

## 9. LIABILITY INSURANCE COVER PRIOR TO 1 JULY 1997

<b>Officer responsible</b> Director of Operations (Ken Lawn)	<b>Author</b> Murray Sinclair DDI 371-1852
---	---

The purpose of this report is to advise the Council of the implications of HIH (NZ) Limited going into liquidation.

### BACKGROUND

From amalgamation to 30 June 1997 the Council's professional indemnity and public liability insurance cover was placed with FAI (NZ) General Insurance Company Limited. With the formation of RiskPool, (owned by the member local authorities established to provide insurance cover for liability claims) in June 1997, the Council moved its liability covers from FAI to RiskPool as from 1 July 1997. Claims lodged with FAI up to 30 June 1997 remained with FAI.

On 28 February 1999 HIH (NZ) Ltd took control of the FAI Insurance business in New Zealand including those claims the Council had lodged with FAI Insurance prior to the Council joining RiskPool.

Earlier this year HIH Insurance (Australia) Ltd went into voluntary liquidation. HIH (NZ) Ltd was trading separately from HIH Insurance (Australia) Ltd but was owned 100% by the Australian parent company. HIH (NZ) Ltd was put into liquidation on 19 July 2001, with KPMG appointed as liquidators. While HIH (NZ) Ltd has been reported to have \$40 million in assets, the liquidators (KPMG) have not confirmed this figure. Since HIH (NZ) Ltd went into liquidation, QBE Insurance Ltd have purchased segments of the HIH (NZ) Ltd portfolio but the purchase did not include the remaining liabilities (outstanding claims) of FAI.

### CURRENT SITUATION

There is uncertainty for those local authorities (including this Council) which have claims lodged with FAI as to whether they will receive either partial or full recovery of losses.

Between the period 1 July 1990 and 30 June 1997 the Council lodged 139 professional indemnity claims and 82 public liability claims with FAI. The claims' procedures under a professional indemnity policy requires that claims are notified as soon as practicable for any circumstance or occurrence of which the insured becomes aware of, or ought to know of, which is likely to give rise to a claim. The claim must be notified during the insurance policy period (12 months). Accordingly, most of the 139 professional indemnity claims are lodged as a precaution in order to comply with the claims procedures.

All public liability claims that were lodged with FAI have been settled. Of the 139 professional indemnity claims lodged the vast majority have either been settled, closed, or lapsed due to no further action taken by the claimant.

Most of those that have lapsed will now fall outside the Statute of Limitations period (i.e. six years). A few of those claims that are still within the Statute of Limitation period could resurface, but this would seem to be unlikely. There are currently four professional indemnity claims lodged with FAI that are still active, including one for which legal proceedings against the Council has been commenced. It is difficult to provide an exact dollar value of the amount being claimed, as the claimants have not quantified their loss.

For all practical purposes, the Council is effectively uninsured for claims lodged with FAI prior to 30 June 1997.

### Chairman's

**Recommendation:** That the information be received.