

# AN IMPORTANT NOTICE TO THE APPLICANT

## 'CLAIMS MADE' CONTRACTS OF INSURANCE

### Please read and retain in your file

The proposed insurance is issued on a 'claims made' basis.

This means that the policy responds to:

1. claims first made against the insured during the policy period and notified to CGU Insurance during that policy period, providing that the insured was not aware, at any time prior to the policy inception, of circumstances which would have alerted a reasonable person in the insured's position that a claim may be made against the insured; and

2. 'claims circumstances' notified pursuant to Section 40 (3) of the *Insurance Contracts Act* which states:

*"where the insured gave notice in writing to the insurer of facts that might give rise to a claim against the insured as soon as was reasonably practicable after the insured became aware of those facts but before the insurance cover provided by the contract expired, the insurer is not relieved of liability under the contract in respect of the claim, when made, by reason only that it was made after the expiration of the period of insurance cover provided by the contract."*

After policy expiry, no new claims can be made on the expired policy even though the event giving rise to the claim may have occurred during the policy period.

If during the policy period you become aware of circumstances which a reasonable person in your position would consider may give rise to a claim, and which you fail to notify to us during the policy period, we may not cover you under a subsequent policy for any claim which arises from these circumstances.

When completing the proposal you are obliged to report and provide full details of all circumstances of which you are aware and which a reasonable person in your position would consider may give rise to a claim.

It is important that you make proper disclosure (see *Duty of Disclosure*, below) so that your cover under any new policy with us is not compromised.

Pursuant to the *Insurance Contracts Act* your duty to disclose all relevant information is set out below.

### Duty of Disclosure

Before entering into a contract of general insurance, you have a duty, under the *Insurance Contracts Act*, to disclose to us every matter that you are aware of, or could reasonably be expected to be aware of, that is relevant to our decision about insuring you and if so, on what terms. You have the same duty to disclose these matters to us before you renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require disclosure of matter –

- that diminishes the risk to be undertaken by us;
- that is of common knowledge;

- that we know or, in the ordinary course of our business, ought to know;
- as to which compliance with your duty is waived by us.

You should note that your duty continues after the proposal form has been completed until the policy is entered into.

### Non-disclosure

If you fail to comply with your duty of disclosure, we may be entitled to reduce our liability under the policy in respect of a claim or may cancel the policy. If your non-disclosure is fraudulent, we may also have the option of avoiding the contract from its beginning. It is therefore vital that you enquire of all entities comprising the insured, including senior staff, before completing the proposal form and before you sign any declaration confirming no change in the information disclosed.

### Retroactive Liability

The proposed insurance may be limited by a retroactive date either stated in the schedule or endorsed onto the policy. Where the retroactive cover provided by the proposed policy is subject to such a date, then the policy does not cover any claim arising from actual or alleged act, error, omission or conduct occurring prior to such retroactive date.

### Average Provision

One of the insuring provisions of the proposed insurance may provide that where the amount required to dispose of a claim exceeds the limit of the sum insured in the policy then CGU Insurance shall be liable only for a proportion of the total costs and expenses. This shall be the same proportion of the total expenses as the policy limit bears to the total amount required to dispose of the claim.

### Surrender of Waiver of any Right of Contribution or Indemnity

If another person or company is liable to compensate you or hold you harmless for part or all of any loss or damage otherwise covered by our policy, but you agree with that person or company (either before or after the inception of our policy) that you would not seek to recover any loss or damage from them, we will not cover you for this loss or damage.

This insurance is issued by Insurance Australia Limited ABN 11 000 016 722 AFS Licence No. 227681 (IAL) trading as CGU Insurance.



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