

Solicitor's Excess Layer Professional Indemnity Insurance

Wording Document

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Solicitor's Excess Layer Professional Indemnity Insurance

Important Information

Please read the following information

A. 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, 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:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay 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 contract as if it never existed.

B. Claims Made and Notified Policy

This policy provides Professional Indemnity Insurance on a "Claims Made and Notified" basis. This means that the policy covers you for claims made against you and notified to the insurer during

the period of cover. It does not provide cover for:

- claims arising from an event which occurred before the policy's "retroactive date" where such a date is specified in the schedule;
- claims made after the period of cover expires (even where the event giving rise to the claim occurred during the period of cover);
- claims made, threatened or intimated before the period of cover commenced;
- claims arising from facts or circumstances of which you first became aware before commencement of the policy and which you knew or ought reasonably to have known, had the potential to give rise to a claim under the policy or any previous policy;
- claims arising from circumstances noted on the proposal form or any previous proposal form.

C. Subrogation Agreements

Where another person would be liable to compensate you for any loss or damage otherwise covered by the insurance, but you have agreed with that person either before or after the loss or damage occurred that you would not seek to recover any monies from that person, the Insurer will not cover you under the insurance for such loss or damage.

D. Privacy

Berkley Insurance Australia handles your personal information in a responsible manner and in accordance with the Privacy Act 1988 (Cth).

Consent

By requesting us to provide you with insurance and insurance related services, you consent to the collection, use and disclosure of personal information you have provided to us for the purposes set out in our Privacy Policy

How we collect your personal information

Generally we collect personal information from you or your agents. Personal information may also be collected by us from our agents and service providers; other insurers and insurance reference bureaus; third parties who may claim under your policies; service providers who assist us in investigating, processing and settling claims; third parties who may be arranging cover for a group that you are part of; statutory, regulatory and law enforcement bodies and from publicly available sources.

Why we collect personal information

The personal information we collect enables us to provide our products and services. This may include processing and settling claims; offering products and services that may be of interest to you and conducting market research for products and services that may be relevant to you.

You can choose not to receive product or service offering from us by calling (02) 92758500 Eastern Standard Time 9am to 5pm Monday to Friday inclusive. For further information, you can access our Privacy Policy at www.berkleyinaus.com.au

Who we disclose your personal information to

Your personal information may be disclosed to other parties with whom we have business arrangements for purposes set out in the paragraph above. These parties may include insurers, intermediaries, reinsurers, related companies, our advisers and parties involved in claims assessment, processing, investigation and settlement. Where required by law, we may also disclose information to government, law enforcement, dispute resolution and statutory or regulatory bodies.

Personal information about others

Where you provide personal information about others, you represent to us that you have made them aware that you will do so, the types of third parties we may disclose it to together with the purposes we and our third parties use it for, how they can access such information and how complaints can be made. Where you provide sensitive information about others, you represent to us that you have obtained their consent. If you have not, and will not do so, you must tell us before you provide the sensitive information.

Overseas Disclosure

Your personal information may be disclosed to other companies in the Berkley group, reinsurers and service providers that may be located in Australia and overseas. The countries this information may be disclosed may vary from time

to time but may include the United States of America and other countries where the Berkley group has a presence.

Any information disclosed may only be used for the purposes detailed above.

Accessing your personal information and dealing with complaints

You may request access to the personal information we hold about you by calling us at any time.

Our Privacy Policy details how you can make a complaint about a breach of the privacy principles as set out in the *Privacy Act 1988 (Cth)* and our complaints process.

Our Privacy Policy is available at www.berkleyinaus.com.au

Contact Details

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Solicitor's Excess Layer Professional Indemnity Insurance

This is a claims made insurance policy

1. Insuring Clauses

We agree, subject to the terms, conditions and exclusions of this insurance, to indemnify the Insured, up to the Indemnity Limit in excess of the Underlying Insurance Limit, for the amount of any claim first made against the Insured and notified to Us during the Policy Period in accordance with the applicable insuring terms conditions and exclusions of the Underlying Insurance except as otherwise stated below or endorsed hereon.

2. General Conditions

- 2.1. The Indemnity Limit includes Defence Costs.
- 2.2. Liability under this insurance shall not attach unless and until the insurers of the Underlying Insurance shall have paid and/or have admitted liability and/or have been held liable to pay, the full amount of their Indemnity Limit.
- 2.3. It is a condition of this insurance that a copy of the Underlying Insurance shall be agreed by
- 2.4. Us and maintained in full force and effect during the currency of this insurance.
- 2.5. No amendment to the Underlying Insurance during the Policy Period, in respect of which the insurers of the Underlying Insurance require an additional premium or an excess, will be effective in extending the scope of this insurance, until the Insured has obtained Our prior written agreement.
- 2.6. We are not precluded from exercising Our rights at law by reason of the Insured's failure to comply with the duty of disclosure or by any reason of misrepresentation (whether that failure or misrepresentation was fraudulent or not) or in the event of cancellation.

3. Claim Conditions

- 3.1. In the event of a claim arising for which We may be liable, no Defence Costs shall be incurred on Our behalf without Our prior written consent (not to be unreasonably withheld). The Insured shall not admit liability and no admission, offer, promise or payment shall be made by the Insured for any amount that will affect this insurance without Our prior written consent.
- 3.2. The Insured shall be required to contest any legal proceedings unless a Senior Counsel (to be mutually agreed upon by the Insured and Us or failing agreement to be appointed by the President of the Bar Association of the Territory in which this policy is issued) shall advise that, taking due account of the interests of both Us and the Insured, such proceedings should not be contested.
- 3.3. If the Insured wishes to continue to contest any claim which We wish to settle, the Insured may do so. However, Our liability in respect of that claim shall thereafter be limited to the amount for which the claim could in fact have been settled plus Defence Costs incurred with Our prior written consent to the date upon which they would have settled it, less the amount payable by the Underlying Insurances and any excess.
- 3.4. In the event of a dispute arising under or in connection with this policy, We at the request of the Insured will submit to the jurisdiction of competent courts in the Commonwealth of Australia. The dispute shall be determined in accordance with the law and practice of that jurisdiction, as applied in those courts.

4. Exclusions

- 4.1. No cover is provided under this insurance in respect of claims in connection with any acceptance of the obligations and duties of a company director or other officer under taken by any person employed or partner of the Insured.
- 4.2. Notwithstanding any provision contained in the Underlying Insurance or endorsed thereon any provision providing continuity of cover is hereby excluded from this insurance.
- 4.3. Any condition in the Underlying Insurance requiring or enabling the Insured to give notice of any circumstances which may give rise to a claim and in respect to which when a claim is made is deemed to have been made at the date when such notice was given to or received by the insures is excluded from this insurance.
- 4.4. Any claim in connection with professional activity that does not fall within the scope of the traditional practice of a solicitor is excluded.
- 4.5. Any claim in connection with any action brought in any court of the United States of America, Canada or their dominions or protectorates or judgment registered or lodged in connection with such an action. Any claim in connection with any work or activities undertaken by the Insured in the United States of America, Canada or their dominions or protectorates.
- 4.6. Any claim for or relating to any fine or penalty or any multiple, exemplary, punitive or aggravated damages

5. Definitions

Various words and phrases have a standard meaning within this insurance and such definitions and interpretations are so set out herein. Headings and notes are for information purposes only and are not to be construed as part of this insurance. The following words and phrases are used in this insurance. In certain instances the words may be used in their plural or singular form. Whenever they appear they are deemed to have the meaning set out below:-

5.1 Insured

Shall mean the company, sole trader or partnership named as the Insured in the Schedule.

We will only be liable for claims arising out of incoming partner's and staff's previous firms where such firm have merged with the Insured during the Policy Period. Any such merger must be declared and accepted by Underlying Insurers and cover affected by endorsement.

5.2 Indemnity Limit

Shall mean the sum shown in the Schedule which is available to indemnify the Insured in respect of each claim provided always that where more than one claim arises from the same original cause or source all such claims shall be deemed to be one claim and only one Indemnity Limit shall be payable in respect of the aggregate of all such claims.

5.3 Defence Costs

Shall mean all costs and expenses incurred in the investigation, defence or settlement of any claim which is indemnifiable under this policy.

5.4 Underlying Insurance

Shall mean insurance(s), with insurers and not self-insured by the Insured, providing the Insured with indemnity for each claim, and evidenced by a certificate/policy or renewal or substitution for the same Underlying Insurance Limit.

5.5 Underlying Insurance Limit

Shall mean the indemnity limit of the Underlying Insurance.

5.6 Policy Period

Shall mean the period shown in the Schedule.

5.7 Schedule

Shall mean the document entitled Schedule that relates to this insurance.

5.8 We, Our, Us

Shall mean Berkley Insurance Company (trading as Berkley Insurance Australia) ABN 53 126 559 706.