



Excess Liability Policy



**Making a real difference to the way insurance is provided
to the Not for Profit sector**

Community Underwriting - Our Story

Community Underwriting operates under a unique business model in the Australian insurance market.

Our story begins over 40 years ago when the NSW Meals on Wheels Association (now Meals on Wheels NSW Ltd) assisted a few member services that were having difficulty obtaining insurances at a reasonable cost.

That grew over the next thirty years into a comprehensive insurance facility assisting over 800 Not for Profits around Australia. In 2014 we created a change in the way that the facility provided insurance to Not for Profit organisations.

Today we are an underwriting agency majority owned by our larger Not for Profit clients, returning our surplus funds back into the sector.

Our 40 year heritage and being uniquely owned by the sector gives us a level of knowledge and empathy that is difficult to match in a corporate insurance organisation.

Our business model is tangible proof of this difference. Each year seventy percent of our surplus is returned to our Not for Profit shareholders as donations.

A further five percent of our surplus is set aside each year to fund a small grants program for our non shareholder clients. Our insurer partners now add to this grants pool to enable us to expand even further the number of clients that we are able to assist.

Join us in making a real difference to the way insurance is provided in our sector.

Contents

Important Information	3
1. Insuring Clauses	5
2. Definitions	6
3. Exclusions	7
4. General Conditions	9
5. Additional Information	11

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Insuring Not for Profits - It's All We Do

Community Underwriting Agency Pty Ltd
ABN 60 166 234 715
AFS License No 448274

Important Information

About Community Underwriting

Community Underwriting Agency Pty Ltd (Community Underwriting) acts under a binding authority as Agent for Berkshire Hathaway Specialty Insurance Company (BHSI) to issue, vary and cancel policies on BHSI's behalf. In all aspects of this Policy, Community Underwriting acts as an agent for the Insurer and not for the Insured.

About The Insurer

Berkshire Hathaway Specialty Insurance Company (ABN 84 600 643 034) is a division of the Berkshire Hathaway group of insurance companies.

About This Policy

This Policy is an important document. It is a legal contract between you and Us. The Policy wording, the Schedule and any Endorsements together set out the cover provided, the amount insured and the terms and conditions of Your insurance.

Please read it carefully to understand what We cover, what We exclude, what We pay to settle your claims and other important information.

In issuing this policy We have relied upon information provided by you and /or your broker. If this information is incorrect or you fail to observe the terms and conditions of this Policy, cover may be denied, reduced or cancelled.

The Duty of Disclosure

Your duty of disclosure

Before you enter into an insurance contract, you have a duty of disclosure under the *Insurance Contracts Act 1984*.

If We ask you questions that are relevant to Our decision to insure You and on what terms, You must tell us anything that You know and that a reasonable person in the circumstances would include in answering the questions.

You have this duty until We agree to insure You.

If You do not tell Us something

If You do not tell us anything You are required to tell Us , 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 in accordance with Our rights at law, including under the Insurance Contracts Act 1984 (Cth).

Renewal of Eligible Contracts of Insurance

Your duty of disclosure

Before you enter into an insurance contract, you have a duty of disclosure under the *Insurance Contracts Act 1984*.

If We ask you questions that are relevant to Our decision to insure You and on what terms, You must tell us anything that You know and that a reasonable person in the circumstances would include in answering the questions.

Also, We may give You a copy of anything that You have previously told Us and ask You to tell us if it has changed. If We do this, You must tell us about any change or tell Us that there is no change.

You have this duty until We agree to renew the contract.

If You do not tell Us something

If You do not tell us anything You are required to tell Us , 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 in accordance with Our rights at law, including under the Insurance Contracts Act 1984 (Cth).

Privacy

Community Underwriting and BHSI seek at all times to comply with the Privacy Act 1988 and the Australian Privacy Principles therein. If We disclose personal information to you for any reason you must also act in accordance with and comply with the terms of the Privacy Act and the Australian Privacy Principles.

Purpose for collection of information:

The information contained in this document and any other documents provided to Us will be dealt with in accordance with our respective Privacy Policies.

Disclosure of Information that you provide to Us:

Community Underwriting and BHSI will only use the information in accordance with the terms of the Privacy Policies. Without limiting the application of the Policy Community Underwriting and BHSI may disclose personal information to other individuals or organisations in connection with your claim, including legal advisors, other parties, other lawyers, experts and witnesses, courts and tribunals and other organisations that need to be involved in the matter. By submitting your notification and continuing to deal with Us you consent to Community Underwriting and BHSI and these parties collecting, using and disclosing personal and sensitive information about

you for these purposes. By signing the claim form you are consenting to the above.

You warrant to Us that where you provide Us with personal information that you have collected from other individuals:

- that the information has been collected in accordance with the Privacy Act 1988.
- that We are authorised to receive that information from you and to use it for the purpose of providing legal claims management services and advice.
- you, and the person who provided you with the information, are aware and have complied with the Privacy Act 1988 and have notified the person about whom the personal information is collected of the collection use and disclosure of such information.

By executing the claim form you are indemnifying Community Underwriting and BHSI against any breach that arises directly or indirectly out of any act or omission of your part which does not accord with the conduct required under the Privacy Act 1988.

Direct Marketing:

We do not disclose personal information that We collect to a third party for the purpose of allowing them to direct market their products and services unless you have given Us Your permission for Us to do this.

Cross Border:

We will share your personal information with the Community Underwriting and BHSI. Our data containing your information is stored in our data centre using dedicated hardware and network. We may also use Saas, Cloud computing or other technologies from time to time and your information may be stored outside Australia. We will not transfer personal information to a recipient in a foreign country unless We have appropriate protections in place as required by the relevant privacy laws. Your information will be stored on Our data base for such period of time as required by law.

Further information

If you would like further information, please review our full Privacy Policy on Our website or if you have any complaints or concerns over the protection of the information you have given to Us or that We have collected from others, contact:

Berkshire Hathaway Specialty Insurance
GPO Box 650
Sydney NSW 2001

Tel: 1300 021 145

Email: complaints.australia@bhspecialty.com

Complaints

Any enquiry or complaint relating to this insurance should in the first instance be referred to:

Complaints Manager, Community Underwriting Agency Pty Ltd P.O. Box 173, Balmain NSW 2041

If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should contact:

Berkshire Hathaway Specialty Insurance
GPO Box 650
Sydney NSW 2001

Tel: 1300 021 145

Email: complaints.australia@bhspecialty.com

1. Insuring Clauses

Subject to the terms of this Policy or as otherwise endorsed to this Policy, We will indemnify the Insured in accordance with the applicable terms, conditions, exclusions and endorsements of the Underlying Insurance, for:

1.1 Coverage

Those sums which the Insured shall become legally liable to pay as Compensation in excess of the Underlying Insurance, subject to:

- i. Coverage for indemnity having been provided by the insurer of the Underlying Insurance; and
- ii. The limit(s) of the Underlying Insurance having been fully exhausted.

This Policy shall not provide broader coverage than would be provided by the Underlying Insurance except as otherwise expressly stated and agreed to in this Policy.

1.2 Limits of Indemnity

Our liability to pay Compensation shall not exceed the sum stated in the Schedule in respect of any one claim or series of claims arising from one occurrence.

Our total aggregate liability for any one Period of Insurance for all claims in respect of or in any way connected with the Insured's products shall not exceed the Limit of Indemnity stated in the Schedule.

Our liability under this Policy does not increase if there is more than one Insured or if the Underlying Insurance comprises more than one insurance policy.

1.3 Step-Down Provision

In the event the aggregate limit(s) of liability of the Underlying Insurance is reduced or exhausted solely as a result of injury, loss or damage occurring during the Period of Insurance, We will continue to indemnify the Insured for the remainder of the Period of Insurance in excess of the reduced or exhausted limit(s) subject to the terms and conditions of this Policy, and Our Limit of Indemnity, but not for broader coverage than that provided by the reduced or exhausted Underlying Insurance.

This Policy does not indemnify the Insured in respect of liability which is subject to any Sub-Limit in any Underlying Insurance specified in the Schedule.

1.4 Defence Costs

In addition to the Limit of Indemnity, We will pay all reasonable and necessary legal costs and/or expenses incurred with Our prior written consent (which shall not be unreasonably withheld) in connection with the defence of any claim for which the Insured is indemnified by this Policy.

Any costs incurred without Our prior written consent shall be payable only if and to the extent We are not prejudiced by the Insured's failure to seek prior consent, unless those costs were incurred on an emergency basis in which the Insured had no opportunity to first seek such consent.

Provided that We shall not be liable for legal costs and expenses:

- a. Where indemnity is not provided by this Policy;
- b. Which are covered by any Underlying Insurance;
- c. In an amount greater than that which is limited to the proportion that Our liability to indemnify the Insured under this Policy bears to the total amount payable.

Provided further that the legal costs and/or expenses incurred in connection with claims made and/or actions instituted within the United States of America or Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries, shall form part of the Limit of Indemnity and will not be payable by Us in addition to the Limit of Indemnity.

2. Definitions

The following definitions shall apply to all sections of this Policy.

“Asbestos” means:

- a. That group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite; or
- b. That group of man-made mineral fibres that comprises mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres,

and includes any product containing Asbestos.

“Compensation” means Monies paid or payable as a result of any judgment or settlement together with any liability on the Insured’s part to pay legal costs and expenses (other than any Defence Costs).

“Defence Costs” means the costs and expenses as stated in Clause 1.4 of this Policy.

“Insured” wherever used in this Policy means The Insured named in the Schedule.

“Insured’s Business” is the business shown in the Schedule.

“Limit of Liability” means The amount stated in the Schedule and pursuant to Clause 1.2 of the Policy.

“Period of Insurance” means the period shown in the Schedule.

“Sexual Abuse” means any assault, abuse or conduct of a sexual nature, any type of molestation, indecent exposure, sexual harassment or intimidation, whether such act is the subject of criminal investigation or not.

“Silica” means any one or a combination of a release, emission, discharge of silicon dioxide, whether occurring in crystalline, amorphous and impure forms, silica particles, silica powder including nano silica powder, silica dust, silica fibres or silica compounds.

“Terrorism” means an act or acts including but not limited to the use of force or violence and/or the threat thereof of any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear.

“Underlying Insurance” means all insurance policies

listed in the Schedule as Underlying Insurance, plus any other policy added by endorsement to this Policy as Underlying Insurance.

3. Exclusions

This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

3.1 Asbestos

any Asbestos.

3.2 Electronic Data

Any actual or alleged:

- 3.2.1 Unauthorised or improper access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information in the form of Electronic Data, including, but not limited to, any patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, or any other type of non-public information;
- 3.2.2 Violation of any statute, regulation, common law, or any other law regulating or protecting access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information in the form of Electronic Data.

For the purposes of this Exclusion, Electronic Data includes, but is not limited to, information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

This Exclusion applies to, among other things, damages or amounts associated with any notification costs, credit monitoring expenses, forensic expenses, public relations expenses, or any other loss, cost or expense, whether incurred by the Insured or others, arising out of any access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information that is subject to this Exclusion.

- a. Direct Personal Injury, which, for purposes of this Exclusion only, means: bodily injury, death, sickness, disease, disability, shock, fright, mental anguish or mental injury; or
- b. Direct Property Damage, which, for the purposes of this Exclusion only, means: physical damage to tangible property, including all resulting loss of use of that

property. All such loss of use shall be deemed to occur at the time of the physical damage that caused it.

For the purposes of this Exclusion, tangible property does not include any information, facts, programs, instructions, commands, Electronic Data, and anything else stored as or on, created or used on, or transmitted to or from computers or their software, including, but not limited to, systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices, networks, clouds, or other media used with electronically controlled equipment.

3.3 Liquidated or Punitive Damages

Fines, penalties, punitive damages, exemplary damages, multiplication of compensatory damages, liquidated damages and/or aggravated damages.

3.4 Nuclear Fuel

- 3.4.1 Ionising radiations or contamination from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self-sustaining process of nuclear fission or fusion; or
- 3.4.2 The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

However, this Exclusion shall not apply to liability arising from radioisotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical, scientific or research pursuits, coverage under this Exclusion shall only be provided to the extent provided by any Underlying Insurance.

3.5 Sanctions

Any coverage of whatsoever nature provided under this Policy that is in violation of any applicable trade or economic sanctions, law or regulation including but not limited to sanctions administered and enforced by the United Nations, the United States Treasury Department's Office of Foreign Assets Control (OFAC), or under laws or regulations of the European Union, United Kingdom, New Zealand or Australia, then coverage for such matters does not apply.

3.6 Silica

Any form of silicosis or any other injury or disease of the human body caused by, arising out of, resulting from, or in any way related to the manufacture, mining, use, sale, removal or distribution by any person or organization of Silica, Silica products, Silica powder, including, nano powder, Silica fibres or Silica dust or the exposure to Silica, Silica products, Silica powder, including, nano powder, Silica fibres or Silica dust or any lung injury, disease or ailment arising out of, caused by, aggravated by, or in any way related to inhalation, consumption or absorption of Silica, Silica products, materials or products containing Silica, Silica powder, including, nano powder, Silica fibres or Silica dust.

3.7 Terrorism

Terrorism, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This Exclusion also excludes any liability of whatsoever nature directly or indirectly caused by or resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to Terrorism.

If We allege that by reason of this Exclusion any liability is not covered by this Policy, the burden of proving the contrary shall be upon the Insured.

In the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

3.8 War

Any liability of whatsoever nature directly or indirectly caused by or resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to war and military action, which include without limitation the following:

- 3.8.1 War, including undeclared or civil war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;
- 3.8.2 Warlike action by military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or.

- 3.8.3 Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

3.9 Sexual Abuse

Any form of Sexual Abuse or allegation of Sexual Abuse.

4. General Conditions

4.1 Claims Notification

The Insured shall give written notice to Us of any claim under this Policy as soon as practicable, using the contact details in the Schedule, and shall give all such additional information as We may require in order to consider the claim. This includes but is not limited to any occurrence where the amount of the claim or potential claim is likely to exceed twenty-five percent (25%) of the Limit of Indemnity applicable to any Underlying Insurance listed in the Schedule.

4.2 Titles, Headings, Plurals and Legislation

This Policy and any endorsements attached to this Policy shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear. The descriptions in the headings and titles of this Policy are solely for reference and convenience and do not lend any meaning to this contract. References in the singular shall be deemed to include the plural and vice versa. All references in this Policy to specific legislation include all amendments, replacements or re-enactments of such legislation, and any subordinate or delegated legislation issued thereunder.

4.3 Discharge of Liability

We may at any time discharge Our total liability to the Insured in respect of any one claim or series of claims arising from one occurrence by paying to or on behalf of the Insured:

- 4.3.1 The total amount in respect of such claim to which the Insured is entitled to indemnity under this Policy;
- 4.3.2 The total amount sought by the claimant for such claim; or
- 4.3.3 The total amount for which such claim can be settled,

and in addition to such payment We will pay Defence Costs incurred up to the date of payment as provided for by Clause 1.4 of this Policy.

Upon such payment, We shall relinquish conduct or control of such claim and be under no further liability under this Policy in respect of such claim or series of claims, including but not limited to Defence Costs.

4.4 Jurisdiction

This Policy shall be interpreted in accordance with the

laws of the Australian State or Territory in which the Policy is entered and all claims for indemnity under this Policy shall be decided in accordance with those laws.

In the event of any dispute arising under this Policy including, but not limited to, its construction and/or validity and/or performance and/or interpretation, the Insured will submit to the exclusive jurisdiction of any competent Court in the Commonwealth of Australia.

4.5 Reasonable Care

The Insured must:

- 4.5.1 Exercise reasonable care and take pro-active steps to:
 - a. Ensure that only competent workers and employees are employed that have the required education, certification, experience, and appropriate level of training (including on the job training) to enable them to perform the work they are asked to perform competently and safely; and
 - b. Maintain all premises, fittings and plant in sound condition including, but not limited to, establishing and following systems of regularly checking and professionally assessing the adequacy and safety of premises, fittings and plant or having them checked by a suitable professional;
- 4.5.2 Take all reasonable precautions to:
 - a. Prevent injury and damage;
 - b. Prevent the manufacture, sale or supply of defective products; and;
 - c. Comply and ensure that its workers, servants and agents comply with all statutory obligations, by laws or regulations imposed by any public authority for the safety of persons or property;
- 4.5.3 At its own expense, take pro-active steps to trace, recall or modify any products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect; and;
- 4.5.4 At its own expense, assist and co-operate fully and promptly with Us in the investigation, settlement or defence of any claim or matters relating or in connection thereto.

The amount of any benefit under this Policy for any

liability caused or contributed to by the lack of such precautions, measures and compliances shall be reduced by the amount that fairly represents the extent to which Our interests have been prejudiced thereby.

4.6 Cancellation

The Insured may cancel this Policy at any time by giving notice in writing to Us.

We may cancel this Policy at any time where:

- 4.6.1 We are entitled to do so pursuant to the Insurance Contracts Act 1984 (Cth);
- 4.6.2 The Insured has failed to notify Us of any specific act or omission where such notification is required under the terms or conditions of this Policy; or.
- 4.6.3 The Insured has acted in contravention of or failed to act in compliance with any term of this Policy which empowers Us to refuse to pay a claim in the event of such contravention or omission.

Any notice of cancellation given by Us shall take effect either at the time when another contract of insurance between the Insured and Us or some other insurer (being a contract that is intended by the Insured to replace this Policy) is entered into or at 4:00pm on the third business day after the date on which notice was given to the Insured by Us, whichever is the earlier.

Upon cancellation by the Insured during the Period of Insurance a pro-rata refund will be paid of up to eighty percent (80%) of the net premium for the unexpired Period of Insurance. Upon cancellation by Us, a pro-rata refund of premium will be allowed for the unexpired Period of Insurance.

4.7 Maintenance of Underlying Insurance

The Underlying Insurance specified in the Schedule must be maintained in force as valid collectible insurance during the currency of this Policy, except for any reduction of the aggregate limits contained therein solely by reason of payment of claims.

Failure to comply with the foregoing or bankruptcy or insolvency of any of the Underlying Insurance will not invalidate this Policy but in the event of such circumstances, We will be liable only to the extent that it would have been liable had such circumstances not existed during the Period of Insurance.

The Insured must give Us written notice as soon as practicable of any change in the scope of coverage or in the amount of limits of indemnity in the Underlying Insurance, and of the termination of any coverage or exhaustion or likely exhaustion of aggregate limits of indemnity of any Underlying Insurance.

5. Additional Information

Dispute Resolution

We are committed to providing Our clients with a high level of service, empathy with the sector and a reasonable response to all matters.

If you think that We have let you down in any way, or Our service is not what you expect, tell Us so that We can help.

We are committed to responding to Your complaint fairly. If you have a complaint:

Step 1: On the spot, if We can!

You can contact Us by phone on 02 8045 2580 or by email at enquiries@communityunderwriting.com.au

If We can't resolve your complaint immediately, We will commit to responding to your complaint within 15 business days of first being notified of the complaint.

- If We need more information or more time to respond properly to your complaint We will contact you to agree an appropriate timeframe to respond.

Step 2: Internal Dispute Resolution

- If you are not happy with Our response, please tell Us in writing. You may escalate it as a dispute and Our Internal Dispute Resolution panel (the panel) will review the matter. The panel will be independent of the person who initially considered your complaint.
- The Disputes Resolution Officer will acknowledge your dispute in writing within 2 business days of receipt and will investigate all details of your dispute and will provide you with a written response of the outcome within 15 business days of first being notified of your dispute.
- In some cases We may be unable to reach a conclusion within this timeframe, and may request a later response date. If this occurs, We will keep you informed of progress of the dispute no less than once every 10 days.

Step 3: External Dispute Resolution scheme

Should We be unable to resolve your complaint (including the IDR process referred to above) within 45 days or you are not happy with Our response/handling of your complaint at any given time, you can seek an external review via Our external dispute resolution scheme, administered by the Australian Financial Complaints Authority (AFCA).

This is an independent national body and its services are free to you. As a member We agree to accept the AFCA's decision.

You can contact the AFCA by:

Mail: Australian Financial Complaints Authority Ltd,
GPO Box 3, Melbourne, Victoria 3001;
Phone: 1800 931 678;
Facsimile: (03) 9613 6399
info@afca.org.au
Website: www.afca.org.au

Goods and Services Tax (GST)

This insurance Policy has provision for the payment of Goods and Services Tax:

- by You in relation to premiums charged by Us;
- by Us in relation to claims.

You must advise Us of your correct Australian Business Number & taxable percentage. Any GST liability arising from Your incorrect advice is payable by You.

Retaining Policy Documents

Incidents which may be claimable under this Policy can take many years before they become known to your organisation.

To enable you to prepare the best defence against an incident that may have arisen some years in the past it is important that you have a document retention and security policy which addresses the effective retention of:

- Your Policy and any endorsements;
- operational and risk management procedures;
- employment records and contracts;
- any published client or other promotional material.