

contractors combined public and products liability policy



WESFARMERS GENERAL INSURANCE LIMITED,
trading as Lumley Insurance
ABN 24 000 036 279

Email: general@lumley.com.au
Website: www.lumley.com.au

New South Wales

Lumley House
Level 9, 309 Kent Street
Sydney NSW 2000
Phone: (02) 9248 1111
Fax: (02) 9248 1122

Suite 19, 50 Glebe Road
The Junction

Newcastle NSW 2291
Phone: (02) 4925 7500
Fax: (02) 4940 0295

Victoria

Level 3, 99 King Street
Melbourne VIC 3000
Phone (03) 8627 4333
Fax: (03) 8627 4312

Australian Capital Territory

Level 4, 10 Rudd Street
Canberra City ACT 2601
Phone: (02) 6279 0333
Fax: (02) 6279 0330

Tasmania

Level 11, 27 Paterson Street
Launceston TAS 7250
Phone: (03) 6331 5844
Fax: (03) 6331 1370

South Australia

465 Pulteney Street
Adelaide SA 5000
Phone: (08) 8228 1700
Fax (08) 8228 1777

Western Australia

Level 9, 50 St George's Terrace
Perth WA 6000
Phone: (08) 9220 8222
Fax: (08) 9220 8251

Queensland

Level 2, 99 Melbourne Street
South Brisbane QLD 4101
Phone: (07) 3307 4800
Fax: (07) 3307 4899

Level 5, Northtown Tower
Flinders Mall

Townsville QLD 4810
Phone: (07) 4722 6000
Fax: (07) 4724 4398

North Territory

Level 2, Beagle House
38 Mitchell Street
Darwin NT 0800
Phone (08) 8946 4600
Fax (08) 8946 4666

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Contractors Combined Public and Products Liability Policy

IMPORTANT INFORMATION ABOUT THE POLICY

Thank you for choosing the Lumley Insurance "Contractors Combined Public and Products Liability" Policy. Please read the Policy carefully to find out your rights and duties and what is or is not insured. If you want to know anything about the insurance or want to change it, please contact your broker, or us.

Before you enter into a contract of general insurance with an insurer, you have a duty at law to disclose to the insurer anything that you 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 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 business, ought to know;
- as to which compliance with your duty is waived by the insurer.

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 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.

THE AGREEMENT

After you have paid the premium, we will insure you in accordance with the Policy for an Occurrence within the Commonwealth of Australia.

DEFINITIONS

"Advertising Liability" means:

- (a) libel or slander,
- (b) infringement of copyright or passing off of title or slogan,
- (c) unfair competition, piracy or idea misappropriation contrary to an implied contract, or
- (d) invasion of privacy;

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast arising out of any advertising activities conducted by you, while advertising your Products, goods or services.

"Aircraft" means any object that is intended to fly or move through the air, atmosphere or space.

"Business" means all activities and operations of the business shown in the Schedule including the ownership and tenancy of premises and the provision or management of canteen, social, sports, welfare or child care organisations for your employees and internal first aid, fire and ambulance services.

"Dry Hire" means hired out by you without your Operator.

"Employee" means any person engaged in the Business under a contract of service or apprenticeship with you and includes both statutory and common law employees.

"Excess" means the amount specified in the Schedule and elsewhere in the Policy which you must contribute to each and every claim.

"GST" means Goods and Services Tax.

GST Note: All amounts insured by this Policy exclude GST.

Any claim settlements, up to the total of all amounts insured, will exclude GST. However, if there is a shortfall between the GST component of your claim and the amount of input tax credit you are entitled to, we will pay this shortfall in addition to the claim settlement.

We will not be liable to pay any GST, or any fine, penalty or charge that you are liable for arising out of your misrepresentation of, or failure to disclose, your proper input tax credit entitlement in the settlement of any claim or premium relating to the Policy.

"Incidental Contracts" means:

- (a) any written agreement for the lease of property but this does not include any obligation to insure such property,
- (b) any written contract with any public authority or private company for the supply of water, gas, electricity, telephone, telex or other communications services except a contract for work to be done by you, or
- (c) any written contract with any railway authority for the loading, unloading or transport of your Products or any contract relating to the operation of railway sidings.

"Limit of Liability" means the Limit of Liability, that is specified in the Schedule.

DEFINITIONS (continued)

"Occurrence" means an event, including the continued or repeated exposure of persons or property to conditions that are generally the same, which causes Personal Injury or Property Damage that is neither expected nor intended by you.

"Operator" means driver or operator.

"Period of Insurance" means the period specified in the most recent Schedule, or the subsequent period for which the Policy has been extended. A new Period of Insurance begins each time the Policy is renewed.

"Personal Injury" means:

- (a) bodily injury, death, sickness, disease, shock, fright, mental anguish or mental injury,
- (b) false arrest, false detention, wrongful imprisonment, or malicious prosecution,
- (c) libel or slander,
- (d) wrongful entry or wrongful eviction or other invasion of privacy, or
- (e) assault committed by any of your employees while engaged in your Business activities but excluding acts committed at your direction unless for the purpose of reducing the exposure of harm to persons or property.

"Policy" means this document, the Schedule, the endorsements and any notice we give you in writing.

"Pollutants" means any irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, chemicals or waste. Provided that "waste" shall include but not be limited to all materials to be recycled, reconditioned or reclaimed.

"Product" means anything that is not in your physical custody or in your legal control that has been manufactured, grown, extracted, produced, processed, sold, supplied, distributed, imported, exported, repaired, serviced, treated, installed, assembled, erected or constructed by you in the course of your Business including any packaging and containers (other than a vehicle) used to package or contain your Products.

"Products Liability" means any liability for an Occurrence that is caused by or arises out of any of your Products.

"Property Damage" means physical loss, damage or destruction of tangible property, including resultant loss of use of tangible property that has not been physically damaged or destroyed, provided that:

- (a) the loss of use is caused by physical damage to other tangible property, and
- (b) this loss of use does not result from:
 - (i) delay or lack of performance of any contract or agreement by you or by others on your behalf, or
 - (ii) a design defect.

"Public Liability" means any liability other than a liability for an Occurrence that is caused by or arises out of any of your Products.

DEFINITIONS (continued)

"Schedule" means the attachment which forms part of the Policy and specifies the Policy number and other details of the insurance.

"Trade Use" means use in excavating, digging, grading, scraping, drilling, lifting, pumping, spraying, loading and unloading, vacuuming and the like including the process of setting up for such operations and reverting from such operative format to travel/transit configuration. It does not include transit to or from a worksite but does include travel within a worksite if simultaneously being used for work.

"Vehicle" means any machine including attachments that is designed to travel on wheels or on self-laid tracks and to be propelled by a power source other than manual or animal power.

"Watercraft" means anything intended to float on, or in water, or travel on, through or under water.

"we", "us", "our", and "Lumley Insurance" means Wesfarmers General Insurance Limited ABN 24 000 036 279, trading as Lumley Insurance.

"you", "your" means anyone insured by the Policy, including:

- (a) any of your directors, executive officers or employees while acting within the scope of their duties in such capacity,
- (b) any principal but only for the principal's liability that arises out of the work performed by you for that principal provided that:
 - (i) the work was carried out by you in an attempt to comply with a contract to perform work that was made between you and that principal, and
 - (ii) our liability shall not exceed the minimum amount of liability insurance required by the contract to perform the work, and
- (c) any office bearer or member of any of the following organisations that are formed with your consent:
 - (i) a canteen, social, sports, welfare or child care organisation that is for your employees, or
 - (ii) an internal first aid, fire brigade or ambulance service, but only while these persons are acting within the scope of their duties in such capacity.

Note: Any words appearing in the singular can also be construed in the plural and vice versa.

OUR OBLIGATION

Subject to the terms and conditions of the Policy we will pay all amounts that you become legally liable to pay for Public Liability or Products Liability in compensation for:

- (a) Personal Injury, or
- (b) Property Damage,

that happens during the Period of Insurance as a result of an Occurrence which arises in connection with your Business provided that:

- (i) our liability in respect of any one Occurrence will not exceed the Limit of Liability stated in the Schedule.
- (ii) all Personal Injury and all Property Damage claims for compensation that result from the one original source, or one original cause, shall be considered to have been caused by a single Occurrence, and
- (iii) our liability in respect of any one Occurrence and in the aggregate during any one Period of Insurance for all claims arising out of Products Liability will not exceed the Limit of Liability stated in the Schedule
- (iv) you and your Employees have fully complied with that section of the Occupational Health and Safety Act (applicable in your State) relating to you and your Employees' duty of care for health, safety and welfare at any work place.

Additional Payments

In addition to the Limit of Liability, we will pay as Additional Payments all:

- (a) legal charges, expenses and costs incurred with our written consent,
- (b) costs incurred by you to supply first aid to others, and
- (c) costs incurred by you for temporary repairs, shoring up or protection of property that has been damaged,

as a result of an Occurrence, provided that if the Limit of Liability is less than the total amount paid or payable to settle or dispose of a claim, then we will only pay a proportion of these Additional Payments and our proportion will be that proportion that the Limit of Liability represents of the total amount paid or payable to settle or dispose of the claim.

We will not pay for any Additional Payments for costs that are incurred after we have paid or agreed to pay an amount equal to the Limit of Liability.

EXCLUSIONS THAT APPLY TO PRODUCTS LIABILITY The Policy does not insure:

Products Liability

Products Liability unless a Limit of Liability is specified for Products Liability in the Schedule.

Repair, Replacement or Recall of your Products

- (a) the inspection, repair, removal, or replacement of your Products or Property Damage to your Products, other than Property Damage to your Products that is caused directly by you while repairing, servicing, or treating your Products, or

EXCLUSIONS THAT APPLY TO PRODUCTS LIABILITY (continued)

- (b) the recall of:
 - (i) any or all of your Products,
 - (ii) work performed by you or for you,
 - (iii) property that incorporates or has incorporated any of your Products
 - (iv) property worked on by you or worked on by others for you, or
- (c) liability assumed by any warranty or guarantee given by you, other than any warranty as to the safety of your Products implied by Statute.

Aircraft

Personal Injury or Property Damage caused by or arising out of your Products that you could be reasonably expected to know are installed or would be installed in or on any Aircraft.

Loss of Use of Property

Loss of use of property that has not been physically damaged or destroyed if this loss of use results from:

- (a) a design defect, or
- (b) the failure of your Products to meet the level of performance, quality fitness or durability expressed, implied, warranted or represented by you.

EXCLUSIONS THAT APPLY TO PUBLIC LIABILITY AND PRODUCTS LIABILITY**The Policy does not insure:****1. Personal Injury to Employees and Workers**

- (a) Personal Injury to any Employee arising directly or indirectly out of or in the course of their employment in your Business, provided this exclusion does not apply (in Queensland only) in respect of liabilities for injuries which are not compensated under the workers' compensation legislation in Queensland where employment is not the major significant factor causing the injury, or
- (b) any claim or claims arising out of the provisions of any workers' compensation legislation or any industrial award or agreement or determination, or
- (c) any claim or claims for which you are or would have been entitled to seek indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to workers' or workmen's compensation including any legislation of any State or Territory (whether insurance is effected or not).

2. Vehicles

Personal Injury or Property Damage caused by or arising out of the use of or operation of any Vehicle that is legally required to be registered or legally required to have third party bodily injury insurance.

If indemnity is not provided by any other insurance or fund, this exclusion will not apply to your liability for Personal Injury or Property Damage:

- (a) arising from the actual loading, unloading, delivery or collection of goods to or from any Vehicle, and

EXCLUSIONS THAT APPLY TO PUBLIC LIABILITY AND PRODUCTS LIABILITY (continued)

- (b) arising during the Trade Use of any Vehicle at any site where you are working or at your Premises, provided that insurance is not available while the Vehicle is:
 - (i) travelling between locations where it is to be used for Trade use, or
 - (ii) used only for the transportation or haulage of goods.

3 . Property in your Physical or Legal Control

Property Damage to the following property that is not owned by you but which is in your physical or legal control:

- (a) any Aircraft or Watercraft,
- (b) any Vehicle, or plant, equipment or tool leased or on loan to you,
- (c) any Vehicle in a car park owned or operated by you for reward as a principal part of your Business,
- (d) that part of any property that you are working directly upon when the Property Damage results from your work.

4. Property Owned By You

- (a) Property Damage to property that you own.
- (b) liability directly or indirectly arising out of your tenants' or lessees' activities (whether business activities or otherwise).
- (c) liability arising from your failure to maintain property that you own - unless you could not have known that such maintenance was required.

5 . Professional Advice

Personal Injury or Property Damage that is caused by or arises from:

- (a) any professional advice provided by you for a fee,
- (b) your failure to provide any professional advice for which you would normally charge a fee, or
- (c) any error or omission in the professional advice provided by you for a fee.

This exclusion does not apply to any first aid, medical, health or emergency advice or service you provide.

6 . Design, Specification, Formula

Personal Injury or Property Damage that is caused by or arises from any design, plan, specification, formula or pattern provided by you or caused by any associated error or omission.

7 . Aggravated, Punitive or Exemplary Damages, Fines or Penalties

- (a) aggravated, punitive or exemplary damages except punitive or exemplary damages awarded for libel or slander, or
- (b) fines or penalties imposed by law or assumed by you under any contract, warranty or agreement.

8 . Watercraft, Aircraft

Personal Injury or Property Damage caused by or arising out of or in connection with:

EXCLUSIONS THAT APPLY TO PUBLIC LIABILITY AND PRODUCTS LIABILITY (continued)

- (a) the ownership, use or operation by you of:
 - (i) any Watercraft exceeding 8 metres in length unless this is:
 - operated by an independent contractor,
 - not owned by you but is used by you for Business entertainment,
 - a hand propelled craft or a sailing craft in territorial waters,
 - (ii) any Aircraft,
 - (iii) any property used as an airport or any commercial Aircraft landing strip, or
- (b) the repair, maintenance, servicing of any Aircraft, or installation of any property in or on any Aircraft.

9. Asbestos

Personal Injury or Property Damage (including loss of use of property) caused by or arising out of, or in connection with:

- (a) mining, sale, processing, transportation, distribution, storage or use of asbestos,
- (b) manufacturing, sale, transport, distribution, storage or use of asbestos products or products containing asbestos,
- (c) the process of decontaminating persons or property contaminated by asbestos, or
- (d) handling, treating or controlling any materials that contain asbestos, provided that this only applies to:
 - (i) Personal Injury that arises from the inhalation of asbestos fibre, and
 - (ii) Property Damage that is due to the presence of asbestos.

10. Libel and Slander

Personal Injury that is caused by:

- (a) the publication of any libellous or slanderous statement made prior to the Period of Insurance, or
- (b) any statement made by or at your direction if you could reasonably be expected to know the statement was false or illegal.

11. Pollution

- (a) Personal Injury or Property Damage directly or indirectly arising out of the discharge, dispersal, release or escape of Pollutants,
- (b) the cost of removing, nullifying or cleaning up Pollutants, and
- (c) the cost of preventing the escape of Pollutants.

Exclusions **11(a)** and **11(b)** will not apply where the claim arises from a sudden identifiable event that, from your stand-point, is an unintended and unexpected event that takes place in its entirety at a specific time and place.

EXCLUSIONS THAT APPLY TO PUBLIC LIABILITY AND PRODUCTS LIABILITY (continued)

12. Contractual Liability

liability for Personal Injury or Property Damage that is accepted by you under any contract, warranty or agreement requiring:

- (a) insurance to be effected on any property not owned by you (whether such insurance was effected or not),
- (b) assumption of a liability, unless that liability would have attached in the absence of such contract, warranty or agreement, or
- (c) the waiving or limitation of your rights of recovery against another party,

provided that this exclusion shall not apply to liability assumed under an Incidental Contract.

13. Admission of Liability

any liability assumed by you through any admission you make.

14. Advertising Liability

Advertising Liability that is caused by or arises out of:

- (a) a breach of contract, other than misappropriation of advertising ideas contrary to an implied contract,
- (b) an infringement or passing off of a trade mark, service mark or trade name on any products, goods or services sold, offered for sale or advertised, other than an infringement of titles or slogans,
- (c) the incorrect description of the price of products, goods or services, or
- (d) the failure of products, goods or services to conform with advertised performance, quality, fitness or durability.

15. Dry Hire

liability arising from any item of contractor's plant and equipment listed in the Schedule when hired out under a Dry Hire arrangement and caused by the actions of the hirer or an employee of the hirer. The Policy will insure you for Property Damage or Personal Injury arising as a result of

mechanical or service defects in such items of contractor's plant and equipment.

16. Electronic Data

loss or damage caused by:

- (a) the corruption or destruction of data, coding program or software; or
- (b) the unavailability of data and malfunction of hardware, software and embedded chips; or
- (c) any business interruption losses resulting therefrom,

provided that this exclusion shall not apply where such loss or damage occurs as a direct result of physical damage which is otherwise insured by the Policy.

EXCLUSIONS THAT APPLY TO PUBLIC LIABILITY AND PRODUCTS LIABILITY (continued)

17. Pipes and Cables

liability for damage to pipes and cables unless the appropriate authorities have been consulted and written details obtained from them as to the position of such underground pipes and cables together with their supports and fittings.

18. Vibration, Removal or Weakening of Supports

liability for Personal Injury or Property Damage caused by or arising from vibration or removal or weakening of supports to any property unless an amount for vibration, removal or weakening of supports is specified in the Schedule.

19. Demolition

liability for Personal Injury or Property Damage caused by or arising from demolition of property unless such property does not exceed 5 meters from ground level (or otherwise the maximum demolition height specified in the Schedule) but only if such demolition is incidental to your Business.

20. War, Nuclear and Terrorism Risks

liability for Personal Injury, Property Damage, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other contributing cause or event:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, civil commotion assuming the proportions of or amount to an uprising, military or usurped power; or
- (b) nuclear reaction, nuclear radiation or radioactive contamination; or
- (c) any act of Terrorism.

For the purpose of this exclusion, Terrorism means an act including but not limited to the use or threat of force or violence by any person or group of people, whether acting alone or on behalf of or in connection with any organisation or government which from its nature or context is committed for, or in connection with, political, religious, ideological, 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.

The Policy also excludes death, injury, illness, loss, damage, cost or expense of any 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 any act of Terrorism.

EXCLUSIONS THAT APPLY TO PUBLIC LIABILITY AND PRODUCTS LIABILITY (continued)

21 . Alteration

damage or liability caused or contributed to by any alteration after the commencement of the Policy:

- (a) in your Business, or other circumstances which increase the risk of loss damage or liability occurring, or
- (b) if your interest in the Business ceases or changes in nature for whatever reason.

If your Business is wound up or carried on by a receiver or permanently discontinued, all insurance under the Policy will cease from that time.

22 . Tunnelling and Mining

liability for Personal Injury or Property Damage caused by or arising from tunnelling or underground mining/excavation activities.

23 . Explosives and Vehicles on Rails

liability for Personal Injury or Property Damage caused by or arising from the handling or use of explosives, or involving the use of Vehicles which travel on railway tracks.

24 . Products

liability for loss or damage to Products

POLICY CONDITIONS - (Breach of any of these conditions may reduce or void your entitlement to indemnity under the Policy)

Defective Products

You will, at your own expense, trace, recall and modify any of your Products that you know, or you suspect, may contain any defect or deficiency.

Payment of Premium

You will pay the premium promptly together with any adjustments of premium and other amounts charged for the Policy and any renewal, extension or endorsement.

Cross Liability

Where "**you**" comprises more than one entity or person, each of the entities or persons shall be considered as a separate and distinct insured and the word "**you**" shall be considered as applying to each party in the same manner as if a separate policy had been issued to each of the entities or persons provided that nothing in this clause shall result in an increase in our Limit of Liability for any Occurrence or Period of Insurance.

Notices

Notice in writing must be given to us as soon as possible advising:

- (a) every Occurrence, claim, writ, summons, proceedings, impending prosecution, inquest and all information in relation thereto which may result in a claim under the Policy, whether or not you believe any claim amount might fall below any Excess,
- (b) every change materially varying any of the facts or circumstances existing at the commencement of this Policy that shall come to your knowledge.

Any notice given in writing by us to the first named insured in the Schedule shall be deemed to be notice given to each of the entities or persons comprising the insured.

POLICY CONDITIONS - (Breach of any of these conditions may reduce or void your entitlement to indemnity under the Policy) (continued)

Service of notices by us will be effective immediately upon receipt by the first named insured of an electronically transmitted message or, in the case of notices by post, three business days after we post it.

Other Insurance

- (a) You must notify us as soon as is reasonably practical, but within 15 days after entering into any other contract of insurance, supplying us with full details of any such other insurance which provides indemnity, in full or in part, for any of the liabilities insured hereunder.
- (b) If you have any other insurance in force in respect of the liabilities insured in the Policy, we will only be liable under this Policy for the excess beyond any amount insured by such other insurance in respect of that liability, whether or not such insurance is valid or collectable.

Subrogation

In the event of payment under the Policy to you or on your behalf, we will, subject to the Insurance Contracts Act 1984, be subrogated to all of your rights of recovery against all persons and organisations and you will execute and deliver instruments and papers and do all that is necessary to assist us in the exercise of such rights.

Claims

- (a) Without our consent in writing, you must not make any admission, offer, promise or payment in connection with any Occurrence or claim. If we want to, we are entitled to take over and conduct the defence or settlement of any claim in your name.
- (b) You must use your best endeavours to preserve all property, Products, contractor's plant and equipment and all other things which may assist in the investigation or defence of a claim or in the exercise of rights of subrogation. So far as may be reasonably practicable, no alteration or repair shall be effected without our consent until we have had an opportunity of inspection.
- (c) We will be entitled to prosecute in your name at our expense (and for our own benefit) any claim for indemnity or damages or otherwise.
- (d) We will have full discretion in the conduct of any proceedings in connection with any claim and you shall give us all information and assistance we may require in the prosecution, defence or settlement of any claim.

Alteration of Risk

You must notify us immediately of any proposed alterations or additions to the Business, and of any proposed departure from the working conditions which prevailed when this insurance was commenced. If any such alteration increases the risk of incurring a legal liability (without our written consent) then, in the event of Property Damage or Personal Injury, we may reduce or refuse to pay the claim.

POLICY CONDITIONS - (Breach of any of these conditions may be reduce or void your entitlement to indemnity under the Policy (continued)

Diligence

You must, in the course of carrying out your Business:

- (a) take, and ensure that any employee of your Business takes, all reasonable steps to prevent incurring any legal liability for Personal Injury or Property Damage,
- (b) fully comply with manufacturer's instructions and all legal requirements and relevant work place authority regulations regarding safety, installation and maintenance of property, including but not limited to the **Occupational Health and Safety Act** (applicable in your State), and
- (c) ensure that any safety devices (including, but not limited to, load movement and overload indicators), where fitted or required, are in place and fully operational at all times, and in the event of any such safety device being non-operational or otherwise subject to any "tag out" or "warning notice" procedure or requirement, that such tag out or warning notice is duly displayed or otherwise brought to the attention of any employee as well as the appropriate workplace supervisor."

Cancellation

The Policy may be cancelled:

- (a) by you at any time by giving notice in writing to us. Such cancellation will be effective from the date we physically receive your notice. You will be entitled to a pro rata refund of premium for the portion of the Period of Insurance not utilised less 20%,
- (b) by us in accordance with provisions of the Insurance Contracts Act 1984 (or any amendments to it). You are entitled to a pro rata refund of premium for the Period of Insurance not utilised.

IMPORTANT INFORMATION

Cooling Off

If you are not completely satisfied with the Policy you may cancel it by notifying us in writing within 21 days of insurance having commenced. You will receive a refund of the amount you have paid unless something has occurred for which a claim may become payable under the Policy.

Confirming Transactions

You may contact us or your adviser, in writing (which is always required if you are advising cancellation) or by phone, to confirm any transaction under the Policy. Any transaction will be documented by us as quickly as possible.

Code of Practice

A self-regulatory Code of Practice exists for the general insurance industry, designed to raise overall standards. Lumley Insurance has adopted the Code, details of which can be obtained from your adviser or any of our offices.

IMPORTANT INFORMATION (continued)

Complaints - Internal and External Complaints Procedure

If you do not agree with any decision we make in relation to your insurance, please write to us stating what you disagree with and why.

We will then either resolve or attempt to resolve your complaint immediately or refer the matter to our Internal Dispute Resolution Committee (IDRC).

If you are not satisfied with a claim decision by the IDRC, the matter may be referred to an independent alternate dispute resolution body, the "Financial Ombudsman Service (FOS)" provided it falls within their jurisdiction.

Privacy

Lumley Insurance respects your privacy and complies with the Privacy Act and the National Privacy Principles. A copy of our Privacy Statement is available at any of our offices.