

# Professional Indemnity

## Insurance Policy for Barristers

2021 – 2022

### Contact Details

If you have any questions about this policy, please:

- Visit [www.suncorp.com.au/insurance/barristers-professional-indemnity](http://www.suncorp.com.au/insurance/barristers-professional-indemnity)
- Call us on 1300 308 950
- Email us at [sunprorisk@suncorp.com.au](mailto:sunprorisk@suncorp.com.au)

### Preamble

#### A. [Agreement between the Insured and Suncorp](#)

In consideration of payment of the **Premium**, **Suncorp** agrees to provide indemnity in accordance with the terms of this **Policy** as set out below.

#### B. [Where 'prior consent' is required from Suncorp](#)

There are some covers under the **Policy** where the **Insured** will need to obtain **Suncorp's** prior consent, for example, before incurring costs. Where prior consent is required, consent must be obtained from **Suncorp**. **Suncorp's** consent will not be unreasonably withheld or delayed.

Where prior consent has not been obtained as required, it does not mean the **Insured** cannot make a claim. However, **Suncorp** may be able to reduce the claim payable by an amount that fairly represents the extent to which **Suncorp's** interests were prejudiced by the failure to obtain prior consent.

#### C. [Payment of reasonable amounts of any costs, charges, expenses and fees incurred by or on behalf of the Insured under this Policy](#)

A range of different costs, charges, expenses and fees incurred by or on behalf of the **Insured** are covered under this **Policy**. Unless otherwise specified in the **Policy**, the **Policy** provides cover for the 'reasonable' amount of such cost, charge, expense or fee. Reasonable amount means an amount that is not excessive and where the **Insured**

has given reasonable consideration in the circumstances to the different courses of action available prior to incurring the amount and the course of action taken was prudent in that context.

Where consent is required before incurring such costs, when the **Insured** contacts **Suncorp** to seek **Suncorp's** consent, the **Insured** can let **Suncorp** know the steps it has taken to consider the courses of action available and discuss the circumstances with **Suncorp**. If the amounts which are to be incurred are reasonable in the circumstances, **Suncorp** will provide consent for the costs to be incurred.

### Policy Terms

#### 1. [Civil Liability And Statutory Proceedings Insuring Clause](#)

**Suncorp** agrees to indemnify the **Insured** up to the **Limit of Indemnity** against:

- civil liability for compensation;
- claimant's costs and expenses;
- Costs Orders**; and
- Compensation Orders**,

resulting from **Claims** first made against the **Insured** during the **Period of Insurance** and reported to **Suncorp** during the **Period of Insurance** incurred in the conduct of the **Business**.

#### 2. [Defence Costs](#)

**Suncorp** agrees to pay, in addition to the **Limit of Indemnity**, reasonable **Defence Costs** incurred with **Suncorp's** prior consent in connection with a **Claim** under this **Policy**:

- for which **Suncorp** has confirmed indemnity or elected to take over and conduct the defence, or arising from related appeals; or

- ii. where **Suncorp** is liable to indemnify the **Insured** following judgment, final adjudication or settlement of such **Claim**.

Provided that if a payment greater than the **Limit of Indemnity** has to be made to dispose of a **Claim**, the liability of **Suncorp** for **Defence Costs** shall be such proportion thereof as the **Limit of Indemnity** bears to the amount paid to dispose of the **Claim**.

### 3. [Clarification](#)

For the sake of clarity, the indemnity provided to the **Insured** by the insuring clause of this **Policy** includes cover for the following:

#### 3.1 *Defamation*

**Claims** by any person for defamation.

#### 3.2 *Consumer Protection Legislation*

**Claims** for civil liability for compensation against the **Insured** resulting from breach of a statutory duty under the Competition and Consumer Act 2010 (Cth), Corporations Act 2001 (Cth), National Consumer Credit Protection Act 2009 (Cth) or similar legislation enacted for the protection of consumers, within any Australian jurisdiction including any amendment, consolidation, re-enactment, replacement or successor of such legislation, to the extent that such **Claims** are not otherwise subject to any exclusion in this **Policy**.

### 4. [Extensions](#)

The following extensions to this **Policy** are included automatically. Each extension is subject to all the terms of this **Policy**, unless otherwise expressly varied by the extension. The inclusion of these extensions does not increase the **Limit of Indemnity**.

#### 4.1 *Advancement of Costs*

**Suncorp** agrees to advance reasonable **Defence Costs** and reasonable **Inquiry Costs**, incurred by **Suncorp** or the **Insured** with **Suncorp's** prior consent, as they are incurred and prior to the final adjudication of a **Claim**.

If and to the extent that the **Insured** is not entitled to coverage under the terms and conditions of this **Policy**, then **Suncorp** will cease to advance such costs and any amounts previously advanced shall be repaid to **Suncorp**.

**Suncorp** may not refuse to advance reasonable **Defence Costs** or reasonable **Inquiry Costs** by reason only that **Suncorp** considers that the conduct referred to in exclusions 5.2 'Fraud and Dishonesty' or 5.11 'Intentional Damage' has occurred, until such conduct is established by a formal written admission by the relevant **Insured** or

final, non-appealable adjudication of a judicial or arbitral tribunal (other than in a proceeding brought by **Suncorp**).

#### 4.2 *Automatic Reinstatement – Limit of Indemnity*

**Suncorp** agrees to reinstate the **Limit of Indemnity** for such amount, as may be paid by **Suncorp** in respect of any **Claim** or **Claims**, so that following each **Claim** the **Policy** remains in force during the **Period of Insurance** for the **Limit of Indemnity**, provided that the liability of **Suncorp** shall not exceed the **Limit of Indemnity** in respect of any one **Claim**.

#### 4.3 *Loss of Documents*

**Suncorp** agrees to indemnify the **Insured** for **Claims** arising from the loss of any **Documents** (including but not limited to **Documents** which are the property of the **Insured**) which have been destroyed, damaged, lost or mislaid and, after diligent search, cannot be found provided that:

- i. the discovery of such loss of **Documents** occurred during the **Period of Insurance** and was notified in writing to **Suncorp** during the **Period of Insurance**;
- ii. such indemnity shall be limited to the costs, charges and expenses of whatsoever nature incurred by the **Insured** in replacing and/or restoring such **Documents** and any claim for such costs, charges and expenses shall be supported by bills and/or accounts which shall be subject to approval by a competent person nominated by **Suncorp** with the approval of the **Insured**;
- iii. such indemnity shall be limited to the loss of any **Documents**:
  - a. which were in the physical custody or control of the **Insured** or any other person to whom the **Insured** entrusted, lodged or deposited such **Documents** in the ordinary course of business; and
  - b. which occurred within the territorial limits of the Commonwealth of Australia or the Dominion of New Zealand.

The **Excess** shall not be applicable to this extension.

#### 4.4 *Dishonesty of Employees*

Notwithstanding exclusion 5.2 'Fraud and Dishonesty', **Suncorp** agrees to indemnify the **Insured** for **Claims** resulting from any fraudulent or dishonest act or omission by any **Employees** provided that:

- i. the **Insured** did not participate in or condone such fraudulent or dishonest act or omission;

- ii. the **Insured** had no knowledge of the fraudulent or dishonest act or omission prior to it being committed;
- iii. the **Insured** notifies **Suncorp** as soon as is reasonably possible upon becoming aware of the fraudulent or dishonest act or omission; and
- iv. any indemnity provided under this extension shall not extend to any **Claim** for loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

#### 4.5 Estates and Legal Representatives

**Suncorp** agrees to provide indemnity for any **Claim** made against the estate, heirs, legal representatives or assigns of any **Insured** who is deceased, incompetent, insolvent or bankrupt provided that such persons and **Claims** shall be subject to the terms of this **Policy**.

#### 4.6 Director of a Clerk Company

**Suncorp** agrees to indemnify the **Insured** who is a director of a company which operates as a Barristers' Clerk, for any **Claim** for professional negligence arising out of the **Insured's** performance as such director in respect of the company's activities as a Barrister's Clerk.

#### 4.7 Run Off Cover

In the event that the **Insured** dies during the **Period of Insurance** or within one week of the expiry thereof, or becomes a **Retired Insured**, then **Suncorp** agrees to indemnify such deceased **Insured's** estate or **Retired Insured** up to the **Limit of Indemnity**:

1. against:
  - a. civil liability for compensation;
  - b. claimant's costs and expenses;
  - c. **Costs Orders**; and
  - d. **Compensation Orders**, resulting from any **Claim** first made against; and
2. under extension 4.9 'Inquiry Costs', for **Inquiry Costs** arising out of any **Notice** first received by, such deceased **Insured's** estate or **Retired Insured** and reported to **Suncorp** after the date of death or the **Retirement Date** incurred in the conduct of the **Business**, provided that:
  - i. such **Claim** is first made, or such **Notice** is first received, and reported to **Suncorp** during the period of seven (7) years from the date of death or the **Retirement Date**;
  - ii. such indemnity shall only apply in respect of any act, error or omission occurring prior to the date of death or the **Retirement Date**; and

- iii. any executor or administrator of such deceased **Insured's** or **Retired Insured's** estate shall be subject to the terms of this **Policy**.

#### 4.8 Continuous Cover

Where the **Insured**:

- i. first became aware of facts or circumstances that might give rise to a **Claim** or **Notice**, prior to the **Period of Insurance**; and
- ii. had not notified **Suncorp** or the **Company** of such facts or circumstances prior to the **Period of Insurance** in accordance with s40(3) of the Insurance Contracts Act 1984 (Cth),

then exclusion 5.1 'Prior or Pending Claims / Circumstances' will not apply to any notification during the **Period of Insurance** of any **Claim** or **Notice** resulting from such facts or circumstances, provided that:

- a. there is an absence of fraudulent non-compliance with the **Insured's** duty of disclosure and an absence of fraudulent misrepresentation by the **Insured** in respect of such facts or circumstances;
- b. the **Insured** has been continuously insured, without interruption at the time of the notification of the **Claim** or **Notice** to **Suncorp**, under a professional indemnity insurance policy for barristers issued by **Suncorp** or the **Company** and was insured by **Suncorp** or the **Company** at the time when the **Insured** first became aware of such facts or circumstances; and
- c. **Suncorp** may reduce its liability under the **Policy** to the extent of any prejudice **Suncorp** may suffer in connection with the **Insured's** failure to notify the facts or circumstances giving rise to a **Claim** or **Notice** prior to the **Period of Insurance**.

With respect to this clause, **Suncorp** will not be liable to indemnify an **Insured** under this **Policy** if **Suncorp** or the **Company** had accepted facts or circumstances that might give rise to a **Claim** or **Notice** in a previous period of insurance.

#### 4.9 Inquiry Costs

**Suncorp** will indemnify the **Insured** up to the **Limit of Indemnity** for reasonable **Inquiry Costs** incurred with **Suncorp's** prior consent provided that:

- i. the **Notice** is first received by the **Insured** and notified to **Suncorp** during the **Period of Insurance**;
- ii. such **Notice** arises from conduct allegedly

committed by the **Insured** in connection with the **Business**; and

- iii. all wages, salaries or fees of the **Insured** including overtime are excluded from this indemnity.

## 5. Exclusions

**Suncorp** shall not be liable to indemnify the **Insured** or any other person in respect of:

### 5.1 Prior or Pending Claims / Circumstances

any **Claim** or **Notice**:

- i. first made against the **Insured** prior to the **Period of Insurance**;
- ii. arising from any matter disclosed or notified to any insurer (including **Suncorp** and the **Company**) prior to the **Period of Insurance** as either a **Claim** or **Notice**, or circumstances which may give rise to a **Claim** or **Notice** against the **Insured**;
- iii. arising from circumstances of which the **Insured** had become aware prior to the **Period of Insurance** and which the **Insured** knew, or a reasonable person in the **Insured's** professional position ought reasonably to have known, to be circumstances which may give rise to a **Claim** or **Notice**; or
- iv. arising from any matter which gives rise to a **Claim** or **Notice** or circumstances which may give rise to a **Claim** or **Notice** against the **Insured**, prior to the **Insured** obtaining a practising certificate as a barrister only; or

### 5.2 Fraud and Dishonesty

any **Claim** or **Notice** based upon, attributable to, or in consequence of:

- i. any dishonest, fraudulent, criminal or malicious act, error or omission of the **Insured**; or
- ii. any wilful or intentional breach of any statute, regulation, contract or legal duty by the **Insured**

other than as provided for in extension 4.4 'Dishonesty of Employees'; or

### 5.3 Assumed Obligation

any **Claim** or **Notice** based upon, attributable to, or in consequence of any liability, duty or obligation:

- i. under a contractual term, warranty or guarantee (unless liability would have existed regardless of the contractual term, warranty or guarantee);
- ii. assumed by the **Insured** outside the normal conduct of the **Business**; or

- iii. in circumstances where the **Insured** has conducted the **Business** pursuant to any agreement or understanding by which the **Insured** has surrendered or waived any right of contribution or indemnity, to which the **Insured** would otherwise have been entitled at law;

unless the prior agreement of **Suncorp** is obtained; or

### 5.4 Fines and Penalties

any **Claim** or **Notice** for punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law, including but not limited to civil penalties; or

### 5.5 Occupier's Liability

any **Claim** or **Notice** based upon, attributable to, or in consequence of any occupation or ownership of any real property by the **Insured**; or

### 5.6 Trading Debts

any **Claim** or **Notice** based upon, attributable to, or in consequence of any trading debt incurred by the **Insured** or any guarantee or warranty given by the **Insured** in connection with a debt; or

### 5.7 Bodily Injury and Property Damage

any **Claim** or **Notice** based upon, attributable to, or in consequence of:

- i. **Bodily Injury** of any person, other than a **Claim** for breach of professional duty in the conduct of the **Business**; or
- ii. loss of or damage to tangible property (other than **Documents**); or

### 5.8 Insurer's Right of Recovery

any **Claim** or **Notice** in respect of which the **Insured** has at any time by deed or agreement foregone, excluded or limited any right to contribution, recovery or indemnity from any person, unless the agreement of **Suncorp** was obtained beforehand; or

### 5.9 Directors and Officers' Liability

any **Claim** or **Notice** based upon, attributable to, or in consequence of the **Insured** being a director or officer of a body corporate whilst acting in that capacity, except as more specifically provided under extension 4.6 'Director of a Clerk Company'; or

### 5.10 Employers Liability

any **Claim** or **Notice** based upon, attributable to, or in consequence of the **Insured's** liability as an employer; or

### 5.11 Intentional Damage

any **Claim** or **Notice** based upon, attributable to, or in

consequence of acts, errors or omissions by the **Insured** with the intention of causing a third party loss, damage or injury, or with reckless disregard for the consequences; or

#### 5.12 Related Parties

any **Claim** or **Notice** by or in connection with any company, trust or other legal entity:

- i. which is operated or controlled by the **Insured** or the **Insured's Employees**, nominees or trustees; or
- ii. in which the **Insured** has a direct or indirect financial interest; or

#### 5.13 Professional Fees

the payment or refund of professional fees or charges billed by the **Insured** (by way of damages or otherwise).

## 6. [General Conditions](#)

### 6.1 Limit of Indemnity

Subject to the application of extension 4.2 'Automatic Reinstatement – Limit of Indemnity', the maximum liability of **Suncorp** for any one **Claim** or **Notice** covered by this **Policy** (including **Claims** under any extension to this **Policy**) shall be the **Limit of Indemnity**, except that in respect of **Claims**, **Suncorp** will in addition pay **Defence Costs**.

### 6.2 Excess

- i. The **Insured** shall bear the amount of the **Excess** in respect of each **Claim** made against the **Insured** and **Suncorp** shall only be liable to indemnify the **Insured** in excess of that amount.
- ii. In respect of any **Claim** where the amount of the **Claim** is less than the amount of the **Excess**, the **Insured** shall bear all costs and expenses associated therewith unless **Suncorp** has agreed to meet such costs and expenses pursuant to the clause 2 'Defence Costs'.
- iii. The **Insured** is liable for the amount of any **Inquiry Costs** that is less than the **Excess** for each **Notice**.
- iv. **Suncorp** has no liability for the amount of **Inquiry Costs** that is less than the **Excess** for each **Notice**.
- v. The **Excess** is not payable by the **Insured** in respect of **Defence Costs**, unless otherwise specified in the **Certificate of Insurance** that the **Excess** is inclusive of **Defence Costs**.
- vi. The method for payment of the **Excess** will depend on the particular circumstances of the

**Claim**, for example:

- a. **Suncorp** may pay to the claimant or their legal representative the entire amount of the settlement, including the portion that is less than the **Excess**, and then require repayment of the amount of the **Excess** from the **Insured**;
- b. **Suncorp** may deduct the amount of the **Excess** from the amount payable by **Suncorp** to the **Insured**; or
- c. **Suncorp** may require the **Insured** to pay the **Excess** directly to a third party, such as the claimant or their legal representative.

### 6.3 Aggregation of Claims and Notices

All **Claims** arising out of, based upon, attributable to or in respect of a single act, error or omission or series of acts, errors or omissions consequent upon or attributable to one source or original cause shall be considered to be one **Claim** and shall attract one **Limit of Indemnity** and one **Excess**.

For the purposes of extension 4.9 'Inquiry Costs', all **Notices** arising out of, based upon, attributable to or in respect of any one inquiry or hearing shall be considered to be one **Notice** and shall attract one **Limit of Indemnity** and one **Excess**.

### 6.4 Cancellation

The **Insured** may not cancel this **Policy**.

**Suncorp** agrees it will not cancel this **Policy** for any reason other than non-payment of the **Premium**.

### 6.5 Payment of Premium

The **Insured** must pay the **Premium** specified in the **Certificate of Insurance** for the **Period of Insurance** to **Suncorp** at the time of binding cover.

### 6.6 Construction

The titles of paragraphs in this **Policy** are included for descriptive purposes only and do not form part of this **Policy** for the purposes of its construction or interpretation.

### 6.7 Governing Law

This **Policy** shall be construed, and any dispute in respect of this **Policy** shall be determined, in accordance with the laws of the Commonwealth of Australia and the Australian State or Australian Territory where the **Policy** was issued. Any disputes relating to this **Policy** shall be submitted to the exclusive jurisdiction of the courts of Australia.

## 6.8 Territory

The indemnity provided by this **Policy** shall be in respect of acts, errors or omissions committed anywhere in the world but shall not include:

- i. any **Claim** made in, determined pursuant to the law of, or based upon the law of, the United States of America or its territories or protectorates; or
- ii. any **Claim** arising out of the enforcement of judgements, orders or awards obtained within, or determined pursuant to the law of, the United States of America or its territories or protectorates.

## 6.9 Validity

To be valid, this **Policy** must have a current **Suncorp Certificate of Insurance**.

## 6.10 Cease to Practice

The **Insured** shall provide to **Suncorp**, as soon as possible:

- i. written notification of ceasing **Business**; and
- ii. written notification of the **Insured** ceasing to be the holder of a practising certificate or the **Insured's** name being removed from the roll of barristers.

## 6.11 Non-Repudiation, Avoidance or Reduction of Liability

**Suncorp** shall not avoid this **Policy** or exercise any rights under sub-section 28(3) of the Insurance Contracts Act 1984 (Cth) unless the **Insured's** non-disclosure or misrepresentation is fraudulent.

## 6.12 Address for Notification

All **Claims** and **Notice** notifications to **Suncorp** must be sent to

- sunprorisk@suncorp.com.au or
- Claims Manager, Suncorp Professional Risks  
IPC 2CI216  
10 Shelley Street  
SYDNEY NSW 2000

Any other matter required by this **Policy** to be notified, advised or reported to **Suncorp** shall be in writing and delivered to

- sunprorisk@suncorp.com.au or
- Underwriting Manager, Suncorp Professional Risks  
IPC 2CI216  
10 Shelley Street  
SYDNEY NSW 2000

## 7. [Claims Conditions](#)

In the event of a failure by the **Insured** to comply with a provision requiring the **Insured's** compliance under this section, Section 54 of the Insurance Contracts Act may apply, and pursuant to that Section, **Suncorp** may be able to:

- i. refuse a **Claim**; or
- ii. reduce its liability to pay a **Claim** by an amount that fairly represents the extent to which **Suncorp's** interests are prejudiced by the failure to comply.

### 7.1 Notification of Claims and Notices

The **Insured** shall provide to **Suncorp** written notice of any **Claim** or **Notice** as soon as reasonably possible to the address specified in general condition 6.12 'Address for Notification'.

The **Insured** shall provide such information and assistance to **Suncorp** as it reasonably requires including the nature of the allegations, the names of the claimants, and the manner in which the **Insured** first became aware of the **Claim** or **Notice**.

Subject to clause 2 'Defence Costs', compliance with this clause 7.1 shall be at the **Insured's** own cost.

### 7.2 Claims Cooperation and Mitigation

- i. **Suncorp** may make any investigation as is reasonably required in relation to the **Claim** or **Notice**.
- ii. The **Insured** must cooperate and provide **Suncorp** with reasonable assistance in connection with any investigation, negotiation, recovery, defence and legal proceeding or settlement of a **Claim** or **Notice**. This assistance may include:
  - a. providing a more detailed version of facts, including signing statements and affidavits;
  - b. providing further information, evidence and documentation, including such data or documentation necessary to establish and/or assert any right of contribution or indemnification against any third party;
  - c. attending court or meetings with appointed legal experts;
  - d. making available **Employees** for interviews, meetings and court attendance;
  - e. providing contact details of individuals (if available) who may have information that is relevant to the **Claim** (to the extent that the provision of such details would not

- breach any legally enforceable privacy or confidentiality requirement); and
- f. providing access to systems and records (to the extent that doing so would not breach any legally enforceable privacy or confidentiality requirement).
- iii. The **Insured** must, where reasonably possible, take steps to avoid or diminish legal liability, **Defence Costs** or **Inquiry Costs** in respect of which **Suncorp** is or could be liable to indemnify the **Insured**.

Subject to clause 2 'Defence Costs', compliance with this clause 7.2 shall be at the **Insured's** own cost.

### 7.3 Claims Conduct

#### 7.3.1 Conducting the defence and settlement of the Claim

**Suncorp** has the right and full discretion, but is not obligated, to take over and conduct the defence or settlement of any **Claim** notified under claims condition 7.1 'Notification of Claims and Notices' (including in relation to insured, underinsured and uninsured losses) **Suncorp** may engage legal or other representatives to assist in the conduct of the **Claim**.

**Suncorp** reserves entirely its rights under this **Policy**, including its right to agree or deny cover while it assesses a **Claim** or conducts the defence. **Suncorp's** rights under this **Policy** are not affected if it does not conduct the defence.

#### 7.3.2 Conducting the response to the Notice

**Suncorp** has the right and full discretion, but is not obligated, to take over and conduct the response to any **Notice** notified under claims condition 7.1 'Notification of Claims and Notices' (including in relation to insured, underinsured and uninsured losses). **Suncorp** may engage legal or other representatives to assist in the conduct of such response.

### 7.4 Claims Settlement

- i. The **Insured** shall not admit liability (other than any statutory obligation to provide information) for or settle any **Claim**, or incur any costs or assume any contractual obligations in respect of any **Claim** or **Notice**, without the prior consent of **Suncorp**.
- ii. If the **Insured** disputes a settlement recommended by **Suncorp**, the **Insured** may either:
  - a. elect to continue to defend the **Claim**, provided that (subject to the **Limit of Indemnity**) the liability of **Suncorp** for

that **Claim** shall not exceed the amount for which the **Claim** could have been settled, plus **Defence Costs** up to the date of such refusal, less the **Excess**; or

- b. request that the dispute be referred for the opinion of a Senior Counsel or Queen's Counsel pursuant to claims condition 7.5 'Senior Counsel Clause'.
- iii. If, contrary to an opinion of a Senior Counsel or Queen's Counsel pursuant to claims condition 7.5 'Senior Counsel Clause', the **Insured** refuses to consent to any settlement recommended by **Suncorp**, the **Insured** may elect to continue to defend the **Claim**, provided that (subject to the **Limit of Indemnity**) the liability of **Suncorp** for that **Claim** shall not exceed the amount for which the **Claim** could have been settled, plus **Defence Costs** up to the date of such refusal, less the **Excess**.

### 7.5 Senior Counsel Clause

#### 7.5.1 Disputes about contesting or litigation the Claim

- i. Neither the **Insured** nor **Suncorp** shall be required to contest or litigate any **Claim** unless, in the opinion of a Queen's Counsel or Senior Counsel, such **Claim** should be contested.
- ii. The Queen's Counsel or Senior Counsel shall be mutually agreed upon by the **Insured** and **Suncorp**, or failing agreement, appointed by the Chairman/President for the time being or their nominee of the State or Territory Bar Association in the State or Territory in which the **Insured's** practising certificate was issued.
- iii. In formulating the opinion, Queen's Counsel or Senior Counsel shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely **Defence Costs**, the prospects of the **Insured** successfully defending the **Claim** and the prospects of recovering costs against the plaintiff in the event that the defence is successful. If so requested, the Queen's Counsel or Senior Counsel shall also provide a settlement range within which reasonable attempts could be made to settle the **Claim**.
- iv. The cost of the Queen's Counsel or Senior Counsel's opinion shall be regarded as part of the **Defence Costs**.

## 7.5.2 Disputes about contesting the Notice

This clause 7.5.2 applies in respect of extension 4.9 'Inquiry Costs':

- i. Neither the **Insured** nor **Suncorp** shall be required to contest any disciplinary action, finding or similar decision ("Outcome") arrived at, proposed or offered by an **Inquiring Body** unless, in the opinion of a Queen's Counsel or Senior Counsel, such Outcome should be contested.
- ii. The Queen's Counsel or Senior Counsel shall be mutually agreed upon by the **Insured** and **Suncorp**, or failing agreement, appointed by the Chairman/President for the time being or their nominee of the State or Territory Bar Association in the State or Territory in which the **Insured's** practising certificate was issued.
- iii. In formulating the opinion, the Queen's Counsel or Senior Counsel shall consider the reasonability of the Outcome, the prospects of successfully contesting the Outcome and the likely **Inquiry Costs**. The Queen's Counsel or Senior Counsel may also recommend alternative responses to the Outcome.
- iv. If it is the opinion of the Queen's Counsel or Senior Counsel that the Outcome should not be contested, then **Suncorp** shall be entitled to deny cover under extension 4.9 'Inquiry Costs' for any **Inquiry Costs** subsequently incurred to contest the Outcome.
- v. The cost of the Queen's Counsel or Senior Counsel opinion shall be paid by **Suncorp** and shall not be regarded as part of the **Inquiry Costs**.

## 7.6 Recovery Rights

### 7.6.1 Preservation of rights of recovery

The **Insured** must preserve its rights to recovery.

The **Insured** must not, without **Suncorp's** prior consent:

- i. enter into any agreement whereby the **Insured** releases, agrees not to sue on, waives or prejudices, any rights to recover from a person or organisation who is or could have been liable to compensate the **Insured** for any loss, damage or legal liability;
- ii. enter into any deed or agreement excluding, limiting or delaying the legal rights of recovery against another party; or
- iii. enter into any arrangement or compromise or do any act whereby any rights or remedies to

which **Suncorp** would be subrogated in respect to such loss, damage or legal liability are or may be prejudiced.

### 7.6.2 Rights of recovery

In the event of any payment under this **Policy**, **Suncorp** will be subrogated to all the **Insured's** rights of recovery against any person or organisation.

**Suncorp** has the right and full discretion but is not obligated to take over and conduct in the name of the **Insured** any recovery action (including in relation to insured, uninsured and underinsured losses). **Suncorp** may engage legal or other representatives to assist in the conduct of any recovery action.

**Suncorp** shall not exercise its rights of subrogation against an **Employee** in connection with a **Claim**, unless it can establish that exclusion 5.2 'Fraud and Dishonesty' applies to that **Claim** and to that **Employee**.

### 7.7 Application of Recoveries

All recoveries obtained from other parties will be allocated, after the payment or settlement of any **Claim** under this **Policy**, as follows:

- i. firstly, to the benefit of the **Insured** to reduce or extinguish the amount of compensation, claimant's costs and expenses, **Costs Orders**, or **Defence Costs** to the extent that such amounts would have been paid under this **Policy** but for the fact that such amounts exceed the sum of:
  - a. the **Limit of Indemnity**;
  - b. **Defence Costs** payable in addition to the **Limit of Indemnity**;
  - c. the **Excess** where applicable;
- ii. secondly, to the benefit of **Suncorp** for all sums paid in settlement, defence or investigation of any **Claim** under this **Policy**; and
- iii. thirdly, to the benefit of the **Insured**.

All recoveries will be applied as above only after deduction of the reasonable cost of obtaining such recovery. All recoveries made prior to payment or settlement of any **Claim** under this **Policy** will be held by **Suncorp** and applied as stated above after settlement if any is made.

Recoveries do not include any amount recovered from insurance, surety, reinsurance, security or indemnity taken for the benefit of **Suncorp**.



## 8. Definitions

The following words shall have the same special meaning throughout this **Policy**, whether expressed in the singular or plural. If a word has a special meaning, it will appear in the **Policy** in bold type and with a capital letter.

- 8.1 **Act** means the Legal Profession Act 2006 (ACT), Legal Profession Uniform Law (NSW), Legal Profession Act 2007 (QLD), the Legal Profession Uniform Law (VIC), the Legal Profession Act 2007 (Tas), Legal Profession Act 2008 (WA) or similar legislation regulating the **Business** enacted by any State or Territory of the Commonwealth of Australia, including the Legal Profession Uniform Law and any subsequent legislation which operates in lieu of such legislation.
- 8.2 **Bodily Injury** means physical or bodily injury, sickness, death, disease or any psychological or psychiatric injury.
- 8.3 **Business** means the provision of professional services of a barrister, which are provided in the normal course of carrying on the practice of a barrister in private practice, including acting as a mediator or arbitrator.
- 8.4 **Certificate of Insurance** means the **Suncorp Certificate of Insurance**, which attaches to and forms part of this **Policy**.
- 8.5 **Claim** means any:
- i. demand made against the **Insured** by a third party for compensation however conveyed including, but not limited to, a writ, summons, application or other original legal or arbitral proceedings, cross claim, or counter claim issued against and served upon the **Insured**;
  - ii. notification to the **Insured** of **Statutory Proceedings**; or
  - iii. **Contempt Proceedings** brought against the **Insured** and in which the **Insured** is required to appear.
- 8.6 **Company** means the previous issuers of this **Policy** being:
- i. Suncorp Metway Insurance Limited ABN 83 075 695 966; or
  - ii. AAI Limited ABN 48 005 297 807 trading as Vero Insurance.
- 8.7 **Compensation Order** means any order for monetary compensation made against the **Insured** pursuant to the **Act**, arising from conduct not otherwise subject to any exclusion in this **Policy**.
- 8.8 **Contempt Proceedings** means any proceedings of a disciplinary nature including but not limited to undermining the authority, performance or dignity of the court that has been brought against the **Insured** before a tribunal, court or other body which has jurisdiction under the **Act** to hear proceedings against that barrister.
- 8.9 **Cost Order** means a cost order made against the **Insured** pursuant to the **Act**, arising from conduct not otherwise subject to any exclusion in this **Policy**.
- 8.10 **Defence Costs** means the legal costs and associated charges and expenses (other than wages or salaries or fees of the **Insured** or **Inquiry Costs**) incurred by **Suncorp** or the **Insured** in defending, investigating, settling or monitoring any **Claim**.
- 8.11 **Documents** means deeds, wills, agreements, maps, plans, books, letters, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer printouts BUT DOES NOT MEAN bearer bonds or coupons, stamps, bank or currency notes, any negotiable instrument, or any form of computer records or computer memory whether programmes, software or otherwise and however recorded.
- 8.12 **Employee** means any barrister's clerk, the services of whom are utilised by the **Insured** and any person employed under a contract of service, during or prior to commencement of the **Period of Insurance**.
- 8.13 **Excess** means the amount specified in the **Certificate of Insurance**.
- 8.14 **Inquiring Body** means an individual, professional body or court which has jurisdiction under the **Act** to supervise, inquire, or investigate in relation to the **Insured's** conduct as a barrister or suitability to practice as a barrister.
- 8.15 **Inquiry Costs** means the legal costs and expenses incurred by **Suncorp** or the **Insured** (other than **Defence Costs**) arising out of any **Notice**.

- 8.16 **Insured** means the person specified as the **Insured** in the **Certificate of Insurance** and who is the holder of a practising certificate and whose name has been entered on the roll of barristers or has otherwise bound themselves in writing to adhere to the Barrister Rules as applicable, at the time of effecting this **Policy**.
- 8.17 **Limit of Indemnity** means the amount specified in the **Certificate of Insurance** and is inclusive of claimant's costs.
- 8.18 **Notice** means a notice from an **Inquiring Body** requiring a response from the **Insured** or requiring the **Insured's** attendance at an inquiry or hearing held before the **Inquiring Body**.
- 8.19 **Period of Insurance** means the period specified in the **Certificate of Insurance**.
- 8.20 **Policy** means:
- i. this **Policy** wording together with the **Certificate of Insurance**; and
  - ii. any Endorsement(s) agreed to by **Suncorp** either at inception or during the **Period of Insurance**.
- 8.21 **Premium** means the total amount specified in the **Certificate of Insurance**.
- 8.22 **Retired Insured** means the person specified as the **Insured** in the **Certificate of Insurance** if that person has during or within one day after the expiry of the **Period of Insurance**:
- i. ceased to conduct the **Business**; and
  - ii. ceased to be the holder of a practising certificate as a barrister only issued by an Australian State or Territory Bar Association, or other regulatory body responsible for issuing practising certificates to Australian legal practitioners.
- If a person has held a practising certificate until the expiry of the **Period of Insurance**, but does not renew their practising certificate for the period commencing immediately after the expiry of the **Period of Insurance**, then for the purposes of paragraph ii. above that person shall be deemed to have ceased to be the holder of a practising certificate during the **Period of Insurance**.
- 8.23 **Retirement Date** means the date on which the **Insured** became a **Retired Insured**.
- 8.24 **Retroactive Date** means the date specified in the **Certificate of Insurance**.
- 8.25 **Statutory Proceedings** means any proceedings of a disciplinary nature against the **Insured** before a tribunal, court or other body which has jurisdiction under the **Act** to hear proceedings of that type against a barrister.
- 8.26 **Suncorp** means AAI Limited ABN 48 005 297 807

End of Policy wording

## Notices

These notices do not form part of the policy.

### Your duty of disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, that may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for;
- is common knowledge;
- we know or should know as an insurer; or
- we waive your duty to tell us about.

### *If you do not tell us 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.

### Suncorp Group Notice

Various products and services are provided by different entities in the Suncorp Group. The different entities in the Suncorp Group are not responsible for, do not guarantee and are not liable in respect of products or services provided by other entities in the Suncorp Group.

Suncorp Bank does not guarantee and is not liable for this product.

This product is not a bank deposit or other bank liability.

### Privacy

We will collect your personal information for a range of purposes relating to the products and services we provide. We'll use a variety of methods to collect your personal information, including written forms, telephone calls, internet forms, emails, online activity, cookies and technology.

If we ask for your personal information and you don't provide it, we may not be able to provide you with certain products or services.

We may also collect your personal information from or disclose it to other people and organisations for purposes that relate to the products and services we provide to you. Sometimes these people or organisations are located overseas.

The Suncorp Barristers Insurance Privacy Statement provides more information about how we collect, handle, use and disclose your personal information.

You have the right to access and correct your personal information held by us and you can find information about how to do this in the Suncorp Group Privacy Policy.

The policy also includes information about how you can complain about a breach of the Australian Privacy Principles and how we'll deal with such a complaint. You can get a copy of the Suncorp Group Privacy Policy by:

- Visiting [www.suncorp.com.au/privacy](http://www.suncorp.com.au/privacy)
- Calling us on 13 11 55
- Emailing us at [privacyaccessrequests@suncorp.com.au](mailto:privacyaccessrequests@suncorp.com.au)

### General Insurance Code of Practice

We support and adhere to the General Insurance Code of Practice. A copy of the Code can be obtained from the Insurance Council of Australia by:

- Telephone (02) 9253 5100 or 1300 728 228
- Website [www.insurancecouncil.com.au](http://www.insurancecouncil.com.au)

### Our complaints handling procedures

We are committed to:

- listening to what you tell us;
- being accurate and honest in telling you about our products and services;
- communicating with you clearly; and
- resolving any complaints or concerns you have in a fair, transparent and timely manner.

### How to contact us with a complaint

#### *Let us know*

If you experience a problem, are not satisfied with our products or services or a decision we have made, let us know so that we can help.

Contact us:

By phone: 1300 888 073

By email: [claims@vero.com.au](mailto:claims@vero.com.au)

Complaints can usually be resolved on the spot or within 5 business days.

#### *Review by our Customer Relations Team*

If we are not able to resolve your complaint or you would prefer not to contact the people who provided your initial service, our Customer Relations team can assist:

By phone: 1300 264 470

By email: [idr@vero.com.au](mailto:idr@vero.com.au)

In writing: Customer Relations, Vero, PO Box 14180, Melbourne City Mail Centre VIC 8001

Customer Relations will contact you if they require additional information or they have reached a decision.

When responding to your complaint you will be informed of the progress of and the timeframe for responding to your complaint.

#### *Seek review by an external service*

We expect our procedures will deal fairly and promptly with your complaint. However, if you remain dissatisfied, there are external dispute remedies such as mediation, arbitration or legal action you may pursue.

#### Overseas activities

If this policy provides cover for the conduct of activities outside of Australia or claims brought in legal jurisdictions outside of Australia, it is possible other countries' laws or regulations may nevertheless prevent this policy from responding to provide that cover. If you conduct activities overseas you may wish to seek advice from a legal or insurance professional who understands the relevant countries' insurance requirements.

#### Professional Indemnity coverage notices

##### *Claims made basis and retroactive date*

This policy is issued on a 'claims made and notified' basis. This means that the policy covers claims:

- first made against you during the period of insurance; and
- you tell us about during the period of insurance.

If the Run Off Cover clause is activated, the policy will provide:

- an additional run-off cover period for you to tell us about claims first made against you during the period of insurance; and
- cover for claims first made against you during the run-off cover period and which you tell us about during the run-off period - provided the claims are based on an act, error, or omission alleged to have been committed prior to the commencement of the run-off cover period.

Pursuant to section 54 of the Insurance Contracts Act 1984, if you tell us about claims first made against you during the period of insurance (or run-off cover period, if applicable), after the period of insurance and any applicable run-off cover period expires, we may be able to reduce our liability by an amount that fairly represents the extent to which our interests were prejudiced as a result of your delay in notifying us of the claim.

Written notification of facts pursuant to section 40(3) of the Insurance Contracts Act 1984: If during the period of insurance, you learn about facts that might lead to a claim and you tell us in writing about these facts as soon as reasonably practicable after you became aware of those facts but before the end of the period of insurance, we will treat any subsequent claim arising from those facts as though it was made against you during the period of insurance.

The policy doesn't cover claims or potential claims that you knew about prior to the period of insurance which would have put a reasonable person in your position on notice a claim may be made against you. (There are some exceptions to this rule if a 'Continuous Cover' extension applies).

If a retroactive date is applied or shown on the policy schedule, the policy doesn't cover claims resulting from an act or failure to do something before that date.

##### *Average provision*

If a payment in excess of the Limit of Indemnity available under your policy has to be made to dispose of a claim, Suncorp's liability for Defence Costs incurred with its consent shall be such proportion thereof as the amount of indemnity available under this policy bears to the amount paid to dispose of the claim payments.

##### *Preservation of rights of recovery / Subrogation waiver*

This policy contains provisions that has the effect of excluding or limiting Suncorp's liability for a loss or liability incurred due to the Insured entering into:

- a. any agreement whereby the Insured releases, agrees not to sue or waives or prejudices any rights of recovery;
- b. any deed or agreement excluding, limiting or delaying the legal rights of recovery against another party; or
- c. any agreement or compromise whereby any rights or remedies to which Suncorp would be subrogated are or may be prejudiced.

#### Contact Details

If you have any questions about this policy, please:

- Visit [www.suncorp.com.au/insurance/barristers-professional-indemnity](http://www.suncorp.com.au/insurance/barristers-professional-indemnity)
- Call us on 1300 308 950
- Email us at [sunprorisk@suncorp.com.au](mailto:sunprorisk@suncorp.com.au)