

# Directors & Officers Liability Insurance Proposal Form



## Important Facts Relating To This Proposal Form

You should read the following advice before proceeding to complete this Proposal Form

### 1. Duty of Disclosure

Before you enter into a contract of general insurance with an insurer, you have a duty, under the Insurance Contracts Act 1984, to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of insurance, and if so, on what terms.

You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty, however, does not require disclosure of any matter:

- that diminishes the risk to be undertaken by the insurer;
- that is of common knowledge;
- that your insurer knows or, in the ordinary course of his business, ought to know;
- as to which compliance with your duty is waived by the insurer.

### **Non-disclosure**

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim, refuse to pay the claim or may cancel the contract. If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

### 2. Claims Made and Notified Basis of Coverage

The Directors and Officers Liability Insurance Policy is issued on a 'Claims made and Notified' basis.

This means that the policy responds to:

- a) claims first made against you during the policy period and notified to the insurer during the policy period, provided that you were not aware at any time prior to the policy inception of circumstances which would have put a reasonable person in your position on notice that a claim may be made against him/her; and
- b) written notification of facts pursuant to Section 40(3) of the Insurance Contracts Act 1984. The facts that you may decide to notify are those which might give rise to a claim against you. Such notification must be given as soon as reasonably practicable after you become aware of the facts and prior to the time at which the policy expires. If you give written notification of facts the policy will respond even though a claim arising from those facts is made against you after the policy has expired. For your information, S40(3) of the Insurance Contracts Act 1984 is set out below;

"S40(3) Where the insured gave notice in writing to the insurer of *facts* that might give rise to 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."

When the policy period expires, no new notification of Claims or facts can be made on the expired policy even though the event giving rise to the claim against you may have occurred during the policy period. An exception to this is under the Discovery Period Extension. If a Discovery Period is purchased as provided for in the extension, then some cover for new notification of Claims or facts is available.

You will not be entitled to indemnity under your new policy in respect of any claim resulting from an act, error or omission occurring or committed or alleged to have occurred or been committed prior to the retroactive date, where one is specified in the policy terms which are offered to you.

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### **3. Preservation of rights of recovery**

Our policy contains a provision that has the effect of excluding or limiting our liability in respect of a loss, if the Insured releases, agrees not to sue on, waives or prejudices its rights of recovery, or enters into any arrangement or compromise or does any act whereby any rights or remedies to which the Insurer would be subrogated are or may be prejudiced.

### **4. Privacy Statement**

The Privacy Act 1988 (as amended) now applies and requires us to inform you that:

#### **Purpose of collection**

We collect personal information (*this is information or an opinion about an individual whose identity is apparent or can reasonably be ascertained and which relates to a natural living person*) for the purposes of: providing insurance services to you, including to evaluate your application, to evaluate any request for a change to any insurance provided; to provide, administer and manage the insurance services following acceptance of an application; to investigate and, if covered, manage claims made in relation to any insurance you have with us or other companies within the same group.

The personal information collected can be used or disclosed by us for a secondary purpose related to those purposes listed above, but only if you would reasonably expect us to use or disclose the information for this secondary purpose. However for sensitive information, the secondary purpose must be directly related to the purposes listed above.

#### **Disclosure**

We may disclose your personal information (and receive some personal information from), when necessary and in connection with the purposes listed above, to other companies within the same group, your insurance broker or our agent, Government bodies, loss assessors, claim investigators, reinsurers, other insurance companies, mailing houses, claims reference providers, other service providers, hospitals, medical and health professionals, legal and other professional advisers.

#### **Consequences if information is not provided**

If you do not provide us with the information we need we will be unable to consider your application for insurance cover.

#### **Access**

You can request access to the personal information by contacting a Vero office at the address shown on the last page of this Proposal Form.

#### **Privacy Statement issued**

Vero Insurance Limited, 465 Victoria Avenue, Chatswood, NSW 2067.

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**Guidelines to help you complete this Proposal Form**

1. Failure to disclose all material information that is likely to influence the acceptance of the risk or the terms applied could invalidate the insurance. If you are in any doubt as to whether any information is material, it should be disclosed.
2. Where the space provided is insufficient for your replies, please provide these separately and attach to this Proposal Form.
3. Reference to Proposer in this Proposal Form means:
  - the Company and all subsidiary companies; and
  - the directors and officers of the Company and all subsidiary companies.
4. Reference to "North America" in this Proposal Form means the USA and Canada and their respective territories and protectorates.

**1. Details of the Proposer**

a. Name of Company	Country of registration
b. Name of Subsidiaries	Country of registration

c. Principal address .....

.....

d. Location of all other offices.....

.....

.....

e. Website address .....

f. Date Proposer established.....

**2. Business of the Company and its subsidiaries**

Please state the nature of the business of the Company and its subsidiaries.

.....

.....

.....

.....

**3. Type of organisation**

What type of organisation is the Company? (tick as applicable)

Public company       Proprietary company       Company limited by guarantee

Not-for-profit       Other  (please specify): .....

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<b>4. Details of ultimate holding company</b>				
Is the Company a subsidiary of another company? <input type="checkbox"/> Yes <input type="checkbox"/> No				
If Yes, please advise:				
Name of ultimate holding company	Country of registration	Website address		
<b>5. Details of previous name</b>				
Has the Company previously carried on business under any other name(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No				
If Yes, please provide details. ....				
.....				
<b>6. Details of stock exchange listing</b>				
Is the Company or its subsidiaries listed on any stock exchange? <input type="checkbox"/> Yes <input type="checkbox"/> No				
If Yes, state which exchange(s). ..... Ticker symbol .....				
<b>7. Details of employees, locations, revenue and assets</b>				
Please state Company's and its subsidiaries' employees, locations, revenue and assets as follows:	Number of employees	Number of locations	Total revenue derived from	Total assets
In Australia				
Elsewhere excluding North America				
In North America				
Total				
<b>8. Details of North American operations or representation</b>				
Does the Company or its subsidiaries:				
a. conduct business, have representation, own assets in or derive revenue from North America? (representation includes subsidiary companies, local offices, local representation or by any person or concern holding a power of attorney on behalf of the Company or its subsidiaries) <input type="checkbox"/> Yes <input type="checkbox"/> No				
If Yes,				
i. please give details below:				
Name of company(ies)/ business(es)	Type of representation (branch/subsidiary/ joint venture/ associated company)	Location	Nature of business	
ii. Does the Company or its subsidiaries have any manufacturing facilities in North America? <input type="checkbox"/> Yes <input type="checkbox"/> No				

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b. have any subsidiaries in North America which are not wholly owned? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>		
If Yes, state: Name of subsidiary	Percentage owned	Identity of minority shareholders
c. have any stock, shares, American Depository Receipts, debentures or any other debt or equity in North America? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>		
If Yes, please provide details. ....		
.....		
.....		
d. have any employee stock ownership plans in North America? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>		
If Yes, please provide details. ....		
.....		
.....		
e. have any plans to conduct business, have representation, acquire assets in or derive revenue from North America? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>		
If Yes, please provide details. ....		
.....		
.....		
<b>9. Ownership information</b>		
a. Please state the total number of shareholders of the Company		
b. Please provide details of any shareholder that owns directly or beneficially 10% or more of the voting or convertible shares of the Company or any subsidiary.		
Name of shareholder	Company in which shares are held	Percentage held
c. Please provide details of voting shares of the Company or any subsidiary held directly or beneficially by the directors and executive officers.		
Name of director/ executive officer	Company in which shares are held	Percentage held

# Directors & Officers Liability Insurance Proposal Form



10. Directors' and officers' details					
<p>a. Please provide details of the composition of the board of directors of the Company. If this information is fully contained in the most recent annual report and accounts of the Company then indicate here accordingly. Refer annual report <input type="checkbox"/></p>					
Name	Position held (Chairperson, director, CEO, MD CFO)	Executive or non-executive	Date appointed	Qualifications	Age
<p>b. Has any former or current director or officer of the Company or its subsidiaries <input type="checkbox"/> Yes <input type="checkbox"/> No (current or past) ever been declared bankrupt?</p> <p>If Yes, please provide details.</p>					
Name of director/ officer			Date declared bankrupt		
<p>c. Has any former or current director or officer of the Company or its subsidiaries <input type="checkbox"/> Yes <input type="checkbox"/> No (current or past) ever been a director or officer of an organisation placed in receivership, liquidation or provisional liquidation?</p> <p>If Yes, please provide details.</p>					
Name of director/ officer	Name of organisation	Details of receivership/ liquidation		Date	
11. Corporate governance					
<p>Do any former auditors of the Company have positions on its board? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, please provide details.</p> <p>.....</p>					
12. Outside directorships					
<p>Do any of the directors, officers or employees of the Company or its subsidiaries <input type="checkbox"/> Yes <input type="checkbox"/> No hold or have they held (at the specific request of the Proposer) any outside directorships or positions of equivalent status in any outside entities (whether for or not for profit)?</p> <p>If Yes, please provide details for each outside entity for which Outside Directorship cover is required.</p>					
Name of appointee	Outside Entity	Country of registration	Details of any Directors & Officers Insurance provided by the Outside Entity		
			Policy held?	If Yes, Policy number	
			<input type="checkbox"/> Yes <input type="checkbox"/> No		
			<input type="checkbox"/> Yes <input type="checkbox"/> No		
			<input type="checkbox"/> Yes <input type="checkbox"/> No		

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## 13. Mergers, acquisitions, and capital raisings

- a. Has the Company or its subsidiaries acquired, sold, disposed of or merged with any company, subsidiary or business during the last 3 years?  Yes  No
- b. Has the Company or its subsidiaries been the subject of any takeover bid during the last 3 years?  Yes  No
- c. Has the Company or its subsidiaries undergone any corporate restructuring, lay-offs or reductions in workforce in the last 3 years?  Yes  No
- d. Has the Company or its subsidiaries made any offer for the raising of capital by debt or equity or issued any prospectus in the last three years?  Yes  No
- e. Does the Proposer have any plans to acquire, sell, dispose of or merge with any company or business in the next 12 months?  Yes  No
- f. Is the Proposer aware of any proposals relating to the takeover of the Company or its subsidiaries by another company in the next 12 months?  Yes  No
- g. Does the Proposer anticipate a new public offering of its securities in the next 12 months?  Yes  No

If Yes to any of the above, please provide details.....  
 .....  
 .....  
 .....  
 .....

## 14. Financial position

- a. Since the last annual report and accounts was issued, has there been any significant change in the financial position, capital structure or operation of the Company or its subsidiaries which might materially affect the financial position in that annual report?  Yes  No
- b. Are any of the directors or officers aware of facts or circumstances that might affect the ability of the Company or its subsidiaries to meet all its debts as and when they fall due?  Yes  No

If Yes to a or b, please provide details.....  
 .....  
 .....  
 .....

## 15. Environmental protection

- a. Does the Proposer have an environmental management system in place?  Yes  No
- b. Does the Proposer have an EPA licence and/or a Trade Waste Agreement?  Yes  No

If Yes to a or b, please provide details.....  
 .....  
 .....

# Directors & Officers Liability Insurance Proposal Form



16. Claim history			
a.	Has any claim ever been made or civil, criminal or regulatory proceedings brought against any director or officer in their capacity as such (whether in relation to the activities of the Company, its past or current subsidiaries or any other company in which the directors or officers hold or have held office)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b.	Has any director or officer ever received a notice to attend an official investigation, examination, inquiry or other proceedings ordered or commissioned by an official body or institution in connection with the affairs of the Company, its current and past subsidiaries or any other company in which the directors or officers hold or have held office?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
c.	Has the Company or its current or past subsidiaries ever been liable to pay costs and expenses incurred by a shareholder in pursuing a claim against a director or officer pursuant to an order of a court?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
d.	Has there been or is there now pending any prosecution of the Company or its current or past subsidiaries under any Commonwealth, State or foreign legislation, regulation or by-law including but not limited to the Corporations Law or the Trade Practices Act?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If Yes to a, b, c or d, please provide details.			
Date of claim or proceeding	Details of each claim, proceedings or investigation including name of claimant, nature of allegation, details of determinations or judgments and any monetary damages, defence costs, settlements, fines or penalties	Cost (if any) incurred (whether insured or not)	
		Amount Paid	Estimated amount outstanding
...../...../.....			
...../...../.....			
...../...../.....			
...../...../.....			
<p>What action has been taken to prevent a recurrence of the situation that gave rise to each claim, proceeding or investigation?</p> <p>.....</p> <p>.....</p> <p>.....</p>			
17. Known circumstances			
<p><b>After enquiry</b>, are any of the directors or officers of the Company or its subsidiaries aware of any act, omission, conduct, fact, event, circumstance or matter:</p>			
a.	which might reasonably be expected to give rise to a claim or lead to civil or criminal proceedings against any director or officer?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b.	which might reasonably be expected to result in an official investigation, examination, inquiry or other proceedings ordered or commissioned by an official body or institution in connection with the affairs of the Company, its current or past subsidiaries	<input type="checkbox"/> Yes	<input type="checkbox"/> No
c.	which has been or should have been the subject of any written notice given under any policy or coverage part of which this proposed Directors and Officers insurance is to be a direct or indirect renewal or replacement?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If Yes to a, b or c, please provide details.			

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Fact, circumstance or situation	Current status	Date first became aware	Insurer to whom notified	Date of notification to Insurer

**It is agreed that if such facts, circumstances or situations exist, whether or not disclosed, any claim arising from them is excluded from this proposed coverage.**

### 18. Details of Directors and Officers Liability Insurance coverage requested

Limit of Liability	\$	\$	\$
Excess	\$	\$	\$

### 19. Current insurance

- a. Does the Proposer currently hold any Directors and Officers Liability Insurance?  Yes  No  
 If Yes, please provide details
- Insurer .....
- Limit .....
- Excess .....
- Policy Period .....
- b. Has any insurer, in respect of the risks to which this Proposal Form relates, ever:
- i. declined a proposal, refused renewal or terminated an insurance?  Yes  No
- ii. required an increased premium or imposed special conditions?  Yes  No
- iii. declined an insurance claim by the Proposer or reduced its liability to pay an insurance claim in full (other than by application of an Excess)?  Yes  No
- If Yes to i, ii or iii, please provide details .....
- .....

### Supporting information

Please enclose the following documents in support of this Proposal Form:

- The Proposer's latest full consolidated annual report and accounts. (If consolidated accounts are not available, enclose annual report and accounts for each company.)
- The Proposer's latest interim statement (if applicable)
- Business plan or "buyout" documentation if the Proposer was formed in the last 3 years
- A copy of any prospectus, offer document or information memorandum issued by the Proposer in the last 12 months
- The latest full consolidated annual report and accounts for each Outside Entity in respect of which Outside Directorship cover is sought. (If consolidated accounts are not available, enclose annual report and accounts for each company.)
- The latest full annual report and accounts of the Proposer's ultimate holding company (if applicable).

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## Declaration

I/We the undersigned duly authorised person(s) declare that:

- i. I am/we are authorised by each of the Proposers to sign this Proposal Form; and
- ii. the above statements are correct, true and complete; and
- iii. no information material to this Proposal Form has been withheld; and
- iv. I/we have read the **important facts** which you have put before me/us and I/we understand the advice given in relation to the **duty of disclosure**; and
- v. I/we have diligently made all necessary and detailed enquiries in order to comply with the **duty of disclosure**; and
- vi. I/we understand that no insurance is in force until such time as the insurer has confirmed acceptance of the proposed insurance; and
- vii. I/We undertake to inform the insurer of any material alteration to these facts occurring before completion of the contract of insurance; and
- viii. I/we acknowledge that the Insurer relies on the information and representations in this Proposal Form and otherwise made by me/us in relation to this insurance.

Signed .....	Signed .....
Title .....	Title .....
Company .....	Company .....
Date .....	Date .....

**NB: To be signed by the Chairman and one other Executive Officer**

We recommend that you keep a record, including copies of letters and this Proposal Form, of all information supplied to us for the purpose of entering into this contract.

## Stamp Duty Declaration

Please provide a breakdown in the number of employees by location as follows.

NSW	VIC	QLD	SA	WA	TAS	ACT	NT	Overseas

## How to contact Vero Profin

### New South Wales

Address: Locked Bag 25, Australia Square Post Office, Sydney, NSW 1215  
DX 10282 Sydney Stock Exchange

Tel 02 9295 4321  
Fax 02 9295 4323

### Queensland

Address: GPO Box 41, Brisbane, QLD 4001  
DX 200 Brisbane

Tel 07 3246 6000  
Fax 07 3246 6024

### Victoria

Address: PO Box 294, Collins St West, Melbourne, Vic 8007  
DX 273 Melbourne

Tel 03 9245 8111  
Fax 03 9245 8112

### South Australia

Address: GPO Box 1619, Adelaide, SA 5001  
DX 552 Adelaide

Tel 08 8205 5111  
Fax 08 8205 5199

### Western Australia

Address: GPO B78 Perth WA 6838  
DX 125 Perth

Tel 08 9211 4111  
Fax 08 9211 4189