

## Drought - Fire - Liability Risks - Policy Response

The extreme dry weather this summer has seriously affected the primary industry sector in many ways but effects of drought are also felt directly or indirectly across all sectors, domestic and commercial.

One of the more direct effects for the insurance industry is the heightened risk of serious fires in bush and forest areas. Property insurers see this in the damage and destruction caused to property. For liability insurers we see the situation particularly in relation to liabilities arising under the Forest & Rural Fires Act 1977 which are commonly covered under Public Liability (PL) policies.

The terms of PL policies are such that the event giving rise to a claim must be “neither expected nor intended from the standpoint of the insured” - this brings in the concept of accidental or unforeseen. All PL policies contain some form of a “reasonable care” condition which if breached, can result in a policy not responding to a claim. In the current period of rural fire high alert a much higher duty of care is called for when operating in obvious fire risk areas.

Under s43 of the F&RF Act liability for starting forest fires is effectively a strict liability, irrespective of negligence. Anyone who causes a fire will almost certainly be held liable for the costs of the damage itself plus the costs of fighting the fire unless they can prove that their actions were not the cause.

In addition there is added exposure for owners of commercial or semi-commercial forests. Under the Act (s46) where the cause of a fire is undetermined the forest owner may be levied to contribute to the expenditure of the Rural Fire Authority in controlling and extinguishing the fire. Whilst this is effectively a “first party” loss it becomes a liability because of the provisions of the legislation.

Bearing in mind that as much as 98% of land in New Zealand is deemed to be “rural” the Forest & Rural Fires Act has vast scope, and liabilities are commensurately extensive. Not only extensive but expensive.

Two recently reported cases:

- Nov 2009 - Nelson Lifestyle property owner sued for \$1m plus for starting a forest fire.

- Early 2010 – Dunedin contractor caused 800 hectares to burn – costs \$1m firefighting, \$7m for trees and property.

Currently, with the effects of the drought there has been an unusually high number of scrub and forest fires which leads to elevated concern about the risk of rural fires - the total fire ban is one measure which demonstrates this.

Insurers, including Vero Liability, share this greater concern particularly in relation to clients whose business takes them into the rural and forest environments, principally:

- Mobile Plant Operators
- Forestry and Logging Contractors
- Farmers and Farm Contractors.

We should all be conscious of taking every opportunity to be good risk management advisors by seeking to guide insureds in best practice and by communicating the potential consequences of failing to exercise reasonable care.

Vero Liability, whilst recognising the spike in risk factors, is still in the business of meeting any requirements for F&RFA cover but, of necessity, underwriting will stringently reflect exposures.

The Ministry of Business, Innovation and Employment (MoBIE) has various publications the latest of which is the [Approved Code of Practice for Safety and Health in Forest Operations](#). Whilst it is primarily a Health & Safety guide it contains much in the way of “best practice” to assist in managing a wide range of high hazard activities. There is other similar literature available, trackable from this source.

Your specialist [VL Underwriter](#) will be happy to discuss any aspects of this.