



# **Barristers Professional Indemnity Policy Wording**

## Contents

### General Information & Important Notices

How We protect your privacy

General Insurance Code of Practice

Our service commitment

Intermediary Remuneration

We, Us & Our

About Pacific Indemnity

### Policy wording

Insuring Clauses

Insuring Clause clarifications

### Extensions

Compensatory Penalties

Costs of responding to third party claims for equitable relief

Enquiries – legal costs cover – including for regulatory, licensing, disciplinary or coronial enquiries

Vicarious Liability

Extended Continuous cover

Cover to Spouse, domestic partner, Estates, Administrators & Executors and Legal Representatives

Run Off Cover

Office Bearers

### What is not Covered

Claims or Facts Which May Give Rise To Any Claim or Loss or Liability or Enquiry

Foreign Courts

Assumed duty or obligation

Related parties

Refund of Professional Fees and Trading Debts

Profit

Insolvency

Punitive & Exemplary & Liquidated Damages

Bodily Injury and Property

Intentional or Dishonest Damage or Loss

De-Registration

Terrorism

Sanctions

### Limits & GST

Limit of Cover for Claim Investigation Costs

Sub Limits

GST Input Tax Credits

### Claim Conditions

Investigation, defence and settlement of Claims

### General Provisions

Premium Payment

Cover Beneficiaries

Material Change in the Risk

Authority to accept notices & to give instructions

De-registration

Payment in Australian dollars in Australia

Law of the Policy

Territorial & Jurisdiction Limits

Schedule must be included

### Cancelling the Policy

### How to read this Insurance Policy

### Definitions

Bodily Injury

Civil Liability

Claim (or Claims)

Claim Investigation Costs

Compensatory Civil Penalties

Cover (and 'Covered')

Covered Claim

Documents

Employee

Enquiry (or Enquiries)

Excess

Intellectual Property

Known Circumstance

Named Insured

Period of Insurance

Policy

Policy Limit

Principal

Professional Services

Retired Insured

Schedule

Sub Limit(s)

Subsidiary

Terrorism

You / Your

We or Us or Our

## General Information & Important Notices

### How We protect your privacy

We use information provided by Our customers to allow Us to offer Our products and services. This means We may need to collect Your personal information, and sometimes sensitive information about You as well (for example, Your claims history). We will collect this information directly from You where possible, but there may be occasions when We collect this information from someone else.

We will only use Your information for the purposes for which it was collected, other related purposes and as permitted or required by law. You may choose not to give Us Your information, but this may affect Our ability to provide You with insurance cover.

We may share this information with companies within Our group, government and law enforcement bodies if required by law and others who provide services to Us or on Our behalf, some of which may be located outside of Australia.

By applying for, using or renewing any of Our products or services, or providing Us with Your information, You agree to this information being collected, held, used and disclosed as set out in this policy.

You can access Our privacy policy at [www.pacificindemnity.com.au/privacy-policy](http://www.pacificindemnity.com.au/privacy-policy)

### General Insurance Code of Practice

We proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

The objectives of the Code are:

- to commit Us to high standards of service;
- to promote better, more informed relations between Us and You;
- to maintain and promote trust and confidence in the general insurance industry;
- to provide fair and effective mechanisms for the resolution of complaints and disputes between Us and You; and
- to promote continuous improvement of the general insurance industry through education and training.

We have adopted and support the Code and are committed to complying with it. Please contact Us if You would like more information about the Code.

Details of the Code of Practice can be found on-line at: [www.codeofpractice.com.au/](http://www.codeofpractice.com.au/)

### Our service commitment

We are proud of Our service standards and support the General Insurance Code of Practice. In an unlikely event that You are not satisfied with the way in which We have dealt with You, as part of Our commitment to customer service, We have an internal dispute resolution process in place to deal with any complaint You may have.

Please contact Us if You have a complaint, including if You are not satisfied with any of the following:

- one of Our products;
- Our service;
- the service of Our authorised representatives;
- Our claims representatives; or
- Our decision on Your claim.

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

Details of Our internal dispute resolution process are available from Our office.

### Intermediary Remuneration

Pacific Indemnity Underwriting Solutions Pty Ltd pays remuneration to insurance intermediaries when We issue, renew or vary a policy the intermediary has arranged or referred to Us. The type and amount of remuneration varies and may include commission and other payments. If You require more information about remuneration We may pay Your intermediary You should ask Your intermediary.

### We, Us & Our

For the purposes of this General Information and Important Notices, 'We' means Pacific Indemnity Underwriting Solutions Pty Ltd ABN 14 606 511 639 - on behalf of Berkley Insurance Company trading as Berkley Re ABN 53 126 559 706.

### About Pacific Indemnity

Pacific Indemnity Underwriting Solutions Pty Ltd, ABN 14 606 511 639, specialises in Professional Risk insurance (including Professional Indemnity Insurance, Malpractice Insurance, Information & Communication Technology Insurance, Management Liability Insurance and similar products).

In arranging this insurance, Pacific Indemnity is acting on behalf of the insurer, Berkley Insurance Company trading as Berkley Re ABN 53 126 559 706.

Pacific Indemnity's Australian Financial Service Licence number is 480863.

### Wholesale only

Pacific Indemnity Underwriting Solutions Pty Ltd is only licensed to offer or provide General Insurance products or services which do not include any of the following types of General Insurance (which are defined by the Corporations Act as "retail"): Motor Vehicle, Home Building, Home Contents, Sickness and Accident, Consumer Credit, Travel, Personal or Domestic Property, Medical Indemnity or any other kind of General Insurance which has been prescribed by the Corporations Regulations.

## Policy wording

### Insuring Clauses

**We** will indemnify **You** in respect of any **Claim** for **Civil Liability** incurred by **You** while engaging in legal practice as a barrister within Australia.

**We** do this only for **Claims** which:

- (i) are made against **You** during the **Period of Insurance**; and
- (ii) **We** are told about in writing as soon as reasonably possible during the **Period of Insurance**.

**We** will also pay on **Your** behalf (and as needed, advance) the **Claim Investigation Costs**. **We** are not however obliged to defend, or to continue to defend, any **Claim** or pay, or continue to pay, **Claim Investigation Costs** for **Covered Claims** once the **Policy Limit** (or the **Sub Limit**, as the case may be) has been exhausted.

All **Cover** provided under this **Policy** is subject to the Insuring Clauses and all the **Policy** terms, conditions, exclusions and limits contained in or endorsed on this **Policy** and the payment of the Gross Premium stated in the **Schedule**.

### Insuring Clause clarifications

For clarity, and subject to the terms, conditions, exclusions and limits of the **Policy**, **Civil Liability Covered** by this **Policy** includes (but is not necessarily limited to) liability arising from the provision of **Professional Services** for the following:

- Breach of professional duty;
- Breach of confidentiality;
- Breach of privacy;
- Breach of fiduciary duty;
- Defamation;
- Loss of or damage to **Documents** (to the full policy limit);
- Liability for the dishonest, fraudulent, criminal or malicious acts or omissions of persons for whom **You** are responsible – vicarious liability;
- **Intellectual Property** breaches;
- Breaches of the Competition and Consumer Act and the Fair Trading Acts (Australian & New Zealand);
- Misleading and deceptive conduct breaches under the Australian Securities and Investments Commission Act 2001;
- Vicarious Liability;
- Unintentional breaches of warranty of authority.

## Extensions

Each of the following Extensions automatically applies unless otherwise stated in the endorsements or the **Schedule**. Each of the Extensions is subject to the Insuring Clause and all other terms, exclusions, conditions and the **Policy Limit** of this **Policy** unless otherwise expressly stated.

### Compensatory Penalties

Notwithstanding the Punitive & Exemplary & Liquidated Damages Exclusion, **We Cover Claims** for compensatory civil penalties. **Our** total liability for the payment of **Compensatory Civil Penalties** under the **Policy** shall not exceed \$250,000 in the aggregate, which is included within and not in addition to the **Policy Limit**.

However, **We** will not be liable to **Cover You** for any **Compensatory Civil Penalty**:

- a) for which **We** are legally prohibited at law from indemnifying **You**;
- b) based upon, attributable to or in consequence of any:
  - (i) wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation; or
  - (ii) gross negligence or recklessness; or
  - (iii) relating to any requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue charge or impost.

### Costs of responding to third party claims for equitable relief

In so far as an action for equitable relief is brought against **You** while this **Policy** is in force, and **We** are told about this in writing as soon as reasonably possible while the **Policy** is in force, then **We** will also pay on **Your** behalf (and as needed, advance) the **Claim Investigation Costs** of any such action (to the extent that such **Claim Investigation Costs** are not otherwise covered by the Insuring Clauses).

### Enquiries – legal costs cover – including for regulatory, licensing, disciplinary or coronial enquiries

For those **Enquiries** of which **You** first become aware (and of which **We** are told about in writing as soon as reasonably possible) while this **Policy** is in force, **We Cover You** and **Your Employees** up to \$250,000 in the aggregate in respect of **Claim Investigation Costs** for **Your** representation at any such **Enquiry**. This **Cover** does not extend to paying **Your** regular or overtime wages, salaries or fees. The **Excess** applicable to the **Cover** provided under this Extension is the **Excess** stated in the **Schedule**.



### Vicarious Liability

The performance of **Professional Services** by **You** includes, for the purpose of this **Policy**, acts, errors or omissions of **Your** agents or consultants while undertaking work pursuant to the contract with **You** which is reasonably incidental to **Your Professional Services** and for which **You** are liable. Such agents and consultants, however, are not **Covered** by this **Policy**.

### Extended Continuous cover

**We Cover You** for any **Claim**, otherwise **Covered** by this **Policy**, arising from a **Known Circumstance** (notwithstanding the exclusion for **Claims** arising from **Known Circumstances** within this **Policy**) if:

- a) There has been no fraudulent non-disclosure or fraudulent misrepresentation in respect of such **Known Circumstance**; and;
- b) where prior to the **Period of Insurance** stated in the **Schedule You** first became aware of a fact, situation or circumstance which might give rise to a **Claim** but only:
  - (i) during a period of insurance in which **We** continued without interruption to be **Your** professional liability insurer until this **Policy** came into effect; or
  - (ii) during a period of insurance in which the immediate previous insurer continued without interruption to be the insurer until a period of insurance specified in (i) above; and
- c) if there was no interruption between the periods of insurance specified in (i) and (ii) above; and
- d) had **We** (or the said previous insurer) been notified by **You** of the **Known Circumstance** when **You** first knew of it, **You** would have been entitled to **Cover** under the policy in force at that time but are not now entitled to be **Covered** by that policy, and **You** would (but for the **Known Circumstances** exclusion of this **Policy**) otherwise be **Covered** under this **Policy**; and
- e) neither the **Claim** nor **Known Circumstance** have previously been notified to **Us** or to any other insurer.

If **You** still have an entitlement to indemnity, in whole or in part, under another policy, then this Extended Continuous Cover extension does not apply to provide indemnity under this **Policy**.

**We** may reduce the amount **We** pay out under this extension by the amount of any prejudice **We** may suffer in consequence of any delayed notification to **Us** or the previous insurer.

The **Policy Limit** of the **Cover We** provide under this extension is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph b) (i) or (ii) above, or under this **Policy** and the terms of this **Policy** otherwise apply.

Entitlement to **Cover** under this Extension is conditional upon the receipt of all **Policy Documents** requested by **Us**. For the purposes of this Extension, '**Policy Documents**' means:

- (i) the policy schedule; and
- (ii) the policy wording; and
- (iii) any endorsements attaching to (i) and (ii) above;

issued to **You** by the immediate previous insurer for each professional liability policy in force from the time **You** first became aware of a fact, situation or circumstance which might give rise to a **Claim** to the period of insurance specified in paragraph b) (ii) above; and

- (iv) each professional liability proposal form submitted by **You** in application for insurance for the periods of insurance referred to in paragraph b) (ii) above and relied upon by the immediate previous insurer.

### Cover to Spouse, domestic partner, Estates, Administrators & Executors and Legal Representatives

If **You**, or anyone entitled to **Cover** under this **Policy**, dies or becomes legally incompetent or insolvent, **We Cover Your** spouse, domestic partner, estate, legal representative or assigns, or the party entitled to **Cover**, to the same extent as **Cover** would otherwise have been available to **You**, but only in respect of **Your** acts errors or omissions and not of the spouse, domestic partner, estate, administrator, executor, legal representatives or assigns.

### Run Off Cover

If the **Named Insured** cease practice as a barrister for any reason including death and ceases to hold a practicing certificate issued by an Australian or New Zealand bar association during or within one day after the expiry of the **Period of Insurance** stated in the **Schedule** or if the **Named Insured** ceases Practice on their own account and becomes a "government lawyer" (as defined by section 6 of the Legal Profession (Uniform Law) (NSW)) who holds a practising certificate issued by an Australian or New Zealand Bar Association during or within one day after the expiry of the **Period of Insurance** stated in the **Schedule**, then **We** agree to **Cover** the **Retired Insured** for any **Claim** arising from the **Named Insured's** practice as a barrister which **Claim** is first made and notified to **Us** during the period of seven (7) years from the expiry date of this **Policy**. Provided that:

- a) such **Cover** shall only apply in respect of any act, error or omission occurring prior to the date that the **Retired Insured** ceased practicing as a barrister;
- b) notification of ceasing practicing as a barrister has been provided to **Us** within 21 days after the expiry of the **Period of Insurance**;
- c) any executor or administrator of the **Retired Insured's** estate shall be subject to the terms of this **Policy**;
- d) no **Cover** is provided under this Extension if **You** return to practising as a barrister and have an entitlement to indemnity in whole or in part under any other policy of insurance.

- e) this **Cover** is otherwise subject to all the terms, conditions, limitations and exclusions of this **Policy**.

The term “**Retired Insured**” means the person specified in the **Schedule** who has ceased to practice as a barrister or as a legal practitioner during the **Period of Insurance** stated in the **Schedule**.

### Office Bearers

**We** will pay to or on **Your** behalf all awards of damages and awards of claimants’ costs against **You** resulting from any **Claim** for professional negligence arising from **Your** duties as a director of a company which operates as a barrister clerk.

## What is not Covered

**We** do not **Cover You** for or in respect of:

### Claims or Facts Which May Give Rise To Any Claim or Loss or Liability or Enquiry

**Claims**, or facts which might give rise to any **Claim** or loss or liability or **Enquiry**:

- a) known to **You** at the inception date of this **Policy**; or
- b) arising from a **Known Circumstance**; or
- c) directly or indirectly based upon, attributable to, or in consequence of any **Known Circumstance** or known **Claims**, losses, liabilities or **Enquiries**; or
- d) if the **Policy** is endorsed or amended mid term, for any **Claim** or **Covered Claim** or any associated costs that arose from a **Known Circumstance** (as at the effective date of the amendment/endorsement) to the extent that the **Claim** or **Covered Claim** or any associated costs would not have been **Covered** by the **Policy** before such amendment/endorsement.

### Foreign Courts

#### Claims:

- a) first brought in or determined pursuant to the laws 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 in or determined pursuant to the laws of the United States of America or the Dominion of Canada, or their territories or protectorates; or
- c) where the proper law of the United States of America or the Dominion of Canada, or their territories or protectorates is applied to any of the issues in any **Claim** or **Covered Claim**, **Covered** by this **Policy**.

### Assumed duty or obligation

#### Claims:

- a) which allege a liability under a contractual warranty, guarantee or undertaking (unless the liability would have existed regardless of the contractual warranty, guarantee or undertaking); or
- b) which arise from circumstances where a right of contribution or indemnity has been given up by **You**; or
- c) which arise from circumstances where someone has done work or provided services under an arrangement or agreement with **You** which limits any potential right for **You** to receive contribution or indemnity from that person; or
- d) which arise from any **Civil Liability** which **You** agree to accept in connection with the provision of the **Professional Services** which is more onerous than that which **You** would otherwise have at common or Statute law; or
- e) which arise from any business not conducted for or on behalf of the **Named Insured** firm or entity.

### Related parties

**Claims** against any of **You** brought by or on behalf of:

- a) any other of **You**; or
- b) any company in respect of which **You** or any person or party specified in a) above holds (beneficially or otherwise) more than 10% of the voting shares or rights and/or an executive role; or
- c) any trust in respect of which **You** or any person or party specified in a) above is a trustee and/or beneficiary and/or has a direct or indirect financial interest; or
- d) any other person, firm or incorporated body having control of over 10% or more of the voting shares or rights or an executive role in the operation of the **Named Insured** firm or entity.

### Refund of Professional Fees and Trading Debts

#### Claims:

- a) for (or calculated by reference to) the refund of professional fees or charges (by way of damages, offset or otherwise); or
- b) for the costs and expenses incurred by or on **Your** behalf in complying with any contractual obligations or making good any faulty product; or
- c) directly or indirectly arising from the provision of cost guarantees, estimates of probable costs, estimates of probable financial savings or contract price or cost estimates being exceeded; or
- d) related to a liability to pay trading debts, or the repayment of any loan.

## Profit

Any forgone or un-realised profit. In particular, there is no **Cover** under this **Policy** for any component of profit which would have been derived or derivable by **You** from the sale or supply of any goods, services or rights by **You** or on **Your** behalf.

## Insolvency

Liability or loss directly or indirectly arising out of or in any way connected with **Your** insolvency, bankruptcy or liquidation.

## Punitive & Exemplary & Liquidated Damages

For punitive, aggravated or exemplary or liquidated damages or for fines or penalties. Further, this **Policy** does not provide **Cover** for any investigation or defence costs associated with such **Claims** or **Covered Claims**.

## Bodily Injury and Property

**Claims** against any of **You** for:

- a) **Bodily injury**; other than for a **Claim** arising from the provision of **Your Professional Services**; or
- b) loss or damage to tangible property (other than to **Documents**).

## Intentional or Dishonest Damage or Loss

Intentional or dishonest damage or loss

- a) arising from **Your** acts, errors, omissions or conduct, or acts, errors, omissions or conduct by a party otherwise entitled to **Cover** under this **Policy**, with the intention (or with reckless disregard for the consequences) of either:
  - (i) causing loss, damage or injury (including mental or emotional damage), or
  - (ii) depriving a third party (or another of **You**) of a tangible or intangible asset or thing to which they are entitled;
- b) arising from any wilful breach of any statute, contract or duty by **You**;
- c) arising from **Your** fraud or dishonesty or criminal or malicious acts or omissions or conduct.

This exclusion does not restrict **Cover** otherwise provided under the **Policy** for vicarious liability for the dishonest, fraudulent, criminal or malicious acts or omissions of persons for whom **You** are responsible.

## De-Registration

**Claims** arising from acts, errors or omissions by or on **Your** behalf which occurred at a time when a statutory registration or licence (which was required by law in order for **You** to be entitled to practice or provide the **Professional Services**) was not held, was cancelled or suspended or was otherwise not current or valid for the **Professional Services** provided.

## Terrorism

**Claims** directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with:

- a) any act of **Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss, damage, illness, injury, death, cost or expense; or
- b) any action in controlling, preventing, suppressing, retaliating against, or responding to any act of **Terrorism**.

## Sanctions

**Claims** in respect of which and to the extent to which the trade or economic sanctions or other laws or regulations prohibit us from providing **Cover**.

## Limits & GST

**Cover** under this **Policy** shall not exceed the **Policy Limit** for any one **Claim** or series of **Claims** (including **Covered Claims**) arising from the same or interrelated acts, errors or omissions. For the purposes of this **Policy**, all such **Claims** shall be deemed to have been made against **You** in the earliest **Period of Insurance** in which such a **Claim** is first made against **You** (or during which **You** first become aware of facts that might give rise to a **Claim**).

Where the same **Claim** is made against more than one of **You** then the limit is not increased by reason of the number of persons against whom the **Claim** is made.

## Limit of Cover for Claim Investigation Costs

Where **Cover** is provided under this **Policy** for any **Claim**, then **Claim Investigation Costs** are payable in respect of that **Claim** in addition to the **Policy Limit** but only up to an amount equal to the **Policy Limit**.

## Sub Limits

If this **Policy** or the **Schedule** indicates any **Sub Limits** for specific types of **Cover** under this **Policy**, then the applicable **Sub Limits** and not the **Policy Limit** apply only to these **Claims**. These **Sub Limits** are included within and not in addition to the **Policy Limit**.

## GST Input Tax Credits

- a) Where and to the extent that **We** are entitled to claim an Input Tax Credit for a payment made under the **Policy**, then any monetary limit in the **Policy** on **Our** obligation to make such a payment, shall be net of **Our** entitlement to the Input Tax Credit.
- b) Where and to the extent that **You** are entitled to claim an Input Tax Credit for a payment required to be made by **You** as an **Excess**, then the amount of the **Excess** shall be net of **Your** entitlement to the Input Tax Credit.
- c) Where payment is made under this **Policy** for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that **You** are, or will be, entitled to under A New Tax

System (Goods and Services Tax) Act 1999 in relation to that acquisition, whether or not that acquisition is made.

- d) Where payment is made under this **Policy** as compensation instead of payment for the acquisition of goods, services or other supply, **We** will reduce the amount of the payment by the amount of any Input Tax Credit that **You** would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

## Claim Conditions

### Investigation, defence and settlement of Claims

#### We must be told about Claims

**You** must tell **Us** in writing about any **Claims** or losses as soon as possible and while this **Policy** is in force.

#### Claims co-operation

Each of **You** must:

- a) diligently do, and allow to be done, everything reasonably practicable to avoid or lessen **Your** liability in relation to a **Claim** (or **Covered Claim**) or loss otherwise **Covered** by this **Policy**;
- b) promptly give to **Us** all the help and information that **We** may reasonably require to:
  - (i) investigate, mitigate and defend a **Claim** or loss; and
  - (ii) determine **Our** liability under this **Policy**.

#### We can protect Our position

When **We** receive a notification of a **Claim**, or **Covered Claim**, then **We** can take whatever action **We** consider appropriate to protect **Our** position.

This does not, however:

- a) indicate that any of **You** is entitled to be **Covered** under this **Policy**; or
- b) prejudice **Our** rights under the **Policy** or at law.

#### We can manage the Claim (or Covered Claim) on Your behalf

**We** can:

- a) take over and defend or settle any **Claim** (or **Covered Claim**) in **Your** name; and
- b) claim in **Your** name, any right that **You** may have for contribution or indemnity.

### You must not admit liability for or settle any Claim (or Covered Claim)

**You** must not:

- a) admit liability for, or settle any **Claim** (or **Covered Claim**); or
- b) incur any **Claim Investigation Costs** without first obtaining **Our** written consent.

#### Your right to contest

If **You** elect not to consent to a settlement that **We** recommend and **You** want to contest or continue the dispute or legal proceedings, then **We** will only **Cover You** (subject to the **Policy Limit**) for:

- a) the amount **We** could have settled the matter for; less
- b) the relevant **Excess** specified in the **Schedule**; plus
- c) the **Claim Investigation Costs** calculated to the date **You** elected not to consent to the settlement.

#### Senior Counsel

Unless a Senior Counsel, that **We** and **You** both agree to instruct, advises that the **Claim** or **Covered Claim** should be contested, then (subject to Section 43 of the Insurance Contracts Act) neither **We** nor **You** can require the other to contest any legal proceedings about a **Claim** if the other does not agree to do so.

In formulating his or her advice, Senior Counsel must be instructed to consider the economics of the matter, having regard to but not limited to:

- a) the damages and costs likely to be recovered; and
- b) the likely costs of defence; and
- c) **Your** prospects of successfully defending the **Claim** or **Covered Claim**.

The cost of Senior Counsel's opinion will form part of the **Claim Investigation Costs**.

If Senior Counsel advises that the matter should be or is appropriate to be settled and if the terms of settlement which **We** recommend are within limits which are reasonable (in Senior Counsel's opinion and in the light of the matters he/she is required to consider), then **You**:

- a) cannot (subject to the provisions herein under the heading "Your right to contest") object to the settlement; and
- b) must within a reasonable time pay the relevant **Excess** specified in the **Schedule**.

#### Payments to settle potential Claims

Any money **We** pay to settle anything which might give rise to a **Claim** (or **Covered Claim**), is taken to be:

- a) a payment to settle a **Claim** (or **Covered Claim**); and
- b) a payment for the purpose of calculating the total of all **Claims** (or **Covered Claims**) under this **Policy**.

### Recovering money from Employees

**We** will not recover any amount paid out in respect of a **Claim** or loss under this **Policy** from any of **Your Employees** or former **Employees** unless the **Claim** (or **Covered Claim**) arose from dishonest, fraudulent, criminal or malicious acts or omissions of such **Employee** or former **Employee**.

### The Excess

- a) **We** only provide **Cover** (up to the **Policy Limit**) for that part of the **Covered Claim** above the **Excess** specified in the **Schedule**.
- b) There is no **Excess** for **Claim Investigation Costs** when **We** **Cover You** for this **Covered Claim**.
- c) Only one **Excess** is payable for any one **Claim** or series of **Claims** (including **Covered Claims**) arising from the same or interrelated acts, errors or omissions.

### Advancement of Claim Investigation Costs

If **We** elect not to take over and conduct the defence or settlement of any **Claim**, then **We** will pay all reasonable and necessary **Claim Investigation Costs** provided that:

- a) **We** have not already denied indemnity under the **Policy**; and
- b) **Our** written consent is obtained prior to **You** incurring such **Claim Investigation Costs** (such consent not to be unreasonably withheld).

**We** reserve the right to recover any **Claim Investigation Costs** paid under this provision from **You**, in the event and to the extent that:

- a) **You** make an admission in writing of any fraudulent, dishonest, malicious or intentional conduct; or
- b) it is subsequently established, directly or indirectly, by admission, judgment or other final adjudication, that **You** were not entitled to **Cover** under this **Policy**.

### Allocation

- a) If a **Claim** includes both matters which are **Covered** and matters which are not **Covered** by this **Policy**, then both **You** and **We** will allocate (based upon **Your** relative legal and financial exposures to matters **Covered** and matters not **Covered** by this **Policy**) any amounts which have been incurred by or on **Your** behalf.
- b) If both **You** and **We** cannot agree on an allocation of such amounts incurred by or on **Your** behalf then:
  - (i) **We** will advance such portion of the **Claim investigation Costs** which **We** deem to be **Covered** under this **Policy**, unless and until a different and final allocation is mutually agreed upon between **You** and **Us**.

- (ii) **We** may, in **Our** sole discretion, pay amounts (other than amounts for **Claim Investigation Costs**) which **We** deem to be **Covered** under this **Policy**, unless and until a different and final allocation is mutually agreed upon between **You** and **Us** or is judicially determined.
- (iii) any allocation of damages, **Claim Investigation Costs** or other amounts which are mutually agreed upon between **You** and **Us** in accordance with this provision will be applied retroactively to such amounts notwithstanding any prior payment or advancement, as the case may be, to the contrary.
- (iv) any allocation or advancement of **Claim Investigation Costs** will not apply to or create any presumption with respect to the allocation of amounts in respect of a **Claim**, other than in respect of **Claim Investigation Costs**.

### Disclosure of information to Us in respect of the Cover and the Claim (or Covered Claim)

The solicitors instructed by **Us** for any **Claim** (or **Covered Claim**) can disclose to **Us** any information that they may receive in that capacity, wherever and from whomsoever they obtain it and notwithstanding that they may also be representing **You** in respect of the notified circumstance or **Covered Claim**. By claiming under this **Policy**, **You** (and any person entitled to indemnity under this **Policy**) authorise such solicitors to disclose this information to **Us**.

## General Provisions

### Premium Payment

The **Cover We** provide in this **Policy** is subject to full payment of the Gross Premium as nominated on **Your** practicing certificate payment form. If full payment of the Gross Premium is not made, there is no **Cover**.

### Cover Beneficiaries

In so far as **Cover** is extended under this **Policy** to individuals and entities who are not a contracting party under this **Policy**, such **Cover** is subject to those individuals and/or entities (as the case may be) agreeing in writing within a reasonable time of notification to **Us** of the **Claim** or **Covered Claim**:

- a) to be bound by the terms, conditions, exclusions and limits of this **Policy**;
- b) to be bound by obligations of utmost good faith as if they were a contracting party; and
- c) to be liable individually, and together with **You**, for paying the **Excess** (or any other payment due to **Us** under this **Policy**) in respect of any **Cover** provided to them under this **Policy**.

### Material Change in the Risk

**You** must within a reasonable time advise **Us** in writing of any material change in the risk **Covered** by this **Policy**.



### Authority to accept notices & to give instructions

The person or entity first listed as the **Named Insured** in the **Schedule** is appointed as agent of:

- a) each of **You**; and
- b) any person or entity who is entitled to a benefit under this **Policy** (when they request **Cover** or suffer a loss under this **Policy**) in all matters relating to this **Policy**, and to **Claims** or **Covered Claims** which are (or are to be) **Covered** by the **Policy**.

In particular (but without limitation) the person or entity first listed in the **Schedule**, as the **Named Insured**, is the agent for the following purposes:

- (i) to give and receive notice of **Policy** cancellation, to pay premiums and to receive any return premiums that may become due under this **Policy**; and
- (ii) to accept endorsements or other notices provided for in this **Policy**; and
- (iii) to give instructions to solicitors or counsel that **We** appoint or agree to, and to receive advice from them and to act on that advice; and
- (iv) to consent to any settlement that **We** recommend; and
- (v) to do anything that **We** or **Our** legal advisers think might help with the procedures set out in this **Policy** for settling and defending **Claims** or **Covered Claims**; and
- (vi) to give **Us** information relevant to this **Policy**, which **We** can rely on when **We** decide whether to accept the risk, and set the **Policy** terms or the premium.

### De-registration

**You** must tell **Us** within a reasonable time in writing if **Your** statutory registration or licence, (which you are legally required to hold to provide **Professional Services**) is cancelled, suspended or terminated or has had conditions imposed during the **Period of Insurance** specified in the **Schedule**.

### Payment in Australian dollars in Australia

All premiums and **Claims** must be paid in Australian dollars in Australia.

### Law of the Policy

This **Policy** is governed by the law of the State of Queensland, Australia. The courts of Queensland have jurisdiction in any dispute about or under this **Policy**.

### Territorial & Jurisdiction Limits

**Cover** under this **Policy** is not restricted by where anything giving rise to the **Claim** occurred. However, **Our Cover** is restricted in accordance with the **Foreign Courts** exclusion in this **Policy**.

### Schedule must be included

This **Policy** is only legally enforceable if it includes a **Schedule** issued by **Us**.

## Cancelling the Policy

**You** are not entitled to cancel this **Policy**.

### We can cancel the Policy

**We** may only cancel this **Policy** in the event of non-payment of premium.

## How to read this Insurance Policy

### (a) Words with special meanings

Some of the words in this **Policy** wording have special meanings. These meanings can be found in Definitions. If a word has a special meaning, it appears in this **Policy** in bold type and with a capital letter. These words may appear without bold type in endorsements in the **Schedule**.

### (b) Policy Interpretation

Except where the context otherwise requires it:

- (i) the singular includes the plural and the plural includes the singular;
- (ii) if a word or phrase is defined, its grammatical forms have a corresponding meaning;
- (iii) words importing a gender include every other gender.

## Definitions

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

### Bodily Injury

Physical or bodily injury, sickness, death, disease or any psychological or psychiatric injury.

### Civil Liability

Liability for the compensatory damages, costs and expenses which a civil court orders **You** to pay on a **Claim** (as opposed to criminal liability or penalties). It includes the legal costs of the person making the **Claim**, for which **You** become liable.

### Claim (or Claims)

The receipt by **You** of:

- a) any originating process (in a legal proceeding or arbitration), cross claim or counter claim or third party or similar notice claiming compensation against **You**; or
- b) any written or verbal demand from a third party claiming compensation against **You**.

### Claim Investigation Costs

The reasonable and necessary legal costs and expenses (other than regular or overtime wages, salaries or fees of any of **You**) incurred by or on **Your** behalf with **Our** prior approval in the investigation, defence or settlement of any **Claim** or **Covered Claim** which is **Covered** by this **Policy** at the time the legal costs and expenses arise.

### Compensatory Civil Penalties

Pecuniary penalties awarded in and under the laws of the jurisdictions of Australia and New Zealand, against:

- (a) **You** for any civil offence; or
- (b) **You** for a strict liability offence in connection with a breach of occupational health and safety law or regulation ("OH&S"),

but solely resulting from the conduct of the **Professional Services**.

### Cover (and 'Covered')

Indemnity under this **Policy**.

### Covered Claim

The:

- a) **Claims**, liabilities, losses, costs; or
- b) facts which may give rise to a **Claim**,

which **We** may **Cover** or agree to **Cover** under this **Policy**.

### Documents

**Documents** of any nature including the electronically stored data, software or computer programs for or in respect of any computer system; but not including bearer bonds, coupons, bank notes, currency notes or negotiable instruments.

Loss or damage to **Documents** does not include:

- a) loss or damage (including rearrangement) to such electronically stored data, software or computer programs arising from any computer virus or malware or from any design or programming defect in any computer program or computer operating system;
- b) normal wear and tear or the action of insects or rodents or other gradual process;
- c) documents lost, damaged or mislaid outside of Australia or New Zealand.

### Employee

A natural person who is not a **Principal**, but who is or was, at the time the relevant act, error or omission giving rise to the **Claim**, a person who:

- a) is a party to a contract of service with the **Named Insured** and is or was remunerated by **You** for that service; or
- b) is neither a party to a contract of service with the **Named Insured**, nor an independent contractor, but a party to a contract for services with the **Named Insured** for the provision of services to the **Named Insured** for reward; or
- c) a volunteer worker; or
- d) a student,

and in respect of a), b), c) and d) above is (or was) at the time of the act, error or omission which gave rise to the **Claim** under **Your** direct control and supervision in the provision of **Professional Services**.

### Enquiry (or Enquiries)

Any legal or quasi legal enquiry including coronial enquiry (into a matter arising out of the provision of **Professional Services** including an alleged breach of Rule 123 of the Barristers Rules 2015, and such matter is the subject of and is not excluded from **Cover** under this **Policy**) in respect of which **You** are legally required to participate by reason of the fact that the body conducting the enquiry (including a regulatory, licensing or statutory body) has legal jurisdiction over **You** or any of **You** (either by reason of a statutory power or by reason of **Your** membership of a professional association which has the power to discipline its members.

### Excess

The part **You** must pay of each **Covered Claim**.

### Intellectual Property

Copyright, design, patent, trade mark or moral right, including false attribution of authorship (under the Copyright Act 1968).

### Known Circumstance

Any fact, situation or circumstance of which:

- a) any of **You** was aware at any time before this **Policy** began or before this **Policy** was amended or endorsed; or
- b) a reasonable person in **Your** professional position would have thought, at any time before this **Policy** began or before this **Policy** was amended or endorsed,

might result in someone making an allegation against any of **You** in respect of a liability or loss that might be **Covered** by this **Policy** or any amendment or endorsement of this **Policy**.

### Named Insured

Any person or entity expressly identified in the **Schedule** as the **Named Insured**.

### Period of Insurance

The **Period of Insurance** specified in the **Schedule** – being the period between the inception date of this **Policy** and the expiry date of this **Policy** at 11:59 PM. The time being determined at the place where the **Policy** was issued.

### Policy

The insurance contract made up of:

- a) this document;
- b) the **Schedule**; and
- c) the endorsements, if any, contained or referred to in the **Schedule**.

### Policy Limit

The **Policy limit** specified in the **Schedule**.

### Principal

A sole practitioner, a partner of a firm, or a director of a company, which firm or company is **Covered** by this **Policy**.

### Professional Services

Legal practice as a barrister within Australia. The performance of **Professional Services** by **You** includes, for the purpose of this **Policy**, acts, errors or omissions of **Your** agents or consultants while undertaking work which is reasonably incidental to the conduct by **You** of the **Professional Services** and for which **You** are liable. Such agents and consultants, however, are not **Covered** by this **Policy**.

### Retired Insured

The **Named Insured** specified in the **Schedule** who has ceased to practice as a barrister or as a legal practitioner, or who has become a “government lawyer” (as defined by section 6 of the Legal Profession (Uniform Law) (NSW)) during the **Period of Insurance** stated in the **Schedule**.

### Schedule

The schedule to this **Policy** wording, which is issued by **Us**.

### Sub Limit(s)

The limit of **Cover** for each of the matters referred to in this **Policy** as being subject to a **Sub Limit of Cover**. If this **Policy** indicates any **Sub Limits** for specific types of **Cover** under this **Policy**, then the applicable **Sub Limits** and not the **Policy Limit** apply only to these **Claims**. These **Sub Limits** are included within and not in addition to the **Policy Limit**.

### Subsidiary

Any company or other incorporated entity which, at the commencement of the **Period of Insurance**, and by virtue of Australian law was, or is, either directly or indirectly a subsidiary of any incorporated body identified in the **Schedule**.

### Terrorism

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

- a) involves violence against one or more persons; or
- b) involves damage to property; or
- c) endangers life other than that of the person committing the action; or
- d) creates a risk to health or safety of the public or a section of the public; or
- e) is designed to interfere with or to disrupt an electronic system.

### You / Your

Each of the following, individually and jointly:

- a) each person, firm or incorporated body identified in the **Schedule** as a **Named Insured**; and
- b) any entity which is engaged in the provision of **Professional Services** and which is created and controlled, while this **Policy** is in force, by anyone identified in the **Schedule** as a **Named Insured**; and
- c) any person, firm or incorporated body who is entitled to **Cover** under the terms of this **Policy** (as a beneficiary), including any **Employee** or former **Employee**.

### We or Us or Our

Pacific Indemnity Underwriting Solutions Pty Ltd  
ACN 606 511 639 - on behalf of Berkley Insurance Company  
trading as Berkley Re ABN 53 126 559 706.