

**CGU BARRISTERS
CIVIL LIABILITY
PROFESSIONAL
INDEMNITY INSURANCE
POLICY**



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Important Information

How CGU protects your privacy

We use information provided by our customers to allow Us to offer Our products and services. This means We may need to collect your personal information, and sometimes sensitive information about you as well (for example, health information for travel insurance). We will collect this information directly from you where possible, but there may be occasions when We collect this information from someone else.

We will only use your information for the purposes for which it was collected, other related purposes and as permitted or required by law. You may choose not to give Us your information, but this may affect Our ability to provide you with insurance cover.

We may share this information with companies within Our group, government and law enforcement bodies if required by law and others who provide services to Us or on Our behalf, some of which may be located outside of Australia.

For more details on how We collect, store, use and disclose your information, please read our Privacy Policy located at www.cgu.com.au/privacy. Alternatively, contact Us at privacy@cgu.com.au or 13 15 32 and We will send you a copy. We recommend that you obtain a copy of this policy and read it carefully.

By applying for, using or renewing any of Our products or services, or providing Us with your information, you agree to this information being collected, held, used and disclosed as set out in this policy.

Our Privacy Policy also contains information about how you can access and seek correction of your information, complain about a breach of the privacy law, and how We will deal with your complaint.

General Insurance Code of Practice

We proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

The objectives of the Code are:

- to commit Us to high standards of service;
- to promote better, more informed relations between Us and You;
- to maintain and promote trust and confidence in the general insurance industry;
- to provide fair and effective mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- to promote continuous improvement of the general insurance industry through education and training.

The Code Governance Committee is an independent body that monitors and enforces insurers' compliance with the Code.

We have adopted and support the Code and are committed to complying with it. Please contact Us if You would like more information about the Code or the Code Governance Committee.

Our Service Commitment

We are proud of Our service standards and supports the General Insurance Code of Practice. In an event that you are not satisfied with the way in which We have dealt with you, as part of Our commitment to customer service, We have an internal dispute resolution process in place to deal with any complaint you may have.

Please contact your nearest CGU Insurance office if you have a complaint, including if you are not satisfied with any of the following:

- one of Our products;
- Our service;
- the service of Our authorised representatives, loss adjusters or investigators; or
- Our decision on your claim.

Our staff will help you in any way they can. If they are unable to satisfy your concerns, they will refer the matter to their supervisor or manager. If the manager cannot resolve the matter, the manager will escalate the matter to our Internal Dispute Resolution Department.

Further information about Our complaint and dispute resolution procedures is available by contacting Us.

Intermediary Remuneration

We pay remuneration to insurance intermediaries when We issue, renew or vary a policy the intermediary has arranged or referred to Us. The type and amount of remuneration varies and may include commission and other payments. If you require more information about remuneration We may pay your intermediary you should ask your intermediary.

Interest on unallocated premium

If We are unable to issue your insurance when We receive your application, We are required to hold your premium in a trust account on your behalf until your insurance can be issued. We will retain any interest payable by Our bank to meet, among other things, bank fees and other bank costs We incur in operating the account.

Section 1

How To Read This Insurance Policy

1.1 Words with Special Meanings

Some of the words in this insurance **Policy** have special meanings. These meanings can be found in Section 8 of the **Policy** under the heading ('Words with Special Meanings'). If a word has a special meaning, it appears in this **Policy** in bold type and with a capital letter. These words may appear without bold type in endorsements in the **Schedule** and have the same meaning as those words defined in Section 8.

1.2 Policy Interpretation

Except where the context otherwise requires it:

- a) the singular includes the plural and the plural includes the singular;
- b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- c) words importing a gender include every other gender.

1.3 Paragraph Headings

The paragraph headings in this **Policy** are included for the purpose of reference only and do not form part of this **Policy** for interpretation purposes.

Section 2

The Insurance Contract

2.1 Payment of the Premium

We agree to provide the **Cover** described in this **Policy** upon full payment of the **Premium**. If full payment of the **Premium** is not made, there is no **Cover**.

2.2 Proposal

Before this **Policy** came into effect, **We** were provided with information by or on behalf of the **Insured** in the **Proposal** and perhaps in other ways. **We** have relied on this information to decide whether to enter into this contract and on what terms. If any of that information is wrong or false, it may affect entitlement to **Cover** under this **Policy**.

2.3 Period of Insurance

This **Policy** is in force for the **Period of Insurance**.

Section 3

The Cover We Provide

3.1 Civil liability cover

We Cover the **Insured** up to the **Policy Limit** (subject to Section 5) in respect of **Claims** for **Civil Liability** to any third party incurred in the provision of the **Professional Services** and which **Claims**:

- a) are made against the **Insured** during the **Period of Insurance**; and
- b) **We** are told about in writing as soon as reasonably possible during the **Period of Insurance**.

3.2 Examples of what we cover

By way of example, the **Civil Liability We Cover** in Section 3.1 includes (but is not limited to) the following types of **Civil Liability Claims**:

- a) breach of duty.
- b) breach of privacy or confidentiality.
- c) defamation.
- d) loss of or damage to **Documents** which were in the **Insured's** physical custody or control or for which the **Insured** is legally responsible, at the time of loss or damage (to the full **Policy Limit**).
- e) infringement of **Intellectual Property**.

3.3 Claim Investigation Costs

- a) In respect of **Covered Claims**, subject to Sections 3.3 b) and 5.3, **We** also pay in addition to the **Policy Limit** (but only up to an amount equal to the **Policy Limit**) **Claim Investigation Costs**.
- b) In respect of **Covered Claims**:
 - i. first brought in a court outside Australia or New Zealand; or
 - ii. brought in a court within Australia or New Zealand to enforce a judgment handed down in a court outside Australia or New Zealand; or
 - iii. where the proper law of a country other than Australia or New Zealand is applied to any of the issues in any **Claim** or **Covered Claim Covered** by this **Policy**,

the **Policy Limit** is inclusive of **Claim Investigation Costs**.

- c) **We** will pay **Claim Investigation Costs** as and when they are incurred prior to final resolution of the **Claim**, however, **We** will only pay such costs, if either:
 - i. **We** incur them; or
 - ii. the **Insured** incurs them after first obtaining **Our** prior written consent (which shall not be unreasonably delayed or withheld) and the costs and expenses are reasonable and necessary.
- d) **We** are not obliged to defend, or to continue to defend, any **Claim** or **Covered Claim** or pay, or continue to pay, any costs or expenses associated with such defence, once the **Policy Limit** has been exhausted.

Section 4

Policy Extensions

4.1 Disciplinary Enquiries

For those **Disciplinary Enquiries** of which the **Insured** first becomes aware and of which **We** are told about in writing as soon as reasonably possible during the **Period of Insurance**, **We Cover** the **Insured** (subject to the **Specific Cover Limit** set out in the **Schedule** for 'Enquiries'), for the reasonable and necessary legal costs and expenses incurred with **Our** prior written consent (which shall not be unreasonably delayed or withheld) for the representation of the **Insured** at any **Disciplinary Enquiry**. This **Cover** does not extend to paying the **Insured's** regular or overtime wages, salaries or fees.

4.2 Continuous Cover

- a) Notwithstanding Section 6.1 of this **Policy**, **We Cover** the **Insured**, for any **Claim** or **Disciplinary Enquiry** otherwise **Covered** by this **Policy**, arising from a **Known Circumstance** if:
 - i. there has been no fraudulent non-disclosure or fraudulent misrepresentation in respect of such **Known Circumstance**; and
 - ii. **We** were the professional liability insurer of the **Insured** when the **Insured** first knew (or a reasonable person in the **Insured's** professional position would have known) of such **Known Circumstance**; and
 - iii. **We** continued without interruption to be the **Insured's** professional liability insurer up until this **Policy** came into effect; and
 - iv. had **We** been notified of the **Known Circumstance** when the **Insured** first knew of it (or a reasonable person in the **Insured's** professional position would have known of it), the **Insured** would have been covered under the policy in force at that time and the **Insured** would (but for Section 6.1 of this **Policy**) otherwise be **Covered** under this **Policy**; and
 - v. the **Known Circumstance** has not previously been notified to **Us** or to any other insurer.
- b) If the **Insured** was entitled to have given notice of the **Known Circumstance** under any other policy of insurance with any other insurer, then this Extension does not apply to provide **Cover** under this **Policy** to the extent that [indemnity is provided to the Insured](#) under that other policy [of insurance](#).
- c) **Our** liability under this Extension is reduced to the extent of any prejudice **We** suffer as a result of any delayed notification of the **Known Circumstance** to **Us**.
- d) The **Policy Limit** of the **Cover** **We** provide under this Extension is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph a) iv above, or under this **Policy**. The terms of this **Policy** otherwise apply.

4.3 Cover to Estates and Legal Representatives

If an **Insured** dies or becomes legally incompetent or insolvent, **We Cover** the spouse domestic partner, estate, legal representative or assigns of the **Insured**, to the same extent as **Cover** would otherwise be available to the **Insured**, but only in respect of their vicarious liability for the **Insured's** acts, errors or omissions.

4.4 Misleading or deceptive conduct

Notwithstanding Section 6.10 of this **Policy**, **We Cover** the **Insured** on the basis specified in Section 3 of the **Policy** in respect of breaches of the misleading & deceptive conduct provisions of Part 2 Part Div 2 of the Australian Securities and Investments Commission Act 2001, the consumer protection provisions of the Competition and Consumer Act 2010 (Cwlth) and corresponding consumer protection provisions of New Zealand and Australian state and territories Fair Trading legislation and any antecedents to any of this legislation (but not for criminal liability in respect of any of these).

4.5 Breach of warranty of authority

We Cover the **Insured** on the basis specified in Section 3 the **Policy** which arises from a breach of warranty of authority committed, by or on behalf of the **Insured**, in good faith and in the reasonable belief of the person alleged to have committed the breach that appropriate authority was held.

4.6 Run Off Cover

If the **Insured** ceases, for any reason including death, to hold a practising certificate issued by an Australian or New Zealand bar association during or upon expiry of the **Period of Insurance**, then **We** agree:

1. to **Cover** the **Retired Insured** for any **Claim** arising from the provision of the **Professional Services** and which **Claim** is first made and notified to **Us** during the period of 7 years from the expiry date of this **Policy**. Provided that:
 - a) such **Cover** shall only apply in respect of any act, error or omission occurring prior to the date that the **Retired Insured** ceased to hold a practising certificate;
 - b) notification of ceasing to hold a practising certificate as a barrister, has been provided to **Us** within 21 days after the expiry of the **Period of Insurance**;
 - c) any executor or administrator of the **Retired Insured's** estate shall be subject to the terms of this **Policy**;
 - d) the **Policy Limit** under this Extension, is limited to \$1,500,000 any one **Claim** and \$4,500,000 in the aggregate.
 - e) the **Policy Excess** is deemed to be \$1,000 inclusive of **Claims Investigation Costs**.
 - f) no **Cover** is provided under this Extension if the **Insured** returns to practising as a barrister and has an entitlement to indemnity in whole or in part under any other policy of insurance.
 - g) this **Cover** is otherwise subject to all the terms, conditions, limitations and exclusions of this **Policy**.

Section 5

Limits To The Amount Of Cover

5.1 The Policy Limit

Subject to this Section 5, the **Policy Limit** applies to any each and every **Claim Covered** by this **Policy**.

5.2 Reinstatement of the policy limit

The **Policy Limit** is the maximum amount **We** will **Cover** the **Insured** for in respect of any one **Claim**, subject to the following limitations:

- a) **We** do not provide **Cover** for an amount in the aggregate more than the **Specific Cover Limit** for the legal costs and expenses **Covered** under Section 4.1.
- b) **We** do not, in respect of any one **Claim**, provide **Cover** for an amount more than the **Policy Limit**;
- c) the **Cover** under this **Policy** shall not exceed the **Policy Limit** for any one **Claim** or series of **Claims** (including **Covered Claims**) arising from the one and the same act, error or omission;
- d) if there is extra insurance, held with another insurer in excess of the limit of this **Policy**, then **Cover** in excess of one **Policy Limit** is only available for so much of the liability (otherwise **Covered** by this **Policy**) which is not covered by the extra insurance;
- e) where **Cover** is provided under this **Policy** for any **Claim** then **Claim Investigation Costs** are paid in respect of that **Claim** up to an amount equal to the **Policy Limit** in accordance with Section 3.3 of this **Policy**.

5.3 Cover for Claim Investigation Costs if the Policy Limit is exceeded

If the amount that has to be paid to dispose of, settle or finalise a **Claim** exceeds the **Policy Limit**, then **We** only pay for the same proportion of the **Claim Investigation Costs** as the **Policy Limit** bears to the amount to be paid to dispose of, settle or finalise the **Claim**. But **We** never pay more than the **Policy Limit**.

5.4 Limit if multiple persons and/or entities are covered

The **Policy Limit** and **Specific Cover Limits** do not increase if there is more than one **Insured Covered** under this **Policy**, or if more than one **Insured** causes or contributes to the **Claim**.

5.5 Specific Cover Limits

If the **Policy** indicates any **Specific Cover Limits** for specific types of **Cover** under this **Policy**, then the applicable **Specific Cover Limit** and not the **Policy Limit** applies. **Specific Cover Limits** are included within and not in addition to the **Policy Limit**.

5.6 The Excess

- a) **We** only **Cover** (up to the **Policy Limit** or **Specific Cover Limit** as applicable) for that part of the **Covered Claim** which is above the applicable **Excess**.
- b) There are different **Excesses** that may be applicable, depending on the type of **Covered Claim** involved which the **Insured** will be required to pay. The amount of the **Excess** for:
 - i. Australia and New Zealand Jurisdictions specified in the **Schedule** if the **Covered Claim** arises under the jurisdiction of an Australian or New Zealand Court. The **Insured** will also be required to pay this **Excess** for the **Claim Investigation Costs** of such **Covered Claims** if the **Schedule** states 'Costs inclusive'. There is no **Excess** for **Claim Investigation Costs** when **We** **Cover** an **Insured** for such **Covered Claims** if the **Schedule** states 'Costs exclusive'.
 - ii. 'Other Jurisdictions' specified in the **Schedule** if the **Covered Claim** arises under the jurisdiction of a Court other than an Australia or New Zealand Court. The **Insured** will also be required to pay this **Excess** for **Claim Investigation Costs** for the **Covered Claim**.
 - iii. 'Disciplinary Enquiries' specified in the **Schedule** for legal costs and expenses associated with a **Disciplinary Enquiry** which **We** **Cover** under Section 4.1 of this **Policy**.
- c) The **Insured** will be required to pay only one **Excess** for all **Covered Claims**, **Covered** by this **Policy** arising from the one act, error or omission.
- d) In the event of a **Claim** or **Covered Claim** arising from separate acts, errors or omissions, then only one **Excess** shall apply in respect of each such **Claim** or **Covered Claim**.
- e) Where the **Excess** is indicated in the **Policy** as 'Costs inclusive', the amount of the **Excess** is exclusive (i.e. net) of any GST payable in respect of **Claims Investigation Costs** or similar investigation or defence costs.

5.7 GST Input Tax Credits

- a) Where and to the extent that **We** are entitled to claim an Input Tax Credit for a payment made under the **Policy**, then any monetary limit in the **Policy** on **Our** obligation to make a payment of this kind, shall be deemed to be net of **Our** entitlement to the Input Tax Credit.
- b) Where and to the extent that the **Insured** is entitled to claim an Input Tax Credit for a payment required to be made by the **Insured** as an **Excess**, then the monetary limit of the **Excess** shall be deemed to be net of the entitlement of the **Insured** to the Input Tax Credit.
- c) Where payment is made under this **Policy** for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that, the **Insured** is or will be, entitled to under A New Tax System (Goods and Services Tax) Act 1999 in relation to that acquisition, whether or not that acquisition is made.

- d) Where payment is made under this **Policy** as compensation instead of payment for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any input tax credit that the **Insured** would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

Section 6

What is not Covered

We do not provide Cover for Claims or Covered Claims:

6.1 Known Claims and Known Circumstances

- a) known at the inception date of this **Policy**; or
- b) based upon, directly or indirectly arising from or attributable to any **Known Circumstance** or known **Claims** or **Covered Claims**; or
- c) disclosed in the **Proposal**, or arising from facts or circumstances disclosed in the **Proposal**, which may give rise to a **Claim** or **Covered Claim**; or
- d) if the **Policy** is endorsed or amended midterm, for any **Claim** or **Covered Claim** that arose from a **Known Circumstance** (as at the effective date of the amendment / endorsement) to the extent that that **Claim** or **Covered Claim** would not have been **Covered** by the **Policy** before such amendment / endorsement.

6.2 Foreign courts

subject to the 'Jurisdictional Limits' specified in the **Schedule**:

- a) first brought in or determined pursuant to the laws of, the United States of America or Canada, or their territories or protectorates; or
- b) arising out of the enforcement of judgments, orders or awards obtained in or determined pursuant to the laws of the United States of America or Canada, or their territories or protectorates; or
- c) where the proper law of the United States of America or Canada, or their territories or protectorates is applied to any of the issues in any **Claim** or **Covered Claim**, **Covered** by this **Policy**.

6.3 Assumed duty or obligation

based upon, directly or indirectly arising from or attributable to:

- a) a liability under a contractual warranty, guarantee or undertaking (unless liability would have existed regardless of the contractual warranty, guarantee or undertaking); or
- b) circumstances where a right of contribution or indemnity has been given up by an **Insured**, but only to the extent of the prejudice suffered by **Us** in those circumstances; or

- c) circumstances where someone has done work or provided services under an arrangement or agreement with an **Insured** which limits any potential right for an **Insured** to claim or receive compensation, contribution or indemnity from that person, but only to the extent of the prejudice suffered by **Us** in those circumstances: or
- d) any **Civil Liability** which the **Insured** agrees to accept in connection with the provision of the **Professional Services** and/or anything which is the subject of cover, which is more onerous than that which the **Insured** would otherwise have at common law, in equity or under statute but only to the extent of the prejudice **We** suffer because of that agreement; or
- e) any business not conducted for or on behalf of the **Insured** as a barrister.

6.4 Related parties

against an **Insured** brought by or on behalf of any:

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

6.5 Refund of Professional Fees and Trading Debts

- a) for (or calculated by reference to) the refund or waiver of any obligation to pay any fees, charges or disbursement (by way of damages or otherwise); or
- b) arising from a liability to pay trading debts, the repayment of any loan and/or any other financial obligation incurred which does not arise from the provision of **Professional Services**.

6.6 Profits

for any component of profit derived or derivable by an **Insured**.

6.7 Insolvency

based upon, directly or indirectly arising from or attributable to an **Insured's** insolvency, bankruptcy or liquidation.

6.8 Employers' Liability, Directors' & Officers' Liability, Occupier's Liability, Motor, Marine

- a) based upon, directly or indirectly arising from or attributable to the **Insured's** liability as an employer; or
- b) arising from or which involves bodily injury (including mental anguish or emotional distress), sickness, disease or death of any employee, contractor or worker who is under the direction, control and/or supervision of the **Insured** or for whose workplace safety the **Insured** is responsible;

- c) arising out of or in respect of actual or alleged unlawful discrimination (or other unlawful act, error or omission) by any **Insured** against any employee or employment applicant; or
- d) if an **Insured** is either an incorporated body or a director or officer of an incorporated body, arising from any act, error or omission of a director or officer of that incorporated body while acting in that capacity; or
- e) arising from occupation (or alleged occupation) of land or buildings by an **Insured**; or
- f) arising from or in respect of an **Insured's** liability as an owner or operator of any aircraft, marine craft or motor vehicles of any kind.

6.9 Punitive and exemplary damages, fines and penalties

for:

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

including, in respect to a) to c) above, but not limited to Claims Investigation Costs.

6.10 Intentional Damage

arising from:

- a) acts, errors or omissions by the **Insured** with the intention of causing a third party loss, damage or injury, or with reckless disregard for the potential consequences of any acts, errors or omissions; or
- b) any wilful breach of any statute, contract or duty by an **Insured**.

6.11 Deregistration

in so far as an **Insured** is required by law to maintain a registration or any form or certification to lawfully practice or provide the **Professional Services, Claims** or **Covered Claims** arising from acts, errors or omissions by or on behalf of the **Insured** which occurred at a time when such registration was not held, was cancelled or suspended or was otherwise not current and valid.

6.12 Asbestos

which would not have arisen but for the existence of asbestos.

Notwithstanding the above, this Exclusion shall not apply to such **Claims** or **Covered Claims** arising from the provision of the **Professional Services**.

6.13 Nuclear or Radioactivity materials

arising from:

- a) ionising radiations or contamination by radioactivity from any nuclear material; or
- b) the hazardous properties of any nuclear explosive, assembly or component.

6.14 War & Uprisings

based upon, directly or indirectly arising from or attributable to:

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

6.15 Terrorism

based upon, directly or indirectly arising from or attributable to:

- a) any act of **Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss, damage, illness, injury, death, cost or expense; or
- b) any action in controlling, preventing, suppressing, retaliating against, or responding to any act of **Terrorism**.

6.16 UN Sanctions

to the extent that the provision of **Cover** or benefit under this **Policy** 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.

6.17 Fraud and Dishonesty

based upon, directly or indirectly arising from or attributable to the dishonest, fraudulent, criminal or malicious acts or omissions of the **Insured**.

Section 7 General terms and conditions

Investigation, defence and settlement of Claims

7.1 We must be told about Claims

The **Insured** must tell **Us** in writing about a **Claim** as soon as reasonably possible during the **Period of Insurance**. If this is not done the **Insured's** right to **Cover** under this **Policy** may be affected.

7.2 Claims co-operation

Each **Insured** must:

- a) diligently do, and allow to be done, everything reasonably practicable to avoid or lessen the **Insured's** liability in relation to a **Claim** or **Covered Claim, Covered** by this **Policy**;

- b) as soon as reasonably possible give **Us** the help and information that **We** reasonably require to:
 - i. investigate and defend a **Claim** or **Covered Claim**; and
 - ii. determine **Our** liability under this **Policy**.
- c) **We** will only request help and information relevant to handling the **Claim** and will explain why it is required.

7.3 We can protect Our position

When **We** receive a notification under this **Policy** of any matter, **We** can take whatever action **We** consider appropriate to protect **Our** position.

This does not, however:

- a) indicate that any **Insured** is entitled to be **Covered** under this **Policy**; or
- b) prejudice **Our** rights under the **Policy** or at law.

7.4 Disclosure of information to Us in respect of cover

The **Insured** shall share confidential and privileged information that **We** reasonably require with **Us** and with **Our** legal advisers who **We** appoint about any matter notified to **Us** under the **Policy**.

We have a common interest with the **Insured** and with appointed legal advisers in the investigation, defence and settlement of any matter notified to **Us** under the **Policy** (**Common Interest**).

All confidential information provided to **Us** (including information which is subject to legal professional privilege), and/or to the legal advisers **We** appoint, by or on behalf of the **Insured**, which the **Insured** hereby irrevocably consents to appointed legal advisers providing to **Us**, is so provided on the basis that:

- a) subject to c) below, the information is provided to **Us** for that **Common Interest** purpose, is to be kept confidential and will not be further disclosed without the written consent of the **Insured**; and
- b) in respect of confidential information which is subject to legal professional privilege, the **Insured** does not waive legal professional privilege; and
- c) the information may be disclosed by **Us** to **Our** legal advisers and reinsurers on the basis that the above conditions apply to those persons' use of such information.

7.5 We can manage the Covered Claim

We:

- a) can conduct and defend or settle in the **Insured's** name any **Covered Claim**; or
- b) subject to Section 5.6 of the **Policy**, have the duty where and the **Insured** so requests, to manage any matter (including the investigating, defence or settlement) in respect of which **We** have confirmed **Cover** under the **Policy**; and
- c) can take any action, in the **Insured's** name, to pursue any right any **Insured** may have in connection with any **Covered Claim**.

7.6 An Insured must not admit liability for or settle any Covered Claim

An **Insured** must not:

- a) admit liability for, or settle any **Covered Claim**; or
- b) incur any costs or expenses for a **Covered Claim**; without first obtaining **Our** consent in writing (which shall not be unreasonably delayed or withheld). If **Our** prior consent is not obtained, the **Insured's** right to **Cover** under this **Policy** may be affected.

7.7 Insured's right to contest

If an **Insured** does not consent to a settlement that **We** recommend and wants to contest or continue the dispute or legal proceedings, then **We** only **Cover** (subject to the **Policy Limit** or **Specific Cover Limit** as applicable) for:

- a) the amount **We** could have settled the matter for; less
- b) the applicable **Excess**; plus
- c) the **Claim Investigation Costs** calculated to the date the **Insured** elected not to consent to the settlement.

7.8 Senior Counsel

- a) Unless a Senior Counsel, that **We** and the **Insured** both agree to instruct, advises that the **Claim** or **Covered Claim** (which **We** have agreed to **Cover**) should be contested, neither **We** nor the **Insured** can require the other to contest any legal proceedings about a **Claim** if the other does not agree to do so.
- b) In formulating his or her advice, Senior Counsel must be instructed to consider the:
 - i. economics of the matter, having regard to but not limited to, the:
 - 1. damages and costs likely to be recovered; and
 - 2. likely costs of defence; and
 - ii. **Insured's** prospects of successfully defending the **Claim** or **Covered Claim**.
- c) The cost of Senior Counsel's opinion will form part of the **Claim Investigation Costs**.
- d) If Senior Counsel advises that the matter should be settled and if the terms of settlement which **We** recommend are within limits which are reasonable (in Senior Counsel's opinion and in the light of the matters he/she is required to consider), then the **Insured**:
 - i. cannot (subject to Section 7.7, **Insured's** right to contest) object to the settlement; and
 - ii. will be required to pay any applicable **Excess** as soon as reasonably possible.

7.9 Payments to settle potential Claims

Any money **We** pay to settle, and/or investigate anything which might give rise to a **Claim** or **Covered Claim**, is taken to be a payment:

- a) to settle a **Claim**, and in addition,
- b) for the purpose of calculating the total of all **Claims** or **Covered Claims** under this **Policy**.

7.10 Recovering money from employees

We must not recover any amount paid out in respect of a **Claim** or **Covered Claim** under this **Policy** from any employee unless the **Claim** or **Covered Claim** arose from dishonest, fraudulent, criminal or malicious acts or omissions of the employee.

7.11 Offsetting of costs & expenses

If **We** incur costs or expenses above **Our** liability under the **Policy** for **Claim Investigation Costs**, then the **Insured** must pay whatever amount is above that liability as soon as reasonably possible after **We** ask for it.

We can offset that payment due from the **Insured** against (and deduct that amount from) any amount **We** are required to pay to or on behalf of the **Insured** under this **Policy**.

7.12 Loss Prevention

The **Insured** shall, as a condition to **Cover** under this **Policy**, take all reasonable steps to prevent any act, error, omission or circumstance which may cause or contribute to any **Covered Claim**.

7.13 Other insurance which may cover the risk

The **Insured** must advise **Us** as soon as reasonably possible in writing of any insurance already effected or which may subsequently be effected covering, in total or in part and whether absolutely or contingently, the risk, or any part of it, **Covered** by this **Policy**.

7.14 Allocation

- a) To the extent that a **Claim** comprises **Covered Matters** and **Uncovered Matters**, **We** will use best endeavours to agree a fair allocation between **Covered Matters** and **Uncovered Matters** having regard to the relative legal and financial exposure attributable to the **Covered Matters** and **Uncovered Matters**.
- b) This allocation will apply to **Claim Investigation Costs**.
- c) Any dispute between **Us** and the **Insured** on the allocation will be resolved by a Senior Counsel that **We** and the **Insured** both agree to instruct or in the absence of agreement, as appointed by the President of the Bar Association in the state or territory of the first address of the **Insured** shown on the **Schedule** or if no address is shown there, as shown on the **Proposal**.
- d) Any allocation between **Covered Matters** and **Uncovered Matters** as determined by Senior Counsel will apply retrospectively to the **Claim Investigation Costs** paid by **Us** or the **Insured** notwithstanding any prior payment on a different basis, unless otherwise agreed.
- e) The cost of Senior Counsel's opinion will form part of the **Claim Investigation Costs**.

7.15 Payment in Australian dollars in Australia

All premiums and **Claims** must be paid in Australian

Other matters

7.16 Material change in the risk

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

- a) an **Insured's** Practicing Certificate, is cancelled, suspended or terminated or has had conditions imposed during the **Period of Insurance**.
- b) an **Insured** being insolvent, bankrupt or in liquidation.

7.17 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**.

7.18 Territory covered by this policy

Cover under this **Policy** is not restricted by where anything giving rise to the **Claim** occurred.

7.19 Schedule must be included

This **Policy** is only legally enforceable if it includes a **Schedule** signed by one of **Our** officers.

Cancelling the Policy

7.20 We can cancel the policy

- a) **We** will not cancel this **Policy** for any reason other than non-payment of the **Premium**.
- b) **We** may deliver this notice to the **Insured** personally, or post it by certified mail (to the **Insured's** broker or to the address the **Insured** last gave **Us**). Proof that **We** mailed the notice is sufficient proof that the **Insured** received the notice.

7.21 Non-disclosure and mis-representation

- a) **We** will not avoid the **Policy** for fraudulent non-disclosure or misrepresentation to **Us** prior to the inception of this **Policy**.
- b) **We** will not reduce the amount **We** pay on behalf of the **Insured** in respect of a **Claim** or **Claims Investigation Costs** (otherwise **Covered** by this **Policy**) by reason of non-disclosure or misrepresentation by the **Insured** to **Us** prior to the inception of this **Policy**.
- c) If the **Insured** has fraudulently failed to disclose and/or fraudulently misrepresented matters, **We** are entitled to seek reimbursement from the **Insured** of any amounts **We** may pay or incur in relation to this **Policy**. If any non-disclosure or misrepresentation was not fraudulent then **We** are entitled to seek reimbursement from the **Insured** of an amount so as to place **Us** in the same position as **We** would have been in had the

Section 8

Words with special meanings

8.1 Civil Liability

Compensation, damages, costs and expenses in respect of a **Claim** which includes:

- a) the legal costs of the person making the **Claim**, for which an **Insured** becomes liable; and
- b) settlement amounts and/or arbitration awards agreed to with **Our** prior written consent and pursuant to Section 7 of the **Policy**.

8.2 Claim

The receipt by the **Insured** of any:

- a) originating process (in a legal proceeding or arbitration), cross claim or counter claim or third party or similar notice claiming compensation against and served on an **Insured**; or
- b) written demand from a third party claiming compensation against the **Insured**.

8.3 Claim Investigation Costs

The reasonable and necessary legal costs and expenses (including any expert costs where the choice of expert has been approved by **Us**) of investigating, defending or settling any:

- a) **Claim** or **Covered Claim**; or
- b) originating process (in a legal proceeding or arbitration), cross claim or counter claim or third party or similar notice or written demand from a third party claiming declaratory and/or other equitable relief against an **Insured** arising from the provision of the **Professional Services**.

8.4 Cover

Provide indemnity for, and indemnity does not include any component of profit.

8.5 Covered Claim

The:

- a) **Claims**, liabilities, losses, costs, and other matters **Covered** under this **Policy**;
- b) circumstances which may give rise to any of the matters set out in a) above, in respect of which **We** elect to protect the **Insured's** or **Our** position pursuant to Section 7.3 of the **Policy**.

8.6 Covered matters

That part of a **Claim**, or **Covered Claim** made against or sought from the **Insured** for which **We** provide **Cover**.

8.7 Disciplinary Enquiry

Any legal or quasi legal enquiry, by a body (including a regulatory, licensing or statutory body) which has jurisdiction over the **Insured**, which enquires whether the **Insured** has breached any relevant professional code of conduct or standard.

8.8 Documents

Documents of any nature including the electronically stored data, software or computer programs for or in respect of any computer system; but not including bearer bonds, coupons, bank notes, currency notes or negotiable instruments.

Loss or damage to **Documents** does not include loss or damage (including rearrangement) to such electronically stored data, software or computer programs arising from any computer virus or from any design or programming defect in any computer program or computer operating system.

8.9 Excess

The sum shown in the **Schedule** or in Sections 4 or 5 of the **Policy** (as applicable), which the **Covered Claim** must exceed before **We** will be liable under this **Policy** in respect of each **Covered Claim**. It is described in more detail in Section 5.6, the **Excess**.

8.10 Insured

The barrister identified in the **Schedule** as the **Insured**.

8.11 Intellectual Property

Copyright, design, patent, trade mark or moral right, including false attribution of authorship or any other intellectual property rights which exist in Australia or New Zealand whether created by statute or at common law.

8.12 Known Circumstance

Any fact, situation or circumstance which:

- a) an **Insured** was aware of before the commencement of the **Period of Insurance** or any relevant amendment or endorsement of the **Policy**; or
- b) a reasonable person in the **Insured's** professional position would have thought, at any time before the commencement of the **Period of insurance** or any relevant amendment or endorsement of the **Policy**, might result in someone making an allegation against an **Insured** in respect of a liability, loss or cost that might be **Covered** by this **Policy** or any relevant amendment / endorsement to this **Policy**.

8.13 Period of Insurance

The 'Period of Insurance' stated in the **Schedule**.

8.14 Policy

The insurance **Policy** made up of:

- a) all terms, conditions and exclusions contained herein;
- b) the **Schedule**;
- c) the endorsements, if any, contained in the Schedule.

8.15 Policy Limit

The limit stated in the **Schedule** as the 'Total Sum Insured'. See also Section 5 of this **Policy**.

8.16 Premium

'Total Payable Premium' as stated in the **Schedule**.

8.17 Professional Services

The provision by or on behalf of the **Insured** of professional services as a barrister.

8.18 Proposal

The written or electronic proposal form (the date of which is stated in the **Schedule**) together with any supplementary material completed by or on behalf of the **Insured**, that was given to **Us**, and relied on by **Us** to effect this **Policy**.

8.19 Retired Insured

The person specified in the **Schedule** who has ceased to practice as a barrister only or as a legal practitioner and hold a practising certificate during or upon expiry of the **Period of Insurance**.

8.20 Schedule

The schedule attached to this **Policy** or any schedule subsequently agreed between the **Insured** and **Us**, substituted during the **Period of Insurance** and duly signed by one of **Our** officers.

8.21 Specific Cover Limits

The limit of **Cover** for each of the matters specified in listed in the **Schedule** under 'Specific Cover Limits' or in Sections 4 of this **Policy** which are included within, and are not in addition to the **Policy Limit**.

8.22 Terrorism

Terrorism includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- a) involves violence against one or more persons; or
- b) involves damage to property; or
- c) endangers life other than that of the person committing the action; or
- d) creates a risk to health or safety of the public or a section of the public; or
- e) is designed to interfere with or to disrupt an electronic system.

8.23 Uncovered matters

That part of a **Claim** or **Covered Claim** made against or sought from the **Insured** for which **We** do not provide **Cover**.

8.24 We or Us or Our

Insurance Australia Limited ABN 11 000 016 722 trading as CGU Insurance.

CONTACT DETAILS

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Claims 13 24 80

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Melbourne VIC 3000

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trading as CGU Insurance

backed by  iaq