

*just redemptive outcomes*®



CORNEY & LIND  
LAWYERS

# Insurance Clauses in Contracts

A webinar presented by Alistair Macpherson, Director and  
Jacques Nel, Special Counsel

15 June 2016

*just redemptive outcomes®*



CORNEY & LIND  
LAWYERS

# Introduction

➤ Key Mid size law firm – 18 lawyers + 30 staff

➤ Our focus areas

Schools & Education

Not for Profit & Charity

Commercial

Employment & Discrimination

Personal Injury

Commercial & Construction Litigation

Migration & Visas

Family Law

Criminal & Traffic

Estate & Elder Law

➤ Our lawyers travel to you if needed

➤ Specialist lawyers committed to delivering “*just redemptive outcomes®*” with care and integrity

➤ Based right next to the CBD opposite the RBWH transport hub



# 1 Issues that impact on Insurance Clauses

- Risk allocation
- Insurance Policies
- Legislation



## 2 Insurance Requirements

- **Public Liability Insurance**
  - Public Liability Insurance provide cover to the insured for loss or damage suffered by third parties as a result of the insured's activities
  - Triggered by causation of property damage or personal injury
  - Includes legal and court costs, personal injury expenses and damage to property
  - Includes activities internal / external locations



## 2 Insurance Requirements

- Professional Liability Insurance

- Professional liability Insurance provides cover to the insured for loss or damage suffered arising from an actual or alleged breach of the professional's duty of care
- Triggered by contractual relationship between service provider and claimant
- Includes legal and court costs, personal injury expenses and damage to property and may include financial loss



## 3 Insurance Clauses

- Parties covered by Insurance
  - Officers, members, employees or voluntary helper usually covered, students
  - subcontractors, consultants, licensees may not be covered
- Proof of insurance
  - Certificate of currency - acceptable
  - Copy of policy & approval terms – not acceptable



## 4 Level of Insurance Cover Required

- Level of Insurance – in the aggregate or per occurrence
  - Unlimited Liability – not acceptable
  - Limits in the Aggregate - automatic reinstatement
  - Limits per occurrence



## 5 Requirement to be Named Insured

- Named Insured
  - Party to the Insurance Contract
  - Receive and can give insurance notices
  - Claim and enforce policy directly against Insurer





## 6 Requirement to be Interested Party

- Interested Party
  - Not a Party to the Insurance Contract
  - Does not receive any insurance notices
  - Claim and enforce policy directly against Insurer



## 7 Indemnities

- Change risk allocation
  - Common Law liability for loss or damage require some fault /negligence or breach of contract
  - Indemnities allocate the liability for a known risk to one party
  - Indemnities often requires no fault/negligence
  - Can you control the risk?



## 7 Indemnities

- Example 1

*The College will indemnify the Provider against all costs (including **legal costs on a full indemnity basis**), expenses, damages from actions, suits, proceedings, claims or demands, made or suffered by the Provider **arising out of or in any way associated with the Agreement.***



## 7 Indemnities

- Example 1 - Amended

*The College will indemnify the Provider against all costs ~~(including legal costs on a full indemnity basis)~~, expenses, damages from actions, suits, proceedings, claims or demands, made or suffered by the Provider due to arising out of or in any way associated with the Agreement. the College's negligence.*



## 7 Indemnities

- Example 1 – Amended to provide for Proportionate Liability

*The College will indemnify the Provider against all costs (including legal costs on a full indemnity basis), expenses, damages from actions, suits, proceedings, claims or demands, made or suffered by the Provider due to arising out of or in any way associated with the Agreement. **the College's actions/negligence.***

*The College's liability under this clause will be reduced proportionately to the extent that any act or omission by the Provider has contributed to the loss, costs, expense, damages or other losses.*



## 7 Indemnities

- Example 1 – Include Liability to Mitigate

*The Provider must take all reasonable steps to mitigate any loss suffered*



## 8 Work Health & Safety

- Who is Principal Contractor? ( $\geq$ \$250,000)  
*(Workplace Health & Safety Regulation 2011 Qld)*
  - signage identifying principal contractor
  - work health and safety (WHS) management plan
  - duty to inform all persons of plan before they commence
  - duty to review – must remain up-to-date
  - must obtain safe work method statement (SWMS) before high risk construction work commence
  - put in place arrangements for ensuring compliance with specified requirements such as facilities and amenities



## 9 Risk Management

- Role of Insurance Broker
- Limitation of Liability Clauses
- Exclusion Clauses





## 10 Exclusion Clauses

- Force Majeure

*“An event beyond the control of the College, which prevents the College from complying with any of its obligations under this Contract, including but not limited to:*

- 1 act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves, **bushfire, cyclone** and floods);*
- 2 war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilisation, requisition, or embargo;*
- 3 rebellion, revolution, insurrection, or military or usurped power, or civil war;*
- 4 contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive;*
- 5 riot, commotion, strikes, go slows, lock outs or disorder, unless solely restricted to employees of the College or of its agents, subcontractors or suppliers; or*
- 6 acts or threats of terrorism”*

*just redemptive outcomes®*



CORNEY & LIND  
LAWYERS

## Contact



Name: Jacques Nel

Position: Special Counsel

Email: [jacques.nel@corneyandlind.com.au](mailto:jacques.nel@corneyandlind.com.au)

07 32520011

[www.corneyandlind.com.au](http://www.corneyandlind.com.au)