

Statutory Liability Policy

Costs In Addition (Claims Made Wording)

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Introduction

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

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

Section 1 – Definitions

The following defined words and expressions are assigned a particular meaning. That meaning will apply everywhere the word or expression appears and it applies to the plural and derivatives of the word or expressions.

1.1 Act of Parliament

“Act of Parliament” means any Act of the New Zealand Parliament, including any amendment, enactment, or replacement legislation or any regulations, rules or codes issued under an Act.

1.2 Claim

“Claim” means:

- (a) any threatened or actual prosecution or investigations or inquiry regarding an Event which may give rise to a Fine, Reparation or Statutory Damages;
- (b) any circumstance which indicates to a reasonable person in the position of the Insured that a prosecution, investigation or inquiry regarding an Event may give rise to a Fine, Reparation or Statutory Damages.

1.3 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.

“Defence Costs” does not include charges for time spent by sole traders, partners, directors, officers or employees of the Insured or reimbursement of any form for remuneration of such people.

1.4 Event

“Event” means an act or omission by the Insured in connection with the Insured’s Business that is the accidental commission of an offence under an Act of Parliament.

1.5 Fine

“Fine” means any monetary penalty or costs for which the Insured is liable to pay on conviction of any offence under an Act of Parliament.

1.6 Insured

“Insured” means the entity specified in the Schedule and if the Insured is a company it includes its directors, officers or employees and any subsidiary company and its directors, officers or employees, but only while the person is acting within the scope of their duties in such capacity.

1.7 Insured’s Business

“Insured’s Business” means the business and undertakings of the Insured, as stated in the Schedule.

1.8 Limit of Indemnity

“Limit of Indemnity” means the amount stated in the Schedule.

1.9 Lumley

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

1.10 Official Investigation

“Official Investigation” means an investigation:

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

1.11 Policy

“Policy” means the following:

- (a) the Insured’s application for insurance and any oral or written supporting statements or documents supplied;
- (b) this policy wording (including any amending endorsements), and
- (c) the Schedule.

1.12 Reparation

“Reparation” means an amount of money the Insured is ordered to pay as reparation under Section 32 of the Sentencing Act 2002.

1.13 Retroactive Date

“Retroactive Date” means the date shown in the Schedule.

1.14 Schedule

“Schedule” means the most recent policy schedule, issued by Lumley.

1.15 Statutory Damages

“Statutory Damages” means damages payable by the Insured under either the Privacy Act 1993 or the Human Rights Act 1993 for an accidental breach of the applicable Act.

Section 2 – Coverage

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

2.1 Insured Liability

Lumley will pay any Fine arising out of a Claim made against the Insured in connection with the Insured's Business.

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 no later than 30 days after the period of insurance ends; and
- (c) the Event giving rise to the Claim occurred on or after the Retroactive Date; and
- (d) Lumley is not legally prohibited from indemnifying the Insured.

2.2 Limit of Indemnity

- (a) The liability of Lumley for all Claims and Events during the period of insurance shall not exceed the Limit of Indemnity.
- (b) The Limit of Indemnity is inclusive of GST unless specifically provided for under Condition 5.10 (Goods and Services Tax).

2.3 Defence Costs

In addition to the applicable Limit of Indemnity, Lumley shall pay the Defence Costs necessarily and reasonably incurred by the Insured with Lumley's prior written consent, to defend:

- (a) a prosecution that if proven could result in a Fine that would be indemnified under this Policy;
- (b) a proceeding that if proven could result in Statutory Damages that would be indemnified under this Policy;
- (c) a prosecution under the Health and Safety at Work Act 2015.

Provided that:

- (a) Lumley's maximum liability in the aggregate in respect of all Defence Costs during the period of insurance shall not exceed the amount of the Limit of Indemnity.
- (b) upon payment by Lumley of the Limit of Indemnity in respect of any Fine, Reparation or Statutory Damages, Lumley's liability in respect of any further Defence Costs in connection with that Claim shall cease.
- (c) if a payment exceeding the Limit of Indemnity has to be made to dispose of a Claim, the liability of Lumley to pay Defence Costs in connection with that Claim shall be limited to such proportion of the Defence Costs as the Limit of Indemnity bears to the amount paid to dispose of the Claim.

2.4 Separate Limits

For the avoidance of doubt, the limits under Clause 2.2 (Limit of Indemnity) and Clause 2.3 (Defence Costs) are separate. This means the Limit of Indemnity to meet Claims under Clause 2.2 (Limit of Indemnity) cannot be used to meet Defence Costs, and the Limit of Indemnity under Clause 2.3 (Defence Costs) cannot be used to meet any Claim.

2.5 Excess

The Insured must pay the excess specified in the Schedule in respect of each and every Claim including Defence Costs.

Section 3 – Extensions

The following Extensions apply automatically and are subject to the terms of this Policy unless stated otherwise. The amounts payable under these Extensions are included within the Limit of Indemnity; they are not in addition to it.

3.1 Defence Costs if Acquitted

Lumley shall reimburse the Insured's reasonable Defence Costs incurred to defend a prosecution where it is alleged that the Insured has acted or omitted to act knowingly, wilfully or intentionally and the Insured is subsequently Acquitted.

For the purposes of this Extension “Acquitted” means the dismissal of charges before or after a defended hearing, or the entry of a not guilty verdict. “Acquitted” does not include the disposition of a charge pursuant to a plea bargain where multiple charges or informations have been laid.

3.2 Enforceable Undertakings

Lumley will indemnify the Insured for:

- (a) Any amount Lumley agrees to pay as part of an enforceable undertaking under the Health and Safety at Work Act 2015 in respect of a Claim arising out of an Event in connection with the Insured's Business.
- (b) Defence Costs necessarily and reasonably incurred with Lumley's written consent,

Provided that:

- (i) The Claim could result in an order for Reparation if the Insured was convicted, and
- (ii) The amount paid is no greater than the amount Lumley would expect to pay as Reparation if the Insured was convicted.

There is no cover for:

- (a) Any amounts in respect of an undertaking or agreement made without Lumley's prior written consent, or
- (b) Any costs in connection with compliance, training or remedial actions, or
- (c) Any costs of compliance monitoring activities or meeting any non-financial terms of the enforceable undertaking, or
- (d) Any amount payable to any party other than a person who would be a victim under the definition of "victim (a)" under the Sentencing Act 2002 had the Event resulted in a conviction (or their estate in the event of death), or
- (e) Any amount, Fine, Defence Costs or Reparation that may result from a failure to comply with the contravention of any of the terms of the enforceable undertaking.

The amount Lumley agrees to pay as part of an enforceable undertaking is included in the Limit of Indemnity 2.2 (a)

3.3 Extended Reporting Period

If Lumley cancels or refuses to offer renewal terms for this Policy, the Insured has the right, upon payment of 90% of the annual premium, to an extension of the cover granted by this Policy for the period of 12 months following the effective date of such cancellation or non-renewal, but only in respect of an Event otherwise covered under this Policy that takes place prior to the effective date of such cancellation or non-renewal.

This right of extension will lapse unless written notice of such election, together with payment of the additional premium due, is given to Lumley within 30 days following the effective date of cancellation or non-renewal. If the right of extension lapses then cover under this Policy ceases as at the effective date of the cancellation or non-renewal.

Any Claim made during the extended reporting period will be treated as if it had been made during the last period of insurance and is subject to the remaining Limit of Indemnity at the effective date of cancellation or non-renewal.

The entire premium for the extended reporting period is deemed fully earned and non-refundable upon payment.

3.4 Mergers and Consolidations

If the company named as Insured in the Schedule:

- (a) is merged, amalgamated, or consolidated with or becomes a subsidiary company of another company;
- (b) sells all or substantially all of its assets to another company;

this Policy will be extended to insure the new company, provided that:

- (a) the operations and activities of the merged, amalgamated or consolidated company are the same as those undertaken by the Insured described in the Schedule; and
- (b) the Insured gives Lumley notice that it wishes to extend cover to the new company within 30 days of the merger, amalgamation consolidation or sale; and
- (c) Lumley shall be entitled to vary the policy terms, conditions and exclusions and charge an additional premium.

There is no cover for any Claim in connection with any Event that has occurred prior to the date of the merger, amalgamation or consolidation.

3.5 New Subsidiary Companies

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

- (a) the operations and activities of the new subsidiary company are the same as those undertaken by the Insured described in the Schedule; and
- (b) the Insured gives Lumley notice that it wishes to extend cover to the new subsidiary within 30 days of the acquisition or creation of the new subsidiary company; and
- (c) Lumley shall be entitled to vary the policy terms, conditions and exclusions and charge an additional premium.

There is no cover for any Claim in connection with any Event that has occurred prior to the date of the acquisition of the subsidiary company.

3.6 Official Investigations

Lumley will indemnify the Insured for Defence Costs necessarily and reasonably incurred for the Insured to be represented at any Official Investigation, public examination or commission, provided that:

- (a) the investigation arises out of an Event, or potential Event, that occurred after the Retroactive Date in New Zealand in connection with the Insured's Business; and
- (b) the Insured first knew, or ought to have known, during the period of insurance, of the Official Investigation, public examination or commission in relation to that Event; and
- (c) The Insured has advised Lumley of the Official Investigation, public examination or commission, as soon as possible, but no later than 30 days after the period of insurance ends.

3.7 Previous Subsidiary Companies

The definition of Insured will include any entity that ceased to be a subsidiary before or during the period of insurance.

However, Lumley will not indemnify any subsidiary for any Claim arising out of an Event that occurs before the Retroactive Date or after it ceased to be a subsidiary of the Insured.

3.8 Statutory Damages and Reparations

Lumley will indemnify the Insured for its legal liability to pay Statutory Damages or Reparations arising out of an act or omission that occurred after the Retroactive Date in connection with the Insured's Business.

Exclusion 4.16 (Punitive or Exemplary Damages) does not apply to Claims under this Extension.

Section 4 – Exclusions

4.1 Asbestos

There is no cover for liability in connection with asbestos.

4.2 Commerce Act

There is no cover for any Claim in connection with a breach of the Commerce Act 1986.

However, this exclusion does not apply to any individual person(s) covered under this Policy.

4.3 Compliance Costs

There is no cover for:

- (a) any costs incurred in complying with any abatement, compliance, enforcement or remedial notice or order;
- (b) any Fine (or part of a Fine) which is a penalty imposed for failing to comply with any abatement, compliance, enforcement or remedial notice or order.

4.4 Continuing Offences

If a Fine, Statutory Damages or Reparation is imposed for a continuing offence under an Act, there is no cover for the part of the Fine, Statutory Damages or Reparation relating to the period after the Insured:

- (a) knows an offence was being committed;
- (b) ought to have known that an offence was being committed.

4.5 Dishonesty or Fraud

There is no cover for any dishonest, fraudulent, criminal or malicious act or omission of any Insured.

4.6 Excluded Acts

There is no cover for any Claim under the following Acts of Parliament:

- Arms Act 1983
- Aviation Crimes Act 1972
- Crimes Act 1961
- Land Transport Act 1998
- Misuse of Drugs Act 1975
- Proceeds of Crime Act 1991
- Summary Offences Act 1981

and any other Act of Parliament specified in the Schedule as an excluded Act of Parliament.

4.7 Health and Safety at Work Act 2015

There is no cover for any fine the Insured is ordered to pay following conviction under the Health and Safety at Work Act 2015.

4.8 Infringement Fees

There is no cover for any infringement fees of any kind.

4.9 Intentional or Reckless Breach

There is no cover for any intentional or reckless breach of any Act of Parliament.

4.10 Known Claims and Circumstances

There is no cover for any Claims:

- (a) made against, or intimated to, the Insured prior to the commencement of the period of insurance;
- (b) notified under any previous Policy;
- (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.

4.11 Legal Jurisdiction

There is no cover for:

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

4.12 Monetary Amounts Paid or Offered Before Sentence

There is no cover for any sum paid, or offered to be paid, by the Insured prior to sentencing by the Court where the sum is paid or offered made without the prior written consent of Lumley.

4.13 Nuclear

There is no cover for loss, legal liability or expense of any kind arising from or in connection with:

- (a) the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices;
- (b) the use, handling or transportation of radioactive materials;
- (c) the use, handling, transportation of any weapon of war or explosive device employing nuclear fission or fusion.

4.14 Personal Grievances

There is no cover for anything arising out of any contract of employment or service or any intended contract of employment or service with any current, former or prospective employee, including any personal grievance or similar action by an employee.

4.15 Private Prosecutions

There is no cover for any investigation, defence, proceeding, inquiry, or prosecution taken by a person or entity other than the statutory authority or enforcement agency given responsibility for administering enforcement of an Act of Parliament.

4.16 Punitive or Exemplary Damages

There is no cover for any damages, including punitive, aggravated, liquidated, multiple or exemplary damages imposed by a court for the breach of any Act of Parliament.

4.17 Retroactive Date

There is no cover for any Claim that arose out of any Event that occurred prior to the Retroactive Date.

4.18 Sanctions

There is no cover for liability to the extent it would expose Lumley to any sanction, prohibition or restriction under any United Nations resolution, or any trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America, Australia or New Zealand.

4.19 Taxes

There is no cover for the payment of any tax, including any Fine or penalty resulting from the failure to pay any tax.

4.20 Terrorism

There is no cover for liability in connection with any Act of Terrorism, regardless of any contributing cause or event, including in connection with controlling, preventing, suppressing, retaliating against, or responding to an Act of Terrorism.

“Act of Terrorism” means any act, or preparation in respect of action, or threat of action designed to influence or coerce the government de jure or de facto, of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public, or a section of the public, of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and that:

- (a) involves violence against one or more persons;
- (b) involves damage to property;
- (c) endangers life other than that of the person committing the action;
- (d) creates a risk to health or safety of the public or a section of the public;
- (e) is designed to interfere with or disrupt an electronic system.

4.21 War

There is no cover for liability in connection with war, invasion, act of foreign enemy, 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, expropriation, confiscation, nationalisation, destruction or damage to property by or under the order of any government or public or local authority.

Section 5 – Conditions

5.1 Allocation of Costs

If Defence Costs are incurred in respect of both 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 the Defence Costs. In the event that the Insured and Lumley are unable to agree a fair proportion, then a lawyer, mutually agreed upon by both parties and whose decision shall be final, shall determine what is a fair proportion. If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society.

5.2 Assignment

Unless Lumley's written consent is obtained and endorsed on this policy, no assignment of interest under this Policy shall bind Lumley.

5.3 Cancellation

The Insured may cancel this policy at any time by notifying Lumley in writing.

Lumley may cancel this policy at any time by giving notice in writing or by electronic means to the Insured (or the Insured's broker or agent). The policy will be cancelled from 4pm on the 30th day after the date of the notice.

Adjustment of Premium:

- (a) 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;
- (b) After cancellation by Lumley, the Insured is entitled to a pro-rata refund of any unused premium.

5.4 Change of Terms

Lumley may change the terms of this Policy (including the excess) by giving notice in writing or by electronic means to the Insured (or the Insured's broker or agent). Unless otherwise specified in this Policy, the change in terms will take effect from 4pm on the 30th day after the date of the notice.

5.5 Compliance with the Policy

The Insured (and any other person or entity covered) must comply with the conditions of this Policy at all times. If the Insured, or any other person or entity covered under this Policy, or anyone acting on the Insured's behalf, breaches any of the terms and/or conditions of this Policy, Lumley may:

- (a) decline the Claim either in whole or in part; and/or
- (b) declare either this Policy, or all insurance the Insured has with Lumley to be of no effect and to no longer exist.

5.6 Conduct of Claims

The Insured must not, without Lumley's prior written consent, admit liability for or make any decision that affects the conduct of a Claim including the defence, compromise or handling of the Claim on behalf of the Insured, or incur any costs or expenses in connection with a Claim.

Lumley shall be entitled to nominate a solicitor to act as the Insured's lawyer and subject to clause 5.8 (Defence of Prosecutions) shall have total discretion as to the conduct of a Claim in the name of the Insured. The lawyer 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 the 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.

5.7 Cross Liability

Where the Insured consists of more than one legal entity, the word "Insured" shall apply to each as if a separate policy had been issued to each. Nothing contained in this Condition increases the Limit of Indemnity in respect of any Claim or period of insurance.

5.8 Defence of Prosecutions

- (a) If the lawyer instructed to defend the Insured advises Lumley that the Claim should not be defended, Lumley will not be required to defend the Claim against the Insured. If the Insured disagrees with the lawyer's advice not to defend the Claim, a second lawyer that Lumley and the Insured agree to, will be instructed to provide a second opinion. Lumley will defend the Claim if the second lawyer advises that the Claim should be defended. If the parties cannot agree on a second lawyer, then the second lawyer will be appointed by the President of the New Zealand Law Society.
- (b) The cost of the second lawyer's opinion is to be taken as part of the Defence Costs covered under this policy.
- (c) In formulating their advice, the lawyer must be instructed to consider the:
 - (i) economics of the matter; and
 - (ii) damages and costs likely to be recovered; and
 - (iii) likely costs of defence; and
 - (iv) prospects of successfully defending the Claim.
- (d) If the second lawyer advises that the Claim should be settled and if the terms of settlement that Lumley recommend are within limits that are reasonable (in the second lawyer's opinion, and in the light of the matters they are required to consider), then:
 - (i) The Insured cannot object to the settlement; and
 - (ii) The Insured must immediately pay the excess shown in the Schedule.

5.9 Disputes About This Policy

The law of New Zealand applies to disputes about this Policy and the New Zealand Courts have exclusive jurisdiction.

5.10 Goods and Services Tax

Where the Insured is liable to pay tax under Section 5 (13) of the Goods and Services Tax Act 1985, upon receiving any indemnity payment under this Policy, Lumley will indemnify the Insured for the costs of that tax. The indemnity under this condition is payable by Lumley in addition to the Limit of Indemnity.

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 this Policy and the Insured warrants the truth of all statements made therein.

5.12 Legislation Changes

Any reference to any Act of Parliament or subordinate rules referred to in this Policy includes any amendments made or substitutions to that law.

5.13 Material Change of Facts or Circumstances

The Insured shall give Lumley notice in writing as soon as possible of any change that materially varies any of the facts or circumstances that existed or the Insured thought existed at the commencement of this Policy. Lumley shall be entitled to vary the Policy terms, conditions and exclusions and charge an additional premium.

5.14 Other Insurance

The Insured agrees to provide Lumley with written details of any other insurance that may cover or partially cover that Claim.

This policy does not indemnify any claim if it is indemnified to any extent under any other insurance policy. Lumley will not contribute towards any claim under any other insurance policy.

5.15 Reasonable Precautions

The Insured shall take reasonable care at all times to avoid circumstances that could result in a Claim and shall take all reasonable steps to minimise any Claim and avoid any further loss or liability arising. Lumley shall not be liable if the Insured is reckless or grossly irresponsible.

5.16 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; or
- (c) any Event that a reasonable insured in the position of the Insured would consider 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 when the Event was first reported to Lumley.

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 an Event that occurred during the period of insurance; and
- (ii) be given during the period of insurance or within 30 days after its expiry.