



# Professional Indemnity Policy – Projuris

**Allianz** 

# General Information

The General Information set out below is provided for your information only. It does not form part of the insurance contract with you, and is not part of the policy. Nothing contained in the General Information imposes contractual obligations on you, or creates contractual rights. These are contained in the policy and any endorsement.

## Claims made

This policy operates on a 'claims made and notified' basis. This means that the policy covers you for claims made against you and notified to us during the period of insurance.

The policy does not provide cover in relation to:

- acts, errors or omissions actually or allegedly committed prior to the retroactive date of the policy (if such a date is specified);
- claims made after the expiry of the period of insurance even though the event giving rise to the claim may have occurred during the period of insurance;
- claims notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy;
- claims made, threatened or intimated against you prior to the commencement of the period of insurance;
- facts or circumstances of which you first became aware prior to the period of insurance, and which you knew or ought reasonably to have known had the potential to give rise to a claim under this policy;
- claims arising out of circumstances noted on the proposal form for the current period of insurance or on any previous proposal form.

Where you give notice in writing to us of any facts that might give rise to a claim against you as soon as reasonably practicable after you become aware of those facts but before the expiry of the period of insurance, you may have rights under Section 40(3) of the Insurance Contracts Act 1984 to be indemnified in respect of any claim subsequently made against you arising from those facts notwithstanding that the claim is made after the expiry of the period of insurance. Any such rights arise under the legislation only. The terms of the policy and the effect of the policy is that you are not covered for claims made against you after the expiry of the period of insurance.

# General Insurance Code of Practice

We are a signatory to the General Insurance Code of Practice. The Code aims to raise standards of practice and service in the insurance industry. It:

- promotes better communication between insurers and customers which will lead to better public understanding of insurance to allow customers to make informed choices, and
- outlines good standards of practice and service to be met by insurers to enhance their regulation for responding efficiently to their customers' needs.

## (a) Dispute resolution process

We will do everything possible to provide a quality service to you. However, we recognise that occasionally there may be some aspect of our service or a decision we have made that you wish to query or draw to our attention.

We have a Complaints and Dispute Resolution Procedure which undertakes to provide an answer to your complaint within fifteen (15) working days.

If you would like to make a complaint or access our internal dispute resolution service please contact our nearest office and ask to speak to a dispute resolution specialist.

## (b) Contact for assistance or confirmation of cover

If you need to confirm any policy transaction or clarify any of the information contained in this policy document or if you have any other queries, please contact any of our offices or refer to our website at [www.allianz.com.au](http://www.allianz.com.au).

## (c) If this insurance has been issued through an insurance intermediary

If your policy has been arranged through our agent, or a broker who is acting under an agency arrangement such as a binder with us, then they are acting as our agent and not as your agent. They will tell you when this is the case.

If Your Policy has been arranged by a broker, other than a broker acting under such an agency arrangement with us, then the broker is acting as your agent.

Where this Policy has been arranged through an intermediary a commission may be payable by us to them for arranging the insurance.

## Privacy Act 1988

The Privacy Act 1988 contains National Privacy Principles which require us to tell you that as an insurer we collect, handle, store and disclose your personal and sensitive information in order to:

- decide whether to issue a policy,
- determine the terms and conditions of your policy,
- compile data, and
- handle claims.

Sensitive information includes, amongst other things, information about an individual's health, membership of professional associations and criminal records. You have given us your consent to collect your personal and sensitive information in order to issue you with this policy.

We disclose personal information to third parties who we believe are necessary to assist us and them in providing the relevant services and products. For example, in handling claims, we may have to disclose your personal and other information to third parties such as other insurers, reinsurers, loss adjusters, external claims data collectors, investigators and agents or other parties as required by law. We limit the use and disclosure of any personal information provided by us to them to the specific purpose for which we supplied it.

You have the right to seek access to your personal and sensitive information and to correct it at any time. Allianz Australia aims to ensure that your personal information is accurate, up to date and complete. Please contact us on **13 2664** EST 8am-6pm, Monday to Friday if you would like to seek access to, or revise your personal information or feel that the information we currently have on record is incorrect or incomplete or believe that the privacy of your personal information at Allianz Australia has been interfered with. In these cases you are entitled to raise your concerns. Your complaint will be managed and resolved through our internal Privacy Complaint Procedure.

Should you wish to obtain more information about Allianz's privacy policies, please contact us and ask for a copy of our booklet called "**General Insurance Information Privacy Code**".

From time to time we may advise or offer you information on other Allianz products or services that may be relevant and of interest to you. If you do not wish to receive these offers or information please call the Allianz Direct Marketing Privacy Service Line on **13 2664** EST 8am-6pm, Monday to Friday or indicate your decision in the appropriate area of the Privacy section of our website at [www.allianz.com.au](http://www.allianz.com.au).

## Your Duty of Disclosure

Before you enter into an insurance contract with us, the Insurance Contracts Act 1984 requires you to provide us with the information we need to enable us to decide whether and on what terms your application for insurance is acceptable and to calculate how much premium is required for your insurance.

The Act imposes a different duty the first time you enter into the policy with us to that which applies when you renew, vary, extend, reinstate or replace your policy. We set these two duties out below.

### Your Duty of Disclosure when you enter into this policy with us for the first time

You will be asked various questions when you first apply for this policy. When you answer these questions, you must:

- give us honest and complete answers;
- tell us everything that you know; and
- tell us everything that a reasonable person in the circumstances could be expected to tell us.

### Your Duty of Disclosure when you renew, vary, extend, reinstate or replace your policy

When you renew, vary, extend, reinstate or replace the policy, your duty is to tell us before the renewal, variation, extension, reinstatement or replacement is made, every matter known to you which:

- you know, or
- a reasonable person in the circumstances could be expected to know, is relevant to our decision whether to insure you and whether any special conditions need to apply to your policy.

### What you do not need to tell us for either duty

You do not need to tell us about any matter:

- that diminishes our risk;
- that is of common knowledge;
- that we know or should know as an insurer; or
- that we tell you we do not need to know.

### Who do the two duties above apply to?

Everyone who is insured under the policy must comply with the relevant duty.

## What happens if you or they do not comply with either duty?

If you or they do not comply with the relevant duty, we may cancel the policy or reduce the amount we pay if you make a claim. If fraud is involved, we may treat the policy as if it never existed and pay nothing.

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# Professional Indemnity Policy

This **policy** sets out the conditions on which **we**, Allianz Australia Insurance Limited, AFS Licence No 234708, ACN 000 122 850, agree to insure **you** in consideration for **your** payment of the premium.

When reading this **policy**, please note that some words are specially defined. There is a list of these defined words at the end of the **policy**. To assist **you**, **we** have indicated these specially defined words in bold print.

## Part 1 – What We Insure You For

### 1. Insuring Clause

#### 1.1 General

**We** agree to indemnify **you** against all civil liability arising from any **claim** that is first made against **you** during the **period of cover** in respect of **your** conduct of the **professional business**.

#### 1.2 Civil Liability

The civil liability referred to in sub clause 1.1 includes, but is not restricted to civil liability:

- (a) under the Trade Practices Act 1974 (C'wealth), the Fair Trading Act 1987 (NSW), the Fair Trading Act 1985 (Victoria) or similar legislation enacted by the other States or Territories of the Commonwealth of Australia or the Dominion of New Zealand; or
- (b) for defamation; or
- (c) for infringement of copyrights, trademarks, registered designs or patents or any plagiarism or breach of confidentiality; or
- (d) in respect of any activity in which **you** are engaged as a joint venturer, although **we** are only liable to indemnify **you** in respect of liability arising out of **your** acts, errors or omissions and not those of **your** joint venturer or joint venturers.

### 2. Defence Costs

#### 2.1 General

**We** agree to pay any **defence costs**:

- (a) that **we** incur; or
- (b) that **you** incur with **our** written consent.

#### 2.2 Advancement of **Defence costs**

**We** agree to pay **defence costs** before final disposition of a **claim**:

- (a) where **we** give **you** written confirmation that **we** will indemnify **you** against civil liability arising from the **claim**; or
- (b) where **we** take over and conduct proceedings in respect of the **claim** under sub clause 31.1.

In any other case, **we** may pay **defence costs** before final disposition of a **claim** at **our** discretion.

#### 2.3 Reimbursement of **Defence costs** Advanced

If **we** subsequently refuse to indemnify **you** under the **policy**, **you** must reimburse **us** for any **defence costs** that **we** paid in advance.

### 3. Limit of Indemnity

#### 3.1 General

**We** are only liable to indemnify **you** against civil liability arising from any one **claim**, and in the aggregate from all **claims**, up to the **limit of indemnity**.

#### 3.2 **Defence costs**

**We** agree to pay the **defence costs** in addition to the **limit of indemnity**. However, if **your** civil liability arising from a **claim** exceeds the **limit of indemnity**, **we** are only liable to pay the same proportion of the **defence costs** as the amount of the **limit of indemnity** bears to the amount of **your** civil liability in respect of the **claim**. In all other cases, the maximum amount that **we** are liable to pay in **defence costs** is a sum equivalent to the **limit of indemnity**.

### 4. Deductible

#### 4.1 General

**We** are only liable to indemnify **you** against that part of **your** civil liability in respect of each **claim** that exceeds the **deductible**. **You** must bear the **deductible** in respect of each **claim**.

#### 4.2 **Our** Investigation Costs

Any costs and expenses that **we** incur to determine whether **we** are liable to indemnify **you** under this **policy** are not subject to the **deductible**. **We** agree to bear any such costs and expenses.

#### 4.3 **Your** Defence costs

Where a **claim** is made against **you** for an amount that is less than the **deductible**, **you** must bear all **defence costs** up to the limit of the **deductible**, unless **we** notify **you** in writing that **we** agree to bear the **defence costs**. Furthermore, where the **deductible** is expressed in the **schedule** to be inclusive of **defence costs**, **you** must pay all **defence costs** up to the amount of the **deductible** that **we** incur in the engagement of advisers that **we** consider necessary to determine **your** liability and to resolve the **claim**.

#### 4.4 Claims

For purposes of this clause, all **claims** that arise from any one act, error or omission, or series of related acts, errors or omissions are deemed to constitute one **claim**.

### 5. Extent of Indemnity

#### 5.1 Extensions

**Our** liability to indemnify **you** is extended by:

- (a) the automatic extensions set out in Part 2 of this **policy**; and
- (b) any optional extensions set out in Part 3 of this **policy** that are specified in the **schedule** to apply; and
- (c) any extensions incorporated by endorsement to this **policy**.

**Our** liability to indemnify **you** may be extended by either one or a combination of these extensions.

#### 5.2 Exclusions and Conditions

However, unless expressly provided otherwise, **our** liability to indemnify **you** under Parts 1, 2 and 3 of this **policy** and any endorsement is subject to:

- (a) the **limit of indemnity** and **deductible** set out in clauses 3 and 4 of this **policy**; and
- (b) the exclusions from liability set out in Part 4 of this **policy**; and
- (c) the **claims** conditions set out in Part 5 of this **policy**; and
- (d) the other conditions set out in Part 6 of this **policy**; and
- (e) any exclusions, conditions or other provisions incorporated by endorsement to this **policy**.

## Part 2 – Automatic Extensions

### 6. Consultants, Sub-Contractors and Agents

**We** agree to indemnify **you** against all civil liability arising from any **claim** that is first made during the **period of cover** in respect of any consultant, sub-contractor or agent for whose acts, errors or omissions **you** are liable. However, **we** are only liable to indemnify **you** under this clause in respect of an act, error or omission by the consultant, sub-contractor or agent in connection with **your professional business**. Also, **we** are not liable to indemnify that consultant, sub-contractor or agent under this clause.

### 7. Continuous Cover

**We** agree to indemnify **you** against civil liability arising from any **claim** that arises out of facts which first became known to **you** prior to the **period of cover** where:

- (a) **we** were **your** professional indemnity insurer at the time the facts first became known to **you** (the “**previous policy period**”) and have continued to be **your** professional indemnity insurer from then until the date of actual notification; and
- (b) but for **your** failure to notify **us** of the facts during the **previous policy period**, **you** would have been entitled to indemnity under a previous **policy** issued by **us**; and
- (c) but for the prior or pending **claims** exclusion in clause 26 **you** would be entitled to indemnity under this **policy**; and
- (d) **you** have not committed or attempted to commit fraudulent non-disclosure or fraudulent misrepresentation.

**We** are only liable to indemnify **you** to the extent that **we** are obliged to indemnify **you** under the terms and conditions of the **policy** in effect during the current **policy period**.

### 8. Estates and Legal Representatives

**We** agree to indemnify **your** estate, heirs, legal representatives or assigns if **you** die, become insolvent, bankrupt or mentally incompetent, to the extent that **we** would otherwise have been liable to indemnify **you**.

### 9. Former Principals Etc

**We** agree to indemnify any former principal, partner, director or **employee** of **yours** against all civil liability arising from any **claim** that is first made against them during the **period of cover** in respect of their conduct of the **professional business**. **We** are only liable to indemnify them under this clause in respect of acts, errors or omissions while they were still **your** principal, partner, director or **employee**.



## 10. Former Subsidiary

We agree to indemnify you against all civil liability arising from any claim that is first made against you during the period of cover in respect of the conduct of the professional business by any entity that, at the commencement of the policy, is a former subsidiary of yours.

## 11. Fraud and Dishonesty

### 11.1 General

We agree to indemnify you against civil liability arising from any claim that is first made against you during the period of cover, in respect of a dishonest, fraudulent, malicious or reckless act or omission committed or alleged to have been committed by any other person or entity covered by this policy in the conduct of the professional business. However, we are not liable to indemnify you under this clause:

- (a) if you personally committed or condoned any act, omission or breach excluded by the fraud and dishonesty exclusion in clause 22; or
- (b) in respect of any loss of currency.

This extension applies notwithstanding the fraud and dishonesty exclusion in clause 22.

Meaning of 'you personally'

For purposes of this clause, 'you personally', refers to the person or entity covered by this policy seeking indemnity under this policy.

## 12. Loss of Documents

### 12.1 General

We agree to indemnify you against costs and expenses that you incur in replacing or restoring lost documents for which you are legally responsible where you first discover the loss during the period of cover. However, we are only liable to indemnify you against those costs and expenses for which you provide us with bills or accounts that are approved under sub clause 12.3.

### 12.2 Your obligation to notify us

You must notify us of the loss of documents as soon as practicable after you discover the loss and in any event within 30 days.

### 12.3 Approval of bills or accounts

Once you provide us with bills or accounts, we may either:

- (a) indemnify you; or
- (b) nominate a competent person to review the bills or accounts.

If we nominate a competent person, you must notify us whether or not you approve of our nominee.

### 12.4 Deductible

Notwithstanding subclause 4.1, you do not have to bear the deductible in respect of costs and expenses covered by this clause.

### 12.5 Meaning of 'lost documents'

For purposes of this clause, 'lost documents' means documents that have been destroyed, damaged or mislaid and cannot be found after diligent search.

## 13. Newly Acquired or Created Subsidiary

### 13.1 General Cover

We agree to indemnify any subsidiary that you acquire or create after commencement of the policy against all civil liability arising from any claim that is first made against the subsidiary within a period extending from the date that you acquire or create the subsidiary to the earlier of:

- (a) 30 days after that date; or
- (b) expiry of the period of cover,

in respect of its conduct of the professional business.

### 13.2 Discretionary Cover

We may, at our discretion, offer to indemnify any subsidiary that you acquire or create during the period of cover against all civil liability arising from any claim that is first made against the subsidiary after expiry of 30 days from the date that you acquire or create the subsidiary but within the period of cover in respect of its conduct of the professional business. Before we may exercise our discretion, you must:

- (a) notify us of your acquisition or creation of the subsidiary; and
- (b) provide us with all additional information that we request.

If we offer to extend our liability under this clause, we may require that you comply with additional conditions, including conditions charging any additional premium that we consider appropriate. You must notify us as to whether or not you agree to the additional conditions. If you do not agree to the additional conditions, we are not liable to indemnify the subsidiary.

## 14. Previous Business

You may advise us in the proposal that you require us to indemnify:

- (a) a current principal, partner, director or employee; or

- (b) a former principal, partner, director or **employee**; or
- (c) a principal, partner, director or **employee** that **you** intend to appoint, during the **period of cover**,

in respect of their previous business. If **you** do so, **we** agree to indemnify them against all civil liability arising from any **claim** that is first made against them during the **period of cover** in respect of their conduct of the same profession as **your professional business** before they become **your** principal, partner, director or **employee**.

## 15. Reinstatement of Limit of Indemnity

### 15.1 General

If the **limit of indemnity** is exhausted as a result of a **claim** made against **you** during the **period of cover**, **we** agree to reinstate the **limit of indemnity** in clause 3 in respect of any other subsequent unrelated **claim** made against **you**. **We** agree to reinstate the **limit of indemnity** the number of times specified in the **schedule**. Each reinstatement is subject to clause 15.3.

### 15.2 Limit of Indemnity

**We** are only liable to indemnify **you** under this clause against civil liability arising from any one **claim**, and in the aggregate in respect of all **claims**, arising from any one act, error or omission or series of related acts, errors or omissions, up to the **limit of indemnity**.

### 15.3 Restriction on Reinstatement

Subject to the Insurance Contracts Act 1984 (C'wealth) the reinstatement of the **limit of indemnity** in this clause only applies in excess of the total cover provided by any **policy** or policies that apply in excess of this **policy**.

## Part 3 – Optional Extensions

### 16. Fidelity Guarantee

#### 16.1 General

**We** agree to indemnify **you** against loss of any **currency**:

- (a) which is **your** property; or
- (b) for which **you** are legally responsible,

arising from any dishonest, fraudulent, malicious or reckless act or omission in the conduct of the **professional business** by any other person or entity covered by this **policy** where **you** first discover the loss during the **period of cover**. However, **we** are not liable to indemnify **you** under this clause if **you** personally committed or condoned any act, omission or breach excluded by the fraud and dishonesty exclusion in clause 22.

This extension applies notwithstanding the fraud and dishonesty exclusion in clause 22.

#### 16.2 Your obligation to notify us

**You** must:

- (a) notify **us** of the loss of **currency** as soon as practicable after **you** discover the loss and in any event within 21 days; and
- (b) give **us** all necessary information and assistance to enable **us** to sue the person committing the dishonest, fraudulent, malicious or reckless act or omission in respect of the loss of **currency**.

#### 16.3 Scope of indemnity

**Our** liability to indemnify **you** under this clause is subject to the following:

- (a) **we** are only liable to indemnify **you** against the aggregate of all loss under this clause up to the fidelity **limit of indemnity** specified in the **schedule**; and
- (b) **you** must bear the fidelity **deductible** specified in the **schedule** in respect of each and every individual dishonest, fraudulent, malicious or reckless act or omission; and
- (c) **you** must bear any costs or expenses that **you** incur to substantiate the loss of **currency**; and
- (d) **you** must bear any loss that **you** incur as a consequence of any act or omission occurring after the date **you** discover, or have reasonable suspicion of, the dishonest, fraudulent, malicious or reckless act or omission.

Any indemnity **we** provide to **you** under this clause for a loss of currency will reduce the **limit of indemnity** otherwise available to **you** under this **policy**.

#### 16.4 Meaning of 'you personally'

For purposes of this clause, 'you personally', refers to the person or entity covered by this **policy** seeking indemnity under this **policy**.

### 17. Subsidiaries – Pre-Acquisition Liability

**We** agree to indemnify:

- (a) any current **subsidiary**; or
- (b) any former **subsidiary**; or
- (c) any **subsidiary** that **you** acquire or create during the **period of cover**,

against all civil liability arising from any **claim** that is first made against the **subsidiary** during the **period of cover** in respect of any act, error or omission committed or alleged to have been committed by the **subsidiary** before the date that **you** acquire or create the **subsidiary** but after the retroactive date specified in the **schedule** in respect of its conduct of the same profession as **your professional business**.

This extension applies notwithstanding the **subsidiaries** exclusion in clause 27.

## Part 4 – Exclusions

### 18. Asbestos Exclusion

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto, it is agreed that this insurance shall not apply to and does not cover any actual or alleged liability whatsoever for any **claim** or **claims** in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.

### 19. Associates and Relatives

#### 19.1 General

**We** are not liable to indemnify **you** in respect of any **claim** based upon, attributable to, or in consequence of any work performed by **you** for any:

- (a) person or entity who is **your** associate; or
- (b) person who, at the time of the act, error or omission giving rise to the **claim**, is **your** relative, unless such person is acting without any prior direct or indirect solicitation or co-operation by **you** or **your** associates.

#### 19.2 Meaning of 'your associate'

For purposes of this clause, 'your associate' means:

- (a) any person or entity insured under this **policy**; or
- (b) any **subsidiary** of **yours** whether or not it is insured under this **policy**; or
- (c) any business or company in which **you** have a direct or indirect financial or proprietary interest.

19.3 **We** are not liable to indemnify **you** in respect of any **claim** based upon, attributable to, or in consequence of the provision by **you** of any advice inducement or recommendation regarding the investment of any interest, capital or personal endeavour in an investment facility or service in which **you** or **your** relative have a direct or indirect financial or proprietary interest

#### 19.4 Meaning of 'your relative'

For purposes of this clause, 'your relative' means:

- (a) **your** spouse, domestic partner or companion; or
- (b) **your** parents or the parents of the spouse, domestic partner or companion; or
- (c) **your** children or siblings.

#### 19.5 Meaning of "financial or proprietary interest"

For the purposes of this clause, "financial or proprietary interest" does not include an interest in less than 10% of the issued capital of a public company or less than 10% of the value of any other enterprise.

## 20. Assumed Duty or Obligation

We are not liable to indemnify **you** in respect of any **claim** based upon, attributable to, or in consequence of any duty or obligation assumed by **you** outside the normal course of the **professional business**.

## 21. Fines and Penalties

We are not liable to indemnify **you** in respect of any **claim** for punitive, aggravated, multiple or exemplary damages, or fines or any criminal or civil penalties imposed by law.

## 22. Fraud and Dishonesty

We are not liable to indemnify **you** in respect of any **claim** directly or indirectly based upon, attributable to, or in consequence of any:

- (a) dishonest, fraudulent, malicious, or reckless act or omission; or
- (b) any wilful violation or wilful breach of any statute or regulation,

by **you** or **your** consultants, sub-contractors or agents where such act, omission, violation or breach is established by judgment or other final adjudication.

## 23. Jurisdictional and Territorial Limit

We are not liable to indemnify **you** in respect of any **claim**:

- (a) made 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) arising out of the enforcement of judgments, orders or awards obtained within or determined pursuant to the law of the United States of America or the Dominion of Canada or their territories or protectorates.

## 24. Obligations to Employees

We are not liable to indemnify **you** in respect of any **claim** based upon, attributable to, or in consequence of bodily injury, mental injury, sickness, disease or death of any **employee** or damage to or destruction of any property of any **employee**, including loss of use, arising out of, or in the course of, their employment.

## 25. Pollution and Nuclear Risk

### 25.1 General

We are not liable to indemnify **you** in respect of any **claim** directly or indirectly based upon, attributable to, or in consequence of:

- (a) the actual, alleged or threatened discharge, dispersal, release or escape of pollutants into or upon real or personal property, the atmosphere any water course or body of water or any enforcement, action or proceeding in connection with the containment, clean up, removal, treatment or monitoring of such pollutants of seepage, pollution or contamination howsoever occurring; or
- (b) ionising radiation or the contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of any nuclear fuel.

### 25.2 Meaning of 'pollutant'

For purposes of this clause, 'pollutant' means:

- (a) any solid, liquid, gaseous or thermal irritant or contaminant, including without limitation smoke, vapour, soot, fumes, acids, alkalis and chemicals; and
- (b) any waste materials, including materials to be recycled, reconditioned or reclaimed; and
- (c) any other air emission, odour, waste, water, oil, oil products, infectious or medical waste, asbestos, asbestos products or any noise emission.

## 26. Prior or Pending Claims

We are not liable to indemnify **you** in respect of any **claim**:

- (a) directly or indirectly based upon, attributable to, or in consequence of, any circumstance of which **you** first became aware prior to the commencement of the **policy** and which **you** knew or ought reasonably to have known, had the potential to give rise to a **claim** under this **policy** or under any previous **policy**; or
- (b) that was first made prior to the commencement of the **policy**.

## 27 Subsidiaries

We are not liable to indemnify **you** in respect of any **claim** against:

- (a) a current **subsidiary**; or
- (b) a former **subsidiary**; or
- (c) a **subsidiary** that **you** acquire or create during the **period of cover**,

in respect of any act, error or omission committed or alleged to have been committed by the **subsidiary** either:

- (a) before **you** acquire or create the **subsidiary**; or
- (b) after the **subsidiary** ceases to be **your subsidiary**.

## 28. Terrorism Exclusion Endorsement

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto, it is agreed that this insurance excludes death, injury, illness, loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any act of terrorism, as defined herein, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

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

- (i) involves violence against one or more persons; or
- (ii) involves damage to property; or
- (iii) endangers life other than that of the person committing the action; or
- (iv) creates a risk to health or safety of the public or a section of the public; or
- (v) is designed to interfere with or to disrupt an electronic system.

This insurance also excludes death, injury, illness, loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any action in controlling, preventing, suppressing, retaliating against, or responding to any act of terrorism.

## 29. Trading Debts

**We** are not liable to indemnify **you** in respect of any **claim** based upon, attributable to, or in consequence of any trading debt that **you** incur or any guarantee that **you** give for a debt.

# Part 5 – Claims Conditions

## 30. Notification

**You** must notify **us** of any **claim** made against **you** during the **period of cover** as soon as practicable after the **claim** is made. **You** must give notice of any **claim**, loss or other matter in writing, and send it to The Claims Manager, Professional Risks Division, Allianz Australia Insurance Limited, 2 Market Street, Sydney, NSW, 2000.

## 31. Conduct of Proceedings

### 31.1 General

**We** may elect at any time to take over and conduct, in **your** name any proceedings in relation to which **we**:

- (a) have advanced **defence costs** to **you**; or
- (b) are liable to indemnify **you** under this **policy**.

### 31.2 Settlement of **Claims** Etc

**You** must not incur any **defence costs**, settle any **claim**, make any admission, offer, payment or otherwise assume any contractual obligations with respect to any **claim** without **our** prior written consent. **We** are not liable to indemnify **you** in respect of any **defence costs**, settlement, admission, offer, payment or assumed obligation unless **we** give **our** written consent. However, **we** must not withhold consent unreasonably.

## 32. Co-Operation

**You** must:

- (a) give **us** and **our** investigators and legal representatives all information and assistance that **we** or they reasonably require; and
- (b) co-operate fully with **us** and **our** investigators and legal representatives in any proceedings in relation to which **we** are liable to indemnify **you** under this **policy**.

## 33. Mitigation

**You** must use all due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any civil liability, **defence costs** or loss in respect of which **we** are liable to indemnify **you** under this **policy**.

## 34. Senior Counsel

### 34.1 General

Neither **we** nor **you** may require the other to contest any **claim** unless Senior Counsel advises that the **claim** should be contested. In formulating his or her advice, Senior Counsel must take into consideration the damages and costs which are likely to be



recovered by the plaintiff, the likely **defence costs** and **your** prospects of successfully defending the **claim**.

#### 34.2 Appointment of Senior Counsel

If a **claim** is made against **you**, **we** may nominate a Senior Counsel. If **we** nominate a Senior Counsel, **you** must notify **us** whether or not **you** approve of **our** nominee as soon as practicable. If **we** cannot agree with **you** upon Senior Counsel within a reasonable time, Senior Counsel will be such person as the President of the New South Wales Bar Association appoints.

#### 34.3 Costs of Senior Counsel's Opinion

The cost of Senior Counsel's opinion is included in the **defence costs**.

#### 34.1 Meaning of 'Senior Counsel'

For purposes of this clause, 'Senior Counsel' means a practising barrister who is entitled to practice as a Queens Counsel or Senior Counsel in Australia or New Zealand.

### 35. Election to Contest

If **we** recommend settlement in respect of any **claim** and **you** do not agree to settlement, **you** may elect to contest the **claim**. However, **our** liability in connection with the **claim** is then limited to the amount we recommend in settlement plus **defence costs** incurred with **our** consent up to the date **we** recommend settlement to **you**.

## Part 6 – Other Conditions

### 36. Alteration to Risk

**You** must notify **us** as soon as practicable of any material alteration to risk during the **period of cover** including:

- (a) if **you** submit to voluntary bankruptcy, receivership or liquidation; or
- (b) if **you** fail to pay debts; or
- (c) if **you** breach any other obligation giving rise to the appointment of a receiver, bankruptcy, or winding-up proceedings; or
- (d) any material change in the nature of the **professional business**.

### 37. Subrogation

If **we** make a payment under this **policy**, **we** are subrogated to all **your** rights of contribution, indemnity or recovery. **You** must always act to secure and preserve **your** rights of contribution, indemnity and recovery, and must do all things and execute all **documents** to enable **us** to sue in **your** name for such contribution, indemnity or recovery.

### 38. Assignability

**You** must not assign this **policy**, or any of **your** rights under this **policy**, without **our** prior written consent.

### 39. Cancellation

**You** may cancel this **policy** at any time by notifying us in writing. **We** may cancel this **policy** in accordance with section 60 of the Insurance Contracts Act 1984 (C'wealth).

On cancellation, **we** agree to refund **you** a 80% pro rata proportion of the nett premium specified in the **schedule**, based upon the expired portion of the **period of cover**, however, this refund of premium is subject to no **claims** or circumstances having been notified during the **period of cover**.

In all other respects this **policy** remains unaltered.

### 40. Representations

In granting this **policy**, **we** rely upon the declarations and statements in, and the attachments to, the **proposal**.

### 41. Imputation

Where more than one person or entity is insured under this **policy**:

- (a) failure by an insured person or entity to comply with the duty of disclosure under *the Insurance Contracts Act 1984* (C'wealth); or
- (b) misrepresentation by an insured person or entity to **us** before this **policy** commences; or



(c) failure by an insured person or entity to comply with any terms or conditions of this **policy**,

does not prejudice the right of any other insured person or entity to indemnity under this **policy**. However, this clause only applies if:

- (i) the other insured person or entity is innocent of, and has no knowledge of, such conduct; and
- (ii) as soon as practicable after becoming aware of the conduct, they notify **us** of all facts relating to such conduct.

#### 42. Governing Law

The laws of the Commonwealth of Australia and the State or Territory where the **policy** is issued govern this **policy**. Any disputes relating to interpretation shall be submitted to the exclusive jurisdiction of the Courts of Australia.

#### 43. GST Basis of Settlement

The amount that **we** are liable to pay under this **policy** will be reduced by the amount of any input tax credit that **you** are or may be entitled to claim for the supply of goods or services covered by that payment.

If **you** are entitled to an input tax credit for the premium, **you** must inform **us** of the extent of that entitlement at or before the time **you** make a claim under this **policy**. **We** will not indemnify **you** for any GST liability, fines or penalties that arise from or is attributable to **your** failure to notify **us** of **your** entitlement (or correct entitlement) to an input tax credit on the premium.

If **you** are liable to pay a **deductible** under this **policy**, the amount payable will be calculated after deduction of any input tax credit that **you** are or may be entitled to claim on payment of the **deductible**.

## Part 7 – Definitions & Interpretation

### 44. Definitions

In this **policy**, unless the context requires otherwise:

- (a) **Claim** means:
  - (i) a written or verbal demand by a third party for compensation or damages; or
  - (ii) a civil proceeding brought by a third party for recovery of compensation or damages, in respect of an actual or alleged breach of professional duty.
- (b) **Currency** means any money, negotiable instruments, bearer bonds or coupons, stamps, bank or **currency** notes.
- (c) **Deductible** is the amount specified as such in the **schedule**.
- (d) **Defence costs** means reasonable costs, charges, fees (including legal counsels' fees and experts' fees) and expenses incurred after the date a **claim** is notified to **us** in defending, investigating or monitoring a **claim** and costs of appeal.
- (e) **Documents** means all **documents** that:
  - (i) relate to the **professional business** including but not limited to written, printed, computer records and electronic data material but not including any **currency**, and
  - (ii) whether **your** property or not, are in **your** personal control, or the control of any other person with whom **you** have lodged, deposited or entrusted such **documents**.
- (f) **Employee** means any person that **you** employ under a contract of service or apprenticeship during or prior to commencement of the **policy**.
- (g) **Limit of indemnity** is the limit of **our** total liability under this **policy** specified as such in the **schedule**.
- (h) **Period of cover** is the period specified as such in the **schedule**.
- (i) **Policy** means:
  - (i) these terms, conditions, definitions and exclusions and the attached **schedule**; and
  - (ii) any endorsement attached to and forming part of this **policy** either at commencement of the **policy** or during the **period of cover**; and
  - (iii) the **proposal**.
- (j) **Professional business** means the profession, practice, occupation or business specified as such in the **schedule** conducted by the person, partnership, company or other entity specified in the **schedule**.

- (k) **Proposal** means **your** written **proposal** to us.
- (l) **Schedule** means the **schedule** relating to this **policy**.
- (m) **Subsidiary** means:
  - (i) any entity in which **you** own or control, directly or indirectly, in any combination, more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors; or
  - (ii) any entity deemed to be **your subsidiary** under any applicable legislation, law or Australian Accounting Standard.
- (n) **We, us, our** means Allianz Australia Limited, AFS Licence No 234708, ACN 000 122 850.
- (o) **You** means:
  - (i) the person, partnership, company or other entity specified as such in the **schedule** including their predecessors in business; and
  - (ii) where the entity referred to in subparagraph (i) of this definition is a company – any **subsidiary** in existence at the commencement of the **policy**; and
  - (iii) any person who, at any time during the **period of cover**, is a principal, partner, director or **employee** of any person or entity referred to in subparagraphs (i) or (ii) of this definition; and
  - (iv) any person who, at the commencement of the **policy**, is a former principal, partner, director or **employee** of any person or entity referred to in subparagraphs (i) or (ii) of this definition.

#### 45. Interpretation

In interpreting any word or expression in this **policy**:

- (a) the singular includes the plural;
- (b) the male gender includes the female, and vice versa;
- (c) where any word or phrase is given a definite meaning, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (d) words shown in bold, for example, **claim**, are words that clause 44 defines.

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Contact: [finlines@allianz.com.au](mailto:finlines@allianz.com.au)

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The information in this brochure  
is current as at April 2009.