

# Statutory Liability

This Statutory Liability policy wording must be read in conjunction with the Business Insurance policy wording. The **schedule** shows under the 'Schedule Section' of the 'Business Liability Part' whether you have selected Statutory Liability.

## What you are insured for

### ▶ A. Statutory liability and defence costs

You are insured for:

1. any **fine** and/or **reparation** that a New Zealand Court or Tribunal imposes on **you** arising out of an **event** that occurs after the **retroactive date** in New Zealand in connection with the business stated in the **schedule**, and
2. **statutory damages** that **you** become liable to pay arising out of an **act or omission** after the **retroactive date** in New Zealand in connection with the business stated in the **schedule**, and
3. all legal costs and legal expenses necessarily and reasonably incurred by **you** with **our** prior written consent, to defend a:
  - 3.1 **prosecution** that if proven, would result in a **fine** insured under this policy, or
  - 3.2 **proceeding** that if proven would result in **statutory damages** insured under this policy, or
  - 3.3 **prosecution** under the Health and Safety in Employment Act 1992,

provided that for 1, 2 and 3:

- a. **you** first knew, or ought to have known, of:
  - i. the **prosecution** in relation to that **event**, or
  - ii. the **proceeding** in relation to that **act or omission**,
 during the **period of insurance**, and
- b. **you** have advised **us** of the **prosecution** or **proceeding** as soon as possible, but no later than 30 days after the **period of insurance** ends.

The excess shown in the **schedule** applies for each **event** or **act or omission** under this Insuring Clause.

## Automatic extensions

These Automatic Extensions are subject to the terms of the policy except to the extent those terms are varied by each Extension.

### ▶ A. Commerce Act

**We** will insure any individual person(s) covered under this policy for any **fine** arising from a breach of the Commerce Act 1986.

'Exclusion C' does not apply to this Extension.

### ▶ B. Mergers and consolidations

If the company named as 'The Insured' in the **schedule**:

1. is merged, amalgamated, or consolidated with or becomes a subsidiary company of another company, or
  2. sells all or substantially all of its assets to another company,
- this policy will be extended to insure the new company, provided that **you**:
- a. give **us** notice that **you** wish to extend cover as soon as practicable, and
  - b. pay any additional premium **we** require.

### ▶ C. New subsidiary companies

This policy is extended to insure a subsidiary company created or acquired by **you** during the **period of insurance** provided that **you**:

1. give **us** notice that **you** wish to extend cover as soon as practicable, and
2. pay any additional premium **we** require.

**We** will only cover **events** or **acts or omissions** that happen after the acquisition.

### ▶ D. Official investigations cover

**You** are insured for all legal costs and legal expenses necessarily and reasonably incurred by **you** in connection with an **official investigation** involving **you**, provided that:

1. the investigation arises out of:
  - 1.1 an **event**, or potential **event**, after the **retroactive date** in New Zealand in connection with the business stated in the **schedule**, or
  - 1.2 an **act or omission** after the **retroactive date** in New Zealand in connection with the business stated in the **schedule** that may result in **you** being liable to pay **statutory damages**, and
2. **you** first knew, or ought to have known, of the **prosecution** in relation to that **event** or the **proceeding** in relation to that **act or omission** during the **period of insurance**, and
3. **you** have advised **us** of the **prosecution** or **proceeding** as soon as possible, but no later than 30 days after the **period of insurance** ends.

The excess shown in the **schedule** applies for each **event**, or **act or omission** under this Insuring Clause.

# Exclusions

## ▶ A. Asbestos

You are not insured for any **event** or **act or omission** in connection with asbestos.

## ▶ B. Building defects

You are not insured for any **event** or **act or omission** in connection with a building or structure being affected by:

1. moisture or water build-up or the penetration of external moisture or water, or
2. the action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa, or any similar or like forms, provided that the **injury** and/or **damage** is caused directly or indirectly by:
  - a. non-compliance with the New Zealand Building Code, or
  - b. faulty design or faulty specification, including but not limited to faulty sequence, procedure or programme, or
  - c. faulty materials, or
  - d. faulty workmanship, or
  - e. faulty inspection, or
  - f. faulty certification of compliance,

when the building or structure was constructed, manufactured, altered, repaired, renovated or maintained.

## ▶ C. Commerce Act

You are not insured for any **fine** arising from a breach of the Commerce Act 1986.

## ▶ D. Continuing offences

If a **fine** and/or **reparation** is imposed for a continuing offence under an **Act**, you are not insured for the part of the **fine** and/or **reparation** relating to the period after you:

1. know an offence is being committed, or
2. ought to have known that an offence was being committed.

## ▶ E. Dishonesty or fraud

You are not insured for any **event**, or **act or omission** that involves you:

1. dishonesty, or
2. fraud.

## ▶ F. Health and Safety in Employment Act 1992

You are not insured under 'What you are insured for – A.' for any **fine** or infringement fee under the Health and Safety in Employment Act 1992.

However, Defence Costs in relation to a **prosecution** under that Act remain covered as described under 'What you are insured for – A, item 3.3'

## ▶ G. Intentional or reckless breach

You are not insured if you intentionally or recklessly disregard the provisions of an **Act**.

## ▶ H. Known claim and circumstances

You are not insured for any **prosecution** or **proceeding** that you first knew of, or ought to have known of, prior to the inception date of this policy.

## ▶ I. Nuclear

Please refer to the 'Nuclear' Exclusion in the General Exclusions of the 'Business Insurance' policy wording.

## ▶ J. Taxes

You are not insured for any **event** or **act or omission** in connection with a requirement to pay taxes, rates, duties, levies, charges, fees or any other kind of revenue under an **Act**.

## ▶ K. Terrorism

Please refer to the 'Terrorism' Exclusion in the General Exclusions of the 'Business Insurance' policy wording.

## ▶ L. War

Please refer to the 'War' Exclusion in the General Exclusions of the 'Business Insurance' policy wording.

# Basis of settlement

## ▶ A. Maximum amount payable

The most we will pay for all **events** and **acts or omissions**, including legal costs and legal expenses, in the aggregate under Statutory Liability, during an **annual period** (including any Extended reporting period) is the 'Limit of Indemnity' shown in the **schedule** under 'Business Liability Part' for Statutory Liability.

## ▶ B. Excess

We will deduct only one excess for:

1. each **event**, or **act or omission**, including legal costs and legal expenses, or
2. a series of **events**, or **acts or omissions**, including legal costs and legal expenses, arising from one source or cause.

For avoidance of doubt, if you are entitled to cover under more than one insuring clause under 'What you are insured for', then we only deduct one excess. The excess will be the highest excess.

# Managing your claim

## ▶ A. Managing your claim

### 1. Allocation of defence costs

If a claim is covered only partly by this policy, then **we** will attempt to ensure fair and proper allocation of the legal costs and legal expenses for insured and uninsured portions. If all parties are unable to agree upon the allocation of the legal costs and legal expenses, then that allocation shall be referred to a lawyer that **we** and **you** agree to instruct, whose determination shall be binding upon all parties.

The cost of the lawyer's determination is to be taken as part of 'What you are insured for A., Item 3'.

If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society.

### 2. Apportionment

If **we** incur costs and/or expenses above the maximum amount payable, then:

- 2.1 **you** must refund to **us** all amounts in excess of the maximum amount payable when **we** ask for it, or
- 2.2 **we** can offset any surplus against what **we** must pay to **you** under this policy.

### 3. Your defence (Queens Counsel Clause)

3.1 **We** are not required to defend a **prosecution or proceeding** against **you** unless a lawyer that **we** and **you** agree to instruct, advises that the **prosecution or proceeding** should be defended. If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society.

3.2 In formulating his or her advice, the lawyer must be instructed to consider the:

- a. economics of the matter, and
- b. damages and costs likely to be recovered, and
- c. likely costs of defence, and
- d. prospects of successfully defending the **prosecution or proceeding**.

3.3 The costs of the lawyer's opinion is to be taken as part of defence costs covered by this policy.

3.4 If the lawyer advises that the **prosecution or proceeding** should be settled and if the terms of settlement that **we** recommend are within limits that are reasonable (in the lawyer's opinion and in the light of the matters he/she is required to consider), then:

- a. **you** cannot object to the settlement, and
- b. **you** must immediately pay the excess shown in the **schedule**.

### 4. Defence of liability claims

After **you** have made a claim, **we** have the sole right to:

4.1 act in **your** name and on **your** behalf to defend, negotiate or settle the **prosecution or proceeding** as **we** see fit (this will be done at **our** expense).

**We** may appoint **our** own lawyers to represent **you**. They will report directly to **us**.

### 5. Discharge of liability claims

**We** may elect at any time to pay **you**:

- 5.1 the 'Limit of Indemnity' for Statutory Liability, or
- 5.2 any lesser sum that the **prosecution or proceeding** against **you** can be settled for.

Once **we** have paid this (including any defence costs already incurred) **our** responsibility to **you** under Statutory Liability is met in full.

### 6. Waiver of professional privilege

The solicitors **we** instruct to act on behalf of **you** are at liberty to disclose to **us** any information they receive from **you**.

**You** authorise the solicitors to disclose this information to **us**.

## General conditions

### ▶ A. How we administer the policy

#### 1. Separate insurance (cross liability)

If more than one person or entity is named as 'The Insured' in the **schedule**, then all the parties are insured separately (as though a separate policy had been issued to each person/entity).

However, the maximum amount **we** will pay to all parties, is the amount stated in the 'Basis of settlement', subsequent attachments, or **schedule**.

#### 2. Premium adjustments

If the premium for Statutory Liability has been calculated based on estimated figures, then the premium is only a provisional premium for an **annual period**.

Within 3 months of the expiry of an **annual period**, **you** must tell **us** what the actual figures are. **We** will re-calculate **your** actual premium based on the actual figures.

The difference between the actual and the provisional premiums will either be payable to **us** or refunded to **you** depending on the outcome of the adjustment, but any refund will be limited to a maximum of 50% of the provisional premium.

#### 3. Extended reporting period

If **we** cancel this policy or refuse to renew it, then **you** may pay an additional premium (being 50 per cent of the last annual premium), to extend **your** cover under the policy for another 12 months.

However, this will only cover **you** for **events**, or **acts or omissions** that happened before **we**:

- 3.1 cancelled the policy, or
- 3.2 refused to renew the policy.

**You** may not extend **your** cover if **we** cancelled the policy because **you** did not:

- a. pay the premium, or
- b. comply with any part of the policy.

If **you** do wish to extend the policy as described above, then **you** must give **us** notice that **you** wish to do so within 30 days of **our** cancelling the policy or refusing to renew it.

## ▶ B. Your obligations

### 1. Confidentiality

You must not:

- 1.1 reveal that **you** hold this policy, or
- 1.2 disclose the terms of this policy,

if **you** are asked to do so by any investigating or prosecuting body under an **Act** (or their lawyers).

You may only give them this information if:

- a. **we** agree in writing, or
- b. **you** are bound to give the information by law.

### 2. Notices under Acts

You must comply with any lawful notice that **you** receive from an appropriate authority under any **Act**.

## Definitions

The definitions apply to the plural and any derivatives of the bolded words.

For example, the definition of 'accidental' also applies to the words 'accidentally', 'accident' and 'accidents'.

### accidental

Unexpected and unintended by **you**.

### Act

Any Act of the New Zealand Parliament that is in force at the start of each **period of insurance** and any Statutory Regulations that the Government makes under such Acts. However, **you** are not insured under the following Acts:

- a. the Arms Act 1983, and
- b. the Aviation Crimes Act 1972, and
- c. the Crimes Act 1961, and
- d. the Criminal Investigations (Blood Samples) Act 1995, and
- e. the Land Transport Act 1998, and
- f. the Misuse of Drugs Act 1975, and
- g. the Proceeds of Crime Act 1991, and
- h. the Summary Offences Act 1981, and
- i. the Transport (Vehicle and Driver Registration and Licensing) Act 1986, and
- j. the Fisheries Act 1996, and
- k. the Civil Aviation Act 1990, and
- l. any other Acts that are listed on the **schedule** as 'Additional Excluded Acts'.

We do not insure you against committing serious or violent crimes.

### act or omission

An act or omission by **you**.

### annual period

The **period of insurance**. However, if:

- a. **you** have chosen a monthly renewable contract, or
- b. the **period of insurance** is for more than 12 months, the annual period is each 12-month period calculated from the date this policy first started, and consecutively thereafter.

### event

Your **accidental** commission of an offence under an **Act**.

### fine

The amount of money **you** are sentenced to pay as a fine, pecuniary penalty, or infringement fee (including court costs).

This does not include compliance or remedial costs.

### official investigation

An investigation:

- a. by a body empowered under an **Act** to investigate, and
- b. relating to a breach or potential breach of an **Act**.

### proceeding

Whichever of the following that occurs first:

- a. receipt by **you** of an official complaint of a breach (or potential breach) of either the Privacy Act 1993 or the Human Rights Act 1993, or
- b. service upon **you** of a civil proceeding alleging a breach (or potential breach) of either the Privacy Act 1993 or the Human Rights Act 1993, or
- c. a circumstance that **you** become aware of, that is likely to lead to either (a) or (b) above.

### prosecution

Whichever of the following that occurs first:

- a. receipt by **you** of an official complaint of a breach (or potential breach) of an **Act**, or
- b. service upon **you** of a prosecution (or notice of intended **prosecution**) under an **Act**, or
- c. a circumstance that **you** become aware of, that is likely to lead to either (a) or (b) above.

### reparation

The amount of money **you** are sentenced to pay as **reparation** under section 32 of the Sentencing Act 2002.

This does not include compliance or remedial costs.

### retroactive date

The start date of this policy. However, if this policy is a renewal of one or more previous policies with **us**, the start date of the very first policy with **us**.

### statutory damages

Damages recoverable under the Privacy Act 1993 or the Human Rights Act 1993 for an **accidental** breach of the applicable Act.

### you

Any person or entity named in the **schedule** as 'The Insured' including any director, executive officer, employee or partner while they are acting in that capacity.

We may also use the word 'insured' to describe you.

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