Professional Risks

POLICY WORDING

OFFICE BEARERS LIABILITY
Welcome to NZI. Thank you for selecting us as your insurer. This is your Office Bearers Liability Policy document.
It will tell you what you are insured for and what you are not insured for, as well as any obligations that you or we must abide by to ensure an enforceable policy. This policy document is a legal contract so please read it thoroughly and keep it in a safe place. If you need help with understanding your policy document, please contact your insurance broker.

**INTRODUCTION**

**AGREEMENT**

You and/or the body corporate agree to pay us the premium described in the schedule and comply with this policy. In exchange, we agree to insure you as set out in this policy.

**POLICY CONTRACT**

This policy consists of the following parts:
1. your insurance proposal form, and any oral or written supporting statements or documents supplied by you, and
2. this policy wording (including any endorsements or warranties), and
3. the schedule.

**INTERPRETING THIS POLICY**

Certain words in this policy have a specific meaning. These words appear in bold in this policy wording and in Title Case in endorsements shown in the schedule. You will find the meaning listed in the ‘Definitions’ section at the end of this policy or within the particular section. The definitions apply to the plural and any derivatives of the bolded words.

You will also find examples and comments to make parts of this policy easier to understand. These examples and comments, which appear in italics, do not affect or limit the meaning of the section they refer to.

The headings in this policy are for reference only and do not form part of it. They are not to be used when interpreting the policy.

**WHAT YOU ARE INSURED FOR**

**A. OFFICE BEARERS LIABILITY**

You are insured for your liability arising from a wrongful act that occurs after the retroactive date in connection with the body corporate, provided:
1. you first knew, or ought to have known, of the claim in relation to that wrongful act during the period of insurance, and
2. you have advised us of that claim as soon as possible, but no later than 30 days after the period of insurance ends.

**B. DEFENCE COSTS**

You are insured for all legal costs and other expenses necessarily and reasonably incurred with our prior written consent to defend or settle:
1. a claim alleging liability covered by this policy, and
2. a criminal proceeding brought against you arising from a wrongful act covered by this policy, provided that you are acquitted. In the event that you are convicted of an offence in such a criminal proceeding, you are obliged to repay to us any monies we have paid in respect of legal costs or other expenses in relation to that proceeding.

Legal costs and other expenses covered by this policy are included within the sum insured and are not in addition to it.
**AUTOMATIC EXTENSIONS**

The following Automatic Extensions apply to this insurance subject to the provisions outlined in ‘What you are insured for’ and the terms of this policy.

All Automatic Extensions are included within the sum insured shown in the schedule, they are not in addition to it.

**A. ADVANCEMENT OF DEFENCE COSTS**

1. If we have confirmed in writing that we will cover your claim, we will pay legal costs and other expenses arising from that claim.
2. If we have not confirmed in writing that we will cover your claim:
   (a) Where we elect to conduct the defence or settlement of that claim, we will advance legal costs and other expenses arising from that claim.
   (b) In all other cases, we may, at our discretion, advance legal costs and other expenses arising from that claim.

If your claim is withdrawn, or we subsequently withdraw cover, we will cease to advance legal costs and other expenses. You must refund to us all legal costs and other expenses we have advanced to you.

**B. AUTOMATIC REINSTATEMENT OF THE AGGREGATE LIMIT**

If all liability that would otherwise be insured under ‘What you are insured for Part A’ exceeds the sum insured shown in the schedule, then we will provide one automatic reinstatement of the sum insured during the period of insurance. Provided that this does not apply:

1. to any claim that is connected with the same wrongful act as a claim already met or to be met under this policy, and
2. until any separate policy (including an ‘excess policy’) that insures you, after the sum insured under this policy is exceeded, is exhausted.

**C. CONTINUOUS COVER**

This policy is extended to include any claim that you first knew of, or ought to have known of, and that should have been advised to us during any previous period of insurance with us. However, this cover:

1. only applies if:
   (a) you had continuous Office Bearers Liability cover with us since that previous period of insurance for the time you were a committee member of the body corporate, and
   (b) your failure to advise was not deliberate, and
   (c) you had advised us of the claim no later than the end of this period of insurance (or 30 days thereafter), and
2. is subject to:
   (a) the terms of the policy in existence when you first knew, or ought to have known of the claim, or
   (b) the terms of this policy, whichever provides lesser cover. We have sole discretion to elect which policy applies.

Our liability will be reduced by the amount that fairly represents the extent by which we could have mitigated our liability under the previous policy, had the circumstances been reported in accordance with the previous policy.

‘Exclusion Part L’ does not apply to this Extension.

**D. ESTATES AND LEGAL REPRESENTATIVES**

This policy is extended to insure your estate, legal representative or assigns for wrongful acts that result in their liability after you have died or become legally incompetent or insolvent. We will insure your estate, legal representative or assigns on the same terms as we insure you.
Professional Risks / OFFICE BEARERS LIABILITY INSURANCE POLICY

E. EXTENDED REPORTING PERIOD
If, at the expiry of the period of insurance, we elect not to offer renewal of this policy, then you may pay us an additional premium (being 50% of the last annual premium), to extend your cover under the policy for 12 months beyond that expiry. However, this will only cover you for wrongful acts that happened before the expiry of the period of insurance.
You cannot extend your cover if we cancelled this policy or declared this policy unenforceable. If you choose to extend the policy as described above, then you must give us notice that you wish to do so within 30 days of our refusing to renew this policy.

F. OFFICIAL INVESTIGATIONS
This policy is extended to insure all legal costs and legal expenses necessarily and reasonably incurred with our prior written consent, for your representation at any official investigation, examination or inquiry:
1. held as the result of an allegation of a wrongful act against you, and
2. in connection with a claim that is covered by this policy, and
3. that you are required to attend.
This extension does not cover investigations connected with revenue collection.
The most we will pay under this extension is $250,000 for all claims in the aggregate under this policy.

G. SPOUSAL LIABILITY
This policy is extended to insure your lawful spouse for his or her liability that arises from a wrongful act committed by you, provided that the claim:
1. has been made solely because he or she is your lawful spouse, and
2. relates to property that:
   2.1 you and your lawful spouse jointly own, or
   2.2 you have transferred to your lawful spouse for legitimate purposes, and
3. is otherwise covered by this policy.
Your spouse shall observe and be subject to all the provisions of this policy.
For the avoidance of doubt, this extension is subject to ‘What you are insured for Part A’.
EXCLUSIONS

A. ASBESTOS  You are not insured for liability in connection with asbestos.

B. BODILY INJURY  You are not insured for liability in connection with bodily injury, emotional distress, mental anguish, sickness, disease or death of any person.

C. BUILDING DEFECTS  You are not insured for Civil Liability in connection with a building or structure:
   1. being affected by moisture or water, including by the penetration of external moisture or water, or
   2. being affected by the action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa, or any similar or like forms,
   3. failing to comply with or perform to the requirements of any building code or other building standards, to meet any other standard of quality or performance whether contractual or otherwise, or to be fit for purpose, including, without limitation, liability for breach of warranty, negligence, misrepresentation, or misleading and deceptive conduct.
   This exclusion does not apply to your Civil Liability that is caused by, or directly arises from, the leakage of internal pipes, internal water systems or internal cisterns.

D. DISHONESTY OR FRAUD  You are not insured for liability in connection with your:
   1. wilful breach of duty or wilful breach of an Act of Parliament, or
   2. dishonest, fraudulent, or malicious act or omission, or
   3. act or omission committed with criminal intent, or
   4. unlawful profit or advantage.

E. EMPLOYMENT CLAIMS  You are not insured for liability in connection with your capacity as an employer.

F. EXISTING LITIGATION  You are not insured for liability in connection with any litigation in existence or that you should have anticipated at the commencement of the period of insurance.

G. FAILURE TO MAINTAIN INSURANCE  You are not insured for liability in connection with a failure to obtain or maintain adequate insurance.

H. FEES/DEBTS  You are not insured for liability in connection with any dispute over:
   1. your fees or charges (by way of damages or otherwise), or
   2. paying trading debts or the repayment of a loan.

I. FINES, TAXES AND EXEMPLARY DAMAGES  You are not insured for:
   1. any fine, penalty or tax imposed on you (whether under contract or statute), or
   2. any exemplary damages awarded against you.

J. FOREIGN COURTS  You are not insured for liability in connection with a claim:
   1. first brought in a court outside New Zealand (unless that country is shown under ‘Jurisdictional Limits’ in the schedule), or
   2. brought in a court within New Zealand to enforce a judgment made by a court outside of New Zealand (unless that country is shown under ‘Jurisdictional Limits’ in the schedule), or
   3. where the claim is governed by or the liability arises under the proper law of a country other than New Zealand (unless that country is shown under ‘Jurisdictional Limits’ in the schedule).

K. JUDICIAL/INJUNCTION REVIEW  You are not insured for costs and expenses incurred in respect of an application for judicial review or an injunction (or other order having an effect equivalent to an injunction).

L. KNOWN CLAIMS AND CIRCUMSTANCES  You are not insured for liability in connection with any claim or circumstance that may give rise to a claim that you first knew of, or ought to have known of, prior to the inception date of this policy.
M. LIABILITY BY AGREEMENT  You are not insured for obligations assumed under or for liability:
1. arising from your breach of a contract, warranty, guarantee or undertaking (including a representation which is treated as if it were a term), unless you would otherwise have been liable in the absence of that contract, warranty, guarantee or undertaking, or
2. to the extent you have limited any potential right to receive contribution or indemnity in relation to that liability from a person, in an arrangement or agreement with that person.

N. NUCLEAR  You are not insured for liability in connection with any operations employing the process of nuclear fission or fusion, or handling of radioactive material. This includes, but is not limited to:
1. the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices, and
2. the use, handling or transportation of any radioactive material, and
3. the use, handling or transportation of any weapon or explosive device employing nuclear fission or fusion.

O. POLICE PROCEEDINGS  You are not insured for any legal costs and other expenses in respect of any action, proceeding, inquiry, investigation or prosecution against you by the New Zealand Police.

P. POLLUTION  You are not insured for liability in connection with pollutants.

Q. TERRORISM  You are not insured for liability in connection with an act of terrorism.

R. WAR  You are not insured for liability in connection with:
1. war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or
2. confiscation, nationalisation, requisition, destruction or damage to property by any government or public or local authority.

BASIS OF SETTLEMENT

A. MAXIMUM AMOUNT PAYABLE  The most we will pay in total, including legal costs and other expenses, under ‘What you are insured for’, for:
1. any one claim, and
2. all claims (subject to Automatic Extension Part B), during the period of insurance is the sum insured shown in the schedule.

B. EXCESS  The excess shown in the schedule will be deducted from the amount we pay for a claim payable under ‘What you are insured for’. We will deduct only one excess for a series of claims arising from one wrongful act. If a claim arises from separate wrongful acts, then an excess will apply to each wrongful act.
MANAGING YOUR CLAIM

A. YOUR OBLIGATIONS

1. Advise Us
   If you become aware of any claim, you must notify us immediately.

2. Be Truthful
   If your claim is dishonest or fraudulent in any way, we may:
   2.1 decline your claim either in whole or in part, and/or
   2.2 declare this policy or all policies you have with us to be unenforceable from the date of
   the dishonest or fraudulent act.
   This is at our sole discretion.

3. Confidentiality
   You must not disclose the nature of the liabilities covered by this policy unless you are
   required by law.

4. Co-operation
   You must provide any other assistance that we may reasonably require at any time.

5. Do Not Admit Liability
   You must not:
   5.1 admit you are liable, or
   5.2 do or say anything that may prejudice our ability to defend the claim against you or take
   recovery action in your name.

6. Incurring Costs
   You are not authorised to incur any costs or expenses without our prior written consent.

7. Minimise the Loss
   You must take all reasonable steps to minimise the claim and avoid any further liability or loss
   arising.

8. Provide Full Information
   When you make a claim under the policy you consent to your personal information in
   connection with the claim being:
   8.1 disclosed to us, and
   8.2 transferred to Insurance Claims Register Limited.
   You must:
   (a) give us free access to examine and assess the claim, and
   (b) send any relevant correspondence or documents to us, and
   (c) complete a claim form and/or statutory declaration to confirm the claim if we request
   it, and
   (d) provide any other information or assistance that we may require at any time.

B. MANAGING YOUR CLAIM

1. Allocation of Defence Costs
   If a claim is covered only partly by this policy, then we will attempt to ensure fair and proper
   allocation of the legal costs and other expenses for insured and uninsured portions.
   If all parties are unable to agree upon the allocation of the legal costs and other expenses,
   then that allocation shall be referred to a lawyer that we and you agree to instruct, whose
determination shall be binding upon all parties.
   The cost of the lawyer’s determination is to be taken as part of ‘What you are insured for
   Part B’.
   If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the
New Zealand Law Society.
2. Defence of Liability Claims

After you have made a claim under this policy, subject to ‘Managing Your Claim Part B Item 6 – Your Defence (Queen’s Counsel Clause)’, we have the sole right to:

2.1 act in your name and on your behalf to defend, negotiate or settle the claim as we see fit (this will be done at our expense), and

2.2 defend or legally represent you at an official investigation, examination or inquiry as covered by ‘Automatic Extension F Official Investigations’, and

2.3 publish a retraction or apology (in the case of defamation proceedings).

We have this right even if the claim against you concerns matters covered only partly by this policy.

We may appoint our own lawyers to represent you. They will report directly to us.

3. Discharge of Liability Claims

Subject to ‘Managing Your Claim Part B Item 6 – Your Defence (Queen’s Counsel Clause)’ we may elect at any time to pay you:

3.1 the maximum amount payable under this policy, or

3.2 any lesser sum that the claim against you can be settled for.

Once we have paid this our responsibility to you under this policy is met in full.

4. Subrogation

Once we have accepted any part of your claim under this policy, we may assume your legal right of recovery.

If we initiate a recovery, we will include your excess and any other uninsured losses suffered by you. Where we do this, you agree to pay a proportional share of the recovery costs, and subsequently the proceeds of the recovery will be shared on the same proportional basis.

5. Waiver of Professional Privilege

The solicitors we instruct to act on behalf of you are at liberty to disclose to us any information they receive in that capacity, including information they receive from you.

You authorise the solicitors to disclose this information to us.

6. Your Defence (Queen’s Counsel Clause)

6.1 We are not required to defend a claim against you unless a lawyer that we and you agree to instruct advises that the claim should be defended.

If parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society.

6.2 In formulating his or her advice, the lawyer must be instructed to consider:

(a) the economics of the matter, and

(b) the damages and costs likely to be recovered, and

(c) the likely costs of defence, and

(d) the prospects of successfully defending the claim.

6.3 The cost of the lawyer’s opinion is to be taken as part of ‘What you are insured for Part B’.

6.4 If the lawyer advises that the claim should be settled and if the terms of the settlement that we recommend are within limits that are reasonable (in the lawyer’s opinion and in the light of the matters he/she is required to consider), then:

(a) you cannot object to the settlement, and

(b) you must immediately pay the excess shown in the schedule.
A. HOW WE ADMINISTER THIS POLICY

1. Authorisation
   The person(s) who signed the proposal form is appointed as agent of each person who is entitled to cover under this policy, in all matters relating to this policy and to claims covered by it.

2. Cancellation and Modification
   2.1 By You
       You may ask us to cancel or modify this policy at any time. We must agree in writing to any modification before it will take effect.
   2.2 By Us
       We may cancel or modify this policy by advising you (or your Broker or Agent) by letter, fax or email. Cancellation or modification will take effect at 4.00pm, on the 30th day after the date of our advice.
       We will refund the proportion of unused premium paid, calculated from the date of cancellation.
       You are not insured for claims notified after the date of cancellation.

3. Currency
   All sums in this policy wording (including any attachments) and in the schedule are specified in New Zealand dollars.

4. GST
   Where GST is recoverable by us under the Goods and Services Tax Act 1985:
   4.1 all sums insured exclude GST, and
   4.2 all sub limits exclude GST, and
   4.3 all excesses include GST, and
   4.4 GST will be added, where applicable, to claim payments.

5. Other Insurance
   You must notify us as soon as you know of any other insurance policy that covers you for any of the risks covered under this policy.
   If you or anyone else who can claim under this policy can claim under any other insurance, we will only pay over and above the limit payable by the other insurances.

6. Protecting our Position
   Once you have advised us of a claim, we will take whatever action we consider appropriate to protect our position, including dealing or appointing lawyers to deal with the claimant on your behalf. This does not however:
   6.1 indicate that you are entitled to be covered under this policy, or
   6.2 jeopardise our rights under this policy or at law.

7. Territorial Limits
   This policy covers wrongful acts that occur anywhere in New Zealand.
B. LAWS AND ACTS THAT GOVERN THIS POLICY

1. Acts of Parliament
   Where this policy refers to any Act of Parliament, it also includes any subordinate legislation made under it, and any subsequent Acts or Regulations.

2. Disputes about this Policy
   The law of New Zealand applies to disputes about this policy, and the New Zealand Courts have exclusive jurisdiction.

3. Insurance Law Reform Acts
   The exclusions and conditions in this policy are subject to your rights under the Insurance Law Reform Act 1977 and Insurance Law Reform Act 1985.

C. YOUR OBLIGATIONS

1. Change in Circumstances
   You must tell us immediately if there is a material:
   1.1 increase in the risk insured, or
   1.2 alteration of the risk insured.
   Once you have told us of the change, we may then alter the terms, premium or cancel policy.
   If you fail to notify us about a change in the risk insured, we may:
   (a) declare this policy unenforceable, or
   (b) decline any subsequent claim either in whole or in part.
   These actions will be taken from the date you knew, or ought to have known, of the increase or alteration in the risk insured.
   For avoidance of any doubt, information is ‘material’ where we would have made different decisions about either:
   (i) accepting your insurance, or
   (ii) setting the terms of your insurance,
   if we had known that information. If in any doubt, notify us anyway.

2. Comply with the Policy
   You must comply with the terms of this policy at all times. If you fail to comply, we may, at our sole discretion, not pay your claim.

3. Provide Accurate Information
   You must make sure all statements and representations you make to us at any time are truthful and complete.

4. Reasonable Care
   You must take reasonable care at all times to avoid circumstances that could result in a claim.
   Your claim will not be covered if you are reckless or grossly irresponsible.
DEFINITIONS

The definitions apply to the plural and any derivatives of the bolded words. For example, the definition of ‘we’ includes ‘us’ and ‘our’.

**act of terrorism**
Includes any unlawful act, or preparation in respect of action, or threat of action designed to influence or coerce the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and that:

1. involves violence against one or more persons, or
2. involves damage to property, or
3. endangers life other than that of the person committing the action, or
4. creates a risk to health or safety of the public or a section of the public, or
5. is designed to interfere with or disrupt an electronic system.

**acquitted**
All charges against you are dismissed either prior to a hearing or after a defended hearing, or you are found not guilty on all charges against you.

‘Acquitted’ does not include:

(a) a dismissal pursuant to a plea bargain when multiple charges have been laid, or
(b) a criminal prosecution where you have been charged with more than one offence and then convicted of at least one of those charges.

**body corporate**
The body corporate(s) shown in the schedule.

**claim**
The earliest of the following:

1. service on you of a legal or arbitral proceeding by any third party, or
2. your receipt of written or oral notice from any third party that they hold you liable, or intend to commence legal or arbitral proceedings against you, or
3. any circumstance that may give rise to either 1 or 2 above.

**liability**
Liability for damages (but not fines, penalties, or punitive or exemplary damages), interest, costs and expenses that a civil court or arbitrator orders you to pay or settlements negotiated by us, in relation to a claim. It includes the legal costs of the person making the claim, for which you become liable.

**period of insurance**
The period you are insured for. This is shown in the schedule.

**pollutants**
Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

**retroactive date**
The retroactive date shown in the schedule.

**schedule**
The latest version of the Schedule we issued to you for this policy.

**we**
NZI, a business division of IAG New Zealand Limited.

We may also use the words ‘us’ or ‘our’ to describe NZI.

**wrongful act**
Any actual or alleged act or omission by you in your capacity as a committee member of the body corporate.

**you**
Any person who was, or is at any time during the period of insurance a committee member and/or chairperson(s) of the body corporate, by whatever name called, and whether or not validly appointed, to occupy that position.

‘You’ does not include any:

(a) external body corporate manager or administrator, liquidator, external auditor, receiver, receiver and manager, statutory manager, administrator or trustee administering a compromise or scheme of arrangement of the body corporate, or
(b) trustee, director, officer or employee of a superannuation or pension organisation.

We may also use the word ‘insured’ to describe you.
NZI is a business division of IAG New Zealand Limited, a wholly owned subsidiary of Insurance Australia Group, Australasia’s largest general insurer. Established in 1859, it is today one of the country’s largest and longest-serving fire and general insurance brands, protecting tens of thousands of New Zealanders every year.

Through our broad range of commercial, personal, marine, professional risks and rural insurance products, we pride ourselves on helping people to achieve the best protection for their assets.

We partner with a network of skilled and experienced brokers and other insurance intermediaries who distribute our products. We pay remuneration to our brokers and intermediaries when they issue our policies, and when these policies are renewed or varied.

To find out more about the advantages of choosing NZI, talk to your broker or visit nzi.co.nz.

Printed using vegetable based mineral oil free inks on paper from an environmentally certified and responsibly managed forest and mill.

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