

Employment Practices Liability Coverage Section

SCHEDULE

Herein called the Company

Item 1. Principal Organisation:

Item 2. Limits of Liability:

(a)	Each Loss:	\$
(b)	Each Policy Period:	\$

Note that the limits of liability and any deductible amount are reduced or exhausted by **Defence Costs**.

Item 3. Deductible Amount: \$

Item 4. Insured Organisation:

Item 5. Extended Reporting Period:

(a)	Additional Premium:	\$
(b)	Additional Period:	

Item 6. Pending or Prior Date:

Item 7. Endorsement(s) Effective at Inception:

In consideration of payment of the premium and subject to the Declarations, the Schedule of this coverage section, the General Terms and Conditions, and the limitations, conditions, provisions and other terms of this coverage section, the Company agrees as follows:

Insuring Clause 1. The Company shall pay on behalf of the **Insureds** all **Loss** for which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against the **Insured** during the **Policy Period** or, if exercised, during the Extended Reporting Period, for a **Wrongful Act** committed, attempted, or allegedly committed or attempted, by such **Insured** before or during the **Policy Period**.

Estates and Legal Representatives 2. Subject otherwise to the Declarations, the Schedule of this coverage section, the General Terms and Conditions and the limitations, conditions, provisions and other terms of this coverage section, coverage shall extend to **Claims** for the **Wrongful Acts** of **Insured Persons** made against the estates, heirs, legal representatives or assigns of **Insured Persons** who are deceased or against the legal representatives or assigns of **Insured Persons** who are incompetent, insolvent or bankrupt.

Defence and Settlement 3. The Company shall have the right and duty to defend any **Claim** covered by this coverage section. Coverage shall apply even if any of the allegations are groundless, false or fraudulent. The Company's duty to defend shall cease upon exhaustion of the Company's applicable Limit of Liability set forth in Item 2 of the Schedule for this coverage section.

The Company may make any investigation it deems necessary and may, with the written consent of the **Insured**, make any settlement of a **Claim** it deems expedient. If the **Insured** withholds consent to such settlement, the Company's liability for all **Loss** on account of such **Claim** shall not exceed the amount for which the Company could have settled such **Claim** plus costs, charges and expenses accrued as of the date such settlement was proposed in writing by the Company to the **Insured**.

The **Insureds** agree not to settle any **Claim**, incur any **Defence Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Company's written consent, which shall not be unreasonably withheld. The Company shall not be liable for any settlement, **Defence Costs**, assumed obligation or admission to which it has not consented.

The **Insureds** agree to provide the Company with all information, assistance and cooperation which the Company reasonably requests and agree that in the event of a **Claim** the **Insureds** will do nothing that may prejudice the Company's position or its potential or actual rights of recovery.

Defence Costs incurred by the Company, or by the **Insured** with the written consent of the Company, are part of and not in addition to the Company's applicable Limit of Liability set forth in Item 2 of the Schedule for this coverage section, and the payment by the Company of **Defence Costs** reduces such applicable Limit of Liability.

Extended Reporting Period 4. If this coverage section is terminated or not renewed for any reason other than nonpayment of premium, any **Insured** shall have the right, upon payment of the additional premium set forth in Item 5(a) of the Schedule for this coverage section, to an extension of the coverage granted by this coverage section for the period set forth in Item 5(b) of the Schedule for this coverage section (Extended Reporting Period) following the effective date of termination or nonrenewal, but only for any **Wrongful Act** committed, attempted, or allegedly committed or attempted, prior to the effective date of termination or nonrenewal. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is received by the Company within thirty days following the effective date of termination or nonrenewal. Any **Claim** made during the Extended Reporting Period shall be deemed to have been made during the immediately preceding **Policy Period**.

Exclusions

5. The Company shall not be liable for **Loss** on account of any **Claim** made against any **Insured**:
- (a) based upon, arising from, or in consequence of any circumstance if written notice of such circumstance has been given under any policy or coverage section of which this coverage section is a renewal or replacement and if such prior policy or coverage section affords coverage (or would afford such coverage except for the exhaustion of its limits of liability) for such **Loss**, in whole or in part, as a result of such notice;
 - (b) based upon, arising from, or in consequence of any written demand for monetary damages, suit, formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document or arbitration proceeding pending, or order, decree or judgment entered against any **Insured** on or prior to the Pending or Prior Date set forth in Item 6 of the Schedule for this coverage section or the same or any substantially similar fact, circumstance or situation underlying or alleged therein;
 - (c) for any actual or alleged violation of the responsibilities, obligations or duties owed by fiduciaries, trustees, administrators or any other charged with duties with respect to any superannuation, pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing pensions, annuities or any other form of benefits to employees of an **Insured Organisation**. This includes but is not limited to any actual or alleged violation of the responsibilities, obligations or duties imposed by the U.S. Employee Retirement Income Security Act of 1974, the U.S. Fair Labor Standards Act (except the Equal Pay Act), the U.S. National Labor Relations Act, the U.S. Worker Adjustment and Retraining Notification Act, the U.S. Consolidated Omnibus Budget Reconciliation Act of 1985, the U.S. Occupational Safety and Health Act, Australian Occupational Health and Safety legislation, the Australian Workplace Relations Act 1996 (Cth) (except Sections 170CA-170CK, 170CN-CS, 170AA-HC and 170FA-FE, relating to termination of employment), rules or regulations promulgated thereunder and amendments thereto or similar provisions of any federal, state, territory or local statutory law or common law. However, this exclusion shall not apply to any **Claim** for any retaliatory treatment of any claimant because of any claimant's actual or alleged protected lawful activity under the U.S. Fair Labor Standards Act, the U.S. Occupational Safety and Health Act, or similar provisions of any federal, state, territory or local law or common law;
 - (d) for bodily injury, sickness, disease or death of any person or damage to or destruction of any tangible property, whether or not it is damaged or destroyed, including loss of use thereof;
 - (e) based upon, arising from, or in consequence of **Pollution**. However, this exclusion shall not apply to any **Claim** for wrongful dismissal, discharge or termination of employment of any claimant in retaliation for such claimant's actual or alleged (i) refusal to violate any federal, state, or local statutory law or common law regarding **Pollution** or (ii) disclosure regarding any actual or alleged **Pollution** by any **Insured Organisation**;
 - (f) based upon, arising from, or in consequence of any deliberately fraudulent act or omission by such **Insured** if a judgment or other final adjudication adverse to the **Insured** establishes such a deliberately fraudulent act or omission;
 - (g) based upon, arising from, or in consequence of any actual or alleged obligation of any **Insured** pursuant to any workers' compensation, unemployment insurance, social security, disability benefits or similar law. However, this exclusion shall not apply to any **Claim** for any retaliatory treatment of any claimant by any **Insured** based upon such claimant's exercise of rights pursuant to any such law;

Exclusions
(continued)

- (h) based upon, arising from, or in consequence of (i) any actual or alleged violation of any federal, state, territory or common law relating to securities, or (ii) any actual or alleged purchase, sale or distribution of or offer, representation or agreement relating to securities. However, this exclusion shall not apply to any **Claim** for any retaliatory treatment of any claimant for (i) such claimant's actual or alleged refusal to violate any such securities laws or (ii) any actual or threatened disclosure by such claimant of any actual or alleged violation of such securities laws;
- (i) based upon, arising from, or in consequence of liability of others assumed by the **Insured** under any contract or agreement, either oral or written, except to the extent that the **Insured** would have been liable in the absence of the contract or agreement; or
- (j) for **Wrongful Acts** based upon, arising from, or in consequence of the **Financial Impairment** of the **Insured Organisation**. However, this exclusion shall not apply to any **Claim** made against any **Insured** in the United States of America.
- (k) for breach of duties, obligations or responsibilities under any law, regulation, by-law, determination made under or pursuant to an Act of a State or the Commonwealth, ordinance of a Territory or **Industrial Instrument** howsoever promulgated regulating **Employee Entitlements**;
- (l) for any sum of money:
 - (a) in respect of a notice period;
 - (b) pursuant to an express written contract of employment; or
 - (c) pursuant to an express written obligation to make payments in the event of the termination of employment

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6. The Company shall not be liable for the part of **Loss**, other than **Defence Costs**:
- (a) which constitutes **Benefits** due or to become due or the equivalent value of such **Benefits**. However, this exclusion shall not apply where such **Loss** is based upon a **Claim** for actual or alleged wrongful dismissal, discharge or termination of employment;
 - (b) which constitutes front pay, future damages or other future economic relief, or the equivalent thereof, if the **Insured Organisation** is ordered pursuant to a judgment or other final adjudication but fails to reinstate the claimant as an employee;
 - (c) which constitutes any costs associated with any accommodation required pursuant to the Americans With Disabilities Act, the U.S. Civil Rights Act of 1964, rules or regulations promulgated thereunder, amendments thereto, or similar provisions of any federal, state, territory or local law or common law; or
 - (d) which constitutes the cost of compliance with any order for, grant of or agreement to provide injunctive or non-pecuniary relief.

**Severability
of Exclusions**

7. With respect to the Exclusions in section 5 and 6 of this coverage section, no fact pertaining to or knowledge possessed by any **Insured** shall be imputed to any other **Insured** to determine if coverage is available.

**Limit of Liability
and Deductible**

8. For the purposes of this coverage section, all **Loss** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of any **Insured** shall be deemed one **Loss**, regardless of the number of **Claims** made, claimants, or **Insureds** against whom such **Claims** are made. Such **Loss** shall be deemed to have originated at the time a **Claim** is first made against any **Insured** alleging any such **Wrongful Act** or **Interrelated Wrongful Acts** and only the policy in effect at that time, if any, shall apply to all such **Loss**.

The Company's maximum liability for each **Loss**, shall be the Limit of Liability for each **Loss** set forth in Item 2(a) of the Schedule of this coverage section. The Company's maximum aggregate liability for all **Loss** on account of all **Claims** first made during the same **Policy Period** shall be the Limit of Liability for each **Policy Period** set forth in Item 2(b) of the Schedule of this coverage section.

The Company's liability under this coverage section shall apply only to that part of each **Loss** which is excess of the Deductible Amount set forth in Item 3 of the *(continued)* Schedule of this coverage section and such Deductible Amount shall be borne by the **Insured Organisation** uninsured and at its own risk.

Any **Loss** covered by this coverage section and either the Directors' and Officers' Liability and Company Reimbursement or the Trustees' Liability coverage sections of this policy (if purchased) shall be subject to the limits of liability and deductible applicable to this coverage section, not such other coverage section.

For purposes of this section 8 only, the Extended Reporting Period, if exercised, shall be part of and not in addition to the immediately preceding **Policy Period**.

**Reporting
and Notice**

9. The **Insureds** shall, as a condition precedent to exercising their rights under this coverage section, give to the Company written notice as soon as practicable of any **Claim** made against any of them for a **Wrongful Act**.

The **Insureds** shall, as a condition precedent to exercising their rights under this coverage section, give to the Company such information and cooperation as it may reasonably require, including but not limited to a description of the **Claim**, the nature of the alleged **Wrongful Act**, the nature of the alleged damage, the names of claimants, and the manner in which the **Insured** first became aware of the **Claim**.

**Allocation and
Advancement of
Defence Costs**

10. If both **Loss** covered by this coverage section and loss not covered by this coverage section are incurred, either because a **Claim** against the **Insureds** includes both covered and uncovered matters or because a **Claim** is made against both an **Insured** and others, the **Insureds** and the Company shall allocate such amount between covered **Loss** and uncovered loss based upon the relative legal exposures of such parties to such matters.

If the **Insureds** and the Company agree on an allocation of **Defence Costs**, the Company shall advance on a current basis **Defence Costs** allocated to covered **Loss**. If the **Insureds** and the Company cannot agree on an allocation:

- (a) no presumption as to allocation shall exist in any arbitration, suit or other proceeding;
- (b) the Company shall advance on a current basis **Defence Costs** which the Company believes to be covered under this coverage section until a different allocation is negotiated, arbitrated or judicially determined; and

**Allocation and
Advancement of
Defence Costs**
(continued)

- (c) the Company, if requested by the **Insureds**, shall submit the dispute to arbitration. Subject to agreement between the parties, the arbitration panel shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Company, and a third independent arbitrator selected by the first two arbitrators.

Any negotiated, arbitrated or judicially determined allocation of **Defence Costs** on account of a **Claim** shall be applied retroactively to all **Defence Costs** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defence Costs** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of other **Loss** on account of such **Claim**.

Other Insurance

11. To the extent that any **Loss** arising from any **Claim** made against any **Insured** is insured under:
- (a) those policies or coverage sections listed in the documents comprising the proposal for this policy or coverage section; or
- (b) any other policy,

then to the extent to which it is permitted by the Insurance Contracts Act 1984, coverage is only provided under this coverage section subject to its limitations, conditions, provisions and terms for such **Loss** excess of the coverage provided by any of the policies and coverage sections referred to in (a) or (b) above.

Changes in Exposure

*Acquisition or
Creation of
Another Organisation*

12. If the **Insured Organisation** (i) acquires securities or voting rights in another organisation or creates another organisation, which as a result of such acquisition or creation becomes a **Subsidiary**, or (ii) acquires any organisation by merger into or consolidation with an **Insured Organisation**, such organisation and its **Insured Persons** shall be **Insureds** under this coverage section but only with respect to **Wrongful Acts** committed, attempted, or allegedly committed or attempted, after such acquisition or creation unless the Company agrees, after presentation of a complete proposal and all appropriate information, to provide coverage by endorsement for **Wrongful Acts** committed, attempted, or allegedly committed or attempted, by such **Insured Persons** prior to such acquisition or creation.

If the fair value of all cash, securities, assumed indebtedness and other consideration paid by the **Insured Organisation** for any such acquisition or creation exceeds 10% of the total assets of the **Principal Organisation** as reflected in the **Principal Organisation's** most recent audited consolidated financial statements, the **Principal Organisation** shall give written notice of such acquisition or creation to the Company as soon as practicable together with such information as the Company may require and shall pay any reasonable additional premium required by the Company and be subject to any different limitations, conditions, provisions or other terms as the Company deems appropriate.

*Acquisition of
Principal Organisation
by Another Organisation*

13. If (i) the **Principal Organisation** merges into or consolidates with another organisation, or (ii) another organisation or person or group of organisations or persons acting in concert acquires control of the composition of the **Principal Organisation's** board, is in a position to cast, or control the casting of more than 50% of the maximum number of votes that might be cast at a general meeting of the **Principal Organisation** or holds more than 50% of the issued share capital of the **Principal Organisation** (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital), or (iii) another organisation or person or group of organisations or persons acting in concert acquires securities or voting rights which result in ownership or voting control by the other organisation(s) or person(s) of more than 50% of the outstanding securities representing the present right to vote for the election of directors of the **Principal Organisation**, coverage under this coverage section shall continue until termination of this coverage section, but only with respect to **Claims** for **Wrongful Acts** committed, attempted, or allegedly committed or attempted, by **Insured Persons** prior to such merger, consolidation or acquisition. The **Principal Organisation** shall give written notice of such merger, consolidation or acquisition to the Company as soon as practicable together with such information as the Company may require.

Changes in Exposures
(continued)
*Cessation of
Subsidiaries*

14. In the event an organisation ceases to be a **Subsidiary** before or after the inception date of this coverage section, coverage with respect to such **Subsidiary** and its **Insured Persons** shall continue until termination of this coverage section or any renewal or replacement thereof, but only with respect to **Claims** for **Wrongful Acts** committed, attempted, or allegedly committed or attempted, prior to the date such organisation ceased to be a **Subsidiary**.

**Representations
and Severability**

15. In granting coverage to any one of the **Insureds**, the Company has relied upon the declarations and statements in the written proposal for this coverage section. All such declarations and statements are the basis of such coverage and shall be considered as incorporated in and constituting part of this coverage section.

Such written proposal for coverage shall be construed as a separate proposal for coverage by each of the **Insureds**. With respect to the declarations and statements contained in such written proposal for coverage, no statement in the proposal or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** for the purpose of determining if coverage is available. Only facts pertaining to and knowledge possessed by any past, present or future chief financial officer, Chairman, Managing Director, or equivalent thereof, of any **Insured Organisation** shall be imputed to any **Insured Organisation** to determine if coverage is available.

**GST – Basis of
Settlement**

16. If an **Insured** is entitled to an input tax credit for the premium, that **Insured** must inform the Company of the extent of that entitlement at or before the time a **Claim** is made under this coverage section. The Company will not be liable for **Loss** on account of any **Claim** based upon, arising from, or in consequence of any Insured's misstatement of, or failure to inform the Company of, the extent of its entitlement to an input tax credit for the premium.

The amount of deductible payable will be less any input tax credit that is or may be available to the **Insured** on payment of the deductible.

Definitions

17. When used in this coverage section:

Benefits means perquisites, fringe benefits, payments in connection with an employee benefit plan and any other payment, other than salary or wages, to or for the benefit of an employee arising out of the employment relationship.

Claim means:

- (i) a written demand for monetary damages;
- (ii) a civil proceeding commenced by the service of a complaint, summons, statement of claim or similar pleading, including any appeal therefrom;
- (iii) an arbitration proceeding, mediation, conciliation or other alternative dispute resolution; or
- (iv) a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document,

which is brought and maintained by or on behalf of any past, present or prospective employee(s) of the **Insured Organisation** against any **Insured** for any **Wrongful Act** in connection with any actual or alleged wrongful dismissal, discharge or termination of employment, denial of natural justice relating to wrongful termination, breach of any oral or written employment contract or quasi-employment contract, employment-related misrepresentation, violation of employment discrimination laws (including workplace and sexual harassment), wrongful failure to employ or promote, wrongful discipline, wrongful deprivation of a career opportunity, failure to grant tenure, negligent evaluation, invasion of privacy, employment-related defamation or employment-related wrongful infliction of emotional distress.

Defence Costs means that part of **Loss** consisting of reasonable costs, charges, fees (including but not limited to legal counsels' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or employees of the **Insured Organisation**) incurred in defending or investigating **Claims** and the premium for appeal, attachment or similar bonds.

Employee Entitlements means employee benefit arrangements of any kind (whether during or post employment) including:

- (a) provision for unemployment, redundancy, retirement, sickness, disability, maternity leave, paternal leave, adoption leave, annual leave, long service leave, compassionate leave or personal leave;
- (b) entitlements under an **Industrial Instrument** including wages, overtime, time in lieu, allowances and penalties;
- (c) accident, life, medical, disability or other welfare plans, including insurance of any kind;
- (d) superannuation contributions, benefits and entitlements;
- (e) stock options or ownership or profit sharing or deferred compensation plans;

Executive Officer means a person, by whatever name called and whether or not a director of the **Insured Organisation**, who is concerned or takes part in the **Insured Organisation's** management.

Definitions
(continued)

Financial Impairment means the status of the Insured Organisation resulting from (i) the appointment by any country, state, territory or federal official, agency or court of any receiver, administrator, conservator, liquidator, trustee, manager, rehabilitator or similar official to take control of, supervise, administer, manage or liquidate the Insured Organisation or, (ii) the Insured Organisation becoming a debtor in possession.

Industrial Instrument means any award, agreement, arrangement or other instrument which is certified or registered by an industrial tribunal in Australia, including without limitation the Australian Industrial Relations Commission and the Industrial Relations Commissions of the States or Territories of Australia, or similar provisions of any federal, state, territory or local law or common law;

Insured, either in the singular or plural, means the **Insured Organisation** and **Insured Persons**.

Insured Capacity means the position or capacity designated in the definition of **Insured Person** held by any **Insured Person** but shall not include any position or capacity in any organisation other than the **Insured Organisation**, even if the **Insured Organisation** directed or requested the **Insured Person** to serve in such other position or capacity.

Insured Organisation means, collectively, those organisations designated in Item 4 of the Schedule of this coverage section and any **Subsidiary**.

Insured Person, either in the singular or plural, means any natural person who is or was past, present or future director, secretary, employee or **Executive Officer** of the **Insured Organisation**.

Interrelated Wrongful Acts means all causally connected **Wrongful Acts**.

Loss means the total amount which any **Insured** becomes legally obligated to pay on account of each **Claim** and for all **Claims** in each **Policy Period** and the Extended Reporting Period, if exercised, made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments, settlements, costs and **Defence Costs**. **Loss** does not include (i) any amount not indemnified by the **Insured Organisation** for which the **Insured Person** is absolved from payment by reason of any covenant, agreement or court order, (ii) the future salary or benefits of a claimant who has been or shall be hired, promoted or reinstated to employment pursuant to a settlement, order or other resolution, (iii) fines or penalties or aggravated or exemplary damages imposed by law or the multiple portion of any multiplied damage awarded outside of Australia, or (iv) matters uninsurable under the law pursuant to which this coverage section is construed.

Pollutants means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, an environmental protection agency (including but not limited to the United States Environmental Protection Agency) or a country, state, territory, county, municipality or locality or counterpart thereof. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants, smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odour, waste water, oil, oil products, infectious or medical waste, asbestos or asbestos products and any noise.

Pollution means (i) the actual, alleged or threatened discharge, release, escape or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or (ii) any direction or request that the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify, or neutralise **Pollutants**, or any voluntary decision to do so.

Definitions
(continued)

Subsidiary, either in the singular or plural, means:

- (a) any organisation whose accounts are or were consolidated with the accounts of the **Insured Organisation** first named in Item 4 of the Schedule for this coverage section, in accordance with Australian Accounting Standard AASB 1024: Consolidated Accounts or any successor Standard; or
- (b) any organisation in which one or more **Insured Organisation(s)**:
 - (i) controls or controlled the composition of the organisation's board;
 - (ii) is or was in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the organisation; or
 - (iii) holds or held more than 50% of the issued share capital of the organisation (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (c) any organisation in which more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors is or was owned or controlled, directly or indirectly, in any combination, by one or more **Insured Organisations**.

Wrongful Act means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted, by an **Insured Organisation** or by an **Insured Person**, individually or otherwise, in his **Insured Capacity**, or any matter claimed against him solely by reason of his serving in such **Insured Capacity**.