

**EMPLOYMENT PRACTICES
LIABILITY INSURANCE
POLICY**



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Section 1



OPERATIVE CLAUSE

In consideration of the payment of the premiums stated in Item 7 of the schedule the **Insurer** will provide indemnity in accordance with the terms, conditions and exclusions contained in, endorsed on, or otherwise expressed in the policy.

The **Insurer** will pay on behalf of the **Insured** Loss that the **Insured** is legally obliged to pay by reason of any **Claim** first made against the **Insured** during the **Period of Insurance** and notified to the **Insurer** during the **Indemnity Period** for:

- (1) discrimination against any employee, former employee or applicant for employment because of race, colour, age, sex, disability, pregnancy, marital status, sexual orientation, sexual preference or otherwise;
- (2) wrongful dismissal of any employee;
- (3) workplace harassment (whether sexual or otherwise) of an employee;
- (4) breach of an implied term of an oral or written employment contract;
- (5) wrongful demotion, failure to promote, wrongful deprivation of career opportunity, wrongful discipline, negligent evaluation or failure to grant tenure of employment to an employee;
- (6) wrongful refusal to employ a potential employee;
- (7) defamation arising from employment related matters;
- (8) misleading misrepresentation or advertising as to the terms and conditions of employment;
- (9) denial of natural justice to an employee concerning his or her employment.

For the purposes of this Operative Clause only, "employee" shall mean principals, partners, directors, officers and employees of the **Insured**, voluntary workers, contract or temporary workers.

The total amount payable in respect of all **Claims** under this **Policy** shall not in the aggregate exceed the limit of aggregate liability as stated in Item 5 of the schedule.

Section 2



EXTENSIONS

Unless expressly specified to the contrary, the cover granted by these extensions is subject to all the terms and conditions of this **Policy**.

Automatic Extensions

2.1 Advancement of Defence Costs

Where the **Insurer** elects not to take over and conduct the defence or settlement of any **Claim** in the name of the **Insured**, the **Insurer** shall meet the **Defence Costs** of the **Insured** in defending or settling any **Claim** made against them as they are incurred and prior to the finalisation of the **Claim** provided always that indemnity in respect of such **Claim** has been confirmed in writing by the **Insurer**.

Where the **Insurer** has not confirmed indemnity and it elects not to take over and conduct the defence of any **Claim**, it may, in its discretion, advance **Defence Costs** as they are incurred and prior to the finalisation of the **Claim**.

The **Insurer** reserves the right to recover any **Defence Costs** from the **Insured** in the event and to the extent that it is established that the **Insured** was not entitled to the **Defence Costs** so advanced.

2.2 Extended Reporting Period

If the **Insurer** refuses upon request to offer any terms and conditions during the **Period of Insurance**, the **Insured** shall have the right upon payment of an amount equal to 50% of the total expiring annual premium stated in Item 7 of the schedule to a once only extension of the **Policy** for a further 12 months immediately following the expiry of the **Period of Insurance** but only for any act committed or alleged to have been committed or attempted prior to the expiry of the **Period of Insurance**, provided always that the right to this extension is exercised prior to the expiring of the **Period of Insurance**.

2.3 Estates & Legal Representatives

The estates, heirs or legal representatives of any deceased, incompetent or insolvent **Insured** shall be indemnified in like manner

to such **Insured** provided always that they shall be subject to all of the terms and conditions of this **Policy** insofar as they are applicable.

2.4 Attendance at Official Investigations or Inquiries

The **Insurer** will pay **Defence Costs** incurred with its prior written consent by or on behalf of the **Insured** in attending any official investigation, examination, inquiry or other proceedings ordered or commissioned by any official body or institution, where the **Insured** is legally compelled by such body or institution to attend such investigation, examination, inquiry or proceeding and which involves an allegation against the **Insured** of an act which is the subject of indemnity under this **Policy**.

2.5 Continuity of Cover

Notwithstanding Exclusion 3.2 of this **Policy**, the **Insurer** will indemnify any **Insured** for any **Claim** otherwise indemnified by this **Policy**, arising from a **Known Circumstance** if:

- (1) There has been no fraudulent non-disclosure or fraudulent misrepresentation by the **Insured** in respect of such **Known Circumstance**; and
- (2) The **Insurer** was the Employment Practices Liability insurer of the **Insured** when the **Insured** first knew of such **Known Circumstance**; and
- (3) The **Insurer** continued, without interruption, to be the Employment Practices Liability insurer of the **Insured** up until this **Policy** came into effect; and
- (4) Had the **Insurer** been notified by the **Insured** of the **Known Circumstance** when the **Insured** first knew of it, the **Insured** would have been indemnified under the policy in force at that time and the **Insured** would have (but for Clause 3.2 of this **Policy**) otherwise been covered by this **Policy**; and
- (5) Neither the **Claim** nor **Known Circumstance** have previously been notified to the **Insurer** or to any other insurer.

If the **Insured** was entitled to have given notice under any other policy of insurance and thereby have an entitlement to indemnity, in whole or in part, then this Continuity of Cover extension does not apply to provide indemnity under this **Policy**.

The aggregate limit of the indemnity

provided by the **Insurer** under this provision is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph (3) above or under this **Policy**. The terms of this **Policy** otherwise apply.

2.6 New Subsidiaries

Where the **Insured** creates or acquires a **Subsidiary Company** during the **Period of Insurance**, the **Insurer** will provide indemnity in respect of such **Subsidiary Company**, but only in respect of acts actually or allegedly committed or attempted from or after the time when such entity becomes a **Subsidiary Company**. In the case of a **Subsidiary Company** whose consolidated asset value exceeds, as at its last balance date or date of its creation, 20% of the total consolidated asset value of the **Insured**:

- (1) notification of such **Subsidiary Company** shall be given in writing to the **Insurer** within 60 days after such acquisition or creation; if notification is not given to the **Insurer** within 60 days after the acquisition or creation, cover will cease at 4.00 pm 60 days after the acquisition or creation;
- (2) the **Insurer** may in its discretion, provide cover for such **Subsidiary Company** subject to such additional terms and/or premium.

Optional Extension

Where indemnity is provided under this extension, it shall be indicated in Item 9 of the schedule or by subsequent endorsement.

2.7 Reinstatement of Aggregate Limit

Upon the **Insurer** having made **Loss** payments under the **Policy** up to the limit of aggregate liability stated in Item 5 of the schedule, the limit of aggregate liability shall be reinstated to the same amount, provided always:-

- (1) the reinstatement shall not apply to an existing **Claim** on which a **Loss** payment has been made, or to a subsequent **Claim** brought in respect of an event, or of an event related to an event, in respect of which a **Loss** payment had been made by the **Insurer** under another **Claim** before reinstatement;
- (2) if the **Insured** has extra insurance in excess of this **Policy**, then the reinstatement shall not apply until the extra insurance has been exhausted.

Section 3



EXCLUSIONS

This **Policy** does not provide an indemnity for any **Loss** arising out of any **Claim**, or for **Defence Costs** incurred pursuant to Section 2.4:

3.1 Dishonesty & Fraud

brought about by, contributed to by or which involves the dishonest, fraudulent or malicious act or omission or other act or omission committed with criminal intent of such **Insured**.

The **Insurer** shall have the burden of proof of establishing the existence of the subject conduct.

3.2 Known Claims & Known Circumstances

- (1) known as at the inception date of this Policy, or
- (2) arising from a **Known Circumstance**,
- (3) directly or indirectly based upon, or attributable to, or in consequence of any such **Known Circumstance**.

3.3 Strikes, Lock-outs, etc.

brought about by, contributed to by or which involves acts committed during or in connection with any industrial dispute (whether between employer and employee or between employees or their unions or generally), strike, picket, lock-out, go slow or work to rule.

3.4 Workers' Compensation/ Occupational Health & Safety Legislation

brought about by, contributed to by or which involves **Claims** arising under, or pursuant to, or in relation to any Workers' Compensation or Occupational Health and Safety Acts or similar legislation.

3.5 Insolvency

after the appointment of any liquidator, receiver and manager, official liquidator, administrator or trustee administering a compromise or scheme of arrangement of the **Insured** named in Item 1 of the schedule but this exclusion is not to apply to **Claims** notified prior to the appointment.

3.6 Bodily Injury & Property Damage

arising from:

- (1) bodily injury (except emotional distress or mental anguish), sickness, disease or death of any person; or
- (2) destruction of or damage to tangible property (including the loss of use thereof); or

3.7 Physical Modifications to premises.

For the cost of physical modifications to premises, plant or equipment owned or occupied by the **Corporation**.

3.8 Date Recognition

Notwithstanding anything contained to the contrary herein, this **Policy** does not provide an indemnity against any **Claim** made against the **Insured** arising from or in respect to the use in any way:

- (1) by the **Insured**; or
- (2) by any supplier, past, present or future, of services or products to the **Insured**, of any computer program, software products, computer data processing equipment or media, microchip, programmed logic controllers, integrated circuit or any electronic equipment which fails to:
 - (a) correctly recognise any date as its true calendar date; or
 - (b) capture, save or retain and/or correctly manipulate, interpret, or process any data, information, command or instruction as a result of treating any date otherwise than as its true calendar date; or
 - (c) capture, save, retain or correctly process any data as a result of the operation of any command which has been programmed into any computer software being a command which causes a loss of data or the inability to capture, save, retain or correctly process such data on or after any date; or
 - (d) otherwise fails to correctly or effectively provide for the change of date when the Year 1999 concluded and the Year 2000 commenced.

Further, this **Policy** does not provide an indemnity against any **Claim** arising from or in respect to any duty owed by the **Insured** in respect of any issue related to Year 2000 conformity as defined in the Standards Australia/ Standards New Zealand SAA/ SNZ MP 77 document.

Notwithstanding anything contained to the contrary in Extension 2.6 of this **Policy** (Continuity of Cover), the indemnity provided by that Extension is subject to this Date Recognition Exclusion.

3.9 Asbestos

which would not have arisen but for the existence of asbestos.

3.10 Unfair Contracts

For or in respect of:

- (1) a contract of employment alleged to be unfair
- (2) the seeking of relief pursuant to Section 127A of the Workplace Relations Act (Commonwealth) or Section 106 of the Industrial Relations Act (NSW) 1996 or Section 276 of the Industrial Relations Act (Queensland) 1999 or similar legislation in the other states or territories of the Commonwealth of Australia or in New Zealand.

3.11 Fines and Penalties

arising from or by reason of or directly or indirectly caused by or arising from fines and penalties imposed by law, punitive, exemplary or aggravated or multiple damages, income tax, customs duties, excise duty, stamp duty, sales tax or any other State or Federal tax or duty.

3.12 Pollution, Nuclear Risks, War & Terrorism

arising directly or indirectly from or caused by or contributed to by, or happening through or in connection with:

- (1) pollution or contamination howsoever and wheresoever occurring. For the purpose of this **Policy**, the term Pollution shall have the meaning ascribed to it in the Protection of the Environment Operations Act 1997 No 156 (NSW).
- (2) atomic energy operations employing the process of nuclear fission or fusion or handling radioactive material which operations include but are not limited to:
 - (a) the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices; or
 - (b) the use, handling or transportation of radioactive materials; or
 - (c) the use handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion.

Provided always that this Exclusion 3.7(3) shall not apply to any **Claim** arising from radio-isotopes or radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits; or

- (3) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any Government or Public or Local Authority, except to the extent that such an order arises as a result of any **Wrongful Act** committed by any **Insured**.

- (4) any act of terrorism. Further there is no indemnity for any **Claim** arising from or related to any death, injury, illness, loss, damage, cost or expense of whatever nature directly or indirectly caused by, resulting from, or in connection with any action taken in controlling, preventing, suppressing or in any way relating to an act of terrorism.

Terrorism is defined as being an act, which may include but is not limited to an act involving the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological, or ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

Section 4



GENERAL CONDITIONS

4.1 Authorisation Clause

By acceptance of this **Policy**, the **Insured** named in Item 1 of the schedule agrees to act on behalf of all other entities comprising the **Insured** with respect to the giving and receiving of notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under this **Policy** and the acceptance of endorsements or other notice provided for in this **Policy**.

4.2 Severability & Non Imputation

For the sake of determining cover under this **Policy**:

- (1) the written proposal shall be construed to be a separate application for cover by each of the **Insured** and no statement or representation in or with respect to the proposal by an **Insured** shall be imputed to any other **Insured**.
- (2) this **Policy** shall, subject to General Condition 4.9 (Non-Accumulation), be construed to be a separate policy between the Insurer and each **Insured** and no breach of any term or condition of this **Policy** or other misconduct by an **Insured** shall be imputed to any other **Insured**.
- (3) no fact or knowledge possessed by an **Insured** shall be imputed to any other **Insured**.

Provided always that this Condition shall not apply where there was a fraudulent misrepresentation or fraudulent non-compliance with the duty of disclosure, to the **Insurer**, at the time of entering into the **Policy**.

4.3 Merger or Consolidation

Where the **Insured** shown in the schedule merges or is consolidated with or becomes the **Subsidiary Company** of another company or entity during the **Period of Insurance** the **Insurer** will continue to provide indemnity in respect of the **Insured** shown in the schedule and its **Subsidiary Companies** but only in respect of acts preceding the time of such merger, consolidation or acquisition.

4.4 Claims Co-operation

The **Insured** shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any **Loss** hereunder, and shall immediately give all such information and assistance to the **Insurer** as it may reasonably require to enable it to investigate and to defend the **Claim** and/or to enable the **Insurer** to determine its liability under this **Policy**.

The **Insurer** may, on request from the **Insured** for indemnity under this **Policy**, take whatever action that it considers appropriate to protect the **Insured's** position in respect of the **Claim** and such action by the **Insurer** shall not be regarded as in any way prejudicing its position under this **Policy** and no admission of the **Insured's** entitlement to indemnity under this **Policy** shall be implied.

4.5 Court Jurisdiction

It is further understood that this **Policy** shall be governed by the law of the State or Territory where this **Policy** was issued and

whose courts shall have jurisdiction in any dispute arising under or in connection with or in respect of the provisions of indemnity under this **Policy**. For the purpose of this condition the place of issue stated in Item 12 of the schedule shall be conclusive.

4.6 Deductibles

The amount of relevant deductibles stated in Item 6 of the schedule (including a deductible co-insurance percentage) shall be applied to each and every **Claim** bought under this **Policy**.

Where the same act results in more than one **Claim** being made against the **Insured** then only one deductible shall apply to any such **Claim** covered by this **Policy**. In the event of a **Claim** being based on separate, different or additional acts, then the relevant deductible shall apply in respect of each act.

4.7 Aggregate Liability

The **Insurer** shall only be liable to provide indemnity to the extent of the amount of the limit of aggregate liability stated in Item 5 of the schedule.

Any **Loss** arising out of all interrelated acts of any **Insured** shall be deemed one **Loss** and such **Loss** shall be deemed to have originated in the earliest **Period of Insurance** in which a **Claim** is made against any **Insured** by reason of any act.

Any costs incurred by the **Insurer** in investigating any fact, situation or circumstance which may give rise to a **Claim** shall be deemed for all purposes of the **Policy** to be **Defence Costs** incurred under the **Policy**.

Any amount paid by the **Insurer** in settlement of a dispute which may otherwise become a **Claim**, shall be deemed for all purposes of the **Policy** to be a **Loss** incurred under the **Policy**.

4.8 Paragraph Headings

The paragraph headings in this **Policy** are included for the purpose of reference only and do not form part of this **Policy** for interpretation purposes.

4.9 Non Accumulation

The inclusion in this **Policy** of more than one (1) **Insured** shall not operate to increase the **Insurer's** limit of aggregate liability stated in Item 5 of the schedule.

4.10 Notice

Any notice required to be given under this **Policy** to the **Insurer** shall be validly and lawfully given if it is given to the **Insurer** in writing at the address or to the facsimile number stated in Item 11 of the schedule.

4.11 Gender and Number

Except where the context otherwise requires it, words importing a gender include every other gender, words in the singular shall include the plural and words in the plural shall include the singular.

4.12 Q.C. Clause

Neither the **Insured** nor the **Insurer** shall be required to contest any legal proceedings unless a Queen's Counsel or Senior Counsel (mutually agreed upon by the **Insured** and the **Insurer** or in default of such agreement, selected by the Chairman or President of the local Bar Council) shall advise that such proceedings should be contested. In formulating his or her advice, Counsel shall take into consideration the economics of the matter, having regard to the damages and costs which are likely to be recovered by the plaintiff, the likely **Defence Costs** and the prospects of the **Insured** successfully defending the action.

The costs of such Counsel's opinion shall, for the purpose of this **Policy**, be regarded as part of the **Defence Costs**. In the event that Counsel advises that, having regard to all the circumstances, the matter should not be contested but should be settled, providing settlement can be achieved within certain limits which, in Counsel's opinion, are reasonable, then the **Insured** shall not object to any such settlement and shall co-operate with the **Insurer** to effect such settlement in accordance with this **Policy**.

4.13 Settlement Procedure

Subject always to the provisions of the Insurance Contracts Act the **Insured** shall as a condition precedent to the right to be indemnified under this **Policy** not admit liability for or settle any **Claim** or incur any costs or expenses in connection therewith or enter into settlement without the written consent of the **Insurer** which shall be entitled to at any time take over and conduct in the name of the **Insured** the defence or settlement of any **Claim**. However, if the **Insured** shall refuse to consent to any settlement recommended by the **Insurer** and shall elect to consent or continue any legal proceedings in connection therewith, the **Insurer's** liability for the **Claim** shall not exceed the amount for which the **Claim** could have been so settled plus the **Defence Costs** incurred up to the date of such refusal.

4.14 Subrogation

In the event of any payment by the **Insurer** for a **Loss** under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment of all an **Insured's** rights of recovery thereof and the

Insured shall execute all papers required and do everything that may be necessary to secure such right including the execution of such documents necessary to enable the **Insurer** effectively to bring suit in the name of the **Insured** except that all right of subrogation is waived under this **Policy** against an **Insured** to whom protection is afforded under this **Policy**.

Provided always that:

- (1) if such **Insured** is protected from such **Loss** by any other policy of insurance, the right of subrogation is not waived to the extent and up to the amount of such other policy.
- (2) the **Insurer** does not waive any right of recovery of any deductible stated in Item 6 of the schedule as applied in accordance with this condition.

4.15 Territory and Jurisdiction

- (1) The indemnity provided by this **Policy** extends to acts occurring anywhere in the world.
- (2) The indemnity provided by this **Policy** extends to **Claims** made anywhere in the world, except:
 - (a) actions brought in or determined pursuant to the law of, the United States of America or the Dominion of Canada, or their Territories or Protectorates; or
 - (b) any **Claim** arising out of the enforcement of judgements, orders or awards obtained in or determined pursuant to the laws of the United States of America or the Dominion of Canada, or their Territories or Protectorates.

4.16 Other Insurance

Subject to the Insurance Contracts Act 1984 where the **Insured** is entitled to indemnity pursuant to a separate policy of insurance more specifically providing cover in respect of the **Claim** this **Policy** does not respond except to the extent that the **Insured's** liability for any claim exceeds the amount of cover under such other policy.

4.17 Cancellation

Under Section 60 of the Insurance Contracts Act 1984 the **Insurer** may cancel this **Policy**.

4.18 Legal Enforceability

For the **Policy** to be legally enforceable, it must include a schedule that has been appropriately signed by an officer of the **Insurer**.

4.19 Goods and Services Tax

Where the **Insurer** makes a payment under this **Policy** for the acquisition of goods, services or other supply the **Insurer** will reduce the amount of the payment by the amount of any input tax credit the **Insured** is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made.

Where the **Insurer** makes a payment under this **Policy** as compensation instead of payment for the acquisition of goods, services or other supply, the **Insurer** will reduce the amount of payment by the amount of any input tax credit that the **Corporation** would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

4.20 Allocation

In the event of a **Claim** which is made against an **Insured** and which is covered only partly by this **Policy**, the **Insured** will use its best efforts to ensure a fair and proper allocation of the **Claim** for insured and uninsured portions.

The **Insured** will also advance **Defence Costs** on a similar basis, which will apply to all **Defence Costs** unless otherwise agreed by all parties.

Section 5



DEFINITIONS

Whenever appearing in this **Policy** in bold type and with a capital letter the following terms shall be interpreted only in the manner described below. These words may appear without bold type in endorsements on the policy schedule.

- 5.1 **Claim** means any writ, summons, application or other originating legal (criminal, civil or otherwise) or arbitral proceedings, cross claim or counter-claim or proceedings referred to in Extension 2.4 issued against and served upon any **Insured** who is entitled to indemnity under this **Policy**.
- 5.2 **Defence Costs** means all reasonable costs, charges and expenses (other than regular or overtime wages, salaries or fees of any principal, partner, director, officer or

employee) incurred with the prior written consent of the **Insurer** in defending any **Claim** or incurred pursuant to section 2.4.

- 5.3 **Indemnity Period** means the **Period of Insurance** and the Extended Reporting Period if extension 2.2 (Extended Reporting Period) is in force.
- 5.4 **Insured** means:
- (1) the corporation, trust, other entity, person, persons or partnership whether incorporated or not as shown in Item 1 of the schedule.
 - (2) any **Subsidiary Company**.
 - (3) any current or former principals, partners, directors, officers and employees of any entity described in definition 5.4(1) and 5.4(2) but only with respect to their duties as principals, partners, directors, officers and employees of the entity.
- 5.5 **Insurer** means CGU Professional Risks Insurance, a division of CGU Insurance Limited ABN 27 004 478 371, an IAG Company.
- 5.6 **Known Circumstance** means any fact, situation or circumstance which:
- (1) any **Insured** was aware of prior to this **Policy** inception, or
 - (2) a reasonable **Insured** would have considered at any time prior to the period of **Insurance**
- might result in someone making an allegation against an **Insured** in respect of a **Loss** that might be covered under this **Policy**.
- 5.7 **Loss** means the amount payable in respect of a **Claim** made against the **Insured** and shall include judgements, settlements, interest, costs, **Defence Costs** and damages including backpay where reinstatement of an employee by a court is ordered but excludes any payments which the **Insured** is required to pay pursuant to a specific obligation imposed under a contract of employment, employment agreement, statute, award or otherwise.
- 5.8 **Period of Insurance** means the **Period of Insurance** stated in Item 4 of the current schedule.
- 5.9 **Policy** means:
- (1) All the terms, conditions, definitions, exclusions, and limitations contained herein;
 - (2) the schedule;
 - (3) any endorsements attaching to and forming part of this **Policy**, either at inception or during the **Indemnity Period**.

5.10 **Subsidiary Company** means any company or other incorporated entity which at the inception of the **Period of Insurance** by virtue of Australian law was or is, either directly or indirectly a subsidiary of the **Insured**.

Provided always that the accounts of any **Subsidiary Company** are consolidated into those of the **Insured** in accordance with the relevant accounting standard.

Section 6



THE WAY WE HANDLE YOUR PERSONAL INFORMATION

We collect personal information from you for the purpose of providing you with insurance products, services, processing and assessing claims.

You can choose not to provide this information, however, we may not be able to process your requests.

We may disclose information we hold about you to other insurers, an insurance reference service or as required by law. In the event of a claim, we may disclose information to and/or collect additional information about you from investigators or legal advisors.

If you wish to update or access the information we hold about you, contact us.

Northern Regional Office
10 Spring Street Sydney NSW 2000
PO Box H90 Australia Square Sydney NSW 1215
DX 10260 Sydney Stock Exchange
Tel. (02) 8224 4655 Fax (02) 8224 4030

Queensland Branch
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