

Introduction

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.

1.1 Act of Parliament

'Act of Parliament' means any Act of the New Zealand Parliament, including any amendments, enactments or Statutory Regulations of such Act.

1.2 Claim

'Claim' means:

- (a) any threatened or actual prosecution or investigations or inquiry regarding an Event; or
- (b) any circumstances which indicate to the reasonable insured in the position of the Insured that a prosecution, investigation or inquiry regarding an Event may occur, which is connected with the business of the Named Entity and which may give rise to the imposition of a Fine.

1.3 Conduct of the Claim

'Conduct of a/the Claim' means the investigation, defence, compromise or handling of the Claim in any manner whatsoever on behalf of the Insured.

1.4 Defence Costs

'Defence Costs' means reasonable costs, charges, fees and expenses (including but not limited to lawyers' fees, investigators' fees and experts' fees) incurred with the prior written consent of Lumley which relate directly to the Conduct of the Claim. 'Defence Costs' does not include charges for time spent by sole traders, partners, directors, officers or employees of the Named Entity or reimbursement of any form of remuneration for such people.

1.5 Event

'Event' means any act or omission done or omitted to be done by the Insured in connection with the Insured's Business that may result in an allegation that the Insured has committed an offence under an Act of Parliament punishable by conviction.

1.6 Fine

'Fine' means any monetary penalty or costs for which the Named Entity and/or Insured Persons are liable on conviction of any offence under an Act of Parliament.

1.7 Insured

'Insured' means the Named Entity and the Insured Persons.

1.8 Insured's Business

'Insured's Business' means the business and undertakings of the Named Entity, as defined in the Schedule.

1.9 Insured Person

'Insured Person' means any person who is currently, or was at the date of any Event, or becomes during the period of insurance, a sole trader, partner, director, officer or employee of the Named Entity.

1.10 Lumley

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

1.11 Named Entity

'Named Entity' means the entity specified in the Schedule and includes any subsidiary.

1.12 Order for Reparation under the HSE Act

'Order for Reparation under the HSE Act' means an order for reparation imposed by the Court on sentencing following conviction of the Named Entity and/or Insured Persons for an offence under the Health and Safety in Employment Act 1992.

1.13 Schedule

'Schedule' means the most recent Policy Schedule, Revised Policy Schedule or Insurance Certificate issued by Lumley.

Section 2: Coverage

In consideration of payment of the premium and subject to the clauses of this Policy contained herein, Lumley agrees as follows:

2.1 Insured liability

Lumley will pay on behalf of the Insured any Fine under any Act of Parliament, any Order for Reparation under the HSE Act, and any Defence Costs arising out of a Claim made against the Insured **provided that:**

- (a) the Insured first became aware of, or ought to have been aware of, the Claim during the period of insurance; and
- (b) the Claim is notified to Lumley during the period of insurance or within 30 days of expiry; and
- (c) the Event giving rise to the Claim occurred on or after the retroactive date.

There is no indemnity under this Policy for Claims that do not comply with 2.1(a), 2.1(b) and 2.1(c) of this clause.

2.2 Limits of liability

- (a) The limit of Lumley's liability in respect of any one Claim, inclusive of Defence Costs, shall not exceed the limit of indemnity stated in the Schedule.
- (b) The total aggregate liability of Lumley during any one period of insurance for all Claims and Defence Costs shall not exceed the limit of indemnity stated in the Schedule.

2.3 excess

Where an excess is specified in the Schedule the Insured must pay this amount in respect of each and every Claim inclusive of Defence Costs.

Section 3: Extensions

3.1 Previous subsidiaries of the Named Entity

The definition of Named Entity will include any entity that ceased to be a subsidiary before or during the period of insurance, but Lumley will not pay on behalf of the Insured any Fine or Order for Reparation under the HSE Act arising from an Event occurring after it ceased to be a subsidiary, nor will Lumley pay on behalf of the Insured any Fine or Order for Reparation under the HSE Act arising from an Event occurring before it became a subsidiary.

Section 4: Exclusions

Lumley shall not be liable to indemnify the Insured in respect of any Claim:

4.1 Known Claims and Events

- (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 Event that:
 - (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.

4.2 Intentional or deliberate disregard

arising out of or based upon, attributable to, or in any way involving any Insured's intentional or reckless disregard of the provisions of any Act of Parliament.

4.3 Other activities

arising out of activities otherwise than in the course of or in connection with the Insured's Business.

4.4 Retroactive date

that arose out of any Event that occurred prior to the retroactive date.

4.5 War

- (a) arising out of or connected with war, invasions, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, 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.

4.6 Nuclear

arising out of or connected with:

- (a) ionising radiation 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.

4.7 Excluded acts

arising out of, based upon, attributable to, or in any way involving, directly or indirectly the following Acts of Parliament:

- Arms Act 1983
- Aviation Crimes Act 1972
- Crimes Act 1961
- Criminal Investigations (Blood Samples) Act 1995
- Misuse of Drugs Act 1975
- Proceeds of Crime Act 1991
- Summary Offences Act 1981
- Transport Act 1962
- Transport (Vehicle and Driver Registration and Licensing) Act 1986

and any other Act of Parliament specified in an endorsement to this Policy as an excluded Act of Parliament.

4.8 Damages and non-criminal penalties

for payment of money arising from a breach of a legal obligation (including an obligation owed pursuant to an Act) other than consequent upon the Insured's conviction for an offence. In particular (but without limitation) this Policy does not cover any proceeding seeking:

- (a) damages, including punitive, aggravated, liquidated, multiple or exemplary damages;
- (b) compensation for injury suffered, including physical or mental injury, humiliation, distress or damage to reputation; or
- (c) penalties provided by an Act.

4.9 Reparation

for any monetary amount ordered to be paid by the Named Entity and/or Insured Persons by way of an order for reparation imposed by a Court following conviction under any Act of Parliament, except an Order for Reparation under the HSE Act.

4.10 Legal jurisdiction

- (a) in respect of any Claim where the threatened or actual prosecution, the investigation or inquiry is brought or may be brought in a court outside New Zealand; or
- (b) in respect of any Claim which is brought or may be brought in a court within New Zealand to enforce a Fine ordered in a court outside New Zealand whether by way of a reciprocal agreement or otherwise; or
- (c) in respect of any Claim in which the proper law to be applied is that of a country other than New Zealand.

4.11 Date recognition

arising directly or indirectly out of or in connection with the failure or inability of:

- (a) any 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) any similar device, or media or systems used in connection with any of them;

whether the Insured's property 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 4.11(a) or 4.11(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 4.11(a) or 4.11(b) above.

4.12 Commerce act

for any pecuniary penalty, restitution, compensation or order for payment imposed by a court upon the Named Entity or Insured Person pursuant to Part 6 of the Commerce Act 1986.

4.13 Health and Safety in Employment act

for any fine or infringement fee (other than Reparation) ordered to be paid by the Named Entity and/or the Insured Persons following conviction under the Health and Safety in Employment Act 1992.

4.14 Monetary Amounts Paid or Offered before Sentence

for any sum paid, or offered to be paid, by the Named Entity and/or Insured Persons, without the prior written consent of Lumley, to or for a complainant prior to imposition of sentence by the Court, as reparation or otherwise, following an occurrence under any Act of Parliament.

4.15 Dishonesty and fraud

resulting from or contributed to by any dishonest, fraudulent, criminal or malicious act or omission of any Insured Person. Provided that this Exclusion shall not apply to any Insured who has not committed or condoned the dishonest, fraudulent, criminal or malicious act or omission.

4.16 Taxes

for the payment of any tax, including any Fine or penalty resulting from the failure to pay any tax.

4.17 Continuing Fine

for payment of any Fine (or part of a Fine) which is imposed in relation to a period of time after the Named Entity or Insured Person first received notice from the prosecuting body of the intention to commence a prosecution in relation to the offence.

4.18 Compliance costs

- (a) for payment of any Fine (or part of a Fine) which is a penalty imposed for failing to comply with any enforcement order or remedial order;
- (b) for the cost incurred by the Insured in complying with any enforcement or remedial order.

4.19 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 or suppressing terrorism, or in any way relating to the above exclusion.

4.20 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 5: Conditions

5.1 Reporting of Claims

Irrespective of the quantum, the Insured must give Lumley immediate notice in writing of:

- (a) any Claim made against them; or
- (b) the receipt of notice from, or information as to any intention by, any party to make a Claim against them; or
- (c) any Event that a reasonable insured in the position of the Insured would have considered may give rise to a Claim. Where such notice is given to Lumley by the Insured, any Claim that may subsequently be made against the Insured shall be deemed to be a Claim made during the period of insurance.

Provided that in order to qualify as a Claim capable of being covered by this Policy the Insured's notice in writing must:

- (i) relate to a Claim that occurred during the period of insurance; and
- (ii) be given during the period of insurance or within 30 days after its expiry.

5.2 Conduct of Claims

The Insured must not make any admission or any decision that affects the Conduct of a Claim, or incur any costs or expenses in connection therewith without the prior written consent of Lumley.

Lumley is entitled at any time to nominate a solicitor to act as the Insured's solicitor and shall have total discretion as to the Conduct of the Claim, in the name of the Insured. The solicitor shall at all times be at liberty to disclose to Lumley any information obtained in the course of so acting, whether from the Insured or howsoever. The Insured hereby waives all claims to legal professional privilege that it might otherwise have as between itself and Lumley in respect of such information.

If Lumley believes that the Claim will not exceed the excess, Lumley may instruct the Insured to assume responsibility for the Conduct of a Claim at the Insured's expense. Should the Claim subsequently exceed the excess, Lumley agrees to reimburse the reasonable costs and expenses incurred by the Insured that exceed the excess. The Insured must advise Lumley as soon as the total costs of the Claim exceed the excess or it becomes apparent that they are likely to do so.

5.3 Defence of prosecutions

Lumley shall not require the Insured to defend any prosecution in respect of any Claim against the Insured, nor shall the Insured require Lumley to defend, on its behalf, any prosecution in respect of any such Claim unless a legal counsel (to be mutually agreed upon by the Insured and Lumley) shall advise that such prosecution should be defended.

In formulating such advice, counsel shall take into consideration whether the defence of the prosecution has a reasonable prospect of success. The cost of counsel's opinion shall be regarded as part of the Defence Costs of any Claim.

In the event that counsel advises that, having regard to all the circumstances, the matter should not be defended, then the Insured can elect to defend the prosecution at its own expense but the liability of Lumley will not exceed the amount of the Fine (or Order for Reparation under the HSE Act, if applicable) and Defence Costs that would have been payable had the Insured elected not to defend.

5.4 Allocation of costs

If costs or expenses are incurred both in respect of a Claim insured under this Policy and a matter that is not insured under this Policy then Lumley shall be liable to pay only a fair proportion of such costs or expenses. In the event that the Insured and Lumley are unable to agree as to a fair proportion, then counsel, mutually agreed upon by both parties and whose decision shall be final, shall determine what is a fair proportion.

5.5 Reasonable precautions

The Named Entity and Insured Persons shall take all reasonable precautions to:

- (a) avoid or prevent the happening of any circumstances that may give rise to an Event; and
- (b) comply, and ensure that the Named Entity's employees, servants and agents comply, with all statutory obligations, by-laws or regulations imposed by a public authority for the safety of persons or property.

5.6 Change of facts or circumstances

Notice in writing shall be given to Lumley as soon as possible of every change materially varying any of the facts or circumstances existing at the commencement of this Policy that shall come to the knowledge of the Insured.

5.7 Other insurance

Upon giving notice of any Claim, the Insured agrees to provide to Lumley written details of any other insurance that may cover or partially cover that Claim.

In the event that the Insured holds other insurance cover with another insurer in respect of any Claim then the indemnity under this Policy shall not be available until the limit of indemnity under any other policy has been exhausted.

5.8 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.

5.9 GST

Where the Insured is liable to pay tax under section 5(13) of the Goods and Services Tax 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.

5.10 Policy disputes

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

5.11 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.