

Specialty Risks | Insurance solutions



Underwritten by:

Berkley
INSURANCE AUSTRALIA
a W. R. Berkley Company



Arthur J. Gallagher
BUSINESS WITHOUT BARRIERS™
Incorporating OAMPS Insurance Brokers

Combined Professional Indemnity and Public & Products Liability Insurance

IMPORTANT INFORMATION

Please read the following information

A. Your 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 Us every matter that you know, or could reasonable be expected to know, is relevant to Our decision whether to accept the risk of insurance, and if so, on what terms.

You have the same duty to disclose those matters to Us 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 Us;
- that is of common knowledge;
- that your insurer knows or, in the course of his business, ought to know;
- as to which compliance with your duty is waived by Us.

Non-disclosure

If you fail to comply with your duty of disclosure, We may be entitled to reduce Our liability under the contract in respect of a claim, or may cancel the contract.

If your non-disclosure is fraudulent, We may also have the option of avoiding the contract from its beginning.

B. 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, We will not cover you under the insurance for such loss or damage.

C. Underinsurance

Your property is insured for reinstatement and replacement costs and as such the insured amounts should represent the full replacement value at new costs. If this is not done any claim you make for these costs may not be paid in full.

D. Privacy Statement

The Privacy Act 1988 (as amended) applies to this insurance and requires us to advise you that:

Purpose of collection

We collect personal information (this is information or an opinion about an individual whose identity is apparent or can reasonable be ascertained and which relates to a natural living person) for the purposes of:

- providing insurance services to you;
- evaluating your application;
- evaluating any request for changes to any insurance provided;
- issuing administering and managing the insurance provided after acceptance of an application;
- investigating and, if covered, managing claims made in relation to any insurance you have with us.

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

Disclosure

When necessary and in connection with the purposes listed above We may disclose your personal information to and/or receive information from 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, administer your policy or manage any claim under your policy.

Access

You may request access to the personal information We hold about you by contacting Us at the address shown.

Contact Details

You should firstly contact the insurance intermediary that you purchased this policy through in relation to any issues concerning this policy. However if needed we can be contacted as follows:

Berkley Insurance Australia
Level 23, St Martins Tower
31 Market Street
SYDNEY NSW 2000

Ph: 02 9275 8500
Fax: 02 9261 2773
Email: facilities@Berkleyinaus.com.au
Web site: www.berkleyinaus.com.au

Combined Professional Indemnity and Public & Products Liability Insurance

INDEX

Item	Page
INSURING CLAUSES	
Section 1 – Public Liability.....	4
Section 2 – Products Liability.....	5
Section 3 – Professional Indemnity.....	6
Section 4 – General Property.....	7
Section 5 – Legal Expenses.....	8
POLICY EXTENSIONS (<i>applicable to sections 1, 2 and 3</i>).....	13
POLICY CONDITIONS (<i>applicable to sections 1, 2 and 3</i>).....	14
POLICY CONDITIONS (<i>applicable to sections 1, 2, 3, 4 and 5</i>).....	14
POLICY EXCLUSIONS (<i>applicable to sections 1, 2, 3, 4 and 5</i>).....	15
POLICY EXCLUSIONS (<i>applicable to sections 2 and 3</i>).....	16
POLICY EXCLUSIONS (<i>applicable to sections 1, 2, and 3</i>).....	16
POLICY DEFINITIONS (<i>applicable to sections 1, 2, 3, 4 and 5</i>).....	19

SECTION 1 – PUBLIC LIABILITY

The Cover

We will indemnify the Insured in respect of Compensation arising out of the following occurrences

- a. accidental Bodily Injury to any person; or
- b. accidental Damage to Property;

and which occurs during the Period of Insurance within the Territorial Limits and arises from and in the course of the Business.

Additional coverage for Plate Glass Breakage

If the Insured is required under their lease at the premises from which they operate the Business to indemnify their landlord for the breakage of the plate glass window then We agree to indemnify the Insured for the cost of replacement of that plate glass window if it occurs during the Period of Insurance at the premises and is reported to Us within 7 days subject to a \$500 excess. However We will only be liable for the costs of the glass and will not be liable for the costs of any signage or other things that were on the glass.

Property in the Insured's Care Custody or Control

We will also indemnify the Insured up to the amount of \$100,000 in total during the Period of Insurance which the Insured becomes legally liable to pay as Compensation for loss of or Damage which occurred during the Period of Insurance to Property (excluding land, buildings, fixtures or fittings) that did not belong to the Insured but which was in the Insured's care, custody or control.

Limit of Indemnity

Our liability under this section for Compensation in respect of any one occurrence or series of occurrences arising out of or attributable to any one cause or event shall not exceed the Limit of Indemnity in the Schedule.

Section Extensions (*only applicable to Section 1*)

These Section Extensions are subject otherwise to the terms (including without limitation the Conditions and the Exclusions) of this Policy:

Motor Vehicles

Section Exclusion 2 below shall not apply to liability caused by or arising from:

1. the use of plant as a tool of trade at the Insured's premises or on any site at which the Insured is working; or
2. the loading or unloading of any vehicle or the bringing to or taking away of a load from any vehicle *provided that* We shall not provide indemnity against liability
 - a. in respect of which insurance or security is required under any legislation governing the use of the vehicle; or
 - b. for which indemnity is provided for by any other insurance.

Leased or Rented Premises

Section Exclusion 4(b) shall not apply to liability for Damage to premises (including their fixtures and fittings) leased or rented to the Insured *provided that* We shall not provide indemnity against:

1. Contractual Liability; or
2. the first \$250 of each and every occurrence of Damage to Property caused other than by fire or explosion.

Students covered as an Insured

If the Insured is a recognised training body then the students currently undergoing training by the Insured will be covered as an Insured whilst carrying out their required coursework either on or off campus.

Section Exclusions (*only applicable to Section 1*)

We shall not provide indemnity under Section 1 of this policy against liability:

1. caused by or arising from the ownership possession or operation by or on behalf of the Insured of any airlines, aircraft, aerodromes, airports, and/or other aviation risks, spacecraft, launch sites and/or other space risks, hovercraft or watercraft;
2. caused by or arising from the ownership, possession or operation by or on behalf of the Insured of any mechanically propelled vehicle (except as covered by the Section Extension entitled Motor Vehicles, above);
3. caused by or arising from any Product Supplied;
4. in respect of Damage to Property
 - a. belonging to the Insured; or
 - b. in the care, custody or under the control of the Insured (except as covered above under the heading Property in the Insured's Care Custody & Control);

5. for that part of any Property on which the Insured or any Employee or agent of the Insured is or has been working where the Damage arises out of such work (except as covered by the Section Extension entitled Leased or Rented Premises, above);
6. arising from professional advice, design, treatment, services or specification provided by or on behalf of the Insured; or
7. the cost of performing, completing, correcting or improving any work carried out by the Insured.

SECTION 2 – PRODUCTS LIABILITY

The Cover

In the event of accidental

- a. Bodily Injury to any person; or
- b. Damage to Property;

occurring during the Period of Insurance anywhere within the Territorial Limits and caused by any Product Supplied, We will indemnify the Insured in respect of Compensation arising out of such event.

Limit of Indemnity

Our liability under this section for Compensation in respect of any one occurrence or series of occurrences arising out of or attributable to any one cause or event shall not exceed the Limit of Indemnity in the Schedule.

Reinstatement of the Limit of Indemnity

Our total liability under this section for Compensation shall not exceed twice the amount stated as the Limit of Indemnity in the Schedule.

Section Exclusions (*only applicable to Section 2*)

We shall not provide indemnity under Section 2 of this policy against liability:

1. in connection with the recalling, repairing, replacing, altering, removing, rectifying, reinstating or making any refund in respect of any Product Supplied caused by or arising from
 - i. a defect in or the harmful nature or the unsuitability of such Product Supplied; or
 - ii. an error or fault in connection with the sale, supply or presentation of such Product Supplied;
2. in connection with any Product Supplied whilst in the custody or under the control of the Insured;
3. in connection with any Product Supplied which to the knowledge of the Insured is for
 - i. use in or on any aircraft or aero spatial device;
 - ii. aviation or aero spatial purposes; or
 - iii. use in the safety or navigation of marine craft of any sort;
4. in connection with any Product Supplied which to the knowledge of the Insured is for use in or supply to the United States of America or Canada or their protectorates or dominions;
5. in connection with the internal application or ingestion of essential oils; or
6. arising out of the provision of professional advice, treatment or services.

The remainder of this page is intentionally left blank

SECTION 3 – PROFESSIONAL INDEMNITY

The Cover

We will indemnify the Insured in respect of Compensation arising out of any act, error or omission in the provision of professional advice, treatment or services in the course of the Business *provided that*:

- a. the person conducting or providing the advice, treatment or services is qualified to do so or is currently undergoing training by a recognised training body in the treatment that they are providing; and
- b. the advice, treatment or services are listed in the Schedule; and
- c. the act, error or omission took place during the Period of Insurance anywhere within the Territorial Limits.

Limit of Indemnity

Our liability under this section for Compensation in respect of any one occurrence or series of occurrences arising out of or attributable to any one cause or event shall not exceed the Limit of Indemnity in the Schedule.

Reinstatement of the Limit of Indemnity

Our total liability under this section for Compensation shall not exceed twice the amount stated as the Limit of Indemnity in the Schedule.

Section Extensions (*only applicable to Section 3*)

This Section Extension is subject otherwise to the terms (including without limitation the Conditions and the Exclusions) of this Policy:

Students covered as an Insured

If the Insured is a recognised training body then the students currently undergoing training by the Insured will be covered as an Insured whilst carrying out their required coursework either on or off campus.

Section Exclusions (*only applicable to Section 3*)

We shall not provide indemnity under Section 3 of this policy:

1. against liability caused by, arising from or in connection with any Product Supplied;
2. if the Insured named in the Schedule is a student currently undergoing training by a recognised training body in the treatment that they are providing then they are not covered whilst carrying out their required coursework either on or off campus; or
3. for any claim in connection with a student carrying out activities which they have not been authorised to carry out by the teaching institution in which they are enrolled.

The remainder of this page is intentionally left blank

SECTION 4 (Optional) – GENERAL PROPERTY

The Cover

If stated as covered next to this section in the Schedule then We will pay for any unintended damage to or theft of the Insured Property up to the Limit of Liability *provided that* such damage or theft occurs during the Period of Insurance and is not caused by or in connection with:

- a. the sea (which without limiting the foregoing includes any ocean, bay, port and/or tidal water);
- b. flood;
- c. earthquake, subterranean fire or volcanic explosion;
- d. spontaneous combustion, fermentation or heating;
- e. persons taking part in riots, civil commotions or labour disturbances, or persons of malicious intent acting on behalf of or in connection with any political organisation;
- f. wear and tear, denting, scratching, any process of cleaning, repairing or restoring any property, or the application of electrical energy, action of light or atmospheric conditions, moth, vermin, corrosion or any other gradually operating cause;
- g. theft from any road vehicle
 - i. unless the vehicle is fully enclosed and all doors windows and other openings, windscreen and boot are left closed and securely locked; and
 - ii. unless the vehicle has been broken into by violent and forcible means;
- h. theft from the open air or where the property has been left unattended;
- i. theft committed by any family member or by any person who would benefit from this insurance;
- j. theft committed by any person lawfully at the premises at which the property is situated;
- k. delay, confiscation or detention by customs or other lawful activity;
- l. damage discovered more than 30 days after the occurrence of the damage;
- m. theft not reported to the police;
- n. mechanical or electrical breakdown or derangement; or
- o. tools of trade whilst they are being used.

Basis of Settlement

We will pay at Our own option the cost of repair, replacement or reinstatement of the Insured Property to a condition substantially the same as but not better or more extensive than its condition when new.

Cover for specified and unspecified items

Our liability under Section 4 of this policy for:

1. unspecified items is \$1,000 per item;
2. specified items is \$75,000; and
3. all claims in the Period of Insurance is

the lesser of \$75,000 or the Limit of Liability.

Section Exclusions (only applicable to Section 4)

We shall not pay for loss of or damage

- to any mobile phones, electronic tablets; or
- cash.

The remainder of this page is intentionally left blank

SECTION 5 (Optional) – Legal Expenses

The Cover

If stated as covered next to this section in the Schedule then We will indemnify the Insured up to \$25,000 in total in respect of legal costs and expenses as set out in the Indemnity Granted part of this section if:

- a. there are reasonable grounds for pursuing or defending the legal proceedings;
- b. it is reasonable for legal costs and expenses to be provided in the particular case;
- c. the Insured has used the Insured's best endeavours to include an Alternative Dispute Resolution (ADR) clause in all contracts relating to the business;
- d. the dispute is covered by the Insured Events specified in this section;
- e. the dispute occurs within the period of insurance;
- f. the dispute occurs within Australia;
- g. the legal proceedings take place in Australia and only Australian law applies;
- h. the dispute is not excluded by any of the Section Exclusions (*only applicable to Section 5*);
- i. the dispute is not excluded by any of the Policy Exclusions (*applicable to Section 1,2,3,4, and 5*) in the policy;
- j. the Insured has complied with the Section Conditions (*only applicable to Section 5*); and
- k. the Insured has complied with the Policy Conditions (*applicable to Sections 1,2,3,4 and 5*) of the policy,

Insured Events:

The term 'Insured Events' when used above in this section refers to:

1. Employment:

Contract Disputes: A dispute arising from a contract or alleged contract of employment with an employee, ex-employee or a prospective employee.

Acts or omission of employees: A dispute arising from any actual or alleged act or omission of the Insured or an Insured's employee arising out of or in the course of their normal employment in the Business which leads to:

- (a) their prosecution in a court of criminal jurisdiction;
- (b) civil proceedings being taken against them under any anti-discrimination legislation; or
- (c) civil proceedings being taken against them as trustee of a superannuation fund.

2. Employers prosecution defence

Any act or omission which leads to the Insured's prosecution in a court of criminal jurisdiction arising out of the Insured acting as an employer but does not mean a prosecution for the defence of which cover is provided in paragraphs numbered 1 or 5 of the definition of Insured Events.

3. Contract disputes

A dispute concerning a contract for the buying, renting, or supply of goods or services in relation to the Business.

4. Property dispute

A dispute arising from:

- (a) loss of or damage to land and/or buildings owned by the Insured or for which the Insured is responsible for the purpose of the Business, or
- (b) loss of or damage to goods owned by the Insured or for which the Insured is responsible whilst contained in or on the land and/or buildings referred to in paragraph (a) above

but not:

a dispute arising under a contract;

a dispute arising from goods lent, leased or hired to third parties;

a dispute arising from goods at premises not occupied by the Insured unless they are there for the purposes of installation or use in work to be carried out by the Insured.

5. Trade Practices Act dispute

A dispute arising from:

- (a) the operation of the Trade Practices Act 1974; or
- (b) any act or omission arising out of the Trade Practices Act 1974 which leads to the prosecution in a court of criminal jurisdiction of the Insured or an Insured's employee.

6. Right to practice

A dispute in relation to the Insured's legal right to practice in terms of the rules and by-laws of the association of which the Insured is an associated member but does not mean any matter covered by Insured Events 1, 2, 3, 4 or 5.

7. Attendance for jury service

The attendance of the Insured or an employee for jury service.

Indemnity Granted:

1. Employment

Contract disputes: We will pay the Insured's reasonable legal costs and expenses and any legal liability of the Insured for the opponent's legal costs incurred in relation to employment contract disputes in:

- (a) the pursuit of the Insured's legal rights to obtain a remedy or to recover damages and costs from other parties;
- (b) the defence by the Insured of any claim or counter claim;
- (c) the defence of a prosecution against the Insured; and
- (d) the appeal or the defence of an appeal against judgment provided We are given 6 clear business days notice before the time for making the appeal or application for appeal has expired and We consider there to be a reasonable chance of success.

Acts or omission of employees: We will pay the Insured's legal costs and expenses and opponent's legal costs incurred in relation to acts or omissions of employees for:

- (a) the defence by the Insured of any claim or counter claim; and
- (b) the defence of a prosecution against the Insured.

2. Employers prosecution defence

We will pay the Insured's reasonable legal costs and expenses and any legal liability of the Insured for the opponent's legal costs incurred in employers prosecution defence for:

- (a) the defence of a prosecution against the Insured; and
- (b) the defence of an appeal against judgment provided We are given 6 clear business days notice before the time for making the appeal or application for appeal has expired and We consider there to be a reasonable chance of success.

3. Contract disputes

We will pay the Insured's legal costs and expenses and any legal liability of the Insured for the opponent's legal costs incurred in relation to contract disputes (other than employment contract disputes) for:

- (a) the pursuit of the Insured's legal rights to obtain a remedy or to recover damages and costs from other parties;
- (b) the defence by the Insured of any claim or counter claim;
- (c) the defence of a prosecution against the Insured; and
- (d) the defence of an appeal against judgement provided We are given 6 clear business days notice before the time for making the appeal or application has expired and We consider there to be a reasonable chance of success.

4. Property dispute

We will pay the Insured's legal costs and expenses and any legal liability of the Insured for the opponent's legal costs incurred in relation to a property dispute, for:

- (a) the pursuit of the Insured's legal rights to obtain remedy or to recover damages and costs from other parties;
- (b) the defence by the Insured of any claim or counter claim;
- (c) the defence of a prosecution against the Insured; and
- (d) the defence of an appeal against judgment provided We are given 6 business days notice before the time for making the appeal or application for appeal has expired and We consider there to be a reasonable chance of success.

5. Trade Practices Act disputes

We will pay the Insured's legal costs and expenses and any legal liability of the Insured for the opponent's legal costs incurred in Trade Practices Act disputes, for:

- (a) the pursuit of the Insured's legal rights to obtain a remedy or to recover damages and costs from other parties;
- (b) the defence by the Insured of any claim or counter claim;
- (c) the defence of a prosecution against the Insured;
- (d) the defence of any claim, counter claim or prosecution against an Insured's employee;
- (e) the defence of an appeal against judgment provided We are given 6 clear business days notice before the time for making the appeal or application for appeal has expired and We consider there to be a reasonable chance of success.

6. Right to Practice

We will pay the Insured's legal costs and expenses and any legal liability of the Insured for the opponent's legal costs incurred in relation to a right to practice dispute, for:

- (a) the pursuit of the Insured's legal rights to obtain remedy or to recover damages and costs from other parties;
- (b) the defence by the Insured of any claim or counter claim;
- (c) the defence of a prosecution against the Insured; and
- (d) the defence of an appeal against judgment provided We are given 6 clear business days notice before the time for making the appeal or application for appeal has expired and We consider there to be a reasonable chance of success.

7. Attendance for jury service

We will pay any reasonable legal costs and expenses in relation to the Insured or an employee attending jury service.

Section Conditions (only applicable to Section 5):

1. Recovery of legal costs and expenses

If We have paid a claim to the Insured, and the Insured recovers an amount for costs as part of the award or settlement, the Insured must repay this amount to Us.

2. Claims consent

- (a) The Insured must obtain and forward to Us upon Our request and at the Insured's expense a written opinion from the Insured's legal practitioner, and where necessary counsel, on the merits of the claim or legal proceedings. If the claim is subsequently admitted by Us the Insured's costs in obtaining these opinions will be covered under this section subject to Our total limit of indemnity under this section.
- (b) If We refuse to accept or decide to discontinue a claim We will provide the Insured with Our reasons. If the Insured commences or continues the claim or legal proceedings and is successful We will pay legal costs and expenses as if We had given Our consent in the first instance *provided that* the reason or reasons the claim was refused or discontinued by Us were not because of an exclusion under the policy, non-compliance by the Insured with a condition of the policy or the fact that the claim fell outside the cover provided by the policy.

3. Representation

- (a) Upon making a claim the Insured may either nominate a legal practitioner to act for the Insured or We will nominate a solicitor of Our choice.
- (b) We reserve the right to refuse the Insured's nomination of legal practitioner without giving any reason and prior to Our acceptance of the Insured's nomination of a legal practitioner We may make any enquiries We deem appropriate with respect to that legal practitioner.
- (c) We reserve the right to instruct the Insured to terminate the services of the appointed legal practitioner. If so instructed the Insured must terminate the services of the appointed legal practitioner and appoint a new legal practitioner to act for the Insured which shall be nominated by Us.
- (d) We reserve the right to take over and conduct in the Insured's name the pursuit, defence or settlement of any claim or legal proceedings including any appeal. The Insured must co-operate with Us fully in any proceedings which We may take and We will have full discretion in the conduct of those proceedings and in the settlement of any claim.

4. Control of claim

- (a) We must have direct access to the appointed legal practitioner at all times. The Insured must co-operate fully with Us in all respects and keep Us fully and continually informed of all material developments in the legal representation or proceedings. If We ask, the Insured must instruct the appointed legal practitioner to produce to Us immediately any documents, information or advice in their possession and the Insured must give them any instructions in relation to the conduct of the claim that We may require.
- (b) We are not liable for the costs or fees of counsel, accountants or any expert witness unless We have given Our prior approval to the appointment of that person and agreed the proposed fee.
- (c) Any agreement, undertaking or promise made or given by the Insured to the appointed legal practitioner or by either to any witness expert or agent will not in any way affect the legal costs and expenses payable.
- (d) The appointed legal practitioner or the Insured must inform Us immediately in writing of any offers made with a view to settling the claim and
 - i. no agreement to settle which may result in a claim for indemnity under this section may be made without Our prior approval; and
 - ii. if the Insured does not accept any offer or payment but that amount is equal to or in excess of the total damages eventually recovered by the Insured, We shall have no liability in respect of any legal costs

and expenses or any legal liability of the Insured for the opponent's legal costs incurred after that offer or payment unless, upon being notified of the offer or payment into court, We agree to the continuation of the legal proceedings.

- (e) If in any legal proceedings the Insured is not successful in the Insured's claim or defence, no appeal or other proceedings will be covered under this policy unless We are notified in writing of the intention to appeal no later than six clear days before the time for making an appeal expires and We notify the Insured that We consider that there are reasonable prospects of such appeal succeeding.
 - (f) If We require, the Insured must instruct the appointed legal practitioner to have the Insured's legal costs and expenses or opponent's legal costs and expenses taxed, assessed or audited by the relevant authority.
 - (g) If for any reason the appointed legal practitioner refuses to continue acting for the Insured or if the Insured withdraws its instructions from the appointed legal practitioner then Our liability will cease forthwith unless in Our absolute discretion We agree to the appointment of another legal practitioner to continue with the claim.
 - (h) If the Insured withdraws from the legal proceedings or proposed legal proceedings without Our prior agreement, then the legal costs and expenses and opponent's legal costs will become the Insured's responsibility and We will be entitled to be reimbursed by the Insured for any costs paid or incurred during the course of the legal proceedings or proposed legal proceedings, including any legal costs and expenses We consider We are obliged to pay on the Insured's withdrawal from the claim.
 - (i) Where the Insured is awarded costs, the Insured must take steps to recover legal costs and expenses which would be the subject of payment under the policy. The legal costs and expenses and attendance expenses actually recovered will be taken into account by Us to reduce Our liability when calculating Our liability under this section.
5. Dispute resolution
- (a) The Insured must, at Our direction, use any ADR process available before taking legal action in respect of any commercial dispute.
 - (b) The Insured must use its best endeavours to have any commercial dispute resolved through ADR.
 - (c) If the Insured is a party to legal action in connection with a commercial dispute commenced by another party, the Insured must suggest resolution of that commercial dispute by ADR as an alternative to continuing the legal action.

Excess (only applicable to Section 5):

The Insured must pay the first \$500 of any claim made under this section.

Section Exclusions (only applicable to Section 5):

We will not be liable for any claim in respect of or arising from or in connection with:

- 1. civil proceedings where the amount in dispute is less than \$5,000;
- 2. any act, omission or dispute which occurred or started prior to the commencement of the period of insurance and which the Insured knew or ought reasonably to have known might give rise to a claim or legal proceedings by or against the Insured;
- 3. legal costs and expenses and opponent's legal costs incurred prior to the written acceptance of a claim by Us;
- 4. defamation, libel or slander;
- 5. a dispute with Us arising from any claim made under this policy or any other policy with Us;
- 6. mining subsidence or land subsidence;
- 7. fibreglass or asbestos or their derivatives;
- 8. the use, ownership or possession by the Insured or an Insured's employee of any motor vehicle, boat, vessel, craft or aircraft;
- 9. disputes concerning patents, copyrights, trade marks, merchandise marks, registered designs, intellectual property and secrecy and confidentiality agreements;
- 10. disputes concerning undefended debts or concerning debts owed by or to private individuals for non-business purposes;
- 11. an act, omission or dispute between any two or more parties who are insureds under this policy;
- 12. a contract of insurance where the dispute arises only in respect of the sum of money or other compensation payable under that contract;
- 13. monies owed to the Insured, where the claim is made 6 months or more after those monies became due and payable;
- 14. any matter where the Insured or an insured employee:
 - (a) pursue or defend a claim or legal proceedings without Our consent or in a different manner from that advised by the appointed legal practitioner;
 - (b) fail to give proper instructions in due time to the appointed legal practitioner or counsel appointed by them; or

- (c) are responsible for delay which is prejudicial to the successful outcome of the claim or legal proceedings.
20. bankruptcy proceedings or the Insured having committed an act of bankruptcy or having made an arrangement with the Insured's creditors or having entered into a deed of arrangement or being in liquidation or part of the Insured's affairs or property being in the care or control of a receiver or administrator.
 21. the breach or alleged breach of any professional duty (including but not limited to the provision of advice, treatment or services) by the Insured or an insured employee.
 22. damages (including damages associated legal costs and expenses) for Bodily Injury to any person.
 23. damage to property (including associated legal costs and expenses).
 24. the transit of any goods or property by air or by sea.
 25. contamination or pollution.
 26. the compulsory purchase, confiscation, nationalisation, requisition or destruction of or restrictions or controls placed on any property.
 27. the actual, planned or proposed construction, closure, modification or repair of roads or bridges or the actual, planned or proposed construction or demolition of buildings or other works by or under the order of any inter-governmental, governmental, public or local authority except insofar as the claim relates to accidental damage arising from such activities.
 28. payment of fines or other penalties which the Insured or an insured employee may be ordered to pay.
 29. costs which the Insured or an insured employee may be ordered to pay by a court of criminal jurisdiction.
 30. relating to any criminal or unlawful act committed deliberately or with wilful intent by the Insured or an insured employee.
 31. any legal liability which would be covered under Sections 1, 2 and 3.

The remainder of this page is intentionally left blank

POLICY EXTENSIONS (*applicable to Sections 1, 2 and 3*)

These policy extensions are applicable to Section 1, 2 and 3 of this policy and are subject to the terms, conditions and exclusions of this Policy.

Claimants' Costs and Expenses

We will provide indemnity for legal costs and expenses reasonably incurred by a claimant for which the Insured is found to be legally liable in connection with any claim which is covered by Sections 1, 2 or 3.

Defence Costs and Expenses

We will provide indemnity in respect of all reasonable legal costs and expenses incurred with Our written consent:

1. of legal representation at any coroner's inquest or other inquiry in respect of any death arising out of the Insured's Business; or
2. in the investigation, settlement or defence of any claim which is covered by Sections 1, 2 or 3.

Costs of Court Attendance

In the event of any of the under-mentioned persons attending court as a witness at Our request in connection with a claim which is covered under this policy We will reimburse the Insured at the following rates per day for each day on which attendance is required

1. any director or partner of the Insured \$650
2. any Employee \$250

Indemnity to Other Persons

We will also indemnify as if a separate policy had been issued to:

1. the legal personal representatives of the Insured or any other person entitled to indemnity under this policy but only in respect of liability incurred by the Insured or such other person;
2. any owner of plant hired to the Insured but only to the extent required by the conditions of the contract or agreement of hire;
3. at the request of the Insured, any officer or member of the Insured's catering, social, sports, educational, medical, dental and welfare organisations and fire, security, first aid, and ambulance services in their respective capacity as such but not any medical or dental practitioner in respect of medical or dental services *provided always that*
 - a. any persons specified above shall as though they were the Insured be subject to the terms, conditions and exclusions of this policy insofar as they can apply; and
 - b. nothing in this policy extension shall increase Our liability to pay any amount exceeding the Limit of Indemnity regardless of the number of persons claiming to be indemnified.

Cross Liabilities

If the Insured comprises more than one party We will under Sections 1, 2 and 3 provide indemnity to each such Insured in the same manner and to the same extent as if a separate policy had been issued to each of them *provided that* nothing in this policy extension shall increase Our liability to pay any amount exceeding the Limit of Indemnity regardless of the number of persons claiming to be indemnified.

Retrospective Cover (*optional*)

Subject to:

1. the Insured being covered by a Claims Made policy of insurance relating to its professional business immediately prior to the inception date of this policy; and
2. it is noted in the Schedule that this extension is covered;

then We will indemnify the Insured in accordance with Section 1, 2 or 3 and subject to the conditions and exclusions of this policy for any Claims first made against the Insured after the inception date of this policy which arise directly out of any occurrence or act, error or omission that occurred prior to the inception date of this policy but after the Retroactive Date.

This optional extension shall not indemnify the Insured against any Claim:

1. made upon the Insured prior to the inception of this policy; or
2. in connection with any fact, matter or circumstance known to the Insured at any time prior to the inception of this policy and which the Insured knew, or a reasonable person in the Insured's profession would, in the circumstances, be expected to know or have known might give rise to a Claim against the Insured.

POLICY CONDITIONS (*applicable to Sections 1, 2 and 3*)

Claims (Notice in Writing from the Insured)

The Insured shall give notice in writing to Us as soon as possible after any event which may give rise to liability under this Policy with full particulars of the event. Notice in writing shall also be given immediately to Us by the Insured of any impending prosecution, inquest or fatal inquiry in connection with any such event.

Any correspondence received by the Insured concerning an event or legal proceedings served on the Insured that might give rise to a claim under this policy shall be forwarded to Us immediately on receipt.

Claims (Conduct and Control)

No admission offer promise payment or indemnity shall be made or given by or on behalf of the Insured without Our written consent .

We shall be entitled if We so desire to take over and conduct in the name of the Insured the defence or the settlement of any claim and to prosecute in the name of the Insured for its own benefit any claim for indemnity or damages or otherwise against all other parties or persons. We shall have full discretion in the conduct of any proceedings and in the settlement of any claim against the Insured and the Insured shall give all such information and assistance as We may require

Claims (Discharge of liability)

We may at any time pay (or agree to pay) to the Insured in connection with any claim made under this policy the Limit of Indemnity (less the Excess, any sums already paid and unpaid costs and expenses incurred with Our prior written consent) and upon such payment (or agreement to pay) We shall not be under any further liability in respect of such claim.

Notwithstanding such payment (or agreement to pay) by Us, in no circumstances will We be liable in respect of such claim for an amount greater than the Limit of Indemnity. In the event that:

- a. We have made a payment in excess of the amount for which We would otherwise have been liable in accordance with the policy in respect of such claim, the Insured shall refund to Us that proportion of the payment which exceeds the amount which We would otherwise have been liable for in accordance with the policy; or
- b. We have agreed to pay an amount in excess of the amount which We would otherwise have been liable for in accordance with the policy in respect of such claim, Our liability in respect of such agreement shall be limited to the amount which We would otherwise have been liable for in accordance with the policy.

Our and the Insured's Right to Defend

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 NSW Bar Association) shall advise that, taking due account of the interests of both Us and the Insured, such proceedings should not be contested.

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 costs and expenses incurred with Our prior written consent to the date upon which they would have reasonably settled the claim.

POLICY CONDITIONS (*applicable to Sections 1, 2, 3, 4 and 5*)

Material Change

The Insured shall immediately notify Us of any material change in the Business or any other act, error or omission on the part of the Insured which materially increases Our exposure to risk.

Reasonable Care

The Insured shall take all reasonable care:

- a. to prevent any event which may give rise to a claim under this policy;
- b. to maintain the premises plant and everything used in the Business in proper repair;
- c. in the selection and supervision of employees;
- d. to comply with all statutory and other obligations and regulations imposed by any authority; and
- e. to make good or remedy any defect or danger which becomes apparent and take such additional precautions as the circumstances may require.

Disputes

Any dispute concerning the interpretation of the terms of this policy shall be resolved in accordance with the law and under the jurisdiction of the territory in which this policy is issued.

Other conditions

The Insured must:

- a. observe and fulfil the terms of this policy insofar as they relate to anything to be done or complied with by the Insured;
- b. pay to Us all premium due to Us together with all taxes and charges within 30 days of the policy inception; and
- c. ensure that all statements answers and information supplied to Us by or on behalf of the Insured in connection with this Policy are truthful and complete.

Cancellation

The circumstances and manner in which We may cancel this insurance is governed by the Insurance Contracts Act 1984 (Cth).

The Insured may cancel this insurance at any time and provided there have been no claims made by the Insured under this policy the Insured shall be entitled to a pro rata refund. If the Insured has made a claim under the policy then the Insured is not entitled to any refund.

Fitness Gym and/or Aerobics Instructors

It is a condition that an Insured engaging in fitness activities ensures a health form is completed by each individual client prior to the client undertaking any exercise/fitness training and if any medical condition which might affect the ability of the client to exercise safely is declared, the client must obtain written confirmation from the an appropriately qualified medical practitioner stating that the client can undertake the proposed exercise/fitness training.

The Insured must have the appropriate qualification for any fitness instruction for children or older adults.

Subcontractors

The insured must obtain from any persons or companies subcontracted to the Insured to provide professional services certificates of currency for professional indemnity and public liability insurance that are in force for the entire period that those persons or companies are working for the insured.

POLICY EXCLUSIONS (*applicable to Sections 1, 2, 3, 4 and 5*)

Sections 1, 2, 3, 4 and 5 of this insurance shall not indemnify the Insured in respect of any liability for a claim, damage to the Insured Property or legal costs and expenses directly or indirectly arising out of, in connection with, or in any way involving:

Excess

the amount of any excess stated in the Schedule or if a different amount is specified in a particular section of coverage in the policy then that amount.

Claim Under Another Section

a claim being made under any section of the policy in relation to an occurrence or provision of professional advice, treatment or services or set of facts where a claim has already been made under another section of the policy in respect of that same occurrence or provision of professional advice, treatment or services or set of facts.

Radioactive Contamination

ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

Pollution or Contamination

Pollution or Contamination unless caused by a sudden identifiable, unintended and unexpected incident which takes place in its entirety at a specific time and place during the Period of Insurance; or
the cost of removing nullifying or cleaning up seeping, polluting or contaminating substances unless the Pollution or Contamination is caused by a sudden identifiable, unintended and unexpected incident which takes place in its entirety at a specific time and place during the Period of Insurance *provided always that*

- a. all Pollution or Contamination which arises out of such incident shall be deemed to have occurred at the time such incident takes place; and

- b. Our liability for all Compensation under Sections 1, 2 and 3 payable in respect of all Pollution or Contamination which is deemed to have occurred during the Period of Insurance shall not exceed in the aggregate the Limit of Indemnity.

Waiver of Subrogation

any waiver of rights of subrogation, recovery or recourse against any other person existing prior to or undertaken after the happening of an event or occurrence to which such waiver applied.

War and Similar Risks

war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, 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 authority, or any action taken in controlling, preventing, suppressing or in any way relating to any of the above.

POLICY EXCLUSIONS (*applicable to Sections 2 and 3*)

Sections 2 and 3 of this insurance shall not indemnify the Insured in respect of any liability for a claim directly or indirectly arising out of, in connection with, or in any way involving:

Act of Terrorism

an Act of Terrorism.

POLICY EXCLUSIONS (*applicable to Sections 1, 2 and 3*)

Sections 1, 2 and 3 of this insurance shall not indemnify the Insured in respect of any liability for a claim directly or indirectly arising out of, in connection with, or in any way involving:

Contractual Liability

Contractual Liability unless such liability:

- a. would have existed in the absence of the contract but in any event We shall not be liable in respect of liquidated damages or liability under any penalty clause; or
- b. arises out of a condition or warranty of goods implied or imposed by statute.

Asbestos

asbestos or any materials containing asbestos in whatever form or quantity.

Cyber Liability

alteration of, or Damage to or a reduction in functionality, availability or operation of a computer system or programme, hardware, data, information, repository, microchip, integrated circuit or similar device in computer equipment or non-computer equipment as a result of the Insured's "e-activities"

For the purpose of this exclusion, "e-activities" means any use of or business undertaken by the Insured or by any person, persons, partnership, firm or company acting for or on behalf of the Insured in connection with electronic networks including the internet and private networks, intranets, extra-nets, electronic mail, worldwide web and similar medium.

Jurisdiction

any action for Compensation commenced by a third party in any court situated in any country other than within the Territorial Limits.

Students Condition

students undertaking unsupervised work in a competency they are not currently training in.

Stage Hypnoterapy & Past Life Regression

stage and/or entertainment hypnosis/hypnoterapy; or
past life regression unless the past life regression is unintentional.

Eyelash/Eyebrow Tinting/Perming with more than 5% bleach

the provision of eyelash/eyebrow tinting/perm where the Insured has used a product containing more than 5% bleach.

Body Piercing & Tattooing

any piercing equipment and jewellery which is not specifically designed and manufactured for the use on or in the earlobe; or
piercing of the face (including the tongue) or genitalia; or
tattooing which without limiting the foregoing includes cosmetic tattooing and micro pigmentation.

Sun Tanning Cancer

any form of skin cancer including but not limited to melanoma and any resulting injury, disease, disorder or condition of the body or mind caused by or aggravated by the use, operation or maintenance of any sun tanning device or sun tanning treatments or sessions.

Kinesiology

kinesiology oral testing.

Spinal manipulation

any manipulation or adjustment of the spine.

Liability arising out of Employment

bodily injury, mental injury (including but not limited to mental stress and mental anguish), harassment, invasion of privacy, disease or death of any employee of the Insured, or damage to or destruction of any property of any employee (including loss of use), arising out of or in the course of their employment or any dispute in connection with employment.

Loss of use

the loss of use of property which has not been physically damaged or destroyed resulting from:

- a. a delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or
- b. the failure of products or work performed by or on behalf of the Insured to meet the level of performance, quality, fitness or durability warranted or represented by the Insured, unless such failure consists of loss of or damage to or breakage or disintegration of products or work performed by the Insured or on the Insured's behalf after such products or work have been put to use by any person or organisation other than the Insured.

Laser / Intense Pulse Light Condition

any type of Laser Treatment, Intense Pulse Light (IPL) treatment or Variable Pulse Light (VPL) treatment where

- a. there has been a reaction to a patch test;
- b. either the operator or the client have not worn protective glasses during the treatment;
- c. the products have not been applied only using a single use disposable spatula, which is used only once;
 - i. any part of the equipment that has been in contact with a human body or any bodily fluid and has not been cleaned after each individual treatment;
 - ii. the laser being used is over 500mW in strength or over classification 3b;
 - iii. the insured has failed to enquire and record if the client has any of the Conditions or undergone any of the Treatments listed below; or
 - iv. the client has confirmed that they do, or might have, one of the Conditions or undergone any of the Treatments listed below:

Conditions means epilepsy, porphyria, diabetes, psoriasis, dark moles (in the area to be treated), tattoos (in the area to be treated), pregnancy, micropigment, eczema, dermatitis, skin tumours, skin cancer, hypopigmentation, hypopigmentation tanned skin, active melanin present in the skin, is taking any medication resulting in photosensitivity.

Treatments means aromatherapy treatment which involved the use of essential oils, self tanning products within the last 10 days, laser treatment or chemical skin peeling in the area to be treated, or the use of a sunbed in the previous 4 weeks.

Blood conditions

Human Immunodeficiency Virus (HIV) or Lymphadenopathy Associated Virus (LAV) or the mutants derivatives or variations thereof in any way related to Acquired Immune Deficiency Syndrome (AIDS) or any Syndrome or condition of a similar kind.

Sterilised Instruments

in connection with any instrument having need to contact or penetrate skin tissue unless the instrument has been used once only or sterilised before re-use in accordance with respective State Health Regulations and/or Commonwealth Health Regulations as specified from time to time.

Work overseas

the Insured or any person employed by the Insured carrying out work not in Australia or New Zealand where the Insured or the person has been, or intended on being, outside of Australia or New Zealand for more than 3 months during the Period of Insurance.

Molestation

the molestation of, the interference with, the mental abuse of or the physical abuse of or by any persons.

However We will advance the Insured up to \$50,000 for reasonable legal costs and expenses for any claim made against the Insured alleging molestation, the interference with, the mental abuse of or the physical abuse of any persons during the Period of Insurance which arises in the course of the Business *provided that*.

- a. We may at any time refuse to advance to the Insured legal costs and expenses if in Our sole opinion We believe that the allegation will be proved; and
- b. if a court of law, arbitration panel, tribunal or other judicial body determines that the allegation is proved then the Insured agrees to repay to Us the amount so advanced.

Work involving Animals

- a. any person carrying out any treatment on animals where that person (or the Insured) is required to be registered under any relevant state, territory or federal legislation in respect of that treatment;
- b. canines involved in racing; or
- c. Bloodstock (as hereafter defined).

However paragraphs b. and c. above do not apply to Insureds that during the Period of Insurance are members of the International Equine Body Worker Association (IEBWA), Bowen Therapists Federation of Australia (BTFA), Small Animals and Equine Naturopathic (SAEN), Bowen Association Australia (BAA), the college operated by Smart Bowen Pty Ltd, International Institute Complementary Therapists (IICT) and the Australian College of Equine Podiotherapy (ACEP).

The term Bloodstock applies to any horse which is:

- entered or eligible for entry in any stud book; or
- registered with a recognised turf authority which is the authority for controlling horse or harness racing in the country concerned.

The maximum amount payable for any claim in connection with animals will not exceed a limit of indemnity of \$1,000,000 including legal costs and expenses.

To the extent that any parts of the above exclusions are found to be invalid or unenforceable, the remainder of each exclusion and all other exclusions shall remain in full force and effect.

Fitness trainers

- dietrics, martial arts, contact boxing, wrestling, self-defence, gymnastics, ocean swimming, life guarding or swimming teaching/coaching, participation in sporting events or matches; or
- owners/operators of fitness facilities; or
- purchasing, selling or hiring fitness equipment and/or machinery.

Retreats and conferences

the insured conducting, operating or being responsible for a retreat or conference. Without limiting the foregoing a retreat includes having people staying overnight at the insured's own home in connection with the insured's business. However this does not exclude the insured providing services to a retreat/conference organiser or taking a class at a retreat/conference that falls within the insured's modality.

Marketstalls

the insured conducting a market stall unless directly in connection with the modality the insured has disclosed and We have agreed to cover.

the insured selling any of the following products at a marketstall:

- Second hand mechanical & electrical goods and toys;
- Goods that could be described as hazardous, flammable or dangerous;
- Prescription medicines;
- Products that have been dispensed, or have been repackaged into smaller containers for retail sales except for natural products that are not altered in anyway during the repacking process;
- Products sold in containers exceeding 5 litres or 5kg;
- Explosive tools, fireworks, extremely flammable liquid or bulk pool chemicals;
- Products intended to be used in connection with the navigation, safety or controls of vehicles, aircraft or watercraft;
- Parts for motor vehicles;
- Medical equipment;
- Guns &/or ammunition;
- Bicycles;
- Model aircraft;

- Knives, swords or spears;
- Power tools;
- Motorised vehicles;
- Animal feeds;
- Baby or infant equipment or toys;
- any product that does not comply with Australian Standards.

The remainder of this page is intentionally left blank

Policy Definitions (*applicable to Sections 1, 2, 3, 4 and 5*)

Insured shall mean the person(s) or corporate body(ies) named as such in the Schedule and their employees whilst conducting the Business.

Insured Property shall mean the property listed in the Schedule unless the replacement value is under \$1,000. However if the total replacement value for any same or similar items which when the total aggregated value of such items is more than \$1,000 then such items must be specified in the Schedule.

Business shall mean the Insured's business as described in the Schedule and shall include the ownership repair maintenance and decoration of the Insured's premises.

Bodily Injury shall mean

- a. death illness or disease
 - b. physical or mental injury mental anguish or shock
- but not defamation libel slander deceit or injurious falsehood discrimination harassment or advertising injury.

Damage shall mean loss of or damage to

Property shall mean material and/or tangible property.

Pollution or Contamination shall mean

1. the discharge dispersal release or escape of smoke vapours soot fumes acids alkalis toxic chemicals liquids or gases waste materials or other irritants contaminants or pollutants into or upon buildings or structures or of water or land or the atmosphere and
2. all Damage to Property or Bodily Injury directly or indirectly caused by or arising from such pollution or contamination as described in the above paragraph.

Product Supplied shall mean any product or item (including containers packaging or labelling) sold supplied erected repaired altered treated installed processed manufactured tested serviced hired out stored transported or delivered by or through the Insured in the course of the Business in or from the Territorial Limits

Excess shall mean the amount stated in the Schedule (or if a different amount is specified in a particular section of coverage in the policy then that amount) and is payable by the Insured or any other person entitled to indemnity arising out of any one occurrence or series of occurrences arising out of any one original source or cause before We shall be liable to make any payment

Contractual Liability shall mean liability which attaches by virtue of a contract or agreement including and without limiting the foregoing any guarantees given by the Insured

Compensation shall mean all sums which the Insured shall be legally liable to pay as compensation other than fines or penalties punitive exemplary or aggravated damages or any additional damages resulting from the multiplication of compensatory damages

Period of Insurance shall mean the period specified in the Schedule and/or such other period(s) as may be agreed by Us

Limit of Indemnity shall mean the limit in relation to each section as specified in the Schedule or in the wording

Act of Terrorism means the actual or threatened

- a. use of force or violence against persons or Property
- b. commission of an act dangerous to human life or Property or
- c. commission of an act that interferes with or disrupts an electronic or communication system
- d. undertaken by any person or group whether or not acting on behalf of or in connection with any organisation government power authority or military force when any of the following applies
- e. the reasonably apparent intent or effect is to intimidate or coerce a government or business or to disrupt any segment of the economy
- f. the reasonably apparent intent or effect is to cause alarm fright fear of danger or apprehension of public safety in one or more distinct segments of the general public or to intimidate or coerce one or more such segments or
- g. the reasonably apparent intent or effect is to further political ideological religious or cultural objectives or to express support for (or opposition to) a philosophy ideology religion or culture

Territorial Limits shall mean anywhere in the world except the United States of America, Canada or their dominions or protectorates.

We, Us, Our shall mean Berkley Insurance Company (trading as Berkley Insurance Australia) ABN 53 126 559 706.

Contact Us

Arthur J. Gallagher

Specialty Risks Team

1800 222 012

specialtyrisks@ajg.com.au

ajg.com.au