

INSTITUTIONAL BIOSAFETY COMMITTEE



POLICY: Indemnity for members of the Institutional Biosafety Committee and for staff and students working with genetically modified organisms

POLICY NO: 001/2001

DATE: 27 June 2001

AMENDMENTS:

CROSS REFERENCES:

1. Office of the Gene Technology Regulator. Guidelines for the accreditation of organisations. Part F: Conditions relating to the indemnification of IBC members. June 2001.
2. University Professional Indemnity policy.

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1. Overview
 2. Definitions
 3. Scope
 4. Policy
 5. Procedures
 6. Related documents

1. Overview

All organisations that conduct genetic manipulation work are required to abide by the *Gene Technology Act 2000* and *Gene Technology Regulations 2001*.

As a condition for Office of the Gene Technology Regulator accreditation, the University of Adelaide must ensure that all members of the IBC have appropriate indemnification as a consequence of their role on the IBC.

2. Definitions

'Professional Activities' is defined at Item 3 of the University Professional Indemnity Policy Schedule as:

Item 3 Professional Activities

Any and all of the activities pertaining to an Educational and Research Institution, including the providing of student services and the providing of, or the facilitating of, all recognised student activities, and including all the activities of a researcher, tester, producer, manufacturer, publisher, property owner, trustee, including trustee of superannuation and employee benefit schemes, provider of veterinary, dental, medical and scientific services and any other activity or occupation incidental to an Educational and Research Institution.'

3. Scope

This policy and the associated procedures apply to all members of the Institutional Biosafety Committee and to all staff and students working with genetically modified organisms or within University premises.

4. Policy

4.1 With respect to members of the IBC who are university staff or students

4.1.1 Members of the Institutional Biosafety Committee who are University staff or students are covered by the University's policy of insurance through UniMutual.

4.2 With respect to members of the IBC who are not university staff or students

- 4.2.1 The University's Professional Indemnity policy will provide protection to members of the IBC who are not staff or students ('lay member') under Section 2.7 of the Policy.
- 4.2.2 The lay member falls under the expression 'any person...under the aegis of the Insured'.
- 4.2.3 UniMutual advise that the three provisos to this Clause are standard for such covers.
- 4.2.4 In addition, South Australia recently enacted the Volunteers Protection Act 2001, which would ensure that any volunteer receives protection under the University's insurance cover.

4.3 With respect to decisions made by members of the IBC in regard to outside organisations

- 4.3.1 Draft agreements with appropriate indemnities between outside organisations and the University of Adelaide are established.
- 4.3.2 As part of any agreement, each outside organisation will be obliged to obtain its own insurance cover and provide annually a copy of a certificate of currency and/or policy document as evidence of same.

4.4 With respect to outside organisations relying on the University of Adelaide IBC

- 4.4.1 Under the Gene Technology Act legislation, an organisation (that is, a non University entity) seeking accreditation by relying on the IBC of another institution, referred to as the 'parent' organisation (that is, the University), the applicant will need to have either insurance in place for the parent organisation's IBC members or have arrangements in place with the parent organisation of the IBC to rely on that organisation's insurance of IBC members while they are undertaking work for the applicant organisation;
- 4.4.2 Any such applicant organisations will be advised to make their own arrangements to provide insurance for the members of the parent organisation (University);
- 4.4.3 If such protection is to be given then UniMutual and Excess Layer insurers would require full underwriting information and most likely an additional premium, if they were prepared to grant such cover;
- 4.4.4 Any such applicant organisation must provide evidence in writing of the insurance arrangements to the IBC before it considers any application. (UniMutual would be prepared to 'vet' that insurance for the University).

4.5 With respect to students involved in GMO practicals, projects, and/or research

- 4.5.1 UniMutual note that the students must be engaged in approved University activities.
- 4.5.2 Under Clause 2.7 of the University Professional Indemnity policy, the word 'students' is included. Thus, a student whilst carrying out a Professional Activity for the University would be covered under the policy.

4.6 With respect to claims arising from the release of a GMO

- 4.6.1 Whilst GMOs are covered generally, GMOs in some particular areas are NOT covered.
- 4.6.2 UniMutual drew the University's attention to the General and Products Liability policy, in particular Definition 6, which reads:
6. 'Beneficiary's Products' means any commodity, article or thing (including food or drink) which has been designed, specified, formulated, manufactured, constructed, erected, installed, treated, serviced, altered, repaired, sold, supplied, parcelled, packaged, bottled, labelled, held for storage and/or transport and/or distributed by or on behalf of the Beneficiary including any packaging or container thereof and irrespective of whether or

not such products are grown, extracted, procured, processed, assembled or resupplied and also includes:

- (a) directions, markings, instructions, warnings or advice given or omitted to be given in connection with such Products; and*
- (b) anything in respect of which a Beneficiary is taken or deemed to be the manufacturer by operation of a law of Australia or its external territories, but excluding the following classes of products, unless otherwise agreed in writing by the Insurers that any product in the classes specified shall be included in the Beneficiary's products for the purposes of this coverage:*
 - (i) Pharmaceuticals of every description*
 - (ii) Herbicides and Pesticides*
 - (iii) Products to promote growth or control diseases in growing crops or plants*
 - (iv) Stockfeed products other than primary grown products to be used for such purposes*
 - (v) Explosives*
 - (vi) Fireworks*
 - (vii) Ammunition and Armaments*
 - (viii) Medical Equipment for direct application to the person*
 - (ix) Human Implants*
 - (x) Surgical, Optical or Ophthalmic Instruments*
 - (xi) Lead products*
 - (xii) 'Products' otherwise specifically excluded herein.*

It is understood and agreed that Product Classes (i); (iv); (viii); (ix); and (x) will be deemed as not excluded under this definition if the products are incidental to the business of the Institution, and if the turnover produced from such products does not in respect of each class, each Institution, exceed \$1,000,000 per annum, and provided also that the products mainly relate to Research and Development. However this deeming clause shall not apply to joint venture and commercial companies which the Institution forms part.

It is further understood and agreed that this policy excludes claims arising from any products in the classes of products referred to in the preceding paragraph, if such a product is used in Human Trials or is supplied from a USA or a Canadian domiciled operation or if it is a product exported to North America.

- 4.6.3 It is to be noted that there are certain classes of 'product' for which the policy may provide either no or limited coverage.
- 4.6.4 In particular, attention is drawn to items (i), (ii), (iii), (iv) and (xii) of the schedule of excluded products; however, if certain items, that is, (i) 'Pharmaceuticals of every description', and (iv) 'Stockfeed products other than primary grown products to be used for such purposes' are not excluded if the products are incidental to the University's business, have revenue of less than \$1M. per year and are primarily for R&D purposes.
- 4.6.5 However, this coverage does not apply if the products are from joint venture or commercial companies of the University.
- 4.6.6 Neither will coverage apply if the products are used in human trials or supplied from or exported to North America.
- 4.6.7 For any products of the University that fall into these excluded categories the IBC will refer to the University's legal adviser regarding the availability of insurance protection.

5. Procedures

- 5.1 The Secretary of the IBC to request annually a copy of a certificate of currency and/or policy document as evidence of same of the insurance cover obtained by each outside organisation with access to the IBC.
- 5.2 The Secretary to provide annually to the Manager, Risk Management/Insurance a listing of GMO dealings to be undertaken in the forthcoming year for inclusion in the University's insurance submission.

6. Related Documents

University Professional Indemnity policy

"2.7 Indemnity to employees and other persons

This Insuring Agreement shall indemnify in the same manner as provided under the provisions of Insuring Agreements:

- (Act, Error, Omission or Conduct in the carrying out of the Professional Activity)
- (Defamation)
- 2.3 (Loss of Documents)
- 2.5 (Intellectual Property)
- 2.6 (Trade Practices Act Cover)
- 2.9 (Costs of Disciplinary Inquiries)
- 2.12 (Continuity of Indemnity); and of this Policy,

and treat in like manner as if an Insured, any present or former Employee, Honorary Employee, student, Council Member or Director of an Insured, or any person or group of persons under the aegis of the Insured in respect of a Claim made against any of them, by reason of any actual, or alleged act, error, or omission of, or through the conduct of, any such person, in the carrying out by that person of any part of the Professional Activities for an Insured.

Provided always that such indemnity is subject to:

1. each such Employee, Honorary Employee, student, Council Member, Director or other person or group of persons being bound by all the terms, Exclusions and Conditions of this Policy;
2. the Maximum Aggregate Limit of Liability of the Insurers not being increased thereby (refer Condition 4.9);
3. the Insured's records confirm the identity of any such person."