

# Employment Disputes

Policy wording



# Welcome to NZI.

Thanks for selecting us as your insurer.  
This is your Employment Disputes policy wording.

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## 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	<p>This Employment Disputes policy consists of:</p> <ul style="list-style-type: none"><li>(a) this policy document, and</li><li>(b) the <b>schedule</b>, and</li><li>(c) any endorsements that have been applied.</li></ul>
Duty of disclosure	<p>The <b>insured</b> has a legal duty of disclosure when they apply for insurance.</p> <p>This means the <b>insured</b> or anyone acting on the <b>insured's</b> behalf must tell <b>us</b> everything they know (or could be reasonably expected to know) that a prudent insurer would want to take into account in deciding:</p> <ul style="list-style-type: none"><li>(a) to accept or decline the insurance, and/or</li><li>(b) the cost or terms of the insurance, including the <b>excess</b>.</li></ul> <p>The <b>insured</b> also has this duty every time their insurance renews and when they make any changes to it.</p> <p>If the <b>insured</b>, or anyone acting on the <b>insured's</b> behalf, breaches this duty, <b>we</b> 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 <b>us</b> about something.</p>
Defined words	<p>If a word is shown in <b>bold</b>, it has a specific meaning. There is a list of these words and what they mean in Section 7 'Definitions'.</p>
Headings	<p>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.</p>

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## 1. Insurance agreement

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

2.1 Liability	<p><b>We</b> will cover the <b>insured</b> for <b>liability</b> arising out of a <b>claim</b> brought by an <b>employee</b>:</p> <ul style="list-style-type: none"><li>(a) that is first made against the <b>insured</b> and notified to <b>us</b> during the <b>period of insurance</b> or within 30 days of its expiry, and</li><li>(b) for any actual or alleged <b>wrongful act</b> that happened after the <b>retroactive date</b>, provided that the <b>insured</b> has sought legal advice before undertaking any disciplinary investigation or terminating an <b>employee's</b> employment, from:<ul style="list-style-type: none"><li>(i) a lawyer who practices employment law, or</li><li>(ii) an employment relations or industrial organisation approved by <b>us</b>.</li></ul></li></ul>
2.2 Defence Costs	<p>In addition to the <b>limit of indemnity</b>, <b>we</b> will also cover all reasonable and necessary <b>defence costs</b> incurred with <b>our</b> prior written consent, for the investigation, defence, settlement or appeal of a <b>claim</b> for <b>liability</b> covered by this policy.</p>

## 3. Exclusions

- 3.1 Asbestos** This policy does not cover any **claim** arising out of, relating to or in any way connected with asbestos.
- 3.2 Bodily injury** This policy does not cover any **claim** arising from or in connection with death or bodily injury.
- 3.3 Employee entitlements** This policy does not cover payment of any:
- (a) remuneration or benefit owed to any **employee** reinstated to their former position, or
  - (b) amount the **insured** is obligated to pay under statute or an employment agreement, or
  - (c) redundancy or other benefit to any **employee** dismissed by reason of redundancy that the **employee** was entitled to receive.
- 3.4 Fines and penalties** This policy does not cover any:
- (a) fine or penalty imposed, whether under contract or statute, or
  - (b) punitive, aggravated, liquidated, or exemplary damages.
- 3.5 Foreign courts** This policy does not cover any **claim** arising from or in connection with any legal proceedings:
- (a) first brought in a court outside of New Zealand, or
  - (b) brought in a court within New Zealand for the purposes of enforcing a judgment made by a court outside New Zealand, or
  - (c) where the proper law to be applied to the issue/s is that of a country other than that of New Zealand.
- 3.6 Industrial action** This policy does not cover any **claim** arising from or in connection with any **wrongful act** committed during any lockout, strike, picket, stand-down or suspension, or other industrial dispute.
- 3.7 Intentional or reckless acts** This policy does not cover any **claim** arising from or in connection with any:
- (a) willful or intentional breach of any duty, statute or contract, or
  - (b) any actual or alleged act, error, omission or conduct committed or omitted with a reckless disregard for the consequences.
- 3.8 Known claims or circumstances** This policy does not cover any **claim**:
- (a) made or intimated against an **insured** prior to the commencement of the **period of insurance**, or
  - (b) notified under a previous policy, or
  - (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**.
- 3.9 Modifications to workplace** This policy does not cover the cost of any physical modifications to the **insured's** workplace, or the cost of changes to workplace procedures.
- 3.10 Non-compliance** This policy does not cover any **claim** arising from or in connection with non-compliance with any judgment, award, determination or demand against the **insured** issued or published by:
- (a) Employment Relations Authority, or
  - (b) Employment Court or Court of Appeal, or
  - (c) Human Rights Review Tribunal, or
  - (d) Privacy Commission, or
  - (e) Labour Inspector employed by Employment New Zealand, or
  - (f) any other Statutory body.

### 3.11 Nuclear

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

### 3.12 Sanctions

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

### 3.13 Statutory liability

This policy does not cover any **claim** arising from or in connection with any statute relating to workers compensation, accident compensation or occupational health and safety.

### 3.14 Territorial limits

This policy does not cover any **claim** arising from or in connection with any act, error, omission or conduct that occurred outside of New Zealand.

### 3.15 Terrorism

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

### 3.16 War

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

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## 4. Basis of settlement

### 4.1 Maximum amount payable

#### (a) Liability

The most **we** will pay in total during the **period of insurance** for any one **claim** and all **claims** covered by this policy is the **limit of indemnity**.

#### (b) Defence costs

The most **we** will pay in total during the **period of insurance** for all **defence costs** in connection with a **claim** covered by this policy is an amount equal to the **limit of indemnity**.

### 4.2 Excess payable

The **excess** applies to any **defence costs** covered under this policy.

**We** will only pay that part of **defence costs** that exceeds the amount of the **excess**.

### 5. Claims conditions

#### The insured's obligations

- 5.1 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, 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.
- 5.2 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**. The **insured** must fully co-operate with any recovery process.
- 5.3 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.
- 5.4 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.
- 5.5 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.
- 5.6 Obtain our agreement** The **insured** must obtain **our** agreement before:
- (a) incurring any **defence costs** or other expenses in connection with any **claim** under this policy, or
  - (b) negotiating, paying, settling, admitting or denying any **claim** against them.
- 5.7 Other insurance** The **insured** must notify **us** as soon as they know of any other insurance policy that may 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.
- 5.8 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

### 5.9 Claim below the excess

If **we** believe that a **claim** will not exceed the **excess**, **we** may instruct the **insured** to conduct the investigation, defence and settlement at the **insured's** expense. Should the **claim** subsequently exceed the **excess**, **we** agree to reimburse the reasonable **defence costs** incurred by the **insured** or pay on behalf of the **insured** any additional **defence costs**.

### 5.10 Claim in excess of the limit of indemnity

If any payment, settlement or judgment in excess of the **limit of indemnity** has to be made to settle or dispose of any **claim**, **our** liability for **defence costs** is limited to such proportion as the **limit of indemnity** bears to the amount payable to dispose of the **claim**.

The **insured** must refund to **us** all amounts **we** pay for **defence costs** in excess of **our** proportion.

### 5.11 Defence of a claim

**We** have the sole right (which will be a condition precedent to the **insured's** right to be covered) to:

- (a) act in the **insured's** name and on the **insured's** behalf to defend, negotiate or settle a **claim** as **we** see fit,
- (b) appoint **our** own lawyers to defend or legally represent the **insured** and the lawyers will report directly to **us**.

### 5.12 Discharge of a claim

**We** may elect at any time to pay the **insured**:

- (a) the maximum amount payable under this policy in relation to a **claim**, or
- (b) any lesser sum that the claim against the **insured** can be settled for.

Once **we** have paid this (including any **defence costs** already incurred up to the date of the election), **our** responsibility to the **insured** under this policy for that **claim** is met in full.

### 5.13 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 5.14 '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.

### 5.14 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 the parties 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, and
- (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. General conditions

### How we administer this policy

- 6.1 Assignment** The **insured** may not assign this policy or any interest under this policy without **our** prior written consent.
- 6.2 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**. The **insured** must pay any outstanding premium due for the expired 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**.
- 6.3 Currency** Any amounts shown in this policy or in the **schedule** are in New Zealand dollars, unless otherwise specified in the **schedule**.
- 6.4 Disputes about this policy** The law of New Zealand applies to disputes about this policy and the New Zealand Courts have exclusive jurisdiction.
- 6.5 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.  
GST will be added, where applicable, to any payments.
- 6.6 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

- 6.7 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 an increase or alteration to the risk insured, **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 insured, **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.
- 6.8 Comply with this policy** The **insured** (and any other person or entity covered by the policy) must comply with the terms of this policy.  
If:  
(a) the **insured**, or  
(b) any other person or entity covered under this policy, or  
(c) anyone acting on the **insured's** behalf,  
breaches any of the terms and/or conditions of this policy, **we** may decline the **claim** either in whole or in part.



## 7. Definitions

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

<b>act of terrorism</b>	<p>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:</p> <ul style="list-style-type: none"><li>(a) involves violence against one or more persons, or</li><li>(b) involves damage to property, or</li><li>(c) endangers life other than that of the person committing the action, or</li><li>(d) creates a risk to health or safety of the public or a section of the public, or</li><li>(e) is designed to interfere with or to disrupt an electronic system.</li></ul>
<b>application</b>	<p>The information provided to <b>us</b> by the <b>insured</b>, or on the <b>insured's</b> behalf, when the <b>insured</b> purchased this insurance or requested a quotation for this insurance from <b>us</b>.</p>
<b>claim</b>	<ul style="list-style-type: none"><li>(a) legal or arbitral proceedings instituted and served upon the <b>insured</b> seeking compensatory damages, or</li><li>(b) any threat or intimation that legal or arbitral proceedings will be issued against the <b>insured</b> seeking compensatory damages, or</li><li>(c) an injunction seeking an interim or permanent order from the Employment Relations Authority, Employment Court, Human Rights Review Tribunal or other Court or Tribunal authorised to make orders under the Human Rights Act 1993, Privacy Act 1993 or Employment Relations Act 2000.</li></ul>
<b>defence costs</b>	<p>Legal costs, expenses and disbursements, witnesses' costs, assessors' or experts' fees.</p>
<b>employee</b>	<p>Any person who is or was or alleges to be or who alleges that but for the <b>wrongful act</b> would have been an employee (as defined in the Employment Relations Act 2000) of the <b>insured</b>. It does not include any person who is or was a director, principal or partner of the <b>insured</b> or any person providing services for labour only under a contract for services to the <b>insured</b>.</p>
<b>excess</b>	<p>The amount specified as the 'Excess' in the <b>schedule</b> or as specified in any extension.</p>
<b>insured</b>	<p>The person, persons, partnership, or entity named on the <b>schedule</b>, including:</p> <ul style="list-style-type: none"><li>(a) any predecessor in business, or</li><li>(b) any <b>subsidiary</b>, or</li><li>(c) any person who is a principal, partner, director or <b>employee</b>, or</li><li>(d) any former principal, partner, director or <b>employee</b>, or</li><li>(e) the estate, heirs, legal representatives or assigns of any principal, partner or director in the event of their death or incapacity but only if such persons observe and are subject to the terms and conditions of this policy.</li></ul>
<b>liability</b>	<p>Liability for:</p> <ul style="list-style-type: none"><li>(a) compensatory damages and interest the <b>insured</b> is ordered to pay pursuant to the Employment Relations Act 2000, Privacy Act 1993, or Human Rights Act 1993, and</li><li>(b) the legal costs of a party making the <b>claim</b>.</li></ul> <p>It includes settlements negotiated by <b>us</b>, in relation to a <b>claim</b>. It does not include:</p> <ul style="list-style-type: none"><li>(a) any amount for which the <b>insured</b> is absolved from payment, or</li><li>(b) any private mediator's or arbitrator's costs that may arise out of a contractual alternative dispute resolution provision, or</li></ul>

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- (c) the costs of complying with any injunction or permanent order from the Employment Relations Authority, Employment Court, Human Rights Review Tribunal or other Court or Tribunal authorised to make orders under the Human Rights Act 1993, Privacy Act 1993 or Employment Relations Act 2000.

<b>limit of indemnity</b>	The amount specified as the 'Limit of indemnity' in the <b>schedule</b> .
<b>period of insurance</b>	The 'Period of insurance' shown in the <b>schedule</b> that states the start and end dates of this policy.
<b>retroactive date</b>	The 'Retroactive date' shown in the <b>schedule</b> .
<b>schedule</b>	The latest version of the schedule <b>we</b> have issued to the <b>insured</b> for this policy.
<b>subsidiary</b>	Any entity that was, or at the beginning of <b>period of insurance</b> is, controlled by the <b>insured</b> holding more than 50% of the voting rights of that organisation or one in which the <b>insured</b> has the ability to control decisions made by the board of directors (whether directly or indirectly).
<b>we/us/our</b>	NZI, a business division of IAG New Zealand Limited.
<b>wrongful act</b>	<ul style="list-style-type: none"><li>(a) unjustifiable dismissal,</li><li>(b) unjustifiable disadvantage,</li><li>(c) discrimination,</li><li>(d) wrongful demotion or unjustifiable failure or refusal to promote,</li><li>(e) actual or constructive termination of an employment agreement, in breach of the law,</li><li>(f) misrepresentation or misleading advertising as to the terms and conditions of employment,</li><li>(g) defamation in relation to employment matters,</li><li>(h) emotional distress,</li><li>(i) sexual or racial harassment,</li><li>(j) wrongful refusal to hire a potential employee,</li><li>(k) invasion or breach of the right of privacy as provided in the Privacy Act 1993.</li></ul>

