



Liberty
International
Underwriters™
Member of Liberty Mutual Group

LIBERTY INTERNATIONAL UNDERWRITERS
(a member company of Liberty Mutual Group)

STATUTORY LIABILITY POLICY
CLAIMS MADE AND NOTIFIED



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Statutory Liability Policy **Claims Made and Notified**

In consideration of the premium being paid by the Insured to LIU, LIU agrees to indemnify the Insured in accordance with the attached Schedule, Policy wording and endorsements where applicable.

1. Notice to the Insured

This Policy provides cover on a **Claims made and notified basis**.

- 1.1 A Claim must be made against the Insured during the Period of Insurance; and
- 1.2 The Insured must notify LIU in writing of such Claim during the Period of Insurance.

2. Insuring Clause

Subject to the terms and conditions of this Policy, LIU will pay to or on behalf of the Insured any Loss arising from any Claim in respect of a Wrongful Breach that occurs after the Retroactive Date.

3. Definitions

- 3.1 "Act" means any Act of the Parliament of Australia and any Act of the Parliaments of the States or Territories of Australia, including any subordinate or delegated legislation

made under those Acts; and any amendment, consolidation or re-enactment of any of the above Acts or legislation.

- 3.2 “Business” means the business conducted by the Insured as described in the Schedule.
- 3.3 “Claim” means the receipt by the Insured of any written or verbal notice which alleges a Wrongful Breach and claims that the Insured is liable to pay a Penalty.

- 3.4 “Consumer Protection Act” means any of the following:

Fair Trading Act 1985 (VIC)
Fair Trading Act 1987 (NSW)
Fair Trading Act 1987 (SA)
Fair Trading Act 1987 (WA)
Fair Trading Act 1989 (QLD)
Fair Trading Act 1990 (TAS)
Fair Trading Act 1992 (ACT)
Consumer Affairs and Fair Trading Act 1996 (NT)
Trade Practices Act 1974 (Cth)

And any amendment, consolidation or re-enactment of any of those Acts.

- 3.5 “Deductible” means the amount stated in the Schedule.
- 3.6 “Employee” means any person employed by the Insured.
- 3.7 “Insured” means:
- 3.7.1 The organisation named as the Insured in the Schedule, including any Officer, Employee or work experience student whilst acting in the performance of their duties or employment;
- 3.7.2 Any subsidiary company of the Insured named in the Schedule which is:
- 3.7.2.1 Incorporated within Australia including subsidiaries;
- 3.7.2.2 Controlled by the Insured and over which the Insured assumes active management;
- 3.7.3 Outside Directorship held by an Officer,
- Provided that:
- 3.7.3.1 Coverage shall not be extended to the outside organisation in which such Outside Directorship is held, or to any other director, executive officer, company secretary or employee of such organisation; and
- 3.7.3.2 Coverage shall not apply to any part of any Loss covered by any indemnity given by such outside organisation or any contract of

insurance taken out by or on behalf of that outside organisation or its directors, executive officers, company secretary or employees.

- 3.8 “Joint Venture” means any enterprise undertaken jointly by the Insured and any other party.
- 3.9 “LIU” means Liberty International Underwriters. Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated in Massachusetts, USA. (The liability of members is limited).
- 3.10 “Loss” means any Penalty and Defence Costs.
- 3.11 “Officer” means any past, present or future director, executive officer (as defined by the Corporations Act) or company secretary of the Insured.
- 3.12 “Outside Directorship” means an executive position held by an Officer of the Insured in connection with the Business at the specific request of the Insured in any corporation, joint venture, partnership, trust or other enterprise which is not included in the Definition of the Insured. In this definition, a reference to Insured shall mean the Insured as defined in clauses 3.7.1 and 3.7.2.
- 3.13 “Penalty” means any monetary sum payable by the Insured to any Regulatory Authority pursuant to any Act for a Wrongful Breach by the Insured but excluding:
- 3.13.1 Any amounts payable as compensation;
 - 3.13.2 Any compliance, remedial, reparation or restitution costs;
 - 3.13.3 Any damages, including any exemplary or punitive damages;
 - 3.13.4 Any consequential economic loss;
 - 3.13.5 Any legal costs and associated expenses.
- Notwithstanding clause 3.13.5, LIU will pay any reasonable legal costs and associated expenses payable by the Insured to any Regulatory Authority upon the imposition of a Penalty covered by this Policy. Provided that where the proceedings that lead to the imposition of the Penalty also include proceedings in respect of any of the matters set out in sub-clauses 3.13.1 to 3.13.4, LIU will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in respect of those matters set out in sub-clauses 3.13.1 to 3.13.4.
- 3.14 “Period of Insurance” means the period of insurance stated in the Schedule.
- 3.15 “Reasonable Grounds for Defence” means:
- 3.15.1 The Insured has reasonable prospects of success in avoiding the quantum of any Penalty alleged in the Claim; or
 - 3.15.2 The Insured has reasonable prospects of success in reducing the quantum of any Penalty alleged in the Claim,

and that having regard to the likely legal costs incurred in defending the Claim it is reasonable for the Claim to be defended. Provided that in either scenario 3.15.1 or 3.15.2 above the Claim is not capable of being avoided or mitigated by a settlement into which a reasonable person in the position of the Insured, properly advised, would enter.

In the event that an agreement on reasonable prospects for success cannot be reached between LIU and the Insured, a Senior Counsel (to be mutually agreed upon by LIU and the Insured) shall, as an expert and not an arbitrator, make such determination. Until the Senior Counsel has made a determination LIU may, in its absolute discretion, pay such legal costs and/or expenses or any other amount insured under this Policy as it considers appropriate.

In the event that agreement on the appointment of a Senior Counsel cannot be reached, such Senior Counsel shall be appointed by the then President of the Law Society or the Law Institute in the relevant State or Territory.

3.16 “Regulatory Authority” means a person or entity appointed, constituted or acting under a delegation pursuant to any Act for the purposes of enforcement of such Act or another Act, including a person or entity authorised to collect monies payable to the Consolidated Revenue Fund, Consolidated Fund or any other such fund.

3.17 “Territorial Limits” means anywhere in Australia.

3.18 “Wrongful Breach” means any act, error or omission which occurs in connection with the Business, within the Territorial Limits and after the Retroactive Date stated in the Schedule, whereby:

3.18.1 The Insured contravenes an Act or is involved in the contravention of an Act;

3.18.2 The Insured commits an offence pursuant to an Act; or

3.18.3 Such conduct is prohibited under an Act or is the subject of the imposition of a Penalty under an Act.

4. Limit of Indemnity and Deductible

LIU’s liability under this Policy in respect of all Losses arising out of all Claims covered by this Policy shall not exceed the Limit of Indemnity specified in the Policy Schedule any one Claim and in the aggregate during the Period of Insurance.

All Losses arising out of any one Wrongful Breach or interrelated Wrongful Breaches are deemed to be one Loss.

The amount shown within the Policy Schedule as a Deductible is the first amount for each and every Claim which is to be borne by the Insured.

5. Defence Costs

LIU agrees to pay all legal costs and expenses, excluding wages, salaries or other remuneration of the Insured, incurred with LIU's prior written consent in connection with any Claim for which indemnity is available under this Policy, provided that such legal costs and expenses are included within the Limit of Indemnity applicable to this Policy.

Provided that LIU shall not be obliged to provide such consent unless LIU is satisfied that the Insured has Reasonable Grounds for Defence.

Provided that LIU shall not be liable for legal costs and/or expenses where indemnity is not provided by this Policy.

6. Exclusions

6.1 This Policy does not provide indemnity in respect of any Claim:

6.1.1 Based upon, attributable to or in consequence of:

- 6.1.1.1 Any wilful, intentional or deliberate Wrongful Breach;
- 6.1.1.2 A wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any Act;
- 6.1.1.3 Any Wrongful Breach caused by gross negligence or recklessness by the Insured;
- 6.1.1.4 A dishonest, fraudulent or malicious act or omission of the Insured;
- 6.1.1.5 The Insured gaining any personal profit or advantage or receiving any remuneration to which he/she was not legally entitled;
- 6.1.1.6 Any Wrongful Breach in connection with any strike, lockout, picket line, stand down or industrial dispute. This exclusion does not apply to Officers and Employees for Claims arising in the proper performance of their duties as Officers and Employees;
- 6.1.1.7 A Wrongful Breach of any Consumer Protection Act. This exclusion does not apply to Officers and Employees for Claims arising in the proper performance of their duties as Officers and Employees;
- 6.1.1.8 Any Wrongful Breach pursuant to Sections 182, 183, 601FE or 601JD of the Corporations Act; and any amendment, consolidation or re-enactment of any of those Sections;

- 6.1.1.9 A Wrongful Breach in connection with a requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost;
- 6.1.1.10 A Wrongful Breach relating to the regulation of vehicular, air or marine traffic;
- 6.1.1.11 Asbestos, asbestos products and/or products containing asbestos;
- 6.1.2 Made, threatened or in any way intimated against the Insured prior to the Period of Insurance:
- 6.1.3 Arising from any matter disclosed to any insurer, including LIU, prior to the Period of Insurance as either a Claim or fact which may give rise to a Claim against the Insured;
- 6.1.4 Arising from any facts of which the Insured was aware prior to the commencement of the Period of Insurance and which the Insured knew, or ought reasonably to have known, to be facts which may give rise to a Claim;
- 6.1.5 Arising from any Wrongful Breach where the Insured knew, or ought reasonably to have known, prior to the Period of Insurance that there had been such a Wrongful Breach;
- 6.1.6 For any Loss or part of any Loss which is attributable to the period after the Insured knew, or ought reasonably to have known, that its conduct was a Wrongful Breach;
- 6.1.7 Deliberately or intentionally solicited by the Insured. This exclusion does not apply to Officers and Employees where such Claims arise in the proper discharge of their duties as Officers and Employees;
- 6.1.8 Any Defence Costs incurred or paid before the consent of LIU has been given in accordance with the provisions of this Policy;
- 6.1.9 For any Loss or part of any Loss arising from or which is attributable to the Insured's participation in any Joint Venture. Provided that this exclusion shall not apply to Outside Directorship as defined in Definition 3.13;
- 6.1.10 For any Penalty:
 - 6.1.10.1 Imposed pursuant to any law of any country, state or territory outside the Territorial Limits;
 - 6.1.10.2 Imposed within the Territorial Limits but arising out of any act or omission occurring outside the Territorial Limits, and any Defence Costs associated with such Penalty.

6.2 LIU shall not be liable to pay the amount of the Deductible in respect of each Loss.

7. Continuous Cover

If the Insured was aware of any facts that might give rise to a Claim prior to the commencement date of the Period of Insurance and had not notified LIU of such facts prior to the commencement date of the Period of Insurance, then Exclusion 6.1.4 will not apply to the notification of a Claim resulting from such facts, provided that:

- 7.1 The failure to notify such facts was not a fraudulent misrepresentation or fraudulent non-disclosure by the Insured; and
- 7.2 The Insured has been insured continuously under a Statutory Liability Policy with LIU and was so insured by LIU at the time the Insured first became aware of such facts; but
- 7.3 Indemnity will be considered under the terms and conditions of the Policy (including limits of liability and deductibles) in force when the Insured first became aware of such facts; and
- 7.4 LIU will reduce its liability to the extent of any prejudice suffered as a result of the Insured's failure to notify such facts giving rise to a Claim prior to the commencement date of the Period of Insurance.

8. Conditions

- 8.1 In the event of a Claim, the Insured must give immediate notice in writing to LIU of such Claim and such information as LIU may require to reasonably investigate the Claim and to enable LIU to determine its liability under this Policy.
- 8.2 The Insured must take all reasonable care and do and concur to do all things reasonably practicable to avoid or prevent a Wrongful Breach, or diminish a Loss.
- 8.3 The Insured shall not make any admission, offer, promise or payment in respect of any Claim, or agree to pay any Penalty or consent to any order directing the Insured to pay any Penalty without the prior written consent of LIU.

LIU shall not be liable for any such Penalty incurred without its consent, and such consent will not be unreasonably withheld by LIU.
- 8.4 LIU shall be entitled, but not obligated, to take over the conduct in the name of the Insured the investigation, defence (including appeal and resisting appeal) and settlement of any Claim. Any amount incurred by LIU shall be deemed part of Defence Costs.
- 8.5 If LIU grants indemnity under this Policy in respect of any Claim, then LIU shall be subrogated to all the Insured's rights of recovery in respect of such Claim whether or not payment has in fact been made and whether or not the Insured has been compensated in full for their loss. Each Insured must, at its own cost, provide all

reasonable assistance to LIU (including, but not limited to giving information, signing documents and giving evidence) to help enforce those rights.

The Insured must not do anything that may prejudice LIU's position or its potential or actual rights of recovery against any party. Any amounts recovered by LIU shall be allocated in the following order – recovery costs, uninsured loss, Limit of Indemnity and Deductible.

- 8.6 This Policy, the Schedule and any endorsements attached to this Policy shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear.
- 8.7 Where LIU recommends to the Insured to pay any Penalty, consent to any directing the Insured to pay any Penalty or otherwise settle or resolve any Claim, and the Insured does not agree to do so, then LIU is entitled to reduce its liability to the Insured to the extent of any prejudice suffered by LIU by reason of the Insured's failure to so agree.
- 8.8 This Policy shall be interpreted in accordance with the laws of Australia or any State or Territory as applicable, and all claims for indemnity under this Policy shall be decided in accordance with those laws.
- 8.9 The Insured shall comply with any lawful notice or direction received from, or any enforcement action taken by any appropriate Regulatory Authority under any Act within the time specified or, if no time is specified, within a reasonable time.
- 8.10 The Insured may cancel this Policy at any time by giving notice in writing to LIU.

LIU may cancel this Policy at any time where:

- 8.10.1 It is entitled to do so pursuant to the Insurance Contracts Act 1984 or any amendments thereto;
- 8.10.2 The Insured has failed to notify LIU of any specific act or omission where such notification is required under the terms or conditions of this Policy;
- 8.10.3 The Insured has acted in contravention of or omitted to act in compliance with any term of this Policy which empowers LIU to refuse to pay a claim in the event of such contravention or omission.

Any notice of cancellation given by LIU shall take effect either at the time when another contract of insurance between the Insured and LIU or some other insurer (being a contract that is intended by the Insured to replace this Policy) is entered into or at 4pm on the third business day after the date on which notice was given to the Insured by LIU (whichever is the earlier).

- 8.11 Where the Insured comprises more than one person or company, it is agreed that the named Insured referred to in the Schedule shall be the agent of each of the other Insured persons or companies for the purposes of receiving any notice of cancellation pursuant to this Clause 8.11, or any other notice, statement, document or information

relating to this insurance Policy. Where the Insured has an insurance broker, nothing in this paragraph shall restrict LIU's right to notify the broker as agent of the Insured.

- 8.12 Except to the extent that the Insured is compelled by law to do so, the Insured shall not release to any third party or otherwise publish details of:
- 8.12.1 The nature of the liabilities insured by this Policy;
- 8.12.2 The extent of cover provided by this Policy; or
- 8.12.3 The amount of the premium specified in the Schedule,
- without the written consent of LIU.
- 8.13 Where this Policy provides any indemnity to the Insured which is prohibited by law, this Policy shall be varied by operation of this Clause 8.13 so that this Policy does not respond to the extent that the indemnity is prohibited by law.
- 8.14 8.14.1 Failure by any Insured to comply with the duty of disclosure under the Insurance Contracts Act 1984 (Cth) or misrepresentation by any Insured to LIU shall not prejudice the right of any other Insured to cover under this Policy.
- 8.14.2 Failure by any Insured to comply with any terms and conditions of this Policy shall not prejudice the right of any other Insured to cover under this Policy.
- Cover is only provided to an Insured who is innocent of and has no prior knowledge of such conduct. Such Insured shall as soon as practicable after becoming aware of such conduct, advise LIU in writing of all relevant facts.

Signed on behalf of Liberty International Underwriters
on the date stated in the Schedule

N. MacCarthy
Senior Vice President, Casualty – Asia Pacific