



Endorsement





DUAL Australia Evolution Directors & Officers Liability

Employment Practices Liability Endorsement

Table Of Contents

Section 1:	Preamble	5
Section 2:	Insuring Clauses	5
Section 3:	Automatic Extensions	5
Section 4:	Exclusions	7
Section 5:	Definitions	8
Section 6:	Conditions	12

Important Notices

You should read the entire **policy** and **endorsement** carefully, including all definitions and, in particular, the exclusions to ensure that it meets your requirements. **We** recommend that you consult an insurance agent or broker to ensure that you have a clear understanding of your rights and obligations under the **policy** and that the **policy** meets your needs and circumstances.

About DUAL Australia

DUAL Australia Pty Limited ABN 16 107 553 257 AFSL 280193 (**We/Us/Our**) is a Coverholder for certain Underwriters at Lloyd's of London (Underwriters) and an Insurer Berkshire Hathaway Specialty Insurance Company (BHSI). DUAL has the authority to bind this **policy** on behalf of these Underwriters and BHSI.

Claims Made and Notified Policy

This is a claims made and notified **policy**. **We** shall only cover you for **claims** made against you during the **insurance period** and notified to **us** as soon as practicable during the **insurance period** or any **discovery period** that may apply.

If your **policy** does not have a continuity of cover provision or provide retrospective cover then your **policy** may not provide insurance cover in relation to events that occurred before the **policy** was entered into.

Your Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell **us** anything that you know, or could reasonably be expected to know, that may affect **our** decision to insure you and on what terms.

You have this duty until **we** agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- a. reduces the risk **we** insure you for;
- b. is common knowledge;
- c. **we** know or should know as an insurance company; or
- d. **we** waive your duty to tell **us** about.

If you do not tell us something

If you do not tell **us** something you are required to, **we** may cancel your **policy** or reduce the amount **we** shall indemnify you if you make a claim, or both.

If your failure to tell **us** is fraudulent, **we** may refuse to pay a claim and treat the **policy** as if it never existed.

Notification of Facts that may give rise to a Claim

Section 40(3) of the *Insurance Contracts Act 1984* (Cth) provides that if you give notice in writing to **us** of facts that may give rise to a claim against you as soon as reasonably practicable after you became aware of such facts but before the **policy** expires, then **we** will continue to be liable under the **policy** for that claim, if made.

Privacy Statement

We are committed to compliance with the *Privacy Act 1988* (Cth) (the Privacy Act). **We** use your personal information to assess the risk of and provide insurance, assess and manage claims, to perform administrative functions and to comply with regulatory requirements. **We** may also use your contact details to send you information and offers about products and services that **we** believe will be of interest to you.

If you do not consent to provide **us** with the information which **we** request, **we** may not be able to provide insurance or assess a claim. If you provide **us** with information about someone else, you must obtain their consent to do so.

We provide your information to the insurer **we** represent when **we** issue and administer your insurance. When providing a quotation or insurance terms, **we** will tell you if the insurer is overseas and if so, where they are. **We** are part of the Howden Group and may provide your information to UK Based Group entities who provide **us** with business support services. **We** may also provide your information to your broker and **our** contracted third party service providers (e.g. claims management companies) but will take all reasonable steps to ensure that they comply with the Privacy Act.

We understand that this information is often sensitive, and **we** shall treat it with the utmost care. **Our** Privacy Policy contains information about how you can access the information **we** hold about you, ask **us** to correct, or make a privacy related complaint. You can obtain a copy from **our** Privacy Officer by:

telephone (+61 (0) 2 9248 6300)

email (privacy@dualaustralia.com.au)

or by visiting **our** website (www.dualaustralia.com.au).

By providing **us** with your personal information, you consent to its collection and use as outlined above and in **our** Privacy Policy.

General Insurance Code of Practice

We are compliant with the Insurance Council of Australia General Insurance Code of Practice.

The Insurance Council of Australia has developed the General Insurance Code of Practice (the Code), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit www.codeofpractice.com.au

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.au

Complaints and Disputes

If you have any concerns or wish to make a complaint in relation to this **policy**, **our** services or your insurance claim, please let **us** know and **we** will attempt to resolve your concerns in accordance with **our** Internal Dispute Resolution procedure.

Please contact **us** in the first instance:

General Counsel Team

DUAL Australia Pty Limited

Email: complaints@dualaustralia.com.au

Telephone: 02 9248 6300

Level 29, Angel Place, 123 Pitt Street,

Sydney NSW 2000

Australia

We will acknowledge receipt of your complaint and do **our** utmost to resolve the complaint to your satisfaction within 10 business days.

If **we** cannot resolve your complaint to your satisfaction, **we** will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

Australian Financial Complaints Authority Limited

GPO Box 3

Melbourne VIC 3001

Australia

Telephone Number: 1800 931 678

Facsimile Number: (03) 9613 6399

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

Service of Suit and Legal Notices

The Underwriters and BHSI accepting this Insurance agree that:

- i. if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters and BHSI will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- ii. any summons notice or process is to be served upon the Underwriters and BHSI as follows:

Lloyd's Underwriters' General Representative in Australia

Suite 1603

Level 16

1 Macquarie Place

Sydney NSW 2000

who has authority to accept service on the Underwriters' behalf; and

Berkshire Hathaway Specialty Insurance

Level 25, 8 Chifley Square

Sydney NSW 2000

- iii. if a suit is instituted against any of the Underwriters or BHSI, all Underwriters and BHSI participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

Notification of Claims

In the event of a claim arising under this insurance, immediate notice should be given to:

The National Claims Manager

DUAL Australia Pty Limited

Level 29, Angel Place, 123 Pitt Street,

Sydney NSW 2000

Australia

Or by email to: claims@dualaustralia.com.au

Please refer to the Claims Conditions section of this **policy** for further details regarding the notification of claims or loss subject to this Insurance.

DUAL Australia Evolution Directors & Officers Liability Insurance

Employment Practices Liability Endorsement

Section 1: Preamble

1.1 In consideration of the premium and subject to all the terms and conditions of this **endorsement**, and, in reliance upon the disclosures made in the **proposal**, **we** agree to provide insurance on the terms set out in this **endorsement** and **policy**.

For the purposes of this **endorsement** only, the additional Insuring Clauses, Automatic Extensions, Exclusions and Definitions contained below will apply to all **claims** and **investigations** arising from 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.

Subject to the terms and conditions of the **endorsement**, the total amount payable by **us** under this **endorsement** shall not exceed the sub-limit displayed in the **policy schedule**. This sub-limit is part of and not in addition to the **indemnity limit**.

Words and phrases appearing in bold text have the meaning provided in Section 5 - Definitions.

Section 2: Insuring Clauses

A sub-limit of indemnity may apply to an Insuring Clause. All applicable sub-limits are specified in the **schedule**. The sub-limit is the maximum amount payable by **us** under an Insuring Clause. A sub-limit is part of and not in addition to the **indemnity limit**. A **deductible** may apply to an Insuring Clause.

All applicable **deductibles** are specified in the **schedule**. The **deductible** is inclusive of all costs, unless otherwise specified in the **schedule**.

2.1 Employment Practices Liability Cover

We agree to pay to or on behalf of the **policyholder** all **loss** arising from a **claim** made against the **policyholder** during the **insurance period** by an **employee** arising from an actual or alleged **employment practices breach**.

2.2 Employment Practices Investigation Cover

We agree to pay to or on behalf of the **policyholder** all **investigation costs** arising from an **investigation** commenced during the **insurance period** arising from an actual or alleged **employment practices breach**.

2.3 Retroactive Date

The **endorsement** will only provide cover in connection with any **employment practices breach** and any other conduct occurring after the **retroactive date**.

Section 3: Automatic Extensions

Subject to all the terms and conditions of the **endorsement**, **we** further agree to extend cover through the following Automatic Extensions.

A sub-limit of indemnity may apply to an Automatic Extension. All applicable sub-limits are specified in the **schedule**. The sub-limit is the maximum amount payable by **us** under an Automatic Extension. A sub-limit is part of and not in addition to the **indemnity limit**.

A **deductible** may apply to an Automatic Extension. All applicable **deductibles** are specified in the **schedule**. The **deductible** is inclusive of all costs, unless otherwise specified in the **schedule**.

3.1 Continuous Cover

We will not rely on Exclusion 4.4 (a) and (b) (Prior Known Facts), in respect of any **claim** or **investigation** arising from 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. through error or oversight failed to notify the previous insurer or insurers on risk of such facts or circumstances, under any like policy existing prior to the **insurance period**.

If **we** do not rely upon Exclusion 4.4 (a) or (b) by reason of this Extension, **we** have the absolute discretion to apply the terms of this **policy** or the terms of the policy in place when the **policyholder** first became aware of the relevant facts and circumstances, in providing indemnity under this **policy**. For the avoidance of doubt, policy terms include (but are not limited to) any deductible and the indemnity limit in any prior policy.

3.2 Court Attendance Costs

We agree to pay to or on behalf of the **policyholder** any Court attendance costs of any **insured person** who is legally compelled to and does attend Court as a witness in a **claim** for **employment practices breach** covered by the **policy**, to an amount not exceeding \$1,000 per day for all **insured persons**.

3.3 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. 90 days, granted automatically with no additional premium payable; or
- b. at **our** discretion, 12 months, if the **policyholder** requests such period in writing within 30 days after the end of the **insurance period** and tenders the expiring annual premium, commencing immediately after the end of the **insurance period**, with such premium is payable within 30 days of the receipt by **us** of such written request; or
- c. at **our** discretion, 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 Automatic Extension is not available if this **policy** is:

- i. renewed or replaced with any other employment practices liability policy or other policy offering similar cover to this **policy**; or
- ii. cancelled or avoided.

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

3.4 Heirs, Estates, Legal Representatives and Spousal Cover

We will pay the **loss** of:

- a. the estate, heirs, legal representatives or assigns of any deceased or mentally incompetent, bankrupt or insolvent **insured person**; or
- b. a legal or de facto spouse, domestic partner of an **insured person**;

but only in respect of an **employment practices breach** committed by an **insured person**.

3.5 Panel Counsel

The **policyholder** is entitled to one (1) hour of free advice per enquiry in the **insurance period** from any one firm listed on **our** panel of solicitors for each matter relevant to the risks insured by this **policy**. **We** consent to that firm listed on **our** panel of solicitors being retained to act for an **insured** in respect of any **loss** covered by this **policy**.

3.6 Public Relations Expenses

We agree to pay **public relations expenses** incurred by the **insured** during the **insurance period** up to the conclusion of the **claim** or **investigation**.

Section 4: Exclusions

We will not cover the **insured** for any **loss**, including for **defence costs**, or other amounts under this **policy** in respect of:

4.1 Bodily Injury / Property Damage

any **claim** or **investigation** arising from bodily injury, psychiatric injury, sickness, disease or death of any person howsoever caused or damage to or destruction of any tangible property, including loss of use thereof.

However, this Exclusion will not apply to a **claim** or **investigation** for emotional distress arising from an **employment practice breach**.

4.2 Employee Entitlements and Benefits

any **claim** or **investigation** 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** or **investigation** 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, duty, statute or regulation; or
- d. committing any breach of either Section 182 or Section 183 or Section 184 of the *Corporations Act 2001* (Cth).

This Exclusion will only apply if it is established through a final non-appealable determination adverse to the **policyholder**, or any admission by a **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**, notwithstanding that such facts are disputed by the **insured**; or

- 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**.

4.5 Retroactive Date

any **claim** or **investigation** based upon, arising from or in connection with any **employment practices breach** which occurred in whole or in part, prior to the **retroactive date**.

Section 5: Definitions

In this **endorsement**:

5.1 Benefits means any amount payable to a beneficiary of a **fund** by the **trustee** under the rules governing the **fund**.

5.2 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.

5.3 Cryptoasset means a **Digital Asset** and a public or private key or any component thereof solely when used for a **Digital Asset**.

5.4 Continuity date means the date specified in the **schedule**.

5.5 Deductible means the amount or amounts specified the **schedule** in respect of each Insuring Clause and Automatic Extension and is payable in respect of each **claim** or **investigation** or specified **loss** under an Automatic Extension.

5.6 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, settling, appealing or defending a **claim** covered by this **policy**.

Defence cost does not include regular or overtime wages, salaries, costs of time, other remuneration or other fees of the directors, **officers** or **employees** of the **policyholder** incurred in attending, defending, investigating or monitoring **claims**.

5.7 Digital Asset means any actual, counterfeit or fictitious:

- a. digital coin;
- b. digital token;
- c. cryptocurrency;
- d. cryptosecurity; or

- e. any other digital representation of value or contractual rights that uses a type of distributed ledger of technology and that:
 - i. functions, or purports to function, as a medium of exchange, a unit of account or a store of value; or
 - ii. is or becomes regulated as a security.

5.8 Discovery period means the period of time specified in Automatic Extension 3.3 (Discovery Period) during which time written notice may be given to **us** of a **claim** or **investigation** which is first made against the **policyholder** for an **employment practices breach** committed or allegedly committed prior to the end of the **insurance period** or **transaction**.

5.9 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.

5.10 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**.

5.11 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; or
- i. salary or wage payments of any kind.

5.12 Endorsement means this Employment Practices Liability endorsement as endorsed to the **policy**.

5.13 Entities means any company, direct or indirect holding company owned or controlled (either in whole or in part) either directly or indirectly by the Government or State of any of the **Territories**.

5.14 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.

5.15 Indemnity limit means the amounts specified in the **schedule**.

5.16 Industrial instrument means:

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

which regulates the terms and conditions of employment.

5.17 Insurance period means the period specified in the **schedule**.

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

5.19 Insured person means 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**.

Insured person does not include:

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

5.20 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**.

5.21 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**.

5.22 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.

5.23 Loss means the total amount which a **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. 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 related benefits**, which the **policyholder** is legally obligated to pay under an **industrial instrument** or at law.

5.24 Officer means any natural person who was, now is or shall be a company secretary, executive officer, officer, principal, partner, or the holder of an equivalent position, of the **policyholder** or senior manager as defined in Section 9 of the *Corporations Act 2001* (Cth) and acting in that capacity.

5.25 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.

5.26 Pollutant 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.

5.27 Policy means this policy wording, the **schedule**, the General Conditions, Claims Conditions and General Exclusions Wording and any endorsements attaching to and forming part of the **policy** either at commencement of or during the **insurance period**.

5.28 Policyholder means the entity or entities specified in the **schedule** and any of their **subsidiaries**.

5.29 Proposal means the **insured's** written proposal form, submission and all other supporting documentation and attachments provided to **us** in the **application** for this **policy**.

5.30 Principal organisation means the entity or entities specified as such in the **schedule**. **Principal organisation** does not include any **subsidiaries** or **outside entities**.

5.31 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 minimise the risk of negative publicity in respect of:

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

based upon, arising from, or in consequence of an **employment practices breach**. It does not include overheads, staff remuneration or management time of any **insured** or compensation or other payments made to customers, clients or potential **claims** or any fines and penalties.

5.32 Retroactive date means the date specified in the **schedule**.

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

5.34 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 **employment practices breach** occurring after the date of creation or acquisition.

5.35 Territories means Belarus, Russia, any disputed Russian territories, including but not limited to, Donetsk Region, Luhansk Region, Crimea Region.

5.36 Terrorism means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s), whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

5.37 Transaction means any one of the following events:

- a. the **policyholder** 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 **policyholder** or control the appointment of directors who are able to exercise a majority of votes at Board meetings of the **policyholder**; or
- c. the insolvency of the **policyholder**; or
- d. the appointment of an administrator, liquidator, receiver, receiver and manager or court appointed manager to the **policyholder**.

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

5.39 We, Us or Our means DUAL Australia Pty Limited, ACN 107 553 257 as agent of the Underwriters and Insurers named in the schedule.

Section 6: Conditions

6.1 The following Condition applies to this **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.