



Family DAYCARE Australia
leading the way in childcare

Public Liability Insurance *Policy Information*

Dated 1 March 2008

**We're family day care and in-home care
insurance specialists.**

**We guarantee that no-one knows your
childcare business like we do.**

By choosing this product you are supporting the work of Family Day Care Australia (FDCA). FDCA is the not-for-profit national peak organisation for Australia's family day care program.

Family Day Care Australia Limited (ABN 93 094 436 021) arranges this insurance as a Corporate Authorised Representative (CAR No. 269678) of Altiora Retail Pty. Limited (Australian Financial Services License No. 240823).

The policy is led by certain underwriters at Lloyd's of London as listed:

Syndicate 4040 (HCCL)

FDCA members can arrange premium funding through Ascot Premium Finance Pty. Limited.

FDCA will receive fees and/or commission from Altiora Retail and Ascot. These funds contribute to FDCA's work on behalf of the family day care program at the national level. FDCA is a member-based organisation. Non-member clients are welcome to access FDCA's products and services. A non-member fee is charged on each product.

This booklet, together with your evidence of cover, is a record of your public liability insurance; they are important documents and should be kept in a safe place. You may need to refer to them periodically and particularly when the policy is due for renewal or at the time of a claim.





Table of Contents

INTRODUCTION	4
FDCA's Heritage	4
Membership, Financial Services and Products	5
IMPORTANT INFORMATION	7
Public Liability is Necessary for Carers	7
Home and Contents is Domestic Insurance	7
Your Duty of Disclosure	7
Non-Disclosure	8
POLICIES AND PROCEDURES	9
Insured Period	9
Renewals	9
Lapse of Policy	9
Change of Details	9
Eligibility	10
Refund Policy and Cancellation Fees	10
Public Liability Claims Procedure	11
Public Liability Claims Dispute Resolution	13
Public Liability Claims Excess	14
Privacy Policy	14
MASTER POLICY SCHEDULE	15
OUR AGREEMENT	16
The Agreement	16
How Much We Will Pay	16
What This Policy Consists Of	16
COVERAGE	16
EXCLUSIONS	18
CONDITIONS	25
DEFINITIONS	29
EXTENSIONS	32
FREQUENTLY ASKED QUESTIONS	42



Introduction

We are happy to explain the benefits both of this policy and the full range of products and resources available through FDCA. If you require further information please telephone FDCA Member Services on 1800 658 699 or visit our website at www.familydaycareaustralia.com.au.

FDCA's Heritage

FDCA was formed in 1988 to provide effective advocacy and promotion of the family day care program on a national level. Our purpose then, as it is now, was to influence social policy and give the family day care community a national, cohesive voice.

Today we are a member-based financially independent organisation with a national office in Gosford on the NSW central coast, 1.25 hours north of Sydney. We provide information, policy advice and advocacy regarding the family day care program, promote family day care as a quality childcare choice and career option, and offer an extensive range of family day care specific products and services to a growing member base.

Our commitment to representing the family day care community, by consulting with individuals working at the grass roots level within the program, remains an intrinsic part of our organisation and is critical to our ongoing success as a national peak organisation.

FDCA is an apolitical, independent national body that supports the traditional family day care model of a central coordination unit working in partnership with carers, families, service operators and local communities.

Membership, Financial Services and Products

Membership

FDCA is family day care's national peak organisation which works on behalf of its members. Your membership not only helps FDCA continue to serve the family day care community, it enables you to access a growing range of products and services which have been developed in response to requests from the community.

Mission statement

Our mission - Building competitive childcare business through:

- A national voice and media presence
- Trends analysis and forecasting
- The right products and services
- Market Intelligence
- Business alliances
- Influencing change
- Industry consultation

Your membership also helps us to work on your behalf at the national level to fulfill our vision of *providing dynamic and responsive leadership, representing the interests of children and families, supporting excellence in Australian family day care.*

Your Membership entitles you to...

- ▶ Access to specialised advice on insurance, marketing, media and policy
- ▶ Access FDCA products and financial services free of non-member fees.
- ▶ A twelve month subscription to *JiGSAW* magazine – the only family day care-specific publication in Australia
- ▶ Access to premium funding arrangements that help you manage your budget by spreading the payments of membership and a range of insurance products.
- ▶ Member discounts to conferences, forums and other family day care events.
- ▶ Participate in FDCA's Members' Forums (Individual Members only).
- ▶ Vote for candidates to the FDCA board of Directors or stand for election yourself (Individual Members only).

Financial Services

FDCA can arrange the following products specially tailored for the family day care community. All products are also suitable for use in the in-home care environment.

- Public Liability Insurance
- Personal Accident Insurance for Children
- Telephone Legal Advice (Comprehensive or Standard)
- Home and Contents Insurance
- Motor Vehicle Insurance
- Income Protection Insurance
- Superannuation
- Premium Funding

Products

Dimensions - Excellence in Many Ways - is your essential guide to operating a successful family day care service. This easy-to-read book combines practical advice with real life stories about supporting children's learning, interactions and relationships, planning, programming and evaluating, working professionally and much more!

Getting it Right - a Tax Guide For Family Day Care Carers - developed in consultation with the Tax Office this book assists carers from Day 1 to prepare accurate tax returns.

Child Care Benefit Receipt Books - compliant with Commonwealth requirements, Child Care Benefit Receipt Books are specifically designed to meet the needs of family day care.

First Aid Kit - Supplied to comply with WorkCover in all States, the kits (Deluxe or Premium) are just perfect for family day care. Particular attention has been given to their organisation and ease of use. All items have been clearly labelled so that you'll know where to find them immediately in an emergency. Fundraising opportunities are available on the First Aid Kit and First Aid Emergency Handbook. Contact us on 1800 658 699 for more information.

First Aid Emergency Handbook - This Handbook provides a quick summary of first aid for a range of every day emergencies. The book should be kept in a visible and accessible place using the magnetic strip.

**FDCA's Member Services Team is available
8.30am–7.00pm Monday to Thursday (EST)
9.00am–5.00pm Friday (EST)**



Important Information

This booklet contains the Master Policy Wording, FDCA policies and procedures and answers to frequently asked questions in relation to public liability insurance.

Public liability is necessary for carers

Carers are small business operators. FDCA's Public Liability insurance offers insurance protection for carers conducting a family day care or in-home care service.

- This cover protects carers where they are held liable for third party property damage, injury to children in care or injury to persons associated with the family day care or in-home care service (subject to the terms and conditions of the policy).
- The policy does not cover the carer or their family for property damage or injury.
- The policy provides public liability cover for up to \$10 million for any one occurrence.

If a claim is brought against you in relation to an injury to a child in your care for example, you could be personally liable to pay any damages or compensation which may be awarded to the injured party if you do not hold adequate public liability insurance.

Home and Contents is domestic insurance

Although many Home and Contents insurance policies include public liability insurance, they usually do not cover any claims arising out of a business.

Your Duty of Disclosure

Before you enter into a contract of general insurance with an Insurer, you have a duty under the Insurance Contracts Act 1984, to disclose to the Insurer every matter which you know, or could reasonably be expected to know, is relevant to the Insurer's decision whether to accept the risk of the

insurance and, if so, on what terms. You have the same duty to disclose those matters to the Insurer before you renew, vary or reinstate a contract of general insurance. Your duty however does not require disclosure of any matter:

- That diminishes the risk to be undertaken by the Insurer
- That is of common knowledge
- That your insurer knows, or in the course of his business, ought to know
- As to which compliance with your duty is waived by the Insurer.

If you have any questions about what should be disclosed, please contact FDCA's Member Services Team on freecall 1800 658 699.

Non-Disclosure

If you fail to comply with your duty of disclosure, the Insurer may be entitled to reduce its liability under the contract in respect of a claim or may cancel the contract. If your non-disclosure is fraudulent, the Insurer may also have the option of avoiding the contract from its beginning.



Policies and Procedures

The following policies and procedures have been established by FDCA and agreed by the insurer to assist with the administration of the public liability insurance product.

Insured Period

Insurance cover commences for 12 months when your application is accepted by the insurer. The commencement date will be shown on your evidence of cover.

Renewals

You will receive a renewal notice for your insurance at least 14 days prior to the expiry date as noted on your evidence of cover. Renewal payments must be made on the renewal notice as no reminders are issued. You will receive a receipt detailing your payment and showing the GST component separately. Your payment must be received by FDCA by 4:00pm on the date of expiry of your policy to ensure continuation of your policy.

Lapse of Policy

If your renewal payment is not received by FDCA by 4:00pm on the due date, your policy will lapse. A lapse notice is sent on the next business day after the lapse date.

If you are still providing a family day care or in-home care service and wish to reinstate your policy, you must remit payment immediately as cover cannot commence until payment is received. There may be a gap in cover between the lapse of the old policy and the start of the new.

Change of Details

Although public liability is not address specific you must notify FDCA immediately if you change your address, name, telephone number or email address.

Eligibility

Age - Applicants must be 18 years or over and must be registered with a Commonwealth funded family day care scheme, or in-home care service with a demonstrated link to Commonwealth funded family day care.

The public liability insurance policy is conditional upon policy holders meeting all statutory requirements for the safety of persons and property. If you do not comply with these requirements and a claim occurs, the policy may not cover you for the claim.

First Aid - All persons covered under the public liability insurance policy (such as primary carers, co-carers, backup carers, support carers or relief carers) irrespective of whether they earn an income or not must have '*current training in first aid and resuscitation with the capacity to respond appropriately in a medical emergency*' before* they commence care or renew their public liability policy. A First Aid Certificate which meets State Regulations, as applicable, will fulfil this requirement.

**If a carer cannot meet this criterion, upon commencement of care or at renewal of their public liability policy, they must be able to show that they were unable to obtain a First Aid Certificate in their locality due to the irregularity of training courses. In this instance carers should book into the first available course being conducted within the area. In any event, carers must be compliant not more than 6 months after commencing care. Exceptions to this condition include Volunteers such as work experience students, those acting in an emergency situation, persons appropriately qualified such as Nurses and Doctors.*

Refund Policy and Cancellation Fees

- Membership, Telephone Legal Advice and insurances are non-transferable.
- FDCA Membership, Telephone Legal Advice and Personal Accident Insurance for Children and insurance agency fees and Altiora Retail broker fees, including government charges, are not refundable unless cancellation in writing is received within 14 days of the date the policy starts and only if no care has taken place.
- You may cancel the Public Liability Insurance policy at any time. To do so you must tell us in writing that you want to cancel the policy and the future date from which the cancellation is to apply.

- The insurer will retain the premium which applies to the days the policy has been in force.
- If you pay annually, FDCA will retain \$22 (including GST) for our expenses relating to administering the cancellation.
- If you pay by instalment through Ascot Premium Finance, Ascot will retain no more than \$30 (including GST) for their expenses relating to administering the cancellation.

Public Liability Claims Procedure

If a third party has a claim against you they should lodge their complaint in writing, setting out the circumstances and providing details of the claim. When that information is received the claim will then be investigated on your behalf.

At no stage should you admit liability or fault - this is for the insurer of the Public Liability policy to determine. Do not attempt to negotiate with the person involved or with their legal representatives.

In the event of serious injury or damage, immediately contact Altiora Retail for advice on tel: 02 9953 7722.

All Carers are supplied with claims reporting information and contact details on Incident Report forms after purchasing the public liability product.

Carers are required to complete an incident report form for all injuries to children in care other than the most minor of incidents, these should also be recorded in an incident book or diary so the Carer has a backup record.

Insurers may wish to investigate serious incidents in order to assess whether there is a potential liability owed by a Carer or scheme. Claimants may also appoint legal advisers who from time to time carry out investigations into claims or incidents. It is very important that schemes and Carers identify who is asking questions and conducting investigations. Scheme staff and Carers should always be very careful to establish the identity of investigators and only talk with an investigator once they have satisfied themselves of the identity of the investigator and who they are representing.

Scheme staff or Carers are not obliged to talk with investigators acting for the claimant and should never speak with an investigator unless they have received confirmation from their insurer that it is alright to speak with them. Under no circumstances should scheme staff or Carers ever make

a statement to an investigator that constitutes an admission of liability as this may prejudice the interests of the insurer and cause the claim to be denied.

The following public liability insurance claims reporting protocol has been developed in consultation with Altiora Retail Pty Limited and the Lloyds of London underwriters to help schemes and Carers understand their reporting obligations under FDCA's Public Liability policy.

There are 3 categories of incidents, Category A, Category B and Category C.

Category A incidents are:

- Death
- Spinal injury
- Extensive scarring
- Burns of any kind
- Any other incident that requires hospitalisation
- Loss of consciousness/concussion
- Fracture of a major limb
- Where a parent expresses anger or threatens legal action against the Carer or withdraws the child from care immediately after the incident.

Reporting Procedure

- A Category A incident must be reported:
 - to the scheme within 48 hours of the incident occurring
 - to the FDCA office verbally within 48 hours of the incident occurring (1800 658 699).
 - the incident report form must be completed and received at the FDCA office no later than 7 days after the incident.
 - Convulsion/seizure/fit where an ambulance is called and/or hospitalisation is required.

Category B incidents are:

- Minor fractures of fingers, nose, toes etc.
- Injuries to teeth
- Lacerations which only require regular first aid treatment
- Third party medical treatment is required but none of the Category A injuries are present.

- Where the parent is distraught and expresses any feeling of blame towards the carer

Reporting Procedure

- A Category B incident must be reported:
 - to the scheme no later than 30 days after the incident.
 - The incident report form must be completed and received at the FDCA office no later than 30 days after the incident.

Category C incidents are all others minor injuries and illnesses.

Reporting Procedure

- A Category C incident must be reported to:
 - the scheme however the Carer is not required to send the incident report form to the FDCA office but should keep a copy on their files in case the incident escalates.

There will always be incidents which may at first seem to fall into the Category B or C area but are borderline. In these instances the Carer and scheme should err on the side of caution and escalate the incident to the higher Category.

Public Liability Dispute Resolution

This Certificate is Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted outside Australia. Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

Any enquiry or complaint relating to this Insurance should be referred to FDCA in the first instance. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Underwriters' General Representative in Australia
Suite 2, Level 21
Angel Place, 123 Pitt Street
Sydney NSW 2000
Telephone Number: (02) 9223 1433
Facsimile Number: (02) 9223 1466

Who will refer your dispute to the Complaints Department

at Lloyd's.

Complaints that cannot be resolved by the Complaints Department may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

Disputes

The underwriters accepting this insurance agree that:

- (i) If a dispute arises under this insurance, this insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- (ii) Any summons notice or process to be served upon the Underwriters may be served upon: Lloyd's Underwriters' General Representative in Australia Suite 2, Level 21 123 Pitt Street Sydney NSW 2000 who has the authority to accept service and to appear on the Underwriters' behalf
- (iii) If a suit is instituted against any of the Underwriters, all Underwriters participating in this insurance will abide by the final decision of such Court or any competent Appellate Court

Public Liability Claims Excess

A nil excess applies to each claim.

Privacy Policy

We are committed to protecting your privacy. We use the information you provide in this form to arrange your insurances. We provide this information to Altiora Retail Insurance Brokers and they provide it to the underwriting agencies and insurers who arrange and provide your insurance. We may also provide information about the status of your public liability insurance to your family day care scheme and/or in-home care service; your landlord if you are a tenant and Ascot Premium Finance if you elect to pay by instalment through Ascot Premium Finance. Otherwise we do not provide this information to anyone unless we are required to do so by law and we do not trade, rent or sell your information.

You can check the information we hold about you at any time. For more information about our Privacy Policy, ask us for a copy or visit our website at www.familydaycareaustralia.com.au.



Master Policy Schedule

This copy is for information purposes only.

Insured

- Family Day Care Australia Limited
- family day care schemes and their employees
- family day care carers
- in-home care carers

Period

31 December 2007 at 4pm to 31 December 2008 at 4pm.

Business

Principally the organisation of and responsibility for the care of children in the homes of approved family day care carers or the homes of families where an in-home care service is provided, subject to the framework of the family day care and in-home care systems, property owners and occupiers and any other occupation incidental thereto, or in which the Insured has been or may become involved.

Limit of Liability

Public Liability: \$10,000,000 any one occurrence

Products Liability: \$10,000,000 any one occurrence and in the aggregate any one period of insurance

Errors and Omissions: \$1,000,000 any one claim made and in the aggregate any one period of insurance

Sub – Limit

Criminal Defence Expense Insurance: \$50,000 any one insured event and in the aggregate any one period of insurance.

Care Custody or Control: \$20,000 in respect of property in possession or control of the Insured and any one occurrence.

Excess

Nil each and every occurrence including costs and expenses.

Our Agreement

The Agreement

Because You have paid or agreed to pay the premium for this Policy, We agree to provide You with the insurance cover described in this Policy.

How Much We Will Pay

Limit of Liability

We will not pay any more for any claim under this Policy than the lesser of:

- The Limit of Liability or any Sub-limit less any Excess which is listed in the Schedule, or
- Any other limit less any Excess which is set out in this Policy.

Excess

We will not pay the Excess which applies to any claim.

The Excesses are set out in the Schedule and the Policy.

If more than one Excess applies to any one claim or series of claims under this Policy, then only the single highest Excess will apply.

What This Policy Consists Of

This Policy consists of the Schedule, Our Agreement, Coverage, Exclusions, Conditions and Definitions which apply. All parts of the printed Policy wording, the Schedule and any Endorsements must be read as if they are one and the same document.

Coverage

We will pay to You or on Your behalf all amounts which You shall become legally liable to pay for compensation

- in respect of Personal Injury or Property Damage,
- which happens during the Period of Insurance, and
- is caused by an Occurrence in connection with the Business.

We will not pay more than the Limit of Liability stated in the Schedule for Public Liability for all claims or series of claims arising out of any one Occurrence.

We will not pay more than the Limit of Liability stated in the Schedule for Products Liability for all claims arising out of all or any of Your Products during any one Period of Insurance.

In addition to the Limits of Liability stated in the Schedule, We will:

1. Defend any suit against You claiming any amounts for Personal Injury or Property Damage and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; and We may investigate, negotiate and settle any claim or suit as We deem expedient; but We shall not be obligated to pay any claim or judgement or to defend any suit after Our Limit of Liability has been exhausted by payment of judgements or settlements;
2. Pay all expenses incurred by Us, all legal costs recoverable from You in any such suit and all interest accruing after any such judgement until We have paid, tendered, or deposited in court such part of such judgement as does not exceed Our Limit of Liability thereon;
3. Reimburse You for all reasonable expenses other than Your loss of earnings, incurred with Our consent;
4. Pay expenses incurred by You for first-aid to others at the time or any Personal Injury for which You are entitled to compensation.

If a payment exceeding Our Limit of Liability has to be made to dispose of a claim Our liability to pay these additional payments in connection therewith shall be limited to such proportion of the additional payments as the Limit of Liability bears to the amount paid to dispose of the claim.

Retroactive Cover

If the Schedule shows that retroactive cover applies to this policy, We will indemnify You for any Personal Injury or Property Damage for which a claim is made against You during the Period of Insurance and which is notified to Us during the Period of Insurance so long as the incident from which the claim directly arose:

- (i) occurred during the period between the Retroactive Date as stated in the Schedule and the first day of the Period of Insurance; and
- (ii) had not been reported by You or on Your behalf to another Insurer prior to the Period of Insurance; and

- (iii) You did not know, or could not reasonably have known that the incident could give rise to a claim against You.

Landlords Cover

The policy automatically extends to indemnify property owners and/or body corporates of rented properties from which the insured conducts the Business provided that such an indemnity is only extended for claims arising out of the Insured's Business.

Furthermore the policy extends to indemnify the body corporate where You are an owner occupier of part of the building or premises from which Your business is conducted provided at all times that the indemnity under this extension will only apply in respect of Bodily Injury or Property Damage and that such indemnity is only extended for claims arising out of the conduct of Your Business

It is hereby noted that indemnity for accidental damage will be sublimited to \$5000 any one occurrence. Malicious damage is excluded under this section.

In-home care

The policy automatically extends to indemnify You when providing care from a venue other than Your place of residence.

Fundraising Events, Fetes and Excursions

The policy automatically extends to indemnify You when attending fundraising events, fetes, festivals and similar events whilst undertaking excursions with children in care.

Exclusions

We shall not be liable for claims in respect of:

1. Aircraft Hovercraft and Watercraft

Personal Injury or Property Damage arising out of or caused by, through, or in connection with:

- (a) the ownership, legal possession, legal control or use by You or the use on Your behalf of;
 - (i) Aircraft or Hovercraft; or

- (ii) Any Watercraft, other than manually propelled Watercraft not exceeding 8 metres in length, or mechanically propelled Watercraft that do not require registration and/or that do not require the operator to be licensed not exceeding 3 metres in length.
- (b) the selling or manufacturing of Aircraft or the manufacture, assembly and or supply of any products that are used with Your knowledge in Aircraft or aerial device;
- (c) the leasing, hiring or chartering of Aircraft to or from You; or
- (d) the repair, service or maintenance of Aircraft or Aircraft products or the installation of any products into Aircraft.

2. Asbestos

Personal Injury or Property Damage caused by or arising out of exposure to asbestos or alleged exposure to asbestos or materials or products containing asbestos.

3. Contracts and Agreements

Liability assumed by You under any contract or agreement except to the extent that such liability would have been implied by law.

Exclusion 3 shall not apply to:

- (a) the written contracts specified in the Schedule;
- (b) liability assumed by You under a warranty of fitness or quality as regards Your Products;
- (c) liability assumed by You under any lease or agreement of real or personal property.

4. Employees

- (a) Personal Injury to any of Your employees, deemed employees or the employees of sub contractors arising out of or in the course of his/her employment in Your Business;
- (b) Personal Injury to any person in Your service arising from a liability imposed by an industrial award or agreement or determination;
- (c) Any liability in respect of which You are entitled to seek compensation under any policy of insurance

required to be taken out pursuant to any legislation relating to workers' compensation whether or not You have effected such a policy.

5. Erection and Alteration to Buildings

The erection, demolition of and/or alteration or addition to buildings or structures by you or on Your behalf except where the completion value of such work does not exceed \$50,000 unless some other sub-limit is stated in the Schedule.

6. Faulty Workmanship

The cost of performing, completing, correcting or improving any work undertaken by You.

7. Fines and Penalties

Punitive, aggravated, exemplary damages or criminal damages, fines or penalties or the like imposed by the law.

8. Legal Jurisdiction

Personal Injury or Property Damage where the action is brought against You in any country outside Australia or New Zealand.

9. Libel and Slander

Liability arising out of the publication or utterance of a libel or slander:

- (a) made prior to the commencement date of this Policy, or
- (b) made by You or at Your discretion with the knowledge that it is false; or
- (c) related to advertising, broadcasting, printing, publishing or telecasting activities by You or on Your behalf.

10. Loss of Use

Loss of use of tangible property which has not been physically injured or destroyed resulting from:

- (a) a delay in or lack of performance by You or on Your behalf of any contract or agreement, or
- (b) the failure of Your Products to meet the level of performance, quality fitness or durability expressly or impliedly warranted or represented by You, but this exclusion does not apply to loss of use of

other tangible property resulting from the sudden or accidental physical damage to or destruction of Your Products after such Products have been put to use by any person or organisation other than You.

11. Nuclear Fuel/Weapons

Personal Injury or Property Damage caused by or arising from:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any Nuclear waste from the combustion of nuclear fuel.

For the purpose of this exclusion, combustion shall include any self-sustaining process of nuclear fission;

- (b) nuclear weapons material.

12. Pollution

Personal Injury or Property Damage arising out of Pollution occurring in its entirety during the Period of Insurance as stated in the Schedule but this exclusion shall not apply if You can demonstrate that such Pollution:

- (a) was the direct result of a sudden specific and identifiable event occurring during the Period of Insurance
- (b) was not the direct result of You failing to take reasonable precautions to prevent such Pollution

However, notwithstanding 12. Pollution above cover does not apply in respect of Pollution for:

- (a) Property Damage to premises presently or at any time previously owned or tenanted by You
- (b) Property Damage to land or water within or below the boundaries of any land or premises presently or at any time previously owned or leased by You or otherwise in Your care custody or control.

13. Professional Advice

The rendering of or failure to render professional advice or service by You or any error or omission connected therewith.

Exclusion 13 will not apply to the rendering of or failure to render professional medical advice by Medical Persons employed by You to provide first-aid and other medical services on Your premises.

14. Property Damage to:

- (a) Property owned by or leased or rented to You, or
- (b) Property in Your physical or legal control.

Exclusion 14 shall not apply to liability for Property Damage to:

- (i) Property in Your physical or legal control up to a maximum of \$15,000 any one Occurrence and in the aggregate unless some other sub-limit is stated in the Schedule. However We shall not be liable for Property Damage to that part of any property upon which You are or have been working where such Property Damage arises from Your such work;
- (ii) Premises which are leased or rented to You for the purposes of carrying on Your Business provided the liability does not arise from Your failure to insure the Premises as required in the lease or rental agreement;
- (iii) employees' property;
- (iv) vehicles (not belonging to or used by You or on Your behalf) in Your physical or legal control where such Property Damage occurs whilst any such vehicle is in a car park owned or operated by You provided that You do not own or operate a car park for reward as part of Your Business.
- (v) keys in Your physical or legal control up to a maximum of \$2,500 any one occurrence and in the aggregate for the cost of replacing locks and keys.

Where cover is extended You shall bear an Excess in respect of such Property Damage.

15. Property Damage to Your Products

Property Damage to Your Products if such damage is attributable to any defect therein or the harmful nature or unsuitability thereof.

16. Recall of Products

Damages, costs or expenses claimed for the withdrawal, recall, inspection, repair, replacement or loss of use of Your Products or of any property of which such Products form a

part if such Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.

17. Territorial Limits

Personal Injury or Property Damage;

- (a) occurring in the United States of America or Canada. This Exclusion shall not apply to claims arising from the presence of any person who is normally resident in Australia or New Zealand and who is not a manual worker or a supervisor of work,
- (b) caused by or arising out of Your Products knowingly exported by You or Your agents to the United States of America or Canada,
- (c) where claims are made upon You outside Australia or New Zealand in any country where You are represented by a branch or company or firm or individual holding Your power of attorney,
- (d) where such claims arise out of any contract entered into by You under the terms of which work is not to be performed outside Australia or New Zealand.

18. Terrorism

Personal Injury or Property Damage or costs or expenses caused by or arising directly or indirectly out of 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.

Terrorism shall mean an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

Also excluded is loss, injury, 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.

If We allege that by reason of this exclusion, any loss, injury, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon You.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

19. Tobacco

Any injury caused directly or indirectly by the inhalation or ingestion of or exposure to tobacco or tobacco smoke or any ingredient or additive present in any articles, items or goods which contain or include tobacco.

20. HIV/AIDS Exclusion

This policy does not provide indemnity in respect of liability arising out of or in connection with HIV (Human Immunodeficiency syndrome) or the mutant derivations or variations thereof or in any way related to AIDS (Acquired Immune Deficiency Syndrome) or Aids related complex (ARC) or any syndrome or condition of a similar kind howsoever it may be named.

21. Vehicles

Personal Injury or Property Damage arising out of the ownership, maintenance, possession or use by You of any Vehicle;

- (a) which is registered, or which is required to be registered;
or
- (b) in respect of which insurance is required by virtue of any legislation; or
- (c) which is otherwise insured in respect of the same liability;

Exclusion 21 shall not apply to Personal Injury or Property Damage arising from:

- (i) the delivery or collection of goods to or from any Vehicle where such Personal Injury or Property Damage occurs beyond the limits of any road, carriageway or thoroughfare,
- (ii) the loading or unloading of any Vehicle.

22. War

Personal Injury or Property Damage arising out of war, invasion, act of foreign enemy, hostilities (whether war be declared or

not), civil war, rebellion, insurrection, military or usurped power, or requisition or Damage to property by or under order of government or public or local authority in preventing or attempting to prevent any such act or in minimising the consequences of any such act or confiscation or nationalisation.

23. Molestation

This Policy shall not indemnify You against liability arising out of actual or alleged criminal acts or improper behaviour or gross misconduct involving sexual activity or sexual abuse or molestation involving any individual who is or was at any time in the care and/or custody and/or control of You or any Employee of Yours.

For the purpose of this Exclusion such liability shall include any related claims alleging or arising from a failure on the part of You or Your Employees or persons working on behalf of You to protect and/or supervise adequately such individuals.

24. Financial Loss

It is hereby noted and agreed that this Policy does not cover liability arising out of Financial Loss not consequent upon Personal Injury and/or Property Damage.

Conditions

Cross Liability

Where You are comprised of more than one person or entity, each shall be considered as a separate legal entity.

The words You and Your shall apply to each person or entity as if a separate policy had been issued to each.

This Condition does not increase the Limit of Liability under this Section in respect of any Occurrence or Period of Insurance.

Claims Procedure

(a) When an event occurs which could give rise to a claim You must:

- (i) As soon as possible notify Us of the Occurrence;
- (ii) Within 30 days of notifying Us, give Us a statement in writing with as much detail as You can about

the cause, description and amount of the Loss or Damage;

- (iii) Forward details and copies of any claim or legal proceedings including any prosecutions by any party brought against You to Us as soon as possible after receipt;
 - (iv) Preserve any property which may be needed as evidence in any claim against You and make it available for inspection by Us and Our representatives.
- (b) You must not make admissions, settle or attempt to settle or defend any claim against You without Our written consent.
- (c) We may at Our option take over the defence of any claim or legal proceedings brought against You. If We do so, We may settle or defend the claim or proceedings as we see fit. You must give Us any reasonable assistance and information that We require in the defence or settlement of any such claim.
- (d) We may at any time pay to You the limit of Liability (after deduction of any sum or sums already paid) in respect of any claim(s) made against You or any lesser sum for which the claims(s) can be settled. Upon such payment, We will have no further liability under this Policy in connection with that claim(s) except for costs, charges and expenses recoverable from You or incurred by Us or by You with Our consent prior to the date of such payment.

Cancellation by You

- (a) You may cancel this Policy at any time. To do so You must tell Us in writing that You want to cancel the policy and the future date from which the cancellation is to apply.
- (b) We will retain the premium which applies to the days the Policy has been in force and an amount for Our expenses of the cancellation, subject to minimum premium provisions.

Cancellation by Us

- (a) We may cancel this Policy by giving written notice to You if:
- (i) You failed to comply with:
 - The duty of utmost good faith, or
 - A provision of this Policy, including a provision with respect to the payment of premium; or
 - (ii) before this Policy was entered into You failed to comply with the duty of disclosure or made a

misrepresentation to Us;

(iii) You have made a fraudulent claim under this or any other policy of insurance with us or any other insurer; or

(iv) You did not tell Us about anything which this Policy required You to tell it.

(b) Cancellation by Us will take effect from the earlier of:

(i) the day on which You arrange other insurance to replace this Policy, or

(ii) 4.00pm on the third business day after the day on which notice of cancellation was given to You or any later date shown in the notice of cancellation.

(c) The cancellation will be effective unless You can prove that, through no fault of Yours, You did not receive the notice of cancellation.

(d) If We cancel the policy, We will retain the premium which applies to the days this Policy has been in force, subject to minimum premium provisions.

Hold Harmless Agreements

You must not enter into an agreement with another person which excludes or reduces Your rights to make a claim against that person at any time without Our written consent.

If you do, We may reduce the amount of any claim You make under this Policy by the extent to which Your agreement prevents Us making a claim against that person under Our rights of subrogation.

Joint Insureds

Where the Policy covers the interest of more than one person or entity:

(a) any information supplied to or withheld from Us in relation to entering into, renewing or extending this Policy or any claim under the Policy will be deemed to have been supplied or withheld by all persons or entities insured by this Policy; but

(b) an action or omission of one which increases the risk of Damage will not prejudice the rights of the others, provided that immediately on becoming aware of the increase in the risk of Damage, the others give Us written notice and pay any reasonable additional premium charged by Us.

Service of Suit Clause (Australia)

We hereon agree that:

- (i) In the event of a dispute arising under this Policy, We at the request of You will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- (ii) Any summons notice or process to be served upon Us may be served upon

Lloyd's Underwriters' General Representative
in Australia, Lloyd's Australia Limited
Suite 2, Level 21
123 Pitt Street
Sydney NSW 2000
Telephone Number (02) 9223 1433

who has the authority to accept service and to enter an appearance on Our behalf, and who is directed at the request of You to give a written undertaking to You that he will enter an appearance on Our behalf.

- (iii) If a suit is instituted against any one of Us all of Us hereon will abide by the final decision of such Court or any competent Appellate Court.

Other Insurance

You must tell Us in writing and supply copies to Us as soon as possible about any other insurance which covers the risks insured by this Policy.

The insurance afforded by this Policy is excess over and reduced by any other valid and collectable insurance available to You. Valid and collectable insurance includes any self insurance plan which would be applicable to this loss.

Our Rights of Inspection

You must allow Us and Our representatives to inspect or examine any property and documents of Your Business insured by this Policy at any reasonable time.

Premium Adjustment

If the premium for this Policy has been calculated on estimates by You, You shall within 30 days after expiry of the Period of Insurance provide Us with such particulars and information relevant to the Policy as We may reasonably

require. The premium for the period shall be adjusted and any difference paid by or allowed to You as the case may be. Provided that the adjusted premium shall not be lower than the minimum premium normally charged by Us.

Reasonable Precautions

- (a) You must take all reasonable precautions to:
- (i) prevent personal injury or Damage to property;
 - (ii) prevent the manufacture, sale or supply of defective Products.
- (b) You must at Your own expense, trace or recall or modify any of Your Products which contain any defect or deficiency of which You are aware or have reason to suspect.
- (c) You and Your employees, servants and agents must comply with the requirements of any statutory authority for the safety of persons and property.

Recovery

We will not pursue any claim to recover any amount paid to You or on Your behalf under this Policy against:

- (a) any entity (and its directors, officers, employees or servants) which is Your subsidiary, which You own or control or which co-owns any property insured by this Policy;
- (b) any Insured (and its directors, officers, employees or servants) named or described in this Policy.

Subrogation

- (a) We are entitled to pursue under claim to recover any amount paid to You or on Your behalf under this Policy in Your name at Our expense and for Our benefit.
- (b) You must give Us all the reasonable assistance and information that We require in pursuing any such claim.

Definitions

The following words will have the meaning set out below wherever they appear in the Policy.

Aircraft

Means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

Business

Means the business specified in the Schedule.

Business includes the following:

- The ownership or tenancy of premises, and
- The provision and management of canteens, social and welfare organisations and first aid and safety services for Your employees.

Excess

Means the amount which You must pay towards any claim under this Policy which will be deducted before any amount is paid to You or paid on Your behalf.

Hovercraft

Means any vessel or craft or thing made or intended to float on or in or travel on or through the atmosphere or water.

Limit of Liability

Means the amounts shown in the Schedule for which You have chosen to insure.

Medical Persons

Means qualified medical practitioners, dentists, nurses and first-aid attendants.

Occurrence

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

Period of Insurance

Means the period of insurance shown in the current Schedule.

Personal Injury

Means:

- Bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
- False arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution and humiliation;
- Libel, slander, defamation of character or invasion of right of privacy; and
- Assault and battery not committed by or at Your direction unless committed for the purpose of preventing or eliminating danger to persons or property.

Pollution

Means pollution or contamination of the atmosphere or any water, land or other tangible property.

Property Damage

Means:

- Physical injury to or destruction of tangible property including the loss of use thereof at any time resulting therefrom; or
- Loss of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an Occurrence.

Start Date of Business

Means the date you first commenced your family day care or in-home care service.

Vehicle

Means any type of machine on wheels or on self-laid tracks which is made or intended to be propelled by other than manual or animal power.

Vehicle includes any trailer or caravan or other implement made or intended to be drawn by any such machine.

Watercraft

Means any vessel or craft made or intended to float on or in or travel on or through water.

We/Our/Us

Means certain Lloyd's Syndicates who are the Underwriters of this Insurance.

You/Your

Means each of the following, to the extent set forth below;

- (a) the named Insured, Family Day Care Australia, family day care Schemes and their employees, family day care carers and in-home care carers as detailed in the Schedule;
- (b) all subsidiary companies (present and future) of the named Insured whose places of incorporation are within Australia and New Zealand (including their Mandated Territories and Protectorates);
- (c) any director, executive officer, employee or partner of the named Insured or of a company designated in (b) but only whilst acting within the scope of their duties in such

- capacity;
- (d) any principal in respect of the liability of such principal arising out of the performance by the named Insured or by a company designated in (b) of any contract or agreement for the performance of work for such principal to the extent required by such contract or agreement but limited to the coverage provided by this Policy;
 - (e) any office bearer or member of social or sporting clubs or welfare organisations formed with the consent of the Insured (other than an Insured designated in (d)) in respect of claims arising from duties connected with activities of any such club or organisation.
 - (f) any 'other' carers such as relief, support, backup or co-carer, as so designated, emergency carer, or volunteer participating in the provision of care or the provision of fund raising or other administration activities performed on behalf of Family Day Care Australia, a family day care scheme or family day care carer.
 - (g) any work experience candidate or youth training candidate performing activities on behalf of Family Day Care Australia, a family day care scheme or family day care carer.

Your Products

Means anything (after it has ceased to be in the Your possession or under the control) manufactured, grown, extracted, produced, processed, constructed, erected, assembled, installed, repaired, serviced, treated, sold, supplied or distributed by You (including any container thereof other than a vehicle).

Extensions

Public Liability Errors & Omissions

It is hereby noted and agreed by underwriters that the following Extension of cover is to be included in the Policy.

1. Notice to You

The terms and conditions of this extension provide that:

1.1 a Claim (as defined within this Extension) must be made against You during the Period of Insurance for this Policy to apply; and

1.2 You must immediately notify Us in writing of such Claim(s). Such notification must be given to Us during the Period of Insurance for this Policy to apply.

If any circumstances or facts come to Your attention during the Period of Insurance which are likely to give rise to a Claim(s) to be made against You or which You should reasonably expect to give rise to a Claim(s) to be made against You, the terms and conditions of this Extension provide You with an option as to whether or not to notify Us. However, failure to notify may affect Policy indemnity, ie. All or part of any subsequent Claim(s) may not be covered. Assuming the option to notify Us is chosen such notification must be given in writing during the Period of Insurance for this Policy to apply.

The time of the happening of the negligence, whether by act, error or omission which gives rise to a Claim(s) or a possible Claim(s), is not of relevance provided they occur after the Retroactive Date specified below.

Upon expiry of the Period of Insurance, no further Claim(s) can be made under this Policy and therefore the maintenance of insurance provided by this Extension is essential.

2. Errors and Omissions Operative Clause

We, to the extent and in the manner hereinafter provided, hereby agree to pay to or on behalf of You up to the Limit of Liability as stated in the schedule against all sums which You shall become legally liable to pay as compensation as a result of a Claim or Claims first made against You and reported to Us during the Period of Insurance arising out of any negligence, whether by act, error or omission (which expression shall include any non-deliberate breach of section 52 of The Trade Practices Act 1994 or mirroring provisions of any State Fair Trading Act or similar statute) committed or alleged to have been committed by You or on Your behalf in connection with Your Products or services.

We hereby agree to pay all Costs in the defence of claim (including claims handling expenses) for which indemnity is available under this Extension provided that Our total aggregate liability (including costs in the defence of claim) shall not exceed in all the Limit of Liability specified above notwithstanding the number of Claims made.

3. Exclusions Applicable to Errors & Omissions Cover

This Extension does not cover liability:

- 3.1 As already excluded under the Policy. Provided however, for the purposes of the Extension only, Exclusion 13 (paragraph 1) is deleted.
- 3.2 Arising out of acts, errors or omissions which occurred or allegedly occurred prior to the commencement of the Period of Insurance.
- 3.3 Arising out of any facts or circumstances which You were aware of prior to the commencement of the Period of Insurance or which a reasonable person in Your position would have considered may give rise to a Claim.
- 3.4 Arising out of or attributable to any failure or omission on Your part to affect or maintain insurance.
- 3.5 Which is more specifically insured against in any other section of this Policy.
- 3.6 Arising out of the repair, reconditioning, replacement, making good or recall of any product or faulty or inadequate workmanship performed by You or on Your behalf.
- 3.7 Assumed under contract or agreement unless such liability would have attached in the absence of such contract or agreement.
- 3.8 Arising from an occurrence which is inevitable having regard to:
 - 3.8.1 the circumstances and nature of the work undertaken, or
 - 3.8.2 Your Products.
- 3.9 Arising from or in connection with advice, design, consultancy, specification, formulae or supervision given or undertaken by You:
 - 3.9.1 not in relation to Your Products, or
 - 3.9.2 for a fee.
- 3.10 Arising out of conspiracy, conversion, deceit, inducement, breach of contract or injurious falsehood.
- 3.11 Arising in the USA and/or Canada or in respect of any Claims which would be subject to the

jurisdiction of the Courts of the USA and/or Canada.

- 3.12 Incurred by or caused by a Director or Officer of You whilst acting within the scope of their duties in such capacity.

4. Definition

'Claim' or 'Claims' means

- 4.1 Any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counterclaim or third or similar party notice issued against or serviced upon You; or
- 4.2 The receipt by You of any written or verbal notice of demand for compensation made by a third party against You.

5. Conditions Applicable to Errors & Omissions Cover

- 5.1 You shall, as a condition precedent to their right to be indemnified under this section, give to Us as soon as practicable notice in writing during the Period of Insurance:
- 5.1.1 of any Claim(s) made against You;
- 5.1.2 of the receipt of notice from any person of an intention to make a claim against You.
- 5.2 You shall give to Us as soon as practicable, notice in writing during the Period of Insurance of any circumstance of which You shall become aware during the Period of Insurance, likely to give rise to a Claim against You.

If, during the Period of Insurance, You become aware of any circumstances which might subsequently give rise to a Claim under this Extension and elect, during the Period of Insurance, to give written notice to Us of such circumstances, then any such Claim which might subsequently arise out of such circumstances will be deemed to have been made during the Period of Insurance.

All other terms and conditions remain unchanged.

Criminal Defence Expense Insurance

PREAMBLE

It is agreed that:

- (a) We will pay the Legal Costs and Expenses of Insured Persons subject to the terms and conditions of this Extension,
- (b) the indemnity provided by this Extension is subject to the Policy, the Schedule, the Certificate of Insurance, and any endorsement (unless otherwise expressly stated herein); and these will be considered one document and any word or expression to which a specific meaning has been attached will bear such meaning wherever it appears,
- (c) where this Extension is not specified as included in the Schedule then this Policy shall not provide any indemnity in relation to coverage specified in this Extension.

DEFINITIONS

The following Definitions apply specifically to this Extension

'We/Us/Our' means certain Lloyd's Underwriters or companies specified in the Schedule.

'Appointed Solicitor' means the solicitor appointed under Claims Condition 3 to act for an Insured Person.

'Certificate of Insurance' means a certificate of insurance issued by Us to an Insured Person during the currency of this Policy.

'Insured Event' means any actual or alleged criminal act or omission in Australia of an Insured Person arising out of and in the course of his/her normal involvement in the supervision, care and control of children as part of the provision of the Centre or Service.

'Insured Person' means

1. an individual child carer; or
2. a Principal/Owner of a Child Care Centre, employed staff and volunteers; or
3. the Management Committee of a Service, employed staff and volunteers;

who have paid the Premium and to whom We have issued a Policy and Certificate of Insurance.

'Legal Costs and Expenses' means legal costs, fees and disbursements reasonably and properly charged or incurred by the Appointed Solicitor in accordance with the appropriate statutory or court scale of fees and may be determined by taxation or should We deem it appropriate by a legal costs

consultant approved by Us.

'Limit of Indemnity' means:

- for any one Insured Event/Insured Person
- the sum specified in the Schedule under this Extension as the maximum sum payable by Us with respect to all legal proceedings commenced arising from the one Insured Event.

'Annual Aggregate' means:

- for any one Period of Insurance
- the sums specified in the Schedule under this Extension as the maximum sum payable by Us with respect to all legal proceedings commenced within the one annual Period of Insurance.

'Period of Insurance' means in respect of an Insured Person the period set out in the current Schedule and/or Certificate of Insurance.

'Premium' means the premium and any government charges an Insured Person must pay Us for the Policy and/or Certificate of Insurance.

'Schedule' means the Schedule issued by Us to the Insured Person.

INSURING CLAUSE

Subject to the Limit of Indemnity and Annual Aggregate specified in the Schedule for this Extension, We will indemnify an Insured Person in respect of Legal Costs and Expenses incurred in:

1. the defence of criminal proceedings in a court of criminal jurisdiction commenced against the Insured Person during the Period of Insurance and arising from any Insured Event, ("Initial Proceedings").
2. the appeal, or the defence of any appeal, against judgement, conviction or sentence in any Initial Proceedings.

CLAIMS CONDITIONS

The following Claims Condition applies specifically to this Extension

Presentation of Claim

The Insured Person must advise Us immediately in writing of the full circumstances of any Insured Event or any actual or likely legal proceedings which give rise or is likely to give rise to a claim under this Policy and provide such proof, supporting evidence, and other information as We may request.

Claims Consent

- (a) We shall provide indemnity with respect to a claim where the Insured Person is able to satisfy Us that:
 - (i) there are reasonable grounds for defending the legal proceedingsand
 - (ii) it is reasonable for Legal Costs and Expenses to be provided in the particular case.

The Insured Person must obtain and forward to Us upon Our request, and at his/her expense, a written opinion from his/her solicitor and should We deem necessary, counsel, on the merit of the claim or legal proceedings. If the claim is subsequently admitted by Us, the Insured Person's costs in obtaining these opinions will be covered by this Policy.
- (b) If We either refuse to accept, or do not continue to support a claim We shall inform the Insured Person of the reasons for doing so.

Representation

- (a) Upon making a claim the Insured Person may either request Us to nominate a solicitor to act for him/her or may nominate a solicitor of their choice.
- (b) Upon request for the nomination of a solicitor We shall recommend the appointment of a solicitor and the Insured Person will instruct that solicitor accordingly.
- (c) We reserve the right to refuse the nomination of a solicitor by the Insured Person without giving any reason and prior to Our acceptance of their nomination of a solicitor We may make such enquiries as We deem appropriate with respect to that solicitor.
- (d) We reserve the right to instruct the Insured Person to terminate the services of a solicitor nominated by him/her or appointed by Us if We believe it is in the Insured Person's interest to do so. The Insured Person shall terminate the services of the solicitor and a new solicitor shall be appointed to act for him/her nominated by him/her or appointed by Us in the circumstances referred to above.
- (e) The solicitor whom We agree shall be nominated to act for the Insured Person shall be appointed by Us in his/her name and on his/her behalf.
- (f) Prior to Our acceptance of the Insured Person's nomination of a solicitor or if the Insured Person fails to nominate a solicitor We shall be entitled but not bound

to instruct a solicitor on the Insured Person's behalf if We consider this necessary to safeguard the Insured Person's immediate interests.

Control of Claim

- (a) We shall have direct access to the Appointed Solicitor at all times and the Insured Person shall co-operate fully with Us in all respects and shall keep Us fully and continually informed of all material developments in the legal representation or proceedings. At Our request the Insured Person shall instruct the Appointed Solicitor to produce immediately any documents, information or advice in his/her possession and further shall give him/her such other instructions in relation to the conduct of the claim as We may require.
- (b) We shall not be liable for the costs or fees of counsel, accountants or any expert witness unless We have given Our prior approval to the appointment of such person and agreed the proposed costs or fees.
- (c) Unless Our consent is first obtained We shall not be liable for any costs or expenses that may be payable as a result of any agreement, undertaking or promise made or given by the Insured Person to the Appointed Solicitor or to any witness, expert or other person relevant to the proceedings.
- (d) If in any legal proceedings the Insured Person is not successful in his/her claim or defence, We will not be liable for any appeal or further proceedings unless We are notified in writing of the intention to appeal no later than six (6) clear days before the time for making an appeal expires and We consider there are reasonable prospects of such appeal succeeding and it is reasonable for Legal Costs and Expenses to be provided in the particular case.
- (e) At Our request the Insured Person shall require the Appointed Solicitor to have the Legal Costs and Expenses taxed by the relevant statutory authority or otherwise assessed by an appropriate cost consultant approved by Us, as We may direct.
- (f) If for any reason the Appointed Solicitor refuses to continue acting for the Insured Person or if he/she withdraws their instruction from the Appointed Solicitor then Our liability will cease forthwith unless in Our absolute discretion We agree to the appointment of another solicitor to continue with the claim.

- (g) Where the Insured Person is awarded costs, he/she must take steps to recover Legal Costs and Expenses which would be the subject of payment under this Policy. Such Legal Costs and Expenses actually recovered will be taken into account by Us when calculating Our liability under the Policy.

Payment of Costs

All accounts for Legal Costs and Expenses payable under this Policy shall be submitted to Us immediately.

EXCLUSIONS

The following Exclusions apply specifically to this Extension

We shall not be liable for any claim for Legal Costs and Expenses:

1. for any Insured Event or legal proceedings directly or indirectly caused by or contributed to or arising from:
 - (a) ionising radiations or contamination by radioactivity from any irradiated nuclear fuel or from any nuclear waste from combustion of nuclear fuel or
 - (b) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof.
2. for any Insured Event or legal proceedings consequent upon war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, or military or usurped power, riot, industrial dispute, civil commotion or malicious acts by an Insured Person
3. for any Insured Event or legal proceedings arising from bodily injury or loss of or damage to property or financial loss resulting from contamination or pollution caused by any trade waste, smoke, soot, fumes, liquids, gases or other substances discharged, dispersed, released or which have escaped into or upon land, the atmosphere or any watercourse or body of water unless such discharge, dispersal, release or escape is instantaneously caused by a sudden, unexpected and unintended happening.
4. involving the payment of fines or other penalties, multiple or aggravated damages, which an Insured Person may be ordered to pay.
5. in respect of or arising from or relating to:
 - (a) any Insured Event which occurred or is alleged to have occurred prior to the commencement of the

Period of Insurance and which the Insured Person knew or ought reasonably to have known was likely to give rise to legal proceedings against him/her;

- (b) Legal Costs and Expenses incurred prior to the written acceptance of a claim by Us;
 - (c) defamation, slander or libel;
 - (d) a dispute with Us arising from any claim under this Policy;
 - (e) the defence of any criminal prosecution under any relevant motor and road traffic legislation; or
 - (f) the defence of any criminal prosecution arising from or out of fraud or overcharging in relation to Commonwealth or State legislation.
6. where an Insured Person
- (a) defends legal proceedings without Our consent or contrary to or in a different manner from that advised by the Appointed Solicitor;
 - (b) fails to give proper instructions in due time to the Appointed Solicitor or counsel appointed by him; or
 - (c) is responsible for delay, which is prejudicial to the successful outcome of the claim or legal proceedings.
7. for any legal proceedings in a court or tribunal outside Australia.
8. the molestation or interference with a minor or minors by an Insured Person.
- Further We shall not have any duty to defend any action, suit or proceedings brought against the Insured Person (or any other person or body corporate who might otherwise but for the provisions of this clause be entitled to indemnity under this Policy) which either directly or vicariously seeks compensation in respect of such molestation or interference as above or any personal injury resultant therefrom.
9. in respect of or arising from or relating to the defence of any criminal prosecution where a criminal conviction is subsequently recorded.
10. relating to the defence of any criminal prosecution not arising from or relating directly to the Insured Person's role as a Child Care Principle/Owner.

- Policy Wording Ends -



Frequently Asked Questions

Public Liability Insurance

Frequently the FDCA Member Services team are asked to respond to 'What if...' situations – those enquiries that highlight a particular scenario but where the answer usually comes back to consideration of three questions:

Ask yourself:

- Did the incident occur in connection with my family day care or in-home care service?
- Is the claim for personal injury or property damage?
- Did the incident occur while you had a current policy?

If the answer to those questions in every 'What if...' situation is 'yes' then you may be entitled to claim under your public liability insurance policy.

To assist with some typical 'What if...' scenarios, Altiora Retail Pty Limited has provided answers to a range of frequently asked questions:

Are a carer's own children included in her numbers if they are at home but in the care of another adult?

It is possible for a carer's own children to be excluded temporarily from the legal limit of number of children in care. Such exclusion is possible only if:

- an adult member of the family (over 18 years) is present
- the scheme co-ordinator has been informed in writing before the dates on which this is to occur
- written approval has been received by the carer from the scheme.

Approval will be granted on the basis of the needs of children and families in the service. Ongoing approval will not be granted. Any carer who fails to notify the scheme office in writing will be treated as if they have breached registration conditions.

Can schemes and/or carers hire or use venues other than the family day care home?

If a group of carers or a scheme hires or has permission to use a venue (such as a scout hall) for family day care get togethers, this would be considered a normal interaction between carers and children and would form part of the provision of the family day care service. This would therefore be covered by the carer/scheme public liability policy if they are held liable if an incident occurs.

If a carer or scheme insured under this policy is requested by a third party (such as a local council) to sign an agreement indemnifying them for all liabilities regardless of who was at fault then they must not sign it. However, most agreements only ask for the indemnity where the occupier/user of the hall or facility is at fault. If unsure, fax a copy of the agreement to the FDCA Member Services on 02 4324 7882 and we will arrange for the broker to review the document.

What happens if a child in care is injured while in the care of an “other” carer (co-carer, support carer, relief carer, backup carer)?

POLICY CONDITIONS

Where an Other carer provides a back-up role aimed at supporting the primary carer, the Other carer, whether paid or unpaid, will be covered under the primary carer’s public liability policy with the following provisos:

- The primary carer and other carer collectively can only provide care for the maximum allowable number of children in care as stated under regulations.
- The other carer is registered and approved by the family day care scheme and is compliant with all statutory requirements, regulations etc.
- The other carer lives in the primary carer’s home and assists the primary carer to provide additional care; OR
- The other carer does not live in the primary carer’s home but provides care in the primary carer’s home for no more than 250 consecutive care hours, eg to enable the primary carer to undertake additional training. As an example of consecutive care hours, care provided 10 hours per day, 5 days per week would be 50 consecutive care hours in that week
- The other carer is not providing a regular relief care service for more than one primary carer registered with the scheme. If they were, then the other carer would be required to hold

their own public liability policy as they would be operating a relief care business potentially providing relief care to all carers registered with the scheme.

The other carer will be noted on the evidence of cover (insurance certificate) if they provide an ongoing support role, eg as a husband or another adult living in the primary carer's home.

Although it would be impractical to note an Other carer on the policy in a more ad hoc arrangement, FDCA can provide a letter upon request, endorsing the arrangement on behalf of the underwriter, ie written confirmation that for 'X period' 'X other carer' is covered under the primary carer's public liability policy.

What happens if an 'other' carer is injured while providing care?

The primary carer's public liability policy may respond to a claim for injury to an 'other' carer but only if there is some evidence that the primary carer's actions or inactions caused the accident; hence the primary carer is deemed liable.

If the 'other' carer incurs an injury that is not caused by the primary carer's actions or inactions, (eg the co-carer lifts a child and sustains a back injury) and there is no contributing negligence on the part of the primary carer, then the primary carer's public liability policy will not respond.

Will the policy respond if a child is injured in a motor vehicle?

The public liability insurance policy does not cover liabilities that should be covered under statutory insurance, such as Compulsory Third Party (CTP) insurance. As an example, a child injured as a result of a motor vehicle accident where the injury/ies are covered by the CTP policy.

If however, a child suffers injury whilst in a vehicle but that injury is not subject to a CTP insurance cover then the public liability policy held by the carer will still respond. An example would be where one child injures another child within the vehicle and where the vehicle itself is not involved in an accident with another vehicle or object. If it can be shown that the carer is liable for such injury then this will be covered by the carer's public liability insurance policy.

Effectively this ensures that there is no gap in cover as the public liability policy covers you right up to the time that the CTP insurance cover commences and then starts again the moment that CTP ceases, subject always to the terms and conditions of both policies.

It is suggested that carers contact their CTP and Motor Vehicle insurers and advise that they are operating a family day care service. It is further suggested that they discuss their situation

with the relevant Motor Vehicle Transport Department of their State or Territory as there may be a need to have the vehicle registered for business purposes.

It should be emphasised that although children are transported in the carer's vehicle this activity is incidental to the provision of child care.

Are children who are not registered with the scheme covered under the policy?

Children being cared for in a private arrangement who are not registered with a family day care scheme are not insured under FDCA's public liability insurance policy. Further, if such children in care take a carer over the allowed number of children as set under relevant standards, policies, guidelines or regulations, the entire policy may be jeopardised should a claim eventuate arising from this situation.

A home and/or contents insurance policy held by a carer which covers private (domestic) arrangements outside of the family day care service may cover children being cared for in a private arrangement. Carers are advised to check with their insurer in relation to this matter.

What if non-registered children visit the family day care home while care is taking place?

Children who are not placed in care with the family day care carer are not covered by the carer's policy should they suffer physical injury whilst attending the carer's premises. This is the private responsibility of the carer and should be covered by the carer's personal liability policy which is included with most home and/or contents insurance policies.

At no time should a carer knowingly breach legislative requirements or the requirements of their scheme concerning the number of children in care, as cover could be jeopardised under their liability due to breach of policy conditions. Clearly, the greater number of children under the supervision of the carer reduces the extent of personal attention that the carer can provide for each child in care, and as such should be discouraged.

Are carers who attend playgroup covered under the policy?

There has been some confusion regarding the situation where family day care carers are attending playgroups either organised through the State Playgroup Association, within the scheme amongst other carers or in privately organised groups. The situation with respect to Public Liability cover and who will be insured in each situation is explained below:

Scheme organised playgroups for family day care carers only

When playgroups are organised by a family day care scheme, and all attendees are covered by FDCA's public liability insurance policy, then the insurance cover will extend to indemnify any carer who may be held liable for physical injury or property damage during the course of the playgroup.

Playgroups that are members of the State Playgroup Association

Where family day care carers are attending a playgroup that is a member of the Playgroup Association in that State, the carer should be a financial member of the Playgroup Association so that they can access benefits provided by the State Association's insurance scheme. This covers not only public liability but also other various insurance areas such as loss and damage of equipment and personal accident for voluntary workers and children. It is generally the policy of the State Playgroup Association that anyone attending a Member playgroup must be a financial member of the State Association which automatically includes insurance cover.

If the Playgroup Association in a particular State or Territory insures through Altiora Insurance Solutions via Altiora Retail Pty Limited carers need only hold a playgroup membership in her/his name and any child attending with the carer will be covered. There is no need for each family to join separately, provided the carer is attending playgroup with the child/ren.

Privately organised playgroups

Privately organised playgroups have the potential for problems to arise should children be injured where the care provider (whether they be a family day care carer or a legal guardian of a child) is not adequately insured. If carers are held liable in such situations their FDCA public liability policy will respond.

However, if a private individual does not have personal liability insurance or the personal liability insurance they do hold does not cover the activities whilst attending playgroup, then should a child in the care of a family day care carer be injured as a result of the negligence of such persons, there may be no cover for the child.

What is the situation if a carer's home is to be renovated or a pool installed?

The following procedures are to be followed in the case of renovations or pool installation under the value of \$50,000:

1. Schemes are to be notified of the intention to change the existing conditions of the carer's property.
2. Plans are to be supplied to schemes for perusal.
3. Schemes are to ensure that the children are placed in no danger by the works in progress.
4. Schemes are to confirm that the children have no access to the construction area.

Local government regulations must also be strictly adhered to.

This information does not need to be forwarded to FDCA or Altiora, but should be filed in the carer's file.

The following procedures are to be following in the case of renovations or pool installation over the value of \$50,000:

1. Follow same four procedures as for renovations under \$50,000.
2. In addition, send a copy of the plan and covering letter to FDCA's national office. This information will then be forwarded to Altiora Retail Pty Limited. The letter should explain the construction and what measures are being taken to ensure the safety of the children in care.

What if a registered child is injured at the home of the carer before being signed in or out of care by the parent?

Carers insured under FDCA's public liability policy owe a duty of care to anyone who comes on to their property in connection with the family day care service. Therefore, even if a parent is on site with their own child, the carer remains liable if an incident occurs as the result of her negligence.

However, when parents sign their children in or out of care there should be awareness that this is the point where responsibility for the child transfers from the carer to the parent. It should not be assumed that the carer will remain responsible for the child until the child physically leaves the property.

Can two carers living in one house, both with their own insurance policy, care for twice the number of children?

No. Ratios of carers to children refers to the number of children on each property where care is taking place, not the number of carers.



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