

Broker Notice

Vero Profin Directors and Officers Liability Insurance Policy V5671 06/08.

Vero Profin has made some changes to our Directors and Officers Liability Insurance policy wording. This applies to both new business and renewal of business currently held by us.

To assist you in comparing our new policy wording with our existing policy wording (Reference 5671 11/06) we have prepared a guide to the changes.

Item	Existing - V5671 11-06	New - V5671 06-08
Acquisition or Creation of New Subsidiaries Extension	New Subsidiaries whose assets are no more than 10% of the company's assets are included for 60 days.	New Subsidiaries whose assets are no more than 20% of the company's assets are included for 60 days.
Advancement of Defence Costs and Representation Expenses Extension	A General Term	An Extension
Continuity Extension	A General Term	An Extension
Emergency Representation Expenses and Defence Costs Extension	No	Yes: applies in the event of an emergency and if the insured persons are unable to contact the insurer. Waives the requirement to obtain the insurer's prior written consent before incurring defence costs and representation expenses until such time as the insured persons contact or could have contacted the insurer. Subject to conditions – see policy wording. Limited to 10% of the limit of liability or any applicable aggregate limit.
Extended Discovery Period for Retiring Directors and Officers Extension	No	Yes, a seven year extended discovery period from expiry of the policy period for directors and officers who retire during the policy period. Only applies if the policy is neither renewed nor replaced at the end of the policy period. Does not apply to directors or officers who retire after a merger or acquisition.
Non-Rescission in respect of misrepresentation or non disclosure Extension	No	Yes: the Insurer will only exercise its right under section 28 of the Insurance Contracts Act 1984 (Cth) in respect of an insured person if the Insurer is able to establish that such insured person was directly involved in or aware of any such non-disclosure or misrepresentation.

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Occupational Health and Safety Defence Costs Extension	Yes	Yes: The Extension does not cover defence costs for civil proceedings or other written demands for compensation or damages.
Outside Directorships	Yes	Now includes persons who assume non-profit outside directorships after the policy period
Pollution Defence Costs and Representation Expenses Extension	Covers Defence Costs	<p>Now subject to the provisions of the Advancement of Defence Costs and Representation Expenses Extension.</p> <p>The Extension does not cover defence costs for civil proceedings or other written demands for compensation or damages</p> <p>Now covers representation expenses, where the subject matter of the official investigation, examination, inquiry or other proceedings is pollution.</p>
Public Relations Expenses Extension	No	<p>Yes: covers the reasonable costs, charges, fees and expenses of a public relations firm or consultant engaged to prevent or limit adverse effects or negative publicity resulting from a claim that is covered under the Policy.</p> <p>Subject to a sub-limit of \$100,000 in the aggregate.</p>
Representation Expenses Extension	<p>Covers official investigations, examinations, inquiries or proceedings that</p> <ol style="list-style-type: none"> the Insured Persons are legally required to attend; and has as its subject matter the affairs of the Company; or has as its subject matter the conduct of the Insured Persons in their capacity as such. <p>Representation Expenses are the costs of being represented at the investigation.</p> <p>Covers investigations ordered or commissioned by an official body or institution.</p>	<p>Covers official investigations, examinations, inquiries or other proceedings:</p> <ol style="list-style-type: none"> the Insured Persons are requested to attend; and has as its subject matter the affairs of the Company; or has as its subject matter the conduct of the Insured Persons in their capacity as such or as a director or officer of, or the holder of a position of equivalent status in a Non-Profit Outside Entity or Outside Entity in their capacity as such. <p>Representation Expenses are the costs of preparing for, attending and being represented at the investigation.</p> <p>Covers investigations ordered or commissioned by any regulator, government body or authority, governmental or administrative agency, official body or institution.</p>
Spouses Extension	Yes	Definition of spouse now includes same sex partner.
Insured v Insured Exclusion	<p>Loss resulting from any Claim by the Company or any Insured Person, except for any Claim:</p> <ol style="list-style-type: none"> resulting from an Employment Wrongful Act; or solely for a contribution or indemnity in respect of a Claim which is brought against another Insured Person and is covered under this Policy; or by the Company as a statutory derivative action, but not voluntarily solicited or assisted by the Company or an Insured Person; or by a liquidator, administrator, or receiver or equivalent in any jurisdiction, but not voluntarily solicited or assisted by an Insured Person; or by the Company pursuant to Section 50 of the Australian Securities and Investments Commission Act 2001. 	Loss, other than Defence Costs, resulting from any Claim brought with the prior direct or indirect consent, solicitation, enticement or co-operation (except co-operation required at law) of the Insured Person against whom the Claim is made.

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Pollution Exclusion	No shareholder claim writeback	<p>Includes shareholder claim writeback.</p> <p>The Exclusion does not apply to any claim brought by a shareholder or a group of shareholders of the company directly or in the name of the company without the prior direct or indirect consent, solicitation, enticement or co-operation (except co-operation required at law) of the insured person against whom the claim is made.</p>
Professional Services Exclusion	<p>Contained the following writeback:</p> <p>except that this exclusion will not apply in respect of the provision of professional services or professional advice by an insured person but only in his or her capacity as such.</p>	<p>Now contains the following writeback:</p> <p>except that this Exclusion will not apply in respect of any actual or alleged professional services or professional advice which is provided by an Insured Person when acting solely in their capacity as an Insured Person and in circumstances where such professional services or professional advice is provided to the Insured and not to third parties in the course of the Company's professional business.</p>
Claims Conduct	<p>The Insurer is entitled to take over and conduct in the name of the Insured the defence or settlement of any Claim and will have full discretion in the conduct of any proceedings and in the settlement of any Claim.</p> <p>The Insurer reserves entirely its rights under this Policy, including its right to agree or deny cover while it assesses a Claim or conducts the defence. The Insurer's rights under this Policy are not affected if it does not conduct the defence.</p> <p>If the Insured objects to a proposal by the Insurer to settle or compromise any Claim payable under this Policy and wishes to contest or litigate the matter, then the Insured may so elect, but the Insurer's liability in respect of any such Claim so contested or litigated will not exceed the amount for which, but for such election, it could have been settled or compromised by the Insurer, together with Defence Costs payable in accordance with the terms of this Policy and incurred up to the time of such election.</p>	<p>The Insurer is entitled to take over and conduct in the name of the Insured the defence or settlement of any Claim and will have full discretion in the conduct of any proceedings and in the settlement of any Claim.</p> <p>The Insurer reserves entirely its rights under this Policy, including its right to agree or deny cover while it assesses a Claim or conducts the defence. The Insurer's rights under this Policy are not affected if it does not conduct the defence.</p> <p>Neither the Insured nor the Insurer will be required to contest or litigate any Claim if, in the opinion of Senior Counsel, reasonable attempts should be made to settle the Claim. The Senior Counsel shall be mutually agreed upon, or in the absence of such agreement, as nominated by the President of the NSW Bar Association. The cost to obtain the opinion will be advanced by the Insurer and treated as Defence Costs.</p> <p>Senior Counsel shall provide the opinion in writing. In formulating the opinion Senior Counsel shall consider commercial matters including the amount of the Claim, the actual and potential Loss (including Defence Costs) that may reasonably be incurred in contesting the Claim, the liability prospects and the prospect of recovering costs against the claimant in the event that the defence is successful. Senior Counsel shall also provide a settlement range within which reasonable attempts should be made to settle the Claim.</p> <p>If it is the opinion of Senior Counsel that reasonable attempts should be made to settle the Claim, the Insured shall not object to the Insurer's attempt to do so.</p>

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Settlement	The Insured must not settle or offer to settle any Claim, incur any Defence Costs, or Representation Expenses or otherwise assume any contractual obligation or admit any liability in respect of any Claim without the Insurer's prior written consent.	<p>The Insured must not settle or offer to settle any Claim, incur any Defence Costs, or Representation Expenses or otherwise assume any contractual obligation or admit any liability in respect of any Claim without the Insurer's prior written consent.</p> <p>If the Insured objects to a proposal by the Insurer to settle or compromise any Claim payable under this Policy and wishes to contest or litigate the matter, then the Insured may so elect, but the Insurer's liability in respect of any such Claim so contested or litigated will not exceed the amount for which, but for such election, it could have been settled or compromised by the Insurer, together with Defence Costs payable in accordance with the terms of this Policy and incurred up to the time of such election.</p>
Company Failure to Indemnify	Where Insuring Clause 1.1 applies and the Company is obliged to indemnify the Insured Persons, the Excess specified in Item 5 (b) of the Policy Schedule applies and is payable by the Policyholder to the Insurer, unless the Company is in liquidation (other than voluntary liquidation) and has insufficient funds available to provide such indemnity.	Where Insuring Clause 1.1 applies and the Company is in liquidation (other than voluntary liquidation) and has insufficient funds available to indemnify the Insured Persons for Loss as agreed, then the Excess applicable to the Company specified in the Policy Schedule is not payable to the Insurer.
Material Change	No	The Insured must notify the Insurer as soon as reasonably practicable of any material change in the risk insured by this Policy. The Insurer is entitled to amend the terms of this Policy and/or charge an additional premium based on the Insurer's assessment of any change in the risk insured by this Policy.
Definitions of Director and Officer		Includes persons who become directors and officers after the policy period.
Definition of Related Claim	Related Claims means all Claims arising directly or indirectly from or in respect of the same or causally related Wrongful Acts.	Related Claims means all Claims arising directly or indirectly from or in respect of the same or causally related or continuous or repeated Wrongful Acts whether committed by one or more of the Insured Persons and whether directed to or affecting one or more than one person or legal entity.