

# **G** WESTERN AUSTRALIAN GOVERNMENT Gazette

5447



**PERTH, FRIDAY, 29 OCTOBER 1999 No. 206 SPECIAL**

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 3.45 PM

**SETTLEMENT AGENTS ACT 1981**

**SETTLEMENT AGENTS SUPERVISORY BOARD PROFESSIONAL AND FIDELITY INSURANCE MASTER POLICY**

Policy No VK21178

**SETTLEMENT AGENTS PROFESSIONAL INDEMNITY INSURANCE**

Schedule

Certificate No: Contract No: VK21178

Assured Firm:

Address:

Period of Insurance:  
From: to 31 October 2000 (Midnight)

Limit of Indemnity: Section 1 \$ each and every claim  
Section 2 \$1,000,000 each and every claim

Excess: \$2,000 each claim or \$5,000 each claim where acting for more than one party

Special Conditions:

Premium: GST Stamp Duty:

Date of Proposal Form:

HIH Casualty and General Insurance Ltd, A.C.N. 008 482 291, Melbourne 100%

In Witness Whereof this Certificate has been signed by  
AON PROFESSIONAL SERVICES  
a division of Aon Risk Services Australia Ltd  
A.C.N. 000 434 720

ANDREW B WILLIAMS  
Manager for Australia  
Authorised Signatory

Date:

#### **SETTLEMENT AGENTS' PROFESSIONAL INDEMNITY & FIDELITY INSURANCE CERTIFICATE WORDING**

WHEREAS the Settlement Agents Supervisory Board (hereinafter called "the Board") has agreed to the Insurer (hereinafter called "the Company") on behalf of all Licensees from time to time required by the Act to be insured and on behalf of and for the benefit of Former Licensees providing insurance in accordance with the Terms, Conditions and Exclusions contained herein,

And Whereas the Licensees (hereinafter called "the Insured") named in the Certificate of Insurance having paid to the Company the premium stated in the Certificate of Insurance to effect insurance with the Company,

The Company agrees:

#### **SECTION 1: Professional Indemnity**

To indemnify the Insured (which expression shall in this Section 1 only include any person or persons in the direct employ of the Insured) against all sums which the Insured shall become legally liable to pay for any claim or claims first made against the Insured during the period of insurance by reason of any act, error or omission committed or allegedly committed by or on behalf of the Insured in the conduct of the Insured's Business.

In addition, pay the costs and expenses incurred with the written consent of the company in the defence, settlement or investigation of any such Claim.

#### **SECTION 2: Fidelity**

This Policy shall indemnify the Insured in respect of any pecuniary loss including loss of bearer bonds, coupons, bank notes, currency notes negotiable instruments or stamps sustained by them and first discovered by the Insured during the Period of Insurance by reason of any dishonest, fraudulent, malicious or illegal act or omission of the Insured or person in his direct employ in the conduct of the Insured's profession.

#### **Provided Always That**

No indemnity shall be afforded to any person committing or condoning such act or omission, and the Insured shall take all reasonable steps requested by the Company to recover the loss and shall permit the Company, if he so requests, to himself take such recovery action in the name of the Insured and in that event the Insured shall assist and co-operate with the Company and shall provide the Company with such information (including signed statements) as the Company may reasonably require.

Provided that the liability of the Company shall not exceed in the aggregate in respect of each claim (including claimant's costs) the Limit of Liability stated in Memorandum 7 and in addition all costs and expenses incurred with the consent of the Company in the defence or settlement of any such claim, provided that, if a payment in excess of the said Limit of Liability is made to dispose of any such claim, the Company's liability for any such costs and expenses so incurred shall be limited to such proportion thereof as the said Limit of Liability bears to the amount of the payment so made.

Provided further that in respect of each claim there shall be deducted from the amount of such claim, as finally determined, the amount of the Deductible stated in Memorandum 8 and the liability of the Company shall be limited to the amount, if any, in excess of such Deductible but not exceeding the Limit of Liability stated in Memorandum 7.

#### **EXCLUSIONS APPLICABLE TO SECTION 2**

The Company shall not be liable under this Policy in respect of or in relation to any person acting alone or in collusion with others—

1. for more than the Limit of Liability stated in Memorandum 7 notwithstanding that such dishonest, fraudulent malicious or illegal act or acts were committed by such person during more than one Period of Insurance;
2. for any loss, or to that part of any loss, as the case may be, the proof of which either as to its factual existence or as to its amount, is deducted from an inventory computation or a profit and loss computation; provided, however, that this Exclusion shall not apply to loss of money or other property which the Insured can prove, through evidence wholly apart from such computations, was sustained by the Insured through any dishonest, fraudulent, malicious or illegal act or acts committed by any one or more of such persons;

3. for any loss arising from any fraudulent, dishonest, malicious or illegal act or acts committed by such person after the Insured shall have knowledge or information of such act of dishonesty, fraud, malice or illegal act on the part of such person;
4. for any loss arising from the complete or partial non-payment of, or default upon any loan, extension of credit or transaction in the nature of, or amounting to, a loan, obtained from or made by the Insured or by any of the employees whether authorized or unauthorized unless such loss results from dishonesty, fraud, malice or illegal act on the part of any of the employees.

#### **GENERAL EXCLUSIONS**

1. This Policy does not cover for loss, damage or liability directly or indirectly occasioned by or

- a) happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of damage to property by or under the order of any government or public or local authority; or
- b) caused by or arising from or in consequence of or contributed to by nuclear weapons materials, or arising from or in consequence of or contributed to by ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self sustaining process of nuclear fission;

2. The Company shall not indemnify the Insured in respect of any loss arising out of any claim in respect of any liability incurred in connection with a Business conducted wholly outside the State of Western Australia or in respect of an act or omission occurring outside the State of Western Australia in connection with a Business conducted principally outside the State of Western Australia.

3. This Policy does not provide cover in respect of any circumstance or occurrence which has been notified under any other insurance attaching prior to the commencement date of the Certificate of Insurance.

4. This policy will not indemnify the Insured against any Claim in respect of liability imposed upon the Insured pursuant to any contract if such liability would not have been imposed upon the Insured in the absence of any such contract, or for fines, penalties or exemplary damages of any description.

#### **EXTENSIONS AUTOMATICALLY INCLUDED**

Subject to the limitation of indemnity stated in the Schedule in respect of all claims under this policy the following extensions are automatically included.

Each extension is subject to the terms, excess and Limit of Indemnity of this policy.

The cover provided by each extension is limited to claims or circumstances reported to the Insurers during the Period of Insurance.

##### **1. Libel and Slander**

This policy shall cover any claim first made against the Insured during the Period of Insurance for libel and slander by reason of words written or spoken by the Insured in the conduct of the Insured's profession.

##### **2. Trade Practices Act**

This policy is extended to indemnify the Insured in respect of claims for damages or compensation made against the Insured under the terms of the Trade Practices Act 1974 (Commonwealth), the Fair Trading Act 1987 (Western Australia) or similar legislation in other States, except in respect of such claims made under the penal or criminal provisions of those Acts.

##### **3. Loss of Documents**

If during the Period of Insurance the Insured shall first discover that any documents as defined by this clause the property of or entrusted to the Insured, which may be now or hereafter be, or be supposed or believed to be, in the custody of the Insured, or in the custody of any other person to or with whom such documents have been entrusted, lodged or deposited by the Insured in the ordinary course of business, have while within Australia been destroyed, damaged, lost or mislaid and after diligent search cannot be found, the Company shall indemnify the Insured against:

- a) legal liability which may attach to the Insured in consequence of such documents having been so destroyed, damaged, lost or mislaid, and
- b) costs and expenses of whatsoever nature incurred by the Insured in replacing or restoring such documents provided that such costs and expenses shall be supported by accounts approved by a competent person nominated by the Company.

#### **Provided always that**

- c) no indemnity shall be afforded in respect of any loss brought about by wear and tear and other gradually operating clauses and
- d) the expression "**documents**" shall in this clause mean deeds, wills, agreements, maps, plans, books, letters, forms and documents of any nature whatsoever including computer printouts BUT SHALL NOT MEAN or extend to any other

form of computer records nor computer memory whether programs or database or otherwise and however recorded NOR SHALL IT MEAN or extend to bearer bonds, coupons, bank notes, currency notes or negotiable instruments.

#### 4. Fraud & Dishonesty of Employees

This policy shall indemnify the Insured in respect of the legal liability of the Insured arising from any claim first made against the Insured during the Period of Insurance by reason of any dishonest, fraudulent, malicious, or illegal act or omission of the Insured's employees in the conduct of the Insured's profession.

#### **Provided always that**

no indemnity shall be afforded to any person committing or condoning such act or omission, and the Insured shall take all reasonable steps requested by the Company to recover the loss and shall permit the Company, if it so requests, to itself take such recovery action in the name of the Insured and in that event the Insured shall assist and co-operate with the Company and shall provide the Company with such information (including signed statements) as the Company may reasonably require.

#### 5. Continuous Cover

- a) In the absence of fraudulent non-disclosure and subject to 5(b) & 5(c) below, where—
  - i) a Claim is made against the Insured by reason of an act, error or omission by or on behalf of the Insured which occurred prior to the Period of Insurance: and
  - ii) HIH was the Insured's professional indemnity lead insurer at the time when the Insured first became aware of the circumstance which subsequently gave rise to the Claim ("Circumstance"): and
  - iii) HIH continued without interruption as the Insured's professional indemnity lead insurer from the time when the Insured first became aware of the Circumstances up until such time as the Claim is made against the Insured and notified to HIH.

HIH agrees to indemnify the Insured against the Claim subject to and on the terms and conditions of this policy

- b) HIH reserves the right to reduce its liability in respect of the Claim by the amount which fairly represents the extent to which HIH's interests are prejudiced as a result of the late notification.
- c) Where clauses 5(a) and 5(b) apply, HIH agrees that it will not deny indemnity for the Claim as a consequence of any non-disclosure on the part of the Insured with respect to the Claim.

#### **DEFINITIONS**

In this Policy—

1. "Act" means The Settlement Agents Act 1981 as from time to time in force.
2. "Business" means the professional activities of a Settlement Agent as defined in the Act, under the name stated in the Certificate of Insurance or such other name notified to the Company from time to time.
3. "Licensee" has the same meaning as in the Act.
4. "Each Claim" shall mean all claims arising from the same act, error or omission.
5. "Insured" means the Licensee, Firm or the Related Business, Directors and any person who is or becomes or who has ever been an employee of the Insured.
6. "Commencement Date" means that date as of which the Certificate of Insurance becomes effective.
7. "Firm" means the person or persons carrying on the Business from time to time.
8. "Former Licensee" means any Licensee who has ceased to carry on Business as a principal.
9. "Period of Insurance" means the period so specified in the Certificate of Insurance.
10. "Related Business" means any service, administrative or nominee company or other person entity or trust associated with or providing services to the Business and specified in the Certificate of Insurance or notified in writing to the Company and not being a Firm carrying on a Business.
11. "Insurer" means the Insurance Company(ies) whose name(s) appear(s) in the Certificate of Insurance.
12. Words importing any gender include every other gender

#### **INTERPRETATION**

1. The terms "Insured", "Licensee", "Firm" and "Business" shall be read as if they were separately defined in each Insurance effected by the issue of a Certificate of Insurance and were defined by reference to the Firm referred to in the respective Certificate of Insurance.
2. This Master Policy and every Certificate of Insurance shall be governed by and construed according to the laws of the State of Western Australia.

**MEMORANDA****1. Currency of Master Policy**

This Master Policy commences on the 1st day of November 1999 and shall continue until midnight 31st October 2000 and may thereafter be renewed for such further periods and with such variations as may be agreed between the Company and the Board.

**2. Premium**

The premium payable for the issue of a Certificate or Insurance to a Licensee for the Limit of Liability shall be as agreed between the Company and the Board, but the Company reserves the right to vary the standard Premium based upon prior claims and circumstances as declared on the questionnaire.

**3. Premium Payable by New Licensee**

A Licensee which commences Business other than at the commencement of a year of insurance under the Master Policy shall pay, in order to obtain insurance in respect of the Business of that Licensee, a premium equal to the premium payable by a Licensee reduced pro rata for every whole month by which the Period of Insurance is less than twelve months, subject to a minimum premium of \$105.00 inclusive.

**4. Issue of Certificates of Insurance**

The Company through its intermediary, Aon Professional Services, will issue Certificates of Insurance annually in the form of the Schedule hereto on receipt of the premiums payable in accordance with Memorandum 2 above to Licensees who are required by the Act to be insured.

**5. Effect of Certificate**

Each Certificate when issued shall have effect as if it were a separate Policy of insurance made between the Company and the Insured in the Terms of the Certificate and of this Policy.

**6. Insurance of Former Licensees**

A Former Licensee who has at any time been insured under any Master Policy or whose successors in business have at any time been insured thereunder shall be entitled to be indemnified by the Company in respect of any claim or claims first made against him during the currency of this Policy as if a Certificate of Insurance had been issued to him hereunder and as if there were specified in such Certificate—

- a) As the Period of Insurance, the period during which this Policy shall be in force; and
- b) As the Limit of Liability, the sum of
  - Section 1—\$1,000,000
  - Section 2—\$1,000,000

**7. Limit of Liability**

**Section 1** The Limit of Liability for each claim shall be as stated in the Schedule and shall be not less than \$1,000,000.

**Section 2** The Limit of Liability for each claim shall be \$1,000,000

**8. Deductible**

The Company shall not be liable to indemnify the Insured in respect of the first \$2,000 of each claim or \$5,000 if the claim derives from a matter where the agent acted for both parties.

**9. Variation by Agreement**

The Board and the Company may by agreement vary any of the terms of this Policy other than the terms of Memoranda 2, 7 and 8 as above with respect to any Certificate of Insurance which is issued after the effective date of such variation. The effective date of variation shall be the date nominated in the agreement being a date not earlier than the date the agreement is made.

**10. No Refusal of Cover**

The Company may not refuse any cover pursuant to this Master Policy to any Licensee.

**11. Cross Liability (Applicable to Section 2 only)**

The word "Insured" shall be deemed to apply to each person comprising the Insured in the same manner as if a separate Policy had been issued to each of them and the act, error or omission of one shall not prejudice the right of any other to indemnity under this Insurance but the total liability of the Company in respect of all the individuals and entities comprising the Insured shall not exceed the Limit of Liability as stated in Memorandum 7 above.

**GENERAL CONDITIONS****1. No Admission or Settlement**

The Insured shall not admit liability for or settle any claim or incur any costs or expenses in connection therewith without the written consent of the Company. The Company shall be entitled at its own expense at any time to take over and conduct in the name of the Insured the defence or settlement of any claim.

## 2. Notice of Claims

The Insured shall give notice to the Company in writing as soon as practicable of any circumstances giving rise or likely to give rise to a claim under this Policy and the Insured shall

- a) within fourteen days from the date of such notice (unless the Company has in writing agreed to extend such period) deliver to the Company a detailed statement in writing of the loss sustained;
- b) at all reasonable times permit the Company to inquire into, investigate and examine the circumstances of the alleged loss by the Insured, and the claim in respect thereof, and the Insured shall, at his own expense upon being required so to do by the Company produce all books, vouchers, correspondence, documents, receipts, and all other information in his possession or control relating to the alleged loss, and shall furnish copies of such of them and otherwise give all possible assistance as may be required by the Company so far as they relate to such claim or may in any way enable the Company to ascertain the correctness thereof or the liability of the Company under this Policy.

## 3. Effect of Giving Notice of Circumstances

If a notice of circumstances is given to the Company under the preceding clause either by or on behalf of the Insured or by or on behalf of his successors in business any claim subsequently made (whether before or after the expiration of the Period of Insurance) pursuant to such an intention to claim or arising from circumstances so notified shall be deemed to have been made on the date when such notice was given.

## 4. Other Insurance

Upon giving any notification pursuant to General Condition 2, the Insured shall inform the Company as to any other Insurance or indemnity pursuant to which the Insured is entitled to any benefit in respect of that claim.

## 5. Fraud

If any Licensee shall prefer any claim knowing the same to be false or fraudulent, as regards amount or otherwise, the insurance provided to such Licensee shall become void and all claim thereunder shall be forfeited.

## 6. Recoveries

If the Insured shall sustain any loss covered by this Policy which exceeds the Limit of Liability stated in the said Schedule, the Insured shall be entitled to all recoveries (except from suretyship, insurance, reinsurance, security or indemnity taken by or for the benefit of the Company) by whomsoever made on account of such loss under this Policy until fully reimbursed less the actual cost of effecting the same and any remainder shall be applied to the reimbursement of the Company.

## 7. Subrogation Agreements

This Policy does not cover any liability for or arising directly or indirectly from any claim for loss or damage in respect of which the Insured has at any time by deed or agreement foregone, excluded or limited a right of recovery.

## 8. Right of Company Upon Breach or Non-Compliance

Where the Insured's breach of or non-compliance with any term or condition of this insurance has resulted in substantial prejudice to the handling or settlement of any claim against the Insured in respect of which insurance is provided hereunder the Insured shall reimburse to the Company the difference between the sum payable by the Company in respect of that claim and the sum which would have been payable in the absence of such prejudice PROVIDED ALWAYS THAT it shall be a condition precedent to the right of the Company to seek such reimbursement that it shall have fully indemnified the Insured in accordance with the terms hereof.

## 9. Queen's Counsel Clause

The Company agrees to pay claims which may arise under this Insurance without requiring the Insured to dispute any claim unless a Queen's Counsel (to be mutually agreed upon by the Insured, the Firm and the Company) advises that the claim could be contested with a reasonable prospect of success by the Insured and the Insured or the Firm consents to such claim being contested, but such consent is not to be unreasonably withheld. In the event of any dispute arising between the Insured, the Firm and the Company as to what constitutes an unreasonable refusal to contest a claim the Chairman for the time being of the Board shall nominate a Referee to decide this point only and the decision of such a Referee shall be binding on all parties.

## 10. Prejudice to Insurers

Where the Insured's breach of or non-compliance with any condition of this insurance has resulted in substantial prejudice to the handling or settlement of any claim against the Insured in respect of which the Insured is insured hereunder the Insured shall reimburse to the Insurers the difference between the sum payable by the Insurers in respect of that claim and the sum which would have been payable in the absence of such prejudice. Provided always that it shall be a condition precedent of the right of the Insurers to seek such reimbursement that they shall have fully indemnified the Insureds in accordance with the terms hereof.

**ATTACHING TO AND FORMING PART OF POLICY NO VK21178**

The COMMON SEAL of the SETTLEMENT AGENTS SUPERVISORY BOARD was hereto affixed by authority of a resolution of the Board dated 21 September 1999 in the presence of—

VALERIE HASKINS, Acting Chairperson.

GEOFF COUPER, Registrar.

HIH Casualty & General Insurance Limited

100%

ACN 008 482 291

Level 29, 35 Collins Street

MELBOURNE VIC 3001

Policy No. VK21178

Dated this 20th day of October 1999.

ANDREW BEAVER, Authorised Signatory.

-----



1 9 9 9 0 0 2 0 6 6