

Legal Prosecution Defence

Policy

Lumley, a business division of IAG New Zealand Limited, Lumley Centre, 88 Shortland Street, PO Box 2426, Auckland 1140, New Zealand
Tel 09 308 1100 www.lumley.co.nz

Introduction

In consideration of payment of the premium and in reliance on the statements made in the Proposal (which is made a part of this Policy), Lumley and the Insured agree to abide by the limitations, conditions, provisions and other terms of the following contract of insurance.

All sections of the printed Policy wording and the Schedule must be read as if they are one and the same document.

Marginal notes and headings are only used to help you read this Policy and do not form part of this Policy.

Section 1: Definitions

Any word or expression that this Policy defines as having a particular meaning will have that meaning everywhere it appears.

Legal Action

'Legal Action' means any legal proceedings, including appeals, in any court, authority or tribunal in New Zealand.

Legal Expenses

'Legal Expenses' means the amount that the Insured had to spend and that was reasonable for the Insured to spend on Legal Action in relation to Solicitors' fees, expenses and disbursements;

Policy

'Policy' means, collectively, the Schedule, the Proposal, this Policy wording and any endorsements hereto.

Solicitor

'Solicitor' means any solicitor, firm of solicitors, barrister or Queen's Counsel appointed to act for the Insured in relation to any Legal Action.

Lumley

'Lumley' means Lumley, a business division of IAG New Zealand Limited.

Insured

'Insured' means individual directors, executives, managers or employees of the entity named in the Policy Schedule whilst undertaking duties for such entity.

Section 2: Insuring clause

2.1 Lumley will reimburse the Insured for Legal Expenses incurred in defending any Legal Action alleging an offence under any statute arising in the course of the Insured's employment. Provided always that:

- (a) The alleged conduct must have taken place in New Zealand; and
- (b) The Insured must have been first threatened with the Legal Action during the Period of Insurance; and
- (c) The Insured must also have notified Lumley of the Legal Action during the Period of Insurance or within 28 days of its expiry.

Section 3: Exclusions

Lumley shall not be liable for claims in respect of:

- 3.1 Legal Action arising from anything which had already happened or is alleged to have already happened and/or was still happening or is alleged to have still been happening prior to the Retroactive Date specified in the Policy Schedule.
- 3.2 Legal Action where:
 - (a) The Insured has been charged with any similar offence in the seven years before the Insured obtained cover under this Policy; and
 - (b) The Insured is intending to plead guilty or the Insured intends to plead not guilty, but this plea is not reasonable, and not based on the evidence and the law; and
 - (c) The Insured has cover under any other policy, or is otherwise entitled to indemnity from any other source.
- 3.3 Legal Action that arises out of or is in connection with the driving of a motor vehicle or offence or infringement under the Land Transport Act 1998, or Transport Act 1962, or their amendments, unless:
 - (a) The Insured is liable to be disqualified from driving; or

- (b) If the Insured is under 24 years old at the date of the alleged offence, and the Insured is at risk of being imprisoned for more than 3 months.
- 3.4 Legal Action that arises out of or is in connection with the driving of a motor vehicle or offence or infringement under the Land Transport Act 1998, or Transport Act 1962, or their amendments, where the Insured has been charged with any of the following types of offences: alcohol, drug-related, log book, overloading, road user charges, or speeding including dangerous or excessive speed.
- 3.5 Legal Action arising from any:
- (a) Alleged breach of professional duty, or duty as a director, trustee, or power of attorney;
 - (b) Agreement under which the Insured has agreed to accept liability that the Insured would not otherwise have had;
 - (c) Dispute concerning a will, bequest, contract to leave assets in a will, probate, Testamentary Promises claim, Family Protection claim, inheritance or gift.
 - (d) Employment dispute.
- 3.6 Legal Action:
- (a) Between the Insured and the Insured's spouse, ex-spouse, de facto partner or ex-de facto partner:
 - (b) By way of criminal prosecution in which a spouse, ex-spouse, de facto partner or ex-de facto partner, or any relative of them or of the Insured, is a complainant/victim.
 - (c) In relation to dissolution, maintenance, custody, access or property disputes.
 - (d) In which more than one person within the definition of the Insured:
 - (i) is involved; and
 - (ii) they have conflicting positions and interests.
 - e) By or on behalf of any state agency involving any state-funded grant, income, revenue collection, income support, aid, subsidy, surcharge or assistance, including liable parent contributions.
- 3.7 Legal Action that the Insured has intentionally encouraged.
- 3.8 Legal Expenses for which the Insured did not first get Lumley's written consent.
- 3.9 Fines, penalties, damages of any type or any other form of compensation payment, and interest.
- 3.10 Legal action in relation to any offence alleged to have been committed:
- (a) whilst in breach of any order made under the Domestic Violence Act 1995 or its amendments; or
 - (b) under Fisheries legislation.
- 3.11 Legal Action arising from war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property under the order of any government or public or local authority; or
- 3.12 Legal Action arising from or in any way related to death, injury, illness, loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any act of Terrorism regardless of any contributing cause or event.
- For the purpose of this exclusion, Terrorism means an act, including but not limited to the use or threat of force or violence, by any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, which from its nature or context is committed for or in connection with political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public or any section of the public in fear.
- This Policy also excludes death, injury, illness, loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to the above Exclusions.
- 3.13 Legal Action directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.
- 3.14 Legal action for any actual or alleged liability whatsoever caused by or contributed to or arising from:
- (a) moisture or water or the penetration of external moisture or water; or
 - (b) the action or effects of mould, fungi, mildew, rot, decay, micro-organisms, bacteria, protozoa or any similar or like forms; or
 - (c) the failure of any building or structure to comply with or perform to the requirements of any building code or to meet the level of performance, quality, fitness or durability of its intended purpose.
- 3.15 Any litigation in existence at the commencement of the Period of Insurance.
- 3.16 Legal Action brought against the Insured in any other jurisdiction other than New Zealand.

Section 4: Claims conditions

4.1 Notice of Claims and Circumstances

The Insured must give Lumley immediate notice in writing of any:

- (a) circumstances which might give rise to a claim under this Policy, as soon as the Insured becomes aware of them;
- (b) notice of any indication that someone intends or may intend to make a claim against the Insured which might result in Legal Action;
- (c) claim against the Insured which might result in Legal Action;
- (d) document served on the Insured in relation to Legal Action;

irrespective of whether or not the Insured believes that:

- (i) a claim is justified; or
- (ii) Legal Action is likely.

4.2 Claims co-operation

The Insured must take all reasonable care and precautions to avoid any circumstances which might give rise to a claim under this Policy.

In relation to any Legal Action, the Insured must:

- (a) give Lumley all information and documents which Lumley asks for;
- (b) keep Lumley fully and continually informed of all significant developments;
- (c) advise Lumley immediately of any offers of compromise, proposals, or recommendations to make any offers of compromise or proposals.

If Lumley instructs the Insured in writing to so do, the Insured must direct the Insured's Solicitor to have any account or fee referred to any appropriate officer, authority or body to be taxed, assessed or audited.

4.3 Legal Counsel

The Insured must not appoint a Solicitor to defend any Legal Action without first getting Lumley's written consent. Lumley can:

- (a) withhold or withdraw consent to any Solicitor that the Insured proposes to appoint or has appointed.
- (b) require the Insured to appoint a Solicitor from Lumley's preferred panel.

If cover has been confirmed in writing then Lumley may advance the Insured's Legal Expenses as and when they are incurred.

4.4 Conduct of the Claim

Lumley can immediately stop reimbursing the Insured's Legal Expenses if:

- (a) the Insured unreasonably refuses to follow the Insured's Solicitor's advice about how the Legal Action should be conducted, including advice about making or accepting an offer, compromise or payment, or discontinuing the Legal Action or any step in it; or
- (b) the Insured does not give Lumley or the Insured's Solicitor full co-operation and assistance; or
- (c) a barrister of at least 15 years' experience advises Lumley that the Insured's defence to the Legal Action has no reasonable prospect of being actually or economically successful (including, if the likely Legal Expenses are out of reasonable proportion to the likely outcome), and the Insured declines to accept Lumley's written instructions on how to resolve or terminate the Legal Action.

4.5 Appeals

Lumley will not be liable for Legal Expenses in relation to any appeal unless Lumley:

- (a) receives written notice of the Insured's intention to appeal at least 5 working days before any time limit for bringing the appeal expires; and
- (b) has given the Insured prior written consent to the appeal.

4.6 Recovery

The Insured must:

- (a) let Lumley have any amounts that the Insured recovers on account of Legal Expenses; and
- (b) co-operate with and assist Lumley in any steps that Lumley wants to take at Lumley's own cost to recover these amounts.

4.7 Multiple Offences

If the Insured is charged with one or more offences arising out of the same general circumstances and is convicted of at least one such offence, and Lumley has reimbursed/paid any Legal Expenses relating to the offences, Lumley has the right to claim all the Legal Expenses from the Insured.

4.8 Waiver of Privilege

If Lumley instructs any solicitor to investigate or defend any claim against the Insured, the Insured authorises the solicitor to provide to Lumley any documents, information or advice in respect of the claim, including in relation to indemnity, and the Insured waives any privilege to the extent necessary to give full effect to Lumley's entitlement in this respect.

Section 5: General conditions

5.1 Limit of Liability

Lumley will pay the Insured up to the Limit of Indemnity for all Legal Action(s) commenced against the Insured during the Period of Insurance.

5.2 Excess

In respect of each and every Claim against the Insured the amount of the excess specified in the Schedule must be paid by the Insured. Where a Claim does not exceed the excess the Insured must also pay the costs and expenses incurred in investigating, defending and settling the Claim.

5.3 Bankruptcy of the Insured

Unless the Insured notifies Lumley and Lumley agrees in writing to continue the Insured's cover under this Policy, the Insured immediately stops being insured under this Policy if the Insured:

- (a) commits any act of bankruptcy; or
- (b) is made bankrupt; or
- (c) makes any arrangement with creditors, including a composition or assignment.

5.4 Agent of the Insured

The Insured appoints the person who signed the Proposal for this Policy as the Insured's agent for the purpose of receiving any Policy Schedule, paying the premium, and receiving or giving notices under this Section, including any notice of cancellation or endorsement. Lumley may deal with him/her as if Lumley was dealing with the Insured personally, unless the Insured gives Lumley written notice, including full contact details, appointing someone else in his/her place.

5.5 Fraudulent Claims

If the Insured puts forward a claim that is in any way intentionally exaggerated or fraudulent, or if the Insured uses any fraudulent means or devices to obtain a benefit under this Policy, the Policy shall be void ab initio.

5.6 Other Insurance

If at the date on which the Legal Action commenced, the Insured had Legal Expenses cover under this Policy, or the Insured is otherwise entitled to indemnity from any other source, (even if an excess applies) Lumley does not have to reimburse the Insured's Legal Expenses, even if the other policy has a condition to the same or similar effect, but Lumley will provide cover to the Insured until the availability of such other insurance or indemnity is determined provided the Insured co-operates with Lumley in reviewing other insurance or indemnity entitlements.

5.7 Cancellation

- (a) Method of Cancellation:
 - (i) the Insured may cancel this Policy at any time by notifying Lumley in writing;
 - (ii) Lumley may cancel this Policy at any time by giving 30 days' notice in writing to the Insured of the date from which cancellation is to take effect. Such notification is to be delivered personally or posted by registered mail to the Insured at the address last notified to Lumley. Proof of mailing is sufficient proof of notification.
- (b) Adjustment of Premium:
 - (i) after cancellation by the Insured, Lumley will retain or be entitled to the premium for the period during which this Policy has been in force based on Lumley's cancellation rates;
 - (ii) after cancellation by Lumley, the Insured is entitled to a pro rata refund of the premium.

5.8 GST

Where the Insured is liable to pay tax under section 5(13) of the Goods and Services Act 1985 (or any statutory amendment or re-enactment of the section or Act) upon receiving any indemnity payment under this Policy, Lumley will indemnify the Insured for the costs of that tax. The indemnity under this clause is payable by Lumley in addition to the Limit of Indemnity.

5.9 Policy Disputes

This Policy shall be governed by the law of New Zealand, whose courts shall have jurisdiction in any dispute arising herein.

5.10 Insured's Warranty

It is agreed between the Insured and Lumley that the written Proposal provided by the Insured forms the basis of this Policy and the Insured warrants the truth of all statements made therein.

5.11 Interpretation of Words

Words referring to persons shall include companies and other legal entities. The singular includes references to the plural and vice versa and any gender includes reference to all other genders.

5.12 Breach of Conditions

Where the Insured's breach of any condition of this Policy has resulted in prejudice to the handling and/or settlement of any Legal Action, which in all other respects qualifies to be indemnified under this Policy, the indemnity afforded by this Policy in respect of such Legal Action shall be reduced to such sum as would have been payable by Lumley in the absence of such prejudice.