

Policy Wording

Employment Disputes



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Insuring Clause

In consideration of payment of the premium, in reliance on the proposal and declarations (which shall be deemed to be the basis of this policy) and subject to its terms, conditions, exclusions, warranties and endorsements, Vero Liability Insurance Limited ("the Company") will pay:

- (a) on behalf of the Insured all claims for Damages made against the Insured by any current, former or prospective Employee alleging any breach by the Insured, or any person now or previously employed by the Insured, of any Employment Agreement, the Privacy Act 1993 and/or the Human Rights Act 1993; and

- (b) Defence Costs;

Provided that:

- (a) all such claims are notified to the Company during the Period of Insurance stated in the Schedule, or within 60 days of the it's expiry, or for any subsequent period for which the policy is renewed or extended; and
- (b) any such breach has taken place or is alleged to have taken place on or after the Retroactive Date stated in the Schedule.

Limit of Indemnity and Excess

1. The Company's liability under this policy applies only to that part of each claim which exceeds the Excess stated in the Schedule.
2. The Company's aggregate liability under this policy in respect of Damages and Defence Costs, howsoever arising, will not exceed the Limit of Indemnity stated in the Schedule.
3. All claims arising out of any one breach or inter-related breaches are deemed to be one claim. Any claim arising from inter-related breaches is deemed to have originated in the earliest Period of Insurance in which any breach is first notified to the Company.

Extensions

The terms of this policy apply to each extension to this policy unless expressly stated otherwise.

1. Innocent Non-disclosure

In the event the Company is entitled to avoid this policy from inception or from the time of any variation in cover, the Company may maintain this policy in force, provided that:

- (a) the consequences of any matter which ought to have been disclosed at inception or at the time of any variation in cover are excluded from cover;
- (b) the Insured can establish to the satisfaction of the Company that such non-disclosure or misrepresentation was innocent;
- (c) the terms of the current Period of Insurance shall be adjusted, at the discretion of the Company, to those which would have applied had such notification or representation been made at inception or at the time of variation.

2. Injunctions and Reinstatement Defence Costs

The Company will also indemnify the Insured for reasonable legal costs and legal expenses incurred with its prior written consent in the defence or settlement of any claim against the Insured by any current, former or prospective Employee seeking either an Injunction, Reinstatement, or an order from the Human Rights Review Tribunal, Employment Relations Authority, Employment Court or any other Court or Tribunal authorised to make orders under the Human Rights Act 1993 or the Privacy Act 1993 or the Employment Relations Act 2000, provided that:

- (a) the Company's liability for any such legal costs and legal expenses shall form part of and not be in

addition to the Limit of Indemnity stated in the Schedule;

- (b) the Company will not indemnify the Insured for the costs of complying with any injunction, any order for Reinstatement or any order of the Human Rights Review Tribunal, Employment Relations Authority, Employment Court or any other Court or Tribunal that is authorised to make orders under the Human Rights Act 1993 or the Privacy Act 1993 or the Employment Relations Act 2000.

3. Fines and Penalties

Notwithstanding Exclusion 6 – Costs of Complying and Exclusion 8 – Fine. Penalty of this policy, the Company will also indemnify the Insured for Defence Costs and any fine or penalty arising out of a breach of any of the following sections of the Employment Relations Act 2000:

- (a) Section 34: Providing information in bargaining for collective agreement;
 - (b) Section 62: Employer's obligations in respect of new employee who is not a member of union;
 - (c) Section 63A: Bargaining for individual employment agreement or individual terms and conditions in employment agreement;
 - (d) Section 98: Record of strikes and lockouts;
 - (e) Section 130: Wages and time records;
- provided that the Company's liability under this Extension shall form part of and not be in addition to the Limit of Indemnity stated in the Schedule.

Exclusions

The Company shall not pay any claim:

1. Accident Compensation

for any costs or compensation for which cover to any extent is provided by the accident compensation legislation, or would be so provided but for the Insured either being an Exempt Employer in terms of any such legislation or having taken out any contract of insurance pursuant to such legislation;

2. Asbestos

resulting from asbestosis and/or related diseases, or for any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of, asbestos in whatever form or quantity;

3. Bodily Injury

for bodily injury, sickness, disease or death of any person, or for damage to or destruction of any tangible property, including loss of use.

4. Company's Advice

directly or indirectly caused or contributed to by or arising from the dismissal, disciplining, or manner of dealing with any Employee unless before such dismissal, disciplining, or dealing, the Insured obtained and acted in accordance with the Company's advice or the advice of an employment law practitioner whose engagement to act in that matter has been approved by the Company in writing;

5. Copyright

for breach of copyright, design, trademark, confidential information or patent;

6. Cost of Complying

for costs incurred in complying with any Injunction or any order for Reinstatement of any Employee or with any order of the Employment Relations Authority, Employment Court, Human Rights Review Tribunal, or any other Court or Tribunal authorised to make orders under the Human

Rights Act 1993, the Employment Relations Act 2000 or the Privacy Act 1993;

7. Defamation

resulting from defamation or alleged defamation;

8. Fine, Penalty

for any fine or penalty;

9. Employment Agreement

for any Remuneration payable under an Employment Agreement, including any failure to pay compensation or adequate compensation on termination of employment;

10. Fraud

for any alleged deliberate, fraudulent or intentionally criminal act or omission of the Insured, or of any person or entity which has a beneficial interest in the Insured or its stated predecessors in business, other than any person at any time employed by the Insured;

11. Harassment

arising from allegations of harassment, whether sexual or otherwise, oppression, duress, intimidation, criminal conduct or deliberate breach of the provisions of the Employment Relations Act 2000 committed or condoned by a shareholder, partner, director, officer or proprietor of the Insured;

12. "Leaky Buildings" – Moisture or Water Penetration, Building Defects

arising from any liability for, or to fulfil any obligation in respect of any claim or defence costs, which are directly or indirectly caused by or contributed to, or arises directly or indirectly out of:

- (a) the action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure; or
- (b) any cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in anyway responding to or assessing the effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or similar or like forms, in any building or structure; or
- (c) the failure of any building or structure to meet or perform to the requirements of the New Zealand Building Code contained in the first schedule to the Building Regulations 1992 (or any amendment or substitution thereof) in relation to:
 - (i) external water or moisture; or
 - (ii) either durability or protection from external water or moisture entering that building or structure, or the effects thereof.

13. Prior Circumstances

for any matter of which the Insured is aware, or ought reasonably to be aware, prior to the commencement of the Period of Insurance, and which may give rise to a claim against it;

14. Prior Claims

made, threatened or in any way intimated against the Insured prior to the commencement of the Period of Insurance;

15. Prior Legal Advice

for any legal fees or related expenses incurred as a result of obtaining legal advice prior to the submission of a grievance to or the issue of proceedings against the Insured (whichever shall be first);

16. Prior Litigation

for any liability arising out of any litigation in existence at the commencement of the Period of Insurance.

17. Profit or Advantage

for the return by the Insured of any remuneration, profit or advantage to which it was not legally entitled;

18. Radioactivity

directly or indirectly occasioned by, happening through or in consequence of ionising radiations or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel or the radioactive toxic explosive or other hazardous properties or any explosive nuclear assembly or nuclear component thereof;

19. Suspension

arising from allegations that the Insured has locked any Employee out, suspended the employment of any striking or non-striking Employee, or employed any other person to perform the work of a striking or locked out Employee;

20. Union Access

arising from allegations that the Employer has refused any Union access to any Employee, failed to deal with a Union in good faith, refused to bargain with a Union, failed to bargain with a Union or any Employee in good faith, bargained unfairly with any Employee, refused to allow any Employee to join a Union, refused to deduct Union membership fees from any Employee's pay, or refused to allow any Employee to attend a Union meeting or take employment relations education leave;

21. War, Terrorism

for death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (a) 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; or
- (b) any act of terrorism.
Definition: "act of terrorism" means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done 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 exclusion also excludes death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (i) and/or (ii) above.

For the purpose of determining the applicability of the exclusions, no fact pertaining to, knowledge possessed by, conduct of, dishonesty of or breach by any Insured, shall be imputed to any other Insured.

Conditions

1. Assignment

No assignment of interest under this policy shall bind the Company unless its written consent is endorsed on this policy.

2. Authorisation

By acceptance of this policy, the party which signs the proposal agrees to act on behalf of the Insured with respect to giving or receiving of notice of claim or termination, payment of premiums and receiving of any return premiums that may become due under this policy, and acceptance of endorsements and any other notice provided for in this policy, and the Insured agrees that the party so nominated shall act on its behalf.

Provided always that the above authorisation is in addition to and not in derogation of the rights, powers and obligations of the Insured under this policy and the authorisation conferred imposes no additional obligation upon the party so nominated with respect to any of the matters set out.

3. Cancellation

This policy may be cancelled by the Company at any time by giving written notice by registered mail to the last known address of the Insured. Cancellation will be effective at 4.00pm on the 30th day after posting of the written notice. In the event of such cancellation the Company will refund premium pro rated for the unexpired period of insurance.

The policy may be cancelled by the Insured at any time from the date of receipt by the Company of the Insured's written instructions and the Company will refund 80% of the premium pro rated for the unexpired period of insurance.

4. Claims

- (a) The Insured shall as a condition precedent to its right to be covered under this policy give to the Company notice in writing as soon as practicable of:
- (i) any claim made against the Insured; or
 - (ii) the receipt of notice from any person or party of any intention to hold the Insured responsible for any matter which may give rise to a claim or claims under this policy; or
 - (iii) any circumstance which the Insured shall become aware which may give rise to a claim or claims under this policy;

irrespective of whether the claim is considered justified and/or the quantum is likely to be within the Excess stated in the Schedule.

- (b) The insurance provided by this policy ceases absolutely at the expiry of the Period of Insurance. However, provided that notice referred to in 4(a) above has been given to the Company prior to the expiration of the Period of Insurance, any claim arising from the notified circumstances, which is subsequently made after the expiration of the Period of Insurance, shall be deemed to have been made during the subsistence of this policy.
- (c) The Insured shall do, and concur in doing, all things reasonably practicable to avoid or diminish any claim under this policy at its cost and, on request, give to the Company or its authorised representatives all such information and assistance as they may reasonably require. The Company shall have the right to assume the conduct and control of the defence or settlement of any claim, and any counterclaim (which shall be a condition precedent to the Insured's right to be covered under this Policy).

- (d) The Insured shall not in relation to any claim under this policy:
- (i) make any admission of liability;
 - (ii) incur any expense;
 - (iii) make any payment or settlement of liability; without the prior written consent of the Company. Such consent shall not be unreasonably withheld. The Company shall not be liable for any admissions, expenses, payments or settlements made without its consent.
- (e) If the Insured shall refuse to consent to any settlement recommended by the Company, and shall elect to contest or continue any legal proceedings, the Company's liability for the claim shall not exceed the amount for which the claim could have been so settled (over and above the Excess stated in the Schedule), including Defence Costs incurred up to the date of such refusal.

5. Fraud

If any claim is in any respect fraudulent, if any false declaration is made or used in support of any claim, or if any fraudulent means or devices are used by the Insured or by anyone acting on its behalf to obtain any benefit under this policy, all benefits will be forfeited.

6. Jurisdiction

This policy shall be governed by the law of New Zealand, the Courts of which shall have exclusive jurisdiction over any dispute.

7. Other Insurance

If, at the time of any claim arising under this policy, there is any other valid and collectable insurance covering all or part of the same claim, this policy will apply to the amount in excess of that recoverable or in fact recovered, whether such insurance is stated to be primary or excess, unless written only as specific excess insurance over the Limit of Indemnity under this policy.

8. Territory

This policy only provides cover for breaches occurring anywhere in New Zealand.

9. Waiver of Privilege

If the Company instructs any lawyer to investigate or defend any claim against the Insured, the Insured authorises the lawyer to provide to the Company any documents, information or advice in respect of the claim, including in relation to indemnity; and the Insured waives any privilege to the extent necessary to give full effect to the Company's entitlement in this respect.

Definitions

Words or phrases given special meaning in the Schedule attaching to this policy have the same meaning wherever they appear in the policy. In addition:

1. Damages

means compensation pursuant to the:

- (a) Section 123 of the Employment Relations Act 2000;
 - (b) Privacy Act 1993;
 - (c) Human Rights Act 1993;
- but shall not mean any fine, penalty, or injunctive remedy or costs awarded or incurred in relation to any fine, penalty or injunctive remedy.

2. Defence Costs

means costs, charges and expenses incurred in preparation for, attendance at, and representation at:

- (a) investigations, inquiries, hearings, conferences, administrative proceedings, regulatory proceedings, commissions, examinations, prosecutions, reviews,

complaint or disciplinary hearings, or other proceedings;

- (b) defence and settlement of legal actions, claims, or proceedings and appeals therefrom; the cost of appeal, attachment or similar bonds; and legal counsels' fees and experts' fees;

relating to any breach or alleged breach to which this insurance applies. However, Defence Costs shall not include regular or overtime wages, salaries or fees of the Insured.

3. Employee

shall mean a person deemed to be employed by the Insured pursuant to the terms of the Employment Relations Act 2000.

4. Employment Agreement

shall mean any contract of service between the Insured and any Employee.

5. Injunction

shall mean an interim or permanent order of the Employment Relations Authority, Employment Court, District Court or High Court:

- (a) that an Employee be reinstated to a position with the Insured that he or she formerly occupied;
- (b) restraining the Insured from instituting or continuing disciplinary or dismissal procedures.

6. Insured

means:

- (a) the entity stated in the Schedule and, if a partnership, each of the partners;
- (b) any Subsidiary Company of the Insured;
- (c) in respect of any partner entitled to cover under this policy as described in (a) above who is deceased, incompetent, insolvent or bankrupt, the:
 - (i) estates, heirs, legal representatives or assigns;
 - (ii) current or former spouses, de facto spouses or same sex partners;

but only in relation to alleged negligence on the part of any such partner.

Each person or entity is insured jointly.

7. Period of Insurance

means the period stated in the Schedule.

8. Reinstatement

shall mean the restoration of an Employee to a position pursuant to an order under the Employment Relations Act 2000.

9. Remuneration

shall mean wages, salary, holiday pay, allowances (whether reimbursing or otherwise) benefits and all other emoluments.

10. Subsidiary Company

means any company that is or was:

- (a) controlled by the Insured through legal or beneficial ownership of more than 50% of the issued voting stock; or
- (b) deemed a subsidiary of the Insured by virtue of any applicable legislation or law, including companies held either directly or indirectly through one or more subsidiaries (ie, subsidiaries of subsidiaries).

11. Union

shall mean any society registered with the Registrar of Unions or any society which has applied to the Registrar of Unions for registration.