



Trustees Liability Coverage Section

SCHEDULE

CHUBB INSURANCE COMPANY
OF AUSTRALIA LIMITED
(A.B.N. 69 003 710 647)
A.F.S. Licence No: 239778
Herein called the Company

Item 1. Principal Organisation:

Item 2. (a) Participating Employer:

(b) Superannuation Fund:

Item 3. Limits of Liability: (a) Each **Loss:** \$
(b) Each **Policy Period:** \$

Item 4. Deductible Amounts: (a) Insuring Clause 1: \$
(b) Insuring Clause 2: \$

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 to 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 Clauses

Insureds' Liability Coverage Insuring Clause 1

1. The Company shall pay on behalf of the **Insureds** all **Loss** for which the **Insured** is not indemnified by the **Participating Employer** or the **Trustees** of the **Superannuation Fund** and which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against the **Insured** during the **Policy Period** pay 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**.

Participating Employer's and Trustees' Reimbursement Coverage Insuring Clause 2

2. The Company shall pay:
 - (a) on behalf of any **Participating Employer**, all **Loss** for which an **Insured** is indemnified by the **Participating Employer**, as permitted or required by law;
 - (b) on behalf of the **Superannuation Fund**, all **Loss** for which an **Insured** (other than the **Superannuation Fund**) is indemnified by or out of the assets of the **Superannuation Fund**, as permitted or required by law;
 - (c) on behalf of the **Trustee** which is a body corporate, all **Loss** for which an **Insured** is indemnified by such **Trustee**, as permitted or required by law;

and 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

3. Subject otherwise to the Declarations, the Schedule to 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 an **Insured** made against the estates, heirs, legal representatives or assigns of any **Insured** who is deceased or against the legal representatives or assigns of any **Insured** who is incompetent, insolvent or bankrupt.

Extended Reporting Period

4. If this coverage section is terminated or not renewed for any reason other than for nonpayment of premium, the **Insureds** 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 non-renewal, but only for any **Wrongful Act** committed, attempted, or allegedly committed or attempted, prior to the effective date of termination or non-renewal. 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 30 days following the effective date of termination or non-renewal. Any **Claim** made during the Extended Reporting Period shall be deemed to have been made during the immediately preceding **Policy Period**.

Exclusions

Exclusions
Applicable to

Insuring Clauses 1 and 2 (a)

5. The Company shall not be liable for that part of **Loss**, other than **Defence Costs**:
- (a) which constitutes **Benefits** due or to become due to a beneficiary of a **Superannuation Fund** unless, and to the extent that, (i) the **Insured** is a natural person and the **Benefits** are payable by such **Insured** as a personal obligation, and (ii) recovery for the **Benefits** is based upon a covered **Wrongful Act**;
 - (b) which is based upon, arising from, or in consequence of the failure to collect from employers contributions payable to the **Superannuation Fund** unless the failure is because of the negligence of an **Insured**; or
 - (c) which constitutes the return or repatriation to any employer of any contribution or assets of a **Superannuation Fund**.
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6. 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 demand, suit or other 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 substantially similar fact, circumstance or situation underlying or alleged therein;
 - (c) based upon, arising from, or in consequence of such **Insured** having gained in fact any personal profit, remuneration or advantage to which such **Insured** was not legally entitled;
 - (d) based upon, arising from, or in consequence of (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, including but not limited to any **Claim** for financial loss to an **Insured**, its security holders or its creditors based upon, arising from, or in consequence of the matters described in (i) or (ii) of this exclusion;
 - (e) based upon, arising from, or in consequence of any deliberately fraudulent act or omission or any wilful violation or breach of any statute or regulation by such **Insured**, if a judgment or other final adjudication adverse to such **Insured** establishes such a deliberately fraudulent act or omission or wilful violation;
 - (f) 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; or
 - (g) 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 unless the liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Superannuation Fund** was established.

Severability of Exclusions

7. With respect to the Exclusions in sections 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.

Allocation and Advancement of Defence Costs

8. If both **Loss** covered by this coverage section and loss not covered by this coverage section are incurred, either because a **Claim** against **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
- (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**.

Defence and Settlement

9. Subject to this section, it shall be the duty of the **Insured** and not the duty of the Company to defend **Claims** made against the **Insureds**.

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 Company shall have the right and shall be given the opportunity to effectively associate with the **Insured** in the investigation, defence and settlement, including but not limited to the negotiation of a settlement, of any **Claim** that appears reasonably likely to be covered in whole or in part by this coverage section.

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 and
Settlement**
(continued)

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**.

**Limit of Liability
and Deductible**

10. 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**, and such **Loss** shall be deemed to have originated in the earliest **Policy Period** in which a **Claim** is first made against any **Insured** alleging any such **Wrongful Act** or **Interrelated Wrongful Acts**.

The Company's maximum liability for each **Loss**, whether covered under Insuring Clause 1 or Insuring Clause 2 or both, shall be the Limit of Liability for each **Loss** set forth in Item 3(a) of the Schedule. The Company's maximum aggregate liability for all **Loss** on account of all **Claims** first made during the same **Policy Period** whether covered under Insuring Clause 1 or Insuring Clause 2 or both, shall be the Limit of Liability for each **Policy Period** set forth in Item 3(b) of the Schedule to this coverage section.

Defence Costs do not deplete and are in addition to the Limit of Liability set forth in Item 3 of the Schedule to this coverage section.

The Company's liability hereunder applies only to that part of each **Loss** which is excess of the Deductible Amounts set forth in Item 4 of the Schedule for this coverage section and such Deductible Amount shall be borne by the **Insureds** uninsured and at their own risk.

If a single **Loss** is covered in part under Insuring Clause 1 and in part under Insuring Clause 2, the maximum Deductible Amount applicable to the **Loss** shall be the Insuring Clause 2 deductible set forth in Item 4(b) of the Schedule for this coverage section.

For the purposes of this section 10 only, the Extended Reporting Period, if exercised, shall be part of and not in addition to the immediately preceding **Policy Period**.

**Presumptive
Indemnification**

11. If the **Participating Employer** and/or the **Superannuation Fund** and/or the **Trustee** which is a body corporate:
- (a) fail or refuse, other than for reason of **Financial Impairment**, to indemnify the **Insured** for **Loss**; and
 - (b) are permitted or required by statutory or common law to indemnify the **Insured** for such **Loss**, whether or not subject to an amendment to the **Participating Employer** or such **Trustee's** articles of association, by-laws, constitution, certificate of incorporation or memorandum of association or the **Superannuation Fund's** governing rules,

then, notwithstanding any other conditions, provisions or terms of this coverage section to the contrary, any payment by the Company of such **Loss** shall be subject to the Deductible Amount set forth in Item 4(b) of the Schedule to this coverage section.

Changes in Exposure

*Participation in
Another
Superannuation Fund*

12. If during the **Policy Period**:
- (a) a **Participating Employer** commences to participate in a superannuation fund not covered by this coverage section (“Inception Event”);
 - (b) the trustees of such superannuation fund and the **Participating Employer** wish to extend cover under this coverage section in respect of such superannuation fund;
 - (c) the **Trustees** give written notice to that effect to the Company as soon as practicable after the Inception Event together with such other information as the Company may require; and
 - (d) the **Trustees** or the **Participating Employer** pay any reasonable additional premium required by the Company,

such fund is deemed to be a **Superannuation Fund** to which this coverage section applies. Coverage shall be afforded, subject to the terms and conditions of this coverage section and the General Terms and Conditions, from the date of the Inception Event for the **Insureds** of that **Superannuation Fund**, but only for **Wrongful Acts** committed, attempted, or allegedly committed or attempted, after the date of the Inception Event, unless the Company agrees by endorsement to provide coverage for **Wrongful Acts** committed, attempted, or allegedly committed or attempted, prior to such date.

*Acquisition by
Another Entity*

13. If:
- (a) the **Participating Employer** merges into or consolidates with another organisation;
 - (b) another organisation or person or a group of organisations and/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 election of directors of the **Participating Employer**; or
 - (c) the responsibilities of any **Superannuation Fund** is fully assumed by any other person and/or entity,

coverage under this coverage section for any **Insureds** prior to such acquisition, merger, consolidation or assumption of responsibilities shall continue until termination of this coverage section subject to the following:

- (i) for the merged, consolidated or acquired **Participating Employer** and any **Superannuation Fund** thereof, and for any **Superannuation Fund** described in paragraph (c) above, coverage shall continue only with respect to **Claims** for **Wrongful Acts** committed, attempted, or allegedly committed or attempted prior to such merger, consolidation, acquisition, or assumption of responsibilities;

Acquisition by
Another Entity
(continued)

- (ii) for **Insureds** who were natural persons of the merged, consolidated, or acquired **Participating Employer** or any **Superannuation Fund** thereof, and for **Insureds** who were natural persons of any **Superannuation Fund** described in paragraph (c) above, coverage shall continue with respect to **Claims for Wrongful Acts** of such **Insureds** where such **Wrongful Acts** to were committed, attempted, or allegedly committed or attempted, prior to the date the **Participating Employer** was merged, acquired, or consolidated or prior to the date such **Superannuation Fund's** responsibilities were so assumed.

The **Participating Employer** shall give written notice to the Company of such merger, consolidation, acquisition or assumption of responsibilities as soon as practicable together with such information as the Company may require.

Termination of any
Superannuation Fund

14. If the **Participating Employer** or a **Trustee** terminates any **Superannuation Fund** before or after the inception date of this coverage section, coverage under this coverage section with respect to such terminated **Superannuation Fund** shall continue until termination of this coverage section for those who were **Insureds** at the time of such **Superannuation Fund** termination, or who would have been **Insureds** at the time of such termination if this coverage section had been in effect, with respect to **Wrongful Acts** committed, attempted, or allegedly committed or attempted, by such **Insureds** prior to the date of such **Superannuation Fund** termination. The **Insureds** shall give written notice to the Company of such **Superannuation Fund** termination as soon as is practicable together with such information as the Company may require.

Reporting and Notice

15. 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**.

If, during the **Policy Period** or Extended Reporting Period (if exercised), an **Insured** becomes aware of circumstances which could give rise to a **Claim** and gives written notice of such circumstances to the Company, then any **Claims** subsequently arising from such circumstances shall be considered to have been made during the **Policy Period** or the Extended Reporting Period in which the circumstances were first reported to the Company.

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** or circumstances, the nature of the alleged **Wrongful Act**, the nature of the alleged or potential damage, the names of actual or potential claimants, and the manner in which the **Insured** first became aware of the **Claim** or circumstances.

Representations and
Severability

16. In granting coverage to any one of the **Insureds**, the Company has relied upon the declarations and statements which are contained in or constitute 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 **Insured**. 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** shall be imputed to any other **Insured** for the purpose of determining if coverage is available.

Other Insurance

17. 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.

Definitions

18. When used in this coverage section:

Benefit, either in the singular or plural, means any amount payable to a beneficiary of the **Superannuation Fund** by the **Trustees** under the governing rules of the **Superannuation Fund**.

Claim means:

- (a) a written demand for monetary damages;
- (b) a civil proceeding commenced by the service of a complaint, summons, statement of claim or similar pleading;
- (c) a criminal proceeding commenced by a summons or charge;
- (d) a proceeding commenced by the service of a notice of receipt of a complaint by the Superannuation Complaints Tribunal; or
- (e) a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document,

against any **Insured** for a **Wrongful Act**, including any appeal therefrom.

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 **Participating Employer** or of the **Trustees**) incurred in defending or investigating **Claims** and the premium for appeal, attachment or similar bonds.

Financial Impairment means:

- (a) with respect to a **Participating Employer**, the status of the **Participating Employer** resulting from:
 - (i) the appointment by any country, state 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 **Participating Employer**; or
 - (ii) the **Participating Employer** becoming a debtor in possession;
- (b) with respect to the **Trustees**, the inability of the **Trustees** to indemnify an **Insured** for the whole or any part of any **Loss** because the assets of the **Superannuation Fund** are insufficient (after exhaustion of all other rights of indemnity the **Trustees** may have, whether from the **Participating Employer** or otherwise, and after exhausting all such assets as are available from the **Superannuation Fund**) to meet the amount of that **Loss**.

Definitions
(continued)

Insured, either in the singular or plural, means:

- (a) any **Trustee**;
- (b) any past, present or future director or officer of a corporate **Trustee**;
- (c) any past, present or future employee of any **Trustee** in the management of the **Superannuation Fund**;
- (d) any past, present or future member of a **Policy Committee** of the **Superannuation Fund**;
- (e) any past, present or future **Participating Employer**;
- (f) any past, present or future director or officer of a **Participating Employer**;
- (g) any past, present or future employee of a **Participating Employer** in the management of the **Superannuation Fund**;
- (h) any past director, officer or employee of the **Participating Employer** who is retained by the **Participating Employer** to assist in the management of the **Superannuation Fund** for a fee pursuant to a written contract; or
- (i) the **Superannuation Fund**.

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 **Participating Employer** or the **Trustees** for which the **Insured** is absolved from payment by reason of any covenant, agreement or court order, (ii) any amount incurred by the **Participating Employer** (including its board of directors or any committee of the board of directors) or the **Trustees** in connection with the investigation or evaluation of any **Claim** or potential **Claim** by or on behalf of the **Participating Employer** or the **Trustees**, (iii) fines or penalties or aggravated or exemplary damages imposed by law or the multiple portion of any multiplied damage awarded outside Australia; or (iv) matters uninsurable under the law pursuant to which this coverage section is construed.

Participating Employer means the organisation named in Item 2(a) of the Schedule of this coverage section and any **Subsidiary**.

Policy Committee means a board, committee or other body that:

- (a) advises the **Trustees** of a **Superannuation Fund** about such matters as are prescribed in the Superannuation Industry (Supervision) Regulations; and
- (b) is established by or under the governing rules of the **Superannuation Fund**.

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.

Definitions
(continued)

Subsidiary, either in the singular or plural, means:

- (a) any organisation whose accounts are or were consolidated with the accounts of the **Participating Employer** first named in Item 2(a) of the Schedule of 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 **Participating Employers**:
 - (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 **Participating Employer**.

Superannuation Fund means the funds designated in Item 2(b) of the Schedule of this coverage section.

Trustee, either in the singular or plural, means any past, present or future person or body corporate, duly appointed as a trustee of the **Superannuation Fund** in accordance with the governing rules of the **Superannuation Fund** or by a court or pursuant to a statute.

Wrongful Act means any error, misstatement, misleading statement, act, omission, neglect, breach of trust or breach of duty committed, attempted, or allegedly committed or attempted, by an **Insured**, individually or otherwise, in the management of a **Superannuation Fund**.