

17. FACT SHEET ON INSURANCE AS A RISK MANAGEMENT TOOL



This fact sheet looks at the different types of liability insurance policies available and what they cover.

LIABILITY INSURANCE GENERALLY

Although an organisation may have done its best to comply with the law, manage its risks and work within safe boundaries, circumstances can arise making the organisation liable for losses suffered by another person or organisation. The purpose of liability insurance is to cover the organisation in situations such as those. The organisation can claim under a liability policy if it is liable to another party who has suffered actual loss – whether financial loss, injury or death – as a result of the organisation's action or inaction.

The terms of the particular policy will determine exactly what is and isn't covered, and to what extent the insured organisation is responsible for minimising the risk of a claim being made against it. This fact sheet is only designed to give an indication of the types of policies and cover available to organisations.

What costs will be covered?

The costs covered by the policy will depend on the precise terms of the policy. Usually a liability policy will cover any award of damages or compensation made in a civil lawsuit, or any payment agreed to in a negotiated settlement between the parties. A policy may also cover statutory penalties (see the discussion of statutory liability policies overleaf).

If the other person or organisation takes legal action, the costs of defending the claim can be significant, even if the action is successfully defended. The terms of a liability policy can also cover those legal costs.

Obligation to act responsibly

Insurance policies usually include a condition requiring the insured person or organisation to act responsibly in carrying on their business. The policy may also specifically state that the company will reject a claim if the insured chose to deliberately disregard the law. It's therefore important that your organisation genuinely attempts to comply with the law or your insurance may be ineffective.

DIFFERENT TYPES OF POLICIES

Each of the policies discussed below may be arranged as stand-alone cover, although they may overlap in some cases. In certain cases, a combined policy covering two or more aspects of liability may be available.

Directors, officers and trustees liability policy

Mismanagement or wrongful acts in operating an organisation can be covered by a directors, officers and trustees liability policy. Directors, officers or trustees of an organisation may find themselves held personally liable for their own actions or those of their colleagues. In some situations they may be indemnified by their organisation, but their personal assets may also be at risk. A directors, officers or trustees liability policy can protect both the individual and their indemnifying organisation.

Professional indemnity policy

Negligent advice or services can be covered by a professional indemnity policy. Providing negligent advice or using negligent methods of service can result in a civil claim for damages if the provider breached their duty of care to the client. A claim may be brought personally against the individual who provided the advice or service, or against their employer, or both. A professional indemnity policy can provide both the individual professional and the employer with protection from this type of claim.

Employment practices policy

Employment disputes and personal grievances can be covered by an employment practices policy. The employer must have made a reasonable attempt to comply with the Employment Relations Act in order to be protected by the insurance.

Public liability policy

Damage to the person or property of others caused by an organisation's negligent act or omission can be covered by a public liability policy. Personal injury

DIFFERENT TYPES OF POLICIES (CONTINUED)

in New Zealand is usually covered by ACC, and therefore a claim for compensation by an injured person is usually not possible. However, if a personal injury results in a claim for compensation or for exemplary (punitive) damages, the organisation's costs are insurable under a public liability policy.

Products liability policy

Products liability insurance applies when products produced or sold by an organisation cause damage or loss to third parties. Products liability is normally included as an extension to a public liability policy.

Employers' liability policy

Injuries to employees can be covered by an employers' liability policy. In situations where there is gradual or non-physical injury (for example, stress-related injury), ACC may not cover it, and the employees may then be able to claim for compensation directly against their employer. Employers' liability insurance protects employers from this risk.

Statutory liability policy

Breaches of statutory obligations can be covered by a statutory liability policy. Many Acts include penalty provisions, and a breach may involve costly Court action. Examples are the Building Act, the Privacy Act and the Resource Management Act. Provided those insured have made a genuine attempt to comply with the law, the costs of defence, and in a number of cases the penalties imposed, are insurable under a statutory liability policy.

Fidelity policy

A fidelity policy protects an organisation against the theft of cash or property by a volunteer or employee, which can threaten an organisation's continued existence. Fidelity cover can be included as part of a legal liability insurance programme.

Association liability policy

Incorporated societies and charitable trusts may take out an association liability policy. At the least, this includes directors, officers and trustees cover, combined with professional indemnity. It may also include certain other protection, such as employment practices or fidelity.

FINDING AN APPROPRIATE POLICY THROUGH AN INSURANCE BROKER

Once you've decided to explore using insurance as a risk management tool, the next step is usually to appoint a competent insurance broker.

A broker should start by learning how your organisation functions. They should then work with you to prioritise the different risks so that the organisation obtains the best cover for its money.

RESOURCES

Websites

www.icnz.org.nz

The Insurance Council of New Zealand website provides information and guidelines on preventing loss, and on the Fair Insurance Code 2001.

www.iombudsman.org.nz

The Insurance and Savings Ombudsman's website lists broker and insurance adviser associations.

