



# Tax Disputes and Investigations Legal Expenses Policy Wording

Version: V17042019



## About AllTradesCover

All Trades Cover are the specialists in trade insurance and we bring a unique understanding of the risks associated with the trade industry. Our brokers have extensive experience in providing insurance for tradespeople and we have a strong focus on providing exceptional customer service. With our selection of insurance packages, we can find the best cover for your needs.

## About High Street Underwriting Agency

High Street Underwriting Agency Pty Limited A.C.N 096 939 169 AFS Licence 244370 (High Street) is a member of the Underwriting Agencies Council (UAC). High Street is an authorised Coverholder of Certain Underwriters at Lloyds and is licenced to wholesale insurance in **Australia**.

In effecting this Contract of Insurance, any cover is accepted by High Street acting under an authority given by the subscribing Underwriters and High Street is acting as Agent of the Insurers and not the Agent of **You**, the Insured.

## About Certain Underwriters at Lloyd's

Lloyd's is the world's specialist insurance and reinsurance market, bringing together an outstanding concentration of underwriting expertise and talent. Over 80 syndicates underwrite insurance at Lloyd's, covering all classes of **Business**. Together they interact with thousands of brokers daily to create insurance solutions for businesses in over 200 countries and territories around the world.

In **Australia** Lloyd's has been insuring risks for over 150 years and is authorised under the *Insurance Act 1973 (Cth)* to conduct insurance **Business** in **Australia**. That Act establishes a system of financial supervision of general insurers in **Australia**.



Underwritten by

Certain Underwriters at Lloyd's 100%

*If **We** issue **You** with a **Policy**, **You** will be given a **Policy Schedule**. The **Policy Schedule** sets out the specific terms applicable to **Your** cover and should be read together with the **Policy Wordings**. The **Policy Wordings** and **Policy Schedule** form **Your** legal contract, so please keep them in a safe place for future reference. **You** should check the **Policy Schedule** or **Renewal Schedule** if **You** are issued one, when **You** receive it to ensure it accurately states what has been insured. The information collected from **You** (whether it be from online or in hard copy) including proposal forms, supplementary documentation and declarations made by the insured are the basis and form part of these contracts of insurance.*

*In effecting this Contract of Insurance, any cover is accepted by High Street acting under an authority given by the subscribing Underwriters and High Street is acting as Agent of the Insurers and not the Agent of **You**, the Insured.*

*This is to certify that in accordance with the authorisation granted under the Contract by Certain Underwriters at Lloyd's, whose definitive numbers and proportions underwritten by them forms part of the **Schedule of Insurance** contained herein, and in consideration of the payment of the premium specified herein, the said Underwriters are hereby bound, severally and not jointly, their Executors and Administrators, to insure in accordance with the terms and conditions contained herein or endorsed hereon.*

THIS CERTIFICATE IS ISSUED IN RESPECT OF 100% OF THE HEREIN  
STATED VALUES AND AMOUNTS

**You** are advised to read this **Policy** carefully, particularly the exclusions, conditions and limitations.

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# IMPORTANT NOTICES

## Insurer's Notice to the Insured:

(These notices are subject to and do not affect the provisions of this **Policy**)

### 1. Non-Standard Policy

The terms and conditions of this Tradesmen Tax Disputes and Investigations Legal Expenses Insurance **Policy** are distinct and exclusive from the terms and conditions of all other business insurances arranged by us. It may contain provisions which are unusual or different from any other policies and you should read the entire **Policy** carefully prior to entering into any contract.

### 2. Legal Advice

You can e-mail the **Advice Provider** via trish@legalaccess.com.au for legal advice on any problem related to your business, trade or profession. The advice available is limited to the law and practice of Australia.

This insurance is only available to business organisations whose **Normal Business Activities** are conducted within the **Territorial Limits**.

### 3. Claims Made and Notified

3.1. This is a "claims made and notified" insurance policy, which means that it provides cover only in relation to a claim against you that is:

3.1.1. first made against you during the **Period of Insurance**; and

3.1.2. notified by you to the **Claims Administrator** during the **Period of Insurance**;

provided that you were not aware before the commencement of the **Period of Insurance** of any facts that alerted you or would have alerted a reasonable person in your position that the claim might arise (see GENERAL CONDITION 2 and EXCLUSION 3).

3.2. This **Policy** also responds to claims circumstances notified by you to the **Claims Administrator** during the **Period of Insurance** pursuant to section 40(3) of the *Insurance Contracts Act 1984 (Cwlth)*, which provides:

Where the insured gave notice in writing to the insurer of facts that might give rise to a claim against the insured as soon as was reasonably practicable after the insured became aware of those facts but before the insurance cover provided by the contract expired, the insurer is not relieved of liability under the contract in respect of the claim, when made, by reason only that it was made after the expiration of the period of insurance cover provided by the contract.

3.3. This insurance also provides cover in relation to a claim made by you against another, but only if:

3.3.1. you first become aware of facts and circumstances giving rise to the claim during and not before the **Period of Insurance**; and

3.3.2. you first notify the **Claims Administrator** of those facts and circumstances and your intention to make the claim during the **Period of Insurance**.

3.4. This **Policy** does not provide cover for any legal costs or expenses that you incur before the **Claims Administrator** accepts the claim.

3.5. In addition to immediately notifying the **Claims Administrator**, you must also immediately notify the **Advice Provider** of a **Claim** or potential **Claim** via e?mail at the address stated in the **Schedule** (see GENERAL CONDITION 2.6). If you delay you may prejudice your rights under this **Policy**. If you are in any doubt about your need to notify a claim or any facts or circumstances under this **Policy** or your eligibility to make a claim, then you should contact the Advice Provider.

3.6 Please note that, in addition to GENERAL CONDITION 2, special conditions dealing with the reporting of claims apply to claims under the Tax Disputes cover - see WHAT IS COVERED .

### 4. Your Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

1. reduces the risk we insure you for; or
2. is common knowledge; or
3. we know or should know as an insurer; or
4. we waive your duty to tell us about.

#### 4.1. If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

### 5. Material Alterations of Risk

5.1 You shall throughout the **Period of Insurance** disclose to us as soon as reasonably practicable any material change in any fact, activity or circumstance as described in the Proposal.

5.2 The **Insurer** is entitled to refuse to cover the additional exposure or to charge a reasonable additional premium or, if the nature of the change in circumstances entails a substantially different risk, whether in type or degree, from that previously envisaged, to cancel the contract or reduce its liability.

### 6. Waived Recourse Rights

Please note that the **Policy** excludes any claim or claims where and to the extent **Insurers** have or would have rights of recourse in respect of such claim but you have granted without the **Insurers** prior consent a waiver of such recourse rights to others whether by express term or by reason of an assumption of liability under contract.

### 7. Lloyd's Service of Suit Clause (Australia)

(applicable to Lloyd's Underwriters only)

The **Underwriters** hereon agree that:-



7.1. In the event of a dispute arising under this **Policy, Underwriters** at the request of the **Insured** (or reinsured) will submit to the jurisdiction of any competent **Court** in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such **Court**.

7.2. Any summons notice or process to be service upon the Underwriters may be served upon:

Lloyd's General Representative  
Level 9

1 O'Connell Street,  
Sydney 2000 N.S.W AUSTRALIA

who has authority to accept service and to enter an appearance on **Underwriters'** behalf, and who is directed at the request of the **Insured** (or reinsured) to give a written undertaking to the **Insured** (or reinsured) that he will enter an appearance on **Underwriters'** behalf.

7.3. If a suit is instituted against any one of the **Underwriters** all **Underwriters** hereon will abide by the final decision of such **Court** of any competent Appellate **Court**.

## 8. Dispute Resolution Process

### Stage 1

Any enquiry or complaint relating to this insurance should be addressed to High Street Underwriting Agency in the first instance. Please contact High Street Underwriting Agency by:

Postal Address: PO Box 7174, Brendale, Queensland 4500

Phone: 1800 096 829

Email: info@hsua.com.au

High Street will acknowledge **Your** enquiry or complaint immediately by telephone or email. High Street Underwriting Agency aims to resolve **Your** complaint where possible within 15 business days.

### Stage 2

If Stage 1 does not resolve the matter or **You** are not satisfied with the way a complaint has been dealt with, **You** should contact:

Lloyd's Australia Limited

Postal Address: Level 9, 1 O'Connell Street, Sydney, NSW 2000

Phone: +61 2 8298 0783

Fax: +61 2 8298 0788

Email: idraustralia@lloyds.com

When **You** lodge the dispute Lloyd's will usually require the following information:

- Name, address and telephone number of the **Insured**
- The type of insurance policy involved
- Details of the policy concerned (policy and/or claim reference numbers, etc.)
- Name and address of the insurance intermediary through whom the policy was obtained
- Details of the reasons for lodging the complaint
- Copies of any supporting documentation you believe may assist us in addressing **Your** dispute appropriately.

### How Long Will the Stage 2 Process Take?

**Your** complaint will be acknowledged in writing with 5 business days of receipt and **You** will be kept informed of the progress of **Our** review of **Your** complaint at least every 10 business days.

The length of time required to resolve a particular dispute will depend on the individual issued raised, however in most cases **You** will receive a full written response to **Your** complain within 15 business days of receipt, provided we have received all necessary information and have completed any investigation required.

### External Dispute Resolution

If **Your** complaint is not resolved within 45 calendar days, or resolved in a manner satisfactory to **You**, **You** may refer the matter to AFCA. AFCA can be contacted by post GPO Box 3, Melbourne VIC 3001, phone 1800 931 678 or email info@afca.org.au. More information can be found on their website [www.afca.org.au](http://www.afca.org.au).

AFCA is an independent body that operates nationally in Australia and aims to resolve disputes between **You** and **Your** insurer. AFCA provides fair and independent financial services complaint resolution that is free to consumers. Determinations made by AFCA are binding upon **Us**.

**Your** dispute must be referred to AFCA within 2 years of the date of our final decision.

This service is free of charge to policyholders.

## 9. Privacy

Lloyd's and its agents are bound by the obligations of the *Privacy Act 1998* as amended by the *Privacy Amendment (Private Sector) Act 2000 (the Act)*. This sets out basic standards relating to the collection, use, disclosure and handling of personal information.

"Personal Information" is essentially information or an opinion about a living individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

Information will be obtained from individuals directly where possible. Sometimes it may be collected indirectly (e.g. from your representatives).

Only information necessary for the arrangement and administration of Lloyd's business by Lloyd's, its agents and their representatives will be collected. This includes information necessary to accept risk, to assess a claim, to determine competitive and appropriate premiums, etc.

Lloyd's and its agents disclose personal information to third parties who they believe are necessary to assist them in doing the above. These parties will only use the personal information for the purposes we provided it to them for (or if required by law).

When you give Lloyd's and its agents personal information about other individuals, we rely on you to have made or to make them aware that you will or may provide their personal information to us, the types of third parties we may provide it to, the relevant purposes we and the third parties we disclose it to will use it for, and how they can access it. If it is sensitive information we rely on you to have obtained their consent on these matters. If you have not done or will not do either of these things, you must tell us before you provide the relevant information.



You are entitled to access your information if you wish and request correction if required.

An individual who believes their privacy may have been prejudiced has a right to make a complaint about the matter. In the first instance, your complaint should be addressed to High Street Underwriting. This may be done either verbally or in writing to The Compliance Officer, High Street Underwriting, 1/3 Hinkler Court Brendale, Queensland 4500.

If you are dissatisfied with the response, you may refer the matter to Lloyd's Australia Ltd, which has the appropriate authority to investigate and address matters of this nature. Lloyd's Australia Ltd can be contacted at:

Level 9  
1 O'Connell Street,  
Sydney NSW 2000  
Phone +61 (2) 8298 0788 Fax +61 (2) 8298 0788.  
Lloyd's Australia Ltd will respond in writing within 15 working days, and if you remain dissatisfied with their response you will be provided at that time with the details of any other avenues for resolution that may be available to you.

#### 10. **Terrorism Insurance Act 2003 Notice**

The **Insurer** has treated this Insurance (or part of it) as an Insurance to which the *Terrorism Insurance Act 2003 (TIA)* applies. TIA and the supporting regulations made under the Act deem cover into certain policies and provided that the Terrorism exclusion to which this Insurance is subject shall not apply to any eligible terrorism loss as defined in TIA.

Any coverage established by TIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined in TIA. The Terrorism exclusion to which this Insurance is subject applies in full force and effect to any other loss and any act or event that is not a declared terrorist incident .

All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged.

If any or all of the **Insurers** have reinsured this insurance with the Australian Reinsurance Pool Corporation, then any such **Insurers** will not be liable for any amounts for which they are not responsible under the terms of TIA due to the application of a reduction percentage as defined in TIA which results in a cap on the **Insurers** liability for payment for "eligible terrorism losses".



# DEFINITIONS

In this **Policy**, unless the context otherwise requires, the following words and expressions shall bear the meaning set out below:

TERM / WORD	DEFINITION
Advice Provider	means the person or company specified as "Advice Provider" in the <b>Schedule</b> or appointed subsequently by the <b>Insurer</b> , who provides legal advice under this <b>Policy</b> on the <b>Insurer's</b> behalf.
Annual Aggregate Limit	means the amount specified as "Annual Aggregate Limit" in the <b>Schedule</b> being the maximum the <b>Insurer</b> will pay for all <b>Claims</b> notified under this <b>Policy</b> during the <b>Period of Insurance</b> .
ATO	means the Australian Taxation Office or appropriate government authority or agency authorised to conduct the relevant activity.
ATO Investigation	means an investigation into the <b>Insured's</b> returns of income or profit from a trade, profession or business by the ATO under <b>Income Tax Legislation</b> .
Claim	means a claim of a kind described in the Sections of Cover under WHAT IS COVERED that: <ul style="list-style-type: none"> <li>• is first made against the <b>Insured</b>, as relevant, during the <b>Period of Insurance</b> and notified by the <b>Insured</b> to the <b>Claims Administrator</b> before the end of the <b>Period of Insurance</b>; or</li> <li>• first comes to the knowledge of the <b>Insured</b> during the <b>Period of Insurance</b> and is first notified to the <b>Claims Administrator</b> before the end of the <b>Period of Insurance</b>; and arises out of the <b>Normal Business Activities</b>.</li> </ul>
Claims Administrator	means the company specified as " <b>Claims Administrator</b> " in the <b>Schedule</b> or appointed subsequently by the <b>Insurer</b> , which administers the <b>Insured's</b> claims under this <b>Policy</b> on the <b>Insurer's</b> behalf and to whom notification of a <b>Claim</b> must be made.
Court or Tribunal	means a court, tribunal or other statutory body of competent jurisdiction within the <b>Territorial Limits</b> .
Coverholder	means the company specified as " <b>Coverholder</b> " in the <b>Schedule</b> , which is the <b>Insurer's</b> agent for the purposes of this <b>Policy</b> .
Cwlth	denotes the legislation being referred to is a Commonwealth of Australia Consolidated Act.
Declared and Accepted	means declared by or on behalf of the <b>Insured</b> to the <b>Coverholder</b> for the purpose of coverage under the <b>Policy</b> and accepted by the <b>Coverholder</b> .
Director	means a director or other board member of the <b>Insured</b> where the <b>Insured</b> is a company.
Excess	means the amount indicated in the <b>Schedule</b> to this <b>Policy</b> which the <b>Insured</b> must bear before the <b>Insurer</b> is obliged to make any payment of indemnity.
Fringe Benefits Dispute	means a dispute with the ATO regarding the amount of tax payable by the <b>Insured</b> under Income Tax Legislation in respect of fringe benefits where there are reasonable grounds for such dispute.
GST Dispute	means a dispute with the ATO regarding the amount of GST payable by the <b>Insured</b> where there are reasonable grounds for such dispute.
Income Tax Legislation	means either or both of the <i>Income Tax Assessment Act 1936 (Cwlth)</i> and the <i>Income Tax Assessment Act 1997 (Cwlth)</i> .
Insured	means the policyholder specified as " <b>Insured</b> " in the <b>Schedule</b> , whose registered office or principal trading address is within the <b>Territorial Limits</b> .
Insured's Costs	means the legal fees and disbursements payable by the <b>Insured</b> to the <b>Preferred Practitioner</b> in respect of the <b>Legal Action</b> or <b>ATO Investigation</b> , which have been incurred with the prior written consent of the <b>Claims Administrator</b> and whose reasonable amount is determined by taxation or assessment of costs or by agreement of the <b>Claims Administrator</b> , but excludes any such fees and disbursements recovered by the <b>Insured</b> .
Insurer	certain Underwriters at Lloyd's specified as " <b>Insurer</b> " in the " <b>Schedule</b> ".
Legal Action	Means a proceeding in the appropriate forum for a <b>Fringe Benefits Dispute</b> , a <b>GST Dispute</b> or an <b>ATO Investigation</b> .
Limit of Indemnity	means the amount specified as " <b>Limit of Indemnity</b> " in the <b>Schedule</b> being the maximum sum the <b>Insurer</b> will pay in connection with the one event or series of events attributable to a single source or cause or to a single set of circumstances, from which the <b>Excess</b> is deducted, and is subject always to the <b>Annual Aggregate Limit</b> .
Normal Business Activities	means the <b>Insured's Declared and Accepted</b> normal business activities.
Opponent	Means a party to a <b>Legal Action</b> other than the <b>Insured, Partner</b> or <b>Director</b> .
Opponent's Costs	means the legal fees and disbursements of the <b>Legal Action</b> incurred by the <b>Opponent</b> and payable by the <b>Insured</b> pursuant to a judgement of the <b>Court or Tribunal</b> or a settlement agreed to by the Claims Administrator, whose reasonable amount is determined by taxation or assessment of costs or by agreement of the <b>Claims Administrator</b> .





TERM / WORD	DEFINITION
Partner	means where the <b>Insured</b> is a partnership, any of the partners within that partnership.
Period of Insurance	means the period specified as “ <b>Period of Insurance</b> ” in the <b>Schedule</b> .
Policy	means the contract of insurance between the <b>Insurer</b> and the <b>Insured</b> as set out in this document and the <b>Schedule</b> .
Preferred Practitioner	means the lawyers or suitably qualified tax advisers designated to act on behalf of the <b>Insured</b> in respect of the resolution of a Claim.
Prospects of Success	means in the <b>Claims Administrator’s</b> reasonable opinion: <ul style="list-style-type: none"> <li>• it is more probable than not that at a determination at a final hearing the <b>Insured</b> will be successful in obtaining the outcome in respect of the <b>Claim</b> that the <b>Insured</b> is seeking; and</li> <li>• the <b>Insured’s</b> interests cannot be better achieved by other means.</li> </ul>
Schedule	means the <b>Schedule</b> to this <b>Policy</b> .
Territorial Limits	means the Commonwealth of Australia and its external territories and an Australian State or Territory.

### Please Note:

Reference to any statute or statutory provision and orders or regulations there under shall include a reference to that statute, provision, order or regulation as amended, re-enacted or replaced from time to time.

Unless the context otherwise requires reference to the singular includes the plural and the plural includes the singular. Headings are for convenience only and do not affect the interpretation or form part of this policy.

# WHAT IS COVERED

The **Insurer** will indemnify the **Insured** under the following Section of Cover subject to the terms of this **Policy** and up to but not exceeding the **Limit of Indemnity** and the **Annual Aggregate Limit**:

## Tax Disputes and Investigations

1. The **Insured's** Costs of a **Legal Action** arising directly from:

1.1. a **GST Dispute** with the **ATO** in respect of a **Claim** by the **ATO** for additional amounts of GST where there are reasonable prospects of the **Insured** obtaining a financial benefit. For the purpose of this clause, the **Claim** is first made against the **Insured** on the earliest of the following:

- 1.1.1. the date on which the **ATO** requests a meeting with the **Insured** or enters the **Insured's** premises or expresses dissatisfaction with any of the **Insured's** GST returns in writing;
- 1.1.2. date on which the **Insured** or his or her adviser first became aware, or could reasonably have become aware, that a **GST Dispute** was likely to arise with the **ATO**; or
- 1.1.3. the date on which the **Insured** is served with a notice of assessment or amended notice of assessment relating to the additional amounts of GST.

1.2. a **Fringe Benefits Dispute** in respect of a **Claim** by the **ATO** for additional amounts of tax within the meaning of **Income Tax Legislation**. For the purpose of this clause, the **Claim** is first made against the **Insured** on the earliest of:

- 1.2.1. the date on which the **ATO** expresses dissatisfaction with the amounts of PAYG or FBT (as those terms are defined in **Income Tax Legislation**) paid by the **Insured** or his or her returns relating to PAYG or FBT; or
- 1.2.2. the date on which the **ATO** starts an investigation into the accuracy of PAYG or FBT returns or information or into the **Insured's** liability to pay additional tax because of alleged inaccuracies in such returns or information.

2. The **Insured's** Costs arising directly from an **ATO Investigation** in respect of a **Claim** being a notification from the **ATO** that it is taking action, carrying out an investigation or making an enquiry under the provisions of **Income Tax Legislation**.

## Conditions

3. In addition to the General Conditions, the **Insured** must contact the **Advice Provider** as soon as possible after the **Claim** is first made and comply with the advice given by the **Advice Provider**;

4. The **Insured** must have maintained and must continue to maintain accurate, truthful and up to date records and make returns in due time in accordance with statute and accounting conventions acceptable to the **ATO** where applicable and have made all returns and payments except those which are disputed and provide all information to relevant authorities in due time;

5. The **Insured** and the **Preferred Practitioner** must provide information to the **ATO** in due time and must comply with any statutory notice requesting information which is not the subject of an appeal;

6. The **Insured** or his or her **Preferred Practitioner** must immediately notify the **Claims Administrator** in writing of any invitation by the **ATO** to make an offer in settlement; and

7. In respect of **ATO Investigations** the **Preferred Practitioner** must provide copies of relevant correspondence between the **ATO**, the **Preferred Practitioner** and the **Insured** (including the notice of investigation) together with copies of the accounts, tax computations and returns giving rise to the investigation.

# WHAT IS NOT COVERED

The following exclusions apply in respect of this **Policy**:

## 1. Tax Disputes

- 1.1. Costs incurred in dealing with routine matters (including but not limited to a GST audit visit).
- 1.2. In respect of an **ATO Investigation** only:
  - 1.2.1. costs arising after the issue of a notice under **Income Tax Legislation** notifying the **Insured** that the investigation has been completed; and/or
  - 1.2.2. costs incurred in respect of an amendment under **Income Tax Legislation**; and/or
  - 1.2.3. costs incurred otherwise than wholly in connection with an **ATO Investigation** into the **Insured's** business profits. Where appropriate, **Preferred Practitioner's** fees will be apportioned.
- 1.3. Any **Claim** where:
  - 1.3.1. deliberate mis-statements have been made in respect of accounts, returns or any other submissions made to the relevant authorities with intent to deceive;
  - 1.3.2. the **Insured** has failed to notify his or her business status to the relevant authorities within a statutory period;
  - 1.3.3. there has been a failure to maintain or submit accurate, truthful and up-to-date records and returns or a failure to observe statutory time limits or requirements;
  - 1.3.4. a false representation has been made either knowingly or without belief in its truth and this has resulted in a misstatement of amounts payable, expenses claimed, income or profits chargeable or losses allowable for tax or contributions purposes or of expenses payments made.
- 1.4. Any **Claim** arising from or relating to:
  - 1.4.1. an investigation or enquiry by the Investigations and Prosecutions Division of the **ATO** or following the transfer of an enquiry to that Division;
  - 1.4.2. avoidance schemes relating to tax or superannuation contributions under the *Superannuation Industry (Supervision) Act 1993 (Cwlth)*; and/or
  - 1.4.3. GST refunds in countries outside Australia or Import GST.

## 2. Excess and Various Liabilities

The **Insurer** will not pay for:

- 2.1. the **Excess**;
- 2.2. compensation, damages, interest, penalties or taxes which the **Insured** or his or her **Partners** or **Directors** are ordered or agree to pay except under Section of Cover 1.1.

## 3. Excluded Claims

- 3.1. Any Claim:
  - 3.1.1. notified to the **Claims Administrator** after the **Period of Insurance** expires;
  - 3.1.2. where the **Insured's** delay during the **Period of Insurance** in notifying the **Claims Administrator** has prejudiced the **Insurer's** position;
  - 3.1.3. where, before the commencement of the **Period of Insurance**, the **Insured** was aware, or should have been aware, that a **Claim** was likely to be made;
  - 3.1.4. where, before the commencement of the **Period of Insurance**, the **Insured** was aware of facts and circumstances that might give rise to a **Claim**;
  - 3.1.5. more specifically insured or any amount that the **Insured** cannot recover from a more specific insurance because the insurer refuses the claim for indemnity under the other insurance;
  - 3.1.6. which does not arise from the **Normal Business Activities**;
  - 3.1.7. where no **Court or Tribunal** will or would entertain a hearing on the substantive merits of the dispute or which is otherwise not within the jurisdiction of a **Court or Tribunal**.
- 3.2. Any claim for indemnity under the **Policy** which is false, fraudulent or exaggerated.
- 3.3. Any **Claim** concerning or arising from:
  - 3.3.1. a dispute between the **Insured, Coverholder, Claims Administrator, Advice Provider** and/or **Insurer** about this **Policy**;
  - 3.3.2. an application for judicial review.
- 3.4. Any civil claim against the **Insured** arising from:
  - 3.4.1. the death or injury to any person including (without limitation) any sickness, disease or any naturally occurring condition or degenerative process;
  - 3.4.2. the loss destruction or damage to property owned or occupied by or under the control of a third party.

## 4. Excluded Costs

- 4.1. All costs associated with an appeal unless:
  - 4.1.1. the appeal relates to a **Claim** that the **Insurer** has already covered under this **Policy**; and
  - 4.1.2. the **Insured** notifies the **Claims Administrator** in writing that the **Insured** wants to appeal at least six working days before the **Insured** is required to give notice of appeal; and
  - 4.1.3. the **Claims Administrator** considers that the appeal has **Prospects of Success**.
- 4.2. All costs of any private prosecution.
- 4.3. All costs that the **Insured** pays or agrees to pay before the **Claims Administrator** has accepted the **Insured's** claim for indemnity in writing.
- 4.4. All costs greater than agreed by the **Claims Administrator**.
- 4.5. All costs arising from the **Insured** entering into any form of litigation funding without obtaining the **Claims Administrator's** consent in writing first.
- 4.6. All costs arising from the **Insured's** or **Preferred Practitioner's** unreasonable behaviour or failing.



4.7. All costs arising from breach of the **Insured's** duties under this **Policy** or acts of the **Insured** or the **Preferred Practitioner** that cause prejudice to the **Insurer**.

4.8. All costs arising from the **Insured** acting against or differently from the advice of the **Preferred Practitioner**.

4.9. All costs of or relating to any security for costs the **Insured** is ordered to pay or agrees to pay.

4.10. All costs incurred in unnecessary correspondence.

#### 5. **Claims not arising from Normal Business Activities**

This **Policy** does not provide cover in relation to Claims not arising out of the **Normal Business Activities**.

#### 6. **Professional Negligence Claims**

This **Policy** does not provide cover in relation to **Claims** against the **Insured** or any **Partner** or **Director** for alleged negligent act, error or omission of a type normally covered under professional indemnity, directors and officers, management liability or similar insurance.

#### 7. **Terrorism / War and Contamination Exclusions**

7.1. This **Policy** does not cover any claims or legal proceedings (including any costs or expenses of any description) arising out of or in connection with:

7.1.1. war (whether declared or not), invasion, acts of a foreign enemy, hostilities, or any similar act, condition or warlike operation, warlike action by a regular or irregular military force or other authority to hinder or defend against an actual or expected attack;

7.1.2. insurrection, rebellion, revolution, riot, attempt to usurp power, popular uprising, or any action taken by any governmental or martial authority in hindering or defending against any of these;

7.1.3. discharge, explosion, or use of a weapon of mass destruction, whether or not employing nuclear fission or fusion, or chemical, biological, radioactive or similar agents, by any party at any time for any reason;

7.1.4. any claims or legal proceedings (including any costs or expenses of any description) arising out of or in connection with any terrorist action (regardless of any other cause or event contributing concurrently or in any other sequence to the liability) or any action taken in controlling, preventing or suppressing terrorist action.

7.2. This **Policy** does not cover any claims or legal proceedings (including any costs or expenses of any description) arising out of or in connection with any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to, smoke, vapours, soot, dust, fibres, fungi, mould, fumes, acids, alkalis, chemicals and waste (including but not limited to material to be recycled, reconditioned or reclaimed) or contamination of any kind; or ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or radioactive, toxic, explosive or other hazardous properties of any explosive.

# GENERAL CONDITIONS

## 1. Premium

The **Insured** must have paid the relevant premium and have been declared to the **Insurer** by the **Coverholder** as having done so.

## 2. Reporting of Claims

- 2.1. This is a claims made and notified legal expenses insurance which means that, subject to the terms of this **Policy** as a whole, the following conditions apply.
- 2.2. In respect of a **Claim** against the **Insured**, the **Insured** is covered under this **Policy** only if:
  - 2.2.1. the **Claim** is first made against the **Insured** during the **Period of Insurance**; and
  - 2.2.2. the **Insured** notifies the **Claims Administrator** of the **Claim** before the expiration of the **Period of Insurance**.
- 2.3. In respect of a **Claim** by the **Insured**, subject to the terms of this **Policy**, the **Insured** is covered only if:
  - 2.3.1. the **Insured** first becomes aware of the facts and circumstances which might give rise to the **Claim** during the **Period of Insurance**; and
  - 2.3.2. the **Insured** notifies the **Claims Administrator** of those facts and circumstances and the **Insured's** intention to make the **Claim** before the expiration of the **Period of Insurance**.
- 2.4. The **Insured** must notify the **Claims Administrator** by e?mail or post to the address stated in the **Schedule** immediately upon becoming aware of the **Claim** or facts and circumstances, as relevant. Delay may prejudice the **Insured's** legal position. If the **Insured** is in any doubt about the **Insured's** need to notify a **Claim** under this insurance or the **Insured's** eligibility to make a claim in respect of such a **Claim**, then the **Insured** should contact the **Claims Administrator**.
- 2.5. The **Insured** will be sent a claim form. The **Insured** must fill this in fully and truthfully and return it to the **Claims Administrator** and give the **Claims Administrator**, at the **Insured's** own cost, any documentation, evidence, or other information that the **Claims Administrator** may reasonably need in order to assess the **Claim**, including a copy of the **Schedule**.
- 2.6. To enable the **Claims Administrator** to assess the **Claim** the **Insured** must tell the **Insured's** solicitor or tax adviser to:
  - 2.6.1. provide the **Claims Administrator**, as soon as reasonably possible, with:
    - 2.6.1.1. his or her views on the merits of the **Claim** and the strategies and timelines to resolve the **Claim**;
    - 2.6.1.2. his or her detailed estimate of the **Insured's** Costs and **Opponent's Costs** of the **Claim**; and
    - 2.6.1.3. any information, document or file (including the **Insured's** solicitor s or tax adviser s files) relating to the **Claim**, whether or not privileged, that the **Claims Administrator** may ask for.
- 2.7. The **Insured** must also give the **Advice Provider** immediate notice of any proceedings brought against the **Insured**, contemplated by the **Insured** or believed by the **Insured** to be considered by a third party and any summons or other process served or threatened to be served on the **Insured** and/or any other incident or circumstance which may give rise to a **Claim**.

## 3. Observance

The due observance and fulfilment of the terms, conditions and endorsements of this **Policy** insofar as they relate to anything to be done or complied with by the **Insured** and the truth of any statements in the **Insured's** proposal and declaration shall be conditions of any liability of the **Insurer** to make any payment under this **Policy**.

## 4. Acceptance of claim

- 4.1. The **Insurer** will pay the **Insured's** Costs incurred after the **Claims Administrator** accepts the **Insured's** claim in writing and the **Insured's** solicitor or tax adviser confirms in writing that he or she will co?operate with the **Insured** to keep to the terms of this **Policy**.
- 4.2. The **Claims Administrator** will accept the **Insured's** claim only if there are **Prospects of Success**.
- 4.3. The **Insurer** will only meet the **Insured's** Costs of the **Claim** which have been agreed in advance by the **Claims Administrator** as to both amount and purpose.
- 4.4. If at any stage the **Claims Administrator** considers that the **Claim** does not have **Prospects of Success**, the **Insured** will be given an explanation of the decision in writing. The **Insurer** will not provide any further cover for the **Claim**.
- 4.5. If the **Insured** disagrees with the **Claims Administrator's** decision, the **Insured** can refer the matter under the DISPUTE RESOLUTION PROCESS procedure.

## 5. Appointment of Preferred Practitioner and Conduct of Claims

- 5.1. The **Claims Administrator** will arrange for the **Preferred Practitioner** to act on behalf of the **Insured** in the resolution of a **Claim**. The **Insured** shall choose the **Preferred Practitioner** from a list provided by the **Claims Administrator** or, upon request, the **Claims Administrator** will nominate the **Preferred Practitioner**.
- 5.2. The **Insured** will authorise and request the **Preferred Practitioner** to:
  - 5.2.1. provide the **Claims Administrator**, as soon as reasonably possible, with:
    - 5.2.1.1. their views on the merits of the **Claim** and the strategies and timelines to resolve the **Claim**;
    - 5.2.1.2. their detailed estimate of the **Insured's** Costs and **Opponent's Costs** of the **Claim**; and
    - 5.2.1.3. any information, document or file (including the **Preferred Practitioner's** files) relating to the **Claim**, whether or not privileged, that the **Claims Administrator** may ask for;
  - 5.2.2. keep the **Claims Administrator** fully updated during the **Claim**:
    - 5.2.2.1. on the progress of the **Claim**, including any offers to settle;
    - 5.2.2.2. of any change in their views on the merits of the **Claim**; and
    - 5.2.2.3. of any change to their estimate of **Insured's** Costs and **Opponent's Costs**.
- 5.3. The **Insured** will co?operate at all times with:
  - 5.3.1. the **Claims Administrator** and reply promptly to any correspondence about the **Claim**; and
  - 5.3.2. the **Preferred Practitioner** and provide them with all information that they need and attend meetings and hearings whenever the **Insured** are



asked to.

5.4. In the event that the **Claims Administrator** considers it appropriate to refer an issue for expert determination, the **Claims Administrator** will nominate the expert to be appointed for that purpose.

5.5. The **Claims Administrator**, or its agents, may investigate the **Claim**. At its absolute discretion, the **Insurer** may, after considering all the circumstances of the **Claim**, pay the **Insured** an amount equal to the **Claims Administrator's** reasonable estimate of the value of the indemnity instead of providing cover for the costs.

5.6. The **Insured** or the **Preferred Practitioner** must immediately write to tell the **Claims Administrator** of any offer made to settle the **Claim** including offers relating to costs. The **Insured** must not accept any offers without getting the permission of the **Claims Administrator** first. The **Claims Administrator** will not withhold consent in relation to an offer that a reasonable solicitor would recommend to a private client who is paying his or her own fees. If the **Insured** does not accept an offer the **Claims Administrator** considers reasonable, the **Insurer** will not pay any further costs.

5.7. If the **Claims Administrator** considers at any stage that the **Claim** no longer has reasonable **Prospects of Success**, the **Claims Administrator** will give the **Insured** an explanation of that decision in writing. The **Insurer** will not provide any further cover for the **Claim**. If the **Insured** disagrees with the decision, the **Insured** can refer the matter for resolution in accordance with the ENQUIRIES, COMPLAINTS OR DISPUTES procedure.

5.8. If the **Insured** withdraws from or discontinues the **Claim** without getting the permission of the **Claims Administrator** in writing first then the **Insurer** will not pay any costs and will be entitled to recover from the **Insured** any **Insured's Costs** and **Opponent's Costs** paid before the withdrawal or discontinuance. The **Claims Administrator** will not withhold permission in relation to a withdrawal or discontinuance that a reasonable solicitor would recommend to a private client who is paying his or her own fees.

5.9. All accounts for **Insured's Costs** and **Opponent's Costs** payable under this **Policy** must be submitted to the **Claims Administrator** immediately upon receipt.

5.10. If any payment in respect of **Insured's Costs** or **Opponent's Costs** is made under this **Policy** the **Claims Administrator** will be subrogated to the **Insured's** rights of recovery. The **Insured** will not enter into any agreement, arrangement or understanding which has the effect of limiting or compromising the **Claims Administrator's** rights of subrogation.

5.11. If the **Insured** is dissatisfied with any decision made by a **Court or Tribunal** and decides to appeal against that decision, the **Insured** must request the written consent of the **Claims Administrator** no later than 6 business days prior to the expiry of the time for making an appeal. The **Claims Administrator** shall provide consent only if the appeal has **Prospects of Success**.

5.12. If the **Claims Administrator** is dissatisfied with any decision made by a **Court or Tribunal** and wishes to appeal against that decision, the **Insured** will cooperate with the **Claims Administrator** in making such an appeal. In this event, the **Insurer** agrees to pay 100% of the **Insured's Costs** and **Opponent's Costs** up to the **Limit of Indemnity**, subject to the **Annual Aggregate Limit**.

## 6. Assessment and Recovery of Costs

6.1. If the **Claims Administrator** asks, the **Insured** must instruct the **Preferred Practitioner** to send all of his or her files and any bill of costs for taxation or assessment by a court or certification by the appropriate professional body or auditing by cost consultants appointed by the **Claims Administrator**.

6.2. The **Insured** must:

6.2.1. take reasonable steps to recover all costs awarded or agreed to be paid to the **Insured**; and

6.2.2. immediately pay the **Claims Administrator** any Costs recovered, or instruct the **Preferred Practitioner** to do so.

6.3. If the **Insured** pays or agrees to pay costs above the **Limit of Indemnity** in order to resolve a **Legal Action** or **Claim**, any costs awarded or agreed to be paid to the **Insured** will be divided between the **Insurer** and the **Insured** to reflect the proportion of costs that both the **Insurer** and the **Insured** have paid or, but for the recovery of costs from an **Opponent**, would be liable to pay. The **Insured** will pay the **Claims Administrator** or instruct the **Preferred Practitioner** to pay to the **Claims Administrator** the amount that is due to the **Insurer** immediately.

## 7. Notification of Alteration in Risk

The **Insured** must notify the **Coverholder** immediately of any alteration in risk which materially affects this legal expenses insurance. The **Insured** must also declare information in the form and at the intervals the **Claims Administrator** specifies and the **Insured** will pay such additional premium to, or receive a refund of premium from, the **Insurer** as the case may be.

## 8. Insolvency

The **Insurer** is not obliged to indemnify if, at any time, the **Insured** is made bankrupt or goes into liquidation or files a bankruptcy petition or winding up petition or makes an arrangement with the **Insured's** creditors or enters into a deed of arrangement or part or all of the **Insured's** affairs or property are in the control of a receiver or administrator.

## 9. Agreement

The **Insurer** is not bound by any agreement that the **Insured** or the **Preferred Practitioner** makes without the **Claims Administrator's** prior approval or permission.

## 10. Waiver

If the **Insurer** waives any right or breach of any term of this **Policy**, this will not waive any other right or later breach.

## 11. Transferring the Insured's Rights

The **Insured** cannot transfer the **Insured's** rights under this **Policy**.

## 12. Other Parties and Interests

The **Insurer** will not indemnify anyone not named as an **Insured**.

## 13. Cancellation

The **Insurer** may cancel this **Policy** in accordance with Sections 59 and 60 of the *Insurance Contracts Act 1984 (Cwlth)* by giving the appropriate notice to the **Insured**.

# IMPORTANT NOTE

You are advised to read this policy carefully, particularly the exclusions, conditions and limitations.

Should you have any queries about the cover provided please do not hesitate to contact High Street Underwriting who will be pleased to assist with your query.



High Street Underwriting is the appointed insurance intermediary.

In arranging this Insurance High Street Underwriting is acting as agent for the **Insurer** and not as your agent. High Street Underwriting acts under a binding authority given by the **Insurer** to arrange, issue and administer policies. When acting under that authority High Street Underwriting acts as an underwriting agency on behalf of the **Insurer** and not for you. High Street Underwriting is not the **Insurer** for this contract and they are not liable for any loss or claim. The **Insurer** is clearly shown on the **Schedule**.



