

Association Liability

Summary of key changes



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

The NZI wording takes effect from 3 December 2018 and all quotations issued by NZI, both renewals and new business, will be quoted on the new wording.

	Lumley LB018 1215	NZI AIA0514 and ASO 0707	New NZI Wording AL 1018
Insuring clauses			
Trustees Liability	✓	✓	<p>✗</p> <p>The new NZI Association Liability policy does not provide trustees cover.</p> <p>The Association wording applies to any organisation incorporated under the Incorporated Societies Act 1918.</p> <p>Cover for trustees' liability is available under the NZI Trustees Liability policy.</p>
Defence Costs	<p>Lumley D&O policy dealt with 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>A specific limit selected by the insured and specified in the schedule.</p>	<p>Clause 2.5</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>
New extensions			
Emergency defence cost			<p>Extension 3.7</p> <p>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.</p> <p>Sub-limit of 10% of the amount payable for defence costs.</p>

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New extensions (continued)			
Public relations expenses			Extension 3.20 Pays the costs of a public relations consultant to mitigate the effect of negative publicity in the event of a claim. \$25,000 sub-limit.
Summary of other key changes in the cover			
Extensions			
Advancement of defence costs	✓ The Lumley policy advanced defence costs to an insured person in respect of a claim for civil liability. Defence costs for a criminal prosecution against an insured person were only covered after acquittal of all charges by a court. (Extension 3.9 – Successful defence of a criminal prosecution).	✓ The NZI policy advanced defence costs where NZI had confirmed cover for that claim in writing. If NZI had not confirmed cover in writing for a claim but elected to conduct the defence or settlement of that claim, then NZI advanced defence costs arising from that claim. In all other cases advancement of defence costs was at NZI's sole discretion. Defence costs for a criminal prosecution against an insured person were only covered after acquittal of all charges by a court.	✓ Extension 3.1 The new NZI policy will advance defence costs to an insured person in connection with an investigation or a claim excluded by Exclusions 4.9 'Fraud or dishonesty' or 4.18 'Personal profit', prior to the disposition of such claim. The insured person must repay defence costs to NZI if it is established by judgment, written admission or other final adjudication that defence costs are not covered by the policy.
Court attendance costs	✗	✓	✓ Extension 3.5 \$500 per day for each insured person. \$20,000 sub-limit.
Defamation	✗	✓	✓ Covered under the definition of 'wrongful act' for unintentional defamation.

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Extensions (continued)			
Dishonesty of employees	✓	✓	✓ Extension 3.6 Updated control condition and language. Now has dual authorisation requirements for all payments or withdrawals.
Employment Liability	✗	✓ The NZI policy had an optional extension providing cover to the association for employment disputes. A sub-limit was specified in the schedule.	✗ Extension 3.8 Covers an insured person for liability for an employment grievance. Cover for the association is not available in the new Association Liability wording. A separate Employment Disputes policy will need to be arranged to cover the association.
Extended reporting period	✓ 75% of the annual premium payable for a 12 month extension.	✓ 50% of the annual premium payable for a 12 month extension. The policy cannot be extended if NZI cancel or declare the policy unenforceable because of non-payment, non-disclosure or breach of conditions.	✓ Extension 3.10 Only available if NZI does not offer to renew the policy. 50% of the last annual premium payable for 12 months extension. The policy cannot be extended if NZI cancels or declares the policy unenforceable because of non-payment, non-disclosure or breach of conditions.
Fair Trading Act	✓ Civil Liability for breach of FTA NZ & Australia.	✓ Civil Liability for breach of FTA NZ only.	✓ Extension 3.11 Covers liability for breach of the Fair Trading Act 1986 (NZ) only.
Fidelity	✗	✓ Optional extension.	✗ Fidelity cover is not available in the new Association Liability wording. A separate Fidelity or Crime policy will need to be arranged to cover the association.

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Extensions (continued)			
Health and safety defence costs	<p>✓</p> <p>New Zealand and Australia only. \$1,000,000 sub-limit.</p>	<p>✗</p>	<p>✓</p> <p>Extension 3.12</p> <p>Covers an insured person's defence costs in respect of a claim or investigation alleging a breach of the Health and Safety at Work Act 2015.</p> <p>Sub-limit amount payable for defence costs applies.</p>
Intellectual property	<p>✓</p> <p>Covers liability for infringement of any patent, copyright, design or trademark under Section 2.3 Professional Indemnity only.</p>	<p>✓</p> <p>Covers unintentional infringement of patent, copyright, registered design or trademark.</p>	<p>✓</p> <p>Extension 3.13</p> <p>Provides cover for unintentional breach of confidential information, plagiarism, infringement of copyright, design or trademark.</p> <p>Patent cover has been removed from the extension as including patent cover in the extension conflicted with the Product Liability exclusion. Patents are related to products and Product Liability is not covered.</p>
Investigations and inquiries	<p>✓</p> <p>Only covered legally compellable attendance.</p> <p>Full limit applied.</p>	<p>✓</p> <p>Required an allegation of a wrongful act.</p> <p>\$250,000 sub-limit.</p>	<p>✓</p> <p>Extension 3.15</p> <p>Covers the association and an insured person for defence costs incurred in relation to an investigation covered by the policy.</p> <p>The insured must refund defence costs to NZI where it is established that the conduct which is the subject of the investigation was:</p> <ul style="list-style-type: none"> ▶ dishonest, fraudulent or criminal, or ▶ a reckless or knowing breach of any law. <p>The amount payable for defence costs applies.</p>

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Extensions (continued)			
Joint venture	✓ Automatic extension.	✓ Optional extension.	✓ Extension 3.16 Covers liability arising from involvement in a joint venture or partnership. Clarifies there is no cover for the joint venture or partners.
New subsidiary	✓ Covers any subsidiary acquired or created in respect of activities carried out post acquisition.	✓ Covers any subsidiary acquired or created in respect of activities carried out post acquisition but only if advised to us as soon as possible but no later than 30 days after.	✓ Extension 3.18 Automatically covers a subsidiary created or acquired during the period of insurance for the activities post acquisition but subject to the subsidiary: <ul style="list-style-type: none"> ▶ being incorporated, domiciled and conducting business in New Zealand. ▶ not having estimated revenue of more than 25% of the gross annual consolidated revenue of the association. ▶ having business activities that are not materially different to the business activities of the association. ▶ having professional services the same as those already covered.
Outside position liability	✓ Automatically covered any: <ul style="list-style-type: none"> ▶ Non-profit organisations. ▶ Any other entity provided it was noted in the schedule. 	✓ Current and former outside positions of any non-profit automatically covered. Cover for any other position was an optional extension.	✓ Extension 3.19 Now automatically covers: <ul style="list-style-type: none"> ▶ non-profits. ▶ any entity which the association owns between 20% and 50% of the issued or unissued shares. Clarifies that there is no cover for claims brought against the insured by the outside entity or any of its directors or any past or present shareholders.

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Extensions (continued)			
Previous subsidiaries	<p>✓</p> <p>Covered any entity that ceased to be a subsidiary before or during the period of insurance.</p> <p>Automatic extension.</p>	<p>✓</p> <p>Prior corporate entities needed to be stated in the schedule to be covered.</p> <p>Optional extension.</p>	<p>✓</p> <p>Now covered under the definition of association which includes any subsidiary being:</p> <ul style="list-style-type: none"> any entity that was, or at the beginning of the period of insurance is, controlled by the association holding more than 50% of the voting rights of that organisation.
Punitive or exemplary damages	<p>✓</p> <p>Covers a claim for exemplary damages arising from the provision of medical, welfare, counselling and other social services.</p> <p>Optional extension.</p> <p>\$1,000,000 sub-limit.</p> <p>\$10,000 excess.</p>	<p>✓</p> <p>Covers a claim for exemplary damages claim arising the provision of the insured services.</p> <p>\$1,000,000 sub-limit.</p>	<p>✓</p> <p>Extension 3.21</p> <p>Covers punitive or exemplary damages ordered by a New Zealand Court as a result of an injury covered under the Accident Compensation Act 2001 in connection with medical, welfare, counselling and other social services included in the association's professional services.</p> <p>Sub-limit of \$1,000,000 or the limit of indemnity, whichever is lesser.</p> <p>The excess that applies is \$10,000 or the excess specified in the schedule, whichever is greater.</p>
Exclusions			
Building defects	✗	✓	<p>✓</p> <p>Exclusion 4.3</p> <p>This exclusion which may have been added to the Lumley policy by endorsement is now incorporated in the wording.</p>
Refund of fees	✗	<p>✓</p> <p>Excludes a claim for a dispute over:</p> <ul style="list-style-type: none"> Professional fees or charges (by way of damages or otherwise). Paying trading debts or the repayment of a loan. 	<p>✓</p> <p>Exclusion 4.23</p> <p>Excludes any claim for a refund of professional fees or charges, by way of damages or otherwise.</p>

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Exclusions (continued)			
Sanctions	✗	✗	✓ Exclusion 4.24 Excludes cover for liability to the extent it would expose NZI to any sanction.
Conditions			
Allocation of defence costs	✗	✓	✓ Condition 6.9 Provides clarity of operation of policy if there are parts of a claim that are covered and parts that are not covered.
Cancellation	✓	✓	✓ Condition 7.3 Updated notice provisions so that notice can be given in writing or by electronic means.
Subrogation	✓	✓	✓ Condition 6.19 NZI assumes any legal right of recovery and the insured must fully co-operate with any recovery process. NZI will not exercise any rights of recovery against an insured person unless it is established by written admission, settlement, judgment or other final adjudication that an insured person has committed a dishonest, fraudulent or criminal act, or a reckless or knowing breach of any law.