



Health Professionals Insurance Policy Wording



{ANR / 201515792 / 00562516}
Managed by Aon New Zealand
PO Box 2517, Wellington
Tel (04) 819 4000 | Fax (04) 819 4106
© Aon New Zealand 2019. All rights reserved.



Insured by QBE Insurance (Australia) Limited
QBE Insurance (Australia) Limited ABN 78 003 191 035
incorporated in Australia has been given an A+ (Strong)
Insurer Financial Strength Rating by Standard & Poor's.

Health Professionals Insurance Plan

WHEREAS the **Insured** named in the **Schedule** has made to QBE Insurance (Australia) Limited (hereinafter referred to as the "**Insurer**") a **Declaration** containing particulars and statements which it is hereby agreed are the basis of this contract and are to be considered as incorporated herein and in consideration of the **Insured's** agreement to pay the agreed premium the **Insurer** hereby agrees to provide insurance to the **Insured** subject to the limitations, terms and conditions hereinafter mentioned or endorsed hereon.

SECTION I Malpractice Liability

Insuring Clauses

1. The **Insurer** shall indemnify the **Insured** named in the **Schedule** in respect of all sums the **Insured** shall become legally liable to pay and which arise by reason of any negligent act, error or omission of whatsoever kind performed in the course of the **Insured's Health Profession**.
2. The **Insurer** will also indemnify the **Insured** in respect of **Costs and Expenses** incurred with the **Insurers** consent in defending any **Claim** under Insuring Clause 1 provided that the **Insurers** consent shall not be unreasonably or arbitrarily withheld.
3. The **Insurer** will also indemnify the **Insured** in respect of **Costs and Expenses** incurred in representation and defence at an official investigation, examination or enquiry. This includes an investigation, examination or enquiry by way of any Medical Board, Medical Council, Tribunal, Committee of Inquiry, New Zealand Health and Disability Commission Enquiry, Coroner's Enquiry, Accident Compensation Enquiry or an investigation, examination or enquiry conducted by a regulatory authority or a disciplinary committee of an association or professional body of which the **Insured** is a member.

The Indemnity

The maximum amount the **Insurer** will pay in respect of any one **Claim** defined in Insuring Clauses 1 shall not exceed the **Limit of Indemnity** stated in the **Schedule** in the aggregate during any one **Period of Insurance**. In addition, the **Insurer** will pay **Costs and Expenses** under Insuring Clauses 2 and 3 up to an amount equal to the **Limit of Indemnity** stated in the **Schedule** or NZD 1,000,000, whichever is the lesser.

Retroactive Date Limitation Clause

The **Insurer** will not indemnify the **Insured** for any act, error, omission or conduct committed or omitted prior to the Retroactive Date specified in the **Schedule**.

The Exclusions

The insurance provided by this Section will not indemnify the **Insured** in respect of any **Claim** which is excluded by virtue of the General Exclusions detailed in the **Policy**.

The Conditions

The insurance provided by this Section is subject to all the conditions contained in the General Conditions as though such conditions were incorporated in this Section.

SECTION II Expense Reimbursement and Loss of Earnings

Insuring Clauses

1. The **Insurer** will indemnify the **Insured** for all reasonable costs incurred by reason of the Insured's attendance at any Medical Board, Medical Council, Tribunal, Committee of Inquiry, New Zealand Health and Disability Commission Enquiry, Coroner's Enquiry, Accident Compensation Enquiry or any regulatory authority or a disciplinary committee of an association or professional body of which the **Insured** is a member where such expenses are not recoverable from an employer.
2. In addition to the cover provided by Section II Insuring Clause 1 the **Insurer** will pay to the **Insured** an amount of \$1,000 per day or part day or 75% of the **Insured's** average income, whichever is lesser where it is required that the **Insured** attend and is the subject of any Medical Board, Medical Council, Tribunal, Committee of Inquiry, New Zealand Health and Disability Commission Enquiry, Coroner's Enquiry, Accident Compensation Enquiry or any regulatory authority or a disciplinary committee of an association or professional body of which the **Insured** is a member provided that this indemnity shall only apply where the **Insured** suffers a loss of earnings as a result of such attendance

The Indemnity

The maximum amount the Insurer will pay in respect of any one Claim under Section II Insuring Clauses 1 and 2 shall not exceed the **Limit of Indemnity** stated in the **Schedule** in the aggregate during any one **Period of Insurance**.

The Exclusions

The insurance provided by this Section will not indemnify the **Insured** in respect of any **Claim** which is excluded by virtue of the General Exclusions detailed in this **Policy**.

The Conditions

The insurance provided by this Section is subject to all the conditions contained in the General Conditions as though such conditions were incorporated in this Section.

SECTION III Public and Products Liability

(This Section only applies if a **Limit of Indemnity** is recorded in the **Schedule**)

Insuring Clauses

1. The **Insurer** will indemnify the **Insured** for all sums that the Insured shall become legally liable to pay as **Damages** in respect of **Personal Injury** or **Property Damage** happening during the **Period of Insurance** caused by an **Occurrence** in connection with the **Insured's Health Profession**.
2. The **Insurer** will also indemnify the **Insured** in respect of **Costs and Expenses** incurred with the **Insurers** consent in defending any **Claim** under Section III Insuring Clause 1 provided that the **Insurers** consent shall not be unreasonably or arbitrarily withheld.

The Indemnity

The maximum amount the **Insurer** will pay in respect of any one **Occurrence** defined in Insuring Clause 1 during the **Period of Insurance** shall not exceed the **Limit of Indemnity**:

1. In respect of any Claim, or any series of Claims, arising out of one Occurrence: or
2. In the aggregate during the Period of Insurance for any Occurrence involving the Insured's Products.

In addition, the Insurer will pay **Costs and Expenses** under Section III Insuring Clauses 2 up to the **Limit of Indemnity** stated in the Schedule or NZD 1,000,000, whichever is the lesser.

The Exclusions

The insurance provided by this Section will not indemnify the **Insured** in respect of any **Claim** which is excluded by virtue of the General Exclusions detailed in this **Policy**.

The Conditions

The insurance provided by this Section is subject to all the conditions contained in the General Conditions as though such conditions were incorporated in this Section.

Definitions

In this **Policy**, including any endorsements, unless specifically stated to the contrary:

1. 'Claim' means:

- 1.1 legal proceedings instituted and served on the Insured claiming Damages; or
- 1.2 any allegation, of wrongdoing by the **Insured** or for which the **Insured** is legally liable, together with a demand for **Damages**; or
- 1.3 any threat or intimation that legal proceedings will be issued against the **Insured**.

2. 'Costs and Expenses' means:

- 2.1 all necessary and reasonable legal costs, disbursements, witness costs, assessors costs or experts costs incurred by the **Insurer** solely in investigating, defending or settling any **Claim** payable under this **Policy**;
- 2.2 all necessary and reasonable expenses (other than loss of earnings or profits) that are incurred by the **Insured** with the prior written consent of the **Insurer** solely in assisting the **Insurer** or its solicitors in the investigation, defence or settlement of any such **Claim** payable under this **Policy**;
- 2.3 any interest accruing after the date of entry of judgment against the **Insured** and until the date the **Insurer** pays, tenders or deposits in court the judgment sum or such part of that judgment sum as is required to satisfy the **Insurers** liability to the **Insured** in terms of the **Limit of Indemnity**.

3. 'Damages' means:

any amount payable as compensation including interest.

4. 'Health Profession' means:

the profession specified in the **Schedule** conducted by the **Insured**.

5. 'Insured' means:

- 5.1 in respect of Section I (Malpractice Liability) and Section II (Expense Reimbursement):
 - i) the individual person, company or trust (trading as a sole practitioner) specified as the Insured in the **Schedule**.
- 5.2 In respect of Section III (Public and Products Liability):
 - i) the individual person, company or trust (trading as a sole practitioner) specified as the Insured in the **Schedule** including every director, officer, employee, partner or shareholder of an Insured whilst acting within the scope of their duties as such, except in respect of any liability under the Companies Act 1993.

6. 'Insured's Products' means:

any goods, products, including labels, instructions for use and advice and property after they have ceased to be in the possession of or under the control of the **Insured**, manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by the **Insured** (including any container, other than a vehicle).

7. 'Limit of Indemnity' means:

the Limit of Indemnity specified in the **Schedule**.

8. 'Occurrence' means:

an event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** or **Property Damage** that is neither expected nor intended from the standpoint of the **Insured**.

9. 'Period of Insurance' means:

the Period of Insurance specified in the **Schedule**.

10. 'Personal Injury' means:

bodily injury (including resulting death or illness), disability, shock, fright, mental anguish or mental injury including such injury arising from the following by the **Insured**:

- 10.1 false arrest, wrongful detention, false imprisonment or malicious prosecution or humiliation;
- 10.2 wrongful entry or eviction or other invasion of the right of privacy;
- 10.3 assault and battery, provided that this was not committed by or at the direction of the **Insured** except for the purpose of preventing or eliminating danger to persons or property;
- 10.4 trespass to the person.

11. 'Policy' means:

this wording, the **Schedule** and any endorsements.

12. 'Property Damage' means:

- 12.1 physical injury to or destruction or loss of tangible property including resulting loss of use: or
- 12.2 loss of use of tangible property which has not been physically injured or destroyed.

13. Schedule means:

the current Schedule to this **Policy**.

General Exclusions (applicable to all Sections)

This Policy shall not indemnify the **Insured** in respect of any **Claim**:

1. Asbestos

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, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

2. Commercial Activities

arising out of any commercial activities not directly related to the performance of a **Health Profession**.

3. Contractual Liability

arising directly or indirectly from any liability assumed by the Insured under a specific contract other than a contract of employment which would not have been assumed in the absence of such contract.

4. Directors Liability

brought against an **Insured** in their capacity as a company director or officer.

5. Employers Liability

brought by an employee for breach of an employment contract.

6. Fraud and Dishonesty

brought about or contributed materially to by the dishonest, fraudulent, criminal or malicious act or omission of the **Insured**.

7. Insolvency

as a result of the insolvency, bankruptcy or liquidation (as the case may be) of the **Insured**.

8. Intellectual Property

By the owner or assignee or licensee of a copyright design or patent for breach of such copyright design or patent.

9. Jurisdiction

in respect of any legal action:

- 9.1 first brought in a court outside the jurisdiction of New Zealand; or
- 9.2 brought in a court within the jurisdiction of New Zealand to enforce a judgment of a court outside New Zealand whether by way of a reciprocal agreement or otherwise; or
- 9.3 in which the proper law to be applied to the issues or any of them is that of a country other than New Zealand.

10. Nuclear

alleging or directly or indirectly caused by or contributed to or arising from nuclear energy operations, including but not limited to:

- 10.1 the erection, installation, occupation, repair, maintenance, control, use or ownership of any nuclear power station, similar reactor building or nuclear reactor; or
- 10.2 any process of nuclear fission or fusion or handling radioactive material or irradiated nuclear fuel which operations include but are not limited to:
- 10.3 the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices; or
- 10.4 the use, handling or transportation of radioactive materials; or
- 10.5 the use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion.

Except in respect of Section III, this exclusion will not apply to any **Claim** arising from Radioisotopes or radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

11. Other Insurance

in respect of which the **Insured** is entitled to indemnity under any other insurance except in respect of any excess beyond the amount which is payable or would have been payable under such other insurance had this not been effected.

12. Prior or Pending

made prior to the commencement of the **Period of Insurance** stated in the **Schedule** or in respect of any occurrence of which the **Insured** is aware or ought reasonably to be aware of at the inception of this insurance which may give rise to a **Claim** against the **Insured** whether notified under any other insurance or not.

13. Refund of Fees

for a refund of professional fees, by way of damages or otherwise.

14. Sanctions

for liability arising where the provision of such cover, payment of such **Claim** or provision of such indemnity would expose the **Insurer** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations any country.

15. Territorial Limit

alleging or arising from any negligent act, error, omission or conduct that occurred outside the territorial limits of New Zealand.

16. Terrorism

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

For the purpose of this exclusion, "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 person(s) 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 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 will also apply to 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 any Act of Terrorism.

17. Vehicles

arising directly from the ownership, possession or use by or on behalf of the **Insured** of any land, aircraft, watercraft, vessel or mechanically propelled vehicle.

18. War

alleging loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with war, invasion, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power, or confiscation or nationalisation or requisition or destruction or damage to property by or order of any Government or public or local authority.

General Conditions

1. Breach of Conditions

Where the **Insured's** breach of or non-compliance with Condition 4, 6 and 7 of this **Policy** has resulted in prejudice to the handling and/or settlement of any **Claim** or **Claims** which in all other respects qualify to be indemnified under this **Policy** the indemnity afforded by this **Policy** in respect of such **Claim** or **Claims** (including **Costs and Expenses**) shall be reduced to such sum as would have been payable by the Company in the absence of such prejudice.

2. Cancellation

2.1 The **Insured** may cancel this **Policy** at any time by notifying the **Insurer** in writing.

2.2 The **Insurer** may cancel this **Policy** at any time by sending 30 days notice in writing to the **Insured** of the date from which cancellation is to take effect. Such notice may be provided to the **Insured** or their representative at the address last notified to the **Insurer**.

In either event, the **Insurer** will retain or be entitled to the premium for the period during which this **Policy** has been in force based on the **Insurers** cancellation rates.

3. Cessation of Insurance

The insurance provided by this **Policy** ceases absolutely at the time and date stated in the **Schedule**. However provided that notice referred to in General Condition 4 has been given to the **Insurer** prior to the expiration of the **Period of Insurance** any **Claim** or loss arising from the circumstances thus notified 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**.

4. Claims Reporting

The **Insured** shall as a condition precedent to being indemnified under this **Policy** give to the **Insurer** immediate notice in writing:

- (a) of any **Claim** made against the **Insured**
- (b) of the receipt of notice from any person of any intention to hold the **Insured** responsible for the results of an alleged negligent act, error or omission
- (c) of any circumstance of which the **Insured** shall become aware which may reasonably be expected to give rise to a **Claim** or **Claims** under this **Policy**.

5. Fraudulent Claim

If any **Claim** under this **Policy** shall be in any respect fraudulent or if any fraudulent means or devices are used by the **Insured** or anyone acting on the **Insured's** behalf to obtain any benefit under this **Policy** all benefit hereunder shall be forfeited.

6. GST Clause

Where, upon receiving any indemnity payment under this **Policy**, the **Insured** is liable to pay tax under section 5 (13) of the Goods and Services Act 1985 (or any statutory amendment or re-enactment of the section or Act) and/or under the equivalent legislation in any other jurisdiction specified in the **Schedule**, the **Insurer** will indemnify the **Insured** for the amount of that tax. The indemnity under this General Condition is payable by the **Insurer** in addition to the **Limit of Indemnity**.

7. Insureds Right to Contest

If the **Insured** shall refuse to consent to any settlement recommended by the **Insurer** and shall elect to contest or continue any legal proceedings in connection therewith the **Insurers** liability for the **Claim** shall not exceed the amount for which the **Claim** could have been so settled (less the excess specified in the **Schedule**), plus the **Costs and Expenses** incurred up to the date of such refusal.

8. Interpretation of Words

Words and expressions in the singular shall include the plural and vice versa. Additionally, where a term in this **Policy** is not specifically defined in this document, it is agreed the definition normally attributed to it by any applicable law or business practice shall apply.

Sections, clauses and other headings are for ease of reference only and will not affect the interpretation of this **Policy**.

Reference to a statute including references to regulations, orders, rules or notices under that statute include references to all amendments to that statute or regulation whether by subsequent statute or regulation or otherwise.

9. Legal Counsel

Neither the **Insurer** nor the **Insured** shall require each other to contest any legal proceedings in respect of any **Claim** against the **Insured**, unless legal counsel (to be mutually agreed upon by the **Insured** and the **Insurer**, or in default of agreement, nominated by the **Insurer**) shall recommend that such proceedings should be contested.

In formulating such recommendation, counsel shall take into account the economics of the matter, the damages and costs that are likely to be recovered by the plaintiff, the likely costs of defence and the prospects of the **Insured** successfully defending the action. The cost of counsel's opinion shall, for the purpose of this **Policy**, be regarded as part of the **Costs and Expenses**.

In the event that counsel recommends that, having regard to all the circumstances, the matter should not be contested but should be settled, provided that settlement can be achieved within limits which, in counsel's opinion, are reasonable, then the **Insured** shall not object to any such settlement and shall cooperate with the **Insurer** to effect such settlement in accordance with this **Policy**, subject to Condition 3 (Insured's Right to Contest).

10. Limit of Indemnity

The **Insurers** liability to indemnify the **Insured** under Section I Insuring Clause 1 (Malpractice), in respect of any one **Claim** shall not exceed the **Limit of Indemnity** stated in the **Schedule**.

Furthermore, the **Insurers** liability to indemnify the **Insured** in respect of all such **Claims** shall not exceed the aggregate **Limit of Indemnity** noted in the **Schedule**.

The **Insurers** liability to indemnify the **Insured** under Section I Insuring Clauses 2 -4 (Cost and Expenses) shall not exceed the amount equal to the **Limit of Indemnity** stated in the **Schedule** or \$1,000,000 whichever is lesser.

The **Insurers** liability to indemnify the **Insured** under Section II Insuring Clauses 1 and 2 (Expense Reimbursement) in respect of any one **Claim** shall not exceed the aggregate **Limit of Indemnity** noted in the **Schedule**.

11. Loss or Suspension of Registration / Alteration to Risk

The **Insured** shall give immediate notice in writing to the **Insurer** should their statutory registration be cancelled, suspended or terminated, or should there be any other material alteration to the risk, facts or circumstances.

12. Non Admission of Liability

The **Insured** shall not admit liability for or settle any **Claim** or incur any **Costs and Expenses** in connection therewith without the written consent of the **Insurer** who shall be entitled to take over and to conduct in the name of the **Insured** the defence or settlement of any **Claim**.

13. Other Insurance

If, at the time of occurrence of any insured incident or receipt of a **Claim**, the **Insured** is entitled to an indemnity for **Costs and Expenses** pursuant to another contract of insurance or certificate or benefit, the **Insurer** shall only be liable to indemnify the **Insured** for any excess over and above the sum which is payable under such other contract of insurance or certificate or benefit.

14. Payment of Indemnity

The **Insurer** may at any time pay the **Limit of Indemnity** applying to any one **Claim** or series of **Claims** (after deduction of sums already paid) or any lesser amount for which such **Claims** can be settled and shall then be under no further liability in connection with such **Claims**.

15. Policy Interpretation

Interpretation of this insurance shall be governed by the laws of New Zealand whose courts shall have exclusive jurisdiction in any dispute that may arise.

16. Reasonable Precautions

The **Insured** shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any loss hereunder and on request give to the **Insurer** or their authorised representatives all such information and assistance as the **Insurer** may reasonably require.

17. Subrogation

If any payment is made under the **Policy** in respect of a **Claim**, the **Insurer** is subrogated to all the **Insured's** rights of recovery in any way related to the **Claim**. The **Insured** shall give all such assistance in the exercise of rights of recovery as the **Insurer** may reasonably require. Any such recovery shall be applied first to the **Insurers** defence costs incurred, regardless of how the recovery may be described in any settlement agreement between the **Insured** and the claimant.

Policy Extensions

The following Extension apply to Section 1 (Malpractice Liability) of this **Policy**.

1. Automatic Reinstatement

If a **Claim** or **Claims** shall exhaust the **Limit of Indemnity** under this **Policy**, the **Insurer** agrees to one reinstatement only of the **Limit of Indemnity**. Provided always that the **Insurers** total liability under this **Policy** shall not exceed:

- 1.1 the **Limit of Indemnity**, in respect of any one **Claim** or related **Claims**; and
- 1.2 twice the **Limit of Indemnity**, in respect of all **Claims** which are not related.

For the purpose of this extension, **Claims** are related if they arise out of the same, identical or a series of acts, errors, omissions or conduct, or arise out of or are attributable to the same originating source or cause.

2. Automatic Run-Off Cover

The **Insurer** will indemnify the **Insured** for any amount that may be payable under this **Policy** in respect of **Claim(s)** arising from an act, error or omission occurring prior to the effective date that such **Insured** ceased to practice for a period of three years at no additional cost, provided that:

- 2.1 the **Insurer** continues to be the **Insurer** of the Aon Health Practitioners Scheme arranged by Aon New Zealand;
- 2.2 the **Insured** had purchased and been a member of the Scheme for a minimum of 3 years prior to ceasing practice;
- 2.3 the **Insured** notified the **Insured's** representative Aon New Zealand within 28 (twenty-eight) days of cessation or expiry of the **Policy**, whichever is the latter, of the cessation of practice of the **Insured's Health Profession**.

3. Defamation

The **Insurer** agrees to indemnify the **Insured** against civil liability for compensation arising from any **Claim** made against the **Insured** brought by any person who is not an **Insured**, alleging defamation, provided that defamation was accidentally and unintentionally made by the **Insured**.

4. Fair Trading Act 1986

The **Insurer** agrees to indemnify the **Insured** against civil liability for compensation arising from any **Claim** made against the **Insured** alleging a breach of sections 9 to 14 of the Fair Trading Act 1986.

5. Intellectual Property

The **Insurer** shall indemnify the **Insured** for loss arising from any **Claim** made against the **Insured** alleging infringement of copyright, trademark, registered design or patent, plagiarism or breach of commercial confidentiality, provided such infringement was accidentally and unintentionally made by the **Insured**.

Insurer Financial Strength Rating

QBE Insurance (Australia) Limited (New Zealand Branch); ABN 78 003 191 035, Incorporated in Australia, has been given an A+ Insurer Financial Strength Rating by Standard & Poor's (Australia) Pty Ltd. The rating scale is:

AAA (Extremely strong)	BBB (Good)	CCC (Very Weak)	SD (Selective Default)
AA (Very Strong)	BB (Marginal)	CC (Extremely Weak)	D (Default)
A (Strong)	B (Weak)	NR (Not Rated)	R (Regulatory Action)

Plus (+) or Minus (-): The ratings from 'AA' to 'CCC' may be modified by the addition of a plus or minus sign to show relative standing within the major rating categories. Credit ratings issued by Standard & Poor's Ratings Services are solely statements of opinion and not statements of fact or recommendations to purchase or discontinue any policy or contract or to buy, hold or sell any security issued by QBE Insurance (Australia) Limited or make any other investment decisions. Credit ratings may be changed, withdrawn or suspended at any time. Latest ratings can be found at www.standardandpoors.com.

An overseas policyholder preference applies to QBE Insurance (Australia) Limited ("QBE"). This means that in the event that QBE is wound up, Australian law requires that its assets in Australia are applied to satisfy its Australian liabilities, before those assets can be applied to satisfy overseas liabilities, which would include claims by policyholders in New Zealand. However, QBE is required to hold capital which meets minimum regulatory capital requirements.

AON

www.aon.co.nz