

Body Corporate Liability



Policy wording

Business Insurance for
a growing New Zealand

Welcome to NZI.

Thanks for selecting us as your insurer. This is your Body Corporate Liability policy wording.



Why NZI

NZI is one of New Zealand's largest and most well-known insurance brands. We're proudly backed by IAG (Insurance Australia Group) New Zealand. IAG is Australasia's largest general insurer. At IAG, our purpose is to make your world a safer place.



Get in touch

If you have any questions, or you would like more information on this insurance policy, please contact your broker.

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Introduction

About this policy	This Body Corporate Liability Policy consists of: (a) this policy document, and (b) the schedule, and (c) any endorsements that have been applied.
Duty of disclosure	The insured has a legal duty of disclosure when they apply for insurance. This means the insured or anyone acting on the insured's behalf must tell us everything they know (or could be reasonably expected to know) that a prudent insurer would want to take into account in deciding: (a) to accept or decline the insurance, and/or (b) the cost or terms of the insurance, including the excess. The insured also has this duty every time their insurance renews and when they make any changes to it. If the insured, or anyone acting on the insured's behalf, breaches this duty, we may treat this policy as being of no effect and to have never existed. Please ask if you are not sure whether you need to tell us about something.
Defined words	If a word is shown in bold, it has a specific meaning. There is a list of these words and what they mean in Section 8 'Definitions'.
Headings	The headings in this policy document are for reference only and do not form part of it. They must not be used when interpreting the policy document.

1. Insurance agreement

1.1 Our agreement	The insured agrees to pay us the premium and comply with this policy. In exchange and in reliance on the information provided in the application, we agree to provide cover as set out in this policy.
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2. What this policy covers

2.1 Body corporate liability	We will cover the insured for liability arising out of a claim: (a) first made against the insured and notified to us during the period of insurance or within 30 days of its expiry, and (b) for a wrongful act that happened after the retroactive date.
2.2 Defence costs	In addition to the limit of indemnity, we will also cover the insured for all reasonable and necessary defence costs incurred with our prior written consent for the investigation, defence, settlement or appeal of any claim covered by this policy. The most we will pay for defence costs during the period of insurance for all claims covered by this policy is \$5,000,000, or an amount equivalent to the limit of indemnity, whichever is the lesser amount.

3. Automatic Extensions

Subject to the terms of Section 2 'What this policy covers', and all the other terms of this policy, the following extensions are included automatically.

Some automatic extensions have a specified sub-limit and **excess** and these will apply unless specifically stated otherwise in the **schedule**. Unless specifically stated otherwise, all sub-limits are included in, and are not in addition to, the **limit of indemnity** or the amount payable for **defence costs**, whichever is applicable.

- 3.1 Advancement of defence costs** **We** will advance **defence costs** in connection with an **investigation** or a **claim** made against the **insured** that would be covered by this policy, but for Exclusions 4.9 'Fraud or dishonesty' and 4.13 'Personal profit' prior to the disposition of such **claim**.
If it is established by judgment, written admission or other final adjudication that such **defence costs** are not covered by this policy, the **insured** agrees to repay such **defence costs**.
- 3.2 Continuity of cover** **We** will cover any **claim** against the **insured** that would otherwise be covered by this policy but for Exclusion 4.11 'Known claims and circumstances', provided that:
- (a) **we** were the **insured's** body corporate liability insurer under a policy ('the former policy') at the time the **insured** should have notified **us** of the **claim** or circumstance that might give rise to a **claim**, and
 - (b) **we** have continued without interruption as the **insured's** body corporate liability insurer from the time the **insured** should have notified **us** up until such time as the **claim** was made against the **insured** and notified to **us**, and
 - (c) **our** liability is limited to the amount for which **we** would have been liable at the time referred to in (a) in accordance with the terms and conditions of the former policy, and
 - (d) **our** liability will be reduced by the amount that fairly represents the extent to which liability for the **claim** could have been reduced had the circumstances been reported under the former policy.
- 3.3 Court attendance costs** **We** will pay to a **committee member** \$500 per day for each day they are required to attend a court as a witness in connection with a **claim** covered by this policy.

The most **we** will pay under this extension during the **period of insurance** is \$20,000.
- 3.4 Emergency defence costs** If **our** prior written consent cannot reasonably be obtained before the **insured** incurs **defence costs**, **we** will waive the requirement for prior written consent provided that **our** written consent is obtained within 14 days following the date such costs start being incurred.
We will not pay **defence costs** in relation to a **claim** that is not covered by this policy.
The most **we** will pay for **defence costs** incurred without **our** prior written consent is 10% of the amount payable for **defence costs**.
- 3.5 Estates, legal representatives and spousal liability** **We** will cover a **committee member's** lawful spouse, estate, heirs, legal representatives or assignees for their liability that arises from a **wrongful act** committed by the **committee member** on the same terms and conditions as **we** cover the **committee member**.
- 3.6 Extended reporting period** If **we** do not offer to renew this policy, then the **insured** may extend cover under this policy for another 12 months. However, this extended period will only cover a **wrongful act** that happened before the expiry of this policy's **period of insurance** but not a **wrongful act** that happens during the extended period.
If the **insured** elects to extend this policy as described above, then notice of such election must be given to **us** within 30 days of **our** refusal to renew this policy and the **insured** must pay **us** an additional premium (being 50% of the last annual premium).
This policy cannot be extended if **we** cancel this policy or declare this policy unenforceable because the **insured** did not:
- (a) pay the premium, or
 - (b) disclose information material to the risk, or
 - (c) comply with terms of this policy.
- This extension does not provide a new **limit of indemnity** for the extended period.

3.7 Investigations and inquiries

We will cover the **insured** for **defence costs** in relation to an **investigation** where such **investigation** may lead to a **claim**, which if made, would be covered by this policy, but only where:

- (a) the notice of the **investigation** is first notified to the **insured**, and to **us**, during the **period of insurance**, and
 - (b) the conduct which is the subject of the **investigation** occurred after the **retroactive date**, if any.
- The **insured** must refund **defence costs** advanced by **us** where it is established by the **investigation** that the conduct which is the subject of the **investigation** was:
- (a) dishonest, fraudulent or criminal, or
 - (b) a reckless or knowing breach of any law.

3.8. Public relations expenses

We will cover the reasonable fees, costs, charges and expenses incurred with **our** prior consent for a public relations consultant retained to mitigate the adverse effect on the reputation of the **insured** as a result of a **claim** covered by this policy.

We will only pay the cost of publicising findings made in a final judicial disposition of a claim in the **insureds** favour.

The most **we** will pay under this extension during the **period of insurance** is \$25,000, or the amount payable for **defence costs**, whichever is the lesser amount.

4. Exclusions

4.1 Asbestos

This policy does not cover any liability arising out of, relating to or in any way connected with asbestos.

4.2 Bodily injury

This policy does not cover any liability arising from or in connection with bodily injury, sickness, disease, disability, shock, fright, mental anguish, mental injury or death.

4.3 Building defects

This policy does not cover any liability arising from or in connection with a building or structure:

- (a) being affected by moisture or water build-up or the penetration of external moisture or water,
- (b) 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,
- (c) failing:
 - (i) to comply with, or perform to, the requirements of any building code or standard,
 - (ii) to meet any standard of performance, quality, fitness or durability,
 - (iii) to be fit for its intended purpose.

4.4 Contractual liability

This policy does not cover any **claim** arising from or in connection with any contractual liability, warranty or guarantee assumed or provided by the **insured** except if the **insured** would have been liable in the absence of the contractual liability, warranty or guarantee.

4.5 Employee claims

This policy does not cover any liability arising from or in connection with any actual or alleged breach of any obligations as an employer.

4.6 Existing litigation

This policy does not cover any liability in connection with any pending or prior litigation or any civil, criminal, administrative or regulatory proceeding or investigation in existence at the commencement of the **period of insurance**.

4.7 Fines and penalties

This policy does not cover any liability for:

- (a) any fine or penalty imposed, whether under contract or statute,
- (b) any punitive, aggravated, liquidated, or exemplary damages.

4.8 Foreign courts

This policy does not cover any liability arising from or in connection with any legal proceedings:

- (a) first brought in a court outside of New Zealand,
- (b) brought in a court within New Zealand for the purposes of enforcing a judgment made by a court outside of New Zealand,
- (c) where the proper law to be applied to the issue/s is that of a country other than New Zealand.

4.9 Fraud or dishonesty

This policy does not cover any liability arising from or in connection with any:

- (a) dishonest, fraudulent or criminal act,
- (b) reckless or knowing breach of any law.

This exclusion will only apply where there is a written admission, settlement, judgment or other final adjudication that establishes that such conduct did in fact occur.

4.10 Intentional or reckless acts

This policy does not cover any liability arising from or in connection with any wilful or intentional breach of any duty, statute or contract, or any act, error, omission or conduct committed or omitted or alleged to have been committed or omitted with a reckless disregard for the consequences.

4.11 Known claims and circumstances

This policy does not cover any **claim**:

- (a) made or intimated against the **insured** prior to the commencement of the **period of insurance**,
- (b) notified under a previous policy,
- (c) arising from or in connection with circumstances:
 - (i) that the **insured** was aware of prior to the **period of insurance**, and
 - (ii) that a reasonable person in the position of the **insured** would have considered might give rise to a **claim**.

4.12 Nuclear

This policy does not cover liability arising from or in connection with any atomic energy risks, being operations employing the process of nuclear fission or fusion or handling of radioactive material, which operations include but are not limited to:

- (a) the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices,
- (b) the use, handling or transportation of radioactive materials,
- (c) the use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion.

4.13 Personal profit

This policy does not cover any liability arising from or in connection with:

- (a) a **committee member** gaining any personal profit, remuneration or financial advantage to which they were not legally entitled, or
- (b) the improper use of position or information by a **committee member** to gain personal profit or advantage.

This exclusion will only apply if there is a written admission, settlement, judgment or other final adjudication which establishes that such conduct did in fact occur.

4.14 Pollution

This policy does not cover any liability arising from or in connection with pollution or contamination.

4.15 Sanctions

This policy does not cover any liability or provide any cover to the extent such cover would expose **us** to any sanction, prohibition or restriction under any United Nations resolution, or any trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America, Australia or New Zealand.

4.16 Territorial limits

This policy does not cover any liability arising from or in connection with any act, error, omission or conduct that occurred outside of the territorial limit specified in the **schedule**.

4.17 Terrorism

This policy does not cover any liability for death, injury, illness, loss or damage directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any **act of terrorism**, regardless of any other cause or event contributing concurrently or in any other sequence to the loss including in connection with controlling, preventing, suppressing, retaliating against, or responding to an **act of terrorism**.

4.18 War

This policy does not cover any liability for loss or damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

5. Basis of settlement

- 5.1 Maximum amount payable** The most **we** will pay in total for any one **claim** and all **claims** covered by this policy during the **period of insurance** is the **limit of indemnity**.
- 5.2 Excess payable** **We** will only pay that part of either **liability** or **defence costs** that exceeds the amount of the **excess**, but in respect of any one **claim**, only one **excess** is payable.
We will only deduct one **excess** for a series of **claims** arising out of the same **wrongful act**.

6. Claims conditions

The insured's obligations

- 6.1 Advise us of a claim or circumstance** If the **insured** becomes aware of any **claim**, or circumstance that may give rise to a **claim** under this policy during the **period of insurance**, regardless of the anticipated amount, they must notify **us** in writing as soon as possible.
Once a circumstance is notified to **us** in writing, any subsequent **claim** arising from that circumstance is deemed to be a **claim** in the **period of insurance** in which the circumstance was first notified.
- 6.2 Co-operation** The **insured** must, at their own cost, provide all information and reasonable assistance to **us** to determine cover under this policy and to enable **us** to investigate, defend or settle a **claim**.
- 6.3 Dishonest or fraudulent statements** If the **insured** makes any dishonest or fraudulent statement in connection with a **claim** or any **application** for cover under this policy, **we** may:
(a) decline the **claim**, either in whole or in part, and/or
(b) declare either this policy or all insurance the **insured** has with **us** to be of no effect and to no longer exist from the date of the dishonest or fraudulent statement.
- 6.4 Do not admit liability** The **insured** must not:
(a) admit liability,
(b) do or say anything that may prejudice **our** ability to defend the **claim** against the **insured** or take recovery action in the **insured's** name.
- 6.5 Minimise the claim** The **insured** must, at their own cost, take all reasonable steps to minimise a **claim** and avoid any further loss or liability arising.
- 6.6 Obtain our agreement** The **insured** must obtain **our** agreement in writing before:
(a) incurring any **defence costs** or other expenses in connection with any **claim** under this policy,
(b) negotiating, paying, settling, admitting or denying any **claim** against them.
- 6.7 Other insurance** The **insured** must notify **us** as soon as they know of any other insurance policy that may cover or partially cover them for any of the risks covered under this policy.
If the **insured** holds other insurance cover with any other insurer in respect of any **claim** covered under this policy, then **we** will only pay under this policy once cover under the other policy has been exhausted.
- 6.8 Waiver of legal privilege** The lawyers **we** instruct to act on behalf of the **insured** in relation to any **claim** against the **insured**, are at liberty to disclose to **us** any information they receive in that capacity, including information they receive from the **insured**. The **insured** authorises the lawyers to disclose this information to **us**.

How we manage a claim

- 6.9 Allocation of defence costs** If a **claim** is only partly covered by this policy, **we** will attempt to ensure fair and proper allocation of the **defence costs** for covered and uninsured portions.
- If **we** and the **insured** are unable to agree upon the allocation of the **defence costs** then the allocation will be decided by a lawyer that **we** and the **insured** agree to instruct, whose determination will be binding. The cost of the lawyer's determination is to be taken as part of the **defence costs** covered under this policy.
- If **we** and the **insured** cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society.
- 6.10 Defence costs** The **insured** must obtain **our** prior written consent before incurring **defence costs**. **Our** consent will not be unreasonably delayed or withheld.
- 6.11 Defence of a claim** **We** are entitled, but not obliged to:
- (a) act in the **insured's** name and on the **insured's** behalf to defend, negotiate or settle any **claim** as **we** see fit,
 - (b) appoint **our** own lawyers to defend or legally represent an **insured** and the lawyers will report directly to **us**.
- 6.12 Insured's right to contest settlement of a claim** If the **insured** does not agree with a decision by **us** to settle a **claim**, the **insured** can elect to contest the **claim** at their own expense but **our** liability will not exceed the amount for which the **claim** could have been settled in the opinion of the lawyer appointed under Condition 6.13 'Requirement to defend a claim'.
- We** will pay **defence costs** incurred up to the date the **insured** notifies **us** in writing of their election under this clause, and will pay the **insured** (subject to the **excess**) the amount for which the **claim** could have been settled. The **insured** expressly agrees that **our** liability in respect of such **claim** will then be at an end.
- 6.13 Requirement to defend a claim** **We** will not require the **insured** to defend any legal proceedings in respect of a **claim**, nor will the **insured** require **us** to defend on its behalf, any legal proceedings in respect of a **claim**, unless a lawyer mutually agreed by **us** and the **insured**, advises such proceedings should be defended. In formulating his or her advice, the lawyer will be instructed to consider the:
- (a) damages and costs likely to be recovered,
 - (b) likely costs of defence of the **claim**, and
 - (c) the prospects of successfully defending the **claim**.
- The cost of the lawyer's opinion is to be taken as part of the **defence costs** covered under this policy. If the lawyer advises that the **claim** should be settled and if the terms on which settlement can be achieved are within limits that are reasonable (in the lawyer's opinion, and in consideration of the matters), then the **insured**:
- (a) will cooperate with **us** to effect such settlement in accordance with this policy, and
 - (b) if applicable, must pay the **excess** shown in the **schedule**.
- 6.14 Severability** If any natural person fails to comply with their duty of disclosure, makes a misrepresentation or breaches any condition of this policy, **we** will not deny cover to any other natural person on these grounds, if that other person was unaware of the matter not disclosed or the fact of the misrepresentation or did not breach a policy condition.
- 6.15 Subrogation** **We** may assume the **insured's** legal right of recovery. The **insured** must fully co-operate with any recovery process.
- We** will not exercise any rights of recovery against a **committee member** unless it is established by written admission, settlement, judgment or other final adjudication that the **committee member** has committed a:
- (a) dishonest, fraudulent or criminal act, or
 - (b) reckless or knowing breach of any law.

7. General conditions

How we administer this policy

- 7.1 Assignment** The **insured** may not assign this policy or any interest under this policy without **our** prior written consent.
- 7.2 Cancellation**
- By the insured**
The **insured** may cancel this policy at any time by giving **us**, or their broker, notice in writing or by electronic means. If they do, **we** will refund any premium that is due to the **insured** based on the unused portion of the **period of insurance**.
- By us**
We may cancel this policy by giving the **insured**, or their broker, notice in writing or by electronic means, at the **insured's**, or their broker's, last known address. The policy will be cancelled from 4pm on the 30th day after the date of the notice. **We** will refund any premium that is due to the **insured** based on the unused portion of the **period of insurance**.
- 7.3 Currency** Any amounts shown in this policy or in the **schedule** are in New Zealand dollars, unless otherwise specified in the **schedule**.
- 7.4 Disputes about this policy** The law of New Zealand applies to disputes about this policy and the New Zealand Courts have exclusive jurisdiction.
- 7.5 Goods and Services Tax** Where GST is recoverable by **us** under the Goods and Services Tax Act 1985:
(a) the limits of indemnity exclude GST, and
(b) all sub limits exclude GST, and
(c) any **excess** includes GST, and
(d) GST will be added, where applicable, to any payments.
- 7.6 Inadvertent non-disclosure** **We** will waive **our** right to avoid this policy under Condition 7.8 'Change in circumstances' for non-disclosure or misrepresentation of any material increase or alteration of the risk insured but only if the **insured** can establish to **our** satisfaction that such non-disclosure or misrepresentation was innocent and free from any dishonesty or intent to deceive.
Provided that:
(a) **we** must have continued without interruption as the **insured's** body corporate liability insurer from the time the **insured** should have disclosed or correctly represented material facts to **us** up until such time as the non-disclosure or misrepresentation is notified to **us**, and
(b) **we** will be entitled to adjust the premium and terms of this policy to reflect those which would have applied by **us** had the proper disclosure or representation been made at the correct time, and
(c) **our** liability under this policy is limited to the amount for which **we** would have been liable for had the proper disclosure or representation been made at the correct time.
- 7.7 Legislation changes** Any reference to any Act of Parliament or subordinate rules referred to in this policy includes any amendments made or substitutions to that law.

The insured's obligations

- 7.8 Change in circumstances** The **insured** must tell **us** as soon as possible if there is a material:
(a) increase in the risk insured, or
(b) alteration of the risk insured.
Once the **insured** has told **us** of the change, **we** may then alter the premium and/or the terms of this policy or cancel this policy.
If the **insured** fails to notify **us** about a change in the risk **we** may:
(a) declare this policy unenforceable, and/or
(b) decline any subsequent **claim** either in whole or in part.
These actions will be taken from the date the **insured** knew, or ought to have known, of the increase or alteration in the risk insured.
- 7.9 Comply with this policy** The **insured** must comply with the terms of this policy. If any **insured** breaches any of the terms of this policy, **we** may decline the **claim** either in whole or in part.

8. Definitions

The definitions apply to the plural and any derivatives of the bolded words.

act of terrorism	Any act, or preparation in respect of action, or threat of action designed to influence 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 which: (a) involves violence against one or more persons, or (b) involves damage to property, or (c) endangers life other than that of the person committing the action, or (d) creates a risk to health or safety of the public or a section of the public, or (e) is designed to interfere with or to disrupt an electronic system.
application	The information provided to us by the insured or on the insured's behalf when the insured purchased this insurance or requested a quotation for this insurance from us.
body corporate	The body corporate registered under the Unit Titles Act 2010 specified as the 'Insured' in the schedule.
claim	(a) a demand for compensation, damages or other relief, (b) legal proceedings instituted and served upon the insured seeking compensatory damages, (c) a threat or intimation that legal or arbitral proceedings will be issued against the insured seeking compensatory damages, (d) any civil proceeding or alternative dispute resolution process including but not limited to any arbitration or mediation, made against the insured as a result of a wrongful act. It does not include proceedings seeking non-monetary relief, including judicial review, injunctions or declarations.
committee member	Any natural person who is or was: (a) a member, or (b) the chairperson, of a committee of the body corporate.
defence costs	Legal costs, expenses and disbursements, witnesses' costs, assessors' or experts' fees.
excess	The amount specified as the 'Excess' in the schedule or as specified in any extension.
insured	A committee member or the body corporate.
investigation	(a) an official investigation, hearing, examination or inquiry in relation to the affairs of the body corporate, (b) a request for information to an insured by any regulator, government body or authority, governmental or administrative agency or self-regulatory body.
liability	Any amount which the insured becomes legally liable to pay: (a) on account of any claim for compensatory damages and interest that a civil court or arbitrator orders the insured to pay in civil proceedings, (b) for legal costs of the party making the claim. It includes settlements negotiated by us, in relation to a claim. It does not include: (a) liability for taxes, except as covered under General Condition 7.5 'Goods and Services Tax', or (b) any amount which is uninsurable under the laws of any jurisdiction covered by this policy.

Body Corporate Liability / Policy wording

limit of indemnity	The amount specified as the 'Limit of indemnity' in the schedule .
period of insurance	The 'Period of insurance' specified in the schedule , that specifies the start and end dates of this policy.
retroactive date	The 'Retroactive Date' specified in the schedule .
schedule	The latest version of the 'Schedule' we have issued to the insured for this policy.
we/us/our	NZI, a business division of IAG New Zealand Limited.
wrongful act	Any actual or alleged misstatement, misleading statement, act, error or omission, negligence, breach of duty, breach of trust, breach of authority or other act committed or attempted by an insured in the performance of its duties specified under the Unit Titles Act 2010.

