

Superannuation Fund Trustees Liability

Insurance Policy



Superannuation Fund Trustees Liability Insurance Policy

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1. Insuring clause

The **Insurer** will pay, on behalf of the **Insured**, **Loss** resulting from **Claims** first made against the **Insured** and notified to the **Insurer** during the **Policy Period**, based on **Wrongful Acts** in connection with the **Superannuation Fund**.

2. Extensions

These Extensions are subject to all the terms of the **Policy**, unless otherwise stated. The total of all payments made under these Extensions will be part of and not in addition to the **Limit of Liability**, unless otherwise stated.

2.1 Criminal acts

The **Insurer** will pay the **Trustees** for **Policy Claims** for loss of **Property** first **Discovered** and notified to the **Insurer** during the **Policy Period**, sustained by the **Superannuation Fund** and caused by a **Criminal Act**.

The total liability of the **Insurer** under this Extension will not exceed the aggregate limit specified in Item 5 (b) of the **Policy Schedule**.

2.2 Loss of or damage to documents

The **Insurer** will pay the **Trustees** for **Policy Claims** for costs and expenses reasonably incurred by them in replacing or restoring lost or damaged **Documents** where such loss or damage is first discovered by the **Trustees** and notified to the **Insurer** during the **Policy Period**, provided that:

- (a) such loss or damage is sustained while the **Documents** are either in transit or in the custody or under the control of the **Trustees** or of any person to whom the **Trustees** have entrusted them; and
- (b) where the **Documents** are in electronic format, the **Trustees** or any person to whom the **Trustees** have entrusted them, have in place sufficient and proper procedures for the security and the daily back-up of the **Documents**.

The total liability of the **Insurer** under this Extension will not exceed \$100,000.

2.3 Superannuation funds acquired prior to the policy period

If, prior to the **Policy Period**, the **Policyholder** or its **Subsidiaries** acquired an entity and the **Trustees** became trustees of that entity's superannuation fund, then such superannuation fund is included within the definition of **Superannuation Fund** but only for:

- (a) **Wrongful Acts** in connection with such superannuation fund committed, or alleged to have been committed; and
- (b) loss of **Property** in connection with such superannuation fund under Extension 2.1, Criminal Acts, sustained; and
- (c) loss of or damage to **Documents** in connection with such superannuation fund under Extension 2.2, Loss of or Damage to Documents, sustained

after the date the **Trustees** became trustees of such superannuation fund.

2.4 Discovery period

2.4.1 In the event that the **Insurer** declines to offer terms for renewal of this **Policy**, other than for non-payment of premium, the **Policyholder** will be entitled to purchase a **Discovery Period**. The offer of renewal terms or premiums different from those in effect prior to renewal will not constitute the **Insurer** declining to offer terms for renewal.

The additional premium for the **Discovery Period** will be as specified in Item 8 (b) of the **Policy Schedule**.

2.4.2 The entitlement to purchase a **Discovery Period** lapses upon expiry of the **Policy Period**.

2.4.3 The application to purchase a **Discovery Period** must be received by the **Insurer** prior to the expiry of the **Policy Period**, and payment of the additional premium must be made to the **Insurer** within thirty days of the same date.

2.4.4 In the event that any **Superannuation Fund** is wound up or dissolved involuntarily, the **Policyholder** will not be entitled to purchase a **Discovery Period**.

2.4.5 During the **Discovery Period** the **Policyholder** may continue to notify **Claims** to the **Insurer**, but only **Claims** based on **Wrongful Acts** committed or alleged to have been committed prior to the expiry of the **Policy Period**.

Any **Claim** made and notified to the **Insurer** during the **Discovery Period** will be deemed to have been first made and notified to the **Insurer** during the immediately preceding **Policy Period**.

2.5 Legal representatives

If an **Insured**, who is a natural person, dies or becomes legally incapable or bankrupt, then this **Policy** will afford cover for **Loss** resulting from **Claims**:

- (a) first made against such **Insured's** estate, heirs, executors or other legal representatives; and
- (b) notified to the **Insurer**,

during the **Policy Period** based on **Wrongful Acts** by such **Insured**. However, the estate, heirs, executors or other legal representatives must comply with the terms of this **Policy**.

2.6 Spouses

If a **Claim** against an **Insured** who is a natural person, includes a claim against such **Insured's Spouse** solely by reason of (i) such **Spouse's** legal status as a **Spouse** of such **Insured**, or (ii) such **Spouse's** ownership interest in property which the claimant seeks as recovery for **Claims** made against such **Insured**, then all loss which such **Spouse** becomes legally liable to pay resulting from such **Claim** will be treated for the purposes of this **Policy** as **Loss**.

This Extension does not apply to the extent the **Claim** alleges any act, error or omission by such **Insured's Spouse**.

3. Exclusions

3.1 Exclusions applicable to claims

The **Insurer** will not be liable for:

3.1.1 Known claims and circumstances

Loss resulting from **Claims** arising directly or indirectly from or in respect of any fact, event, circumstance or **Wrongful Act**:

- (a) known to any **Insured** at the inception of this **Policy** and which a reasonable person in the circumstances might reasonably expect to give rise to a **Claim**; or
- (b) which has been or should reasonably have been the subject of any written notice given under any policy of which this **Policy** is a direct or indirect renewal or replacement; or
- (c) alleged in, discovered in, relating to or underlying any **Claim** against any **Insured** on or prior to the Prior Litigation Date specified in Item 9 of the Policy Schedule,

except as provided for in General Term 5.6, Continuity.

3.1.2 Bodily injury and property damage

Loss resulting from **Claims** for bodily injury, any form of psychiatric, psychological or mental injury, illness, disease or death of any person or damage to or destruction of any tangible property including any consequent loss of use thereof.

3.1.3 Claims by the trustees

Loss resulting from **Claims** by any of the **Trustees**.

3.1.4 Employment wrongful acts

Loss resulting from **Claims** arising directly or indirectly from or in respect of any **Employment Wrongful Act**.

3.1.5 Liability of others

Loss resulting from **Claims** arising directly or indirectly from or in respect of any liability of others assumed by the **Insured** under or pursuant to any warranty, guarantee, indemnity or agreement (including where the **Insured** has agreed to limit or waive any rights to recover an amount from a third party) unless:

- (a) such liability would have attached in the absence of such warranty, guarantee, indemnity or agreement; or
- (b) such liability would have attached under the terms of the trust deed of the **Superannuation Fund**.

3.1.6 Trading loss

Loss resulting from **Claims** arising directly or indirectly from or in respect of any trading losses or trading liabilities incurred in connection with any business managed or carried on by the **Policyholder** and/or its **Subsidiaries**.

3.1.7 Dishonest or criminal intent/improper gain

Loss resulting from **Claims** against an **Insured** arising directly or indirectly from or in respect of:

- (a) any **Wrongful Act** committed by that **Insured** with wilful, reckless, dishonest, fraudulent, malicious or criminal intent; or
- (b) that **Insured** having received any gain, profit, advantage or remuneration, in each case in respect of the Superannuation Fund, to which that **Insured** was not legally entitled,

if it is found by way of any judgement or other final adjudication that such **Insured** did in fact commit such **Wrongful Act** or engage in such illegal conduct.

For the purpose of this Exclusion, the fact that one **Insured** has committed or is alleged to have committed the conduct described in Exclusion 3.1.7 a or b above will not be imputed to any other **Insured** who is a natural person.

3.1.8 Investment loss

Loss resulting from **Claims** arising directly or indirectly from or in respect of:

- (a) the depreciation or loss of value of any investment or asset; or
- (b) loss of or reduction in income or other return from any investment, caused by a fluctuation in any stock, financial, commodity or other market or index.

3.1.9 Pollution

Loss resulting from **Claims** arising directly or indirectly from or in respect of **Pollution**.

3.2 Exclusions applicable to loss other than defence costs, resulting from claims

The **Insurer** will not be liable for:

3.2.1 Failure to fund

Loss, other than **Defence Costs**, resulting from **Claims** arising directly or indirectly from or in respect of:

- (a) failure to fund the **Superannuation Fund** in accordance with the **Superannuation Fund** trust, deed or instrument; or
- (b) failure to collect contributions owed to the **Superannuation Fund**; or
- (c) return or repatriation to the **Policyholder** and/or its **Subsidiaries** of any contributions or assets of the **Superannuation Fund**.

3.2.2 Benefits due

Loss, other than **Defence Costs**, resulting from **Claims** for benefits due or to become due from the **Superannuation Fund** unless and to the extent that the benefits are payable by a **Trustee** who is a natural person, such **Trustee** is personally liable for the benefits and recovery for the benefits is based upon a covered **Wrongful Act**.

3.2.3 Self-insured benefits

Loss, other than **Defence Costs**, resulting from **Claims** arising directly or indirectly from or in respect of any liability for self-insured benefits claimed to be payable or actually payable from the **Superannuation Fund**.

3.3 Exclusions applicable to extension, 2.1 criminal acts, only

3.3.1 Prior discovery of loss

The **Insurer** will not be liable under Extension 2.1, Criminal Acts, for **Policy Claims** for loss, or that part of any loss, of **Property** caused by a **Trustee, Director** or **Employee** which is sustained after 'discovery' of any **Criminal Act** committed by such **Trustee, Director, or Employee** or where such **Trustee, Director** or **Employee** engaged in dishonesty.

For purposes of this exclusion only, the term 'discovery' means when any **Trustee** who is a natural person or any officer or senior manager of the **Insured**, not in collusion with any **Trustee, Director** or **Employee** committing a **Criminal Act** or engaged in dishonesty, first becomes aware of facts which would cause a reasonable person in the circumstances to believe that a **Criminal Act** or dishonesty has occurred.

3.4 Exclusions applicable extension 2.2, loss of or damage to documents, only

3.4.1 Fading and mould

The **Insurer** will not be liable under Extension 2.2, Loss of or Damage to Documents, for **Policy Claims** for costs and expenses incurred in replacing or restoring lost or damaged **Documents** where such loss or damage is caused by fading, mould, vermin, pest infestation, wear, tear or any other gradually operating cause.

3.5 Exclusions applicable to all loss

The **Insurer** will not be liable for:

- (a) **Loss** resulting from **Claims**; or
- (b) **Policy Claims** for loss

arising directly or indirectly from or in respect of:

3.5.1 War and terrorism

- (a) declared or undeclared war, civil war, insurrection, riot, rebellion or revolution, military, naval or usurped power, governmental intervention, expropriation or nationalisation or any **Act of Terrorism**, regardless of any other cause or event contributing concurrently or in any other sequence; or
- (b) any action taken in controlling, preventing, suppressing or in any way relating to any **Act of Terrorism**.

3.5.2 Nuclear

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

3.5.3 Asbestos

Asbestos, Asbestos fibres or derivatives of **Asbestos**.

4. Limit of liability and excess

If the **Insured** is comprised of more than one entity, the **Limit of Liability** and **Excess** applies to the group of such entities as a whole.

4.1 Limit of liability

4.1.1 The **Insurer's** liability to the **Insured** under this **Policy** will not exceed the **Limit of Liability** in the aggregate for all:

- (a) **Loss** resulting from all **Claims** first made and notified to the **Insurer**; and
- (b) **Policy Claims** for **Loss** under Extension 2.1, Criminal Acts, first **Discovered** and notified to the **Insurer**; and
- (c) **Policy Claims** for **Loss** under Extension 2.2, Loss of or Damage to Documents, first discovered and notified to the **Insurer**

during the **Policy Period**.

4.1.2 The **Insurer** has no liability for any amount above the **Limit of Liability**.

4.1.3 The purchase of any **Discovery Period** will not increase or reinstate the **Limit of Liability**, which will be the **Insurer's** maximum liability for the **Policy Period** and **Discovery Period**, combined.

4.2 Excess

4.2.1 The **Insured** is liable for the amount of **Loss** that is less than the **Excess** for each:

- (a) **Claim**; and
- (b) **Policy Claim**.

4.2.2 The **Excess** is deducted from **Loss** payable before the application of section 4.1, Limit of Liability.

4.2.3 The **Insurer** has no liability for the amount of **Loss** that is less than the **Excess**.

4.2.4 The **Insured** agrees that the **Excess** specified in Item 6 of the **Policy Schedule** must be retained by the **Insured** and is to remain uninsured.

4.2.5 The **Excess** will not apply to any **Loss** directly payable by any **Trustee** who is a natural person.

4.3 Related claims

All **Related Claims** will be deemed to be one **Claim** and cover for all **Related Claims** will be provided as follows:

- (a) if the first **Related Claim** is first made during this **Policy Period** and notified to the **Insurer** during this **Policy Period** or any applicable **Discovery Period**, then coverage for all subsequent **Related Claims** will only be provided under this **Policy**; and
- (b) if the first **Related Claim** was first made and notified to this **Insurer** during a period prior to this **Policy Period**, during which the **Insured** had cover with this **Insurer**, then cover for all **Related Claims** will only be provided under that earlier policy with this **Insurer**, subject to the terms, excess and limit of liability of that earlier policy; and
- (c) if the first **Related Claim** was first made during a period prior to this **Policy Period**, during which the **Insured** did not have cover with this **Insurer**, then no cover for any **Related Claim** will be provided under this **Policy**.

4.4 Related loss

For the purpose of the calculation of the **Limit of Liability** or **Excess**, all **Policy Claims** for **Loss** of any kind, sustained as a result of one act, cause or event or a series of related acts, causes or events will be deemed to be one **Loss** regardless of when during the **Policy Period** or prior thereto such acts occurred.

5. General terms

5.1 Payment of premium

The **Policyholder** must pay the premium specified in Item 4 of the **Policy Schedule** for the **Policy Period** to the **Insurer** by the Due Date. The Due Date is on or before ninety days after the inception date of the **Policy Period** specified in Item 3 of the **Policy Schedule** or such other time that the **Insurer** agrees in writing. If the **Policyholder** fails to pay the premium by the Due Date, the **Insurer** is entitled to cancel this **Policy** in accordance with the Insurance Contracts Act 1984.

5.2 Authorisation

The **Policyholder** is the agent for each **Insured** and each **Insured** is bound by any statement, act or omission of the **Policyholder** for all purposes under this **Policy**, subject to General Term 5.3, Disclosure and 5.4, Non-imputation and 5.11.1, Claims Conduct.

If the **Policyholder** is more than one entity, then the first entity listed in Item 1 of the **Policy Schedule** will be deemed to be the **Policyholder**.

5.3 Disclosure

Each **Insured** represents that the information about each **Insured** supplied to the **Insurer** before the **Policy Period** in respect of this **Policy** is correct, true and complete. The **Insured** acknowledges that the **Insurer** relies on this information and this representation.

5.4 Non-imputation

An **Insured** who is a natural person is not liable for any misrepresentation or non-disclosure in respect of or breach of, this **Policy**, in each case by any other **Insured**. Each **Insured** is entitled to make a claim against the **Insurer** under this **Policy**. The knowledge or state of mind of one **Insured** is not imputed to any other **Insured** who is a natural person.

5.5 Duty to keep records

The **Insured** must keep records of all **Property** in such manner that in the event of a **Policy Claim** under Extension 2.1 Criminal Acts, the **Insurer** can accurately verify therefrom the existence of such **Property** and the fact of and amount of the **Loss**.

5.6 Continuity

In the absence of fraudulent non-disclosure or fraudulent misrepresentation, where a **Claim** that would otherwise be covered by this **Policy** is excluded by Exclusion 3.1.1 a or 3.1.1 b, then cover is provided under this **Policy**, provided that:

- (a) the **Insured** first became aware of the fact, event, circumstance or **Wrongful Act** that gave rise to the **Claim** after the Continuity Date specified in Item 7 of the **Policy Schedule**; and
- (b) the **Insured** was insured by the **Insurer** at the time when the **Insured** first became aware of such fact, event, circumstance or **Wrongful Act** and has since been insured continuously by the **Insurer**, under a policy of which this **Policy** is a replacement.
- (c) no **Related Claim** has been made against the **Insured** prior to the **Policy Period**.

The cover provided under this General Term will be in accordance with this **Policy**, except that:

- (i) if the excess applicable to the policy in force at the time when the **Insured** first became aware of such fact, event, circumstance or **Wrongful Act** is higher than the **Excess** specified in Item 6 of the **Policy Schedule**, then that higher amount will be deemed to be the **Excess** specified in Item 6 of the **Policy Schedule** in respect of such **Claim**; and
- (ii) if the amount of the limit of liability applicable to the policy in force at the time when the **Insured** first became aware of such fact, event, circumstance or **Wrongful Act** is lower than the amount of the **Limit of Liability**, then that lower amount will be deemed to be the amount of the **Limit of Liability** in respect of such **Claim**.

5.7 Jurisdiction

This **Policy** provides cover for **Claims** made anywhere in the world except for those **Claims**:

- (a) brought in a court of law, arbitration, tribunal forum or other body entitled to impose enforceable orders against the **Insured** in **North America**; or
- (b) arising from the enforcement of any judgment, order or award in respect of any action brought in any court of law in **North America**.

5.8 Other insurance

If, at the time any **Loss** arises under this **Policy**, there is any other insurance contract in force covering the same **Loss**, the **Policyholder** must notify the **Insurer** as soon as reasonably practicable providing full details of such other insurance contract, including the identity of the insurer, the policy number and such further information as the **Insurer** may reasonably require.

5.9 Notice

5.9.1 Notification of claims

The **Policyholder** must give to the **Insurer** notification of any **Claim** made against any **Insured**:

- (a) as soon as reasonably practicable within the **Policy Period** or within any applicable **Discovery Period**; and
- (b) at the address or facsimile number specified in Item 10 (a) of the **Policy Schedule**.

Each notification of a **Claim** must include so far as practicable:

- (i) the identity of the claimant or potential claimant; and
- (ii) the nature of the **Claim**; and
- (iii) the likely quantum of the **Claim**.

The **Policyholder** must provide the **Insurer** with such further information and documentation as it may reasonably require.

5.9.2 Notification of loss

The **Policyholder** must give to the **Insurer** notification of:

- (a) **Discovery** of loss of **Property** under Extension 2.1, Criminal Acts; and
- (b) discovery of loss of or damage to **Documents** under Extension 2.2, Loss of or Damage to Documents, as soon as reasonably practicable within the **Policy Period** and at the address or facsimile number specified in Item 10 (a) of the **Policy Schedule**.

Each notification of **Loss** must include so far as practicable:

- (i) the nature of the **Loss**; and
- (ii) the likely quantum of the **Loss**.

The **Policyholder** must provide the **Insurer** with such further information and documentation as it may reasonably require.

5.9.3 Other notices

Any other communications to the **Insurer** under this **Policy**, including any application to purchase a **Discovery Period**, must be sent by the **Policyholder** to the **Insurer** at the address or facsimile number specified in Item 10 (b) of the **Policy Schedule**.

Notice to the **Insured** may be given to the **Policyholder** or its agent at the address specified in Item 1 of the **Policy Schedule**.

5.9.4 Manner of giving notices

Notification and notices given to the **Insurer** in accordance with 5.9.1, 5.9.2 and 5.9.3 above will be taken to have been received:

- (a) if delivered by hand to the **Insurer's** address, on the date of delivery, provided that delivery is acknowledged in writing by the **Insurer**; or
- (b) if sent by post, 5 working days after posting; or
- (c) if sent by facsimile on a business day at the **Insurer's**, on the date of transmission, or if sent on a non-business day at the **Insurer's**, on the next working day, provided that in both cases the sender's facsimile machine records a successful transmission.

5.10 Claims and policy claims co-operation

In the event of a **Claim**, **Policy Claim** or **Loss**, the **Insured** will at all times and at its own cost provide the **Insurer** with all information, evidence, documentation, assistance and cooperation and will execute such documents, including signed statements and affidavits, which the **Insurer** reasonably requests.

The **Insured** will at all times and at its own cost use reasonable endeavours to do and concur in doing everything reasonably practicable to avoid or diminish **Loss** and to assist with the defence, investigation or settlement of any **Claim** or **Policy Claim**.

The **Insurer** may make any investigation it deems necessary.

5.11 Defence of claims

5.11.1 Claims conduct

The **Insurer** is entitled to take over and conduct in the name of the **Insured** the defence or settlement of any **Claim** and will have full discretion in the conduct of any proceedings and in the settlement of any **Claim**.

The **Insurer** reserves entirely its rights under this **Policy**, including its right to agree or deny cover while it assesses a **Claim** or conducts the defence. The **Insurer's** rights under this **Policy** are not affected if it does not conduct the defence.

If the **Insured** objects to a proposal by the **Insurer** to settle or compromise any **Claim** payable under this **Policy** and wishes to contest or litigate the matter, then the **Insured** may so elect, but the **Insurer's** liability in respect of any such **Claim** so contested or litigated will not exceed the amount for which, but for such election, it could have been settled or compromised by the **Insurer**, together with **Defence Costs** payable in accordance with the terms of this **Policy** and incurred up to the time of such election.

5.11.2 Advancement of defence costs

The **Insurer** will advance **Defence Costs**, except that if and to the extent the **Insurer** requests repayment of those amounts because its assessment indicates that the amounts advanced were not covered under this **Policy**, the respective **Insured** must repay immediately to the **Insurer** the amount of the advance specified by the **Insurer** within thirty days.

5.11.3 Settlement

The **Insured** must not settle or offer to settle any **Claim**, incur any **Defence Costs** or otherwise assume any contractual obligation or admit any liability in respect of any **Claim** without the **Insurer's** prior written consent.

5.12 Subrogation and recoveries

5.12.1 Preservation of rights of recovery

The **Insured** will take all necessary steps to preserve its rights of recovery. The **Insured** will not, without the **Insurer's** prior consent in writing:

- (a) release, agree not to sue on, waive or prejudice, any such rights; or
- (b) enter into any arrangement or compromise or do any act whereby any rights or remedies to which the **Insurer** would be subrogated are or may be prejudiced.

5.12.2 Provision of information and assistance

The **Insured** agrees to provide the **Insurer** with all information, evidence, documentation, assistance and co-operation and to execute such documents, including signed statements and affidavits, which the **Insurer** reasonably requests in the exercise of those rights.

The **Insured** will at all times and at its own cost use reasonable endeavours to do and concur in doing everything reasonably practicable to assist in the exercise of those rights.

5.12.3 Criminal acts recoveries

In the event of any payment in respect of a **Policy Claim** under Extension 2.1, Criminal Acts:

- (a) the **Insured** must, if requested by the **Insurer**, take all reasonable steps to make recovery from any person committing or condoning a **Criminal Act** or from the legal representatives of such person. Any costs incurred will not be recoverable; and
- (b) to the extent allowed by law, the **Insured** will deduct the following from any amount payable in respect of **Loss** caused by or resulting from a **Criminal Act**:
 - (i) any monies which but for such **Criminal Act** would be due from the **Insured** to the person committing or condoning such act; and
 - (ii) any monies held by the **Insured** and belonging to such person; and
 - (iii) any monies recovered under 5.12.4 (a) below; and

all such monies will be applied towards reducing the amount of the **Loss**.

5.12.4 All recoveries

All recoveries obtained by the **Insured** from other parties will be allocated, after the settlement of any **Claim** or **Policy Claim** under this **Policy** as follows:

- (a) firstly, to the benefit of the **Insured** to reduce or extinguish the amount of the **Insured's Loss** to the extent that it would have been paid under this **Policy** but for the fact that such **Loss** exceeds the sum of the **Limit of Liability** and the **Excess** where applicable; and
- (b) secondly, to the benefit of the **Insurer** for all sums paid in settlement of **Loss** arising under this **Policy**; and
- (c) thirdly, to the benefit of the **Insured** for the **Excess** under this **Policy**.

All recoveries will be applied as herein only after deduction of the reasonable cost of obtaining such recovery. All recoveries made prior to settlement of any **Claim** or **Policy Claim** under this **Policy** will be held for the benefit of the **Insurer** and applied as stated herein after settlement if any is made.

Recoveries do not include any amount recovered from insurance, suretyship, reinsurance, security or indemnity taken for the benefit of the **Insurer**.

5.13 Variation of the policy

No variation of this **Policy** will be effective, except when made by written **Endorsement**.

5.14 Assignment

This **Policy** cannot be assigned by the **Policyholder**.

5.15 Winding up or dissolution of superannuation fund

If, during the **Policy Period**, any **Superannuation Fund** is wound up or dissolved then cover for the **Insured**, in respect of such **Superannuation Fund** under this **Policy**, will remain in force until the expiry of the **Policy Period**, but only in respect of:

- (i) **Wrongful Acts** in connection with such **Superannuation Fund** committed or alleged to have been committed; and
- (ii) loss of **Property** in connection with such **Superannuation Fund** under Extension 2.1, Criminal Acts, sustained; and
- (iii) loss of or damage to **Documents** in connection with such **Superannuation Fund** under Extension 2.2, Loss of or Damage to Documents, sustained

prior to such winding up or dissolution.

5.16 Cancellation

The **Policyholder** is entitled to cancel this **Policy** at any time, by notice, to the **Insurer**.

Upon receipt of such request the **Insurer** will retain a short period premium calculated at a pro rate of the **Full Annual Premium** for the time it has been on risk plus ten per cent and the **Policyholder** will receive a refund of any balance of the premium.

The **Insurer** may cancel this **Policy** in accordance with the Insurance Contracts Act 1984.

5.17 Currency

All premiums, **Limits of Liability**, **Excesses**, **Loss** and other amounts under this **Policy** are expressed and payable in Australian dollars, unless otherwise stated.

If judgment is rendered, settlement is denominated or another element of **Loss** under this **Policy** is stated in a currency other than Australian dollars, then payment under this **Policy** will be made in Australian dollars calculated at the rate of exchange published in the Australian Financial Review as the wholesale market closing rate on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively.

5.18 Governing law

The construction, interpretation and meaning of the terms of this **Policy** will be determined in accordance with the laws of the Commonwealth of Australia and the State or Territory where the **Policy** was issued. Any disputes relating to the construction, interpretation and meaning of the terms of this **Policy** will be submitted to the exclusive jurisdiction of the courts of the Commonwealth of Australia.

5.19 Goods and Services Tax

As part of the premium, the **Insurer** will charge the **Policyholder** an amount on account of GST.

The **Policyholder** must inform the **Insurer** of the extent to which it is entitled to an input tax credit for that GST amount each time that it notifies a **Claim** or makes a **Policy Claim** under this **Policy**. No payment will be made to the **Policyholder** for any GST liability that it may incur on the settlement of a **Claim** or **Policy Claim** if it does not inform the **Insurer** of its entitlement or correct entitlement to an input tax credit.

Despite the other terms of this **Policy**, the **Insurer's** liability to the **Policyholder** will be calculated taking into account any input tax credit to which the **Policyholder** is entitled for any acquisition which is relevant to the **Claim** or **Policy Claim**, or to which it would have been entitled had it made a relevant acquisition.

'GST', 'input tax credit', 'acquisition' and 'supply' have the meaning given in A New Tax System (Goods and Services Tax) Act 1999.

5.20 Interpretation

In this **Policy** the singular includes the plural and vice versa. The male gender includes the female and neutral genders. Person includes bodies corporate, except when it refers to a natural person, when it does not include bodies corporate.

A reference in this **Policy** to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision (whether of the Commonwealth of Australia or elsewhere).

The titles and headings to the various sections of the **Policy** are included solely for ease of reference and do not in any way limit or expand or otherwise affect the terms of such sections.

6. Definitions

When used in this **Policy**:

Act of Terrorism means an act, including but not limited to the use of force or violence or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government or to put the public, or any section of the public, in fear.

Asbestos means asbestos in whatever form including, without limitation, asbestos products or products containing asbestos.

Benefits means:

- (a) fringe benefits and perquisites; or
- (b) amounts due or payments made in connection with an employee benefit plan or pension scheme; or
- (c) share or stock options or any other right to purchase, acquire or sell shares or stock; or
- (d) any other payment, other than salary or wages, to or for the benefit of an employee arising out of the employment relationship.

Claim means:

- (a) a written communication, including electronic communications, to an **Insured**, containing a demand for compensation or damages, alleging an act, error, omission, conduct, facts or circumstances that may constitute a **Wrongful Act**; or
- (b) a civil proceeding commenced by the service of a complaint, summons, statement of claim, writ or similar pleading or an arbitral process, cross-claim, or counter claim against an **Insured** alleging an act, error, omission, conduct, facts or circumstances that may constitute a **Wrongful Act**; or
- (c) any criminal proceeding commenced by a summons or charge of an **Insured** resulting from a **Wrongful Act**; or
- (d) any proceeding commenced by service of a notice of receipt of a complaint by the Superannuation Complaints Tribunal; or
- (e) any formal administrative or regulatory proceeding commenced by the filing of a formal investigative order or similar document alleging an act, error, omission, conduct, facts or circumstances that may constitute a **Wrongful Act**.

Claim does not mean an action solely for declaratory or injunctive relief where there is no demand for compensation or damages.

Criminal Act means theft, fraud or dishonesty committed by a **Trustee**, **Director** or **Employee** with the intent to cause the **Superannuation Fund** loss.

Defence Costs means the **Insured's** share of necessary and reasonable costs, charges, fees and expenses (other than regular or overtime wages, salaries, fees or **Benefits** of any **Insured** who is a natural person), incurred by the **Insured** with the **Insurer's** prior written consent, in defending, investigating or settling **Claims**.

Director means any natural person who was prior to the **Policy Period**, or is during the **Policy Period** a director (as defined in the Australian Corporations Act 2001 or any equivalent provision in the jurisdiction in which the **Policyholder** and/or its **Subsidiaries** is incorporated) of the **Policyholder** and/or its **Subsidiaries** and who carries out duties in connection with the **Superannuation Fund**.

Discovered/Discovery means when any **Trustee** who is a natural person or any officer or senior manager of the **Insured**, not in collusion with any **Trustee**, **Director** or **Employee** committing a **Criminal Act**, first becomes aware of facts which would cause a reasonable person in the circumstances to believe that **Loss** covered by Extension 2.1, Criminal Acts, has occurred, or is likely to be incurred, regardless of when the act or acts causing or contributing to such **Loss** occurred and even though the exact amount or details of **Loss** may not then be known.

Discovery Period means the shorter of the following:

- (a) the period of time specified in Item 8 (a) of the **Policy Schedule** beginning immediately following the expiry of the **Policy Period** and ending on the date and time specified in Item 8 (a) of the **Policy Schedule**; or
- (b) the period of time beginning immediately following the expiry of the **Policy Period** and ending on the effective date and time on which the **Insured** obtains insurance cover similar to this **Policy** from another insurer.

Document means anything in which information of any description is recorded (excluding **Securities**, coupons, bank or currency notes or other negotiable instruments) which is the property of the **Trustees** and which relates to the trusteeship of the **Superannuation Fund**.

Employee means any natural person who was prior to the **Policy Period**, or is during the **Policy Period** an employee of the **Policyholder** and/or its **Subsidiaries**, including any trainee, casual, part-time, seasonal, temporary, voluntary and work experience personnel, carrying out duties in connection with the **Superannuation Fund**. **Employee** does not mean a **Director**.

Employment Wrongful Act means any employment related act, error, omission or conduct constituting actual, constructive or alleged: wrongful dismissal, discharge or termination of employment; wrongful failure to employ or promote; wrongful deprivation of career opportunity; misleading representation or advertising in respect of employment; wrongful disciplinary action; negligent employee evaluation; wrongful demotion; breach of employment contract; sexual or workplace harassment (including the creation of a workplace environment conducive to such harassment); wrongful discrimination; failure to grant tenure; invasion of privacy or defamation.

Endorsement means any document which is described as an endorsement to this **Policy** and intends to vary it. An **Endorsement** does not affect or increase the **Limit of Liability**, or any other term, except to the extent specifically provided in the **Endorsement**. For the avoidance of doubt, each Endorsement is otherwise subject to all the terms of this **Policy**.

Excess means the sum of:

- (a) the **Excess** specified in Item 6 of the **Policy Schedule**; and
- (b) any amount payable under a **Specified Policy**.

Full Annual Premium means the annual premium payable by the **Insured**, including any additional premium which becomes payable in respect of the **Policy Period** in question.

Insured means:

- (a) the **Policyholder** and/or its **Subsidiaries**; and
- (b) any **Trustee**; and
- (c) any **Director**; and
- (d) any **Employee**,

which will not include external advisors, liquidators, administrators, receivers or auditors howsoever appointed.

Insurer means AAI Limited ABN 48 005 297 807 trading as Vero Insurance.

Limit of Liability means the **Limit of Liability** specified in Item 5 (a) of the **Policy Schedule**.

Loss means:

in the Insuring Clause:

- (a) the amount, whether determined by judgment, verdict or award for which the **Insured** is legally liable to a third party for a **Claim** and includes damages, interest and claimant's costs and expenses; and

- (b) a settlement of a **Claim** by a third party against the **Insured**, which complies with General Term 5.11.3; and
- (c) penalties or fines that are imposed as a result of a breach of the Superannuation Industry (Supervision) Act 1993, the Corporations Act 2001 or an adverse determination of the Superannuation Complaints Tribunal; and
- (d) **Defence Costs**; and

in Extension 2.1 Criminal Acts, only, loss of **Property** (including interest thereon) sustained by the **Superannuation Fund**; and

in Extension 2.2 Loss of or Damage to Documents, only, costs and expenses reasonably incurred by the **Trustees** in replacing or restoring lost or damaged **Documents**.

Loss does not mean:

- (i) taxes, fines and penalties imposed by law, other than those described in (c) above; or
- (ii) punitive, exemplary or aggravated damages.

North America means the United States of America and Canada and in each case its territories and protectorates.

Policy means and consists of this superannuation fund trustees liability insurance policy wording, the **Policy Schedule** and any **Endorsement** and their terms are incorporated into the terms of this **Policy**.

Policy Claim means a written demand by or on behalf of an **Insured** to the **Insurer** for payment under Extension 2.1, Criminal Acts, or Extension 2.2, Loss of or Damage to Documents.

Policy Committee means a prescribed policy committee for the purposes of Part 9 of the Superannuation Industry (Supervision) Act 1993.

Policyholder means the organisation specified in Item 1 of the **Policy Schedule**.

Policy Period means the period of time specified in Item 3 of the **Policy Schedule**.

Policy Schedule means the schedule attaching to this **Policy**.

Pollutants means any solids, liquids, gaseous or thermal irritants, contaminants, smoke, vapour, soot, fumes, odour or any other air emission, acids, alkalis, chemicals, waste materials, waste water, oil or oil products, infectious biological or medical waste, **Asbestos**, electric or magnetic or electromagnetic fields, noise and any ionising radiations or contamination by radioactivity.

Pollution means:

- (a) the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or
- (b) any direction or request to test for, monitor, clean up, treat, detoxify or neutralise **Pollutants**.

Property means money and tangible property including **Securities**.

Proposal means the signed proposal form and declaration completed in respect of this **Policy**, including any renewal declaration and any information supplied by the **Insured** about any matter or risk the subject of or relevant to this insurance or **Policy**.

Related Claims means all **Claims** arising directly or indirectly from or in respect of the same or causally related **Wrongful Acts**.

Securities means all shares, debentures, units in shares, units in trusts, including any note, stock, bond, debenture, evidence of indebtedness or other equity or debt security.

Specified Policy means:

- (a) any insurance contract under which the **Policyholder** or any **Insured** is entitled to an indemnity and which is specified in the **Proposal** or by **Endorsement**; or
- (b) any renewal or replacement of that insurance contract.

Spouse means a lawful spouse or any person deriving similar status by reason of the common law or statute.

Subsidiary means :

- (a) a subsidiary of the **Policyholder** as defined in the Corporations Act 2001; or
- (b) any body corporate in which the **Policyholder**:
 - (i) controls the composition of the board of the body corporate; or
 - (ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the body corporate; or
 - (iii) holds more than one-half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

- (c) any body corporate which is a subsidiary of a body corporate described in 6.35 a or 6.35 b above; or
- (d) any other body corporate whose accounts are consolidated into those of the **Policyholder** in accordance with the relevant Australian Accounting Standard.

Superannuation Fund means the fund or funds specified in Item 2 of the **Policy Schedule**.

Trustee means any person who:

(a) was prior to the **Policy Period**, or is during the **Policy Period** a:

- (i) duly appointed trustee of the **Superannuation Fund**; or
- (ii) member of the **Policy Committee** of the **Superannuation Fund**, to the extent that such person's activities concern the administration of that **Superannuation Fund** as is contemplated under the Superannuation Industry (Supervision) Act 1993; or

(b) was prior to or at the commencement of the **Policy Period** a trustee of the **Superannuation Fund** duly appointed by a court or regulatory body or pursuant to statute.

Wrongful Act means any means any act, error, omission, conduct, misstatement, misleading statement, neglect, breach of duty, breach of trust, breach of statutory provision or defamation actually or allegedly committed by any **Insured** in connection with the **Superannuation Fund**.

End of wording

Notices

These notices do not form part of the policy.

Duty of disclosure

Before you enter into a contract of general insurance with an insurer, you have a duty, under the Insurance Contracts Act 1984, 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 insurance, and if so, on 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 does not require the disclosure of matters: that diminish the risk to be undertaken by the insurer; that are of common knowledge; that your insurer knows or, in the ordinary course of his business, ought to know, or as to which compliance with your duty is waived by the insurer.

Non-disclosure

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim.

General Insurance Code of Practice

We support and adhere to the General Insurance Code of Practice. By incorporating these standards into our business, we are committed to providing the highest level of service to our customers, every time. Access a copy of the Code at <http://www.codeofpractice.com.au/> or alternatively, contact the Insurance Council of Australia on 9253 5100.

Privacy statement

AAI Limited trading as Vero Insurance is the insurer and issuer of your commercial insurance product, and is a member of the Suncorp Group, which we'll refer to simply as "the Group".

Why do we collect personal information?

Personal information is information or an opinion about an identified individual or an individual who is reasonably identifiable. We collect personal information so that we can:

- ▼ identify you and conduct appropriate checks;
- ▼ understand your requirements and provide you with a product or service;
- ▼ set up, administer and manage our products and services and systems, including the management and administration of underwriting and claims;
- ▼ assess and investigate any claims you make under one or more of our products;
- ▼ manage, train and develop our employees and representatives;
- ▼ manage complaints and disputes, and report to dispute resolution bodies; and
- ▼ get a better understanding of you, your needs, your behaviours and how you interact with us, so we can engage in product and service research, development and business strategy including managing the delivery of our services and products via the ways we communicate with you.

What happens if you don't give us your personal information?

If we ask for your personal information and you don't give it to us, we may not be able to provide you with any, some, or all of the features of our products or services.

How we handle your personal information

We collect your personal information directly from you and, in some cases, from other people or organisations. We also provide your personal information to other related companies in the Group, and they may disclose or use your personal information for the purposes described in 'Why do we collect personal information?' in relation to products and services they may provide to you. They may also use your personal information to help them provide products and services to other customers, but they'll never disclose your personal information to another customer without your consent.

Under various laws we will be (or may be) authorised or required to collect your personal information. These laws include the Anti-Money Laundering and Counter-Terrorism Financing Act 2006, Personal Property Securities Act 2009, Corporations Act 2001, Autonomous Sanctions Act 2011, Income Tax Assessment Act 1997, Income Tax Assessment Act 1936, Income Tax Regulations 1936, Tax Administration Act 1953, Tax Administration Regulations 1976, A New Tax System (Goods and Services Tax) Act 1999 and the Australian Securities and Investments Commission Act 2001, as those laws are amended and includes any associated regulations.

We will use and disclose your personal information for the purposes we collected it as well as purposes that are related, where you would reasonably expect us to. We may disclose your personal information to and/or collect your personal information from:

- ▼ other companies within the Group and other trading divisions or departments within the same company (please see our Group Privacy Policy for a list of brands/companies);
- ▼ any of our Group joint ventures where authorised or required;
- ▼ customer, product, business or strategic research and development organisations;

- ▼ data warehouse, strategic learning organisations, data partners, analytic consultants;
- ▼ social media and other virtual communities and networks where people create, share or exchange information;
- ▼ publicly available sources of information;
- ▼ clubs, associations, member loyalty or rewards programs and other industry relevant organisations;
- ▼ a third party that we've contracted to provide financial services, financial products or administrative services – for example:
 - ▼ information technology providers,
 - ▼ administration or business management services, consultancy firms, auditors and business management consultants,
 - ▼ marketing agencies and other marketing service providers,
 - ▼ claims management service providers
 - ▼ print/mail/digital service providers, and
 - ▼ imaging and document management services;
- ▼ any intermediaries, including your agent, adviser, a broker, representative or person acting on your behalf, other Australian Financial Services Licensee or our authorised representatives, advisers and our agents;
- ▼ a third party claimant or witnesses in a claim;
- ▼ accounting or finance professionals and advisers;
- ▼ government, statutory or regulatory bodies and enforcement bodies;
- ▼ policy or product holders or others who are authorised or noted on the policy as having a legal interest, including where you are an insured person but not the policy or product holder;
- ▼ in the case of a relationship with a corporate partner such as a bank or a credit union, the corporate partner and any new incoming insurer;
- ▼ the Financial Ombudsman Service or any other external dispute resolution body;
- ▼ credit reporting agencies;
- ▼ other insurers, reinsurers, insurance investigators and claims or insurance reference services, loss assessors, financiers;
- ▼ legal and any other professional advisers or consultants;
- ▼ hospitals and, medical, health or wellbeing professionals;
- ▼ debt collection agencies;
- ▼ any other organisation or person, where you've asked them to provide your personal information to us or asked us to obtain personal information from them, eg your mother.

We'll use a variety of methods to collect your personal information from, and disclose your personal information to, these persons or organisations, including written forms, telephone calls and via electronic delivery. We may collect and disclose your personal information to these persons and organisations during the information life cycle, regularly, or on an ad hoc basis, depending on the purpose of collection.

Overseas disclosure

Sometimes, we need to provide your personal information to – or get personal information about you from – persons or organisations located overseas, for the same purposes as in 'Why do we collect personal information?'

The complete list of countries is contained in our Group Privacy Policy, which can be accessed at www.vero.com.au/privacy, or you can call us for a copy.

From time to time, we may need to disclose your personal information to, and collect your personal information from, other countries not on this list. Nevertheless, we will always disclose and collect your personal information in accordance with privacy laws.

How to access and correct your personal information or make a complaint

You have the right to access and correct your personal information held by us and you can find information about how to do this in the Suncorp Group Privacy Policy.

The Policy also includes information about how you can complain about a breach of the Australian Privacy Principles and how we'll deal with such a complaint. You can get a copy of the Suncorp Group Privacy Policy. Please use the contact details in **Contact Us**.

Contact us

For more information about our privacy practices including accessing or correcting your personal information, making a complaint, or obtaining a list of overseas countries you can:

- ▼ Visit www.vero.com.au/privacy.
- ▼ Speak to us directly by phoning one of our Sales & Service Consultants on: 1300 888 073 or by
- ▼ Email us at claims@vero.com.au

