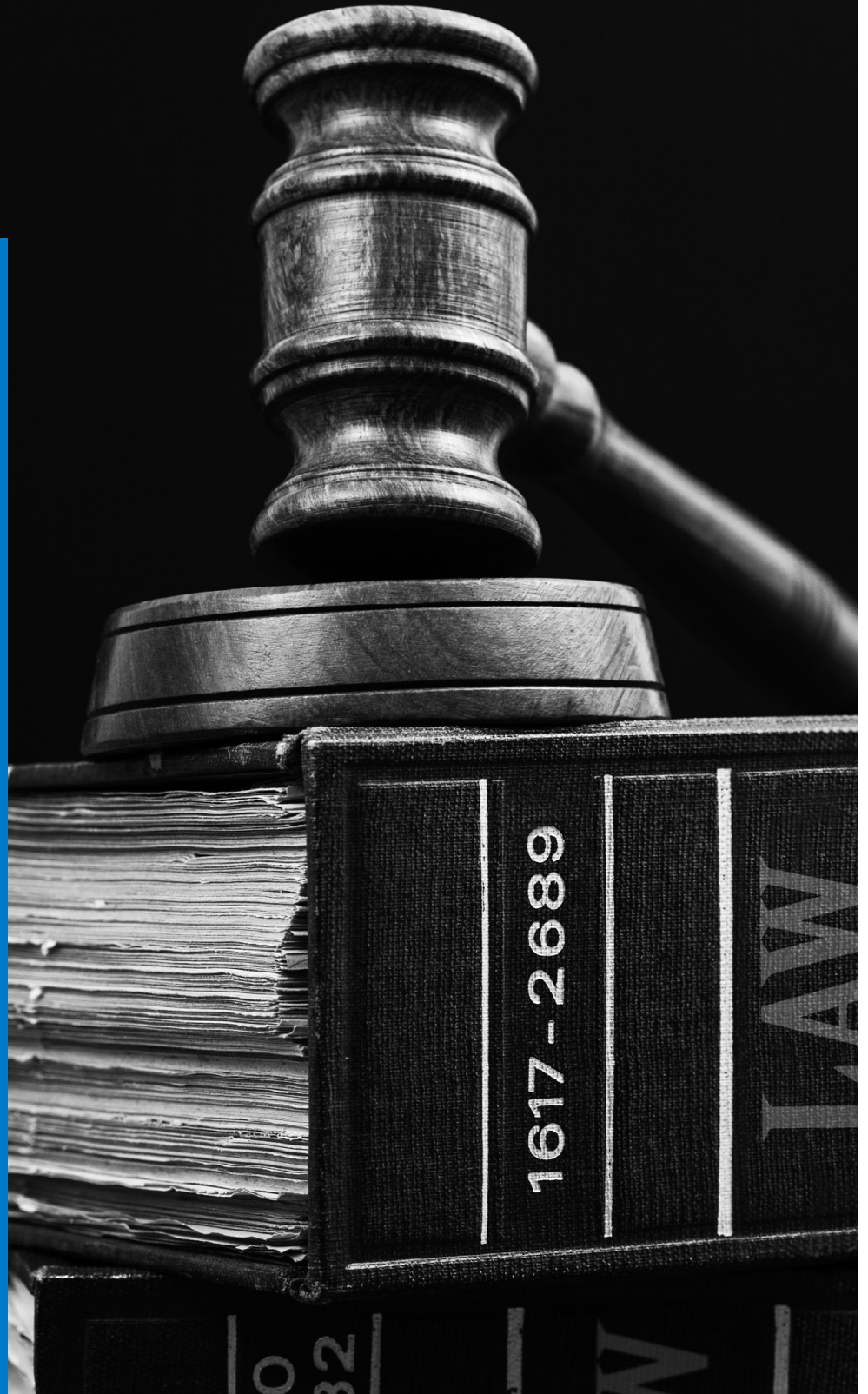


# Wordings.





## **DUAL New Zealand Mind The Gap**

Statutory Liability Policy Wording

### **Table of Contents**

<b>Section 1:</b> Insuring Clauses	3
<b>Section 2:</b> Automatic Coverage Clauses	3
<b>Section 3:</b> Exclusions	5
<b>Section 4:</b> Conditions	6
<b>Section 5:</b> Definitions	6

# DUAL New Zealand

## 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**.