.

## Estates, Heirs, Legal Representatives

We agree to provide Cover to Your estate, heirs, representatives or assigns in the event of Your death, mental incapacity, insolvency or bankruptcy to the same extent as Cover would otherwise be available to You under this Policy.

## Hazardous Goods

You may only use and store hazardous goods which are usual to Your Business and You must use and store them in the manner and quantities permitted by law.

## Joint Insurance – Non-imputation

Where this Policy Covers more than one of You:

- a. any misstatements or misrepresentations in Your Application for this insurance or in any information provided for any alteration to or renewal of this Policy or failure to comply with the duty of disclosure by one of You will not be imputed to any other of You where that other of You is innocent of and had no prior knowledge of the misstatement, misrepresentation or failure to comply with the duty of disclosure; or
- b. a failure of one of You to comply with all of the provisions of this Policy will not prejudice the Cover afforded to any other of You provided that other one of You is innocent of the conduct and advises Us in writing of all the facts relating to the failure as soon as possible after becoming aware of the failure.

## Jurisdiction

Any dispute arising under this Policy will be determined by Australian courts and in accordance with the laws of the State or Territory of Australia in which this Policy was issued.

## Non-accumulation of Limits of Liability

Where two or more insurance policies issued by Us (one of which includes this Policy) provide Cover in respect of the same claim the maximum amount We will pay in respect of that claim is the

highest applicable Limit of Liability amount available under any one of such policies.

Only one Excess shall apply to such claim which will be the Excess applicable to the policy with the highest Limit of Liability amount.

### Notices and Authorisation

Where there is more than one of You Covered under this Policy the person or the legal entity stated in the Schedule as the Insured shall be deemed the agent for the purposes of receiving notices for all other persons or entities Covered under this Policy.

We will send all notices to either Your last notified postal address or notified email address, as selected by You.

The Insured stated in the Schedule will also be authorised to act on behalf of all other persons or entities Covered in respect of all matters relating to this Policy.

### Other Insurance

Where a claim Covered under this Policy may also be covered under another policy of insurance (not issued by Us) then We reserve Our right to seek contribution from the other insurer. When We so require You or any other person or entity entitled to Cover under this Policy must give Us written notice of any insurance covering, whether in whole or in part, the claim under this Policy.

### Premiums

#### Premium Payment

The Cover provided under this Policy does not commence until You have paid Your Premium to Us for the Period of Cover.

#### Annual Premium Payment

When You pay Your Premium annually You must pay the annual Premium for this Policy by the commencement of the Period of Cover. If We do not receive Your Premium by this date, or if Your Premium payment is dishonoured, this Policy will not operate and there will be no Cover under this Policy.

#### Premium Payment By Instalments

When You pay Your Premium by instalments then:

- a. if an instalment premium is overdue for a period exceeding fourteen (14) days We will refuse to pay any claim under this Policy arising from an event which occurs after the due date of the instalment premium;
- b. if an instalment premium is overdue for a period exceeding one (1) calendar month We will cancel this Policy without notice to You; and

- c. if We have to pay Your claim under this Policy We will deduct any outstanding instalment premium from the claim payment.

### Payment in Australian Currency

Payment of all Premiums payable for this Policy and any continuation thereof shall be made in Australian currency only.

### Reasonable Precautions

You are required to:

- a. take all reasonable actions and/or precautions to maintain the Business property in good order and condition;
- b. take all reasonable actions and precautions for the safety and protection of others; and
- c. comply with all laws and regulations imposed by any government statutory authority for the safety of property or person.

### Waiver of Rights and Subrogation

No provision of this Policy, either in whole or in part, shall be considered to have been waived by Us unless the provision is expressly stated in writing to be waived by Us.

**We will not pay** a claim under this Policy where You have agreed not to recover from any person, entity or corporation liable to compensate You for liability or where You have agreed under any contract, lease or similar agreement to limit or exclude any right of recovery against any third party who would otherwise be liable to compensate You with respect to that liability.

In respect of the Cover provided under Section – Public and Products Liability:

We shall waive any rights and remedies or relief to which We are or may become entitled to by way of subrogation against any co-insured (including directors, officers and Employees) unless the liability is caused and/or contributed to by the serious and/or wilful misconduct of any such person or entity.

Without prejudicing Your interests under this Policy, You may:

- a. release any railways authority, government or public authority or local or municipal authority or statutory authority from any liability if You are required by any contract to do so;
- b. agree to enter into a lease or similar agreement for the occupancy of any Building or part of a Building, or hiring of property, where the terms of the lease or similar agreement include a disclaimer clause in favour of the lessor or the owner; or
- c. enter into a contract which includes a disclaimer clause in relation to the storage of goods.

# Claims Conditions

The following claims conditions apply to this Policy. Please read them carefully.

It is important that these claims conditions are observed.

If You or any other person or party Covered under this Policy do not comply with these conditions the Cover under this Policy may be cancelled or We may reduce any claim payment to You or refuse to pay Your or their claim under this Policy.

## Admission or Authorisations

You must obtain Our written consent before making any admission, offer, promise or offer of indemnity in connection with any claim under this Policy.

## Claim Notification

You are required to provide Us with:

- a. notice of any liability or Claim made against You as soon as reasonably possible after any of these occur or You are notified of such liability or of any Claim made against You or are served with a notice in respect of any Inquiry or Criminal Proceedings; and
- b. all correspondence and/or notice of any proceedings in relation to any claim under this Policy and forward to Us every communication, Writ or Summons or other court pleading as soon as reasonably practicable after receipt by You or service on You.

## Claims Control and Legal Proceedings

We may, in Your name, take over and have full discretion in the conduct of the defence or prosecution of legal proceedings or settlement of any claim under this Policy or in the exercise of Our rights of subrogation.

## Claims Cooperation

You must provide to Us any reasonable assistance We require to investigate, defend or settle any claim under this Policy.

In particular, You are required to provide Us with:

- a. Your cooperation in assisting Us to handle any claim under this Policy on Your behalf including the gathering of all relevant information and Your attendance at court to give evidence; and
- b. at Your own expense, such books of account and other Business books, computer records and other documents, proofs, information, explanations and other evidence as We may require for the purpose of investigating or verifying a claim under this Policy.

## Claims Payments in Australian Currency

Payment of all claims Covered under this Policy shall be made in Australian currency only.

## Excess

You must first pay the Excess amount specified in the Schedule before We will make any payment in respect of a claim under this Policy. Our liability to make any payment in respect of a claim shall be limited to that part of the claim above the Excess.

## GST

### GST and Claim Payments for Compensation

Where We make a payment under this Policy as compensation instead of as a payment for a relevant acquisition of goods, services or other supply We will reduce the amount of the payment by the amount of any Input Tax Credit that You would have been entitled to had the payment been applied to acquire such goods, services or other supply.

### GST and Claim Payments for Legal and Other Costs

If We pay Defence Costs or any other costs or expenses on Your behalf or incurred by You with Our prior consent in relation to any claim under this Policy We will not pay or reimburse the amount of GST included in those costs or expenses to the extent that You are entitled to Input Tax Credits in relation to such costs and expenses.

### Limitation of GST Payment

If the Limit of Liability amount or other limits under this Policy is/are not sufficient to Cover Your claim under this Policy We will only pay the respective proportion of the relevant GST amount that relates to the amount of Our settlement of Your claim under this Policy.

## Legal Proceedings and Waiver of Legal Privilege

Solicitors and other legal representatives retained by Us to act on Your behalf, or on behalf of any other Insured, must at all times be at liberty to disclose to Us any information obtained in the course of so acting whether from You or any other person or entity. For that purpose You and any other person or entity Covered under this Policy agree to waive any claim to legal professional privilege in respect of such information. We may rely on such information to determine Our obligation to provide Cover under this Policy.

## Loss Minimisation

You must do everything reasonable to prevent further liability following any event which is the subject of any claim under this Policy or which may lead to a claim under this Policy.

### **Our Right to Subrogation**

Where We make a payment to You or on Your behalf in respect of any claim under this Policy We will have the right to recover or obtain contribution from any person or organisation whom We consider liable at law for the liability and We shall be entitled to all Your rights of recovery against such person or organisation and We have the right to take such action in Your name.

You will be required to do all that is necessary to assist Us for the purpose of enforcing any rights and remedies or of obtaining indemnity from any other party to which We are entitled under this Policy.

### **Preservation of Evidence**

You must take all reasonable actions necessary to retain and preserve any damaged or defective appliances, machinery, plant or other things which might prove necessary or useful as evidence in connection with any claim under this Policy and, so far as possible with due regard for safety, no alteration or repair shall be made without Our prior consent.

### **Senior Counsel Clause**

We will not require You to contest any Claim unless a Senior Counsel (mutually agreed upon by You and Us or if no agreement can be reached within a reasonable time then by the President at the time of the Law Society of the State or Territory in Australia in which this Policy has been issued) advises that the Claim should be contested after taking into consideration the likely cost of defending the Claim, the prospects of successful defence of the Claim, awards or damages if any and the costs likely to be recovered from a third party claimant. The cost of the advice will be paid by Us in addition to the applicable Limit of Liability amount.

### **Your Right to Contest**

Where We recommend settlement of a third party claim under this Policy and You do not agree with the proposed settlement but wish the matter to remain contested Our liability shall not exceed the amount for which the claim could have been settled if the matter had not been contested. Any Defence Costs and all other costs shall be limited to those incurred up to the date the claim could have been settled.

# Definitions

**This Policy has words and terms with special meanings. We explain their meaning in the following definitions.**

**These defined words or terms are shown with a capital letter at the start of each word. Please read all definitions carefully.**

## **Aircraft**

means any craft or object designed or intended to move through air, space or atmosphere other than model aircraft.

## **Application**

means the information provided by You or on Your behalf and submitted to Us when applying for this Policy and which We have relied on when agreeing to issue this Policy.

## **Artificial Breeding Material**

means Semen, Ova and embryos of any animal stock.

## **Australia, Australian**

means the States and Territories of Australia.

## **Bodily Injury**

means:

- a. bodily injury, death, sickness, disease, shock, fright, mental anguish, mental injury or loss of consortium resulting from any of them; or
- b. the physical or mental effects of:
  - false arrest, wrongful detention or imprisonment or malicious prosecution;
  - wrongful entry or wrongful eviction to or from any premises;
  - invasion of privacy; or
  - assault and battery not committed by or at the direction of You unless committed for the purpose of preventing or elimination of danger to persons or property.

## **Business**

means all the activities involved in Your business stated in the Schedule and conducted by You.

## **Business Documents**

means written or printed deeds, wills, agreements, manuscripts, maps, plans, drawings, records, Electronic Data, designs, books of account, books, letters, certificates and other documents of any nature:

### **but does not include:**

- i. Money, bearer bonds, coupons or book debts; or
- ii. documents of aesthetic, historic, scientific or social value for past, present or future generations.

## **Claim**

means:

- a. a writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counter-claim or third party or similar party notice served on You seeking compensatory damages and costs; or
- b. a written or verbal demand for compensatory damages and costs made by a third party against You.

## **Cover, Covers, Covered**

means the indemnity provided under this Policy.

## **Criminal Proceeding**

means an investigation or prosecution brought against You by any registration board, statutory regulatory authority, tribunal or any disciplinary committee of an association or professional body of which You are a member in respect of an allegation of criminal misconduct by You arising directly in the course of Your provision of the Professional Services.

## **Criminal Proceeding Legal Costs**

means the necessary and reasonable legal costs and expenses incurred by You or on Your behalf with Our prior written consent in the investigation, defence and settlement of any Criminal Proceeding:

**but does not include** Your regular or overtime wages, salary, fees, profit or any fixed or variable expenses incurred in the normal course of Your Business operations.

## **Defence Costs**

means the necessary and reasonable legal costs and expenses incurred by Us or by You with Our prior written consent in the investigation, defence or settlement of a Claim Covered under this Policy or in respect of the Cover provided under any of the additional benefits Covered under this Policy.

Any legal costs incurred by Us or by You in determining whether there is Cover provided to You under this Policy will not form part of Defence Costs.

## **Electronic Data**

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

### Employee

means a natural person who has at any time entered into a contract of service or apprenticeship with You and/or for whom You are required by virtue of workers' compensation or similar legislation to effect workers' compensation insurance cover.

### Endorsement

means a written notification given to You by Us that details changes to Your Cover under this Policy.

### Excess

means the amount of money stated in the Schedule or elsewhere in this Policy that You must pay or bear as the first payment in respect of any claim under this Policy.

Where the Excess is stated as being 'costs exclusive' We will not apply the Excess to Your own Defence Costs but You will be required to pay the Excess amount in respect of any payment of compensation and/or the claimant's own legal costs and expenses.

Where the Excess is stated as being 'costs inclusive' You will be required to pay the Excess amount in respect of any payment of compensation, the claimant's legal costs and expenses and Your own Defence Costs.

### Good Samaritan Acts

means the rendering of or failure to render first aid and assistance in an emergency situation or accident to stabilise an injured person or to prepare the injured person for transfer to a medical facility or other place and where You are in attendance as a bystander or passer-by and where there is no expectation of payment or other reward for the rendering of that first aid or assistance.

### GST and GST Act

means goods and services tax as defined within the A New Tax System (Goods and Services Tax) Act 1999 (GST Act).

Input Tax Credit has the same meaning as that in the GST Act.

### Hovercraft

means any vessel, craft or device which uses a cushion of air provided by a downward thrust to travel over water and land.

### Incidental Contract

means:

- a. any written rental agreement, lease or licence of real property not requiring an obligation to insure such property or to be liable at law regardless of fault; or
- b. any written contract with any entity responsible for the supply of electricity, fuel, gas, water, sewerage, waste removal

services or telecommunications other than those contracts in connection with work done for such entities by You.

### Inquiry

means an official investigation, examination or inquiry, other than a Criminal Proceeding, directly relating to an act, error, omission or conduct by You or others acting on Your behalf in Your provision of the Professional Services:

- a. brought by a registration board, statutory regulatory authority or tribunal and where the findings of such an investigation, examination or inquiry may lead to a Claim Covered under this Policy being made against You or them;
- b. brought by way of coronial inquiry or royal commission;
- c. brought by any disciplinary committee of an association or professional body of which You or others acting on Your behalf are a member; or
- d. brought before the Australian Racing Board or any other legally constituted Board governing racing in Australia or before a steward of any legally constituted racing club;

**but does not include** any investigation, examination or inquiry in respect of Your liability to pay any tax, levy or duty payable by You to any statutory or government authority.

### Inquiry Legal Costs

means the necessary and reasonable legal costs and expenses incurred by You or on Your behalf with Our prior written consent in the investigation, defence or settlement of any Inquiry:

**but does not include:**

- i. Your regular or overtime wages, salary, fees, profit or any fixed or variable expenses incurred in the normal course of Your business operations; or
- ii. any amounts payable as compensation or third party legal costs and expenses.

### Known Circumstances

means any fact or circumstance which:

- a. You were aware of prior to the Period of Cover and which You knew or ought reasonably to have known may give rise to a Claim, Inquiry or Criminal Proceeding;
- b. a reasonable person in Your position should have been aware of prior to the Period of Cover and which You knew or ought to reasonably have known may give rise to a Claim, Inquiry or Criminal Proceeding; or
- c. has been disclosed or reported to Us or any other insurer under any insurance policy prior to the Period of Cover.

### Known Claims

means any Claim, Inquiry or Criminal Proceeding:

- a. first made or served on You, threatened or intimidated against You prior to the Period of Cover; and/or
- b. disclosed or reported to Us or any other insurer under any insurance policy prior to the Period of Cover.

### Limit of Liability

means the maximum amount We will pay under each of Sections:

- Professional Indemnity; or
- Public and Products Liability;

of this Policy as stated in the Schedule inclusive of all additional amounts provided for in any relevant additional benefit under any such Section.

### Money

means coin, bank notes, currency notes, cheques, credit card sales vouchers, securities, postal orders, money orders, negotiable and non-negotiable securities and other like documents of value such as phone cards and/or stored value cards, unused postage and revenue stamps, public transport tickets, private transport tickets (excluding airline tickets), lottery tickets, authorised gift vouchers, discount vouchers from external parties and contents of franking machines and includes cash boxes, alarm bags or any other portable container used to convey money which is owned by You:

**but does not include** Money while in the possession of or carried by professional money carriers, professional carriers or common carriers.

### Occurrence

means an event or series of events which results in Bodily Injury or Property Damage neither expected nor intended by You:

#### Provided that:

all Bodily Injury or Property Damage attributable to continuous or repeated exposure to substantially the same general conditions will be deemed to be one Occurrence.

### Ova

means:

- a. germ cells of female animal stock; or
- b. cells of female animal stock that can develop into new members of the same species after maturation and fertilization and includes fertilized cells, embryos and fetuses.

### Period of Cover

means the period of time stated in the Schedule for which We agree to provide You with Cover under this Policy as stated in the Schedule unless this Policy is cancelled in which event the Period of Cover will end on the effective date of the cancellation.

### Policy

means:

- a. the Policy wording;
- b. the Schedule and any addendum attached to the Schedule; and
- c. any Endorsement.

### Pollutant

means any solid, liquid, bacterial, viral, gaseous or thermal irritant or contaminant including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste. Waste includes material to be recycled, reconditioned or reclaimed.

### Premium

means the payment You make to Us for this Policy or for an alteration to this Policy and includes all applicable government or statutory taxes and charges including GST.

### Professional Services

means the professional business services provided by You or on Your behalf as stated in the Schedule.

### Property Damage

means:

- a. physical damage to or loss of or destruction of real or tangible property including any resulting loss of use of that property; or
- b. loss of use of real or tangible property which has not been physically damaged, lost or destroyed provided such loss of use is caused by an Occurrence:

**but does not include** damage to or destruction of or loss of use of Electronic Data.

### Retroactive Date

means the retroactive date stated in the Schedule for any applicable Section of this Policy.

### Schedule

means the Schedule issued by Us containing details of Cover specific to You including but not limited to Your Policy number, the Period of Cover, details of the Cover You have selected, Limits of Liability and other limits of Your Cover and any Excesses You must pay and which attaches to and forms part of this Policy.

### Semen

means the fluid produced by the reproductive organs of male animal stock and includes:

- a. any part of that fluid; and
- b. spermatozoa in any fluid or frozen medium.

### Terrorism

means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, 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.

### Tool of Trade

means any Vehicle which has any tool or plant forming part of or attached to the Vehicle or used in connection with any Vehicle while such tool or plant is in operation for the purpose of the Business.

### Vehicle

means any type of machine on wheels, on skis or on self-laid tracks designed to be moved other than by manual or animal power and includes any trailer while attached to a Vehicle:

**but does not include** motorised wheelchairs, electric wheelchairs, electric scooters, bicycles or Vehicles not requiring registration or compulsory third party insurance by virtue of any legislation.

### Watercraft

means any vessel, craft or thing made or intended to float on or in, or travel on or through, water other than model boats.

### We, Us, Our

means Guild Insurance Limited ABN 55 004 538 863 and AFS Licence No 233791 of 5 Burwood Road, Hawthorn, Victoria 3122.

### You, Your, Insured

means the person stated in the Schedule as the Insured.

### Your Products

means any goods sold, supplied, delivered or distributed by You in the normal course of Your Business after they have ceased to be in Your possession or legal control:

**but does not include** goods manufactured or wholesaled by You unless prepared by You for sale, supply or distribution in the normal course of Your Business including their labels, packaging,

containers, and any directions, instructions or advice provided or not provided.





We're here to help

 **1800 810 213**

 **guildinsurance.com.au**

 **enquiries@guildinsurance.com.au**

**Who is the Insurer?**

This Policy is underwritten by Guild Insurance Limited ABN 55 004 538 863 and AFS Licence No. 233791.

Effective date: 1 November 2015.