

# Professional Indemnity Insurance Policy for Solicitors 2025-2026

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# 1 Our Agreement

## 1.1 Cover

- (a) We agree to provide You with the Cover set out in this Policy.
- (b) The Cover is subject to the terms and conditions of this Policy including (without limitation) the exclusions and the Policy Limit.

## 1.2 Premium

- (a) The Law Practice agrees to pay the Premium to Us.
- (b) In the event that the Law Practice cancels the Policy during the Period of Insurance, We will refund, on a pro-rata basis, that part of the Premium attributable to the unexpired balance of the Period of Insurance, subject to Our retention of a minimum premium of 30% of the Premium.

## 1.3 Period of Insurance

This Policy is in force for the Period of Insurance.

## 1.4 Limit of Cover

- (a) Cover under this Policy shall not exceed the Policy Limit for:
  - (i) any one Claim; or
  - (ii) any Related Claims, and such Related Claims shall be deemed to be a single Claim made at the time that the first Claim in the series was made or notified.
- (b) Where the Schedule specifies a sub-limit in respect of any Cover then:
  - (i) Our total liability to You for that Cover will be limited to the amount of that sub-limit in the aggregate; and

- (ii) the sub-limit is included in, and not in addition to, the Policy Limit.

## 1.5 Excess

- (a) Cover under this Policy is subject to the payment by You of any applicable Excess.
- (b) The indemnity under this Policy does not include the Excess.

## 1.6 Cancellation

- (a) The Law Practice may cancel this Policy at any time by providing notice in writing to Us.
- (b) We will not cancel or avoid this Policy for any reason while the Law Practice continues to carry on the business of providing Legal Services other than in the case of a fraudulent non-disclosure or Misrepresentation by the Law Practice or You.

# 2 What we cover

## 2.1 Civil Liability cover

We will indemnify You in respect of Claims for civil liability to any Third-Party:

- (a) incurred in connection with the provision of Legal Services by You; and
- (b) which are first made against You during the Period of Insurance;

## 2.2 Costs which we cover

When We agree to indemnify You for a Claim, We will also indemnify You for:

- (a) Defence Costs.
- (b) Your liability to pay Third-Party claimants' legal costs, as agreed by Us or as assessed.

## 2.3 Advancement of Defence Costs

If **We** elect not to take over and conduct the defence or settlement of any **Claim**:

- (a) **We** will pay all reasonable and necessary **Defence Costs** provided that:
  - (i) **We** have not denied indemnity under this **Policy**; and
  - (ii) **We** provide **Our** written consent prior to **You** incurring such **Defence Costs**.
- (b) **We** may recover any **Defence Costs** paid under this provision from **You**, in the event that:
  - (i) **You** make an admission, the effect of which discloses any fraudulent, dishonest, malicious or intentional conduct; or
  - (ii) it is subsequently established, directly or indirectly, by admission, judgment or other independent determination, that **You** were not entitled to indemnity under this **Policy**.

## 2.4 Inquiries cover

- (a) Where:
  - (i) **You** first become aware of an **Inquiry** during the **Period of Insurance**; and
  - (ii) **You** notify **Us** of the **Inquiry** in writing as soon as reasonably practicable and during the **Period of Insurance**;

**We** will indemnify **You** for the reasonable and necessary legal costs and expenses incurred for **Your** external representation at that **Inquiry**.

- (b) **Our** prior written consent is required before any legal costs and expenses are incurred.

- (c) The maximum amount **We** will pay is the sub-limit specified in the Schedule.
- (d) This **Cover** does not extend to paying the regular or overtime wages, salaries or fees of an **Insured Person**.

## 2.5 Internal conveyancing and estate planning

Notwithstanding exclusion 3.3, **We** will indemnify **You** for **Claims** in respect of **Legal Services** provided to a **Principal** or **Employee** (in a personal capacity or as trustee of a trust) in connection with personal conveyancing or personal estate planning advice provided in the usual course of the **Law Practice's** business (whether or not a fee is charged) provided that the relevant **Principal** or **Employee** is not directly involved in the provision of such **Legal Services**.

## 2.6 Cost orders against you

- (a) **We** will indemnify **You** for any cost order made against **You**, during the **Period of Insurance**, in any legal proceedings in **Your** capacity as a **Lawyer** representing a client who is a party to those proceedings.
- (b) **We** will also indemnify **You** for external legal costs incurred by **You**, with **Our** prior written consent, in respect of:
  - (i) any application made in the proceedings seeking a cost order against **You** during the **Period of Insurance**; or
  - (ii) any intimation that an application may be made against **You** during the **Period of Insurance**.
- (c) However, **We** will not indemnify **You** for **Your** liability to pay any cost order (or for any external legal costs incurred in resisting or avoiding any costs order) where the costs order arises from a finding, in those proceedings, of wilful misconduct on the part of any **Insured**

**Person**, including but not limited to any reckless breach of the Court rules.

- (d) The maximum amount **We** will pay is the sub-limit specified in the Schedule.

## 2.7 Continuous cover

- (a) **We** will indemnify **You**, for any **Claim**, otherwise covered by this **Policy**, arising from a **Known Circumstance** (notwithstanding clause 3.1 of this **Policy**) if:

- (i) **You** were insured by **Us** under a **Previous Policy** when **You** first became aware of such **Known Circumstance**; and
- (ii) **You** continued without interruption to be insured by **Us** until the **Cover** under this **Policy** came into effect; and
- (iii) had **We** been notified of the **Known Circumstance** when **You** first became aware of it, **You** would have been covered by the **Previous Policy** in force at that time and **You** would, but for clause 3.1 of this **Policy**, be covered under this **Policy**; and
- (iv) **Your** failure to inform **Us** of the **Known Circumstance** prior to entering into this **Policy** was not fraudulent; and
- (v) the **Known Circumstance** has not previously been notified to **Us** or to any other insurer or indemnity provider.

- (b) To the extent that **We** suffer any prejudice as a result of any delayed notification of the **Known Circumstance** to **Us**, **We** may recover from **You** such part of any payment which fairly reflects the amount of prejudice **We** suffer.

- (c) The limit of the indemnity **We** provide is the lesser of:

- (i) the limit of insurance available under the terms of the **Previous Policy** referred to in sub-clause 2.7(a)(i) above; and
- (ii) the **Policy Limit** under this **Policy**.

- (d) The terms of this **Policy** otherwise apply.

## 2.8 Extended notification period

- (a) In the event that this **Policy** is not renewed, or is cancelled, then **You** may notify **Us** of any **Claims** made against **You** during the **Period of Insurance** at any time prior to the earlier of:

- (i) the time that the **Law Practice** effects, either with **Us** or any other insurer(s), another insurance policy which covers substantially the same risk as this **Policy**; or
- (ii) the end of the period of 30 days commencing on the day immediately following the expiry/cancellation of this **Policy**.

- (b) This **Cover**:

- (i) does not reinstate or increase the **Policy Limit** or extend the **Period of Insurance**; and
- (ii) will only apply to acts, errors or omissions committed or alleged to have been committed by **You** before the earlier of the end of the **Period of Insurance** or the cancellation date of this **Policy**.

## 3 What we do not cover

**We** will not indemnify **You** for **Claims** or, where the context permits, **Loss**:

### 3.1 Known Claims and Known Circumstances

- (a) first made against **You** prior to the **Period of Insurance**;
- (b) in respect of, or directly or indirectly arising from, any **Known Circumstance** which **You** notified to **Us**, or any other insurer or indemnity provider, before the **Period of Insurance**;
- (c) disclosed in the **Proposal** or arising from **Known Circumstances** disclosed in the **Proposal**; or
- (d) in respect of which **You**:
  - (i) are entitled to be indemnified under any professional indemnity policy with another insurer prior to this **Policy** or any **Previous Policy**; or
  - (ii) would be, or would have been, entitled to be indemnified under a policy with another insurer or a **Previous Policy** in the event that **You** made a claim on such policy.

### 3.2 Foreign jurisdictions

in respect of, or directly or indirectly arising from, advice provided in foreign jurisdictions unless the **Law Practice's** advice was expressly provided on the basis that it is limited to the application of Australian laws.

### 3.3 Related parties

brought by or on behalf of:

- (a) any **Insured Person**;
- (b) any company in respect of which any **Insured Person** holds (beneficially or otherwise) more than 10% of the voting shares or rights and/or has an executive role;
- (c) any trust in respect of which any **Insured Person** is a trustee and/or beneficiary

and/or has a direct or indirect financial interest;

- (d) any other person, firm or incorporated body having control of more than 10% of the voting shares or rights or an executive role in the operation of the **Law Practice**;
- (e) a **Responsible Entity**, where the **Law Practice** or any **Principal**, or a director of an **Insured Person**, is a **Related Entity**; or
- (f) a corporation which has issued or proposed to issue securities to the public, and the **Law Practice** or a **Principal** of the **Law Practice** controls the corporation.

### 3.4 Specified Services

in respect of, or directly or indirectly arising from, activities or services which are or constitute:

- (a) auditing of financial reports under the *Corporations Act 2001 (Cth)* Chapter 2M (Financial Reports & Audit); or
- (b) provision of a financial service under *the Corporations Act 2001 (Cth)* Chapter 7 other than an activity which constitutes:
  - (i) a referral under the *Corporations Regulations 2001* Regulation 7.6.01(e));
  - (ii) the provision of a credit facility, as defined in the *Corporations Regulations 2001*; or
  - (iii) insurance claims handling in respect of which **You** are exempt from the requirement to hold an Australian financial services licence by reason of *Corporations Act 2001 (Cth)* Section 911A(2)(en).

### 3.5 Contractual liability

- (a) in respect of any liability arising pursuant to a contract, other than a contract to provide **Legal Services**, unless liability

- would have attached in the absence of such contract;
- (b) in respect of any liability arising pursuant to a contract to provide **Legal Services** to the extent that it:
- (i) extends **Your** duty beyond exercising the standard of care and skill to be reasonably expected of a **Lawyer** in the circumstances;
  - (ii) increases the compensation or damages for which **You** are liable beyond the amount payable in tort or under any applicable statute; or
- (c) to the extent that **Your** rights to:
- (i) set-off **Your** liability; or
  - (ii) recover an amount by way of compensation, contribution or indemnity in respect of **Your** liability, from a **Third-Party**;

have been lost, limited or impeded because the **Law Practice** entered into a contract to provide **Legal Services** which limits, extinguishes, or prevents you from asserting or pursuing, such rights.

### 3.6 Dishonesty or fraud

- (a) in respect of, or directly or indirectly arising from, any dishonest or fraudulent act or omission by **You**,

however:

- (b) **We** will indemnify:
- (i) any **Principal** or **Employee** who was not knowingly connected with the dishonest or fraudulent act or omission; and
  - (ii) the **Law Practice**, where it is an incorporated law practice, unless each legal practitioner director of

the **Law Practice** was involved in, or knowingly connected with, the dishonest or fraudulent act or omission.

Provided that, **We** will not provide such indemnity to the extent that the subject matter of a **Claim** entitles the claimant to claim and receive compensation from a fidelity fund, guarantee fund or similar.

- (c) if **We** make a payment under this **Policy** in respect of a **Claim** which arises, directly or indirectly, from any dishonest or fraudulent act or omission by **You**, **We** may recover payment from any **Insured Person** knowingly connected with the dishonest or fraudulent act or omission.

### 3.7 Financial interest

in respect of, or directly or indirectly arising from, a contract or transaction in which **You** have or had a direct or indirect financial interest other than an entitlement to receive fees for the provision of **Legal Services**.

### 3.8 Refund of professional fees and trading debts

- (a) in respect of, or directly or indirectly arising from (or calculated by reference to) the refund or waiver of any obligation to pay any fees, charges or **Disbursements** (by way of damages, offset or otherwise); or
- (b) in respect of or directly arising from any dispute about fees or **Disbursements** charged to a client; or
- (c) in respect of, or directly or indirectly arising from any liability, or alleged liability, to:
- (i) pay any trading debt;
  - (ii) repay any loan;

- (iii) creditors in connection with the insolvency or closure of the **Law Practice**; or
- (iv) pay any other financial obligation.

### 3.9 Loss of profit

in respect of, any loss of profit derived or derivable by **You**.

### 3.10 Computer virus, malware or defects

in respect of, or directly or indirectly arising from, or attributable to loss or damage (including rearrangement or interruption) to electronically stored data, software or computer programs arising from any computer virus or malware or from any design or programming defect in any computer program or computer operating system or computer hardware.

### 3.11 Employers' liability

- (a) in respect of, or arising, directly or indirectly, from or attributable to **Your** liability as an employer;
- (b) in respect of, or directly or indirectly arising from, bodily injury (including mental anguish or emotional distress), sickness, disease or death of any **Employee**, contractor or worker who is under **Your** direction, control and/or supervision or for whose workplace safety **You** are responsible; or
- (c) in respect of, or directly or indirectly arising from, actual or alleged unlawful discrimination (or other unlawful act, error or omission) by **You** against any **Employee** or employment applicant.

### 3.12 Directors' and officers' liability

in respect of, or directly or indirectly arising from, any act, error or omission arising from **Your** personal liability as a director or officer of an incorporated body or unincorporated body other than the **Law Practice**.

### 3.13 Damage to property

arising from physical loss of, or damage to, property, unless the **Claim** relates to property (other than documents, cash, negotiable securities, jewellery, art works or antiques) in **Your** care, custody and control for which the **Law Practice** is responsible to a **Third-Party** in connection with the provision of **Legal Services**.

### 3.14 Death or personal injury

arising from death or personal injury unless the **Claim** is for psychological or psychiatric injury caused by **Your** act, error or omission in providing the **Legal Services** in the ordinary course of the **Law Practice's** business.

### 3.15 Punitive and exemplary damages, fines and penalties

in respect of, or directly or indirectly arising from, any:

- (a) punitive, aggravated or exemplary damages;
- (b) fines or penalties; or
- (c) criminal liabilities.

### 3.16 Intentional damage

in respect of, or directly or indirectly arising from:

- (a) **Your** acts, errors or omissions, where **You**:
  - (i) intended to cause a **Third-Party** loss, damage or injury; or
  - (ii) showed a reckless disregard for the potential consequences of such acts, errors or omissions; or
- (b) **Your** wilful breach of any statute, contract or duty.

### 3.17 Unqualified legal practice

arising from any act, error or omission, in the provision of **Legal Services** by **You** at a time that the **Law Practice**, or any other **Insured Person**

involved in the provision of the relevant **Legal Services**:

- (a) was not a qualified entity within the meaning of the **Legal Profession Uniform Law**;
- (b) otherwise, did not hold any relevant registration of certification required to provide the relevant **Legal Services**; or
- (c) held a registration or certification which had been suspended or contained conditions or limitations which had the effect that the **Law Practice** or relevant **Insured Person** was not entitled to provide the relevant **Legal Services**.

### 3.18 War and civil war

in respect of, or directly or indirectly arising from, or attributable to:

- (a) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war; or
- (b) insurrection, rebellion, revolution, military or usurped power;

unless the **Claim** or **Loss** arises directly from an act, error or omission in the provision of legal advice in relation to those matters in the usual course of the business of the **Law Practice**.

### 3.19 UN sanctions

to the extent that the provision of **Cover** or benefit under this **Policy**, in respect of such **Claim** or **Loss**, would contravene any sanction, prohibition or restriction under any United Nations resolutions or the trade or economic sanctions, law or regulations of the European Union, United Kingdom or United States of America.

## 4 Claims conditions

This section of in the **Policy** sets out the way in which **We** will manage **Claims** and what **You** must do to assist **Us**.

### 4.1 You must notify Us of any Claim

- (a) **You** must notify **Us** in writing about a **Claim** made against **You** as soon as reasonably practicable, even if the **Claim** is for less than the **Excess**, and
- (b) where a **Claim** is made against **You** and **You** fail to notify **Us** of that **Claim** as soon as reasonably practicable, **We** may recover, from the **Insured Person** to whom (or on whose behalf) such indemnity payment was made, such part of the indemnity payment as fairly represents the extent to which **Our** interests were prejudiced as a result of **Your** breach of sub-clause 4.1(a).

### 4.2 Claims co-operation

In respect of any **Claim**, **Loss** or **Circumstance** which **You** have notified to **Us**:

- (a) **You** must diligently and at **Your** expense:
  - (i) do everything reasonably practicable to avoid or lessen **Your** liability;
  - (ii) give **Us** (and **Our** advisers) help and information that **We** reasonably request to:
    - (A) investigate and defend such **Claim**, **Loss** or **Circumstance**; and
    - (B) determine **Our** liability under this **Policy** in respect of such **Claim**, **Loss** or **Circumstance**.

- (b) **You** acknowledge that:
- (i) information which **You** provide to **Us** (or **Our** advisors) about any **Claim, Loss** or **Circumstance** notified to **Us** under this **Policy** will be provided for the purpose of furthering **Your** and **Our** interests in the investigation, defence and settlement of that **Claim, Loss** or **Circumstance**;
  - (ii) where **You** provide information about any **Claim, Loss** or **Circumstance** notified to **Us** under this **Policy** to any legal or other advisor appointed by **Us**:
    - (A) You consent to that advisor providing that information to **Us**; and
    - (B) such provision will not constitute a waiver of legal professional privilege as against any **Third-Party** or any other **Insured Person** (with whom **You** do not have a common interest in respect of the **Claim, Loss** or **Circumstance**).
- (ii) **We** will take reasonable steps to assess whether the **Claim, Loss** or **Circumstance** is covered under this **Policy** and inform **You** of **Our** decision in a timely manner; and
- (iii) nothing done by **Us** pursuant to the authority in sub-clause (i) above, will prejudice **Our** rights in respect of the **Claim, Loss** or **Circumstance**.
- (b) Where **You** have notified **Us** of any **Claim, Loss** or **Circumstance** and **We** have agreed to provide **You** with **Cover, We** may:
- (i) conduct, defend, or settle the **Claim, Loss** or **Circumstance** in **Your** name (subject only to clauses 4.6, 4.7 and 4.8 of this **Policy**); and
  - (ii) take any action, in **Your** name, to pursue any right **You** may have in respect of such **Claim, Loss** or **Circumstance**.
- (c) **You** must not do anything which may conflict with **Our** rights at sub-clauses 4.3(a)(i) or 4.3(b) above to conduct the **Claim, Loss** or **Circumstance**.

### 4.3 Claims authority

- (a) Where **You** have notified **Us** of any **Claim, Loss** or **Circumstance** but **We** have not yet made a decision as to whether that **Claim, Circumstance** or potential **Claim** is covered by this **Policy**:
- (i) **We** can take whatever action **We** consider appropriate to protect **Our** position or **Your** position in respect of the **Claim, Loss** or **Circumstance** (except that **We** may not settle the **Claim, Loss** or **Circumstance**, on terms requiring **You** to pay such settlement without **Your** consent);

### 4.4 Admissions

**You** must not, without first obtaining **Our** prior written consent:

- (a) admit liability for, or settle, any **Claim, Loss** or **Circumstance**; or
- (b) incur any costs or expenses in respect of any **Claim, Loss** or **Circumstance**.

### 4.5 Claims below the Excess

Where the **Claim, Loss** or **Circumstance** is below the **Excess**:

- (a) the **Law Practice** may conduct the **Claim, Loss** or **Circumstance** with **Our** prior written consent;

- (b) the **Law Practice** may settle the **Claim, Loss** or **Circumstance** with **Our** prior written consent;
  - (c) **We** may direct the **Law Practice** to conduct the **Claim, Loss** or **Circumstance**;
  - (d) where **We** direct or consent to the **Law Practice** assuming conduct of the **Claim, Loss** or **Circumstance**:
    - (i) the **Law Practice** must do so within 14 days of such consent or direction;
    - (ii) the **Law Practice** must keep **Us** informed of any material developments and comply with any reasonable requests for information; and
    - (iii) **We** may withdraw such consent or direction and assume conduct of the **Claim, Loss** or **Circumstance** at any time and the **Law Practice** must cease to take further steps in the conduct of the **Claim, Loss** or **Circumstance** (except as necessary to effect the transfer of conduct to **Us** or with **Our** consent).
- (A) the amount **We** could have settled the matter for; LESS the applicable **Excess**; PLUS the **Defence Costs** incurred up to the date the **Law Practice** did not consent to **Our Proposed Settlement**; and
  - (B) the **Policy Limit** or any sub-limit specified in the Schedule which is applicable to the **Claim, Loss** or **Circumstance**.
- (ii) **Our** liability to pay **Defence Costs** shall cease and the **Law Practice** shall assume conduct of the **Claim, Loss** or **Circumstance** from a date which is 14 days after the date of **Our** recommendation or such earlier date as **We** may reasonably stipulate.

(c) Where reasonably practicable, having regard to all the circumstances of the proposed settlement, including the timeframe within which the proposed settlement is available and the risk that it may be withdrawn, **We** will notify the **Law Practice** that it has 14 days (or such lesser period as **We** may reasonably stipulate) to request that an opinion from a **Senior Counsel** be obtained (in accordance with the process set out in clause 4.10) as to whether the **Claim, Loss** or **Circumstance** should be settled in accordance with the terms of **Our Proposed Settlement**. If:

#### 4.6 Law Practice's Right to Contest

- (a) **We** will not settle any **Claim, Loss** or **Circumstance** against **You** without seeking the prior consent of the **Law Practice**.
- (b) If the **Law Practice** does not consent to a settlement that **We** recommend (**Our Proposed Settlement**) (including by not responding to the recommendation within a reasonable time stipulated by **Us**):
  - (i) **Our** total liability to **You** under this **Policy** will be limited to the lesser of:
    - (i) the **Law Practice** does not make a request for an opinion; or
    - (ii) if an opinion is obtained and the **Senior Counsel's** opinion is that the **Claim, Loss** or **Circumstance** should be settled in accordance with **Our Proposed Settlement**;

then **We** may proceed to enter into **Our Proposed Settlement** without the **Law Practice's** consent.

#### 4.7 Appeal

- (a) **We** will inform the **Law Practice** of **Our** decision as to whether or not to appeal any **Judgment** in relation to a **Claim (Our Appeal Decision)**.
- (b) If the **Law Practice** does not agree with **Our Appeal Decision**, then the **Law Practice** has 14 days (or such lesser period as **We** may reasonably stipulate) to request that an opinion from a **Senior Counsel** be obtained (in accordance with the process set out in clause 4.10).
- (c) If:
  - (i) the **Law Practice** does not make a request for an opinion; or
  - (ii) if an opinion is obtained and the **Senior Counsel's** opinion is that **We** should proceed in accordance with **Our Appeal Decision**;

then **We** may proceed in accordance with **Our Appeal Decision**.

#### 4.8 Dispute with Another Insured

If there is a dispute between **You** and a **Third-Party** to whom **We** have issued a professional indemnity policy of insurance, and the dispute relates to a **Claim**, including the notification of a **Claim** or the conduct of a **Claim**, the following procedure applies:

- (a) **We** will notify the **Law Practice** and the relevant **Third-Party** that the dispute exists;
- (b) **We** will request an opinion from a **Senior Counsel** (in accordance with the process set out in clause 4.10).

#### 4.9 Allocation of Defence Costs and Third-Party Costs

- (a) Where this **Policy** provides indemnity to **You** in respect of some matters or issues forming part of a **Claim** but not others, the amount of **Defence Costs** and **Third-Party** costs which **We** will pay will be limited to those costs which are fairly attributable to the matters which comprise the part of the **Claim** which **We** indemnify. **We** will determine that amount having regard to the proportion of total costs which would have been incurred in the event that the **Claim** was limited to the part of the **Claim** which **We** indemnify.
- (b) If the **Law Practice** notifies **Us** that it does not agree with **Our** determination, **We** and the **Law Practice** will use best endeavours to reach an agreement with **Us** in respect of the appropriate allocation of costs.
- (c) If **We** and the **Law Practice** are not able to agree, the dispute will be resolved by obtaining a legal opinion from a **Senior Counsel** (in accordance with the process set out in clause 4.10).

#### 4.10 Senior Counsel opinion

The procedure for obtaining a **Senior Counsel's** opinion is:

- (a) **We** and the **Law Practice** will agree on a **Senior Counsel** to provide an opinion.
- (b) If **We** and the **Law Practice** are unable to agree, then a **Senior Counsel** will be appointed by:
  - (i) in the case of any dispute as to any appeal, settlement or cost allocation, the President of the Bar Association in the State or Territory in which the **Claim**, **Circumstance** or potential **Claim** is being litigated (or if the **Claim** is

- not litigated, the State or Territory to which the **Claim** has its closest connection) or as otherwise agreed by **Us** and the **Law Practice**;
- (ii) in the case of a dispute as to the operation of this **Policy**, the President of the NSW Bar Association; or
- (iii) in the event that the President of the Bar Association in the relevant State or Territory does not offer an appointment service or otherwise declines to make an appointment, the President of the NSW Bar Association.
- (c) **We** and the **Law Practice** may each make written (but not oral) submissions within a timeframe set by the **Senior Counsel**.
- (d) In the case of an opinion as to whether a **Claim** should be settled, or an appeal should be pursued, the **Senior Counsel** must take into account the legal issues in the **Claim** and the estimated future **Defence Costs**.
- (e) The **Senior Counsel** will be retained in the form of the NSW Bar Association's model Expert Determination Agreement subject to modifications:
- (i) to make it consistent with sub-clause (f) to (h) below;
- (ii) reasonably requested by the **Senior Counsel**; or
- (iii) agreed to by the **Law Practice**, the **Senior Counsel** and **Us**.
- (f) The **Senior Counsel** will:
- (i) determine the dispute as an expert not an arbitrator;
- (ii) give written reasons for the opinion;
- (iii) be entitled to make such other reasonable directions as the **Senior Counsel** considers appropriate for the management of the process (provided that such directions are not contrary to the process set out in this clause 4.10 or the **Senior Counsel** retainer.
- (g) **We** and the **Law Practice** may:
- (i) obtain legal advice; and
- (ii) make one written (but not oral) submission to the **Senior Counsel** (within such timeframe and in such form as the **Senior Counsel** may stipulate);
- (iii) make additional written (but not oral) submissions where requested or agreed by the **Senior Counsel**.
- (h) **We**, the **Law Practice** (and, where applicable, any other relevant **Third-Party** to whom **We** have issued a professional indemnity policy of insurance) will share the cost of the **Senior Counsel's** opinion in equal proportions.

## 5 General conditions

### 5.1 Our Consent

Where, in this **Policy**, **You** are required to obtain **Our** consent, **We**:

- (a) will not unreasonably withhold or delay providing consent; and
- (b) may withdraw such consent at any time where it is reasonable to do so.

### 5.2 Breach

If an **Insured Person's** breach of this **Policy** substantially prejudices the conduct or settlement of a **Claim**, that **Insured Person** will

indemnify **Us** to the extent that the breach has prejudiced **Our** interests.

### 5.3 Subrogation

- (a) If **We** make a payment under this **Policy**:
- (i) **We** are subrogated to all **Your** rights to contribution, indemnity or recovery;
  - (ii) **You** agree to do all things which **We** reasonably require to assist **Us** to enforce **Our** subrogation rights; and
  - (iii) **We** may, in respect of any recovery action against any **Third-Party**, or against any **Insured Person** who is not entitled to **Cover** by reason of some wrongful act:
    - (A) fund the whole of the administrative and legal costs of the recovery action;
    - (B) enter into a co-funding agreement with **You** by which **We** and **You** jointly fund the administrative and legal costs of the recovery action in an agreed proportion; or
    - (C) decline to fund any of the administrative and legal costs of the recovery action.
- (b) However, **We** will not exercise **Our** right of subrogation against an **Employee** unless the conduct of the **Employee** that gave rise to the **Claim** or **Loss**:
- (i) did not occur in the course of their employment; or
  - (ii) was serious or wilful misconduct.

### 5.4 Material change in risk

The **Law Practice** must as soon as reasonably possible advise **Us** in writing if any of the following occurs during the **Period of Insurance**:

- (a) any cancellation or suspension, or loss of, or condition imposed upon, any licence, registration or other authority required by the **Law Practice** or any **Principal** to engage in legal practice in that capacity;
- (b) any person or entity comprising the **Law Practice** or a **Principal** of the **Law Practice** becoming insolvent, bankrupt or entering into liquidation; or
- (c) the **Law Practice** ceases to exist or ceases to carry on the business of providing **Legal Services**.

### 5.5 Premium Adjustment

- (a) The **Law Practice** must as soon as reasonably possible advise **Us** in writing if, during the **Period of Insurance**, the **Law Practice** expands via merger, acquisition, addition of new **Principals** or **Lawyers**, such that the **Law Practice's** gross fee income is estimated to increase materially.
- (b) **We** may apply a pro-rata adjustment to the premium and recover any difference from the **Law Practice**.

### 5.6 Authority to accept notices and to give instructions

The **Law Practice** is appointed as **Your** agent in all matters relating to this **Policy**, as well as any **Claim**, **Loss** or **Circumstance** including but not limited to any:

- (a) settlement or consent to any settlement; or
- (b) any issue, dispute or agreement in respect of the operation of this **Policy**.

## 5.7 Law of the Policy

This **Policy** is governed by the law of the Territory or State where the **Policy** was issued, which is stated in the Schedule. The courts of that place have exclusive jurisdiction in any dispute about or under this **Policy**.

## 5.8 Innocent breach of Duty of Disclosure or Misrepresentation

Where the **Law Practice** failed to comply with its **Duty of Disclosure** or made a **Misrepresentation** to **Us** prior to entering into this **Policy**, **We** will provide the **Cover** to **You** notwithstanding **Your** non-disclosure or **Misrepresentation** provided that such non-disclosure or **Misrepresentation** was not fraudulent.

# 6 Definitions

## 6.1 Circumstance

means any fact, matter or circumstance which might result in someone making an allegation against **You** in respect of a **Loss**, of a type which might be covered by this **Policy**.

## 6.2 Claim

means any of the following:

- (a) any written or verbal demand for, or assertion of a right to, compensation or damages against **You**;
- (b) any intimation of an intention to demand or seek compensation or damages against **You**; or
- (c) the receipt by **You** of any originating process (in a legal proceeding or arbitration), cross claim or counter claim or Third-Party or similar notice claiming compensation against **You**.

## 6.3 Cover

means the things **We** agree to indemnify **You** for under this **Policy** (and subject to all other **Policy** terms and conditions).

## 6.4 Defence Costs

means legal, claim investigation and expert costs which:

- (a) **We** incur; or
- (b) **You** incur with **Our** prior written consent and which are necessary and reasonable.

## 6.5 Disbursement

means any amount paid by the **Law Practice** on behalf of a client to a consultant or other **Third-Party** service provider in the course of the **Law Practice's** provision of **Legal Services** to that client.

## 6.6 Duty of Disclosure

means the duty of disclosure contained in Section 21 of the *Insurance Contracts Act 1984* (Cth).

## 6.7 Employee

- (a) means a natural person who was, at the time of the relevant act, error or omission giving rise to the **Claim**, or the conduct giving rise to the **Loss**, a person who:
  - (i) provided services to and was remunerated by the **Law Practice** for those services under a contract of employment;
  - (ii) was seconded to provide services to the **Law Practice**; or
  - (iii) was a volunteer worker, apprentice, trainee, work experience personnel or student,

and was at the time of the act, error or omission, under the **Law Practice's** direction, control and supervision in the course of its provision of the **Legal Services**.

- (b) does not mean:
- (i) a **Principal**; or
  - (ii) any independent contractor who provides legal or other services to the **Law Practice** or to its clients.

## 6.8 Excess

means the sum, specified in the Schedule, which any **Claim** or **Loss** must exceed before **We** will be required to provide indemnity under this **Policy**.

## 6.9 Inquiry

means an investigation, examination or inquiry:

- (a) by a regulator, government body or other external official person or body having legal authority to conduct an investigation; and
- (b) in respect of which **Your** conduct in or about the provision of the **Legal Services** is the subject of scrutiny;

in circumstances where **You** have a reasonable expectation that such investigation, examination or inquiry might give rise to a **Claim**.

## 6.10 Insured Person

- (a) means any person the subject of a grant of **Cover** under this **Policy**;
- (b) **all Insured Persons** taken in the aggregate comprise **You**;
- (c) a reference to **You** includes a reference to each and every **Insured Person** individually and collectively.

## 6.11 Known Circumstance

means any fact, matter or circumstance which, before the inception of this **Policy**:

- (a) the **Law Practice** or any **Principal** knew; or
- (b) a reasonable person in the position of the **Law Practice** or **Principal** would have known,

might result in someone making a **Claim** against **You**.

## 6.12 Law Practice

- (a) means the law practice, identified in the Schedule, which carries on the business of providing **Legal Services**, and is one of the following:
  - (i) a sole practitioner providing **Legal Services** on his or her own account;
  - (ii) a partnership of **Lawyers**;
  - (iii) an incorporated legal practice;
  - (iv) an unincorporated legal practice;
  - (v) a Multi-disciplinary Partnership.
- (b) includes any **Prior Practice**.

## 6.13 Legal Profession Uniform Law

where the law of this **Policy** is:

- (a) Australian Capital Territory Law, New South Wales Law, Northern Territory Law, Queensland Law, or South Australia Law, means the *Legal Profession Uniform Law (NSW) 2014*
- (b) Victorian Law, means Schedule 1 of the *Legal Profession Uniform Law Application Act 2014 (Vic)*;
- (c) Western Australian Law means the Legal Profession Uniform Law (WA) as defined in the *Legal Profession Uniform Law Application Act 2022 (WA)*.

## 6.14 Legal Services

means legal and ancillary services provided by the **Law Practice** in the usual course of carrying on the business of a **Lawyer** in private practice in Australia.

## 6.15 Loss

means any loss, liability, cost or expense.

## 6.16 Misrepresentation

means a statement made by **You** (or on **Your** behalf) in connection with this **Policy**, and prior to this **Policy** being entered into, which would constitute a misrepresentation for the purpose of the *Insurance Contracts Act 1984 (Cth)*.

## 6.17 Multi-disciplinary Partnership

means a business comprised of one or more partners who are **Lawyers** and one or more partners who are not **Lawyers** where the business of the partnership is the provision of **Legal Services** and other professional services.

## 6.18 Period of Insurance

means the period stated in the Schedule.

## 6.19 Policy

means all terms contained in:

- (a) this policy wording;
- (b) the Schedule; and
- (c) any endorsements to the Schedule.

## 6.20 Policy Limit

means \$2 million, inclusive of **Defence Costs**.

## 6.21 Previous Policy

means a policy, providing professional indemnity cover of the same type as this **Policy**, issued by **Us** to the **Law Practice** for a period of insurance earlier than the **Period of Insurance** under this **Policy**.

## 6.22 Principal

means:

- (a) a sole practitioner who constitutes the **Law Practice**;
- (b) where the **Law Practice** is a partnership of **Lawyers**, a partner;

- (c) where the **Law Practice** is an incorporated legal practice, a legal practitioner director;
- (d) where the **Law Practice** is an unincorporated legal practice, a person who falls within the definition of principal in the **Legal Profession Uniform Law**; or
- (e) where the **Law Practice** is a **Multi-disciplinary Partnership**, a partner.

## 6.23 Prior Practice

means any legal practice to which the **Law Practice** is a successor in business and which is noted in the Schedule.

## 6.24 Related Claims

means where one **Third-Party** claimant or multiple **Third-Party** claimants (jointly or separately) claim due to the same, or a related error, act, or omission in relation to **Legal Services** provided by **You**;

## 6.25 Related Entity

means a related entity within the meaning of the *Corporations Act 2001 (Cth)*.

## 6.26 Responsible Entity

means a responsible entity within the meaning of the *Corporations Act 2001 (Cth)*.

## 6.27 Senior Counsel

means a barrister at law appointed to the rank of Senior Counsel or King's Counsel.

## 6.28 Third-Party

means a person other than an **Insured Person**.

## 6.29 We or Us or Our

means ABC Insurance Pty Ltd as Agent for Liberty Mutual Insurance Company, Australia Branch (ABN 61 086 083 605) incorporated in Massachusetts, USA (the liability of members is limited), trading as Liberty Specialty Markets.

### 6.30 You or Your

means each of:

- (a) the **Law Practice**;
- (b) a person who is or was a **Principal** of the **Law Practice**;
- (c) a person who is or was an **Employee** of the **Law Practice** but only in his or her capacity as such;
- (d) a **Lawyer** who is or was a shareholder of the **Law Practice** but only in his or her capacity as such;
- (e) a body corporate related to the **Law Practice** that provides or provided clerical, administrative or management services to the **Law Practice**; and
- (f) the estate of each **Principal**.

- (b) the singular includes the plural and the plural includes the singular.
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) words importing a gender include every other gender and non-binary persons.
- (e) a reference to a 'person' includes a natural person, corporation, other legal entity or partnership.
- (f) a reference to an amount of money is reference to that amount in Australian dollars.
- (g) a reference to any statute or statute law includes:
  - (i) any modification, re-enactment or replacement of that statute or statute law; and
  - (ii) any subordinate legislation issued under, or in respect of, that statute or in respect of that statute law.

## 7 Interpretation

Except where the context otherwise requires it:

- (a) headings are included for convenience and are not to be used as an aid to interpretation.