

Employment Practices Liability

Policy wording





IMPORTANT NOTICES

Claims Made Insurance

This policy is issued by Delta Insurance Australia Pty Ltd ('Delta, 'we', 'our' or 'us') on a claims made and notified basis. Accordingly, this policy will only apply to claims first made during the policy period or extended reporting period, if applicable, and notified to Delta in writing during the policy period or extended reporting period, if applicable. This policy may not provide cover for any claims or events made against you during the policy period if at any time prior to the commencement of the policy period you became aware of facts which might give rise to those claims being made against you. Section 40(3) of the Insurance Contracts Act 1984 (Cth) applies to this type of policy. It provides that where the insured becomes aware of any facts that might give rise to a claim against the insured, provided that the insured notifies the insurer in writing of those facts as soon as reasonably practicable after the insured becomes aware of those facts before the policy period expires, the insurer is not relieved of liability under the contract in respect of a claim which arises out of those facts, merely because when the claim is made, it is made after the policy period has expired.

Insured's Duty of Disclosure

Section 21 of the Insurance Contracts Act 1984 (Cth) provides that before you enter into an insurance contract, you have a duty to tell the insurer anything that you know, or could reasonably be expected to know, that may affect the insurer's decision to insure you and on what terms. You have this duty until the insurer agrees to insure to you. You have the same duty to disclose before you renew, extend, vary or reinstate an insurance contract.

However, you do not need to tell the insurer anything that:

- reduces the risk the insurer insures you for; or
- is common knowledge; or
- your insurer knows or should know as an insurer; or
- the insurer waives your duty to tell them about.

If you do not tell the Insurer something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will

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

Unusual terms

Please read General Condition 1 and 2 (together with your Schedule) carefully as these sections detail the Limit of Liability.

This policy has an individual limit of liability as specified in the schedule (which is an aggregate amount). As this policy can be purchased as part of a package of policies, this policy is also subject to a combined policy aggregate limit of liability. The combined policy aggregate limit of liability is the maximum amount that the Insurer will pay for all loss payable under all the policies you have purchased from the Insurer.

The limit of liability for this policy is a sub-limit of the combined policy aggregate limit of liability (and is not in addition to it). Once the limit of liability for each individual policy is exhausted then then the Insurer will have no liability in excess of that limit of liability even if the combined policy aggregate limit of liability has not been exhausted.

Once the combined policy aggregate limit of liability has been exhausted this will mean that no further Loss is payable by the Insurer even if individual limit of liability for a particular policy (including this one) has not been exhausted. If you have any questions about this then please contact your broker.

Please also note General Condition 5.13, which prevents the insurer from providing cover, benefits or paying claims where that would expose the Insurer to sanctions, prohibitions or restrictions.

Privacy

Delta Insurance Australia Pty Ltd is committed to protecting your privacy. We have adopted the Australian Privacy Principles (APPs) contained in the Privacy Act 1988 (Cth) (Privacy Act). The APPs govern the way in which we collect, use, disclose, store, secure and dispose of your Personal Information.

Any Personal Information collected about you will only be used for the purposes indicated in Delta Insurance Australia's Privacy Policy and only in the instance where you have provided consent to Delta Insurance Australia, or as otherwise required by law.

Delta Insurance Australia will need to collect personal

information from you or your insurance agent to assist with assessing your risk in order to provide the insurance that you are applying for.

Use of your Information

The information collected will be used for the purpose in assisting with underwriting and administering your insurance cover on behalf of the Insurers, Delta Insurance Australia represents. Where reasonable and practicable to do so, Delta Insurance Australia, will collect your Personal Information only from you. In some cases, to verify your identity, Delta Insurance Australia may need to obtain or verify your Personal Information from a third party.

Information collected can also be used towards improving Delta Insurance Australia's customer service, product data research analysis and to advise you of any other products and services that may be of interest to you.

Security of your information

Your Personal Information is stored in a manner that reasonably protects it from misuse and Loss and from unauthorised access, modification, or disclosure.

When your Personal Information is no longer needed for the purpose for which it was obtained, Delta Insurance Australia, will take reasonable steps to destroy or permanently de-identify your Personal Information. However, most of the Personal Information is or will be stored in client files which will be kept, by Delta Insurance Australia for a minimum of 7 years.

Whilst underwriting and reviewing your policy, Delta Insurance Australia may share your information with your insurance agent, Claims assessors, and to third party administrators providing related services to your insurance policy. Your information will be provided to the Insurer's we represent, based in the UK and whose details we will provide to you when issuing an insurance quotation.

By providing Delta Insurance Australia with your Personal Information, you are consenting to the collection, use, disclosing and or processing of your personal data for the purposes as described above.

Complaints

General Insurance Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code.

The Code aims to raise the standards of practice and service in the insurance industry. Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit www.codeofpractice.com.au

The Code Governance Committee (CGC) is an independent body that monitors and enforces Insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.au

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance Claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Delta Insurance Australia Pty Ltd in the first instance:

Managing Director
Delta Insurance Australia Pty Ltd
Email: complaints@deltainsurance.com.au
Telephone: 07 3017 4720
Post: GPO BOX 1832, Brisbane, QLD, 4001, Australia

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

Lloyd's Australia Limited
Email: ldraustralia@lloyds.com
Telephone: (02) 8298 0783
Post: Suite 1603 Level 16, 1 Macquarie Place,
Sydney NSW 2000

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply. You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

Telephone: 1800 931 678
Email: info@afca.org.au
Post: GPO Box 3 Melbourne VIC 3001
Website: www.afca.org.au

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

Goods and Services Tax (GST)

Where you are registered for GST, you must tell Delta the nature and extent of any entitlement you have to an input tax credit at or before the time a Claim is made under this Policy. Where the Insurer makes a payment under this Policy, the amount of the payment will be reduced by the amount of any input tax credit to which you are or may, in the opinion of the Insurer, be entitled to Claim.

The amount of the applicable Retention is calculated after deduction of the amount of any input tax credit that you are or may, in opinion of the Insurer be entitled to Claim. The Insurer will not be liable to pay any GST, or any fine, penalty or charge that you may be liable for arising from your misrepresentation of or failure to disclose the proper input tax credit entitlement on the premium relating to this Policy.

GST and 'input tax credit' have the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Interpretation

The definitions can be found in Section 6 of this Policy. Defined words appear in bold print. Reference to:

- the singular includes the plural and vice versa.

- the masculine includes the feminine and vice versa;
- a statute, statutory instrument, regulation or order includes any amendment, superseding, substitution, replacement or re-enactment of that statute, statutory instrument, regulation or order. References to any statute, statutory instrument, regulation or order shall also refer to such statute, statutory instrument, regulation or order commencing after the date of this Policy which contain similar subject matter to the statute, statutory instrument, regulation or order referred to in this Policy, regardless of whether the statute, statutory instrument, regulation or order is expressed or intended to supersede, substitute or replace the relevant statute, statutory instrument, regulation or order;
- any reference to a "person" (but not a "natural person") includes a natural person, entity or organisation.

Further Information

Delta Insurance Australia understands that you may not want to share with us the information which is requested to review your insurance policy, and this may affect our ability in providing and assessing an insurance policy.

For more information regarding how Delta Insurance Australia collects, stores, uses, and discloses your information, please read our privacy policy located at www.deltainsurance.com.au or alternatively you can contact us at (07) 3017 4720.

THIS POLICY SETS OUT THE TERMS UPON WHICH THE INSURER AGREES TO INSURE THE INSURED IN CONSIDERATION OF THE PAYMENT OF, OR AGREEMENT TO PAY, THE PREMIUM. THE INSURING CLAUSES AND COVERAGE EXTENSIONS ARE SUBJECT TO ALL TERMS, CONDITIONS, RESTRICTIONS AND LIMITATIONS OF THIS POLICY.

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EMPLOYMENT PRACTICES COVERAGE SECTION

In consideration of the payment of the Premium, and subject to the Conditions, the **Insurer** and the **Policyholder** on behalf of all **Insureds** agree as follows:

1. INSURING CLAUSES

The **Insurer** will pay on behalf of the **Insured** any **Loss** resulting from a **Claim** by an **Employee** or a prospective **Employee** first made against the **Insured** during the **Policy Period** arising out of a **Wrongful Act**.

2. AUTOMATIC EXTENSIONS

2.1. Cyber Bullying extension

The **Insurer** will pay any **Loss** resulting from a **Cyber Bullying Event**.

2.2. Immigration Assistance extension

The **Insurer** will pay **Immigration Assistance Costs** of an **Insured**.

2.3. Insured Persons extensions

The **Insurer** will pay **Access to Policy Costs** of an **Insured Person**.

2.4. Company extensions

The **Insurer** will pay:

- a. **Sensitivity Training Costs;**
- b. **Personal Information Request Costs;**

of the **Company**.

2.5 Joint Venture extension

The **Insurer** will pay **Joint Venture Loss** resulting from a **Claim** first made against a **Joint Venture** during the **Policy Period** arising out of a **Joint Venture Wrongful Act**.

2.6 Third party discrimination extension

The **Insurer** will pay **Loss** resulting from a **Claim** first made against the **Insured** during the **Policy Period** arising out of **Third Party Discrimination**.

2.7 Continuous Cover

This policy extends cover for the **Loss** resulting from any **Claim** arising out of, based upon or attributable to a **Circumstance** which:

- a. could have been, but was not, notified by the **Insured** under any **Prior Policy**; and
- b. is first notified to the **Insurer** during the **Policy Period**.

Provided that for this cover to apply:

- i. the failure by the **Insured** to notify such **Circumstance** under such **Prior Policy** was not fraudulent; and
- ii. the **Insurer** has the discretion to apply either the conditions or the terms and conditions of such **Prior Policy** in effect when the **Circumstance** first arose; and
- iii. the **Insured's** entitlement to indemnity will be reduced by the extent of any prejudice to the **Insurer** as a result of the **Insured's** failure to notify such **Circumstance** under such **Prior Policy**; and
- iv. the resulting **Claim** arises out of a **Wrongful Act**.

3. EXCLUSIONS

The **Insurer** will not be liable to make any payment under this policy for that part of any **Loss**:

3.1 Bodily injury or property damage

resulting from any **Claim** for actual or alleged bodily injury, sickness, disease or death of any person, or any damage to, destruction, impairment or loss of use of any tangible property.

This Exclusion will not apply to that part of any **Claim** otherwise covered by this policy for mental anguish or emotional distress.

3.2 Contractual liability

which the **Insured** is obligated to pay by reason of a written contract (or the written statement of terms and conditions in the case of a verbal contract of employment) unless such liability would have existed even in the absence of such documentation.

This Exclusion does not apply to **Defence Costs**.

3.3 Conduct

brought about or contributed to by any:

- a. deliberately criminal or deliberately dishonest act or omission of any **Insured**; or

- b. profit or advantage gained by any **Insured** to which such **Insured** is not legally entitled; or
- c. any fraudulent act or omission; or
- d. any intentional, reckless or willful acts or omissions;

as established by a final and non-appealable adjudication in the underlying proceeding, or formal written admission by such **Insured**.

3.4 Immigration (U.S.A.)

arising out of, based upon or attributable to any actual or alleged violation of the Immigration Reform Control Act 1986 (U.S.A.).

3.5 Prior Claims, Insured Events and Circumstances

arising out of, based upon or attributable to:

- a. any **Claim, Insured Event, Circumstance, Wrongful Act, Joint Venture Wrongful Act** or **Third Party Discrimination** of which notice has been given under any policy in relation to which this policy is a renewal or replacement or any matter which taken together with such **Claim, Insured Event, Circumstance, Wrongful Act, Joint Venture Wrongful Act** or **Third Party Discrimination** would constitute a **Single Event**; or
- b. any prior or pending litigation, arbitration, administrative or regulatory proceeding which was brought against an **Insured** prior to the **Pending and Prior Litigation Date**.

This Exclusion will not apply to facts or **Circumstances** which have been notified to the **Insurer** after the **Continuity Date** but were not accepted by the **Insurer** as a valid notification, and where cover has been maintained continuously with the **Insurer**.

3.6 Superannuation scheme

resulting from any **Claim** for or **Insured Event** in respect of failure to fund or perform any fiduciary obligation as respects any pension benefit plan, welfare benefit plan, health or other welfare or benefit plan, superannuation arrangements or any violation of Superannuation legislation, or any similar legislation in any other jurisdiction.

This Exclusion will not apply to **Claims** for **Retaliation**.

3.7 Employee rights

resulting from any **Claim** for or **Insured Event** in respect of any actual or alleged violations of any of the responsibilities, obligations, or duties imposed by any statute or common law anywhere in the world governing:

- a. **Pay Practices**;
- b. workers' compensation, health insurance coverage, employers liability, unemployment insurance, social security, disability benefits; superannuation arrangements;
- c. occupational health and safety, work-related injuries, illnesses and occupational fatality;
- d. payments in respect of statutory notice periods, redundancy or severance, termination indemnities, social security or insurance obligations; or
- e. **Collective Labour Rights**.

This Exclusion will not apply to **Claims** for **Retaliation**.

3.8 U.S.A Claims

arising out of, based upon or attributable to any **Claim** brought or maintained or **Insured Event** occurring in the United States of America.

3.9 Contamination damage and nuclear

arising out of, based upon or attributable to, directly or indirectly, loss, damage or destruction:

- a. arising out of, based upon or attributable to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores, organic pathogens, organic chemicals, microorganisms or mycotoxins of any kind; or
- b. arising out of, based upon or attributable to ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste as a consequence of the combustion of nuclear fuel, or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component; or
- c. arising out of, based upon or attributable to any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or

- d. arising out of, based upon or attributable to the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes; or
- e. arising out of, based upon or attributable to any chemical, biological, bio-chemical, or electromagnetic weapon.

3.10 War and terrorism

- a. arising out of, based upon or attributable to, directly or indirectly, war, invasion, act of foreign enemy, hostile operations (whether war has been declared or not), civil war, rebellion, revolution, insurrection, riot or civil commotion amounting to a popular uprising, military or takeover of power or martial law;
- b. arising out of, based upon or attributable to, directly or indirectly, terrorism.

For the purpose of determining the applicability of these Coverage Exclusions, the knowledge or act, error or omission of any **Insured Person** will not be imputed to any other **Insured Person**. The knowledge of each **Responsible Person** will be imputed to all **Companies**.

4. CLAIMS CONDITIONS

4.1 Notification

a. Claims and Insured Events

The **Insured** must give notice to the **Insurer** of any:

- i. **Claim** made against the **Insured** during the **Policy Period**; or
- ii. **Insured Event** occurring during the **Policy Period**,

as soon as practicable after the **Responsible Person** first becomes aware of such **Claim** or **Insured Event**, but in no event later than 60 days after the end of the **Policy Period**, or within any applicable **Discovery Period**. In the event that the **Insured** is prevented from notifying any **Claim** or **Insured Event** to the **Insurer** (after the **Insured** has sought consent

to do so) due to any legal or regulatory prohibition restricting them from doing so, the **Insured** must provide full details of the **Claim** or **Insured Event** to the **Insurer** as soon as such restriction is lifted.

If the **Insured** does not give notice to the **Insurer** in compliance with this provision, the **Insurer** will have no liability under this policy in respect of that **Claim** or **Insured Event**.

b. Circumstances

The **Insured** may, during the **Policy Period**, notify the **Insurer** of any fact or **Circumstances** which in the reasonable opinion of the **Responsible Person** may give rise to a **Claim** or an **Insured Event**.

Any notice must include the reasons why the **Responsible Person** reasonably anticipates that the fact or **Circumstances** may give rise to a **Claim** or an **Insured Event** and, where available, full particulars of the dates, acts and persons involved.

Any **Claim** which is made or **Insured Event** which occurs after the end of the **Policy Period** and which arises from a **Circumstance** notified in accordance with this clause will be deemed to have been made or have occurred at the same time such **Circumstance** was notified.

c. Related matters

A **Single Event** will be treated by the **Insurer** as having been notified when the first of such **Claims** or **Insured Events** was notified irrespective of whether or not the **Insurer** has formally accepted the notice.

d. Address for notifications

All notices must be sent either by email or to the address specified on the schedule.

4.2 Defence and settlement

a. Duties

The **Insured** has the right and duty to defend and contest any **Claim** made against them, or any **Insured Event** commenced against them, and will take all reasonable steps to prevent or minimise any **Loss**.

The **Insurer** will be entitled to participate fully in the conduct of the defence, and at its sole discretion and option, to take over conduct of the defence including settlement negotiations,

contribution or indemnification proceedings, in consultation with the **Insured**, where it is reasonably likely to involve the **Insurer** making any payment under this policy.

b. Consent to Policy Costs

The **Insurer** will not be obliged to pay any **Policy Costs** provided under this policy unless the **Insurer** has provided prior written consent to such **Policy Costs** being incurred (except where expressly stated in the policy that prior consent is not first required).

If the **Insurer's** prior written consent cannot reasonably be obtained before **Policy Costs** are incurred, then the **Insurer** will give retrospective approval for such reasonable **Policy Costs** necessarily incurred.

c. Advancements

The **Insurer** will, upon the written request of an **Insured**, advance **Defence Costs** prior to coverage being confirmed.

d. Consent to settlements

If an **Insured** admits liability or compromises or settles any **Claim** or **Insured Event**, without the **Insurer's** prior written consent, this policy will not provide cover in connection with that admission, **Claim** or **Insured Event**.

The **Insured** will not be required to receive the **Insurer's** consent prior to making any self-report or formal written representation to a **Regulatory Authority**, provided that as soon as legally permitted, the **Insured** will seek the consent of the **Insurer** in accordance with this clause. The **Insurer** will not consider such self-report or formal written representation as an admission of liability for the purposes of this clause.

e. Uninsured Loss

The **Policyholder** will reimburse the **Insurer** for any payments which are ultimately determined not to be covered under this policy.

4.3 Allocation

Where a **Claim** or **Insured Event** involves both parties covered and not covered and/or matters covered and/or matters not covered by this policy, the **Insurer's** liability is limited to the proportion of the **Claim**, **Insured Event**, or **Loss** which represents a fair and proper allocation between the **Insured** and the **Insurer**, and/ or

matters covered and not covered by this policy, taking into account the relative legal and financial exposures attributable to the parties and/or matters covered and not covered by this policy.

In the circumstances where the **Insured** and **Insurer** cannot agree on an allocation between covered allegations and allegations that are not covered, the dispute shall be submitted to a binding opinion from a Senior Counsel agreed between the parties or, failing agreement, appointed by the President of the Bar Association of the State or Territory of Australia where this policy is issued.

4.4 Cooperation

The **Insured** will give all information and assistance to the **Insurer** as it may reasonably require to enable it to investigate any matter notified under this policy and cooperate with the **Insurer** in responding to any **Claim** or **Insured Event**.

Except where expressly provided for in this policy, these steps will not be paid for by the **Insurer**. The failure of any **Insured Person** to give the **Insurer** the information and assistance which it may reasonably require will not impair the rights of any other **Insured Person** under this policy.

4.5 Other insurance

This policy will only pay **Loss** that is in excess of any amount recoverable from a more specific employment practices liability insurance policy available to the **Insured**. As excess insurance, this policy will not apply or contribute to the payment of any **Loss** until the amounts of that other insurance have been exhausted. Provided that this clause will not apply to any other policy issued by the **Insurer**.

4.6 Subrogation and recoveries

Following a payment under this policy, the **Insurer** will be subrogated to all rights and remedies available to the **Insured** in connection with that payment therefore the **Insurer** has the right to seek recovery of that payment from a third party and will be entitled to bring proceedings in the name of the **Insured**.

Whether before or after payment under this policy, the **Insured** will take all steps necessary, or required by the **Insurer**, to preserve the rights and remedies which the **Insured** may have to recover its **Loss**.

The **Insured** will provide to the **Insurer** any assistance the **Insurer** may require to secure the rights and reme-

dies set out above. The **Insurer** shall be entitled to take control of all steps taken to recover any **Loss**.

Any amounts recovered will be applied in the following order:

- a. to reimburse costs incurred in bringing proceedings against the third party;
- b. then to the **Insured** for the amount of any **Loss** which exceeds the **Limit of Liability**;
- c. then to the **Insurer** up to the amount of the **Loss** paid by the **Insurer** and the **Limit of Liability** will be reinstated for such amounts; and
- d. then to the **Insured** to reimburse the **Retention**.

The **Insurer** agrees not to exercise its rights of recovery against any **Insured Person** unless the payments made by the **Insurer** under this policy are brought about or contributed to by the deliberately dishonest act or omission of that **Insured Person**.

5. GENERAL CONDITIONS

5.1 Limit of liability

The **Limit of Liability** is the maximum amount payable by the **Insurer** under this Employment Practices Liability policy in respect of all **Insureds**, Insuring Clauses and Automatic Extensions.

Any **Loss** paid by the **Insurer** under this policy will reduce the **Limit of Liability**.

Where any sub-limit is specified in the policy or schedule, the **Insurer** will have no liability in excess of that sub-limit.

Any sub-limit will be part of and not in addition to the **Limit of Liability**.

5.2 Combined Policy Aggregate Limit of Liability

The **Combined Policy Aggregate Limit of Liability** listed in the schedule is the combined total limit of liability for all loss payable under this Employment Practices Liability Policy and any Directors' and Officer's and Corporate Legal Liability Policy, Statutory Liability or Commercial Crime policy provided by the **Insurer**. The schedule will indicate which policies have been purchased.

Each individual policy has its own limit of liability which is part of and not in addition to the **Combined Policy Aggregate Limit of Liability** and is a separate aggregate amount. Each individual policy's limit of liability operates as a sub-limit of the **Combined Policy**

Aggregate Limit of Liability. Once the limit of liability for each individual policy is exhausted then the **Insurer** will have no liability in excess of that limit of liability for each individual policy even if the **Combined Policy Aggregate Limit of Liability's** limit has not been exhausted.

Once the **Combined Policy Aggregate Limit of Liability's** limit has been exhausted then the **Insurer** will have no liability in excess of the **Combined Policy Aggregate Limit of Liability** even if the limit of liability has not been exhausted for any individual policy purchased including this Employment Practices Liability policy.

5.3 Retention

The **Insurer** will be liable only for that part of any covered **Loss** which exceeds the **Retention**.

Only one **Retention**, being the largest, will be applied to the total amount of **Loss** arising from a **Single Event**.

5.4 Change of Control / Acquisitions

In the event of a **Change of Control** of a **Company**, no cover under this policy will apply for any:

- a. **Claim** against that **Company** or their **Insured Persons**, which arises from a **Wrongful Act, Joint Venture Wrongful Act** or **Third Party Discrimination**; or
- b. **Insured Event** concerning that **Company** or their **Insured Persons**, which arises out of any conduct,

that occurred after such **Change of Control**.

The **Policyholder** will, as soon as practicable, give the **Insurer** written notice of any **Change of Control** which takes place in respect of the **Policyholder**.

In the event of an acquisition of a **Subsidiary**, no cover under this policy will apply for any:

- a. **Claim** against that **Subsidiary** or their **Insured Persons**, which arises from a **Wrongful Act, Joint Venture Wrongful Act** or **Third Party Discrimination**; or
- b. **Insured Event** concerning that **Subsidiary** or their **Insured Persons**, which arises out of any conduct,

that first commenced before such acquisition.

5.5 Discovery Period

If this policy is not renewed or replaced, the **Insured** will be entitled:

- a. to an automatic **Discovery Period** of 60 days;
- b. to purchase an optional **Discovery Period** for a longer period as specified in the schedule, provided that written notice is given to the **Insurer** by the **Policyholder** within 30 days after the end of the **Policy Period** and any additional premium specified by the **Insurer** is paid within 45 days of the end of the **Policy Period**; and
- c. to an unlimited **Discovery Period** in the event such **Insured** is a **Retired Insured Person**

The automatic **Discovery Period** is part of and not in addition to any optional **Discovery Period** purchased by the **Insured**.

The **Discovery Period** is non-cancellable and the premium for the optional **Discovery Period** is deemed fully earned at the inception date of the optional **Discovery Period**.

In the event of a **Change of Control** of the **Policyholder**, the **Policyholder** is entitled to purchase a 72-month **Discovery Period** on such terms and conditions and for such additional premium as the **Insurer** requires.

5.6 Cancellation

The **Policyholder** may cancel this policy at any time giving the **Insurer** 30 days' written notice. If the **Insured** has notified any **Claims** or **Insured Events** or the **Insurer** has made any payments of **Loss** under the policy prior to such cancellation then the premium for this policy will be deemed fully earned and there will be no refund of any premium due.

If the **Insured** has not notified any **Claims** or **Insured Events** and the **Insurer** has not made any payments of **Loss** then the **Insurer** will make a pro-rata refund of premium.

The **Insurer** may cancel this policy in accordance with the Insurance Contracts Act (cth).

5.7 Authorisation

The **Policyholder** will act on behalf of all **Insureds** in connection with all matters relevant to this policy unless the **Policyholder** is insolvent in which event the remaining entities will agree with the **Insurer** as to which one of them will act on behalf of all **Insureds**.

Subject to the other provisions of this policy, this clause does not preclude an **Insured Person** from notifying the **Insurer** of a **Claim**, **Insured Event** or **Circumstance** in accordance with the notification provision in this policy.

5.8 Third parties

Nothing in this policy is intended to confer a directly enforceable benefit on any third party other than an **Insured**.

5.9 Assignment

Neither this policy nor any right under it may be assigned without the prior written consent of the **Insurer**.

5.10 Governing law

This **Policy** will be governed by and construed in accordance with the laws of the Commonwealth of Australia.

Any dispute relating to the **Policy** shall be submitted to the exclusive jurisdiction of an Australian Court within the State or Territory in which the **Policy** was issued.

Any summons, notice or process to be served upon the **Insurer** may be served upon the underwriters:

Allied World Assurance Company
(Australian Branch)

Level 21, 264 George Street, Australia Square,
Sydney NSW 2000, Australia

and

Lloyd's Underwriters'
General Representative in Australia
Level 9, 1 O'Connell Street
Sydney, NSW 2000, Australia

who have authority to accept service and to appear on the behalf of the **Insurer**.

5.11 Jurisdictional limits

This policy will only apply to **Claims** brought within the jurisdictional limits stated in the schedule.

5.12 Insurer's consent

Where the **Insured** is required under this policy to seek the consent of the **Insurer**, the **Insurer** will not unreasonably withhold, delay or deny such consent.

5.13 Sanction limitation

The **Insurer** will not be liable to provide any cover, benefit or pay any **Claim** under this policy to the extent that the provision of such cover, benefit or payment of such **Claim** would expose the **Insurer** to any

sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America or Australia.

5.14 Several liability

The liability of the **Insurer** under this policy is several and not joint with other insurers who may be a party to this policy. Any insurer is liable only for the proportion of liability it has underwritten. The **Insurer** and any insurers are not jointly liable for the proportion of liability underwritten by any other insurer; nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this policy.

The proportion of liability under this policy underwritten by any insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion; nor is any member otherwise responsible for any liability of any **Insurer** that may underwrite this policy. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various points in this clause to this policy in the singular, where the circumstances so require this should be read as a reference to Policies in the plural.

6. DEFINITIONS

The following definitions are applicable to all sections of this policy:

6.1 Access to Policy Costs means reasonable fees, costs and expenses necessarily incurred by any of the **Insured Persons**, solely and exclusively, to investigate and resist any challenge, by any other **Insured Person**, the **Company** or any third party, to their right to cover under this policy.

6.2 Bail Bond Cost means the reasonable premium (not including collateral) for a bond or other financial instrument to guarantee an **Insured Person's** contingent obligation for bail required by a court.

6.3 Change of Control means any one of the following events:

- a. the **Policyholder** consolidates with or merges into or sells all or a majority of its assets to any other person or entity or group of persons and/or entities acting in concert;
- b. any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the **Policyholder** or control the appointment of directors who are able to exercise a majority of votes at meetings of the board of directors of the **Policyholder**;
- c. the appointment of a receiver, liquidator, administrator or other insolvency practitioner in respect of a **Company**, but only in relation to that **Company**;
- d. an entity ceases to be a **Subsidiary**, or becomes controlled by another entity by virtue of any law; or
- e. an entity ceases to be a **Joint Venture**.

6.4 Circumstance means an incident, occurrence, fact, matter, act, error or omission which may give rise to a **Claim** against the **Insured**.

6.5 Claim means:

- a. a written demand for damages, compensation or non-monetary relief;
- b. a civil proceeding for damages, compensation or non-monetary relief;
- c. a demand for mediation, arbitration or other form of alternative dispute resolution for damages, compensation or non-monetary relief;
- d. a criminal proceeding;
- e. in respect of an **Insured Person** only, an administrative or regulatory proceeding.

Claim includes a written request to extend the operation of or waive any statute of limitations or contractual time-bar which may be applicable to a **Claim** as defined above.

- 6.6 Collective Labour Rights** means the rights of **Employees**:
- to engage in, or to refrain from engaging in, union or other collective activities;
 - to be consulted and informed of the possibility of a redundancy situation as a collective group of **Employees**;
 - to be consulted and informed of the possibility of a transfer of employment to a new employer.
- 6.7 Combined Policy Aggregate Limit of Liability** is the amount specified in the schedule as applicable in the aggregate to any individual policy, including this policy, provided by the **Insurer** to the **Insured**.
- 6.8 Company** means the **Policyholder** and any **Subsidiary**.
- 6.9 Continuity Date** means the date specified in the schedule.
- 6.10 Cyber Bullying** means bullying or harassment by way of electronic communication including social networking internet sites.
- 6.11 Cyber Bullying Event** means a **Claim** by an **Employee** or a prospective **Employee** arising out of **Cyber Bullying** first made against the **Insured** during the **Policy Period**.
- 6.12 Defence Costs** means the reasonable fees, costs, expenses, **Expert Costs** and **Bail Bond Cost** necessarily incurred solely and exclusively by or on behalf of the **Insured** in connection with the investigation, defence, settlement or appeal of a **Claim**.
- 6.13 Discovery Period** means the period of time following the end of the **Policy Period** during which notice may be given to the **Insurer** of:
- any **Claim** arising out of any **Wrongful Act**, **Joint Venture Wrongful Act** or **Third Party Discrimination** committed before the end of the **Policy Period**; or
 - any **Insured Event** arising out of any conduct undertaken before the end of the **Policy Period**.
- 6.14 Employee** means any natural person who was or is:
- under a contract of employment with;
 - working under an apprenticeship with;
 - hired or seconded to; or
 - working under the control and supervision of, the **Company**.
- 6.15 Employee Benefits** means salaries, fees, commissions, bonuses, share schemes, pensions and similar **Employee Benefits** (including business entertainment whether or not constituting bribery under any applicable bribery legislation) earned in the normal course of employment.
- 6.16 Expert Costs** means the reasonable fees, costs and expenses of an expert retained through defence counsel in order to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence.
- 6.17 Immigration Assistance** means assisting, arranging or obtaining permanent residency status, a work visa, or such other immigration permit for an **Insured Person** to enable the **Insured Person** to have a legal right to work for the **Company** and a right to be resident in the country where the **Insured Person** is employed to work for the **Company**.
- 6.18 Immigration Assistance Costs** means reasonable fees, costs and expenses which are necessarily incurred by the **Insured** for legal advice and representation in relation to an **Immigration Assistance Event** first commenced during the **Policy Period**.
- 6.19 Immigration Assistance Event** means an act, error or omission by the **Company** in carrying out **Immigration Assistance** that directly causes an **Insured Person** to temporarily or permanently lose their legal right to work for the **Company** and their right to be resident in the country where the **Insured Person** was employed to work for the **Company**.
- 6.20 Insured** means the **Insured Persons** and the **Company**.
- 6.21 Insured Event** means **Access to Policy Costs**, a **Cyber Bullying Event**, **Immigration Assistance Event**, and **Personal Information Request**.
- 6.22 Insured Person** means any past, present and future:
- Employee** of the **Company**;
 - director or officer of the **Company**,
- but only when and to the extent acting for and on behalf of the **Company** in such capacity.
- Insured Person** includes the estate, heirs, legal representatives or assigns of an **Insured Person** in the event of their death, incapacity or bankruptcy

or the lawful spouse, civil or domestic partner of an **Insured Person** solely in their capacity as such.

Insured Person does not include any externally appointed receiver, liquidator, administrator or other insolvency practitioner.

6.23 Insurer means Delta Insurance Australia Pty Ltd writing on behalf of the Underwriters named in the schedule.

6.24 Joint Venture means any corporation, partnership, **Joint Venture**, association or other entity, other than a **Subsidiary**, in which the **Policyholder**, either directly or through one or more subsidiaries owns or controls not more than 50%, in the aggregate of the outstanding securities or other interests representing the right to vote for the election or appointment of those persons of such an entity occupying elected or appointed positions having fiduciary, supervisory or managerial duties and responsibilities comparable to those of an **Insured Person** of the **Company**, regardless of the name or title by which such position is designated.

6.25 Joint Venture Loss means the proportion of the **Loss** incurred by a **Joint Venture** that represents the **Company's Joint Venture** Interest in that **Joint Venture** resulting from a **Claim** provided such **Loss** would have been covered under this policy had it been a **Loss** resulting from a **Claim** by an **Employee** or a prospective **Employee** against the **Insured**.

6.26 Joint Venture Interest means the percentage interest of the **Company** in the relevant **Joint Venture** (whether direct or by virtue of the insolvency of others interested in such **Joint Venture**).

6.27 Joint Venture Wrongful Act means any employment related actual or alleged:

- a. act or omission;
- b. failure to provide equal opportunity of employment or pay;
- c. discrimination;
- d. harassment (sexual or otherwise, and including harassment in the form of workplace bullying);
- e. unfair dismissal or treatment;
- f. **Retaliation**;
- g. inducement to become or remain as an **Employee** based upon an erroneous job description;

- h. defamation, misrepresentation, negligent misstatement, wrongful failure to employ or promote, deprivation of a career opportunity, or wrongful discipline;
- i. violation of an individual's civil or human rights, or violations of any similar statutory provision arising out of acts or omissions by an **Insured** or a person for whom the **Insured** is legally responsible;
- j. failure to allow an **Employee** to exercise a statutory right; or
- k. breach of statutory provision or breach of common law,

relating to an **Employee** or a prospective **Employee** of the **Joint Venture**. **Joint Venture Wrongful Act** will include failure to provide or enforce corporate policies or procedures to prevent or address any of the above employment related matters.

6.28 Limit of Liability means the amount specified in the schedule applicable to the **Employment Practices Liability** policy which is an aggregate limit.

6.29 Loss means:

- a. **Policy Costs** to the extent afforded by the applicable Automatic Extension only;
- b. any amount that the **Insured** is legally liable to pay as a result of a legally enforceable obligation to a third party, solely and exclusively in respect of a covered **Claim**, for compensatory damages, judgments, settlements, pre and post judgment interest, punitive or exemplary damages.
- c. **Joint Venture Loss** to the extent covered under Automatic Extension 2.5 only.

Loss does not include:

- a. fines and penalties;
- b. **Employee Benefits**, or costs or overheads of the **Company** or amounts awarded as part of any interim relief application in the Employment Tribunal;
- c. taxes;
- d. amounts which are uninsurable;
- e. the cost to modify any premises or provide any accommodation to any disabled person,
- f. amounts resulting from **Third Party Discrimination** arising out of the **Insured's**

business decisions in respect of pricing, distribution, underwriting, design, marketing, manufacture or other policies or decisions relating to any of its products or services.

6.30 Management Control means:

- a. controls the composition of the board of directors;
- b. controls more than half of the shareholder voting power; or
- c. holds more than half of the issued share capital.

6.31 Pay Practices means the rights of **Employees**:

- a. to be provided with or paid for vacation, off-the-clock work, sick time, holidays or other paid time off;
- b. to be provided with or paid for rest or meal periods;
- c. to be reimbursed for expenses;
- d. to be reimbursed for improper payroll deductions or charges allocated to actual or alleged **Employees**;
- e. to be classified as exempt or non-exempt in relation to overtime pay;
- f. to be paid overtime, minimum wage, or any other required wages;
- g. to be paid within a certain period of time;
- h. to have hours, pay, tips, commissions, wages, expenses, or any other sums allegedly due properly recorded or credited; or
- i. not to be subject to unfair business practices, conversion or unjust enrichment.

6.32 Pending and Prior Litigation Date means the date specified in the schedule.

6.33 Personal Information Request means a subject access request made during the **Policy Period** for personal information by an **Employee** or a prospective **Employee** under any data protection legislation, including applicable Australian federal or state data protection legislation.

6.34 Personal Information Request Costs means the reasonable and necessary legal costs incurred to comply with a **Personal Information Request**.

6.35 Policy Costs means:

- a. **Access to Policy Costs**;

b. **Defence Costs**;

c. **Immigration Assistance Costs**;

d. **Personal Information Request Costs** and;

e. **Sensitivity Training Costs**.

Policy Costs will not include the remuneration of any **Insured Person**, the cost of their time or costs or overheads of the **Company**.

6.36 Policyholder means the entity named in the schedule.

6.37 Policy Period means the period specified in the schedule.

6.38 Prior Policy means any Employment Practices Liability policy issued to the **Insured** by the **Insurer** only, immediately prior to the commencement of this **Policy Period**.

6.39 Responsible Person means any member of the Board of Directors, the Risk Manager, Insurance Manager, Chairman, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Compliance Officer, Head of Audit, Head of Human Resources or General Counsel including any individual in a substantially similar position or with substantially similar responsibilities as those referenced, irrespective of the exact title of such individual, of the **Policyholder**.

6.40 Retaliation means retaliatory treatment against any **Employee** or prospective **Employee** on account of such person:

- a. exercising their rights in law;
- b. refusing to breach any law;
- c. opposing any unlawful practice;
- d. disclosing, or threatening to disclose, an alleged breach of law to a superior or to any governmental agency; or
- e. assisting in, testifying in or cooperating with a proceeding or investigation regarding an alleged breach of law.

6.41 Retention means the amount specified in the schedule.

6.42 Retired Insured Person means any **Insured Person** who has ceased to act in their **Insured** capacity prior to expiry of the **Policy Period** for reasons other than:

- a. disqualification from holding office or from managing a **Company**;

- b. a **Change of Control**; or
 - c. the insolvency of any **Company**;
- and does not subsequently resume their position.

6.43 Sensitivity Training Costs means 85% of the reasonable costs of training, re-education, awareness or other discrimination prevention programmes that the **Company** is obligated to institute by reason of a judgment (or, where applicable, any settlement) or arbitration award for liability on account of a **Claim** covered by the policy, for up to two years after such judgment, award or settlement.

6.44 Single Event means all **Claims** and **Insured Events** arising out of, based upon or attributable to the same originating cause, source or event.

6.45 Subsidiary means any entity in which the **Policyholder** either directly or indirectly through one or more entities has or had **Management Control** on or before the inception date of this policy.

Subsidiary will include:

- a. any new entity which the **Company** incorporates during the **Policy Period** and which, at the time of incorporation, the **Company** has **Management Control** provided that such entity is not incorporated, domiciled, has equity securities, trades in or employees in the United States of America.
- b. any entity that the **Company** acquires **Management Control** of during the **Policy Period** provided that at the time of obtaining that **Management Control**, the acquired entity is not incorporated, domiciled, has employees in or has equity securities issued or traded, in the United States of America.

Subsidiary does not include any fund, investment vehicle, managed investment scheme or trust.

6.46 Third Party means any natural person other than an **Insured Person**.

6.47 Third Party Discrimination means any actual or alleged harassment, discrimination by any **Insured Person** against a **Third Party**.

6.48 Wrongful Act means any employment related actual or alleged:

- a. act or omission;
- b. failure to provide equal opportunity of employment or pay;

- c. discrimination;
- d. harassment (sexual or otherwise, and including harassment in the form of workplace bullying);
- e. unfair dismissal or treatment;
- f. **Retaliation**;
- g. inducement to become or remain as an **Employee** based upon an erroneous job description;
- h. defamation, misrepresentation, negligent misstatement, wrongful failure to employ or promote, deprivation of a career opportunity, or wrongful discipline;
- i. violation of an individual's civil or human rights, or violations of any similar statutory provision arising out of acts or omissions by an **Insured** or a person for whom the **Insured** is legally responsible;
- j. failure to allow an **Employee** to exercise a statutory right; or
- k. breach of statutory provision or breach of common law, relating to an **Employee** or a prospective **Employee**.

Wrongful Act will include failure to provide or enforce corporate policies or procedures to prevent or address any of the above employment related matters.



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