



making relationships count

STATUTORY LIABILITY POLICY WORDING

A photograph of two men in business suits. The man on the left is wearing glasses and has a beard. The man on the right is smiling and looking at a document. They are both looking down at the document, which is partially visible at the bottom of the frame. A white circular callout box is overlaid on the image, containing text.

DUAL New Zealand
'Mind The Gap'
Statutory Liability
Policy Wording



Mind the Gap

Statutory Liability Policy Wording

TABLE OF CONTENTS

Section 1:	INSURING CLAUSES	2
Section 2:	AUTOMATIC COVERAGE CLAUSES	3
Section 3:	EXCLUSIONS	5
Section 4:	CONDITIONS	6
Section 5:	DEFINITIONS	7

MIND THE GAP

Statutory Liability Policy Wording

Section 1: INSURING CLAUSES

We agree to pay on behalf of the **insured** up to the **indemnity limit** any **fine** payable by the **insured** upon conviction of an **offence**, resulting from an **event** in connection with the **business** that:

- (a) first occurs, and
- (b) is first notified to **us**

during the **insurance period**.

1.1 Defence Costs in Addition

We agree to pay to or on behalf of the **insured** any **defence costs** in respect of an **offence** covered by this **policy** in addition to the **indemnity limit**, in an amount not exceeding the same **indemnity limit**.

We will only pay **defence costs** however if:

- (a) **We** incur them; or
- (b) The **insured** incurs them after obtaining **our** agreement in writing and the **defence costs** are in **our** view reasonable and necessary.

We will not defend or continue to defend an **offence** to which the **policy** would provide indemnity, or pay or continue to pay any **defence costs** associated with such defence, once the **defence costs indemnity limit** has been exhausted.

1.2 Retroactive Date

This **policy** shall only provide cover to the **insured** in respect of any **event** which occurred or allegedly occurred after the **retroactive date**.

Section 2: AUTOMATIC COVERAGE CLAUSES

The Automatic Coverage Clauses are subject to the Insuring Clause above and all other **policy** terms.

2.1 Consolidation or Merger

If the **insured** acquires by merger, consolidates with, is merged into or acquired by any other entity after the commencement of the **insurance period**, **we** agree to provide cover to the acquired entity provided that the **insured** gives written notice to **us** as soon as practicable, together with such information as **we** may require; and the **insured** shall pay **us** any required additional premium.

2.2 Continuous Cover

Notwithstanding General Exclusion 6.13 (Prior Knowledge) (a) and (b), **we** agree to provide cover in respect of any **event** first notified in the **insurance period** where the **insured**:

- (a) first became aware, prior to the **insurance period**, that an event had occurred; and
- (b) had not notified **us** of that **event** prior to the **insurance period**.

Provided that:

- i) **we** were the insurer of the **insured** when the **insured** first became aware of the **event**; and
- ii) **we** have continued, without interruption, to be the **insured's** insurer up until this **policy** came into effect; and
- iii) there has not been any fraudulent non-disclosure or fraudulent misrepresentation by the **insured** in respect of the **event**; and
- iv) **we** have the discretion to apply either the terms of the **policy** on foot when the **insured** first became aware of the **event**, including but not limited to the **indemnity limit** and **deductible**, or the terms of this **policy**; and
- v) the **insured** agrees to only make a claim under one **policy** issued by **us**.

For the purpose of this Automatic Coverage Clause only, the definition of **we/us/our** in Definition 5.25 also includes the Underwriter(s) for which **we** were the agent on any previous policy issued by **us**.

Subject to the terms of this Automatic Coverage Clause and the terms of the **policy**, the intention of this Automatic Coverage Clause is to provide continuous cover to the **insured** notwithstanding any change in the identity of the Underwriters for which **we** presently act, or have previously acted, as agent.

2.3 Discovery Period

The **insured** may give written notice to **us** of any **event** occurring prior to the end of the **insurance period**, during the **discovery period** immediately following the **insurance period** as follows:

- (a) 30 days immediately following the **insurance period**, the cover will be granted automatically with no additional premium payable; or
- (b) 12 months immediately following the **insurance period**, then if the **insured** has requested such period in writing within 15 days after the end of the **insurance period** and tenders an additional premium of 100% of the annual premium level within 30 days of the end of the **insurance period** cover will be granted.

This Automatic Coverage Clause is not available if this **policy** is:

- i) renewed or replaced with any other Statutory Liability Policy; or
- ii) cancelled or avoided.

Any **discovery period** purchased under this Automatic Coverage Clause is non-cancellable, and the premium paid for the **discovery period** is non-refundable.

2.4 Enforceable Undertaking

In relation to an **event** covered under this **policy**, **we** agree to reimburse the **insured** for the cost of meeting any **enforceable undertaking** which the **insured** enters into with **Worksafe** provided that the **insured** obtains **our** agreement before entering into the **enforceable undertaking**. **We** will also cover any costs the **insured** is required to pay to **Worksafe** as part of its agreement to enter into any **enforceable undertaking**.

Unless otherwise agreed, **we** will not cover the **insured** in respect of any prosecution or penalties resulting from the **insured's** failure to fulfil an **enforceable undertaking**.

The maximum amount payable under this Automatic Coverage Clause is the sub-limit specified in the **schedule**.

A separate **deductible** will apply under this Automatic Extension Clause, as specified in the **schedule**. The **deductible** is inclusive of **defence costs** and is payable in addition to the **deductible** payable under condition 4.1 (Deductible) of this **policy**.

2.5 Official Investigations

We shall provide cover for **civil defence legal costs** incurred by the **insured** in relation to an **investigation** involving the **insured**.

2.6 Panel Counsel

The **insured** is entitled to one (1) hour free advice from any one firm listed on **our** panel of solicitors relating to a matter which **we** have accepted as notification of circumstances which may give rise to a **claim** under this **policy**.

We consent to that firm listed on **our** panel of solicitors being retained to act for an **insured** in respect of any **claim** covered by this **policy**.

2.7 Progress Payment of Legal Expenses

Where **we** have agreed to indemnify the **insured** for an **event**, and on production of acceptable evidence of expenditure prior to the final settlement of the **claim**, **we** shall pay **defence costs** or **civil defence legal costs** necessarily and reasonably incurred by the **insured**.

Section 3: EXCLUSIONS

We will not cover the **insured** for or in connection with:

3.1 Daily Continuing Offences

- (a) The cost or payment of any enforcement order, remedial order or compliance order; or
- (b) any **fine** imposed in relation to a daily continuing **offence** where the **fine** is imposed in relation to a period of time after the **insured** first received notice from the informant or his employing body of the intention to commence a prosecution in relation to that **offence**.

3.2 Deliberate Disregard/ Wilful Conduct

A prosecution, unless the **insured** is **acquitted**, for any **offence** which has allegedly resulted from the:

- (a) deliberate disregard by the **insured** of any of the provisions of any **Act of Parliament** which the **insured** is alleged to have contravened; or
- (b) **insured** instructing another person to discharge one or more of its obligations under any of the provisions of any **Act of Parliament** and failing to take all reasonable steps to ensure that the **insured's** obligations were discharged as instructed; or
- (c) failure by the **insured** to comply with any lawful abatement notice or enforcement order, improvement notice, prohibition notice or suspension notice, building consent, Notice to Rectify, Compliance Schedule, Gazetted Notice, or order made by a Human Rights or Privacy Review Tribunal.

3.3 Excluded Act

Any **offence** under an **Excluded Act**.

3.4 Orders and Costs

- (a) Any pecuniary penalty, restitution, compensation or order for payment pursuant to sections 79A, 80, 83 or 89(3)(b) of the Commerce Act 1986; or
- (b) Any order for payment of costs made under the Commissions of Inquiry Act 1908; or
- (c) Any court order in the nature of damages or compensation, except a sentence of reparation following a Health and Safety at Work Act 2015 prosecution; or
- (d) Any action, proceeding, inquiry, investigation or prosecution taken against the **insured** by the Inland Revenue Department or any other revenue collecting authority.

3.5 Personal Grievances

Any contract of service or any intended contract of service with any current, former or prospective **employee**, including any personal grievance or like action by an **employee**, but this Exclusion shall not apply to any investigation, inquiry or prosecution by the Department of Labour pursuant to the Health and Safety at Work Act 2015.

3.6 Private Prosecutions

Any investigation of and defence of any action, proceeding, inquiry, investigation or prosecution taken against the **insured** by a person other than the statutory authority or enforcement agency given that responsibility under any **Act of Parliament**.

Section 4: CONDITIONS

4.1 Deductible

- (a) The **insured** is responsible for the **deductible** in respect of each and every **event**. Subject to (c) below, **we** are only liable to indemnify the **insured** for that part of the **insured's** liability in respect of each **event** in excess of the **deductible**.
- (b) Where **we** have paid on the **insured's** behalf part or all of the **deductible**, the **insured** shall reimburse **us**.
- (c) Costs and expenses incurred by **us** in determining whether **we** are liable to indemnify the **insured** under the **policy** shall not be subject to the **deductible** and will be met by **us**.

4.2 Indemnity Limit

Our total liability under the **policy** for any one **event** and in the aggregate from all **events** shall not exceed the **indemnity limit**.

We may at any time pay the **indemnity limit** applying to any one **event** or series of **events** (after deduction of sums already paid) or any lesser amount for which such **events** can be settled and will then be under no further liability in connection with such **events**.

4.3 Reasonable Precautions

The **insured** shall take all reasonable precautions to:

- (a) avoid, prevent or minimise any circumstances that may give rise to an **event**; and
- (b) comply with all relevant statutory obligations.

4.4 Severability and Non-Imputation

Except for General Exclusion 6.13 (Prior Knowledge) no state of mind or knowledge possessed by any one **insured** will be imputed to any other **insured** for the purpose of determining whether any provision in this **policy** applies. However:

- (a) any state of mind or knowledge possessed by any past or present principal, director or partner of the **insured** will be imputed to the **insured** in Definition 5.16 (a) (Insured) of this **policy**.
- (b) where the **insured** named in the **schedule** is a company with a sole director, the knowledge of the sole director shall be imputed to the **insured**.

The terms of this **policy** apply to each **insured** provided that the failure by any **insured** to observe and fulfil the terms of this **policy** will not prejudice this insurance in relation to any other **insured**.

Notwithstanding the above, the maximum aggregate amount payable under all Insuring Clauses and Extensions will apply to all **insureds** combined.

Section 5: DEFINITIONS

For the purposes of this the **policy** only:

5.1 Acquitted means dismissal of charges before or after a defended hearing or entry of a not guilty verdict (but shall not include the disposition of a charge pursuant to a plea bargain where multiple charges have been laid).

5.2 Act of Parliament means any Act of the New Zealand Parliament, including any amendment to or re-enactment, and any code, rules, regulations, bylaws or other subordinate legislation made under such Act.

5.3 Business means the Business of the **insured** specified in the **schedule**.

5.4 Civil defence legal costs means the legal costs and expenses, including witness costs and expenses, necessarily and reasonably incurred in relation to:

- (a) a formal inquiry by an **official body**, which could lead to prosecution for an **offence**;
- (b) proceedings before a Human Rights or Privacy Complaints Review Tribunal.

5.5 Claim means:

- a) a court attendance notice;
- b) a civil proceeding or counter-claim commenced by the service of a writ, complaint, summons, statement of claim, or similar originating process;
- c) an alternative dispute resolution proceeding, a formal administrative or regulatory proceeding including any arbitration, mediation, conciliation or other alternative dispute resolution proceeding commenced in writing; or
- d) a criminal proceeding;

alleging an **offence** brought and maintained by an **official body**.

5.6 Deductible means the amounts specified in the **schedule**.

5.7 Defence costs means the legal costs and expenses, including defence witness costs and expenses, necessarily and reasonably incurred with **our** prior written consent in investigating and/or defending and/or settling any prosecution or threatened prosecution alleging the commission of an **offence**. **Defence costs** shall not include any internal or overhead expenses of the **insured**, the cost of the **insured's** time or any loss of earnings or profits.

5.8 Discovery period means the period of time specified in Automatic Coverage Clause 2.3 (Discovery Period) during which time written notice may be given to **us** of an **investigation** commenced or a **claim** which is first made against the **insured** for an **offence** committed or allegedly committed prior to the end of the **insurance period** or **transaction**.

5.9 Employee means any person who is a past, present or prospective **employee** of the **insured** under a contract of service or apprenticeship on a full-time, part-time or casual basis.

5.10 Enforceable Undertaking means a legally binding agreement between **Worksafe** and the **insured** pursuant to the Health and Safety at Work Act 2015.

5.11 Event means any occurrence, act, circumstance or omission in the course of the **business** that gives rise, or may give rise, to:

- (a) a prosecution for an **offence**; or
- (b) a formal inquiry or investigation by a regulatory body, which could lead to a prosecution for an **offence**; or

- (c) proceedings before a Human Rights or Privacy Complaints Review Tribunal.

5.12 Excluded Act means the following:

- (a) Arms Act 1983
- (b) Aviation Crimes Act 1972
- (c) Crimes Act 1961
- (d) Criminal Proceeds (Recovery) Act 2009
- (e) Summary Offences Act 1981
- (f) Land Transport (Road Safety and Other Matters) Amendment Act 2011
- (g) Land Transport Amendment Act 2009

and any other **Act of Parliament** specified in the **schedule** as an **Excluded Act**.

5.13 Fine means any fine, infringement fee, court costs, witness expenses or solicitor's costs, ordered by a court to be paid by the **insured** upon its conviction for an **offence**, for which **we** may legally indemnify the **insured**. This does not include a **fine** imposed pursuant to the Health and Safety at Work Act 2015, but this definition is extended to include a sentence of reparation imposed following a conviction under the Health and Safety at Work Act 2015.

5.14 Indemnity limit means the amounts specified in the **schedule**.

5.15 Insurance period means the period specified in the **schedule** and includes, where applicable, the **discovery period**.

5.16 Insured means:

- (a) the person, partnership, company or other entity that is specified as the **insured** in the **schedule**, and any **subsidiary** who was at the time of the **event** a **subsidiary**; and
- (b) any person who is during the **insurance period**, or was at the time of the **event**, a principal, partner, director or **employee** of the person, partnership, company, **subsidiary** or other entity specified as the **insured** in the **schedule**, but only while acting in the course of the **business**.

5.17 Investigation means either:

- a) a formal criminal, administrative or regulatory investigation, examination, hearing or inquiry, a Royal Commission, a coronial inquest, or other proceedings commissioned by an **official body** into the **insured**, commenced in writing by an **official body** during the **insurance period**; or

- b) the notification to **us** by the **insured** during the **insurance period** of a workplace fatality or serious injury of an employee that has taken place in the course of the business description and any site inspection by an **official body** that may occur immediately following such fatality or injury.

For the avoidance of doubt, there is no requirement that such an **investigation** be commenced in writing.

5.18 Offence means any information alleging the accidental commission by the **insured** of an offence under an **Act of Parliament** which is not an **excluded act**, for which the **insured** is liable to a **fine** if convicted.

5.19 Official body means any regulator, government or administrative body or agency, official trade body or self-regulatory body legally empowered to investigate the affairs of the **insured**.

5.20 Policy means this Statutory Liability **policy** wording, the **schedule**, the DUAL Mind the Gap General Conditions and Exclusions, the **proposal** and any endorsement attaching to and forming part of the **policy** either at commencement or during the **insurance period**.

5.21 Proposal means the **insured's proposal** made to **us** together with any attachments and material referred to therein.

5.22 Retroactive date means the date specified in the **schedule**.

5.23 Schedule means the policy schedule issued by **us**.

5.24 Subsidiary means:

- (a) any entity which, at the commencement of the **insurance period**, is a subsidiary of the **insured** as defined in section 5 of the Companies Act 1993 (or any equivalent amendments or re-enactments of that provision); or
- (b) any entity which, at the commencement of the **insurance period**, by virtue of any applicable legislation or law, is deemed to be a subsidiary of the **insured**; or
- (c) any entity over which, at the commencement of the **insurance period**, the **insured** is in a position to exercise effective direction or control by means of a direct or uninterrupted succession of **subsidiaries** as defined in clauses (a) or (b) above; or
- (d) any entity with total gross assets in value of 30% or less of the total gross assets of the **insured** which becomes a **subsidiary** of the **insured** as defined in clauses (a), (b) or (c) above after the commencement of the **insurance period**; or
- (e) any entity with total gross assets in value greater than 30% of the total gross assets of the **insured** which becomes a **subsidiary** of the **insured** as defined in clauses (a), (b) or (c) above after the commencement of the **insurance period**, provided that within 60 days of the completion of the acquisition of such entity the **insured** provides **us** with full particulars of the entity and agrees to the imposition of any additional terms, including any additional premium, that **we** may require. If any part of this clause is not complied with the entity shall not be an **insured** under this **policy**.

5.25 We/us/our means DUAL New Zealand Limited for and on behalf of Certain Underwriters at Lloyd's.

5.26 **Worksafe** means Worksafe New Zealand established by section 5 of the WorkSafe New Zealand Act 2013.

5.27 **You/your** means the **insured**.