



 **PRORISK**

# Healthcare Professionals Civil Liability Insurance Policy

 Policy Wording



# Contents

## **SECTION 1: INSURING CLAUSES 2**

### **Coverage Section A (Civil Liability) ..... 2**

1.1 Civil Liability Cover	2
1.2 Employee Fidelity Cover	2
1.3 Investigation Costs Cover	2
1.4 Spousal Liability Cover	2
1.5 Statutory Liability Cover	2

### **Coverage Section B (Public & Products Liability) 2**

1.6 Public Liability Cover	2
1.7 Product Liability Cover	2

## **SECTION 2: EXTENSIONS OF COVER 3**

### **Extensions Applicable to All Insuring Clauses.... 3**

2.1 Advancement of Defence Costs and Investigation Costs	3
2.2 Automatic acquisition or creation of subsidiaries	3
2.3 Continuity of Cover	3
2.4 Discovery period following a change in exposure	3
2.5 Discovery period following non-renewal	4
2.6 Emergency Costs	4
2.7 Reinstatement of the Limit of Liability	4
2.8 Retired or Resigned Insured Persons	4
2.9 Civil Penalties	5
2.10 Court Attendance Costs	5
2.11 Crisis Costs	5
2.12 Defamation	5
2.13 Good Samaritan Acts Liability	5
2.14 Intellectual Property	5
2.15 Internet Liability	5
2.16 Joint Venture Liability	5
2.17 Loss of Documents	5
2.18 Privacy & Health Records Legislation	6
2.19 Public Relations Costs	6
2.20 Trade Practices (Fair Trading) Legislation Cover6	6
2.21 Vicarious Liability	6

### **Extensions Applicable to Coverage Section B only ..... 6**

2.22 Public Relations Costs	6
2.23 Tenants Liability	6

### **Extensions Applicable to Insuring Clause 1.2 – Employee Fidelity Cover Only ..... 6**

2.24 Direct Financial Loss Investigator Costs – Policyholder	6
--	---

2.25 Direct Financial Loss Investigator Costs – ProRisk	6
---	---

### **Value Added Benefits ..... 7**

2.26 Contract Review	7
2.27 Panel Counsel	7
2.28 Whistleblower Hotline	7

## **SECTION 3: EXCLUSIONS 8**

3.1 Abuse	8
3.2 Alcohol, Illegal Drugs, Narcotics and Intoxicants	8
3.3 Assumed Liability	8
3.4 Bankruptcy or Insolvency	8
3.5 Dishonest or Wilful Acts	8
3.6 Directors & Officers Liability	8
3.7 Employment Liability	8
3.8 Insured versus Insured	8
3.9 Prior Policy	9
3.10 Prior or Pending Proceedings	9
3.11 Territorial Limits	9
3.12 Vehicles	9
3.13 Additional Exclusions specific to Insuring Clause 1. 2 (Employee Fidelity Cover) only	9

### **Exclusions specific to Insuring Clause 1.3 – Investigation Costs Cover and 1.5 – Statutory Liability Cover ..... 10**

3.14 Certain Acts	10
-------------------	----

### **Exclusions Specific to Coverage Section B ..... 10**

3.15 Cyber Liability	10
3.16 Defamation	10
3.17 Faulty Workmanship	11
3.18 Loss of Use	11
3.19 Products Liability	11
3.20 Professional Liability	11

## **SECTION 4 - DEFINITIONS 11**

### **Contact Us ..... 18**

# Healthcare Professionals Civil Liability Insurance Policy

In consideration of the payment of **premium** and in reliance on the contents of the **proposal** and any other information submitted by or on **your** behalf, **we** will indemnify **you** in accordance with the terms of this **policy**. This policy includes this document and the **General Terms & Conditions Section** attached to this **policy** and the **policy** should be interpreted with the **General Terms and Conditions**. **Our** total aggregate liability under each insuring clause will not exceed the sub-limits specified in the **schedule**. Each Insuring Clause and Extension is subject to the **excess** specified in the **schedule**.

---

## SECTION 1: INSURING CLAUSES

### Coverage Section A (Civil Liability)

#### 1.1 Civil Liability Cover

**We** will pay on behalf of an **insured** their **loss** in respect of any **claim** for any **civil liability** made against such **insured** during the **insurance period** in relation to the provision of **healthcare services**.

#### 1.2 Employee Fidelity Cover

**We** will pay the **policyholder** for any **direct financial loss** committed by an **employee**, which is first **discovered** during the **insurance period**.

#### 1.3 Investigation Costs Cover

**We** will pay on behalf of an **insured** their **loss** arising from an **investigation** commenced during the **insurance period** by an **official body** into the affairs of the **insured** in relation to the provision of **healthcare services**.

#### 1.4 Spousal Liability Cover

**We** will pay on behalf of the **spouse** of an **insured** their **loss** in respect of any **claim** for any **civil liability** made against such **spouse** during the **insurance period** in relation to the provision of **healthcare services** by an **insured**.

#### 1.5 Statutory Liability Cover

**We** will pay on behalf of an **insured** their **loss** in respect of any **claim** made against the **insured** during the **insurance period** by an **official body** for a **statutory liability wrongful act**.

### Coverage Section B (Public & Products Liability)

#### 1.6 Public Liability Cover

**We** will pay on behalf of an **insured** their **loss** in respect of any **claim** for **public liability** made against them during the **insurance period**.

#### 1.7 Product Liability Cover

**We** will pay on behalf of the **insured** any **loss** in respect of any **claim** for **product liability** made against them during the **insurance period**.

---

## SECTION 2: EXTENSIONS OF COVER

Our total aggregate liability under each Extension of Cover will not exceed the sub-limit specified in the **schedule**.

Each Extension of Cover is subject to the **excess** specified in the **schedule**.

### Extensions Applicable to All Insuring Clauses

#### 2.1 Advancement of Defence Costs and Investigation Costs

We will advance **costs** as incurred prior to a final determination or adjudication of a **claim** or up until the time that a **claim** is withdrawn. If such a **claim** is finally determined not to be covered or is excluded under this **policy** then all **costs** already advanced must be repaid to **us**.

#### 2.2 Automatic acquisition or creation of subsidiaries

If during the **insurance period** the **insured** creates or acquires a new **subsidiary**, then such new **subsidiary** will be automatically covered under this **policy** unless that new **subsidiary** is incorporated or domiciled in the **USA**.

If any new **subsidiary** is not eligible for automatic coverage due to this condition, then the **policyholder** may provide **us** with sufficient details in respect of the new **subsidiary** for **us** to assess and evaluate any increase in risk. **We** may then, with reasonable consideration, agree to extend cover in return for the payment of additional **premium** and any amendments to the terms of this **policy**.

Cover for any new **subsidiary** will apply solely in respect of **loss** arising from conduct on or after the effective date of incorporation or acquisition of such new **subsidiary**.

#### 2.3 Continuity of Cover

Notwithstanding Exclusion 3.10 (Prior or Pending Proceedings), coverage is provided for **claims** or circumstances which were required to be notified in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth) under any policy of insurance of which this **policy** is a renewal or replacement of, provided always that:

- (a) the **claim** or circumstance which was required to be notified in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth) occurring after the **continuous cover date** specified in the **schedule**; and
- (b) there has been no fraudulent non-disclosure or misrepresentation to **us** in respect of the **claim** or circumstance; and
- (c) the **insured** has maintained without interruption medical malpractice insurance or similar insurance with an insurer from the **continuous cover date** stated in the **schedule**; and
- (d) the **insured** has notified such a claim or circumstance under the prior medical malpractice insurance or similar insurance and is unable to obtain cover as it has been notified after such policy expired;

the cover provided by this Extension will be in accordance with all the terms and conditions (including, for the avoidance of doubt, the **limit of liability** and **excess** amounts, or any sub-limit, including the impairment of such **limit of liability** arising from any other claims under that policy) of the policy under which the **claim** or circumstance was required to be notified in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth), provided such earlier policy affords no broader cover in respect of the **claim** or circumstance than the provisions of this **policy**.

#### 2.4 Discovery period following a change in exposure

If there is a **change in exposure**, **we** will only pay in respect of conduct wholly committed before the **change in exposure** and which is otherwise covered by this **policy**.

**You** may, up to 30 days after the **change in exposure**, request an offer from **us** for a **discovery period** of up to 84 months. Upon such request and following the receipt by **us** of any requested information, **we** will

offer to extend the cover under this **policy** for a **discovery period** of up to 84 months on such terms and conditions and at such premium as **you** and **us** may agree. Any additional premium will be non-refundable. Any extended cover will only apply to **claims** or any **investigation** arising from conduct before the **change in exposure** and which is notified to **us** before the expiry of the **discovery period**.

In relation to any **subsidiary** that is sold, dissolved or otherwise disposed of prior to the expiration of the **insurance period**, this **policy** does provide cover in respect of any **claim** that relates to conduct occurring prior to the sale, disposal or dissolution of such **subsidiary**.

## 2.5 Discovery period following non-renewal

If, on expiry, any coverage clause or component under this **policy** is neither renewed nor replaced with a policy of insurance providing such coverage with any insurer, the **policyholder** is entitled to a **discovery period** of:

- (a) 30 days automatically for no additional premium;
- (b) subject to the payment of an additional premium of 100% of the **premium**, 12 months from the expiration of the **insurance period**; or
- (c) up to 84 months, as may be requested from the expiration of the **insurance period** on such terms and for a **premium** that will be determined by **us**;

provided that:

- (i) the extended cover only applies in respect of **dishonest acts** and other conduct wholly committed before the expiry of the **insurance period** and notified to **us** before the expiry of the **discovery period**.
- (ii) the right to purchase the **discovery period** as set out above must be exercised by notice in writing to **us** within 30 days of the expiration of the **insurance period** and is only effective upon payment of the additional premium.
- (iii) **You** will not have the right to purchase the twelve (12) month **discovery period** under this Extension in the event of any **change in exposure**.
- (iv) the **discovery period** under this Extension is not available in the event that this **policy** is cancelled or avoided.
- (v) **our** offer of renewal terms, conditions, limits of liability or premium different to those of this **policy** does not constitute a refusal to renew for the purposes of this Extension.
- (vi) any **premium** earned will be non-refundable.
- (vii) this Extension will not be available in the event of any actual or alleged insolvency, bankruptcy or similar proceedings of the **policyholder**.

## 2.6 Emergency Costs

If written consent from **us** cannot reasonably be obtained prior to **costs** being incurred by an **insured**, **we** automatically grant retrospective approval for such **costs** of up to 10% of the **limit of liability** (or relevant sub-limit, whichever is the lower amount) in the aggregate for all **claims** made during the **insurance period**, provided consent is obtained from **us** within 30 days of **costs** being incurred. Any amounts paid under this Extension are part of and not in addition to the **limit of liability**.

## 2.7 Reinstatement of the Limit of Liability

**We** agree to reinstate the **limit of liability** for either Coverage Section A or Insuring Clause 1.6 (Public Liability) where a **claim** erodes the **limit of liability** in whole or in part, up to the **maximum aggregate limit of liability**.

## 2.8 Retired or Resigned Insured Persons

If this **policy** is neither renewed nor replaced by any insurance granting broadly comparable cover benefiting the **retired** or **resigned insured persons**, coverage under this **policy** will automatically extend to pay **loss** on behalf of the **retired** or **resigned insured persons** in respect of any **claim** made against the **retired** or **resigned insured persons** or **investigation**, provided however that such **claim**:

- (a) is made within a period of 84 months after the date of non-renewal or non-replacement of this **policy**; and
- (b) arises from conduct that is committed or alleged to have been committed or an **investigation** into conduct prior to the expiry date of the **insurance period**.

This Extension does not apply to any **retired** or **resigned insured persons** who retires or resigns as a result of or after a **change in exposure**. This Extension is deleted should an 84 month **discovery period** be elected under Extension 2.4 (Discovery period following a change in exposure) or Extension 2.5 (Discovery period following non-renewal).

## Extensions Applicable to Coverage Section A only

### 2.9 Civil Penalties

The definition of **loss** is extended to include any civil fines or civil penalties that are insurable under the law applicable to this **policy**.

### 2.10 Court Attendance Costs

**We** will pay the **policyholder** for **court attendance costs**.

### 2.11 Crisis Costs

**We** will pay **crisis loss costs** on behalf of the **policyholder**.

### 2.12 Defamation

**We** agree to provide cover in respect of any **claim** against the **insured** which results from the **insured** making a defamatory statement, disparagement or harm to the reputation or character in relation to the provision of **healthcare services**, including but not limited to on the **internet**, **intranet** or **extranet**. This does not include:

- (a) any failure of the **insured** to remove any statement or publications from any **internet**, **intranet** or **extranet** site; or
- (b) any statement or publication made to or contained on any **open site** or **moderated site** by the **insured** and/or any **employee** or third party.

### 2.13 Good Samaritan Acts Liability

**We** will pay **loss** to or on behalf of an **insured person** in respect of a **claim** first made during the **insurance period** arising from a **Good Samaritan act**.

### 2.14 Intellectual Property

**We** agree to provide cover in respect of any **claim** against the **insured** which results from the actual or alleged infringement of copyright, trademarks, registered designs or patents in relation to the provision of **healthcare services**.

### 2.15 Internet Liability

**We** will pay **loss** to or on behalf of an **insured** in respect of a **claim** first made during the **insurance period** arising from an **internet liability breach**.

### 2.16 Joint Venture Liability

**We** agree to provide cover in respect of any **claim** against the **insured** resulting from the provision of **healthcare services** as a joint venture. **We** will not cover any liability of the joint venture partner.

### 2.17 Loss of Documents

We will pay the reasonable costs and expenses incurred by the **policyholder** in replacing or restoring **lost documents** for which the **policyholder** is legally responsible where the **lost documents** are first **discovered** to have been lost during the **insurance period**, and the failure to replace or restore such **lost documents** to do so would likely cause a **claim** otherwise covered under this **policy**.

#### 2.18 Privacy & Health Records Legislation

We will pay **loss** to or on behalf of an **insured** in respect of a **claim** first made during the **insurance period** arising from an actual or alleged breach of **privacy and health records legislation**.

#### 2.19 Public Relations Costs

We will pay the **public relations costs** of an **insured** following a **claim** covered by the **policy**.

#### 2.20 Trade Practices (Fair Trading) Legislation Cover

We will pay **loss** in respect of any **claim** against the **insured** for any actual or alleged breach of any provision of the *Competition and Consumer Act 2010* (Cth) or any section(s) of the Fair Trading Legislation in any State or Territory of the Commonwealth of Australia in relation to the provision of **healthcare services**.

#### 2.21 Vicarious Liability

We agree to indemnify **you** for **your** vicarious liability for any conduct of **your**:

- (a) agents;
- (b) contractors;
- (c) **employees**; or
- (d) **medical practitioners**, provided that they have maintained their own medical indemnity insurance.

To the extent that you are liable and would otherwise be covered under the **policy** had **you** undertaken the conduct.

### Extensions Applicable to Coverage Section B only

#### 2.22 Public Relations Costs

We will pay the **public relations costs** of an **insured** following a **claim** covered by the **policy**.

#### 2.23 Tenants Liability

We agree to indemnify any lessor with whom the **policyholder** has entered into an agreement for the rental or lease of **premises**. Cover available to the lessor is on terms no wider than would have been provided in this **policy** to the **policyholder** if the **policyholder** had been held legally liable for the same **loss**.

### Extensions Applicable to Insuring Clause 1.2 – Employee Fidelity Cover Only

#### 2.24 Direct Financial Loss Investigator Costs – Policyholder

We agree to reimburse the **policyholder** for their costs of hiring a **loss investigator** selected by the **policyholder** with **our** prior written consent (which will not be unreasonably delayed or withheld), which they incur in order to provide a **proof of loss** to **us**, following the **discovery** of a **direct financial loss** during the **insurance period**.

#### 2.25 Direct Financial Loss Investigator Costs – ProRisk

If the **policyholder** elects not to use their own **loss investigator**, **we** agree to pay the costs of a **loss investigator** selected by **us**, in order to assist the **policyholder** to provide **us** with their **proof of loss**, following the **discovery** of a **direct financial loss** during the **insurance period**.

## Value Added Benefits

### 2.26 Contract Review

The **policyholder** is entitled to use the ProRisk Contract Review Service for four (4) contract reviews for the **insurance period**. The Contract Reviews relate only to the provisions of the Contract that might affect the Insured's insurance.

### 2.27 Panel Counsel

The **insured** is entitled to one (1) hour free advice from any one firm listed on our panel of solicitors relating to a matter which we have accepted as notification of circumstances which may give rise to a **claim**. **We** consent to that firm listed on our panel of solicitors being retained to act for an **insured** in respect of any claim covered by this **policy**.

### 2.28 Whistleblower Hotline

The **insured** and their internal and external stakeholders are entitled to access and use the ProRisk Whistleblower Hotline throughout the **insurance period**.



---

## SECTION 3: EXCLUSIONS

We will not be liable under this **policy** to make any payment for **loss**:

### 3.1 Abuse

on account of any **claim** based upon, arising from or in consequence of, or in any way connected with any actual or alleged verbal, physical or sexual abuse, molestation, assault, battery or any violence committed by an **insured person**. This Exclusion will not apply to the vicarious liability of the **policyholder** if they were not aware of such conduct at the time.

### 3.2 Alcohol, Illegal Drugs, Narcotics and Intoxicants

on account of any **claim** arising from, directly or indirectly caused by, contributed to by, or arising out of or in connection with **you** being under the influence of alcohol, illegal drugs, narcotics and intoxicants.

### 3.3 Assumed Liability

on account of any **claim** arising from or directly or indirectly attributable to or in consequence of any obligation assumed by the **insured** under any agreement, except that this Exclusion does not apply to any liability which is, or would have been, implied by law in such agreement or would have separately arisen.

### 3.4 Bankruptcy or Insolvency

arising from the actual or alleged bankruptcy, insolvency, administration, or receivership of the **policyholder**.

### 3.5 Dishonest or Wilful Acts

on account of any **claim** arising from, based upon, arising from or attributable to the:

- (a) dishonest, fraudulent or criminal acts, errors or failure to act;
- (b) wilful breach of any statute, contract, agreement or duty; or
- (c) any wilfully reckless act, error or failure to act;

of an **insured**.

We will not rely on this Exclusion until the conduct in question is established by a final judgment, or any other final adjudication, or a written or verbal admission by any **insured** that the relevant conduct did in fact occur. This Exclusion includes any conduct or contravention in respect of which a prohibition in section 199B of the *Corporations Act 2001 (Cth)* applies. This Exclusion will not apply in respect of cover afforded under Insuring Clause 1.2 (Employee Fidelity Cover).

### 3.6 Directors & Officers Liability

arising from any **claim** brought against an **insured** where such **claim** is made solely by reason of the person holding the position, or having acted in the position, of **director** or **officer**.

### 3.7 Employment Liability

on account of any **claim** arising from, based upon or attributable to an **employment practices wrongful act** or liability for any injury to an **employee**.

### 3.8 Insured versus Insured

arising from any **claim** brought or maintained by or on behalf of any **insured**.

### 3.9 Prior Policy

arising from, based upon or attributable to any **claim, investigation** or circumstances of which notice has been given or was required to be given in accordance with the duty of disclosure contained in section 21 of the *Insurance Contracts Act 1984* (Cth), under any policy of insurance which this **policy** renews, replaces or follows in whole or in part, or for which notice could have been given if such a policy had been in force.

### 3.10 Prior or Pending Proceedings

arising from any **claim** or **investigation** relating to, based upon or attributable to any writ, demand, suit or other proceeding pending, or order, decree or judgment entered, for or against the **insured** which existed prior to or were pending at the earlier of:

- (a) the inception date of this **policy**;
- (b) the original date upon which insurance providing like coverage to this **policy** was affected and continually maintained up to the inception date of this **policy**;

where such a **claim** or **investigation** arises from any matter, fact, situation or circumstance substantially the same as those underlying or alleged in any such claim form, writ, demand, suit or other proceeding pending, or order, decree or judgment.

### 3.11 Territorial Limits

- (a) arising from any **claim** brought and maintained; or
- (b) **direct financial loss** that occurs;

outside of the **territorial limits**.

### 3.12 Vehicles

- (a) arising from the ownership, possession or use by or on **your** behalf of any motor vehicle or trailer for which compulsory insurance is required by law, other than claims arising from damage to any motor vehicle or trailer temporarily in **your** custody or control for the purpose of parking; or
- (b) arising from the ownership, possession or use by or on **your** behalf of any aircraft, watercraft or hovercraft or other vehicle, other than claims under the Insuring Clauses or the Extensions, arising from the emergency transportation of any patient accompanied by the **insured**.

### 3.13 Additional Exclusions specific to Insuring Clause 1. 2 (Employee Fidelity Cover) only

**We** will not be liable under Insuring Clause 1.2 (Employee Fidelity) of the **policy** for any **direct financial loss**:

- (a) which can only be proved by:
  - (i) a profit and loss computation or comparison; or
  - (ii) a comparison of inventory records with an actual physical count;
- (b) arising from the accessing and dissemination of any confidential information, including but not limited to patents, trademarks, copyrights, customer information, computer programs and trade secrets;
- (c) arising from any **dishonest act** committed after any **director** or **officer, partner** or **proprietor** has become aware of a previous **dishonest act**, provided that this Exclusion will not apply if the **director** or **officer** or **partner** or **proprietor** who discovers any such **dishonest act**, acts in collusion with the **employee**;
- (d) arising from any **dishonest act** committed by a person who is either the **proprietor** or owns or controls more than 5% equity in the **policyholder**;
- (e) not directly associated with the incident that caused you to claim, including but not limited to loss of income, interest or dividends not realised or received by the **policyholder** or by any other person(s) or company because of a **direct financial loss**;
- (f) arising from any **dishonest act** committed by any member of the board or directors of the **policyholder**, whether acting alone or in collusion with others;

- (g) arising from any credit arrangement, false accounting, trading in securities, commodities, futures, options, currencies, foreign exchange or the like, unless the **direct financial loss** is a result of a **dishonest act** which results in the **employee** making an improper financial gain other than salary, wages, commissions, fees, bonuses, promotions, awards, profit sharing, superannuation or any other remuneration;
- (h) arising from any extortion or kidnap and ransom;
- (i) by an **employee** (acting alone or in collusion with others) taking property from the **policyholder's** bank account (or other similar account held with an Authorised Deposit Taking Institution) where the **employee** is able to sign cheques, execute transfers or otherwise withdraw funds from such bank account (or other similar account held with an Authorised Deposit Taking Institution) without a second signatory or similar approval for that withdrawal by another **insured person** (or delegate of another **insured person**); or
- (j) arising from a failure of an **insured person** to independently verify a request by a payee (or an alleged payee) to change or redirect payment to a different bank account (or similar account held with an Authorised Deposit Taking Institution).

## Exclusions specific to Insuring Clause 1.3 – Investigation Costs Cover and 1.5 – Statutory Liability Cover

### 3.14 Certain Acts

**We** will not be liable under Insuring Clause 1.3 (Investigation Costs Cover) and 1.5 (Statutory Liability Cover) of the **policy** to make any payment for any **loss** on account of any **claim** based upon, arising from, or in consequence of, or in any way connected with any actual or alleged breach or contravention of the responsibilities, obligations or duties imposed by:

- (a) Sections 182, 183, 588G, 601FD, 601FE, 601JD of the *Corporations Act 2001* (Cth) or any similar law, and any amendments, consolidations or enactments of that Act, including duties of directors, officers and employees to not misuse their position or information, a director's duty to prevent insolvent trading, duties of a member of a scheme's compliance committee and the duties of officers and employees of a responsible entity; or
- (b) the Fair Trading Acts of the States and Territories, the *Competition and Consumer Act 2010* (Cth) and any similar law of any state or territory and any amendment, consolidation or re-enactment of any of those Acts, including obligations in relation to restrictive trade practices (such as cartel conduct), misleading and deceptive or unconscionable conduct, unfair contract terms, consumer guarantees and safety of goods and services.

## Exclusions Specific to Coverage Section B

**We** will not be liable under this **policy** to make any payment for **loss** arising from:

### 3.15 Cyber Liability

- (a) **intranet**, **extranet** or **internet** operations, email and electronic communication;
- (b) the total or partial destruction, distortion, erasure, corruption, alteration, misuse, misrepresentation or misappropriation or other use of electronic data;
- (c) an error in creating, amending, entering, deleting or using electronic data; or
- (d) the total or partial inability or failure to receive, send, access or use electronic data for any time or at all; due to any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

### 3.16 Defamation

the publication or utterance of defamatory comments or content:

- (a) made prior to the commencement of the **insurance period**;
- (b) made by **you** or at **your** direction with knowledge that it would be defamatory; or
- (c) related to publishing, advertising, broadcasting or telecasting activities conducted by **you** or on your behalf.

### 3.17 Faulty Workmanship

the cost of re-performing, correcting or improving any work undertaken by **you**.

### 3.18 Loss of Use

the loss of use of tangible property, which has been physically damaged or lost or destroyed, resulting from a delay in or lack of performance by **you** or on **your** behalf of any contract or agreement.

### 3.19 Products Liability

- (a) the withdrawal or recall of any **products**;
- (b) any costs incurred in the repair, reconditioning, modification or replacement of any **product** or part of a **product** and/or any economic loss consequent upon the necessity for such repair, reconditioning, modification or replacement.
- (c) the failure of a **product** to meet the level of performance, quality, fitness or durability expressly or implied, warranted or represented by **you**, but this Exclusion does not apply to the loss of other tangible property resulting from the sudden, unexpected and unintended physical damage to or loss or destruction of **products** or work performed by **you** or on **your** behalf after such **products** or work have been put to use by any person or organisation other than **you**.

### 3.20 Professional Liability

the rendering of or failure to render **healthcare services**, or any other professional services but this Exclusion does not apply to the rendering of or the failure to render first aid or **healthcare services** to **employees** on **your** premises by medically qualified persons employed by **you**.

### 3.21 Property in Physical or Legal Control

**property damage** to property owned, leased or hired by or under hire purchase or on loan to **you** or otherwise in **your** care, custody or control, other than:

- (a) clothing and personal effects belonging to **your employees** or visitors;
- (b) premises tenanted by **you** to the extent that **you** would be held liable in the absence of any specific agreement; or
- (c) other property temporarily in **your** physical or legal control up to a maximum of AUD\$100,000 any one **occurrence** and in the aggregate during the **insurance period**; or
- (d) **premises** or the contents of **premises** temporarily occupied by **you** for work purposes.

In respect of **premises** or the contents of **premises** temporarily occupied by **you** for work purposes, no indemnity is provided for **damage** to that part of the property on which **you** are working, and which arises out of such work.

---

## SECTION 4 - DEFINITIONS

Please refer to the General Terms and Conditions for any definitions not listed below.

**4.1 Act** means any Act of any parliament or legislative assembly of the Commonwealth of Australia, and/or of any State or Territory of Australia, including any:

- (a) subordinate or delegated legislation or code, rules, regulations, or bylaws made under those Acts; and
- (b) any amendment, enactments, or consolidation of any of the above Acts or legislation.

**4.2 Benefits** means any obligation to pay superannuation or pension entitlements, which constitutes money or property or other entitlement.

**4.3 Civil liability** means the actual or alleged liability of the **policyholder** other than a criminal liability.

**4.4 Claim** means:



- (a) any written demand for compensation, monetary damages or other relief, including non-monetary relief, made against an **insured**;
- (b) any formal written notice of an alternative dispute resolution proceeding, including but not limited to a conciliation, mediation or arbitration.
- (c) A writ, Statement of Claim, or other similar legal proceeding commenced in writing;
- (d) any formal written notice of an **extradition proceedings** or execution of a warrant for arrest against the **insured** alleging a **statutory liability wrongful act**, but only with respect to Insuring Clause 1.5 (Statutory Liability Cover); or
- (e) an **investigation**;

brought by a third party.

**4.5 Costs** means **investigation costs** and all reasonable fees, costs and expenses in the defence, investigation, mitigation, adjustment, challenging, resisting or appeal of any **claim**, provided that **we** have consented in writing prior to such **costs** being incurred. **We** will not unreasonably withhold that consent.

**Costs** does not mean any overheads of the **policyholder** or any salaries, commissions, expenses or other **benefits** associated with the remuneration of the **insured persons**.

**4.6 Court attendance costs** means:

- (a) the reasonable out of pocket expenses; and
- (b) the equivalent daily salary;

incurred by an **insured person** in attending Court when legally compelled to do so, or at the reasonable request of solicitors acting for an **insured** in relation to a covered **claim** under this **policy**.

**4.7 Crisis event** means any of the following unforeseen events occurring and notified to **us** during the **insurance period** where, in the reasonable opinion of the chief executive officer (or the highest office holder) of the **policyholder**, the event has the potential to cause an imminent decrease of greater than 30% of the total consolidated annual revenue for the coming 12 months of the **policyholder** if left unmanaged:

- (a) the sudden, unexpected death or disability of any **director, officer, proprietor or partner**;
- (b) the criminal conviction of any **director, officer, proprietor or partner**;
- (c) the sudden loss of a major customer, contract or credit facility;
- (d) actual or alleged workplace violence against an **employee**;
- (e) the first apparent unauthorised intrusion into the computer facilities of the **policyholder**;
- (f) a recall or boycott of any product sold or otherwise supplied by **you** to a third party;
- (g) a manmade disaster; or
- (h) any criminal or fraud investigation into an **insured**.

**Crisis event** is an event that affects the **policyholder** specifically and does not include an event that affects an industry in general.

**4.8 Crisis loss costs** means:

- (a) the reasonable costs and expenses incurred by the **policyholder** for external crisis management services provided in response to a **crisis event** within the first 30 days after the **crisis event**; or
- (b) any reasonable professional fees, costs or expenses of any accredited:
  - (i) psychologist, psychiatrist or other equivalent medical or health counsellor; or
  - (ii) tax advisor, retained by an **insured person** with **our** prior written consent (which will not be unreasonably delayed or withheld), in respect of a covered **claim**.

**4.9 Direct financial loss** means loss of **property** sustained by the **policyholder** directly resulting from a **dishonest act**.

It does not include:

- (a) past or future economic loss, including the loss of salary, wages, commissions, fees, bonuses, promotions, awards, profit sharing, superannuation or any other remuneration;
- (b) costs, fees or other expenses in establishing the existence or amount of any **direct financial loss**;
- (c) physical destruction to any **premises**, or to any property situated on the **premises**;

- (d) complete or partial non-payment under any credit arrangement;
- (e) costs, fees or expenses of prosecuting or defending any demand, claim or legal proceeding resulting from a **direct financial loss** covered by this **policy**;
- (f) recovery costs;
- (g) interest or other loss that is not directly associated with the incident that caused **you** to claim;
- (h) the personal assets or property of an **insured** (for the avoidance of doubt, this includes an **insured's** property that would otherwise be covered under a home and contents policy); or
- (i) loss of property or other consideration surrendered or intended to be surrendered as payment or on behalf of an **insured person**, unless the **insured** agrees that such payment is on their behalf.

**4.10 Director or officer** means any natural person who was prior to, is or becomes during the **insurance period**:

- (a) a director, officer, partner, manager or trustee of the **policyholder** or **subsidiary**;
- (b) a shadow director of the **policyholder** but only where such shadow director is also a person described in sub-paragraph (a) above;
- (c) an **employee** of the **policyholder** who:
  - (i) carries out a managerial or supervisory function for the **policyholder**;
  - (ii) is joined as a party to any **claim** against any person defined above; or
- (d) the legal representatives, heirs, assigns or estates of a person defined above in the event of that person's death, incapacity, insolvency or bankruptcy.

This definition does not include external auditors of the **policyholder** and does not include any liquidator, trustee, receiver and manager, administrative receiver, supervisor, mortgagee in possession or other insolvency office-holder of the **policyholder** or the assets of the **policyholder**.

**4.11 Discovered or discovery** means when any **director** or **officer**, **partner** or **proprietor** (who is not in collusion with an **employee** or third party who has committed or is attempting to commit a **dishonest act**) becomes aware of any facts which would cause a reasonable person to believe that a **direct financial loss** or other event which may be covered by this **policy** has been or may be incurred, even though the exact amount or details of the **direct financial loss** or other covered event are not known at that time. Such awareness constitutes **discovery** by the **policyholder**.

**4.12 Discovery period** means the additional period in which **you** are able to notify **us** of a **claim**, **investigation** or **direct financial loss** resulting from conduct wholly committed before the end of the **insurance period**, the duration of which is specified in:

- (a) Extension 2.4 (Discovery Period following a Change in Exposure); or
- (b) Extension 2.5 (Discovery Period following Non-Renewal);

commencing from the date of expiry of the **insurance period**. The **discovery period** will be applied to the **policy** by way of Endorsement and will commence from the date of expiry of the **insurance period**.

**4.13 Dishonest act** means any fraudulent or dishonest act committed by an **employee** (acting alone or in collusion with others), which causes the **policyholder** to sustain a **direct financial loss**.

**4.14 Documents** means a deed, will, agreement, map, plan, book, letter, record, certificate, photograph or negative, project model or display, forms, client records and documents of any nature, whether written, printed or reproduced by any method and includes computer software, computer records and electronically stored data, but does not mean money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes or any similar instrument, or **property**.

**4.15 Employee** means:

- (a) any natural person full-time, part-time, casual, seasonal or temporary worker of the **insured** who is employed under a contract of service with the **insured** and is compensated by way of salary, wages and/or commissions;
- (b) any work experience staff member, intern or volunteer of the **insured** under the direction and control of the **insured**;
- (c) students, who are doing work for the **insured**, at the **insured's** direction, regardless of whether they are paid, or not; or
- (d) in relation to insurance clause 1.2 (Employee Fidelity Cover), the **employee** must also be under the direction and control of the **insured**.

**Employee** does not include independent contractors or labour hire personnel.

**4.16 Employment practices wrongful act** means any actual or alleged violation of employment laws, workers compensation laws or any other employment related obligation or matter, including but not limited to any actual or alleged:

- (a) employment-related:
  - (i) sexual or other unlawful harassment (including bullying);
  - (ii) unlawful discrimination;
  - (iii) denial of natural justice;
  - (iv) defamation;
  - (v) invasion of privacy;
- (b) unlawful termination of employment;
- (c) false or misleading advertising or representation involving terms or conditions of employment;
- (d) failure to employ, promote or grant tenure;
- (e) unfair deprivation of career opportunity;
- (f) unfair discipline or evaluation of employment performance;
- (g) failure to provide or adhere to adequate employment policies or procedures;
- (h) violation of any Federal, State or Local statute or regulation governing employment practices;
- (i) breach of employment contract; or
- (j) injury to an **employee**;

with respect to any natural person who was, now is or becomes an **employee** of the **policyholder**, including prospective **employee**.

**4.17 Employment related benefits** means any:

- (a) salary, wages and/or commissions;
- (b) a special right, a privilege, or a fringe benefit;
- (c) payments due under any employee benefit plan, pension plan or superannuation scheme;
- (d) bonuses;
- (e) equitable interest/s; or
- (f) incentive or deferred compensation;

payable to an **employee**.

**4.18 Extradition proceeding** means any action or proceeding commenced in any jurisdiction seeking the extradition of an **insured person**. Any such action or proceeding will be deemed for the purposes of this **policy** to commence upon the receipt by an **insured person** of notice in writing from an official governmental, regulatory or prosecuting body stating that a request for extradition of an **insured person** has been made or will be made.

**4.19 Extranet** means a restricted-access group of inter-connected electronic networks accessible via a gateway or portal.

**4.20 Good Samaritan act** means emergency first aid or medical assistance administered at the scene of a medical emergency, accident or disaster by an **insured person** who is present either by chance, or in response to an S.O.S call and for which the **insured person** has no expectation of payment or other reward.

**4.21 Healthcare services** means any care, treatment, advice, service or goods provided in respect of the physical or mental health and wellbeing of a person as stated in the **schedule**. **Healthcare services** does not include any **product liability**.

**4.22 Insured, you and your** means:

- (a) the **policyholder**;
- (b) any **subsidiaries** of the **policyholder**; or
- (c) any **insured persons**.

**4.23 Insured person** means:

- (a) any **director** or **officer**;
- (b) **partner**;

- (c) **proprietor**;
- (d) **employee**; or
- (e) **student**.

**4.24 Internet** means a network of interconnected electronic networks that enables any computer connected to the network to communicate with any other computer connected to the network, using internationally recognised standards and protocols.

**4.25 Internet liability breach** means the actual or alleged disparagement, defamation of or harm to the reputation or character of any natural person or organisation by an **insured person**, directly resulting from communications which utilise the **internet** and media services utilising the **internet** via an electronic network owned and controlled by the **policyholder**.

**Internet liability breach** does not include:

- (c) any actual or alleged infringement of intellectual property rights;
- (d) any failure to act by the **insured** to remove any statement or publications from any **internet, intranet** or **extranet** site; or
- (e) any statement or publication made to or contained on any **open site** or **moderated site** by the **insured** and/or any **employee** or third party.

**4.26 Intranet** means an electronic network owned and controlled by the **insured** which contains information about the business of the **insured** and is only accessible to designated individuals including **employees** of the **policyholder** and not to the general public.

**4.27 Investigation** means any formal investigation, inquiry or examination by an **official body**, commenced in writing, which the **insured** is:

- (a) legally compelled to comply with; or
- (b) requested to comply with and has the potential to have an adverse impact on the **insured's** ability to provide **healthcare services**.

An **investigation** does not include a risk management visit (or equivalent) by an **official body**.

**4.28 Investigation costs** means reasonable legal fees, costs and expenses incurred by the **insured** in their representation (or in preparation for their representation) at an **investigation** in which the **insured** first become involved during the **insurance period**.

**Investigation costs** does not include wages, salaries or other remuneration, internal costs or overheads of any **insured**.

**4.29 Loss** means the amount, including **costs**, damages, judgments, settlements or reasonable fees incurred on account of a **claim** made during the **insurance period**.

**Loss** does not include:

- (a) matters uninsurable under the law applicable to this **policy**;
- (b) punitive, exemplary or aggravated damages, or the multiple portion of any multiplied damages award in any **claim**;
- (c) taxes or the loss of tax benefits, rates, duties, levies, charges, fees or any other state or government revenue or impost;
- (d) fines or penalties;
- (e) **employment related benefits**;
- (f) any liability or costs incurred in connection with any educational, sensitivity or other corporate programme, policy or seminar relating to an **employment practices wrongful act** or the costs of reinstatement of any **employee**;
- (g) any refund of fees;
- (h) internal or overhead expenses of any **insured**;
- (i) the cost of complying with any non-monetary order or non-monetary relief;
- (j) **benefits**;
- (k) any actual or alleged violation of the responsibilities, obligations or duties imposed by any law, regulation or bylaw relating to vehicular, air or marine traffic and any amendments to that law, regulation or bylaw;



- (l) liquidated damages; or
- (m) any actual or alleged violation of the responsibilities, obligations or duties imposed by Sections 182, 183, 601FD, 601FE, 601JD of the *Corporations Act 2001* (Cth), or any similar law anywhere in the world, and any amendments to that Act, – including duties of directors, officers and employees to not misuse their position or information, duties of a member of a scheme's compliance committee and the duties of officers and employees of a responsible entity.

**4.30 Loss investigator** means a suitably qualified forensic accountant or other consultant, who does not have a conflict of interest, retained to establish the nature and extent of any **direct financial loss**.

**4.31 Lost documents** means **documents** that cannot be located following a diligent search, or **documents** that have been destroyed or damaged.

**4.32 Maximum aggregate limit of liability** means the total amount payable under each Coverage Section of this **policy** as stated in the **schedule**, including all reinstatements.

**4.33 Medical practitioners** means a person registered or licensed as a medical practitioner under a State or Territory law that provides for the registration or licensing of medical practitioners and includes registered healthcare professionals registered with the Australian Health Practitioner Regulation Agency.

**4.34 Moderated site** means any **internet, intranet** or **extranet** site where content is checked for compliance with pre-set content standards before or as soon as reasonably practicable after it is published.

**4.35 Official body** means any regulator, state or administrative body or agency, official trade body or self-regulatory body legally empowered to investigate the affairs of the **policyholder** or the conduct of an **insured person** in their insured capacity.

**4.36 Open site** means any **internet, intranet** or **extranet** site on which content can be published by contributing parties without registration.

**4.37 Partner** means the natural persons as the **policyholder** and any natural person who in the past, present or future trades in partnership with the **policyholder** in the business as specified in the **schedule**, in his or her capacity as such.

**4.38 Personal injury** means:

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
- (b) false arrest, false imprisonment, wrongful detention, malicious prosecution and humiliation;
- (c) wrongful entry, wrongful eviction or other invasion of right of privacy; and/or
- (d) assault and battery committed by the **insured** for the purpose of preventing or eliminating danger to persons or property.

In the event of **personal injury** arising from latent injury, latent sickness, latent disease or latent disability, that **personal injury** will be deemed to have occurred on the day the injury, sickness, disease or disability was first medically diagnosed.

**4.39 Premises** means the place or places where the **policyholder** conducts their business and provides **healthcare services**.

**4.40 Privacy and health records legislation** means the;

- (a) *Privacy Act 2001* (Cth), which regulates the collection and handling of personal information including through a series of Australian Privacy Principles and establishes a scheme for notification of eligible data breaches; and
- (b) *Health Records & Information Privacy Act 2002* (NSW), *Health Records Act 2001* (Vic), *Health Records (Privacy & Access) Act 1997* (ACT) or similar legislation enacted by the other States or Territories of Australia, which regulates the collection and handling of health information.

**4.41 Product liability** means **your** actual or alleged **civil liability** in respect of **personal injury** and/or **property damage** caused by or arising out of any **products** sold or otherwise supplied by **you** to a third party.

**4.42 Products** means anything manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, re-supplied or distributed, imported or exported, by **you** or on **your** behalf, including discontinued **products**.

**Products** does not include:

- (a) food and beverages supplied by **you** or on **your** behalf to **your** employees; or
- (b) any item sold via a vending machine, which **you** do not wholly own and operate.

**4.43 Proof of loss** means documented evidence that the **policyholder** has sustained a **direct financial loss**. A **proof of loss** may include the following, however these items should not be seen as limiting the information which could form part of the **proof of loss**:

- (a) the name of the entity claiming under the **policy**, and details of their relationship to the **policyholder**;
- (b) the policy number of the **policy**;
- (c) the name of the alleged perpetrator (if known);
- (d) a description of the events which led to the **discovery** of the **direct financial loss**;
- (e) a chronology of all relevant facts;
- (f) a description of the alleged **employee** or third party's modus operandi;
- (g) Statutory Declarations from witnesses;
- (h) complete documentary evidence to support that the **policyholder** has sustained a **direct financial loss**, including but not limited to receipts, bank statements, requisitions, invoices, cash receipts, cheques or cheque butts;
- (i) photographs, video or closed circuit television footage of **direct financial loss** occurring;
- (j) any internal investigation reports;
- (k) police report/s and/or any statement/s made to the police;
- (l) a signed confession; and/or
- (m) any other document or other form of evidence which may be relevant to the quantification of a **direct financial loss**.

**4.44 Property** means money, securities and other property owned by the **policyholder** or for which it is legally liable. **Property** does not include the personal assets or property of the **policyholder** (for the avoidance of doubt this includes an **insured's** property that would otherwise be covered under another form of contents insurance).

**4.45 Property damage** means physical loss, damage or destruction of tangible property owned by a third party, including the resultant loss of use, or loss of use of tangible property which has not been physically damaged or destroyed or lost, provided that such loss of use is caused by or arises out of physical damage of other **property**. In the event of a **claim** arising from latent damage or from the exposure of tangible property to gradual deterioration and eventual damage, such **property damage** will be deemed to have occurred on the day such deterioration or damage was first discovered.

**4.46 Proprietor** means the natural person as the **policyholder** as specified in the **schedule**, in his or her capacity as such.

**4.47 Public liability** means **your** actual or alleged **civil liability** in respect of **personal injury** and/or **property damage** sustained by a third party while on your **premises** other than any **product liability** or in relation to the provision of **healthcare services**.

**4.48 Public relations costs** means any reasonable fees, costs and expenses of a public relations consultant retained with **our** prior written consent (which will not be unreasonably delayed or withheld).

**4.49 Retired or resigned insured person** means any **insured person** who voluntarily ceases to hold such a position during the **insurance period** and who does not otherwise cease to hold such a position as a direct result of disqualification or as a result **change in exposure** taking place.

**4.50 Spouse** means a past or present lawful spouse, domestic partner (including, without limitation, same sex partner) or any person deriving similar status by reason of the common law or statute in Australia.

**4.51 Statutory liability wrongful act** means an actual or alleged breach of any **Act** in relation to the provision of **healthcare services**.



© Professional Risk Underwriting Pty Ltd

ABN 80 103 953 073


AFSL 308076

## Contact Us

 03 9235 5255

 [enquiries@prorisk.com.au](mailto:enquiries@prorisk.com.au)

 [www.prorisk.com.au](http://www.prorisk.com.au)

 Level 2, 115 Bridge Road  
Richmond VIC 3121

Find us on

