

Legal Prosecution Defence Costs Insurance Policy

Call us: 09 377 1432
email: hello@ando.co.nz
PO Box 6649, Wellesley Street, Auckland 1141, New Zealand



Introduction

We are committed to complying with the Fair Insurance Code as published by the Insurance Council of New Zealand.

This means **We** will:

- (a) provide insurance contracts which are understandable and show the legal rights and obligations of both **Us** and the policyholder;
- (b) explain the meaning of legal or technical words or phrases;
- (c) explain the special meanings of particular words or phrases as they apply in the **Policy**;
- (d) manage claims quickly, fairly and transparently;
- (e) clearly explain the reason(s) why a claim has been declined;
- (f) provide policyholders with a written summary of **Our** complaints procedure as soon as disputes arise and advise them how to lodge a complaint and tell them about the Insurance and Financial Services Ombudsman Scheme.

Section 1: Coverage

1.1 We will reimburse **You** for **Legal Expenses** incurred in defending any **Legal Action** alleging an offence under any statute arising in the course of **Your** employment. Provided always that:

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

1.2 Excess

You must pay the **Excess** in respect of each and every claim under this **Policy**.

Section 2: Definitions

2.1 Legal Action means:

Any legal proceedings, including appeals, in any court, authority or tribunal in New Zealand.

2.2 Legal Expenses means:

The amount that **You** had to spend and that was reasonable for **You** to spend on **Legal Action** in relation to Solicitors' fees, expenses and disbursements.

2.3 Limit of Indemnity means:

The limit of indemnity specified in the **Schedule**.

2.4 Period of Insurance means:

The period specified in the **Schedule**.

2.5 Policy means:

Collectively, the **Schedule**, the proposal, this policy wording and any endorsements hereto.

2.6 Retroactive Date means:

The date specified in the **Schedule**.

2.7 Schedule means:

The current schedule issued by **Us**.

2.8 Solicitor means:

Any solicitor, firm of solicitors, barrister or Queen's Counsel appointed to act for **You** in relation to any **Legal Action**.

2.9 We or Us or Our means:

Ando Insurance Group Limited on behalf of the Underwriters noted in the **Schedule**.

2.10 You, Your or Yours means:

Individual directors, executives, managers or employees of the entity named in the **Schedule** whilst undertaking duties for such entity.

Section 3: Exclusions

We will not be liable for any claim for indemnity under this **Policy** 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**.

3.2 Legal Action where:

- (a) **You** have been charged with any similar offence in the seven years before **You** obtained cover under this **Policy**; and
- (b) **You** intend to plead guilty or **You** intend to plead not guilty, but this plea is not reasonable, or not based on the evidence and the law; and
- (c) **You** have 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) **You** are liable to be disqualified from driving; or
- (b) **You** are under 24 years old at the date of the alleged offence, and **You** are 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 **You** have 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 **You** have agreed to accept liability that **You** 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; or
- (d) Employment dispute.

3.6 Legal Action:

- (a) Between **You** and **Your** 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 **Yours**, 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 "**You**":
 - (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 **You** have intentionally encouraged.

3.8 Legal Expenses incurred for which **You** did not obtain **Our** prior 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.

3.12 Terrorism:

- (a) **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.
- (b) 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.

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 **You** in any other jurisdiction other than New Zealand.

Section 4: Conditions

4.1 Appeals

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

- (a) receive written notice of **Your** intention to appeal at least 5 working days before any time limit for bringing the appeal expires; and
- (b) have given **Our** prior written consent to the appeal.

4.2 Bankruptcy of the Insured

Unless **You** notify **Us** and **We** agree in writing to continue **Your** cover under this **Policy**, **You** immediately stop being insured under this **Policy** if **You**:

- (a) commit any act of bankruptcy; or
- (b) are made bankrupt; or
- (c) make any arrangement with creditors, including a composition or assignment.

4.3 Breach of Conditions

Where **You** 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 **Us** in the absence of such prejudice.

4.4 Cancellation

- (a) **You** may cancel this **Policy** at any time by giving notice to **Us**. **We** will refund to **You** on a pro rata basis the amount of the unexpired premium already paid subject to any applicable minimum premium.
- (b) **We** may cancel this **Policy** after sending at least 30 days' notice to **You** in accordance with Condition 4.13(b) and 4.13(c) (Notices by **Us**). **We** will refund on a pro rata basis the amount of any unexpired premium already paid.

4.5 Claims Co-operation

You 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**, **You** must:

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

If **We** instruct **You** in writing to so do, **You** must direct **Your Solicitor** to have any account or fee referred to any appropriate officer, authority or body to be taxed, assessed or audited.

4.6 Conduct of the Claim

We can immediately stop reimbursing **Legal Expenses** if:

- (a) **You** unreasonably refuse to follow **Your 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) **You** do not give **Our** or **Your Solicitor** full co-operation and assistance; or
- (c) a barrister of at least 15 years' experience advises **Us** that **Your** 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 **You** decline to accept **Our** written instructions on how to resolve or terminate the **Legal Action**.

4.7 Fraud

If any answers or statements in respect of any claim, or in any information provided to obtain, amend or renew this insurance, are false in any way, **We** will not provide any indemnity to **You** under this **Policy**.

4.8 GST

Where, on receiving any indemnity payment under this **Policy**, **You** are liable to pay tax under section 5(13) of the Goods and Services Tax Act 1985 (or any re-enactment or substitute), **We** will indemnify **You** for the cost of that tax. The indemnity under this clause is in addition to the applicable **Limit of Indemnity**.

4.9 Legal Counsel

You must not appoint a **Solicitor** to defend any **Legal Action** without first getting **Our** prior written consent. **We** can:

- (a) withhold or withdraw consent to any **Solicitor** that **You** propose to appoint or have appointed.
- (b) require **You** to appoint a **Solicitor** from **Our** preferred panel.

If cover has been confirmed in writing then **We** may advance **You Legal Expenses** as and when they are incurred.

4.10 Limit of Indemnity

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

4.11 Material Change

You will give immediate notice to **Us** of any material change to any of the facts or circumstances existing at the commencement of the **Period of Insurance**. **We** will be entitled to vary the **Policy** terms and/or charge an additional premium.

4.12 Multiple Offences

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

4.13 Notices by Us

- (a) Any notice given in writing by **Us** to **You**, or to the broker through which **You** arranged this **Policy** with **Us**, will be deemed to be notice to each insured.
- (b) Any notices by **Us** may be effected by sending an email or letter to the last known contact address.
- (c) Any such notice will be deemed to have been received, if sent by email, at the time of transmission, and if sent by post, three business days after the date of posting.

4.14 Notice of Claims and Circumstances

You must give **Us** immediate notice in writing of any:

- (a) circumstances which might give rise to a claim under this **Policy**, as soon as **You** become aware of them;
 - (b) notice of any indication that someone intends or may intend to make a claim against **You** which might result in **Legal Action**;
 - (c) claim against **You** which might result in **Legal Action**; or
 - (d) document served on **You** in relation to **Legal Action**;
- irrespective of whether or not **You** believe that:

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

4.15 Other Insurance

Upon giving notice of any claim under this **Policy**, **You** shall provide **Us** with written details of any other insurance that may cover or partially cover that claim.

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

4.16 Payment of Limit of Liability

At any time, **We** will be entitled to pay to **You** the balance of indemnity available up to the applicable **Limit of Indemnity**, or such lesser sum for which the claim can be settled. Upon such payment, **We** will have no further liability to **You** under this **Policy**, except for **Legal Expenses** already incurred up until the time of payment.

4.17 Policy Disputes

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

4.18 Recovery

You must:

- (a) let **Us** have any amounts that **You** recover on account of **Legal Expenses**; and
- (b) co-operate with and assist **Us** in any steps that **We** want to take at **Our** own cost to recover these amounts.

4.19 Waiver of Privilege

If **We** instruct any solicitor to investigate or defend any claim against **You**, then **You** authorise the solicitor to provide **Us** with any documents, information or advice in respect of the claim, including in relation to indemnity, and **You** waive any privilege to the extent necessary to give full effect to **Our** entitlement in this respect.

4.20 Words

Certain words in this **Policy** have a specific meaning. These words appear in bold and **You** will find the meaning listed in Section 2 'Definitions' of this **Policy**. Words importing persons will include companies and other legal entities. The singular includes reference to the plural and vice versa, and reference to any gender includes all other genders.

Call us: 09 377 1432
email: hello@ando.co.nz

Ando Insurance Group Limited.
PO Box 6649, Wellesley Street, Auckland 1141, New Zealand