You only have cover under this policy if the schedule lists it as included. This policy should be read in conjunction with the schedule.

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Ansvar Insurance Limited Care Organisations Policy Document NZCARELIABPOLV1 Aug 2010
1 Definitions

These definitions apply to the following words, and their derivatives, whenever they are used in this policy in bold typeface:

'Accident' means an event that is unintended and unexpected by you.

'Act of terrorism' means any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division of that nation, or in pursuit of political, religious, ideological, ethnic or similar purposes or reasons to intimidate the public or a section of the public of any nation, by any person or reasons to intimidate the public or a section of the public of any nation, by any person or

(a) involves force or violence against one or more persons, or threat thereof, or

(b) involves damage to property, or

(c) endangers life other than that of the person committing the action, or

(d) creates a risk to health or safety of the public or a section of the public, or

(e) is designed to interfere with or disrupt an electronic system.

'Bodily injury' means the accidental death of, or the accidental bodily injury to, any person, including sickness, disease, disability, shock, fright, mental anguish or mental injury.

'Business' means the organisation and any associated entities that are described in the schedule.

'Claim' means:

(a) A civil proceeding brought against you alleging you are civilly legally liable for a wrongful act, or

(b) Any advice you receive of an intention to hold you civilly legally liable for a wrongful act, or

(c) Any circumstance you become aware of that is likely to give rise to (a) or (b) above.

This is regardless of whether or not the amount claimed against you exceeds the excess.

'Defence costs' means the necessary and reasonable legal defence costs to defend your alleged legal liability, but only if that alleged legal liability will be covered under this policy, if proven.

'Employees' means employees directly employed by you in the business. It does not include independent contractors.

'Excess' means the amount stated in the policy or shown in the schedule.

'Family' means spouse, de facto partner, parent, child, brother, sister (including 'step' and 'half' relationships).

'Period of insurance' means the period shown in the schedule.

'Retroactive date' means the date shown in the schedule.

'Schedule' means the most recent Schedule to this Care Organisations Liability Insurance Portfolio that we have issued to you.

'Territory' means the country or countries named in the schedule.

'We/us/our' means Ansvar Insurance Limited.

'Wrongful act' means any alleged:

- Act or omission, or
- Misleading statement, or
- Negligence, or
- Error, or
- Breach of duty

by you after the retroactive date, solely in the course of your advice or services in a professional capacity for the business.

'You' means:

(a) The organisation named in the schedule and any associated entities named in the schedule; and

(b) All past and present directors, trustees, managers, employees, secretaries, committee members, officers, and volunteers of that organisation and its associated entities in (a) above; and
2 What You Are Insured For

2.1 We will indemnify you against your civil legal liability arising out of any wrongful act occurring in a territory after the retroactive date in connection with your business, provided:

(a) You first become aware of a claim, during the period of insurance, and

(b) You first notify us about the claim:

- during the period of insurance, or
- within 30 days after the period of insurance ends.

2.2 We will also indemnify you for your defence costs.

3 Automatic Extensions

The following extensions are subject to the terms of this policy, except to the extent they are varied in each extension. They are all included within the Sum Insured shown in the schedule and are not in addition to it. They are also subject to any specified sub limits.

3.1 Defamation cover

The cover includes wrongful acts involving defamation in connection with the provision of professional advice or professional services for the business.

3.2 Previous business

The cover includes wrongful acts in relation to your former businesses.

3.3 Loss of documents

The cover includes wrongful acts that result in the loss of documents entrusted to and not belonging to you.

3.4 Non-imputation of dishonesty or fraud

The dishonesty or fraud by one insured is not imputed to any other insureds.

3.5 Consecutive cover

The cover is extended to claims first notified to you, or which you first became aware of, during previous periods of insurance that we have issued this policy to you, as long as:

3.5.1 This policy has been continuously issued to you between that previous period of insurance and this period of insurance, and

3.5.2 You first notified to us during:

(a) This period of insurance, or
(b) Within 30 days after the end of this period of insurance.

Provided, cover shall be on the terms of the policy current when the claim was first notified to you, or when you first became aware of it. Exclusion 5.23 does not apply to this extension.

3.6 Dishonesty or fraud of employees

The cover is extended to include your civil legal liability arising from a dishonest, fraudulent, criminal or malicious wrongful act by an employee. There is no cover under this extension for the offending employee and anyone conspiring with the offending employee.

However, where theft or misappropriation of money is involved:

(a) You must have kept a separate trust account for that money and the trust account must have been audited at least annually by a qualified independent accountant, and

(b) All payments or withdrawals from the trust account, whether by cheque or otherwise, must have had to be authorised by at least two authorised people.

The most we will pay you in total under this extension for all covered claims during the period of insurance is the amount shown in the schedule for this extension.

Exclusion 5.5 does not apply to this extension.
3.7 Disciplinary Proceedings and Enquiries

The cover is extended to insure legal costs necessarily and reasonably incurred by you with our consent for your representation at a legal or quasi legal enquiry:

(a) into whether, in the conduct of your advice or services for the business, you have breached any relevant professional code of conduct administered by any overseeing professional association, or

(b) about a complaint against you in the conduct of your professional advice or professional services for the business, by a statutory registration board, similar regulatory authority or coronial enquiry,

provided:

- you first become aware of the enquiry during the period of insurance, and
- you have advised us of the enquiry within 30 days after the period of insurance ends.

The most we will pay under this extension for all enquiries you become aware of during the period of insurance is the Sum Insured shown in the schedule for Disciplinary Proceedings and Enquiries.

3.8 Fair Trading Act

The cover is extended to insure your civil legal liability arising from a breach of the Fair Trading Act 1986.

3.9 Intellectual Property

The cover is extended to insure your civil legal liability arising from an infringement of any patent, copyright, design or trademark in your professional advice or professional services.

3.10 Joint Ventures

The cover is extended to insure your individual and joint civil legal liability in respect of joint ventures of which you are a party, provided the joint venture is shown in the schedule.

You are not insured for civil legal liability arising from claims brought against you by your joint venture partner. No cover is provided to your joint venture partner.

After we have paid a claim under this Extension, we are entitled to exercise by subrogation, your rights to seek indemnity or contribution from your joint venture partner.

Exclusion 5.15 does not apply to this extension.

4 Optional Extensions

4.1 Automatic reinstatement of sum insured

This optional extension only applies if it is listed in the schedule. If the cover under this policy during the period of insurance exceeds the Sum Insured shown in the schedule, we will provide one automatic reinstatement of the Sum Insured during that period of insurance.

However, this does not apply:

- to any claim and/or enquiry that is connected with the same act or omission as a claim and/or enquiry already met, or to be met, under this policy, and
- until any separate excess layer policy that insures you, after the Sum Insured under this policy is exceeded, is exhausted.

5 Exclusions

5.1 Asbestos

There is no cover for legal liability connected in any way with asbestos.

5.2 Bodily injury

There is no cover for legal liability arising in connection with the bodily injury to, or the harassment of, or discrimination against any person.

5.3 Claims by certain people

There is no cover for legal liability arising in connection with a claim brought by:

5.3.1 Another insured under this policy, or
5.3.2 A subsidiary or associated entity of an insured under this policy, or
5.3.3 Any member of your family.
5.4 Directors' liability
There is no cover for a **wrongful act** in your capacity as a director of a company or other incorporated body.

5.5 Dishonesty / fraud / malice / crime
There is no cover for a **wrongful act** by you, that is:

5.5.1 Dishonest, or
5.5.2 Fraudulent, or
5.5.3 Malicious, or
5.5.4 Criminal.

5.6 Employment disputes
There is no cover for legal liability for a **wrongful act** in connection with an employment dispute.

5.7 Exemplary damages
There is no cover for any punitive or exemplary damages awarded against you.

5.8 Financial condition
There is no cover for legal liability arising out of your insolvency, bankruptcy, receivership, statutory management or liquidation.

5.9 Fines
There is no cover for any fine or penalty imposed on you.

5.10 Goods
There is no cover for legal liability in connection with your sale, supply, storage or manufacture of goods of any kind.

5.11 Illegal profit
There is no cover for legal liability in connection with your:

4.11.1 Gaining of any profit or advantage, or
4.11.2 Receiving any remuneration to which you are not legally entitled.

5.12 Intentional liability
There is no cover for legal liability arising from **wrongful acts** committed by you with the intention of causing harm or loss of any kind to the claimant or as a result of a deliberate breach of statute or regulation by you.

5.13 Information Technology Operations
There is no cover for legal liability arising from the provision of advice or services in connection with computer or information technology systems and operations but this exclusion shall not apply to liability arising out of normal everyday use of the internet for email, intranet and associated activity, or arising out of any material on your website in support of your products or services.

5.14 Investment Advice
There is no cover for legal liability arising from any investment advice or information or opinion or failure to provide advice or information regarding investments.

5.15 Joint Ventures
There is no cover for legal liability in connection with your business being part of a joint venture.

5.16 Jurisdiction
There is no cover for legal liability established by any court other than a New Zealand court, unless the judgment can be enforced in New Zealand by a New Zealand court.

5.17 Land / buildings / aircraft / watercraft / vehicles
There is no cover for legal liability in connection with the ownership, possession or use of any kind of:

- Land or buildings, or
- Aircraft, or
- Watercraft, or
- Vehicle.

5.18 Leaking Building
There is no cover for legal liability connected in any way with any building or structure:

- Containing moisture or being penetrated by external moisture or water,
- Containing mould, fungi, mildew, rot, micro-organisms, bacteria, protozoa or anything similar

that is caused directly or indirectly by:

(i) Non-compliance with the New Zealand Building Code, or
(ii) Faulty or defective design or specification, or  
(iii) Faulty materials, or  
(iv) Faulty workmanship  
when the building or structure was constructed, altered or repaired.  

5.19 Liability assumed by agreement  
There is no cover for legal liability arising solely because you agree to obligations beyond what the law compulsorily imposes on you in the normal course of conduct of your business.  

5.20 Medical Malpractice  
There is no cover for your legal liability or the legal liability of any person who is a medical practitioner or a self-employed registered health professional where the claim is in connection with such person acting in their capacity as a medical practitioner or prescribed registered health professional.  

5.21 Offering securities  
There is no cover for legal liability arising in connection with any public or private offering of securities.  

5.22 Pollution  
There is no cover for legal liability connected in any way with pollution of any kind (including any removal, neutralising, or cleaning up costs).  

5.23 Prior claims or enquiries  
There is no cover for any claim or enquiry first notified to you prior to the period of insurance, or which you first became aware of prior to the period of insurance.  

5.24 Refund of fees  
There is no cover for legal liability in connection with your fees, whether by way of a liability to refund such fees by way of damages or otherwise.  

5.25 Terrorism  
There is no cover for legal liability directly or indirectly caused by, resulting from or in connection with any act of terrorism, regardless of any other cause or event contributing concurrently or in any other sequence to the loss, or any action taken in controlling, preventing, suppressing, retaliating against, responding to or in any way relating to an act of terrorism.  

5.26 Trustees liability  
There is no cover for any wrongful act in your capacity as a trustee of a trust or superannuation fund.  

5.27 War / Confiscation / Nuclear  
There is no cover for legal liability connected in any way with:  
(a) war, invasion, act of foreign enemy, hostilities or warlike operations (whether war is declared or not), civil war, mutiny, rebellion, revolution, insurrection, military or usurped power,  
(b) confiscation, nationalisation, requisition or destruction of, or damage to property by order of government, public or local authority,  
(c) nuclear power generation or nuclear weapons,  
(d) ionising radiations or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the fusion or fission of nuclear fuel.  

6 What We Pay  

6.1 Connected wrongful acts  
If a number of claims and/or enquiries reported to us all arise out of causally connected wrongful acts, they shall be deemed to be one claim and/or enquiry for the purpose of the application of the Sum Insured and the excess payable under this policy. They shall all be deemed to have been reported during the period of insurance in which the first claim and/or enquiry was reported to us.  

6.2 Maximum amount payable  
The most we will pay you or on your behalf in total under this policy for all covered claims and/or enquiries during the period of insurance (including defence costs) is the Sum Insured shown in the schedule.  

6.3 Excess  
We deduct the excess from the amount payable for any one claim and/or enquiry.
7 How To Claim Under The Policy

7.1 To make a claim

You must:

(a) Tell us as soon as you are aware of any circumstances likely to result in a claim under this policy.

(b) Take steps to minimise your claim, and try to avoid any further claim.

(c) Complete our claim form in full if we request it.

(d) Allow us to investigate the circumstances of the claim and provide any other information or assistance that we need.

(e) Authorise the disclosure to us of your personal information held by any other party that relates to your claim.

(f) Forward to us all relevant information and correspondence as soon as you receive it.

(g) Provide a statutory declaration to verify the claim, if we request it.

You must not:

(a) Say or do anything that may prejudice our ability to:

   • Defend, negotiate or settle any liability you face, and

   • Make recovery from any person who may be responsible for your liability.

7.2 After you have made a claim

After you have made a claim:

(a) We have the sole right to act in your name and defend, negotiate or settle any liability on your behalf at our expense. This includes publishing a retraction or apology in defamation proceedings.

(b) We may appoint the lawyer to defend you. That lawyer reports to us, and you agree to that lawyer passing all information on to us.

(c) We are not required to defend a claim against you unless a mutually agreed lawyer advises that the claim should be defended after taking into account the following:

   (i) the economics of the matter, and

   (ii) the damages and costs likely to be recovered, and

   (iii) the likely costs of defence, and

   (iv) the prospects of successfully defending the claim.

The cost of that lawyer’s opinion will form part of the defence costs.

In the event that the parties are unable to agree on a lawyer then the lawyer will be appointed by the President of the New Zealand Law Society.

If that lawyer advises that the claim should be settled, and if the terms of the settlement that we recommend are reasonable in light of that lawyer’s opinion, then:

• you cannot object to the settlement, and

• you must immediately pay the excess shown in the schedule.

(d) We may take over in full any legal right of recovery that you have. If we do so, you must fully cooperate with us at no cost. This includes completing court documentation and attending hearings if necessary.

(e) We may pay the maximum amount payable under this policy (or any lesser amount for which the liability can be settled), plus the defence costs incurred to date. This meets our obligations under the policy in full.

7.3 Dishonest or fraudulent claims

If your claim is dishonest or fraudulent in any way, we may, at our discretion:

(a) Decline your claim, wholly or partially, and/or

(b) Declare this policy unenforceable by you from the date of the dishonest or fraudulent act.