

Recreational Aviation Australia Limited. Members Liability Insurance Policy



Important Notices – PLEASE READ CAREFULLY

Dispute Resolution Process – helping you solve problems

We have a free internal complaints resolution process that can be accessed by contacting us using the details on the front cover. If this process doesn't resolve the complaint we will give you information about how to access available external dispute resolution schemes.

Your Duty of Disclosure

Before you enter into an Insurance contract with us, the Insurance Contracts Act 1984 requires you to provide us with the information we need to enable us to decide whether and on what terms your proposal for insurance is acceptable and to calculate how much premium is required for your insurance.

The Act imposes a different duty the first time you enter into the policy with us to that which applies when you vary, extend, reinstate or replace your policy. We set these two duties out below:

Your duty of disclosure when you enter into this policy with us for the first time

You will be asked various questions when you first apply for this policy. When you answer these questions you must: give us honest and complete answers

tell us everything you know, and

tell us everything that a reasonable person in the circumstances could be expected to tell us

Your duty of disclosure when you renew, vary, extend, reinstate or replace your policy

When you renew, vary, extend, reinstate or replace your policy your duty is to tell us before renewal, variation, extension, reinstatement or replacement is made, every matter known to you which: you know, or

a reasonable person in the circumstances could be expected to know, is relevant to our decision whether to insure you and whether any special conditions need to apply to your policy

What you do not need to tell us for either duty

You do not need to tell us about any matter that diminishes our risk,

that is of common knowledge,

that we know or should know as an insurer, or

that we tell you we do not need to know

Who do the above two duties apply to?

Everyone who is insured under the policy must comply with the relevant duty.

What happens if you or they do not comply with either duty?

If you or they do not comply with the relevant duty, we may cancel the policy or reduce the amount we pay if you make a claim. If fraud is involved, we may treat the policy as if it never existed and pay nothing.

Privacy

We collect your personal information directly from you where reasonably practicable or if not, from other sources. We collect it to provide our various services and products (e.g. to market, arrange and administer insurance and to handle and settle claims) and to conduct market research or customer research. We also use it to develop and identify services of our related companies and alliance partners that may interest you (but you can opt out of this by calling "The Insurers" phone numbers listed on the front page, Monday to Friday or indicate your decision in the appropriate area of the Privacy section of our websites. If you do not provide the information we require we may not be able to provide you with this service.

We disclose information to third parties who assist us in the above. (e.g. insurers, insurance intermediaries, insurance reference bureaus, related companies, our advisers, persons involved in claims, external claims data collectors and verifiers, your agents and other persons where required by law). We prohibit them from using it for purposes other than those we supplied it for.

Where you provide us with information about another person for the above purposes, you must tell us if you haven't got their consent to this. If you wish to gain access to your personal information (including to correct or update it), have a complaint about a breach of your privacy or you have any query on how your personal information is collected or used, or any other query relating to Privacy, contact us using the details on the front cover 8am-6pm, Monday to Friday.

General Insurance Code of Practice

The General Insurance Code of Practice was developed by the Insurance Council of Australia to further raise standards of practice and service across the Insurance industry.

We keenly support the standards set out in the Code. You can obtain more information on the Code of Practice and how it assists you by contacting us.

Section 1 – The Cover

1. We will indemnify you for all sums which you shall become legally liable to pay, and shall pay, as compensatory damages (including costs and interest awarded against you) up to but not exceeding the amount specified in the Schedule in respect of accidental bodily injury and accidental loss of or damage to the property of others, caused by an Accident occurring during the period of insurance stated on the Schedule and arising out of a Recreational Aviation Australia Limited. activity.

The cover includes:

- 1.1 The legal liability of the Member whilst flying or otherwise operating the Aircraft;
- 1.2 The legal liability of the Insured to another Member of Recreational Aviation Australia Limited.;
- 1.3 Legal Liability to the land owners of the property or land being used by the Insured in the course of the Insured's business;
- 1.4 Legal Liability as the Organisers of events being held under the auspices of the Insured but excluding Liability as the Organiser of an Air Show or Air Display unless specifically agreed by Underwriters;
- 1.5 The legal liability of the Member arising out of storage of the Aircraft and / or whilst the Aircraft is parked

and the Insurer waives any rights of recourse against such parties under 1.3 & 1.4 above.

Section 2 – Limit of Liability

2. Our liability under this Policy will not exceed the amounts less any deductible stated in the Schedule. We will defray in addition any legal costs and expenses incurred with our written consent in defending any action which may be brought against you in respect of any claim for damages covered by these Sections, but should the amount paid or awarded in settlement of such claims exceed the limit of indemnity, then our liability in respect of such legal costs and expenses shall be limited to such proportion of the legal costs and expenses as the limit of indemnity bears to the amount paid for damages.

Section 3 – Exclusions

3. This insurance does not apply to:

- 3.1 Any part of a claim in connection with the entitlement of a worker or employee to compensation in respect of loss of income or earnings by reason of any worker's health and safety or similar legislation, other than a subrogation claim brought by an Insurer to recover sums paid pursuant to such legislation which is not otherwise excluded.
- 3.2 Liability in respect of Property Damage to property owned, occupied by, or in the care, custody or control of the Insured.
- 3.3 Liability arising directly or indirectly out of the use of trailers.
- 3.4 Bodily Injury or Property Damage arising out of any goods or products manufactured, constructed, altered, repaired, serviced, treated, sold, supplied or distributed by the Insured or its employees after such goods or products have ceased to be in the possession of or under the control of the Insured or its employees, but this exclusion shall be deemed not to apply to the supply, by the Insured, of food or drink at the premises of a Recreational Aviation Australia Limited. Club.

- 3.5 Liability brought about or contributed to by any dishonest, criminal or malicious act or omission of the Insured.
- 3.6 Any claim for the cost of making good any faulty workmanship for which the Insured may be liable.
- 3.7 Any claim arising out of the financial default or insolvency of any party.
- 3.8 Claims directly or indirectly occasioned by, happening through or in consequence of:
 - 3.8.1 Noise (whether audible to the human ear or not);
 - 3.8.2 Vibration, sonic boom and any phenomena associated therewith;
 - 3.8.3 Pollution and contamination of any kind whatsoever;
 - 3.8.4 Electrical and electromagnetic interference;
 - 3.8.5 Interference with the use of property;

unless caused by or resulting in a crash, fire, explosion or collision or a recorded in-flight emergency causing abnormal Aircraft operation.

With respect to any provision in the policy concerning any duty of the Insurer to investigate or defend claims, such provision shall not apply and the Insurer shall not be required to defend claims excluded by paragraph 3.8.1 to 3.8.5 above or a claim or claims covered by the Policy when combined with any claims excluded by paragraphs 3.8.1 to 3.8.5 (referred to below as "combined claims").

In respect of any combined claims, the Insurer shall (subject to proof of loss and the limits of the Policy) reimburse the Insured for that portion of the following items which may be allocated to the claims covered in the Policy:

- a) Damages awarded against the Insured; and
- b) Defence fees and expenses incurred by the Insured.

Nothing herein shall override any radioactive contamination or any other exclusion clause attaching to or forming part of this insurance.

- 3.9 Claims caused by:
 - 3.9.1 War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection,
 - 3.9.2 Martial law, military law, military or usurped power or attempts at usurpation of power;
 - 3.9.3 Any hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
 - 3.9.4 Strikes, riots and civil commotions or labour disturbances;
 - 3.9.5 Any act of one or more persons, whether or not agents of a sovereign power, for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional;
 - 3.9.6 Any malicious act or act of sabotage;

- 3.9.7 Confiscation, nationalisation, seizure, restraint, detention, appropriation, requisition for title or use by or under the order of any government (whether civil, military or defacto) or public or local authority;
- 3.9.8 Hijacking or any unlawful seizure or wrongful exercise of control of the Aircraft or crew in-flight (including any attempt at such seizure or control) made by any person or persons on board the Aircraft acting without the consent of the Insured member.

Furthermore, this policy does not cover claims arising whilst the Aircraft is outside the control of the Insured by reason of any of the perils in 3.9.1 to 3.9.7 above. The Aircraft shall be deemed to have been restored to the control of the Insured on the safe return of the Aircraft to the Insured at an airfield not excluded by the geographical limits of the policy, and entirely suitable for the operation of the Aircraft (such safe return shall require that the Aircraft be parked within engines shut down and under no duress).

- 3.10 Liability assumed or rights waived by the Insured under any agreement except to the extent that such liability would have attached to the Insured in the absence of such agreement.
- 3.11 Property Damage or any loss or expense whatsoever resulting or arising therefrom or any consequential loss or any legal liability of whatsoever nature directly or indirectly caused by or contributed to arising from:
 - 3.11.1 The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
 - 3.11.2 Ionizing radiations or contamination by radioactivity from, or the toxic explosive or other hazardous properties of any other radioactive source whatsoever.
- 3.12 Liability or claims directly or arising out of any Aircraft:
 - 3.12.1 In-flight while the certification required by Recreational Aviation Australia Limited. in respect of the Aircraft is cancelled or suspended or invalidated, except in respect of test flying carried out for the purpose of obtaining the registration certificate or renewal or reinstatement of it.
 - 3.12.2 In-flight while carrying a number of persons or load in excess of any limitation with respect thereto prescribed by the Aircraft manufacturers specifications or any appropriate international or government regulations or civil instruction for aviation applicable to the Aircraft.
 - 3.12.3 Being used for any purpose or being piloted by any person not authorised and/or approved by Recreational Aviation Australia Limited. or whilst the Aircraft is outside the geographical limits stated in the policy schedule unless due to force majeure.
 - 3.12.4 Being used for aerobatic flying.
 - 3.12.5 Being used for charter or any other commercial activity not permitted by Recreational Aviation Australia Limited.
 - 3.12.6 Being used at heights below 500 feet above ground level except for the purpose of authorised take-off or landing or manoeuvres due to emergency circumstance or use in a designated low flying area or the use of an Aircraft below 500ft for training or the use of an Aircraft below 500ft with permission of the landowner.

- 3.13 Bodily Injury or Property Damage arising out of the organisation, presentation or management of any Air Race or any stand used for the accommodation of spectators in connection with any Air Meet, Air Race or Air Show.
- 3.14 Liability directly or indirectly arising out of the ownership, management or control by the Insured, of a landing area for Aircraft. The term "landing area" shall include any area from which Aircraft land, take-off or are operated.
- 3.15 Claims for punitive, aggravated or exemplary damages or for any fines or penalties.
- 3.16 Claims which are payable under any other policy or policies of insurance except in respect of any excess beyond the amount which would have been payable under such other policy or policies had this Policy not been effected.
- 3.17 Bodily Injury or Property Damage arising out of construction of, demolition of or alterations to buildings, runways, or installations by the Insured or their contractors or sub-contractors (other than normal maintenance operations) unless previously agreed by the Insurer.
- 3.18 Whilst the Aircraft is In-Flight or Taxiing following any Major Modifications of an Insured Aircraft unless approved by Recreational Aviation Australia Inc and/or the Aircraft Manufacturer.
- 3.19 Bodily Injury or Property Damage arising out of the ownership or operation of any form of rotorwing Aircraft, gyrocopter or gyroplane.

Section 4 – Conditions

- 4.1.1 It is understood and agreed that the landing and taking off of the Insured Aircraft by day on landing grounds other than a Recognised Airfield is covered under the Policy.
- Provided always that
- (a) the Insured and/or the pilot conducting the flight has obtained the permission of the owner or tenant of the land;
 - (b) the Insured and/or pilot conducting the flight has ascertained the suitability of the landing ground and has enquired from the landowner/tenant or from their authorised representative the condition of the landing ground at the expected time of arrival;
 - (c) the pilot conducting the flight has surveyed the landing ground by flypast or overflight immediately prior to landing.
- In the event of a claim being made under this Policy in respect of an Accident occurring during the use of any such landing ground the onus of proving that (a) (b) and (c) above had been complied with shall rest entirely on the Insured.
- The requirements listed above in (a), (b) and (c) of this paragraph do not apply in respect of a landing due to force majeure.
- 4.1.2 In the event of a claim being made in respect of an accident occurring during the use of any such landing ground the onus of proving its suitability as such and that it has been surveyed from the air as provided in 4.1.1 above will rest entirely on the Insured.
- 4.2 The Insured shall at all times use due diligence and do and concur in doing everything reasonably practicable to avoid accidents and to avoid or diminish any loss.
- 4.3 The Insured shall comply with the *Air Navigation Act 1920* (Cth. as amended), the *Civil Aviation Act 1988* (Cth, as amended) all regulations and orders made thereunder, all other statutory and regulatory requirements relating to Aircraft or flying, and all air navigation and air worthiness orders and requirements issued by any competent authority effecting the safe operation of the Aircraft including the regulations and procedures of Recreational Aviation Australia Limited. for the time being in force.

Immediate notice of any event likely to give rise to a claim under this policy shall be given as stated in the schedule. In all cases, the Insured shall:

- 4.3.1 Furnish full particulars in writing of such event and forward immediately notice of any claim with any letters or documents relating thereto;
- 4.3.2 Give notice of any impending prosecution relating to the event;
- 4.3.3 Render such further information and assistance as the Insurer may reasonably require;
- 4.3.4 Not act in any way to the detriment or prejudice of the interest of the Insurer.

The Insured shall not make any admission of liability, or payment, or offer or promise of payment without the written consent of the Insurer.

- 4.4 The Insurer shall be entitled (if it so elects) at any time and for so long as it desires, to take absolute control of all negotiations and proceedings and in the name of the Insured to settle, defend or pursue any claim.
- 4.5 The Insured shall co-operate with the Insurer and do all things necessary or required by the Insurer to mitigate any loss to which this policy may respond.
- 4.6 Upon an indemnity being given or a payment being made by the Insurer under this Policy, the Insurer shall be subrogated to the rights and remedies of the Insured who shall co-operate with and do all things necessary to assist the Insurer to exercise such rights and remedies.
- 4.7 This Policy may be cancelled by either the Insurer or Insured giving 10 days notice in writing of such cancellation. If cancelled by the Insurer it will return a pro rata portion of the premium in respect of the unexpired period of the policy. If cancelled by the Insured a return of premium shall be at the discretion of the Insurer. There will be no return of premium in the event that a claim is paid or is payable under this Policy.
- 4.8 This Policy shall not be assigned in whole or in part except with the consent of the Insurer verified by endorsement hereon.
- 4.9 This Policy should be construed in accordance with Australian law in any dispute or difference between the Insured and the Insurer shall be submitted to a court in Australia for determination.
- 4.10 When two or more persons are insured under this Policy the terms of this Policy apply separately to each.
- 4.11 Notwithstanding the inclusion in this Policy of more than one Insured, whether by endorsement or otherwise, the total liability of the Insurer in respect of any or all of the Insured's shall not exceed the limit(s) of indemnity stated in this Policy.
- 4.12 The premium charged for the Policy will include an amount on account of Goods and Services Tax (GST), where applicable. The Insured must inform the Insurer of the extent to which the Insured is entitled to an input tax credit for the premium in relation to the period during which the insured event happened, each time a claim is made under this Policy. No payment will be made to the Insured for any GST liability that the Insured may acquire on the settlement of a claim if the Insured has not informed the Insurer of their entitlement or correct entitlement to an input tax credit.

Despite the other provisions of this insurance (including provisions in the wordings, any schedule and any endorsement) the Insurer's liability will be calculated taking into account any input tax credit to which the Insured is entitled for any

acquisition relevant to a claim, or to which the Insured would have been entitled were the Insured to have made a relevant acquisition.

If the sum insured or policy limit is not sufficient to cover the Insured's loss, the Insurer will only pay GST (less any relevant input tax credit) that relates to Insurer's proportion of the insured's loss. The Insurer will pay that GST amount in addition to the sum insured or Policy limit.

"GST", "Input Tax Credit", "Acquisition" and "Supply" have the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999*.

- 4.13 Nothing in this contract of insurance will affect the rights of the Insured or the Insurer under the *Insurance Contract Act 1984* as amended from time to time. Where such act is applicable and in the event that there is a conflict between the provisions of this Policy and the Act, then the provisions of this Policy shall be amended as necessary in order to comply with the requirements of such Act.

Section 5 - Special Conditions

Notwithstanding Exclusion 3.2 of Section 3 – Exclusions, this Policy is extended to cover, subject to all terms, conditions, exclusions and limitations of the Policy, the Insured's legal liability for damage to building's that are not owned by the Insured, but are occupied by the Insured for the purpose of the Insured's Recreational Aviation Australia Limited. Aviation Activities.

Provided that:

1. The amount of indemnity shall not exceed AUD1,000 ,0 00 any one accident. Indemnity in respect of this section is included as a sub-limit within the amount of indemnity shown in the Schedule of this Policy and not in addition thereof.
2. The Insured shall first pay in respect of each and every accident in the amount shown in the Schedule of this Policy as an Excess.

Section 6 - Definitions

"Accident" means any one accident or series of accidents arising out of one event.

"Affiliated Club" means a club or organisation approved and elected as an Affiliate Member by the Board of Recreational Aviation Australia Limited. in accordance with the Constitution and Rules of that organisation.

"Aircraft" means an Aircraft which is registered with Recreational Aviation Australia Limited. at the time of the accident giving rise to a claim but excludes rotorwing Aircraft, gyrocopters or gyroplanes

"Australia" means continental Australia and extending 100kms into territorial waters, external territories (excluding Australian Antarctica, Macquarie Island, Heard Island and McDonald Island) and passage between continental Australia and the external territories (other than the excluded territories)

"Bodily Injury" means bodily injury (fatal or otherwise) but excludes nervous shock or psychological injury unless accompanied by and directly caused by, physical injury.

"Member" means one who within 30 days after the renewal date of their membership or in the case of a new member, within 30 days of their application being accepted by RA-Aus, has paid all subscription fees and dues to RA-Aus and has no restrictions applied to their pilot certificate that would prevent them from operating the aircraft they were in command of at the time of the accident.

Recreational Aviation Australia Limited

"Student Pilot Certificate and/or Pilot Certificate" means the certificate as defined in the Operations Manual of Recreational Aviation Australia Limited.

"In-Flight" means the time commencing with the actual take-off run of the Aircraft and continuing until the Aircraft has completed its landing run.

"Taxiing" means movement of an Aircraft under its own power other than In Flight as defined above. Taxiing shall not be deemed to cease merely by reason of temporary halting of the Aircraft.

"Ground" means whilst the Aircraft is not in Flight or Taxiing.

"Major Modification" means any modification that has appreciable effect on the weight, balance, structural strength, reliability, operational characteristics or other characteristics affecting airworthiness of an insured Aircraft including the engine or propeller.

"Insured" means the person or persons specified in the Policy Schedule being a Member of Recreational Aviation Australia Limited. who holds a current Student Pilot Certificate and/or Pilot Certificate or an Affiliated Club and includes any Recreational Aviation Australia Limited. registered pilot engaged by such person or persons.

"Property Damage" means damage to or destruction of property of others.

"Policy" includes the schedule, together with any endorsements shown in the schedule as included, all of which attach to and form part of this policy.

"Recognised Airfield" means any airfield that is permanently prepared, marked and used as an airfield having as a minimum, clearly marked and prepared runways of suitable length, width, surface and slope to comply with the recommendations laid down by the manufacturer of the Aircraft and at least one functioning windsock that is clearly visible by an Aircraft in the circuit.

"Recreational Aviation Australia Limited. Aviation Activity" means the operation by an Insured member of an Aircraft, as defined, including their occupation of a building for the specific purpose of housing and maintaining an Aircraft, as defined and the activities of Affiliated Clubs, as defined and not otherwise excluded.