

Directors and Officers Liability

Summary of
key changes



Business Insurance for
a growing New Zealand

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The new NZI Directors and Officers Liability policy replaces the NZI and Lumley Directors and Officers Liability wordings noted in the table below.








This document is a summary only and therefore details the most significant changes. We recommend that you read the new policy wording so you are familiar with all the amendments.










The new NZI wording takes effect from 1 June 2018 and all quotations issued by NZI, both renewals and new business, will be quoted on the new wording.



















Summary of key changes in cover

	Lumley DO 1215	NZI DIA 0414 and DNO0107	New policy DO 0618
Insuring clauses			
Defence Costs	<p>Lumley D&O policy dealt with paying defence costs in addition to the limit of indemnity by endorsement to the policy in two ways, the options were:</p> <ul style="list-style-type: none"> ▶ an additional amount for defence costs of 20% of Limit of Indemnity: or ▶ a set specified limit selected by the insured. 	<p>DIA 0414 – a specified limit selected by the insured and was specified in the schedule.</p> <p>DNO 0107 – defence costs were included in the limit of indemnity.</p>	<p>Clause 2.3</p> <p>Now automatically provides cover for defence costs payable in addition to the limit of indemnity, to a limit of \$5,000,000, or an amount equivalent to the limit of indemnity, whichever is the lesser amount.</p>
Extensions			
Civil pecuniary penalties	<p>✓</p> <p>\$1,000,000 sub limit</p>	<p>✗</p>	<p>✓</p> <p>Extension 3.2</p> <p>\$1,000,000 sub limit or the limit of indemnity whichever is the lesser amount.</p>
Company securities entity cover	<p>✓</p> <p>\$250,000 sub limit</p>	<p>✗</p>	<p>✗</p> <p>NZI will not be offering cover to the company for securities claims.</p>
Court attendance costs	<p>✓</p> <p>\$400 per day for a insured person</p> <p>\$20,000 sub limit</p>	<p>✓</p> <p>\$300 per day for any independent director or independent officer</p> <p>\$10,000 sub limit</p>	<p>✓</p> <p>Extension 3.4</p> <p>\$500 per day per director</p> <p>\$20,000 sub limit</p>

Directors and Officers Liability / Summary of key changes

	Lumley DO 1215	NZI DIA 0414 and DNO0107	New policy DO 0618
Crisis costs	 \$250,000 or the policy limit, whichever is the lesser amount.		 Extension 3.5 \$250,000 or the amount payable for defence costs, whichever is the lesser amount.
Emergency defence costs	 10% of the Limit of Indemnity		 Extension 3.6 Covers defence costs incurred without NZI's prior written consent provided that our consent is sought within 14 days of the first of such costs being incurred. 10% of the amount payable for defence costs.
Employment practices liability (Company Cover)		 Optional Extension	 NZI will not be offering employment practices cover to the company under this policy. A separate employment disputes policy will need to be purchased by the company. Cover is still available for the directors under 3.7 Employment liability.
Extended reporting period	 100% of the annual premium payable	 50% of the annual premium payable. The policy cannot be extended if NZI cancel or declare the policy unenforceable because of non-payment, non-disclosure or breach of conditions.	 Extension 3.9 Available if NZI does not offer renewal of the policy. 50% of the last annual premium payable. The policy cannot be extended if NZI cancels or declares the policy unenforceable because of non-payment of the premium, non-disclosure or breach of conditions.
Extended reporting period for retired directors	 84 months		 Extension 3.10 84 months
Joint venture			 No specific extension but cover may be available under the insuring clauses.

	Lumley DO 1215	NZI DIA 0414 and DNO0107	New policy DO 0618
Health & safety defence costs	 New Zealand and Australia only \$1,000,000 sub limit		 Extension 3.13 Covers a director's defence costs in respect of a claim or investigation alleging a breach of the Health and Safety at Work Act 2015 or equivalent legislation in any other jurisdiction covered by the policy. No sub limit – amount payable for defence costs applies.
Investigations and Inquiries	 New Zealand or Australia only. Policy limit applies	 Cover did not apply to any investigation if there was any allegation of excluded conduct on the part of the directors. \$250,000 sub limit	 Extension 3.15 The directors must refund defence costs to NZI where there is an admission, settlement, judgment or other final adjudication that a director committed a dishonest, fraudulent or criminal act or reckless or knowing breach of any law. Does not cover any investigation: <ul style="list-style-type: none"> ▶ brought outside the jurisdiction covered by the policy or in the USA; or ▶ under the Health and Safety at Work Act 2015. Amount payable for defence costs applies.
New subsidiary	 Any new entity was automatically covered if: <ul style="list-style-type: none"> ▶ the total assets of the new entity did not exceed 20% of the total gross consolidated assets of the company, ▶ total revenue of the new entity if it was located in the USA or Canada, did not exceed NZ \$250 million, ▶ the business activities of the new entity were not materially different from the existing activities of the company. 	 If the new entity increased the company's total assets by more than 25%, NZI must be advised within 60 days of acquisition/creation.	 Any new entity is automatically covered except where the new entity: <ul style="list-style-type: none"> ▶ has total gross assets exceeding 25% of the total gross consolidated assets of the company; ▶ is located in the USA; ▶ has business activities are materially different to the activities conducted by the company at the commencement of the period of insurance.

	Lumley DO 1215	NZI DIA 0414 and DNO0107	New policy DO 0618
Outside position	 Covered appointments on: <ul style="list-style-type: none"> ▶ Non-Profit Entity or Associated Company or ▶ other entity where Outside Position cover is noted in the Policy by endorsement. 	 Current and former outside positions Non profit only. Profit entities as an optional extension.	 Extension 3.17 Now covers any appointment to an entity: <ul style="list-style-type: none"> ▶ that is established for charitable, community, industry or social purposes, and ▶ any entity in which the company owns, at the time of the wrongful act, between 20% and 50% of the issued or unissued shares. The extension does not cover an appointment to a publicly listed company, a company in the USA or a financial institution or financial services company as defined.
Pollution	 \$1,000,000 sub limit for loss and \$1,000,000 sub limit for defence costs	 Optional extension only \$1,000,000 sub limit	 There is no longer any express extensions for pollution but exclusion 4.13 Pollution excludes only pollution occurring: <ul style="list-style-type: none"> ▶ outside the jurisdiction covered under the policy, or ▶ in the USA.
Prospectus liability		 Only IPO's excluded	 Not included automatically but available on request.
Public relations expenses	 \$250,000 sub limit		 Extension 3.18 \$250,000 sub limit
Reinstatement of limit of indemnity upon recovery			 Extension 3.19
Superannuation trustees			 Extension 3.21

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USA jurisdiction	✗	✓ USA and Canada cover automatic	✗ USA cover not included automatically but available on request.
Exclusions			
Foreign courts	✓ As specified in the schedule	✓ Only USA and Canada claims excluded	✓ Exclusion 4.6 Deals with the jurisdiction of the policy which is as per the jurisdiction specified in the schedule.
Pollution	✓	✓	✓ Exclusion 4.13 The exclusion only applies to pollution or contamination outside the jurisdiction covered by the policy or in the USA.
Sanctions	✗	✗	✓ Exclusion 4.17 This is a treaty exclusion and required by most insurers
Conditions			
Preservation of indemnity	✓ Permitted or required to indemnify a director but for whatever reason does not.	✓ Liquidation only	✓ Condition 6.13 Maintains cover for the directors under 2.1 Directors liability where the company is permitted to indemnify a director but for whatever reason does not.
Subrogation	✓	✓	✓ NZI will not seek recovery against a director unless there is an admission, settlement, judgment or other final adjudication that a director committed a dishonest, fraudulent or criminal act or reckless or knowing breach of any law.