

Introduction

In consideration of payment of the premium, Lumley agrees to indemnify the Insured in accordance with, and subject to, all of the terms and conditions of this Policy.

This is a claims made Policy and no Claim can be made after the expiry date specified in the Schedule. The Policy does not cover acts or omissions prior to the retroactive date specified in the Schedule.

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 the Policy.

Section 1: Definitions

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

1.1 Claim

'Claim' means:

- (a) any circumstance that a reasonable person in the position of the Insured would consider may give rise to a demand for compensation;
- (b) the receipt by the Insured of any written or verbal notice of demand for compensation made by a third party for actual or alleged Medical Malpractice; or
- (c) service on the Insured of any statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third party or similar notice claiming compensation for actual or alleged Medical Malpractice.

1.2 Defence Costs

'Defence Costs' means the reasonable costs, charges, fees and expenses (including but not limited to lawyers' fees, investigators' fees and experts' fees) incurred in the defence or investigation of Claims, and any amount required to be paid as security for costs. Defence Costs do not include charges for time spent by directors or employees of the Insured or reimbursement of any form of remuneration for such people. Defence Costs shall only be incurred with the prior written consent of Lumley.

1.3 Insured

'Insured' means:

- (a) the person, persons, partnership, company, corporation or other entity specified as the Insured in the Schedule including their predecessors in business;
- (b) any person who is, during the period of insurance, a principal, partner, director, employee or volunteer worker of the Insured in respect of work performed for and on behalf of the Insured;
- (c) any former principal, partner, director or employee of the Insured in respect of work performed for and on behalf of the Insured;
- (d) the estate, heirs, or legal representatives of any Insured in the event of the death or incapacity of that Insured but only if such persons observe and are subject to the terms and conditions of this Policy; and
- (e) any student practitioner appointed to the Insured by a university or college of advanced education.

1.4 Lumley

'Lumley' means Lumley General Insurance (N.Z.) Limited.

1.5 Medical Malpractice

'Medical Malpractice' means professional negligence that is the proximate cause of injury, harm or financial loss to a patient resulting from a lack of professional knowledge, experience or skill that can be expected in others in the profession, or from a failure to exercise reasonable care or judgement in the application of professional knowledge, experience or skill.

1.6 Policy

'Policy' means this Policy wording including the Schedule, any additional endorsements and the proposal form and underwriting information provided to Lumley prior to the period of insurance.

1.7 Professional Healthcare Services

'Professional Healthcare Services' means medical treatment rendered by members of the healthcare professions with current qualifications including medical and dental practitioners, nurses, midwives, allied medical professionals, ambulance personnel, laboratory staff and technicians or those people acting on decisions made by members of the healthcare professions whilst acting in a professional capacity.

Section 2: Insuring agreement

For a Claim to be covered under this Policy it must be first made against the Insured, or circumstances (as defined) must first arise, during the period of insurance and notified to Lumley during the period of insurance or within 30 days after the expiry of the period of insurance and the act, error or omission giving rise to the Claim must have occurred on or after the retroactive date.

Lumley agrees to indemnify the Insured against any Claim in respect of a civil liability incurred by the Insured as a result of the provision of or failure to provide Professional Healthcare Services in the conduct of the profession specified in the Schedule.

Lumley agrees to pay the Defence Costs incurred in relation to any Claim. Such Defence Costs shall be part of and not in addition to the limit of indemnity of this Policy.

Section 3: Automatic extensions

Subject to the terms of the insuring agreement and all other terms and conditions of the Policy, Lumley agrees to indemnify the Insured for legal liability arising from any Claim:

3.1 Fair Trading Act 1986

under the terms of the Fair Trading Act 1986 (sections 9 to 14) or any similar fair-trading legislation.

3.2 Defamation

for unintentional defamation by reason of words written or spoken by the Insured in the provision of Professional Healthcare Services.

3.3 Dishonesty

arising out of any Claim which would otherwise be excluded by reason of exclusion 5.2 (Dishonesty). This extension does not cover any person committing or condoning any act, omission or breach excluded by reason of exclusion 5.2 and does not include cover for loss of money, negotiable instruments, bearer bonds or coupons, stamps, or bank or currency notes.

For this extension, the excess applies to each individual dishonest or fraudulent act or omission.

3.4 Loss of documents

arising out of the loss of, damage to or destruction of any documents (including electronic records), that were in the custody of the Insured or any other person to whom the Insured had delegated custody. Cover under this extension does not include cover for loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

3.5 Consultants and sub-contractors

arising out of the actions of any consultants, contractors, sub-contractors or agents but the cover provided under this extension is specifically agreed not to extend indemnity to any consultant, contractor, sub-contractor or agent unless that person is specifically nominated as an Insured in the Schedule.

3.6 Civil penalties

for civil penalties imposed under statute to the extent that those penalties are compensatory in nature and payable to the party making the Claim against the Insured.

3.7 Boards and committees of the Insured

arising out of the acts or omissions of any formal medical, audit or quality assurance board or ethical committee convened by the Insured where such investigation, enquiry or decision of that board or committee may lead to a Claim under this Policy.

3.8 Good samaritan acts

arising out of the provision of emergency first aid assistance by a medically qualified employee of the Insured to any person other than a member of that employee's family. No indemnity is provided by this extension where the employee was acting under a contract of employment with any other employer other than the Insured.

3.9 Exemplary damages

Lumley will indemnify the Insured in respect of legal liability for any Claim brought for punitive or exemplary damages as a result of personal injury happening in New Zealand that was a personal injury for which coverage is determined to exist under the Accident Insurance Act 1998 or any amending or replacing legislation.

Provided that:

any liability for punitive and exemplary damages in respect of such personal injury arising from trespass to the person, assault, battery, false imprisonment, malicious prosecution, sexual harassment or sexual abuse by the Insured is excluded.

- (a) Any punitive or exemplary damages awarded by any court outside of New Zealand are excluded.
- (b) Defence Costs in respect of any claim for punitive or exemplary damages brought in any court outside of New Zealand are excluded.
- (b) A limit of indemnity of \$1,000,000 inclusive of Defence Costs, any one period of insurance shall apply, unless a different amount is shown in the Schedule.
- (c) An excess of \$10,000 inclusive of costs shall apply, unless a different amount is shown in the Schedule.

Section 4: Additional extensions

4.1 Continuous cover clause

In the absence of fraudulent non-disclosure, where a Claim that would otherwise be covered under this Policy is excluded by exclusion 5.1 (c) (Known Claims and circumstances), Lumley agrees to indemnify the Insured under the terms and conditions of this Policy subject to the following additional conditions:

- (a) Lumley was the Insured's professional indemnity insurer at the primary level under a policy ('the former policy') at the time when the Insured first became aware of the circumstances that subsequently gave rise to the Claim;
- (b) Lumley continued without interruption as the Insured's professional indemnity insurer at the primary level from the time when the Insured first became aware of the circumstances up until such time as the Claim was made against the Insured and notified to Lumley;
- (c) the liability of Lumley is limited to the amount for which Lumley would have been liable at the time referred to in 4.1 (a) in accordance with the terms and conditions of the former policy; and
- (d) the liability of Lumley will be reduced by the amount that fairly represents the extent to which liability for the Claim could have been reduced had the circumstances been duly reported under the former policy.

4.2 Severability

Where any person fails to comply with their duty of disclosure, makes a misrepresentation or is in breach of a Policy term or condition, Lumley will not deny indemnity to any other person on these grounds if that other person was unaware of the matter not disclosed or the fact of the misrepresentation or did not breach the Policy term or condition.

4.3 Advancement of Defence Costs

Where Lumley has not confirmed indemnity under this Policy, Lumley may in its absolute discretion pay all reasonable Defence Costs arising from a Claim, provided that the Insured obtains Lumley's written consent prior to incurring those Defence Costs. Where Lumley has made a payment under cover provided by this extension, Lumley retains the right to cease such payments at any time and recover such payments should it be subsequently agreed or established by judgment or final adjudication that the Insured was not entitled to indemnity under this Policy.

4.4 New subsidiary companies

- (a) Lumley agrees to indemnify any subsidiary company acquired during the period of insurance for a period of up to 30 days from the date of acquisition but only in respect of activities carried out after the date of acquisition.
- (b) Lumley agrees to indemnify any subsidiary company created during the period of insurance from the date of creation in respect of activities carried out after the date of creation, subject to the provisions of general condition 6.3 (Alteration to risk).

Cover provided by this extension does not alter the limit of indemnity and is subject to the period of insurance.

4.5 Run off cover

Lumley will indemnify, until expiry of the period of insurance, any Insured entity which is sold, ceased trading, merged or wound up during the period of insurance in respect of those activities of the Insured prior to the sale, cessation of trade, merger or winding up.

4.6 Inquests and coronial inquiries

Lumley agrees to indemnify the Insured for the Defence Costs incurred with Lumley's prior written consent for legal representation:

- (a) in relation to any coroner's inquest; and/or
- (b) in relation to any investigation by the Health and Disability Commissioner pursuant to the Health and Disability Commissioner's Act 1994; and/or
- (c) in relation to any investigation by the Privacy Commissioner pursuant to the Privacy Act 1993; and/or
- (d) in relation to any investigation by the Human Rights Commissioner pursuant to the Human Rights Act 1993; and/or
- (e) in relation to any investigation by the Accident Compensation Corporation;

where such inquest or investigation may lead to a Claim under this Policy.

Section 5: Exclusions

Indemnity provided by this Policy does not include liability for Claims:

5.1 Known Claims and circumstances

- (a) made against, or intimated to, the Insured prior to the commencement of the period of insurance; or
- (b) notified under any previous policy; or
- (c) arising out of or connected with any facts or circumstances which:
 - (i) the Insured was aware of prior to commencement of the period of insurance; and
 - (ii) a reasonable person in the position of the Insured would have considered may give rise to a Claim against the Insured; or
- (d) arising out of or connected with the Insured's activities carried out prior to the retroactive date, if any, specified in the Schedule.

5.2 Dishonesty

- (a) arising out of or connected with any actual or alleged dishonest, fraudulent, criminal, or malicious act or omission of any Insured or their consultants, contractors, sub-contractors, or agents; or
- (b) arising out of or connected with a wilful breach of any statute, contract or duty, or any act or omission committed or omitted or alleged to have been committed with a reckless disregard for the consequences by the Insured or their consultants, contractors, sub-contractors or agents;

except to the extent to which cover is provided under extension 3.3 (Dishonesty).

5.3 Contractual liability

arising out of or connected with any contractual liability, warranty or guarantee assumed or provided by the Insured except if the Insured would have been liable in the absence of the contractual liability, warranty or guarantee.

5.4 Obligations to employees

- (a) arising out of or connected with the bodily injury, mental injury, sickness, 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.
- (b) for any obligation for which the Insured may be held liable under the Accident Insurance Act or any worker's compensation legislation or amendment thereto.

5.5 Fines and penalties

for punitive, aggravated, multiple or exemplary damages, or fines or penalties imposed by law, to the extent not expressly covered by extension 3.9 (Exemplary damages).

5.6 Nuclear

arising out of or connected with:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (b) the radioactive, toxic explosive or other hazardous properties of any explosive assembly or its nuclear components.

5.7 War

- (a) arising from or connected with war, invasions, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (b) arising out of or connected with confiscation, nationalisation or damage to property by or under the order of any government or public or local authority.

5.8 Territorial limits

arising out of or connected with activities carried out or Claims brought in a court of law within the territorial limits of the United States of America or Canada or their protectorates and dependencies.

5.9 Admitted Claims

which the Insured has settled or has agreed to settle or where the Insured has made an admission, offer, payment or otherwise assumed any contractual obligation with respect to any Claim. This includes a contractual obligation that excludes or limits the Insured's rights of recovery from a third party.

5.10 Date recognition

which consists of or arises directly or indirectly out of or in connection with the failure or inability of any:

- (a) electronic circuit, microchip, integrated circuit, microprocessor, embedded system, BIOS or other instruction set, hardware, software, firmware, program, computer, data processing equipment, telecommunication equipment or systems, or any similar device; or
- (b) media or systems used in connection with any of them;

whether the property of the Insured or not, at any time to achieve fully and successfully any or all of the purposes and consequential effects intended by the use of any number, symbol or word to denote, represent or express a date including but without being limited to any failure or inability to recognise, capture, save, retain or restore and/or correctly to manipulate, interpret, transmit, return, calculate or process any date, data, information, command, logic or instruction as a result of or in connection with:

- (i) anything referred to in 5.10 (a) or 5.10 (b) recognising, using or adopting any date, day of the week or period of time, otherwise than as, or other than, the true or correct date, day of the week or period of time; or
- (ii) the operation of any command or logic that has been programmed or incorporated into anything referred to in 5.10. (a) or 5.10 (b) above.

5.11 Pollution

attributable to seepage, pollution or contamination howsoever occurring.

5.12 Terrorism

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.

5.13 Asbestos

whatsoever, directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

Section 6: Conditions

6.1 Limit of Indemnity

The total liability of Lumley under this Policy shall not exceed the limit of indemnity for any one Claim and will be reinstated to a total amount equal to twice the limit of indemnity for all Claims during the period of insurance. If the Insured has additional cover in excess of this Policy, then any reinstatement of the limit of indemnity will only be made upon exhaustion of such additional cover.

The limit of indemnity shall include the Defence Costs.

Where more than one Claim arises out of the same act or omission or causally connected or interrelated acts or omissions, all of those Claims will together constitute one Claim for the purposes of determining the limit of indemnity.

6.2 Excess

In respect of each and every Claim the Insured must pay the excess. Where a Claim does not exceed the excess the Insured must also pay the costs and expenses incurred in investigating, defending and settling that Claim.

Where the excess is shown to be costs inclusive the Insured must pay all costs and expenses incurred in investigating, defending and settling a Claim up to the amount of the excess.

The excess does not apply to any costs and expenses incurred by Lumley to determine indemnity under the Policy.

Where more than one Claim arises out of the same act or omission or causally connected or interrelated acts or omissions, all of those Claims will together constitute one Claim for the purposes of determining the excess.

6.3 Alteration to risk

The Insured must give notice in writing to Lumley as soon as practicable of any material change to the risk. A material change to the risk includes without limitation activities that are materially different from those declared in the proposal form or that are outside the normal activities of the profession specified in the Schedule or a material change to the business specified in the Schedule.

6.4 Reporting of Claims

The Insured must give Lumley notice in writing as soon as practicable within the period of insurance of any Claim.

6.5 Defence and settlement of Claims

Lumley is entitled at any time to conduct, in the name of the Insured, the investigation defence or settlement of any Claim. If Lumley believes that the Claim will not exceed the excess, Lumley may instruct the Insured to conduct the investigation, defence and settlement at the Insured's expense. Should Lumley elect to do so, Lumley may discharge its total liability under this Policy by paying the available limit of indemnity to the Insured.

6.6 Claims co-operation

The Insured agrees to use all of its best endeavours to avoid or diminish a Claim and will provide at their own cost all information and assistance to Lumley as is required to determine liability under the Policy and investigate, defend and settle a Claim.

6.7 Defence counsel

Lumley reserves the right to appoint in its sole discretion its own nominated lawyer, investigator and/or expert to act on behalf of the Insured in relation to any Claim for which indemnity is granted under this Policy.

6.8 Subrogation

Lumley is entitled to all of the Insured's rights of recovery (before a Claim has been paid and whether or not the Insured has been fully compensated for their actual loss) and the Insured will do everything necessary to secure and preserve such rights. This will include but not be limited to the execution of documents necessary to allow Lumley to take legal action in the name of the Insured.

6.9 Contesting Claims

If the Insured does not agree with a decision by Lumley to settle a Claim the Insured can elect to contest the Claim at their own expense but the liability of Lumley will not exceed the amount for which the Claim could have been settled.

6.10 Policy disputes

This Policy shall be subject to the laws of New Zealand whose courts shall have jurisdiction in any dispute arising herein.

6.11 Notice

Any notice to Lumley must be delivered or sent to Lumley at the address or facsimile number stated on the Schedule.

6.12 Other insurance

Upon giving notice of any Claim or circumstances, the Insured agrees to provide to Lumley written details of any other insurance (including membership of any discretionary defence association) that may cover or partially cover that Claim or circumstance.

If in respect of any Claim the Insured is, or but for the existence of this Policy would be, entitled to indemnity or cover under any other policy, policies or defence association, Lumley shall not be liable except in respect of any excess amount beyond the amounts which would have been payable under such other policy, policies or defence association had this Policy not been effected.

6.13 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.

6.14 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. In the event that a Claim has been made under this Policy no refund of premium is due or payable to the Insured.
- (ii) after cancellation by Lumley, the Insured is entitled to a pro-rata refund of the premium.

6.15 Medical practitioners' insurance requirements

The Insured must take reasonable steps to ensure that all medical practitioners carrying out activities at or from the Insured's premises are fully indemnified members of a medical defence organisation or are otherwise insured for legal liability arising out of Medical Malpractice.

6.16 Insured's warranty

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