

# The Anglican Insurance Board Liability Insurance Programme

The Anglican Church purchases a comprehensive liability insurance programme tailored to meet the requirements of its members. The insurance programme runs for 12 months from 4 pm on 1 April.

The following information is a brief overview of the policies currently contained in the Anglican Church's Liability Insurance programme together with an overview of what a claim is and how it should be dealt with by your organisation. For full understanding of the insurance purchased by your organisation please refer to the policy wordings, or refer directly to the Anglican Insurance Board.

Prior to each renewal you will be invited to complete proposal and/or declaration form. At this time you will be asked to review and enquire as to whether you are aware of any matters or issues that may lead to a claim under the policy and if there are any these must be notified to the insurer during the current period of insurance.

As a matter of good practice we recommend regular enquiry be made throughout the period of insurance as to whether there are any matters or issues which may lead to a claim against you and address these accordingly at the time of identification.

The reference to claim used throughout this paper means any circumstance, matter or issue where there is a potential the organisation may have legal liability to a third party to compensate them for a loss they may have incurred as a result of the service or activities provided by your organisation.

## What does a liability insurance policy provide protection against?

Liability policies generally provide insurance protection for intangible losses. The policy provides cover to the legal liability of the insured to pay compensation for loss suffered by a third party from the service or activities provided by the organisation.

When considering liability insurance exposure the question to ask is could an activity or service provided by my organisation result in a third party to sue us for a loss they allege they have suffered due to the service or activity?

## What is a claim?

The definition within the contract of insurance purchased is:

*"Claim" means any demand made upon the insured for loss, however conveyed, or any event or circumstance which may give rise to this.*

It is often difficult to identify what would be considered a claim and when or if it would be covered by insurance. We recommend if in doubt notify AIB. Insurers do not penalise for notifications, not only does it show the insurer you are aware of potential exposures but it also provides a good basis to identify any areas that may require more attention in your risk management programme.

Unlike an insurance policy covering a building or its contents where the loss or damage is fairly evident at the time such as fire, theft, and flood. Liability insurance is not quite so clear cut and determination of whether you may be legally liable to a third party may take some time to identify. As such it is important to be diligent in understanding and assessing the risk and identification of matters that may lead to a claim under the policy so as to allow your organisation the best position in its defence as early as possible.

## Identification of a Claim

Triggers of what may be a claim that should be notified to your insurers:

- An allegation by a third party to you that something your organisation has done has caused them to suffer a loss. This can be conveyed in many different ways, verbally, in writing or via a solicitor.

- You have identified an error or omission which you believe could result in a loss to a third party
- You think you need to seek legal advice around some activity or service you have provided

## When should I notify a circumstance to the insurers?

As soon as you become aware of a claim and most certainly this must be made within the period of insurance in which you became aware of the claim.

All contracts of insurance contain terms and conditions that need to be complied with so as not to prejudice the ability of the insurance policy to respond.

One of these terms is that being the basis in which the policy is written that being known as a Claims Made policy.

Claims Made means that it is the policy that is in force at the time you become aware of a claim, or circumstance which may lead to a claim, will be the policy that will be called upon to respond.

For example:

The action leading to the loss happened in 2010, the third party did not realise their loss until 30 April 2015 at which time they contacted you to advise they had suffered a loss as a result of the actions of your organisation and as such were going to sue you for their loss. The policy that will be called up on to respond is the policy purchased on 1 April 2015 (not the policy that may have been in place in 2010).

As soon as you become aware of a matter/issue or circumstance which may lead to a claim you must notify the insurers by way of providing details and any copies of correspondence.

You can do this by contacting AIB.

## What you must NOT do in the event you identify a claim.

The policy contains conditions that are required to be adhered to so as not to prejudice you or the insurers position (these conditions can be read in full in the policy wordings) however in summary we recommend you:

- Do not mention the existence of your insurance or your insurer's involvement to any third party, other than as required by law or as approved by your insurer.
- Do not admit liability, apologise for any mistake made or offer to settle any potential claim. Your insurer will need to be involved in any such decision, if you wish insurance cover to be available to you.
- Keep insurers informed of developments as soon as they occur and forward all correspondence received, together with draft responses, for the insurer's comment prior to responding. If you are served with Court Proceedings, please forward these to us immediately upon receipt. This is to allow adequate time for preparation of your defence, while meeting the Court's tight timeframes.
- Do not instruct your own lawyer, without agreement from the insurer. If you do, your insurer is unlikely to cover their costs.

## What steps can be taken to ensure compliance with the policy terms and conditions with regard to notification of a claim?

It is important that all members are sufficiently aware that there may be liabilities attaching to them personally and to your organisation arising from the activities and services you provide.

For the best results and support in the event a claim does arise it is important that the matter is identified early and advice is sought as to how to best handle and minimise the risk. As such we suggest regular checks throughout the year to ascertain if there are any matters that require attention to prevent them from potentially escalating at a future date.



## **What does the Anglican Insurance Board Liability Insurance Programme include?**

N.B please refer to the policy wordings for full detail of the insurance protection provided.

### ***Professional Indemnity***

Provides cover for defence costs and compensation to third parties for losses caused by a breach of professional duty or negligence in the performance of your professional services.

#### **Claim example:**

A property management company in the lower end of the residential market and managed hundreds of properties. One of its property managers had been appointed to collecting rents in cash from around 110 tenants. Receipts for the money collected was entered into the tenants rent book, the money was then recorded by the property manager directly into the companies computerised banking system and she produced a bulk itemised receipt for the funds from the computer system. In the course of normal business there were always tenants who failed to pay for one or two weeks rents without getting serious arrears. The property manager committed theft by pocketing one or two weekly rentals and recording "no pay" against various tenants. She maintained a rolling system where the shortfall in money never appeared conspicuously against the same tenant and the level of no pay was always within acceptable levels.

The scam was uncovered when the employee had to take leave for a family bereavement. A very particular tenant, missing her collection called into the office to pay her rent where a discrepancy between office records and her tenant rent book was discovered.

When an audit was conducted it was found the property manager had stolen \$37,000 over an 11 month period.

### ***Directors & Officers /Trustees Liability***

Provides directors, officers and trustees with the resources to defend allegation or mismanagement.

Covers costs of investigating and defending claims and allegations made against directors, officers and or trustees.

Any amounts paid as damages or settlements as a result of these claims or allegations where you are representing the Church as a director, trustee or office of an Outside Entity.

#### **Claims example:**

A freight forwarding company went into liquidation. An unsecured creditor brought proceedings against the directors alleging breach of duty under the Companies Act (1993). The directors, who were not involved in the day to day running of the business, argued that they relied on information supplied by the managing director.

The court held that they could not rely on that defence as they knew the company had traded at a significant loss, and there was enough information available to realise the danger of continuing to trade.

The directors were found to have breached their duty. Each director was individually liable for \$250,000 which was paid to the company's creditors by the liquidator.

### ***Statutory Liability***

Provides protection where you have unintentionally broken the law and face criminal prosecution which could lead to a fine. This includes prosecutions for breach of the Health and Safety in Employment Act (1992)

– although this does not cover fines but can provide cover for reparations costs, the Resource Management Act (1991) and most other Acts of Parliament.

#### **Claims example:**

A leading outdoor clothing and equipment retailer falsely advertised clothing as being at bargain price. The company was taken to Court and fined \$28,000 for misleading and deceptive conduct under the Fair Trading Act (1986), a statutory liability can respond to the fine and the defence costs of such a prosecution.

### ***Employment Disputes***

Provides protection for claim arising from employment disputes brought by employees. The policy covers the cost of defending these actions and any damages awarded against you.

#### **Claims Example:**

An employee brought a claim against a company for unfair dismissal in the Employment Court; even though the company followed what it thought was an acceptable process. The Court found that the company had not provided the employee with sufficient opportunity to improve their performance and awarded the complainant \$20,000 in damages plus costs

### ***Employers Liability***

Provide cover against claims brought by employees for personal injuries that are not covered by ACC.

#### **Claims example:**

A manager of a company developed acute health problems arising from high stress levels caused by overwork. He sued his employer. The company was required to pay \$25,000 in damages and was required to pay its defence costs.

### ***Sexual Abuse***

Provides cover for defence costs in the investigation, defence, settlement or appeal of a claim for sexual abuse

### ***General and Products Liability***

Covers defence costs and damages you may be legally liable to pay as a result of property damage or personal injury you cause to a third party.

#### **Claims example:**

A company supplied wooden crates to a milk manufacturer. The manufacturer stored milk powder in these crates. The crates went mouldy and the mould in turn contaminated the powder causing \$400,000 worth of property damage.

### ***Criminal Defence Costs***

Provides cover for defence costs in defending allegations of improper conduct which involve actual or potential charges under the Crimes Act 1961, Summary Offences Act 1981, Misuse of Dugs Act 1976 or Transport Act 1962.

#### **Claims example:**

A construction company had to divert traffic while performing construction to the outside of a building. The cones diverting traffic were set up in a unsafe manner resulting in a pedestrian being hit by a vehicle and killed. The police looked to prosecute the site foreman responsible under the Crimes Act (1961) for manslaughter.

### ***Internet Liability***

Provides cover for claims arising from the use of the internet or email. This includes cover for claims alleging breach of copyright for using information on a website, through claims arising from an employee's misuse of email or unintentional forwarding of a computer virus to another party.

#### **Claims example:**

An employee forwarded a personal email from their work computer to a number of their friends at various companies. The email had an undetected virus which caused one of the companies to shut down their email server for a day resulting in a significant loss.

