



making relationships count

## DUAL EVOLUTION ENDORSEMENT

A background photograph of a business meeting. A woman in a light blue blazer is smiling and looking at a man in a dark suit who is using a calculator. They are sitting at a table with coffee cups and papers. The background is a bright, modern office with large windows.

DUAL Evolution  
Employment Practices  
Liability Endorsement



## **DUAL Evolution Employment Practices Liability Endorsement**

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# DUAL Evolution Employment Practices Liability

## Endorsement

### Section 1: PREAMBLE

In consideration of the premium, **we** will provide the cover described in this Endorsement, subject to the Insuring Clauses, the Extensions, Exclusions, Definitions and the General Conditions & Exclusions Section.

For the purposes of this Endorsement only, the additional Insuring Clauses, Extensions, Exclusions and Definitions contained herein will apply to all **claims** and **investigations** based upon, arising from or in consequence of an **employment practices breach**. To the extent that there is any inconsistency between this Endorsement and the Directors and Officers Liability Policy to which it applies, the terms and conditions contained in this Endorsement will prevail.

The sub-limit specified in the **schedule** applies to all claims made under this Endorsement. Cover is part of and not in addition to the **indemnity limit**.

### Section 2: ADDITIONAL INSURING CLAUSES

#### 2.1 Employment Practices Liability Cover

**We** agree to pay on behalf of the **policyholder** all **loss** on account of a **claim** made against the **policyholder** during the **insurance period** by an **employee** based upon, arising from or in consequence of an actual or alleged **employment practices breach**, up to the sub-limit shown in Item 6 of the Schedule in respect of all such **claims** in the aggregate.

#### 2.2 Employment Practices Investigation Cover

**We** agree to pay on behalf of the **policyholder** all **investigation costs** arising from an **investigation** based upon, arising from, or in consequence of an actual or alleged **employment practices breach** commenced during the **insurance period**, up to the sub-limit shown in Item 6 of the Schedule in respect of all such **investigations** in the aggregate.

### Section 3: EXTENSIONS

Each Extension is automatically included under the **policy** unless specifically stated otherwise in the **schedule**. Extensions are subject to the Insuring Clauses and all other **policy** terms, conditions and exclusions, Definitions and the General Conditions & Exclusions Section.

#### 3.1 Continuous Cover

Notwithstanding the Exclusion Clause 4.4 (Prior Known Facts), **we** agree to provide cover in respect of any **claim** or **investigation** relating to an **employment practices breach** where the **policyholder**:

- a) first became aware, prior to the **insurance period** and after the **continuity date** that a **claim** or **investigation** might or could arise from facts or circumstances known to the **policyholder**; and
- b) had not notified the previous insurer or insurers on risk of such facts or circumstances, under any like policy existing prior to the **insurance period**.

We have the discretion to apply either the terms and conditions of the Policy in place when the **policyholder** first became aware of the facts and circumstances, including but not limited to the indemnity limit and deductible, or the terms and conditions of this **policy**.

#### 3.2 Discovery Period

The **insured** may give written notice to **us** of any **claim** or **investigation** in respect of an **employment practices breach** occurring prior to the end of the **insurance period**, during a **discovery period** immediately following the **insurance period** of:

- a) 60 days, granted automatically with no additional premium payable; or
- b) 12 months, if the **policyholder** requests such period in writing within 30 days after the end of the **insurance period** and tenders an additional premium of 75% of the expiring annual premium, commencing immediately after the end of the **insurance period**, such premium is payable within 30 days of the receipt by us of such written request; or
- c) 84 months, if a **transaction** takes place and the **policyholder** requests such period in writing within 30 days following the end of the **insurance period**, on such terms and conditions, if any, and for such additional premium as **we** may reasonably decide.

This Extension is not available if this **policy** is:

- (i) renewed or replaced with any other like directors and officers or management liability policy; or
- (ii) cancelled or avoided.

Any **discovery period** purchased under this Extension is non-cancellable, and the premium paid for the **discovery period** is fully earned by **us** and is non-refundable.

### 3.3 Public Relations Expenses

In the event of:

- a) a **claim**; or
- b) an **investigation**; or

being made or occurring in relation to an **employment practices breach** during the **insurance period**, we will pay **public relations expenses** up to AU\$50,000.00. This sub-limit is part of the total sub-limit available for this Endorsement.

## Section 4: EXCLUSIONS

**We** will not cover the **policyholder**, including for **defence costs** or any other **loss** in respect of:

### 4.1 Bodily Injury / Property Damage

any **claim** for bodily injury or property damage to or destruction of any tangible property, including loss of use thereof. However, this exclusion will not apply to a **claim** for emotional distress, mental anguish or humiliation arising from an **employment practice breach**.

### 4.2 Employee-Related Benefits

Any **claim** directly or indirectly based upon or attributable to any:

- a) obligation, or actual or alleged breach of an obligation, under any law, regulation or **industrial instrument** providing for paid or unpaid leave of any kind;
- b) obligation, pursuant to any law, regulation, or **industrial instrument** providing for the payment of workers' compensation entitlements, disability benefits, unemployment benefits, unemployment insurance, retirement benefits, social security benefits;
- c) **Employment related benefits** or amounts calculated by reference to any **employment related benefits**;
- d) costs incurred by the **policyholder** to modify any building or property, or to provide any service, in order to make such building or property, more accessible for accommodating a disabled person;
- e) costs incurred by the **policyholder** in connection with any educational or corrective measures undertaken under order of a Court of competent jurisdiction, arising from an **employment practices breach**;
- f) specified sums payable by the **policyholder** to an **employee** pursuant to a contract of employment or **industrial instrument**; or



- g) **benefits.**

#### 4.3 Fraudulent, Dishonest and Wilful Conduct

any **claim** arising out of or in any way connected with any **policyholder**:

- a) gaining any personal profit or advantage to which the **policyholder** was not legally entitled;
- b) committing any dishonest, fraudulent, criminal or malicious act;
- c) committing any wilful violation or wilful breach of any contract, statute or regulation; or
- d) committing any breach of either Section 182 or Section 183 of the Corporations Act 2001(Cth).

This Exclusion will only apply if it is established through a judgment or any other final adjudication adverse to the **policyholder**, or any admission by an **policyholder**, that the relevant conduct did in fact occur.

#### 4.4 Prior Known Facts

a **claim** or **investigation** arising out of or in any way connected with any:

- a) actual or alleged facts which were known to the **policyholder** prior to the commencement of the **insurance period** and which the **policyholder** knew or ought reasonably to have known might give rise to a **claim** or **investigation**;
- b) actual or alleged facts which could have been, or which can be notified under any previous like policy existing prior to the commencement of the **insurance period**;
- c) pending or prior **litigation**, or **litigation** derived from the same or essentially the same facts as are or might be alleged in such pending or prior **litigation**, as at the commencement of the **insurance period**;
- d) any fact or matter referred to in the **proposal**, or notified under any previous like policy existing prior to the commencement of the **insurance period**; or

### SECTION 5: ADDITIONAL CONTITIONS APPLYING ONLY TO THIS ENDORSEMENT

#### 5.1 The following condition applies to the Endorsement only:

- a) **We** will have the right and it will be **our** duty and not the duty of the **policyholder** to defend **claims** and arrange for legal representation at **investigations**. The **policyholder** will have the right to associate in the defence of the **claim** or the **investigation**, including but not limited to the negotiation of any settlement.
- b) **We** will have the right to enter into any settlement, with the **policyholder's** consent, which we deem to be expedient, to resolve the matter. If the **policyholder** withholds their consent to a settlement, which we deem reasonable and recommend, then **we** will cap our liability at the amount which we could have otherwise settled the matter for, but for the failure on the part of the **policyholder** to provide such consent.
- c) The **policyholder** will not admit liability, settle any **claim**, make any admission, offer any payment or assume any obligation in connection with any **claim** or investigation, incur any **defence costs**, **investigation costs** or other **loss** covered by this **policy**, without **our** prior written consent, which will not be unreasonably withheld or delayed.
- d) **We** will not be liable for any settlement, **defence costs** or other form of **loss**, admission, offer, payment or assumed obligation to which **we** have not given **our** prior written consent.
- e) With respect to any **claim** or **investigation** involving both an **insured person** and the **policyholder**, the **insureds** agree that **we** have the right to require the **insureds** to retain separate legal representation.

## Section 6: DEFINITIONS

For the purposes of this Endorsement, in this **policy**:

- 6.1 Accountant or registered tax agent** means a person or entity that is not an **insured** and is recognised by the Institute of Chartered Accountants or the Australian Society of Accountants, or any other person registered by the Australian Taxation Office as a tax agent.
- 6.2 Benefits** means any amount payable to a beneficiary of a **fund** by the **trustee** under the rules governing the **fund**.
- 6.3 Claim** means:
- a) a written demand for monetary damages or non-pecuniary relief;
  - b) a civil proceeding or counter-claim commenced by the service of a writ, complaint, summons, statement of claim, or similar originating process; or
  - c) an alternative dispute resolution proceeding, a formal administrative or regulatory proceeding including any arbitration, mediation, conciliation or other alternative dispute resolution proceeding commenced in writing;
- alleging an **employment practices breach**.
- All **claims** which arise out of or are attributable to or are in any way connected with a single **employment practices breach** will constitute a single **claim** for the purposes of this **policy**. A single **employment practices breach** means all respective **employment practices breaches** which are related or form part of a series of related conduct or form part of a course of conduct that is not entirely unconnected, different and/or unrelated.
- 6.4 Continuity date** means the date specified in Item 4 of the **schedule**.
- 6.5 Deductible** means the amount or amounts specified in Item 6 of the **schedule** in respect of each Insuring Clause.
- 6.6 Defence costs** means that part of **loss** consisting of the reasonable costs, charges, fees (including but not limited to legal fees) and expenses reasonably incurred by the **policyholder**, with **our** prior written consent in investigating or defending a **claim** but does not include regular or overtime wages, salaries or fees of the directors, **officers** or **employees** of the **policyholder** incurred in attending, defending, investigating or monitoring **claims**.
- 6.7 Discovery period** means the period of time specified in Extension 3.2 (Discovery Period) during which time written notice may be given to **us** of a **claim** which is first made against the **policyholder** for a **employment practices breach** committed or allegedly committed prior to the end of the **insurance period** or **transaction**.
- 6.8 Employee** means any natural person who is a past, present or future employee of the **policyholder**, regardless of whether they are employed on a full-time, part-time or casual basis. **Employee** does not include independent contractors.
- 6.9 Employment Practices Breach** means any of the following employment-related matters:
- a) actual or alleged unfair or wrongful dismissal;
  - b) termination or discharge of employment (either actual or constructive, including breach of an implied contract);
  - c) wrongful failure to employ or promote;
  - d) wrongful deprivation of career opportunity or demotion;
  - e) negligent employee evaluation (including the provision of negative or defamatory statements in connection with an employee reference);
  - f) failure to grant tenure; or
  - g) misrepresentation, discrimination, harassment, retaliation (including lockouts), humiliation, defamation or invasion of privacy;

which relate solely to the **policyholder** and its past, present or prospective **employees**.

**6.10**

**Employment related benefits** includes but is not limited to:

- a) non-monetary benefits including but not limited to the allocation of a company car, travel allowance, mobile or landline telephone, medical or life insurance expenses, education and training allowances, and equipment allowances;
- b) shares, share options or any entitlement or right under any employee plan of any description;
- c) participation in any share option or share option plan, or participation in any employee plan of any description;
- d) severance or redundancy payments or entitlements;
- e) any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;
- f) bonus or incentive payments, or any entitlement or right under a bonus or incentive plan (which, for the avoidance of doubt, does not include any payments, entitlement or right under any commission scheme);
- g) payments or contributions in respect of any provident, benefit, superannuation, pension or retirement fund, or any other account, fund, scheme or plan intended to provide benefits, in whole or in part, at retirement or a particular age, or on the happening of a particular event.
- h) Any paid or unpaid entitlements in relation to a notice period.

**6.11**

**Fund** means any single employer superannuation fund established for the benefit of **employees**. **Fund** does not include any self-managed, industry or master superannuation funds.

**6.12**

**Indemnity Limit** means the amounts specified in Item 5 of the Schedule.

**6.13**

**Industrial Instrument** means:

- a) an award, collective or individual agreement, minimum wage order or any other instrument made or authorised under statute;
- b) any other collective agreement;

which regulates the terms and conditions of employment.

**6.14**

**Insurance period** means the period specified in Item 3 of the Schedule.

**6.15**

**Insured** means an **insured person**, the **policyholder**, or both.

**6.16**

**Insured person** means:

- a) any past, present or future director, shadow director, secretary, **officer**, or **employee** participating in a management function, of the **policyholder**, **trustee**, or a natural person whom, by virtue of any applicable law is deemed to be a director or **officer** of the **policyholder**;
- b) the estate, heirs, legal representatives or assigns of any deceased or mentally incompetent, bankrupt or insolvent **insured person** in (a) above, but only in respect of an **employment practices breach** committed by an **insured person**;
- c) a legal or de facto spouse, domestic partner of an **insured person** in (a) above, but only in respect of a **employment practices breach** committed by an **insured person**;

**Insured person** does not include:

- (i) a receiver, receiver and manager, official manager, liquidator, administrator, trustee or other person administering a compromise or scheme of arrangement made for **policyholder**;
- (ii) a company or other body corporate.

**6.17**

**Investigation** means a formal criminal, administrative or regulatory investigation, examination, hearing or inquiry, into the **policyholder** or an **insured person** in their capacity as such, commenced in writing by an **official body** during the **insurance period** which may be operable, based upon, arising from or in consequence of an actual or alleged **employment practices breach**.

- 6.18** **Investigation costs** means the reasonable fees, costs and expenses incurred with **our** prior written consent, which will not be unreasonably withheld or delayed, by or on behalf of the **policyholder** in:
- a) preparing for, attending or producing documents to an **investigation**; or
  - b) responding to a raid on, or on-site visit to, any **policyholder** by an **official body** that involves the actual or possible production, review copying or confiscation of files or interviews of any **insured**.
- Investigation costs** do not include the remuneration of any **insured**, the cost of their time or costs or overheads of any **policyholder**.
- 6.19** **Litigation** includes, but is not limited to, any civil, criminal, administrative or regulatory proceeding as well as any official investigation, examination, enquiry, arbitration or adjudication.
- 6.20** **Loss** means the total amount which an **policyholder** becomes legally obliged to pay on account of a **claim** or **investigation**. **Loss** includes, but is not limited to:
- a) damages, judgments, settlements and adverse costs orders;
  - b) **defence costs**;
  - c) **public relations expenses**;
  - d) **investigation costs**;
  - e) Court attendance costs of any **insured person** who is legally required to attend Court as a witness in a **claim** covered by the **policy**, to an amount not exceeding \$500 per day for all **insured persons**. No **deductible** applies;
  - f) Pecuniary penalties awarded against the **policyholder** in and under the laws of the jurisdictions of Australia and New Zealand, provided that **we** are not legally prohibited from paying such pecuniary penalties;
- However, **loss** does not include:
- (i) fines or penalties (whether civil or criminal) which are uninsurable at law in the jurisdiction in which the **claim** was brought or the laws which govern this **policy**;
  - (ii) taxes;
  - (iii) the past and future economic loss of an **employee**;
  - (iv) any costs of reinstating an **employee**;
  - (v) any **employee benefits**, which the **policyholder** is legally obligated to pay under an **industrial instrument** or at law.
- 6.21** **Officer** means any company secretary, general counsel or an **employee** who is concerned in, or takes part in, the management of the **policyholder** regardless of the name that is given to their position.
- 6.22** **Official body** means any regulator, government 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.
- 6.23** **Pollution** means any substance, solid, liquid, particulate, noise, gaseous or thermal irritant or contaminant including but not limited to smoke vapours, soot, fumes, acids, alkalis, chemicals or waste materials.
- 6.24** **Policy** means this policy wording, the **schedule**, the General Conditions & Exclusions Section and any Endorsements attaching to and forming part of the **policy** either at commencement of or during the **insurance period**.
- 6.25** **Policyholder** means the entity or entities specified in Item 2 of the **schedule** and any of their **subsidiaries** specified in the **policy** schedule.
- 6.26** **Proposal** means the proposal form, submission and all other supporting documentation and attachments provided to us in the **application** for this **policy**.
- 6.27** **Principal organisation** means the entity or entities specified in item 2 of the **schedule**. **Principal organisation** does not include any **subsidiaries** or **outside entities**.



**6.28** **Public relations expenses** means the reasonable fees, costs and expenses of a public relations firm or consultant, or crisis management firm, or law firm retained by the **policyholder** with our prior written consent (which will not be unreasonably withheld or delayed) to prevent or limit adverse effects or negative publicity in respect of:

- a) a **claim**; or
- b) an **investigation**;

based upon, arising from, or in consequence of an **employment practices breach**.

**6.29** **Schedule** means the schedule attached to this **policy** or any **schedule** subsequently substituted for it during the **insurance period** and duly signed, stamped and dated by an authorised representative of **us**.

**6.30** **Securities** means a bond, debenture, note, share, preference share, warrant, option, promissory note or other equity, debt or hybrid security which is issued or given by the **policyholder**.

**6.31** **Subsidiary** means:

- a) any legal entity in which the **principal organisation** owns or controls, directly or indirectly, more than 50% of the outstanding securities or voting rights representing the present right to vote for election of directors; or any entity which is deemed to be the **principal organisation's** subsidiary under any applicable legislation, law or International Accounting Standard.
- b) any legal entity that ceases to be a **subsidiary** of the **principal organisation** during the **insurance period** or prior to commencement of the **insurance period**, provided that the cover provided will only apply in respect of a **wrongful act** that occurred whilst the entity was a **subsidiary** of the **principal organisation**.
- c) any legal entity which is created or acquired by the **policyholder** during the **insurance period**, provided that the legal entity :
  - (i) has total gross assets which are less than 25% of the total gross assets of the **policyholder**; or
  - (ii) has gross annual turnover of less than 25% of the total gross annual turnover of the **policyholder**; or
  - (iii) has total gross assets which are less than 25% of the total gross assets of the **policyholder** in the United States of America or Canada.

The cover provided in this **policy** will only apply in respect of a **wrongful act** occurring after the date of creation or acquisition.

**6.32** **Transaction** means any one of the following events:

- a) the **principal organisation** consolidates with or merges into or sells all or a controlling interest in its assets to any other person or entity or group of persons and/or entities acting in concert; or
- b) any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the **principal organisation** or control the appointment of directors who are able to exercise a majority of votes at Board meetings of the **principal organisation**; or
- c) the insolvency of the **principal organisation**;
- d) the appointment of an administrator, liquidator, receiver, receiver and manager or court appointed manager to the **principal organisation**.

**6.33** **Trustee** means an **insured** if validly appointed to act, and while acting in the capacity, as a trustee of a **fund**.

**6.34** **We/Us/Our** means DUAL Australia Pty Limited, ACN 107 553 257 as agent of the Underwriters named in the Schedule Item 12 under the heading "Underwriters".