
MEDICAL PROFESSIONALS LIABILITY INSURANCE

ARRANGED

BY

**AON NEW ZEALAND LIMITED
FOR MEMBERS OF THE**

NEW ZEALAND ASSOCIATION OF OCCUPATIONAL THERAPISTS (INC)

1 PREAMBLE

Vero Liability Insurance Ltd ("the Company") hereby agrees, subject to the New Zealand Association of Occupational Therapists (Inc) having paid or agreed to pay on behalf of each Insured the premium shown in the Schedule, to indemnify the Insured subject to the terms of the Policy.

2 INSURING CLAUSE

The Company will indemnify the Insured up to but not exceeding the Limit of Indemnity in respect of:

2.1 any civil, statutory or professional liability including:

- (a) any award for damages, fines, penalties or other costs made against the Insured by any Medical Board, Medical Council, Tribunal, Committee of Inquiry, Court Martial, Accident Compensation Inquiry, Coroners Court, Privacy Act Tribunal or the like;

resulting from any Claim which may be first made against the Insured during the Period of Insurance in connection with the Insured's profession as defined in the Schedule including:

- (b) Claims resulting from ownership, occupation or use of any kind of property for the purpose of that profession;
- (c) any Claim made by the Insured on the Company under the Loss of Documents clause;

2.2 legal and other costs and expenses incurred with the Company's prior written consent in the investigation, defence and settlement of any Claim to which this insurance applies and in representation and defence before any Medical Board, Medical Council, Tribunal, Committee of Inquiry, Court Martial, Accident Compensation Inquiry, Coroners Court, Privacy Act Complaints Tribunal or the like;

provided that the event giving rise to the Claim occurred during the Insured's period of membership of the New Zealand Association of Occupational Therapists (Inc) and the Claim is notified to the Company in writing no later than one month after the expiry of the Period of Insurance.

3 INTERPRETATION

When used in this policy the following meanings shall apply:

- 3.1 **"Additional premium"** means the premium paid for any new paid up member of the New Zealand Association of Occupational Therapists (Inc) who wishes to have the benefit of cover under this policy.
- 3.2 **"Claim"** means the receipt by the Insured of any written or verbal demand for compensation or any allegation of negligence, incompetence or breach of professional duty and includes any Claim or series of Claims against the Insured for which indemnity is provided by this policy arising from one original source or one original cause or event.
- 3.3 **"Documents"** means deeds, wills, agreements, maps, plans, records, books, letters, certificates, documents and forms of any nature whether printed, written or produced by any other method (excluding any bearer bonds or coupons, bank notes or currency notes, unrepresented or unpaid cheques or other negotiable instruments).
- 3.4 **"Employee"** means any employee of the Insured, including any person who becomes or ceases to be an employee of the Insured, but only in respect of services performed for the Insured in the conduct of the Insured's profession.
- 3.5 **"the Insured"** means:
- (a) Each individual paid up member of the New Zealand Association of Occupational Therapists (Inc), who has paid their share of the insurance premium for the Period of Insurance.
 - (b) Any person who becomes a paid up member during the Period of Insurance and who pays their share of the Additional Premium.
 - (c) Any person who ceases to be a paid up member of the New Zealand Association of Occupational Therapists (Inc) who had paid their share of the annual premium in the Period of Insurance when the circumstance giving rise to the Claim first arose providing that this policy is still in force when any Claim is made.
 - (d) The estates and/or the legal representatives of any of the persons defined in (a), (b) and (c) above in the event of their death, incapacity, insolvency or bankruptcy.

3.6 **“Products”** means any property or its container sold, supplied, constructed, repaired, altered, renovated, serviced, or installed by the Insured in New Zealand.

4 **LOSS OF DOCUMENTS**

If, in the conduct of the Insured's profession, documents the property of or entrusted to the Insured are destroyed, damaged, lost or mislaid and after diligent search cannot be found, the Company shall indemnify the Insured for all costs, of whatsoever nature incurred by the Insured in replacing or restoring the documents.

5 **LIMIT OF INDEMNITY**

The Company's liability to indemnify the Insured under the policy in respect of any Claim against the Insured including legal and other costs and expenses shall be limited to the sum specified in item 4 of the Schedule.

6 **DEDUCTIBLES**

The amount specified as the Deductible in Item 6 of the Schedule shall be borne by the Insured. The Deductible will not apply to costs incurred with the Company's prior consent, which will be borne by the Company.

The Deductible will not apply to Claims under Clause 4: Loss of Documents.

All recoveries and payments received in connection with a loss settlement shall be applied to the Company's benefit in priority to the specified Deductible but not in priority to any additional sum beyond the Limit of Indemnity required to be contributed by the Insured to dispose of a Claim.

7 **EXCLUSIONS**

7.1 The Company shall not indemnify the Insured for any Claim or award of damages, fines, penalties or other costs made against the Insured arising from any deliberate or reckless breach of civil, statutory or professional duty.

7.2 The Company shall not indemnify the Insured against any Claim:

- (a) for the payment of a trading debt incurred by the Insured.
- (b) for loss in respect of which the Insured is entitled to indemnity under any other Insurance except in respect of any excess beyond the amount which would have been payable under such insurance had this policy not been effected.
- (c) arising out of any circumstance:
 - (i) which has been notified under any policy or certificate of insurance in force prior to the inception of this policy, or

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- (ii) disclosed to the Company before the commencement of the Period of Insurance; or
 - (iii) of which the Insured was aware, before the commencement of this insurance, might give rise to a Claim.
- (d) directly or indirectly caused by or in part by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, or from war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection.
- (e) arising out of the ownership, maintenance, operation or use of any aircraft, watercraft, automobile or motor vehicle required to be registered for road use by or in the interest of the Insured.
- (f) as a result of insolvency of the Insured.
- (g) for liability assumed by the Insured by express warranty or agreement unless such liability would have attached to the Insured notwithstanding such express warranty or agreement.
- (h) in respect of Products after they have passed from the control and actual physical custody of the Insured:
- (i) for the cost of rectifying defects in any of the Products, or making any refund for the price paid for any of the Products which have proved defective.
 - (ii) arising from any product guarantee given by or on behalf of the Insured.
- (i) for liability in respect of death or bodily injury to any person arising out of or in the course of the employment of such person by the Insured.
- (j) arising from services rendered by the Insured while under the influence of intoxicants or drugs or arising from any failure to render services competently or at all because of such influence.

Notwithstanding this, liability for Claims arising out of services rendered whilst the Insured is either:

- (i) taking prescription drugs in accordance with Doctor's recommendations, and/or
 - (ii) patent medicines in accordance with manufacturer's instructions,
- shall not be excluded.

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- 7.3 in respect of any matter where action for damages is not brought in a Court of Law within New Zealand and subject to New Zealand law, or where an action is brought to enforce a foreign judgment whether by way of reciprocal agreement or otherwise.
- 7.4 The Company shall not indemnify the insured against any claim arising directly or indirectly from:
- (a) mining, processing, transporting, distributing or storing asbestos;
 - (b) manufacturing or processing materials containing asbestos;
 - (c) any process of decontamination, treatment or control of asbestos;
 - (d) the presence of asbestos in any building or structure; or asbestos pollution or contamination.
- 7.5 The Company shall not indemnify the Insured against any liability for, or 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.

7.6 The Company shall not indemnify the insured against any claim or inquiry costs arising directly or indirectly from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence.

Act of Terrorism means:

An act, including but not limited to the use of force or violence and/or the 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 to the public, or any section of the public, in fear.

This policy also excludes any claim or inquiry costs directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

Subject otherwise to the General Conditions and Exclusions of the Policy.

8 **ARBITRATION**

In the event of any dispute or disagreement between the Insured and the Company regarding the application of policy Exclusions (7.1 to 7.6), the dispute or disagreement may be referred for arbitration if the Insured agrees. Decisions arising from such arbitration shall be final and binding.

9 **JURISDICTION**

It is agreed that this Insurance shall be governed by the law of New Zealand and New Zealand courts shall have jurisdiction in any dispute.

10 **FRAUDULENT CLAIMS**

If any Claim is in any respect fraudulent or if any false declaration is made or used in support of such a Claim or if any fraudulent means or devices are used by the Insured or anyone acting on behalf of the Insured to obtain any benefit under this policy in respect of the Claim, all benefit under this policy in respect of that Claim shall be forfeited. For the purpose of this condition, and if the Insured comprises more than one person, each of the Insured shall be treated as having been issued with a separate policy.

11 **CANCELLATION**

This policy may be cancelled by the Company at any time by giving notice to the New Zealand Association of Occupational Therapists (Inc) by registered mail to the last known address of the New Zealand Association of Occupational Therapists (Inc). Notice to New Zealand Association of Occupational Therapists (Inc) will be deemed to be sufficient notice to the Insured. Such cancellation shall be effective from midnight on the 60th day after posting of such written notice. After such cancellation the Company will refund a pro-rata return of premium for the unexpired Period of Insurance.

The New Zealand Association of Occupational Therapists (Inc) may, on behalf of the Insured, cancel the policy at any time by giving written notice to the Company. After cancellation the Company shall refund premium for the unexpired Period of Insurance calculated pro-rata from the date of receipt of advice of such cancellation less 10% subject always to the Company's minimum premium.

12 CONDITIONS

- 12.1 The policy is to insure each and every Insured and the terms of this policy shall apply separately to each Insured as if a separate policy had been issued to each.
- 12.2 The Insured shall not admit liability for, or settle any Claim or incur any costs in connection with any Claim, without the prior written consent of the Company. The Company shall be entitled, at its own expense, at any time to take over and to conduct in the name of the Insured, the defence or settlement of any Claim. Nevertheless, neither the Insured nor the Company shall be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed upon by the Insured and the Company) shall advise that such proceedings should be contested.
- 12.3 The Insured shall as a condition precedent to their right to be indemnified under this policy give the Company written notice as soon as practicable:
- (a) of any Claim made against the Insured.
 - (b) of the receipt of notice from any person of an intention to make a Claim against the Insured.
- 12.4 The Insured shall as a condition precedent to their right to be indemnified under this policy give to the Company written notice as soon as practicable of any circumstances of which they shall become aware during the period of this policy which may give rise to a Claim against them.
- 12.5 The Insured shall on request, as a condition precedent to their right to be indemnified under this Policy, give to the Company or their authorised representatives all such information, assistance and co-operation as they may reasonably require.
- 12.6 The insurance provided by this Policy ceases absolutely at the time and date stated in Item 3 of the Schedule. However, provided the written notice referred to in 12.3 or 12.4 above has been given to the Company no later than one month after the expiration of the Period of Insurance any Claim arising from the circumstances notified which is subsequently made after the expiration of the Period of Insurance shall be deemed for the purpose of this Policy to have been made during the subsistence of this Policy.
- 12.7 Written notice under Clause 12.3 or 12.4 above shall be deemed to have been given if made to Vero Liability Insurance Limited, Private Bag 92 055, Auckland. Telephone: (09) 306-0350 or Facsimile: (09) 306-0351.

13 EMPLOYEE'S EXTENSION

Providing the liability of the Company is not increased beyond the Limit of Indemnity, this policy extends to indemnify any Employee of an Insured in respect of events occurring during the Insured's period of membership of the New Zealand Association of Occupational Therapists (Inc). The Employee will be indemnified in terms of this extension as if the Employee were an Insured.

14 GST CLAUSE

Where the Insured is liable to pay tax under section 5(13) of the Goods and Services Tax Act 1985 (or any statutory amendment or re-enactment of the section of the Goods and Services Tax Act 1985) on receiving any indemnity payment under this Policy the Company will indemnify the Insured for the cost of that tax. The amount payable under this clause will not be subject to the Limit of Indemnity stated in the Schedule.

SCHEDULE

Policy Number: HO-LPI-6010115

ITEM 1 Insured

The individual members of the New Zealand Association of Occupational Therapists (Inc)

ITEM 2 Profession

Occupational Therapy and other related activities permitted by the New Zealand Association of Occupational Therapists (Inc).

ITEM 3 Period of Insurance

From: 1 July 2008 to 1 July 2009 both days at 4pm standard time.

ITEM 4 Limit of Indemnity

\$500,000 any one Claim and \$1,000,000 in the aggregate per individual member or as determined by the premium level paid.

ITEM 5 Premium

As agreed.

ITEM 6 Deductible (where applicable)

\$250 each and every Claim, costs exclusive.

SIGNED: _____

DATED: 11-11-08