

# ASSOCIATION AND NON-PROFIT LIABILITY INSURANCE POLICY



**PRORISK**  
PROBLEM SOLVED

Level 3, 100 Wellington Parade  
East Melbourne VIC 3002  
Tel 03 9235 5255 Fax 1800 633 073  
[enquiries@prorisk.com.au](mailto:enquiries@prorisk.com.au)  
[www.prorisk.com.au](http://www.prorisk.com.au)

Professional Risk Underwriting Pty Ltd  
ABN 80 103 953 073  
AFSL 308076



find us on     

the problem solving **PEOPLE**

## Contents

Important Information	3
1. Section 1 - The Insurance Contract	5
2. Section 2 - The Cover we Provide	5
3. Section 3 - Additional Cover	7
4. Section 4 - Automatic Extensions	7
5. Section 5 - Optional Extensions	10
6. Section 6 - Exclusions	10
7. Section 7 - The Policy Limit	13
8. Section 8 - Excess	13
9. Section 9 - Claim Provisions	14
10. Section 10 - General Conditions	14
11. Section 11 - Definitions	16

## IMPORTANT INFORMATION

### THIS POLICY

This **Policy** is an important document. The **Policy** wording and **Schedule** together set out the cover provided, the amount insured and the terms and conditions of **Your** insurance. Please read it carefully and keep it in a safe place.

**Your** Insurance Broker has arranged this **Policy** for **You**. If **You** have any questions about the cover under the **Policy** or **You** wish to contact **ProRisk**, please contact **Your** insurance broker for assistance.

### PRORISK

**ProRisk** has the authority to bind this **Policy** on behalf of the **Underwriters**.

### CLAIMS MADE POLICY

This **Policy** is issued by **ProRisk** on a **Claims** made and notified basis. This means that the **Policy** only covers **Claims** first made against **You** during the **Insurance Period** and notified to **ProRisk** in writing during the **Insurance Period**. The **Policy** does not provide cover for any **Claims** made against **You** during the **Insurance Period** if, at any time prior to the commencement of the **Insurance Period**, **You** were aware of the facts or circumstances which might give rise to those **Claims** being made against **You**.

Section 40(3) of the Insurance Contracts Act 1984 provides that where an **Insured** gives notice in writing to an insurer, during the **Insurance Period**, of facts that might give rise to a **Claim** against the **Insured**, the insurer cannot refuse to pay a **Claim** which arises out of those facts, by reason only that the **Claim** is made after the **Insurance Period** has expired.

### YOUR DUTY OF DISCLOSURE

Section 21 of the Insurance Contracts Act 1984 provides that before **You** enter into a contract of general insurance with an insurer, **You** have a duty to disclose to the insurer every matter that **You** know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, upon what terms. **You** have the same duty to disclose those matters to the insurer before **You** renew, extend, vary or reinstate a contract of general insurance. **Your** duty, however, does not require disclosure of a matter:

- that diminishes the risk to be undertaken by the insurer; or
- that is of common knowledge; or
- that **Your** insurer knows, or in the ordinary course of its business, ought to know; or
- as to which compliance with **Your** duty of disclosure is waived by the insurer.

### NON-DISCLOSURE

If **You** fail to comply with **Your** duty of disclosure, **We** may be entitled to reduce **Our** liability under this **Policy** in respect of a **Claim** or **We** may cancel the **Policy**. If **Your** non-disclosure is fraudulent, **We** may also have the option of avoiding the **Policy** from its beginning.

### RETROACTIVE LIABILITY

The **Policy** is limited by a **Retroactive Date**. The **Policy** does not cover any liability arising from **Your** conduct prior to the **Retroactive Date**.

### ALTERATION TO RISK AND DEREGISTRATION

The **Policy** requires **You** to notify **Us** within thirty days of any material change in the nature of the **Entity Business**, or any act of insolvency or bankruptcy of the **Insured**. The **Policy** requires **You** to give immediate notice of the cancellation, suspension, termination or imposition of conditions in respect of **Your** statutory registration. **Claims** arising following the cancellation, suspension or termination of **Your** statutory registration are excluded from indemnity under the **Policy**.

### LIMITED LIABILITY FOR COSTS

The **Policy** provides that if a payment greater than the **Limit of Indemnity** is required to dispose of a **Claim**, **Our** liability for costs and expenses will be limited to the proportion that the **Limit of Indemnity** bears to the payment required to dispose of the **Claim**.

### POLICY CANCELLATION

In the event of **Policy** cancellation by the **Insured**, **ProRisk's** cancellation rates will apply.

### WAIVER OF RIGHTS OF SUBROGATION

The **Policy** provides that **You** must not, without **Our** prior written consent, enter into any contract or agreement which excludes, limits or prejudices a right of recovery which **You** may have in respect of any **Claim** covered under this **Policy**. Further, you must not do anything or fail to do anything which excludes, limits or prejudices **Our** rights of subrogation.

### PRIVACY STATEMENT

**ProRisk** is bound by the obligations of the Privacy Act 1988 (as amended) regarding the collection, use, disclosure and handling of personal information.

**We** collect personal information about **You** and about other individuals to enable **Us** to provide **You** with relevant products and services, to assess **Your** application for insurance and, if a contract is entered, to enable **Us** to provide, administer, and manage the **Policy**, and to investigate and handle any claims under the **Policy**. **We** may disclose personal information **We** collect to third parties (who may be located in the United Kingdom and other countries outside Australia). These include the insurer, lawyers, claims adjusters, and others appointed by **ProRisk** to assist **Us** in providing relevant products and services. **We** may also disclose **Your** information to people listed as co-insured on the **Policy** and to **Your** agents. By providing **Your** personal information to **Us**, **You** consent to **Us** making these disclosures.

If **You** do not provide all or part of the information required, **We** may not be able to provide **You** with **Our** products and services, consider **Your** application for insurance, administer the **Policy**, assess or handle claims under the **Policy**. **Your** Duty of Disclosure may require **You** to provide personal information to **Us**.

When **You** provide **Us** with personal information about other individuals, **We** rely upon **You** to have made them aware of that disclosure, and to ensure that they are aware of the matters set out in this **ProRisk** Privacy Statement and **ProRisk's** Privacy Policy and have consented to the disclosure.

Further information about **ProRisk's** collection, use, disclosure and handling of personal information is set out in its Privacy Policy, available on its website at [www.prorisk.com.au](http://www.prorisk.com.au). To obtain a hard copy of our Privacy Policy or to request access to or correction of or to update personal information, contact the Privacy Officer at **ProRisk** by email: [enquiries@prorisk.com.au](mailto:enquiries@prorisk.com.au) or by mail at the address shown on the **Policy**.

#### GENERAL INSURANCE CODE OF PRACTICE

**ProRisk** and **Underwriters** 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. A copy of the Code can be obtained from [www.codeofpractice.com.au](http://www.codeofpractice.com.au).


This **Policy** is Insurance Council of Australia's General Insurance Code of Practice compliant, apart for any **Claims** adjusted outside Australia.

#### COMPLAINTS HANDLING

Any enquiry or complaint relating to this **Policy** should be referred to **ProRisk** in the first instance. **We** have a complaints handling and internal dispute resolution process to assist **You**. Information about **Our** complaints handling procedures is available upon request. If this does not resolve the matter or **You** are not satisfied with the way a complaint has been dealt with, **You** should write to the Complaints Department of the **Underwriters**:

The Complaints Manager  
Swiss Re International SE, Australia Branch  
Level 36, Tower Two, International Towers Sydney  
200 Barangaroo Avenue, Sydney NSW 2000  
Telephone: (02) 8295 9500  
Email: [complaints\\_anz@swissre.com](mailto:complaints_anz@swissre.com)

Complaints that cannot be resolved by the Complaints Department of the **Underwriters** may be referred to the:

Australian Financial Complaints Authority  
 GPO Box 3  
Melbourne VIC 3001  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Telephone: 1800 931 678  
Further details will be provided at the appropriate stage of the complaints process.

#### DEFINITIONS

Apart from in the various headings, words appearing in bold type in the **Policy** have specific meanings attached to them, such as "**You**" and "**Us**". When reading the **Policy** please make sure that **You** refer to the various definitions to ensure that **You** understand what is being said.

## Section 1 - The Insurance Contract

- 1.1. In consideration of the payment of the **Premium** specified in the **Policy Schedule**, **We** agree to provide the cover described in the insuring clauses under sections 2, 3, 4 and 5 of this **Policy** in accordance with and subject to, all the terms, conditions, exclusions and limits of this **Policy**.
- 1.2. Before this **Policy** came into effect, **We** were provided with a written **Proposal** completed by **You**, or on **Your** behalf. **We** have relied on this information to decide whether to enter into this contract and on what terms.
- 1.3. If any of the information contained in the **Proposal** is incorrect or false, it may affect **Your** entitlement to cover under this **Policy**.
- 1.4. There will be no payment under the **Policy** until payment in full of the **Premium**.

## Section 2 - The Cover We Provide

### 2.1 Professional Indemnity Insurance

**We** will cover **You** against **Loss** resulting from any **Claim** arising from a breach of professional duty in the conduct of the **Entity Business** and which **Claim**:

- (a) is first made against **You** during the **Insurance Period**; and
- (b) of which **We** are first notified in writing during the **Insurance Period** or any extended reporting period in accordance with clause 5.1; and
- (c) arises from an act, error or omission on or after the **Retroactive Date** specified in the **Schedule**.

### 2.2 Directors & Officers Insurance

**We** will pay to or on behalf of an **Insured Person** any **Loss** for which that **Insured Person** is not indemnified by the **Entity** arising from any **Claim** by reason of any **Wrongful Act** committed by that **Insured Person** in that capacity and which **Claim**:

- (a) is first made against the **Insured Person** during the **Insurance Period**; and
- (b) is first notified to **Us** in writing during the **Insurance Period** or any extended reporting period under clause 5.1.

### 2.3 Entity Reimbursement Insurance

**We** will pay to or on behalf of the **Entity**, when the **Entity** is legally required or permitted to indemnify an **Insured Person**, any **Loss** arising out of a **Claim** made against an **Insured Person** by reason of any **Wrongful Act** committed by that **Insured Person** whilst acting in that capacity, provided always that such **Claim**:

- (a) is first made against the **Insured Person** during the **Insurance Period**; and
- (b) is first notified to **Us** in writing during the **Insurance Period** or any extended reporting period under clause 5.1.

### 2.4 Entity Insurance

**We** will pay to or on behalf of the **Entity** any **Loss** arising from any **Claim** made against the **Entity** by reason of any **Wrongful Act** committed by an **Insured Person** which **Claim**:

- (a) is first made against the **Entity** during the **Insurance Period**; and
- (b) is first notified to **Us** in writing during the **Insurance Period** or any extended reporting period under clause 5.1.

### 2.5 Employment Practices Insurance

**We** will pay to or on behalf of the **Insured** any **Loss** that the **Insured** is legally liable to pay arising from any **Employment Practices Claim** which:

- (a) is first made against the **Insured** during the **Insurance Period**; and
- (b) is first notified to **Us** in writing during the **Insurance Period** or any extended reporting period under clause 5.1.

The aggregate amount payable by **Us** for all **Employment Practices Claims** under this section during the **Insurance Period** shall not exceed the amount specified in the **Schedule**, and such amount shall be part of, and not in addition to, the aggregate **Limit of Indemnity** stated in the **Schedule**.

### 2.6 Fidelity Insurance

**We** will reimburse the **Entity** for any **Fidelity Loss** it sustains during the **Insurance Period** where such **Fidelity Loss**:

- (a) is sustained by reason of any dishonest or fraudulent act committed by an **Insured Person**; and
- (b) is first discovered by the **Entity** during the **Insurance Period**; and

- (c) is notified to **Us** in writing during the **Insurance Period** and within twenty-eight days of the date of discovery.

Cover under this section is subject to the following provisions and exclusions:

- (a) there is no cover for any further losses suffered by **You** after **You** have become aware of any **Fidelity Loss** or any dishonest or fraudulent act, or the date upon which a reasonable person would have had cause for suspicion of any **Fidelity Loss** or any fraudulent or dishonest act.
- (b) there is no cover for any **Fidelity Loss** directly or indirectly arising from, attributed to or in consequence of any conduct of which **You** had knowledge or had reason to suspect at or prior to the time of such conduct and failed to take any reasonable action to prevent such conduct or any **Loss** arising from it.
- (c) there is no cover for any **Fidelity Loss**, the existence of which has only been proved by profit and loss figures or by inventory calculations (including stock-takes).
- (d) there is no cover under this section for any consequential **Loss**.
- (e) there is no cover for any **Fidelity Loss** caused by or contributed to by an **Insured Person** who was not an **Employee** of the **Entity** when the conduct which caused or contributed to the **Fidelity Loss** occurred.
- (f) there is no cover for any **Fidelity Loss** arising from default under a loan or any type of credit offered to or by the **Entity**.
- (g) **You** shall bear the costs and expenses of establishing the nature and extent of the **Fidelity Loss**. **We** are under no obligation to provide cover until **We** are satisfied that such **Fidelity Loss** has in fact been sustained.
- (h) The **Excess** for Fidelity specified in the **Schedule**, applies to each and every **Fidelity Loss** resulting from each separate dishonest, fraudulent, malicious or illegal act or omission committed by an **Insured Person**.
- (i) a series of related, repeated or continuous dishonest or fraudulent acts of any one **Insured Person** or group of **Insured Persons** acting in collusion shall be treated as giving rise to a single loss for the purpose of applying the **Excess** for this clause.

The aggregate amount payable by **Us** for all **Fidelity**

**Losses** covered under this section during the **Insurance Period** shall be the amount set out in the **Schedule**, and such amount shall be part of, and not in addition to, the aggregate **Limit of Indemnity** stated in the **Schedule**.

## 2.7 Taxation Investigation

Where the **Entity** or any person on behalf of the **Entity**, first receives a **Tax Audit Notice** from the Australian Taxation Office:

- (a) during the **Insurance Period**, and
- (b) of which **We** are first notified in writing during the **Insurance Period** or any extended reporting period under clause 5.1,

**We** will (subject to the limit set out in the **Schedule**), provide cover to the **Entity** for necessary **Tax Audit Costs** reasonably incurred by the **Entity** up to the completion of the audit or investigation.

Cover under this section is subject to the following provisions:

There is no cover for **Tax Audit Costs** in respect of, arising out of, or relating to:

- (a) any improper, unwarranted or unjustified delay, refusal or failure to comply with any request made by or on behalf of the Australian Taxation Office, for the production of documents or the furnishing of information by the **Entity**.
- (b) inquiries from the Australian Taxation Office which are not related to an identified intention to conduct an audit or likely future audit.
- (c) any audit or investigation concerning income earned or where the source of income is outside Australia and its external territories, or where the services giving rise to the audit are performed by persons or any corporate entity ordinarily resident outside Australia.
- (d) matters arising under customs legislation.
- (e) any audit or investigations, notice of which or information as to their likely conduct, was received by the **Entity** or any person acting on its behalf, prior to the **Insurance Period**. Receipt of such communication will have occurred where the Australian Taxation Office makes communication with the **Entity** or any other person acting on its behalf.

- (f) any fraudulent act, error, omission or fraudulent misrepresentation committed by or on behalf of the **Entity**.
- (g) the imposition of or seeking to impose any tax, penalty tax, costs, interest, fine or any fees or expenses in connection with any criminal prosecution.
- (h) an audit or investigation of a return of income that has not been prepared or reviewed by the **Accountant** or **Registered Tax Agent**, except where the return is a prescribed sales tax return or a prescribed payroll tax return.
- (i) **Tax Audit Costs** incurred after the audit or investigation has been completed.

Cover for **Tax Audit Costs** will only be provided if:

- (a) all taxation and other returns are submitted within the time limits prescribed by all relevant statutes and regulations or as required by or on behalf of the Australian Taxation Office or within the extensions of time granted by the Australian Taxation Office.
- (b) upon the **Entity** or any other person acting on its behalf becoming aware of any error or deficiencies in any information, return of income or any other documentation furnished to the Australian Taxation Office, the Australian Taxation Office is notified accordingly without delay.
- (c) all taxes are paid by the due date or within any extension granted by the Australian Taxation Office.
- (d) a full and complete disclosure of all income including capital gains as required by any legislation is made by the **Entity** or any other person acting on its behalf.
- (e) all correspondence, requests and inquiries from the Australian Taxation Office are dealt with within reasonable time.
- (f) direct access to the **Accountant** or **Registered Tax Agent** is granted to **Us** and full cooperation by them is given to **Us**.
- (g) at **Our** request the **Entity** instructs all **Accountants** or **Registered Tax Agents**, lawyers or other persons or organisations engaged by the **Entity** to produce to **Us**, without delay, any documents or information or advice in **Your** possession which **We** shall require in connection with any **Claim** made under section 2.7.

The **Excess** for **Tax Audit Costs** as stated in the **Schedule**, applies to each and every **Tax Audit Notice** received by the **Entity** during the **Insurance Period**.

The total aggregate amount payable by **Us** for all **Tax Audit Costs** covered under this extension during the **Insurance Period** shall be the amount set out in the **Schedule**, and such amount shall be part of, and not in addition to, the aggregate **Limit of Indemnity** stated in the **Schedule**.

### Section 3 - Additional Cover

Subject to insuring clauses 2.1, 2.2, 2.3, 2.4 and all other terms of the **Policy**, **You** are also covered for the following types of **Claim**:

- (a) unintentional defamation.
- (b) **Loss** of or damage to **Documents** which were in **Your** physical custody or control at the time of loss or damage.
- (c) unintentional infringement of any patent, copyright, design or trademark or plagiarism.
- (d) unintentional breach of confidentiality.
- (e) unintentional breach of any provision of the Competition and Consumer Act 2010 or the equivalent section(s) of the Fair Trading legislation in any state and territory but only where the **Claim** arose directly from such a breach.

### Section 4 - Automatic Extensions

Subject to all other terms of the **Policy**, cover under the **Policy** is automatically extended to include the following parts of section 2 unless indicated otherwise in the **Schedule**.

**Extensions to all parts of section 2, excluding 2.6 and 2.7**

#### 4.1 Reinstatement of the Limit of Indemnity

If the **Limit of Indemnity** is wholly or partly exhausted, the **Limit of Indemnity** will be reinstated to the extent to which it has been reduced. The **Limit of Indemnity** will be reinstated only once during the **Insurance Period** and the **Limit of Indemnity** for any one **Claim** will not change.

#### 4.2 Joint Venture

**We** will cover **You** for **Your** conduct, in the course of the **Entity Business**, in any joint venture to which **You** are a party. Cover is limited to **Your** proportion of liability and excludes any joint venture partner.

#### 4.3 Continuous Cover

Notwithstanding exclusion clause 6.1, **We** will cover **You** for any **Claim** first made against you during the **Insurance Period** arising from a **Known Circumstance** provided always that:

- (a) the **Known Circumstance** could and should have been notified after the Pending or Prior Date stated in the **Schedule**; and
- (b) **You** have maintained without interruption association liability insurance from the Pending or Prior Date stated in the **Schedule**; and
- (c) there has been no fraudulent non compliance with **Your** duty of disclosure or fraudulent misrepresentation by **You** in respect of such **Known Circumstance**; and
- (d) the **Limit of Indemnity** under this extension shall be the lesser of the amount available under the policy in force at the time that **You** first became aware of the circumstance and this **Policy**. The terms of this **Policy** will otherwise apply.

If **You** are entitled to give notice under any other policy of insurance which gives **You** an entitlement to indemnity, in whole or in part under that other policy, then this extension does not apply.

#### 4.4 Discovery Period following a Change in Exposure

If there is a **Change in Exposure**, **We** will only pay:

- (a) **Loss** for any **Wrongful Act, Employment Practices Claim** or **Penalty** committed prior to the **Change in Exposure** and which is otherwise covered by this **Policy**; or
- (b) **Defence Costs** for any investigation, inquiry or occupational health and safety proceedings in respect of conduct committed prior to the **Change in Exposure** and which is otherwise covered by this **Policy**.

The **Insured** may, up to 30 days after the **Change in Exposure**, request an offer from **Us** for a **Discovery Period** of up to 84 months. Upon such request and following the receipt of any requested information, **We** may offer to extend the cover under this **Policy** for a **Discovery Period** of up to 84 months on such terms and conditions and at such premium as **We** decide in **Our** absolute discretion. Any additional premium will be non-refundable.

Any extended cover will apply only to **Claims** for a **Wrongful Act, Employment Practices Claim** or **Penalty** committed before the **Change in Exposure** or **Defence Costs** for an investigation, inquiry or occupational health and safety proceeding in respect of conduct committed before the **Change in Exposure**, and notified to **Us** before the expiry of the **Discovery Period**.

#### 4.5 Run Off Cover

If this **Policy** is not renewed or replaced with any other policy affording cover to the same effect as this **Policy** and provided there has not been a **Change in Exposure**, the cover provided by this **Policy** shall extend to indemnify any director or officer who had, for any reason, ceased to be a director or officer prior to the date of such non-renewal, in respect of **Claims** made against such persons during the period of 84 months immediately following the date of such non-renewal but only for **Wrongful Acts** allegedly committed whilst they were a director or officer.

This extension includes cover for **Defence Costs** in respect of an investigation, inquiry or occupational health and safety proceedings in respect of conduct occurring before the expiry of the **Insurance Period**.

#### Extension applicable to section 2.1 only

#### 4.6 Fraud / Dishonesty

**We** will extend section 2.1 to provide cover to **You** against **Loss** arising from any **Claim** brought about or contributed to by any dishonest or fraudulent act or omission of any **Insured Person** first made and notified to **Us** in writing during the **Insurance Period** or any extended reporting period under clause 5.1.

Cover under this extension is subject to the following specific exclusions:

- (a) **We** shall not provide cover to any **Insured Person** committing or condoning such dishonest, fraudulent, criminal or malicious act or omission.
- (b) there is no cover under this extension for any **Loss** or **Claim** directly or indirectly arising from, attributed to, or in consequence of any conduct of which **You** had knowledge or had reason to suspect at or prior to the time of such conduct and failed to take any reasonable action to prevent such conduct or any **Loss** arising from it.

## Extension applicable to section 2.2 only

### 4.7 Current Outside Directorship (Non Profit Organisations)

We will provide cover in accordance with section 2.2 of this **Policy** for **Claims** by reason of a **Wrongful Act** in any **Outside Directorship**, which an **Insured Person** held in any **Non Profit Organisation** at the commencement of or during the **Insurance Period**, at the request of the **Entity**.

Provided always that such cover:

- (a) will not extend to the **Non Profit Organisation** in which such **Outside Directorship** is held or to any other director, officer, or **Employee** of such **Non Profit Organisation** who is not also an **Insured Person** of the **Entity** under this **Policy**;
- (b) shall be specifically in excess of any other cover available to an **Insured Person** by reason of serving in such **Outside Directorship**;
- (c) under this extension shall be non cumulative with any other insurance issued by **Us**.

### 4.8 Run-off Cover for Outside Directorship (Non Profit Organisations)

We will provide cover in accordance with section 2.2 of this **Policy** for **Claims** by reason of a **Wrongful Act** in any **Outside Directorship** which an **Insured Person** held in any **Non Profit Organisation** and which the **Insured Person** ceased or ceases to hold prior to the commencement of or during the **Insurance Period**.

Provided always that:

- (a) the **Wrongful Act** giving rise to a **Claim** occurred before the **Insured Person** ceased holding such position;
- (b) the **Outside Directorship** had previously been covered by **Us** under a previous **Policy** or is now covered under this **Policy**; and
- (c) the provisions under extension 4.7 of this **Policy** will apply to this run-off cover.

## Extensions applicable to sections 2.2 and 2.3 only

### 4.9 Attendance at Official Investigations or Inquiries

We will pay the **Defence Costs**, incurred with **Our** prior written consent by or on behalf of an **Insured Person**, in attending any official investigation, examination, inquiry or other proceedings ordered or commissioned by any official body or institution, where

such **Insured Person** is legally compelled by such a body or institution to attend such investigation, examination, inquiry or proceeding and which involves an allegation against an **Insured Person** of a **Wrongful Act** for which the **Insured Person** would be entitled to indemnity under this **Policy**.

We will not, however, cover any costs associated with an appeal of a decision made as a result of an investigation, examination, inquiry or other proceeding.

### 4.10 Spousal Liability Cover

We will pay on behalf of the **Spouse** of an **Insured Person** all **Loss** arising from a **Claim** in respect of a **Wrongful Act** committed by the **Insured Person**, provided always that **We** shall only provide cover to the **Spouse** for a **Claim** which:

- (a) is made against the **Spouse** for the sole reason that he or she is the **Spouse** of the **Insured Person**; and
- (b) relates to property jointly held by the **Insured Person** and his or her **Spouse**, or transferred by that **Insured Person** to his or her **Spouse** for lawful purposes only.

## Extensions applicable to sections 2.2, 2.3, and 2.4 only

### 4.11 Occupational Health & Safety

Notwithstanding exclusion clauses 6.5, 6.8 and 6.18, **We** will pay **Defence Costs** incurred with **Our** prior written consent in defending any **Claim** for alleged breach of occupational health and safety laws.

### 4.12 Indemnifiable Penalties

Notwithstanding exclusion 6.5 **We** will pay any civil penalty on behalf of any:

- (a) **Insured** for a civil offence, provided that it arises out of conduct otherwise covered under the **Policy**;
- (b) **Insured** for a strict liability offence in connection with a breach by the **Entity** of any occupational health and safety law or regulation. This part of the extension applies notwithstanding exclusion 6.2 (Bodily Injury and Property Damage);
- (c) **Insured Person** for a strict liability offence in connection with the discharge, release, dispersal or escape of pollutants. This part of the extension applies notwithstanding exclusion 6.13a - Pollution;
- (d) the **Entity** imposed by any official body or institution that is legally empowered to

investigate the affairs or activities of any such person and for which that person is legally liable.

The aggregate amount payable by **Us** for all amounts covered under this extension during the **Insurance Period** shall not exceed the amount set out in the **Schedule** and such amount shall be part of, and not in addition to, the aggregate **Limit of Indemnity** stated in the **Schedule**.

There is no cover under this extension for any penalty arising out of the failure of an **Insured Person** or **Entity** to comply with any lawful consent, demand, determination, memorandum, notice, order, schedule or the like issued under any act.

**We** only provide cover under this Section for that part of the penalty payable by the **Insured Person** or **Entity** which is above the **Excess** amount indicated in the **Schedule**. Such **Excess** applies to each and every such penalty but excludes all costs, charges and expenses.

## Section 5 - Optional extension

### Optional extension applicable to sections 2.1, 2.2, 2.3, 2.4 and 2.5 only

Cover is only provided under this extension when it is specified in the **Schedule**. **We** reserve the right to offer this extension and to impose any special conditions or charge any additional premium as **We** require. The inclusion of this extension shall not increase the **Limit of Indemnity** stated in the **Schedule**.

#### 5.1 Extended Reporting Period

Where **We** refuse to offer terms to renew this **Policy** after the expiry of the **Insurance Period** then, the **Entity** and the **Insured Persons** shall jointly (but not separately) have the right upon payment of an amount equal to 25% of the total expiring annual **Premium** stated in the **Schedule** to a once only extension of this **Policy** until the earlier of when a **Replacement Policy** is effected or for a further 90 days immediately following the expiry of the **Insurance Period**.

This extension, however, is only in respect of **Claims** made against **You** in the extension period for any **Wrongful Act** committed or alleged to have been committed or attempted on or after the **Retroactive Date** specified in the **Schedule** and prior to the expiry of the **Insurance Period**, provided always that this extension is requested by the **Insured** prior to the expiry of the **Insurance Period**.

There is no cover under this **Policy** extension for **Claims** arising from any fact, situation or circumstance which **You** knew, before this extension was requested,

might result in someone making an allegation against **You** in respect of a **Loss** that might be covered under this **Policy** but which was not notified to **Us** as a potential **Claim** prior to the expiry of the **Insurance Period**.

## Section 6 - Exclusions

The following exclusions apply to all sections of the **Policy** unless otherwise specified.

**We** do not provide cover for any **Claims** or **Loss** caused by, arising from or in any way relating to:

### 6.1 Assumed Duty or Obligation

- (a) alleging a liability under a contractual warranty, guarantee or undertaking (unless liability would have existed regardless of the contractual warranty, guarantee or undertaking); or
- (b) about circumstances where a right of contribution or indemnity has been given up by **You**; or
- (c) about circumstances where someone has done work or provided services under an arrangement or agreement with **You** which limits any potential right for **You** to receive contribution or indemnity from that person; or
- (d) arising from any liability which **You** agree to accept outside that which is normal in the course of the conduct of the **Entity Business**; or
- (e) arising from any business not conducted for **You** or on **Your** behalf.

### 6.2 Bodily Injury or Property Damage

- (a) Bodily injury (except emotional distress or mental anguish), sickness, disease or death of or damage to property (including the loss of use thereof) or destruction of any tangible property of any:
  - (i) **Employee** of the **Insured** arising out of or in the course of their employment;
  - (ii) Person.
- (b) Exclusion 6.2(a)(ii) will not apply where such bodily injury or damage to property arises directly from a breach of professional duty covered under clause 2.1 of the **Policy**.

### 6.3 Building modifications

For the cost of physical modifications to premises, plant or equipment owned or occupied by **You** or on

**Your** behalf.

#### 6.4 Existing Claims and Known Circumstances:

- (a) any **Claim** first made against **You** prior to the **Insurance Period**; or any **Claim** arising from any matter disclosed or notified to **Us** or any other insurer prior to the **Insurance Period** as being either a **Claim** or circumstances which could result in a **Claim**; or any **Claim** arising from any litigation or official investigation or inquiry that was in progress or pending prior to the **Insurance Period**; or
- (b) which arise from a **Known Circumstance**; or
- (c) directly or indirectly based upon, or attributable to, or in consequence of any such **Known Circumstance**.
- (d) disclosed on the **Proposal** form or arising from facts or circumstances disclosed in the **Proposal** form.

#### 6.5 Fines and penalties

Fines and penalties imposed by law, punitive, exemplary or aggravated or multiple damages, income tax, customs duties, excise duty, stamp duty, sales tax or any other State or Federal tax or duty.

However:

- (a) this exclusion shall not apply to any other parts of a **Claim** which is otherwise covered under the **Policy**;
- (b) in respect of Sections 2.2, 2.3 and 2.4, this exclusion shall not apply to **Defence Costs** incurred in the successful defence of any **Claim** involving fines, penalties, punitive or exemplary damages, taxes, levies, imposts or duties;
- (c) this exclusion shall not apply to any **Penalties** which are specifically covered under extension 4.12.

#### 6.6 Firewalls

A breach in **Your** computer firewalls or security systems.

#### 6.7 Foreign Courts

- (a) first brought in a court outside Australia (or outside any country specified in the 'Jurisdictional Limits' stated in the **Schedule**); or
- (b) brought in a court within Australia to enforce a judgment handed down in a court outside Australia; or

- (c) where the proper law of a country other than Australia (or any country specified in the 'Jurisdictional Limits' stated in the **Schedule**) is applied to any part of the **Claim** or **Loss** covered by this **Policy**.

#### 6.8 Intentional Damage

Acts, errors or omissions by **You** with the intention of causing a third party **Loss**, damage or injury, or with reckless disregard for the consequences.

#### 6.9 Investment Advice

Any investment advice or information or opinion regarding investment (including allegations of or in connection with the negligent failure by **You** to provide investment advice or information).

#### 6.10 Legal Advice

Any legal advice or opinion or any actual or alleged failure by **You** to provide legal advice or opinion.

#### 6.11 Medical Treatment

Medical treatment, advice and/or services and/or scientific or medical research.

#### 6.12 Occupier's Liability, Motor, Marine, etc

- (a) arising from occupation (or alleged occupation) of land or buildings by **You** or on **Your** behalf; or
- (b) arising from or in respect of **Your** liability as an owner or operator of any aircraft, marine craft or motor vehicles of any kind.

#### 6.13 Pollution, Nuclear Risks, War and Terrorism, Asbestos

- (a) the actual, alleged or threatened discharge, release, or escape of pollution, or any direction or request that **You** test for, monitor, clean-up, remove, contain, treat, detoxify or neutralise pollution, or any voluntary decision to do so. For the purpose of this **Policy**, the term pollution shall have the meaning ascribed to it in the Protection of the Environment Operations Act 1997 No 156 (NSW).
- (b) atomic energy operations employing the process of nuclear fission or fusion or handling radioactive material which operations include but are not limited to:
  - (i) the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices; or
  - (ii) the use, handling or transportation of

radioactive materials; or

- (iii) the use handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion. Provided always that this exclusion shall not apply to any **Claim** arising from radio-isotopes or radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits; or

- (c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any Government or Public or Local Authority.
- (d) 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.
- (e) any action in controlling, preventing, suppressing, retaliating against, or responding to any act of **Terrorism**.
- (f) the existence of asbestos in whatever form or quantity.

#### 6.14 Refund of Professional Fees and Trading Debts

- (a) for refund of professional fees or charges (by way of damages or otherwise); or
- (b) arising from a liability to pay trading debts; or
- (c) for the return of remuneration paid to any **Insured Person** without the prior approval of the members of the **Entity** which payment, without such prior approval, shall be held by a court to be in violation of the law.

#### 6.15 Retroactive Liability

**Your** conduct prior to the **Retroactive Date**.

#### 6.16 Workers' Compensation

**Claims**, pursuant to or in relation to any Workers' Compensation or Occupational Health and Safety Acts or similar legislation. However, this exclusion does not apply to **Defence Costs** specifically covered under extension 4.10.

**Exclusions applying to all sections of the Policy except section 2.5**

**We** do not provide cover for any **Claims**:

#### 6.17 Molestation

Directly or indirectly related to, based upon, attributable to or in consequence of any actual or alleged molestation of, interference with, mental abuse of or physical abuse of any person, whether by the **Insured**, or by any agent or **Employee** of the **Insured**, or by any person performing any volunteer service for or on behalf of the **Insured**.

#### 6.18 Related Parties

Against the **Insured** or any **Insured Person** by or on behalf of:

- (a) any person, firm or incorporated body covered by this **Policy**; or
- (b) any company or trust which is operated or controlled by the **Insured** or the **Insured's Employees**, nominees or trustees, and in which the **Insured** has a direct or indirect financial interest; or
- (c) an **Insured** or any **Insured Person**.

#### Exclusions applicable to all sections, except sections 2.1 (including extension 4.6) and 2.6

Save as to the extent provided in sections 2.1 (including extension 4.6) and 2.6, **We** do not provide cover for any **Claims** or **Loss** caused by, arising out of or in any way relating to:

#### 6.19 Breach of Professional Duty

arising from:

- (a) the rendering or failure to render professional services or advice; or
- (b) a breach or alleged breach of any contract for the provision of professional services or advice.

#### 6.20 Dishonesty & Fraud

Brought about by, contributed to by or which involves:

- (a) a wilful breach of duty, the dishonest, fraudulent or malicious act or omission or other act or omission committed with criminal intent of any **Insured Person** or the **Entity**;
- (b) any **Insured Person** or the **Entity** having improperly benefited in fact from securities transactions as a result of information that was not available to other sellers and/or purchasers of such securities; or
- (c) any **Insured Person** or the **Entity** having gained in fact any personal advantage to which

he/she was not legally entitled.

However, this exclusion shall only apply in the event that the subject conduct has been established by an express admission, court judgment or other final adjudication.

#### **Exclusions applicable to section 2.5 and corresponding section 4 and 5 extensions only**

**We** do not provide cover for any **Claims**:

##### **6.21 Unfair Contracts**

In respect of:

- (a) a contract of employment alleged to be unfair;
- (b) the seeking of relief pursuant to Section 127A of the Workplace Relations Act (Commonwealth) or Section 106 of the Industrial Relations Act (NSW) 1996 or Section 276 of the Industrial Relations Act (Queensland) 1999 or similar legislation in the other states or territories of the Commonwealth of Australia.

##### **6.22 Strikes, lockouts etc**

Brought about by, contributed to by or which involves acts committed during or in connection with any industrial action initiated by an employee representative group including and not limited to unions, any strike action, picket, lockout, go slow or work to rule action.

### **Section 7 - The Limit of Indemnity**

- (a) Subject to extension 4.1, our liability under this **Policy** will not exceed the **Limit of Indemnity** for any one **Claim** or for all **Claims** in the aggregate, as specified in the **Schedule**, save that **We** will pay, in addition, **Defence Costs**.
- (b) If a payment greater than the **Limit of Indemnity** is required to dispose of a **Claim**, **Our** liability for **Defence Costs** will be limited to the proportion that the **Limit of Indemnity** bears to the payment required to dispose of the **Claim**.

### **Section 8 - Excess**

- (a) **You** must bear the amount of the **Excess** in respect of each **Claim** under this **Policy**. Where the **Excess** is described in the **Schedule** as "costs inclusive", all **Defence Costs**, in connection with the **Claim** will be borne by **You**, up to the limit of the **Excess**.

- (b) In the event of a **Claim** by **You** under this **Policy**, **You** shall, if directed by **Us**, pay to **Us** (or as directed by **Us**), the **Excess** within seven (7) business days. Any delay, failure or refusal by **You** to pay the **Excess** will entitle **Us** to deduct such amount from any amount(s) required to settle any **Claim** or judgment, order or any other payment to be made by **Us** under this **Policy**. In the event that a failure or refusal to grant access to monies for any **Excess** results in a failure of a settlement or an increase in costs and expenses, **Our** liability in connection with such **Claim** shall not exceed the amount for which the **Claim** could have been so settled plus the costs and expenses incurred with **Our** prior written consent up to the date of such failure or refusal, less the **Excess**.
- (c) Where **We** have elected to pay all or part of the **Excess** in respect of any **Claim** (or any loss or **Claim**), **You** shall, within seven (7) business days of receipt of **Our** written request, reimburse **Us** for such payment.

### **Section 9 - Claim provisions**

#### **9.1 Reporting Claims**

In the event of a **Claim** arising under this **Policy**:

- (a) **You** must give immediate written notice to **ProRisk** at Level 3, 100 Wellington Parade, East Melbourne, Victoria, 3002; and
- (b) **You** must give **Us** such information and assistance as **We** consider necessary to determine an appropriate course of action and identify any parties that **You** may have rights against in connection with the **Claim**.

#### **9.2 Management of Claims**

- (a) **You** must not admit liability for or settle any **Claim**, or incur any costs or expenses in connection with any **Claim**, without **Our** prior written consent. If **Our** prior consent is not obtained, **We** shall not be liable for any liability, costs or expenses incurred by **You**.
- (b) **We** may assume conduct of the defence and settlement of any **Claim** and may appoint legal advisers for that purpose, but **We** will not force **You** to contest any **Claim** unless counsel (agreed to by **You** and **Us**) advises that the **Claim** should be contested having regard to the economics and prospects of the defence of the **Claim**.
- (c) Legal advisers retained by **Us** to act on **Your** behalf for any **Claim** are at liberty to disclose to **Us** any information they receive in that capacity, wherever they obtain it from, including from **You**. By claiming under this **Policy**, **You**

authorise such legal advisers to disclose this information to **Us** and waive all claim to legal professional privilege which might otherwise prevent those legal advisers from disclosing this information to **Us**.

- (d) The legal advisers retained by **Us** to conduct the investigation, defence or settlement of any **Claim**, may provide advice to **Us** on any issue regarding **Our** liability to indemnify **You** and, whilst doing so, may continue to act in the investigation, defence or settlement of the **Claim** on behalf of both **Us** and **You**.
- (e) **You** agree that all communications between **Us** and the legal advisers retained by **Us** to act in the conduct of the investigation, defence or settlement of any **Claim** in relation to **Your** entitlement to indemnity from **Us** are privileged between **Us** and the legal advisers and **You** agree that **You** are not entitled, under any circumstances, to access or obtain any such communications.
- (f) If any actual or apparent conflict arises between the interests of **Us** and **You**, the legal advisers retained by **Us** to conduct the investigation, defence or settlement of any **Claim** may cease acting on behalf of **You** and may continue to act on behalf of **Us** in relation to any dispute between **Us** and **You** with respect to **Your** entitlement to indemnity from **Us**.
- (g) **We** may allow **You** to conduct the defence of a **Claim** if **We** believe the **Claim** will not exceed the **Excess**. If **We** do this, **You** will be required to provide us with regular progress reports and **We** reserve the right to take over conduct of the defence of the **Claim** at any time.
- (h) **We** may settle the **Claim**, if **We** so choose, but if **You** refuse to agree to a settlement recommended by **Us** and decide to contest the **Claim**, then any payment **We** make in connection with that **Claim** will be limited to the recommended settlement amount plus **Your** legal costs up to the time of **Your** refusal to settle.

## Section 10 - General conditions

### 10.1 Alteration To Risk

**You** must notify **Us** within thirty days of:

- (a) any material change in the nature of the **Entity Business**; or
- (b) any act of insolvency or bankruptcy of the **Insured**.

### 10.2 De-Registration

Where the **Insured** is an entity, **You** must notify **Us** immediately in the event that the **Insured's** statutory registration is cancelled, suspended or terminated, or has conditions imposed during the **Insurance Period**. Any **Claims** relating to the **Entity Business** provided by the **Insured** whilst its statutory registration is cancelled, suspended or terminated are excluded from indemnity under this **Policy**. This condition does not apply if the suspension relates purely to the late payment of registration fees.

### 10.3 Severability and Non-Imputation

If more than one person or entity is insured under this **Policy**, then any non-disclosure or misrepresentation by one **Insured** shall not prejudice the rights of any other **Insured** to indemnity, provided that the other **Insured** is innocent of, and has no knowledge of such conduct (or should not reasonably have had prior knowledge).

### 10.4 Multiple Claims

All **Claims** which arise from causally connected or interrelated acts, errors or omissions, will be regarded as one **Claim**. **We** will apply this condition when determining the **Limit of Indemnity** available, and the **Excess** applicable to **Claims** under this **Policy**.

### 10.5 Goods and Services Tax

- (a) The **Premium** includes an amount for **GST**.
- (b) **Our** liability to the **Insured** in respect of a **Claim** under this **Policy** is calculated less any input tax credit to which the **Insured** is entitled for any acquisition which is relevant to the **Claim**, or to which the **Insured** would have been entitled had it made a relevant acquisition. The **Insured** must inform **Us** of the extent to which it is entitled to an input tax credit, and any **GST** liability arising from the **Insured's** provision of incorrect advice is payable by the **Insured**.

### 10.6 Cancellation

- (a) **We** may cancel this **Policy** at any time at **Our** discretion in accordance with the provisions of the Insurance Contracts Act 1984.
- (b) **You** may cancel this **Policy** at any time in writing to **Us**. In the event of cancellation, **ProRisk's** cancellation rates will apply.

### 10.7 Subrogation

Where **We** have paid a **Claim** under this **Policy**, **We** become entitled to any rights **You** may have against

any party in relation to that **Claim**. **You** must assist **Us** (including giving evidence at any civil trial) and provide such information (including signed statements) as **We** reasonably require to exercise such rights.

## 10.8 Validity

To be valid, this **Policy** must have a **Schedule** attached to it which has been signed by **Our** authorised officer.

## 10.9 Headings

Paragraph titles used in this **Policy** are included for descriptive purposes only and do not form part of this **Policy** for the purpose of its construction or interpretation.

## 10.10 Governing Law

This **Policy** will be construed in accordance with the laws of Australia and the State or Territory where the **Policy** was issued. All disputes relating to the interpretation of this **Policy** will be determined by the courts (or a Federal court) based in that State or Territory.

## 10.11 Sanctions Limitation

**We** will not be liable under this **Policy** to make any payment or to provide any other benefit to the extent that trade or economic sanctions or other laws or regulations prohibit **Us** from providing insurance.

## 10.12 Service of Suit

(a) **We** agree that:

- (i) In the event of a dispute arising under this **Policy**, **Underwriters** at the request of the **Insured** will submit to the jurisdiction of any competent court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such court.
- (ii) Any summons notice or process to be served upon **Underwriters** may be served upon:

Professional Risk Underwriting Pty Ltd  
Level 3,  
100 Wellington Parade  
EAST MELBOURNE VIC 3002

who has authority to accept service and to enter an appearance on behalf of **Underwriters**, and who is directed at the request of the **Insured** to give a written undertaking to the **Insured** that it will

enter an appearance on behalf of **Underwriters**.

- (iii) If a suit is instituted against **Underwriters**, **Underwriters** will abide by the final decision of any such court or any competent appellate court.

## Section 11 - Definitions

Whenever the following words are used in this **Policy** in bold type and with a capital letter, they have the special meanings set out below. These words may appear without bold type in endorsements on the **Policy Schedule**.

- 11.1 **Accountant or Registered Tax Agent** means a person who is not an **Insured Person** and is recognised by either the Institute of Chartered Accountants or the Australian Society of Accountants, or any other person registered by the Australian Taxation Office as a tax agent, engaged by the **Entity** for the purpose of preparing, or supervising the preparation of, or reviewing prior to dispatch, all returns and statements required by the Australian Taxation Office, in respect of any liability to pay tax by the **Entity**.
- 11.2 **Change in Exposure** means, any of the following events:
  - (a) the entity shown in the **Schedule** ceases to carry on business; or
  - (b) the entity shown in the **Schedule** merges or consolidates into or with another entity.
- 11.3 **Claim** means:
  - (a) any demand for compensation or damages or any assertion of a financial right made by a third party in writing to **You**; or
  - (b) any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counter claim or third or similar party notice served upon **You**.
- 11.4 **Committee** means:
  - (a) any auxiliary committee, foundation, trust (other than a superannuation trust), or fund raising committee; or
  - (b) any disciplinary, examining or research body or committee; or

- (c) any sporting or social club committee.
- 11.5 **Defence Costs** means all reasonable costs, charges and expenses (other than regular or overtime wages, salaries or fees of any **Insured Person**) incurred with **Our** prior written consent in defending any **Claim** or representing the **Insured** at an official enquiry or other enquiry as set out in extension 4.9 or pursuant to any other extension provided under this **Policy**. The cover for **Defence Costs** is in addition to the **Limit of Indemnity** stated in the **Schedule**.
- 11.6 **Document** means deeds, wills, agreements, maps, plans, books, letters, certificates, forms and documents of any nature, whether written, printed or reproduced by any method and includes computer records and electronically stored data, but does not mean money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.
- 11.7 **Employment Practices Claim** means any actual or alleged violation of employment laws or any other employment related obligation or matter including but not limited to any actual or alleged:
- (a) employment-related:
    - (i) sexual or other unlawful harassment (including bullying);
    - (ii) unlawful discrimination;
    - (iii) denial of natural justice;
    - (iv) defamation;
    - (v) invasion of privacy; or
  - (b) unlawful termination of employment; or
  - (c) false or misleading advertising or representation involving terms or conditions of employment; or
  - (d) failure to employ, promote or grant tenure; or
  - (e) unfair deprivation of career opportunity; or
  - (f) unfair discipline or evaluation of employment performance; or
  - (g) failure to provide or adhere to adequate employment policies or procedures; or
  - (h) violation of any Federal, State or Local statute or regulation governing employment practices; or
- (i) breach of employment contract, with respect to any natural person who was, now is or becomes an **Employee** of the **Entity** including prospective employees.
- 11.8 **Employee** means a natural person who is, or was:
- (a) employed under a contract of service with the **Entity** and includes a director or other officer of the **Entity** who is, or was, so employed; or
  - (b) a voluntary worker who at the time of the relevant act, error or omission giving rise to a **Claim** covered by this **Policy** was under the **Insured's** direct control and supervision.
- 11.9 **Entity** means the organisation specified in the **Schedule**, including any **Committee** established by the **Insured** for the purpose of conducting the activities or business of the **Entity**.
- 11.10 **Entity Business** means the services provided by the **Insured** as stated in the **Schedule** and which the **Insured** is licensed and or registered to provide, where licensing and or registration is required by law.
- 11.11 **Excess** means the amounts specified in the **Schedule**.
- 11.12 **Fidelity Loss** means direct financial **Loss** caused by the **Loss** of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes:
- (a) owned by the **Entity**; or
  - (b) in the care, custody or control of the **Entity** and for which the **Entity** is legally liable.
- Fidelity Loss** does not include wages, salaries, or other remuneration benefits of the **Insured Persons** incurred by the **Entity**.
- 11.13 **Insurance Period** means the **Insurance Period** specified in the **Schedule**.
- 11.14 **Insured, You or Your** means the **Entity** listed in the **Schedule**, and any **Insured Person** either individually or jointly.
- 11.15 **Insured Person(s)** means:
- (a) Any past or present or future director,

secretary, officer, trustee, **Committee** member or **Employee** of the **Entity** (whether salaried or not); or

- (b) Any other natural person, acting on behalf of the **Entity** at the direction of an officer or board of directors or **Committee** of management of the **Entity**; or
- (c) The estate, heirs, legal representatives or assigns of any deceased, incompetent or insolvent **Insured Person**, provided always that **Cover** under this subsection is limited to the **Cover** which would have been otherwise available to the **Insured Person**.

**Insured Person** does not mean a liquidator, external auditor, receiver, receiver and manager, official manager, administrator, trustee or person administering a compromise or scheme of arrangement of the **Entity** or any **Employee** of such person; or company, entity or other body corporate or trustee, directors, officers or employees of superannuation or pension or organisation.

11.16 **Joint Venture** means an undertaking (regardless of what it is called) which the **Insured** carries on together with someone else who is not otherwise covered under this **Policy**.

11.17 **Known Circumstance** means any fact, situation or circumstance which:

- (a) **You** were aware of prior to the **Insurance Period**; or
- (b) a reasonable person would have considered at any time prior to the **Insurance Period**, might result in someone making an allegation against an **Insured** that might give rise to a **Claim** or **Loss** that might be covered under this **Policy**.

11.18 **Limit of Indemnity** means the limits specified in the **Schedule** respectively for any one **Claim** and for all claims in the aggregate.

11.19 **Loss** means the amount payable in respect of a **Claim** and shall include damages, judgment, settlements, interest, costs and **Defence Costs**. In respect of **Employment Practices Claims**, **Loss** will include back-pay where reinstatement of an **Employee** by a court is ordered but excludes any amount which the **Insured** is or was required to pay

pursuant to a specific obligation imposed under a contract of employment, employment agreement, statute, award or otherwise.

11.20 **Non Profit Organisation** means any company, entity, body, **Committee**, council, club, **Entity**, trust or other enterprise whether incorporated or unincorporated that is exempt from the payment of income tax under State or Federal law and is not a subsidiary company of the **Entity**.

11.21 **Outside Directorship** means the position of director, officer, secretary, trustee or equivalent position held by an **Insured Person** in a **Non Profit Organisation** at the request or direction of the **Entity**.

11.22 **Policy** means this policy wording, any endorsements to it, the **Schedule**, the **Proposal** and any other documents that **We** issue to **You** and advise **You** that they form part of the **Policy**.

11.23 **Premium** means the premium amount specified in the **Schedule** or in any endorsement to the **Schedule**, including all charges specified.

11.24 **Proposal** means the written **Proposal** form (the date of which is stated in the **Schedule**) together with any supplementary material completed by **You** or on **Your** behalf, that was given to **Us**, and relied on by **Us** to effect this **Policy**.

11.25 **ProRisk** means Professional Risk Underwriting Pty Ltd ABN 80 103 953 073 AFSL 308076.

11.26 **Replacement Policy** means an insurance policy issued upon the expiry of this **Policy** and which covers substantially the same risk exposure as this **Policy**. A **Replacement Policy** may not necessarily have the same limits, **Excess** or terms and conditions.

11.27 **Retroactive Date** means the date specified in the **Schedule** as the retroactive date. If no date is shown, and the word "Unlimited" is shown, then exclusion 6.2 will not apply.

11.28 **Schedule** means the **Schedule** attached to this **Policy**.

11.29 **Spouse** means the legally recognised spouse of an **Insured Person**.

11.30 **Tax Audit Costs** means any fees, charges or disbursements of an **Accountant** or **Registered Tax Agent** or any other

consultant who is not an **Insured Person** engaged by or replacing the **Accountant** or **Registered Tax Agent**, for work undertaken in connection with the audit or investigation.

- 11.31 **Tax Audit Notice** means any notification from the Australian Taxation Office relating to the **Entity's** liability to pay income tax, fringe benefits tax, capital gains tax, A New Tax System (goods and services) tax, superannuation payments tax, termination payments tax, or sales tax (including the amount of any such tax) only.
- 11.32 **Terrorism** means 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 organisations(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.
- 11.33 **Underwriters** means Swiss Re International SE Australia Branch (ABN 38 138 873 211).
- 11.34 **We, Us or Our** means **ProRisk** on behalf of **Underwriters**.
- 11.35 **Wrongful Act** means any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act wrongly committed or wrongly attempted by any **Insured Person**, individually or otherwise, in the course of his or her duties to the **Entity**.