



office bearers liability

insurance policy



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Section 1 Operative clause

Office Bearers Liability Insuring Agreement A

The **Insurer** will pay on behalf of the **Officers** any **Loss** for which the **Officers** may not be legally indemnified by the **Body Corporate** arising out of any **Claim**, by reason of any **Wrongful Act** committed by them in their capacity as **Officers**, first made against them jointly or severally during the **Period of Insurance** and notified to the **Insurer** during the **Indemnity Period**.

Body Corporate Reimbursement Insuring Agreement B

The **Insurer** will pay on behalf of the **Body Corporate** any payment which it is legally permitted to make arising out of any **Claim**, by reason of any **Wrongful Act**, committed by any **Officers** in their capacity as **Officers**, first made against the **Officers** during the **Period of Insurance** and notified to the **Insurer** during the **Indemnity Period**.

The total amount payable in respect of all **Claims** under Insuring Agreement A and/or Insuring Agreement B of this **Policy** shall not in the aggregate exceed the limit of aggregate liability as stated in the schedule.

Section 2 Extensions

Automatic Extensions

Unless expressly specified to the contrary the cover granted by these extensions is subject to all the terms and conditions of this **Policy**.

2.1 Advancement of Defence Costs

Where the **Insurer** elects not to take over and conduct the defence or settlement of any **Claim** in the name of any **Officers**, the **Insurer** shall meet the **Defence Costs** of any **Officers** in defending or settling any **Claim** made against them as they are incurred and prior to the finalisation of the **Claim** provided always that indemnity in respect of such **Claim** has been confirmed in writing by the **Insurer**.

Where the **Insurer** has not confirmed indemnity and it elects not to take over and conduct the defence of any **Claim**, it may, in its discretion, advance **Defence Costs** as they are incurred and prior to the finalisation of the **Claim**.

The **Insurer** reserves the right to recover any **Defence Costs** from the **Officers** and /or the **Body Corporate** severally according to their respective interests in the event and to the extent that it is established that the **Officers** and / or the **Body Corporate** were not entitled to the **Defence Costs** so advanced.

2.2 Estates & Legal Representatives

The estates, heirs or legal representatives of deceased, incompetent or insolvent **Officers** shall be indemnified in like manner to such **Officers** provided always that they shall be subject to all the terms and conditions of this **Policy** insofar as they are applicable.

2.3 Continuity of Cover

Notwithstanding Exclusion 3.2 of this **Policy**, the **Insurer** will indemnify any **Officer**, for any **Claim** otherwise indemnified by this **Policy**, arising from a **Known Circumstance** if:

- (1) There has been no fraudulent non-disclosure or fraudulent misrepresentation by the **Officers** in respect of such **Known Circumstance**; and
- (2) The **Insurer** was the Office Bearers Liability insurer of the **Officer** when the **Officer** first knew of such **Known Circumstance**; and
- (3) The **Insurer** continued thereafter without interruption, to be the Office Bearers Liability insurer of the **Officer** up until this **Policy** came into effect; and

- (4) Had the **Insurer** been notified by the **Officer** of the **Known Circumstance** when the **Officer** first knew of it, the **Officer** would have been indemnified under the policy in force at that time and the **Officer** would have (but for Clause 3.2(2) of this **Policy**) otherwise been covered by this **Policy**; and
- (5) Neither the **Claim** nor **Known Circumstance** have previously been notified to the **Insurer** or to any other insurer.

If the **Officer** was entitled to have given notice under any other policy of insurance and thereby have entitlement to indemnity, in whole or in part, then the Continuity of Cover extension does not apply to provide indemnity under this **Policy**.

The aggregate limit of the indemnity provided by the **Insurer** under this provision is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph (3) above or under this **Policy**. The terms of this **Policy** otherwise apply.

Section 3 Exclusions

This **Policy** does not provide an indemnity for any **Loss** arising out of any **Claim**:

3.1 Dishonesty & Fraud

brought about by, contributed to by or which involves:

- (1) the dishonest, fraudulent or malicious act or omission or other act or omission committed with criminal intent of such **Officer**;
- (2) such **Officer** 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
- (3) such **Officer** having gained in fact any personal advantage to which he/she was not legally entitled.

The **Insurer** shall have the burden of proof of establishing the existence of the subject conduct.

3.2 Known Claims & Known Circumstances

- (1) known as at the inception date of this **Policy**; or
- (2) arising from a **Known Circumstance**,
- (3) directly or indirectly based upon or attributable to, or in consequence of any such **Known Circumstance**.

3.3 Breach of Professional Duty

arising from:

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

3.4 Insured vs Insured

brought by or on behalf of the **Body Corporate** or any **Officer** or their estates heirs representatives successors or assigns against any other **Officer**.

3.5 Bodily Injury & Property Damage

in connection with or arising from or by reason of or directly or indirectly caused by:

- (1) bodily injury (except emotional distress or mental anguish), sickness, disease, or death of any person; or
- (2) destruction of or damage to tangible property (including the loss of use thereof).

3.6 Date Recognition

arising from or in respect to the use in any way:

- (1) by the **Body Corporate**; and
- (2) by any supplier, past, present or future, of services or products to the **Body Corporate**, of any computer program, software products, computer data processing equipment or media, microchip, programmed logic controllers, integrated circuit or any electronic equipment which fails to:
 - (a) correctly recognise any date as its true calendar date; or
 - (b) capture, save, retain and/or correctly manipulate, interpret, or process any data, information, command or instruction as a result of treating any date otherwise than as its true calendar date; or
 - (c) capture, save, retain or correctly process any data as a result of the operation of any command which has been programmed into any computer software being a command which causes a loss of data or the inability to capture, save, retain or correctly process such data on or after any date; or
 - (d) otherwise fails to correctly or effectively provide for the change of date when the Year 1999 concluded and the Year 2000 commenced.

Further, this **Policy** does not provide an indemnity against any **Claim** made against any **Officer** arising from or in respect to any duty owed by such **Officer** in respect of any issue related to Year 2000 conformity as defined in the Standards Australia/Standards New Zealand SAA/SNZ MP77 document.

3.7 Asbestos

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

3.8 Inadequate Insurance

arising out of the failure or omission on the part of any **Officer** to procure or maintain adequate insurance for the **Body Corporate**.

3.9 Fines and Penalties

arising from or by reason of or directly or indirectly caused by or arising from 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.

3.10 Pollution, Nuclear Risks, War & Terrorism

arising directly or indirectly from or caused by or contributed to by, or happening through or in connection with:

- (1) pollution or contamination howsoever and wheresoever occurring. 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).
- (2) atomic energy operations employing the process of nuclear fission or fusion or handling radioactive material which operations include but are not limited to:
 - (a) the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices; or
 - (b) the use, handling or transportation of radioactive materials; or
 - (c) the use handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion.

Provided always that this Exclusion 3.7(3) 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

- (3) 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, except to the extent that such an order arises as a result of any **Wrongful Act** committed by any **Insured Person**.
- (4) any act of terrorism. Further there is no indemnity for any **Claim** arising from or related to any death, injury, illness, loss, damage, cost or expense of whatever nature directly or indirectly caused by, resulting from, or in connection with any action taken in controlling, preventing,

suppressing or in any way relating to an act of terrorism.

Terrorism is defined as being an act, which may include but is not limited to an act involving the use of force or violence and/or 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, or ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

Section 4 General conditions

4.1 Authorisation Clause

By acceptance of this **Policy**, the **Body Corporate** named in the schedule agrees to act on behalf of the **Officers** with respect to the giving and receiving of notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under this **Policy** and the acceptance of endorsements or other notice provided for in this **Policy** and the **Officers** and each of them agree that the **Body Corporate** shall act on their behalf.

4.2 Severability & Non Imputation

For the sake of determining cover under this **Policy**:

- (1) the written proposal shall be construed to be a separate application for cover by each of the **Officers** and no statement or representation in or with respect to the proposal by an **Officer** shall be imputed to any other **Officer**.
- (2) this **Policy** shall, subject to General Condition 4.8 (*Non-Accumulation*), be construed to be a separate policy between the **Insurer** for the one part and each **Officer** for the other part and no breach of any term or condition of this **Policy** or other misconduct by any **Officer** shall be imputed to any other **Officer**.
- (3) No fact or knowledge possessed by one **Officer** shall be imputed to any other **Officer**.

Provided always that this Condition shall not apply where there was a fraudulent misrepresentation or fraudulent non-compliance with the duty of disclosure, to the **Insurer**, at the time of entering into the **Policy**.

4.3 Claims Co-operation

The **Officers** shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any **Loss** hereunder, and shall immediately give all such information and assistance to the **Insurer** as it may reasonably require to enable it to investigate and to defend the **Claim** and/or to enable the **Insurer** to determine its liability under this **Policy**.

The **Insurer** may, on request from the **Officers** for indemnity under this **Policy**, take whatever action that it considers appropriate to protect the **Officers'** position in respect of the **Claim** against the **Officers** and such action by the **Insurer** shall not be regarded as in any way prejudicing its position under this **Policy** and

no admission of the **Officers'** entitlement to indemnity under this **Policy** shall be implied.

4.4 Court Jurisdiction

It is further understood that this **Policy** shall be governed by the law of the State or Territory where this **Policy** was issued and whose courts shall have jurisdiction in any dispute arising under or in connection with or in respect of the provisions of indemnity under this **Policy**. For the purpose of this condition the place of issue stated in the schedule shall be conclusive.

4.5 Deductibles

The amount of relevant deductible stated in the schedule shall be applied to each and every **Claim** brought under Insuring Agreement A or Insuring Agreement B of this **Policy**.

Where the same **Wrongful Act** results in more than one **Claim** being made then only one deductible shall apply to any such **Claim** covered by this **Policy**. In the event of a **Claim** being based on separate, different or additional **Wrongful Acts**, then the relevant deductible shall apply in respect of each **Wrongful Act**.

4.6 Aggregate Liability

The **Insurer** shall only be liable to provide indemnity to the extent of the amount of the limit of aggregate liability stated in Item 5 of the schedule.

Any **Loss** arising out of all interrelated **Wrongful Acts** of any **Officer** shall be deemed one **Loss** and such **Loss** shall be deemed to have originated in the earliest **Period of Insurance** in which a **Claim** is made against any **Officer** by reason of any **Wrongful Act**.

Any costs incurred by the **Insurer** in investigating any fact, situation or circumstance which may give rise to a **Claim** shall be deemed for all purposes of the **Policy** to be **Defence Costs** incurred under the **Policy**.

Any amount paid by the **Insurer** in settlement of a dispute which may otherwise become a **Claim**, shall be deemed for all purposes of the **Policy** to be a **Loss** incurred under the **Policy**.

4.7 Paragraph Headings

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

4.8 Non-Accumulation

The inclusion in this **Policy** of more than one (1) **Officer** shall not operate to increase the **Insurer's** limit of aggregate liability stated in the schedule.

4.9 Notice

Any notice required to be given under this **Policy** to the **Insurer** shall be validly and lawfully given if it is given to the **Insurer** in writing at the address or to the facsimile number stated in the schedule.

4.10 Gender & Number

Except where the context otherwise requires it, words importing a gender include every other gender, words in the singular shall include the plural and words in the plural shall include the singular.

4.11 Q.C. Clause

Neither the **Officers** nor the **Insurer** shall be required to contest any legal proceedings unless a Queen's Counsel or Senior Counsel (mutually agreed upon by the Officers of the **Body Corporate** and the **Insurer** or in default of such agreement, selected by the Chairman or President of the local Bar Council) shall advise that such proceedings should be contested. In formulating his or her advice, Counsel shall take into consideration the economics of the matter, having regard to the damages and costs which are likely to be recovered by the plaintiff, the likely **Defence Costs** and the prospects of the **Officers** successfully defending the action.

The costs of such Counsel's opinion shall, for the purpose of this **Policy**, be regarded as part of the **Defence Costs**. In the event that Counsel advises that, having regard to all the circumstances, the matter should not be contested but should be settled, providing settlement can be achieved within certain limits which, in Counsel's opinion, are reasonable, then the **Officers** shall not object to any such settlement and shall co-operate with the **Insurer** to effect such settlement in accordance with this **Policy**.

4.12 Settlement Procedure

Subject otherwise to the provisions of the Insurance Contracts Act the **Officers** shall as a condition precedent to the right to be indemnified under this **Policy** not admit liability for or settle any **Claim** or incur any costs or expenses in connection therewith or enter into settlement without the written consent of the **Insurer** who shall be entitled at any time to take over and conduct in the name of the **Officer** the defence or settlement of any **Claim**. However, if the **Officer** shall refuse to consent to any settlement recommended by the **Insurer** and shall elect to contest or continue any legal proceedings in connection therewith, the **Insurer's** liability for the **Claim** shall not exceed the amount for which the **Claim** could have been so settled plus the **Defence Costs** incurred up to the date of such refusal.

4.13 Subrogation

In the event of any payment by the **Insurer** for a **Loss** under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment of all an **Officer's** rights of recovery thereof and the **Officers** or any of them shall execute all papers required and do everything that may be necessary to enable the **Insurer** effectively to bring suit in the name of the **Officers** except that all right of subrogation under this **Policy** is waived against any **Officer** to whom protection is afforded under this **Policy**.

Provided always that:

- (1) if such **Officer** is protected from such **Loss** by any other collectable policy of insurance, the right of subrogation is not waived to the extent and up to the amount of such other policy;
- (2) the **Insurer** does not waive any right of recovery of any deductible stated in the schedule as applied in accordance with this section.

4.14 Territory and Jurisdiction

- (1) The indemnity provided by this **Policy** extends to **Wrongful Acts** occurring anywhere in the world.
- (2) The indemnity provided by this **Policy** extends to **Claims** made anywhere in the world, except:
 - (a) actions brought in or determined pursuant to the law of, the United States of America or the Dominion of Canada, or their Territories or Protectorates; or
 - (b) any **Claim** arising out of the enforcement of judgements, orders or awards obtained in or determined pursuant to the laws of the United States of America or the Dominion of Canada, or their Territories or Protectorates.

4.15 Other Insurance

Subject to the Insurance Contracts Act 1984 where an **Officer** is entitled to indemnity pursuant to a separate policy of insurance more specifically providing cover in respect of the **Claim**, this **Policy** does not respond except to the extent that the **Officer's** liability for any **Claim** exceeds the amount of cover under such other policy.

4.16 Cancellation

Under Section 60 of the Insurance Contracts Act 1984 the **Insurer** may cancel this **Policy**.

4.17 Legal Enforceability

For this **Policy** to be legally enforceable, it must include a schedule that has been appropriately signed by an **Officer** of the **Insurer**.

4.18 Goods and Services Tax

Where the **Insurer** makes a payment under this **Policy** for the acquisition of goods, services or other supply the **Insurer** will reduce the amount of the payment by the amount of any input tax credit the **Body Corporate** is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made.

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

Section 5 Definitions

Whenever appearing in this **Policy** in bold type and with a capital letter the following terms shall be interpreted only in the manner described below. These words may appear without bold type in endorsements on the **Policy** schedule.

- 5.1 **Body Corporate** means the **Body Corporate** stated in the schedule
- 5.2 **Claim** means any writ, summons, application or other originating legal (criminal, civil or otherwise) or arbitral proceedings, cross claim or counter-claim alleging any **Wrongful Act**, which is both issued against and served upon any **Officer** who is entitled to indemnity under this **Policy**.
- 5.3 **Defence Costs** means all reasonable costs, charges and expenses (other than regular or overtime wages, salaries or fees of any **Officer**) incurred with the prior written consent of the **Insurer** in defending any **Claim**.
- 5.4 **Indemnity Period** means the **Period of Insurance** and the thirty (30) days following immediately after the expiry of the **Period of Insurance**.
- 5.5 **Insurer** CGU Professional Risks Insurance, a division of CGU Insurance Limited ABN 27 004 478 371.
- 5.6 **Known Circumstance** means any fact, situation or circumstance which;
- (i) any **Officer** was aware of prior to this **Policy** inception, or
 - (ii) a reasonable **Officer** would have considered at any time prior to the **Period of Insurance** might result in someone making an allegation against a **Officer** in respect of a **Loss** that might be covered under this **Policy**.
- 5.7 **Loss** means the amount payable in respect of a **Claim** made against the **Officers** for a **Wrongful Act** and shall include damages, judgements, settlements, interest, costs and **Defence Costs**.
- 5.8 **Officer** means Council/Committee members of the **Body Corporate**.
- 5.9 **Period of Insurance** means the **Period of Insurance** stated in the schedule.
- 5.10 **Policy** means:
- (1) all the terms, conditions, definitions, exclusions and limitations contained herein;
 - (2) the schedule;
 - (3) any endorsements attaching to and forming part of this **Policy**, either at inception or during the **Indemnity Period**.
- 5.11 **Wrongful Act** means any actual or alleged breach of duty, breach of trust, neglect, error, misstatement, misleading statement, omission, breach of warranty of authority or other act done or attempted by or any other matter claimed against any **Officer** or any of them wherever or whenever while acting in their individual or collective capacities as **Officers**.

Section 6

The way we handle your personal information

We collect personal information from you for the purpose of providing you with insurance products, services, processing and assessing claims.

You can choose not to provide this information, however, we may not be able to process your requests.

We may disclose information we hold about you to other insurers, an insurance reference service or as required by law. In the event of a claim, we may disclose information to and/or collect additional information about you from investigators or legal advisors.

If you wish to update or access the information we hold about you, please contact us.

General Insurance Code of Practice

CGU Insurance proudly supports the General Insurance Code of Practice.

The purpose of the Code is to raise standards of practice and service in the general insurance industry.

The objectives of the Code are:

- ◆ to promote better, more informed relations between insurers and their customers;
- ◆ to improve consumer confidence in the general insurance industry;
- ◆ to provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- ◆ to commit insurers and the professionals they rely upon to higher standards of customer service.

Brochures on the Code are available from your nearest CGU office.

Our service commitment

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

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

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

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

Brochures outlining our internal dispute resolution process are available from your nearest CGU Insurance office.

Intermediary remuneration

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

contact details

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