



Professional Risks

DEFAMATION

Professional Risks / DEFAMATION INSURANCE POLICY

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Welcome to NZI. Thank you for selecting us as your insurer. This is your Defamation 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 TO THIS POLICY

AGREEMENT

You 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. DEFAMATION

You are insured for **your liability** arising from **your** unintentional **defamatory act** that occurs after the **retroactive date**, provided:

1. **you** first knew, or ought to have known, of the **claim** in relation to the **defamatory 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 AND INVESTIGATION COSTS

You are insured for all legal costs and legal expenses necessarily and reasonably incurred with **our** prior written consent to investigate, defend or settle a **claim** alleging **liability** covered by this policy.

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. 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:

(a) only applies if:

- (i) **you** had continuous Defamation cover with **us** since that previous period of insurance, and
- (ii) **your** failure to advise was not deliberate, and
- (iii) **you** had advised **us** of the **claim** no later than the end of this **period of insurance** (or 30 days thereafter), and

(b) is subject to:

- (i) the terms of the policy in existence when **you** first knew, or ought to have known of the **claim**, or
- (ii) 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 F' does not apply to this Extension.

EXCLUSIONS

A. DISHONESTY OR FRAUD

You are not insured for **liability** in connection with **your** dishonest, fraudulent, criminal acts or omissions.

B. EMPLOYMENT CLAIMS

You are not insured for **liability** in connection with **your** capacity as an employer.

C. EXISTING LITIGATION

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

D. 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 law of a country other than New Zealand (unless that country is shown under 'Jurisdictional Limits' in the **schedule**).

E. INSURED VS INSURED

You are not insured for **liability** arising from **claims** brought against **you**, by or on behalf of any other person or entity covered by this policy.

F. KNOWN CLAIMS AND CIRCUMSTANCES

You are not insured for **liability** in connection with any **claim** that **you** first knew of, or ought to have known of, prior to the inception date of this policy.

G. 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.

H. MALICIOUS ACTS

You are not insured for **liability** in connection with a **defamatory act** by **you**:

1. with the intention of causing loss, damage or injury, or
2. with reckless disregard for the consequences.

BASIS OF SETTLEMENT

- A. MAXIMUM AMOUNT PAYABLE** The most **we** will pay in total, under 'What you are insured for' for:
1. any one **claim**, and
 2. all **claims**,
- 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 **defamatory act**. If a **claim** arises from separate **defamatory acts**, then an excess will apply to each **defamatory act**.

MANAGING YOUR CLAIM

- A. YOUR OBLIGATIONS**
- 1. Do Not Admit Liability**
You must not:
 - 1.1 admit **you** are liable, or
 - 1.2 do or say anything that may prejudice **our** ability to defend the **claim** against **you** or take recovery action in **your** name.
 - 2. Advise us**
If **you** become aware of any **claim**, **you** must notify **us** immediately.
 - 3. Minimise the Loss**
You must take all reasonable steps to minimise the **claim** and avoid any further **liability** or loss arising.
 - 4. Provide Full Information**
When **you** make a claim under the policy **you** consent to **your** personal information in connection with the **claim** being:
 - 4.1 disclosed to **us**, and
 - 4.2 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.
 - 5. Be Truthful**
If **your claim** is dishonest or fraudulent in any way, **we** may:
 - 5.1 decline the **claim** either in whole or in part, and/or
 - 5.2 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.
 - 6. Incurring Costs**
You are not authorised to incur any costs or expenses without **our** prior written consent.
 - 7. Cooperation**
You must provide any other assistance that **we** may reasonably 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 legal expenses for insured and uninsured portions.

If all parties are unable to agree upon the allocation of the legal costs and legal 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. Your Defence

2.1 **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.

2.2 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**.

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

2.4 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**.

3. 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 **your** proportional share of the recovery costs, and subsequently the proceeds of the recovery will be shared on the same proportional basis.

4. Defence of liability claims

After **you** have made a claim under this policy, subject to 'Managing Your Claim Part B Item 2 – Your Defence', **we** have the sole right (which shall be a condition precedent to **your** right to be covered) to:

- 4.1 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
- 4.2 publish a retraction or apology.

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**.

5. Discharge of liability claims

Subject to 'Managing Your Claim Part B Item 2 – Your Defence' **we** may elect at any time to pay **you**:

- 5.1 the maximum amount payable under this policy, or
- 5.2 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, in respect of that **claim**.

6. 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**.

GENERAL CONDITIONS

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. Territorial Limits

This policy covers **defamatory acts** occurring anywhere in New Zealand.

3. Cancellation and Modification

3.1 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.

3.2 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 cancellation date. This overrides anything else which is expressed or implied in the policy.

4. Protecting our Position

Once **you** have advised **us** of a **claim**, **we** will take whatever action **we** consider appropriate to protect **our** position. This does not however:

4.1 indicate that **you** are entitled to be covered under this policy, or

4.2 jeopardise **our** rights under this policy or at law.

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. Currency

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

7. GST

Where GST is recoverable by **us** under the Goods and Services Tax Act 1985:

7.1 all sums insured exclude GST, and

7.2 all sub limits exclude GST, and

7.3 all excesses include GST, and

7.4 GST will be added, where applicable, to claim payments.

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. 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**.

2. Provide Accurate Information

You must make sure all statements and representations **you** make to **us** at any time are truthful and complete.

3. 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.

4. Change in Circumstances

You must tell **us** immediately if there is a material:

4.1 increase in the risk insured, or

4.2 alteration of the risk insured.

Once **you** have told **us** of the change, **we** may then alter the premium, terms, or cancel this 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.

DEFINITIONS

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

claim	<p>The earliest of the following:</p> <ol style="list-style-type: none">1. service on you of a legal or arbitral proceeding by any third party, or2. 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, or3. any circumstance that may give rise to either 1 or 2 above.
defamatory act	<p>Any one of the following acts by you and/or your employee, that arises from material appearing in, or transmitted by you and/or your employee in the insured medium:</p> <ol style="list-style-type: none">1. A defamatory statement,2. An infringement of copyright, trademark, design or patent,3. A false attribution of authorship,4. An invasion of privacy or improper disclosure of sensitive private facts.
employee	<p>Any person who is deemed to be employed by you pursuant to the Employment Relations Act 2000.</p>
insured medium	<p>The print or broadcast medium specified in the schedule.</p>
liability	<p>Liability for damages (but not fines or penalties imposed on you, or any punitive or exemplary damages awarded against you), 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.</p>
period of insurance	<p>The period you are insured for. This is shown in the schedule.</p>
publication	<p>Communication to any person through the insured medium.</p>
retroactive date	<p>The retroactive date shown in the schedule, and/or any attaching documents.</p>
schedule	<p>The latest version of the Schedule we issued to you for this policy.</p>
we	<p>NZI, a business division of IAG New Zealand Limited. <i>We may also use the words 'us' or 'our' to describe NZI.</i></p>
you	<p>Any of the following, individually and jointly:</p> <ol style="list-style-type: none">1. any person, firm, or incorporated body named in the schedule as an insured, and2. any entity that is engaged in the publication of the insured medium, which is created and controlled during the period of insurance, by anyone identified in the schedule as insured. <p><i>We may also use the word 'insured' to describe you.</i></p>



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.

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