

# Statutory Liability insurance



## The complexity and risks of running a business in New Zealand's highly regulated environment are increasing.

NZI Statutory Liability insurance is designed to help protect businesses from fines, penalties or reparations for unintentional breaches of most Acts of Parliament. It also covers the legal cost of investigations as well as the costs of investigating and defending a prosecution that if proven could result in a fine or statutory damages insured under the policy. There are certain Acts that are not covered by Statutory Liability insurance, for example the Crimes Act 1961 and Land Transport Act 1998.

### What type of businesses need Statutory Liability insurance?

All businesses should hold Statutory Liability insurance no matter what the size of operation. This includes any individual providing products or services to the public.

#### What are some of the key points of cover?

- ▶ **Who is insured?**  
The business, including any director, executive officer, or employee.
- ▶ **Fines**  
Covers legally allowable fines. (It is illegal to insure fines under the Health and Safety at Work Act 2015 (HSWA) however reparations are insurable).
- ▶ **Reparations**  
Covers reparation following conviction of an offence under the HSWA (this is the amount the business is required to pay as compensation).
- ▶ **Statutory Damages**  
Damages recoverable under either the Privacy Act 1993 or the Human Rights Act 1993 for an accidental breach of the applicable Act.
- ▶ **Defence Costs in Addition**  
Legal advice and other costs associated with defending an alleged breach if the business is taken to court, this includes access to expert legal advice, defence lawyers, investigators, assessor's and specialists that the business may not otherwise have access to.  
The defence costs are in addition and up to the indemnity limit, this means that if the sum insured is \$1,000,000, fines and/or reparations are covered up to \$1,000,000 and defence costs are covered separately up to \$1,000,000.
- ▶ **Official Investigation Costs**  
If the business is investigated for the breach or potential breach of an Act the policy provides the business with cover for the defence costs associated with the official investigation.

#### Why should a business have Statutory Liability insurance?

All businesses must comply with a number of statutes as part of carrying out their day to day operations; their exposure is dependent on numerous factors such as their occupation, activities, how they operate, whether they make or sell products, equipment used, qualifications, staff training, where and how they work, even the actions of others.

Having Statutory Liability insurance with NZI means the business will be afforded expert advice from lawyers and other professionals if they are investigated or prosecuted for an alleged breach of an Act.

#### Knowing that experts are available and key legal costs are covered takes pressure off the business as:

- ▶ timely action may help prevent prosecution
- ▶ reduce or prevent damage to the businesses reputation,
- ▶ they can concentrate on operating the business, and
- ▶ the mounting financial pressure is relieved. Legal costs can be expensive and accumulate quickly placing financial strain on the business.

#### If the business is found guilty or admits guilt (and the offence was unintentional) they are also covered up to their policy limit for:

- ▶ any legally allowable fines, reparations or statutory damages.

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## Do the changes to the Health and Safety at Work Act increase exposure?

The Health and Safety at Work Act 2015 creates a framework for the health and safety of workers and workplaces and sets out duties that must be complied with by law. It places emphasis on identifying and managing risk recognising that everyone is responsible for health and safety in the work place.

The primary duty is on the business itself, referred to as a Person Conducting a Business or Undertaking (PCBU). In addition regulations made under the Act must be complied with; these regulations provide guidance on specific matters relating to compliance or are occupation specific.

There are penalties under the Act for non-compliance; the fine is dependent on what part of the Act was breached and the duty of the person who breached the Act. The maximum fines relate to reckless conduct in respect of a duty that exposes an individual to risk of serious injury, serious illness or death. These are up to \$300,000 for an individual, \$600,000 for an officer, and

\$3,000,000 for a PCBU; in addition reparation may be awarded to the person injured by the breach.

Whilst insurers are not legally able to cover fines under the Health and Safety at Work Act, the Statutory Liability provides cover for reparations and legal costs to defend the prosecution.

## What is the recommended sum insured for Statutory Liability?

A minimum of \$1,000,000 is recommended. The policy is written on a costs in addition basis, this means that if the sum insured is \$1,000,000, fines and reparations are covered up to \$1,000,000 and defence costs are covered separately up to \$1,000,000 (one cannot be offset against the other, nor can they be individually increased). Terms for a higher overall limit can be provided.

## Other Acts that may create a liability

The penalties are dependent on which part of the Act has been breached; the table below shows the maximum penalty for the breach of an Act (not including imprisonment).

ACT	Penalites (where insurable)	Who must comply
<b>FAIR TRADING ACT 1986</b> This encourages fair competition and protects consumers from misleading and deceptive conduct and unfair trading practices. The Act applies to all aspects of the promotion and sale of goods and services; it prohibits misleading and deceptive conduct, unsubstantiated claims, false representation, unfair practices and unfair contract terms.	Up to \$600,000	All Businesses
<b>CONSUMER GUARANTEES ACT 1993</b> Gives consumers remedies against suppliers, manufacturers, importers and distributors of goods and services normally used for domestic and household purposes. Implies goods and services are fit for their purpose and imposes a duty to use reasonable care in providing goods and services.	Penalties under the CGA are usually addressed under the Fair Trading Act	Businesses that sell or provide goods or services intended for domestic consumers including: Retailers, Manufactures, Suppliers, Importers, Distributors and Online Traders. Professionals, Finance Companies, and Tradespeople.
<b>RESOURCE MANAGEMENT ACT 1991</b> Sets out rules and controls for the sustainable management of natural and physical resources.	Up to \$600,000	All businesses, in particular: Manufacturers, property owners, trades and operations which could damage the environment e.g. earthmoving and farming.
<b>BUILDING ACT 2004</b> Primary legislation for the building industry, the Act provides for the regulation of building work, the licensing of building practitioners, and setting of performance standards to ensure the safety of those using the building (this includes the ability to escape from the building in the event of a fire). Ensures the accountability of building owners, designers, builders, and building consent authorities responsible for ensuring building work complies with the building code.	Up to \$200,000	Trades people Building practitioners Building designers – includes architects or anyone that prepares plans or specifications for building work or gives advice on compliance with the building code. Building owner/builder and anyone who owns property.
<b>HAZARDOUS SUBSTANCES AND NEW ORGANISMS ACT 1996</b> The purpose is to protect the environment and the health and safety of people and communities by preventing or managing the adverse effects of hazardous substances and new organisms.	Up to \$500,000	Any business who imports, possesses or uses (including transportation and storage) hazardous substances or new organisms.

Terms, conditions and exclusions apply. Please see full policy for details.

# Statutory Liability Claims examples

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## Resource Management Act

The insured, D Transport kept diesel on their site in a diesel storage tank. The tank leaked, causing a spill of 20,000 litres of diesel. This flowed into a stream and contaminated the water supply for a nearby township. As a result D Transport was prosecuted by the Regional Council under the Resource Management Act and also under the Hazardous Substances and New Organisms Act.

After some negotiations between the lawyer appointed by NZI and the Regional Council, the charge of permitting a discharge was dropped in exchange for a guilty plea for discharging contamination into a water source. A discharge without conviction was secured for charges under the Health and Safety at Work Act.

D Transport admitted liability for the remaining charges including the charge of failing to contain a hazardous substance, and was fined \$240,000 under the Resource Management Act and \$60,000 under the Hazardous Substances and New Organisms Act.

The fines were paid by NZI. In addition NZI paid for the legal defence costs totalling \$125,000.



## Fair Trading Act

National retail chain, Cool Clothing was investigated by the Commerce Commission for its sales practices. Allegations were made that there had been misleading conduct in relation to goods, and false and misleading conduct in relation to the price of goods. The Commerce Commission ultimately laid 14 charges under section 10 of the Fair Trading Act and sought a total fine of \$1.2m to \$1.5m.

The charges related to “was”/”now” pricing, half price advertising, recommended retail price, and clearance representations. Following negotiations between the lawyers appointed by NZI and the Commerce Commission, Cool Clothing admitted liability and a total fine of \$800,000 was imposed.

The fine was paid by NZI along with legal defence costs of \$70,000.



## Health and Safety at Work Act

Ferry service operator, WW Ferry was on a journey to a local island, when they turned sharply and hit a wave, causing several passengers to suffer injuries including fractures. Charges were laid under the Health and Safety at Work Act against both the ferry operator and the skipper.

Initially a not guilty plea was entered to the charges. However following negotiations between the lawyers appointed by NZI and the prosecutor, the charges were amended and an agreed summary of facts was presented to the Court and WW Ferry admitted liability.

The Court awarded the four seriously injured passengers reparation totalling \$78,000, which was paid by NZI. The Court imposed a fine of \$35,000 which is unable to be covered by insurance. However defence costs of \$50,000 were paid by NZI.

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**Are you adequately protected?  
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