# Professional Indemnity Insurance Policy for Barristers 2015 - 2016



# **Professional Indemnity Insurance Policy for Barristers**

# **PREAMBLE**

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

## CIVIL LIABILITY AND STATUTORY PROCEEDINGS INSURING CLAUSE

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

- (i) civil liability for compensation;
- (ii) claimant's costs and expenses;
- (iii) Costs Orders; and
- (iv) 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 Defence Costs in addition to the Limit of Indemnity 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 Libel, Slander and Defamation

Claims by any person for libel, slander or 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 or re-enactment of such legislation, to the extent that such Claims are not otherwise subject to any Exclusion in this Policy.

# 4. AUTOMATIC 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 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.

# 4.2 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:

- 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;
  - (b) which occurred within the territorial limits of the Commonwealth of Australia or the Dominion of New Zealand; and
  - (iv) the Excess shall not be applicable to this extension.

## 4.3 Dishonesty of Employees

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

- the **Insured** did not participate in or condone such fraudulent or dishonest act or omission; and
- the Insured had no knowledge of the fraudulent or dishonest act or omission prior to it being committed; and
- (iii) the **Insured** notifies **Suncorp** as soon as is reasonably practicable 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.

#### 4.4 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**.

## 4.5 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.

# 4.6 Run Off Cover

In the event that the **Insured** becomes a **Retired Insured** with a **Retirement Date** during the **Period of Insurance**, then **Suncorp** agrees to indemnify the **Retired Insured** against civil liability for any **Claim** first made against the **Retired Insured** and reported to **Suncorp** after the **Retirement Date** incurred in the conduct of the **Business**, provided that:

- (i) such **Claim** is first made and reported to **Suncorp** during the period of seven (7) years from the **Retirement Date**;
- (ii) such indemnity shall only apply in respect of any act, error or omission occurring prior to the **Retirement Date**;
- (iii) written notification of the following matters has been provided to **Suncorp** prior to the expiry of the **Period of Insurance**:
  - (a) that the Insured has become a Retired Insured; and
  - (b) the Retirement Date;
- (iv) any executor or administrator of the Retired Insured's estate shall be subject to the terms of this Policy; and
- (v) Suncorp's total liability for compensation, claimant's costs and expenses, Compensation Orders, Costs Orders and Defence Costs under this extension shall not exceed \$2,000,000 in the aggregate for all Claims.

# Professional Indemnity Insurance Policy for Barristers (continued)

## 4.7 Continuous Cover

Where the Insured

- (i) first became aware of facts or circumstances that might give rise to a Claim, 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 the Prior or Pending Claims / Circumstances Exclusion will not apply to any notification during the **Period of Insurance** of any **Claim** 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; and
- (b) the Insured has been continuously insured, without interruption at the time of the notification of the Claim 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 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** in a previous period of insurance.

#### 4.8 Inquiry Costs

Suncorp will indemnify the Insured for Inquiry Costs provided that:

- (i) the **Notice** is first received by the **Insured** and notified to **Suncorp** during the **Period of Insurance**; and
- (ii) such response or attendance arises directly from conduct allegedly committed by the **Insured** in the conduct of the **Business**; and
- (iii) such indemnity is subject to the written consent of Suncorp prior to the incurring of the Inquiry Costs; and
- (iv) all wages, salaries or fees of the **Insured** including overtime are excluded from this indemnity; and
- (v) Suncorp will not indemnify the Insured for Inquiry Costs based upon, attributable to, or in consequence of an act, error or omission committed or alleged to have been committed prior to the date specified in the Certificate of Insurance as the Retroactive Date.

# 5. EXCLUSIONS

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

# 5.1 Prior Or Pending Claims / Circumstances

- (i) first made against the **Insured** prior to the **Period of Insurance**; or
- (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 circumstances which may give rise to a Claim against the Insured; or
- (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
- (iv) arising from any matter which gives rise to a Claim or circumstances which may give rise to a Claim against the Insured, prior to the Insured obtaining a practising certificate as a barrister only; or

# 5.2 Fraud and Dishonesty

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**; or

# 5.3 Assumed Obligation

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

- under a contractual term, warranty or guarantee (unless liability would have existed regardless of the contractual term, warranty or guarantee); or
- (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

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

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

# 5.6 Trading Debts

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

based upon, attributable to, or in consequence of:

- 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

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

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 Automatic Extension 4.5; or

# 5.10 Employers Liability

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

# 5.11 Intentional Damage

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

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.

# 6 CONDITIONS

# 6.1 Limit of Indemnity

Subject to the application of Automatic Extension 4.1, the maximum liability of **Suncorp** for any one **Claim** covered by this **Policy** (including **Claims** under any extension to this **Policy**) shall be the **Limit of Indemnity**, except that **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) If any Claim made against the Insured involves more than one alleged act, error or omission, the Excess shall apply to each alleged act, error or omission separately.
- (iii) 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 Defence Costs clause 2.
- (iv) The **Insured** is liable for the amount of any **Inquiry Costs** that is less than the **Excess** for each **Notice**.
- (v) For the purposes of the Inquiry Costs Automatic Extension, all Notices arising out of, based upon, attributable to or in respect of any one inquiry or hearing shall be considered to be a single Notice and shall attract one Excess.
- (vi) **Suncorp** has no liability for the amount of **Inquiry Costs** that is less than the **Excess** for each **Notice**.
- (vii) 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.

# Professional Indemnity Insurance Policy for Barristers (continued)

## 6.3 Defence, Settlement and Mitigation

- (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, without the written consent of Suncorp. Suncorp shall not be liable for any admission or settlement or costs to which it has not so consented.
- (ii) **Suncorp** may take over and conduct the defence or settlement of any **Claim** notified under Condition 6.4.
- (iii) If the Insured refuses to consent to any settlement recommended by Suncorp and elects to continue to defend the Claim then (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.
- (iv) It shall be the duty and responsibility of the **Insured** to take all appropriate steps to defend any **Claim**, and, to provide such information and assistance to **Suncorp** as it reasonably requires to investigate or to defend any **Claim** or to enable it to determine its liability under the **Policy**. Such information includes such data or documentation necessary to establish and/or assert any right of contribution or indemnification against any third party.
- (v) The Insured shall use due diligence and do and concur in doing anything reasonably practicable to diminish or avoid any legal liability, Defence Costs or Inquiry Costs in respect of which Suncorp is or could be liable to indemnify the Insured.

Subject to the Defence Costs clause 2, compliance with clauses 6.3 (iv) and (v) shall be at the **Insured's** own cost.

# 6.4 Notification of Claims and Notices

The **Insured** shall provide to **Suncorp** written notice of any **Claim** or **Notice** as soon as practicable and 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 the Defence Costs clause 2, compliance with this clause 6.4 shall be at the **Insured's** own cost.

## 6.5 Senior Counsel Clause

- (i) Suncorp shall not require the Insured to contest any Claim unless a Queen's Counsel or Senior Counsel (to be mutually agreed upon by the Insured and Suncorp, or failing agreement, to be appointed by the Chairman/President for the time being or his nominee of the State or Territory Bar Association in the State or Territory in which the Insured's practising certificate was issued), shall advise that such Claim should be contested.
- (ii) In formulating such advice, 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 and the prospects of the Insured successfully defending the Claim.
- (iii) The cost of Queen's Counsel or Senior Counsel's opinion shall be regarded as part of the **Defence Costs**.

# 6.6 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**.

# 6.7 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.

# 6.8 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.

# 6.9 Subrogation

In respect of any **Claim** covered by this **Policy**, **Suncorp** shall be subrogated to any rights of recovery, indemnity or contribution which the **Insured** may have in respect of such **Claim** and the **Insured** shall do everything necessary to secure and preserve such rights, including execution of such documents necessary to enable **Suncorp** to effectively pursue such rights.

# 6.10 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.

### 6.11 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:

- 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.

## 6.12 Validity

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

# 6.13 Cease to Practice

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

- (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 role of barristers.

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

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

#### 6.15 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 2CI244 18 Jamison 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 2CI246 18 Jamison Street SYDNEY NSW 2000

# 7. **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.

- 7.1 Act means the Legal Profession Act 2006 (ACT), Legal Profession Act 2004 (NSW), Legal Profession Act 2007 (QLD), the Legal Profession Act 2004 (VIC), the Legal Profession Act 1993 (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.
- 7.2 Bodily Injury means physical or bodily injury, sickness, death, disease or any psychological or psychiatric injury.
- 7.3 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.
- 7.4 Certificate of Insurance means the Suncorp Certificate of Insurance, which attaches to and forms part of this Policy.

# 7.5 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**; or
- (ii) notification to the Insured of Statutory Proceedings.
- **7.6** 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.
- 7.7 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.
- 7.8 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.
- 7.9 Defence Costs means the reasonable legal costs and associated charges and expenses (other than wages or salaries or fees of the Insured or Inquiry Costs) incurred by Suncorp or with the prior written consent of Suncorp (such consent not to be unreasonably withheld) in defending, investigating or monitoring any Claim:
  - (i) to which **Suncorp** has confirmed indemnity or elected to take over and conduct, or arising from related appeals; or
  - (ii) where Suncorp is liable to indemnify the Insured following judgment, final adjudication or settlement of a Claim made against the Insured.

# Professional Indemnity Insurance Policy for Barristers (continued)

- 7.10 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.
- 7.11 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.
- 7.12 Excess means:
  - (i) in respect of the Insuring Clause and the Automatic Extensions (except Automatic Extensions 4.2 and 4.8), the amount specified in the **Certificate of Insurance**; and
  - (ii) in respect of the Inquiry Costs Automatic Extension 4.8, the amount of \$5,000 or the amount specified in the Certificate of Insurance whichever is the greater.
- 7.13 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.
- 7.14 Inquiry Costs means necessary and reasonable legal costs and expenses incurred by the Insured (other than Defence Costs) arising out of any Notice.
- 7.15 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 role of barristers or has otherwise bound themself in writing to adhere to the Barrister Rules as applicable, at the time of effecting this Policy.
- 7.16 Limit of Indemnity means the amount specified in the Certificate of Insurance and is inclusive of claimant's costs.
- 7.17 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.
- 7.18 Period of Insurance means the period specified in the Certificate of Insurance.
- **7.19 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.
- 7.20 Premium means the total amount specified in the Certificate of Insurance.
- 7.21 Retired Insured means the person specified as the Insured in the Certificate of Insurance if that person has during 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 practicing certificates to Australian legal practitioners.
- 7.22 Retirement Date means the date from which the Retired Insured has ceased to conduct the Business and 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 practicing certificates to Australian legal practitioners.
- 7.23 Retroactive Date means the date specified in the Certificate of Insurance.
- 7.24 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.
- **7.25 Suncorp** means AAI Limited ABN 48 005 297 807

### **General Insurance Code of Practice**

The Suncorp Group has adopted the General Insurance Code of Practice which has been developed by the Insurance Council of Australia.

The Code is designed to promote good relations and good insurance practice between insurers, intermediaries and consumers.

The Code sets out what insurers must do when dealing with the insured. Please contact us for more information about the Code, if required.

#### 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

# How to access and correct your personal information or make a complaint

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. Please use the contact details in **Contact Us.** 

#### **Contact Us**

For more information about our privacy practices including accessing or correcting your personal information, making a complaint, obtaining a list of overseas countries, or giving us your marketing preferences you can:

# www Visit www.suncorp.com.au/privacy



Speak to us directly by phoning us on 1300 308 950



Email us at sunprorisk@suncorp.com.au