



This Information Sheet aims to provide some guidelines about your insurance and legal options as a result of being diagnosed with cancer.

This information is very general and to get the best advice for your needs we suggest you seek advice from a qualified insurance professional or lawyer who specialises in the area that you are interested in.

To find someone who specialises in insurance, you can contact the Institute of Financial Advisers Association. For legal matters, the New Zealand Law Society or District Law Society, your local Community Law Centre, or the Legal Services Agency. Contact details are provided on the last page of this information sheet. This information is general and applies to the whole of New Zealand.

This document contains a lot of detailed information. If you find it difficult to read we suggest you discuss it with your social worker.

Personal Insurance Benefits

Some people living with cancer may be able to claim, or make use of various benefits from personal insurance policies they hold.

Types of insurance policies

Life Insurance:

If you are terminally ill (ie. your life expectancy is less than 12 months) most insurers will pay you the sum assured in advance. This will need to be verified by your Specialist.

Whole of Life & Endowment Policies only – Supplementary Benefits:

1 *Non-Forfeiture Provision:* this is a standard benefit in these types of policies. You are able to stop paying the premium and the premiums are taken from the policy cash reserves, known as the Surrender Value.

2 *Paid-up Policy:* used as an alternative the above benefit where all future premiums are ceased and the existing sum insured and Bonuses are reduced by a formula dependent on how long the policy has been going and to run.

Note: this option should be considered only if the Non-Forfeiture Provision is unsuitable.

3 *Cashing Bonuses:* the Reversionary Bonuses have an immediate cash value, dependent on a number of factors, and can be surrendered for cash. The original sum insured remains and bonuses begin all over again.

Disability policies:

4 *Disability Income or Income Replacement Insurance:* a claim is made after the expiry of your Waiting Period and must be supported by financial and medical reports. The Benefit will be 'offset' by other income benefits you may receive, e.g. Employment Sick Leave, ACC or Work and Income.

5 *Critical Illness or Trauma Insurance:* a relatively new product that may pay a claim on the diagnosis of many cancers, providing your situation matches the policy wording conditions. Some cancers, especially those in the early stages, will not be covered to begin with.

6 *Mortgage Repayment Insurance:* if you have one of these policies, especially from a bank, it may have a disability extension. It could mean that either your mortgage payments are 'waived' by the insurer, or a claim may be payable for TPD (Total and Permanent Disablement) benefit, (see below).

7 *Total and Permanent Disablement Benefit:* commonly referred to as TPD, this may be claimed if you have been unable to work for more than 6 months **and** it is determined that you are totally and permanently disabled with no likelihood of ever returning to work again.

- 8 *Waiver of Premium Benefit*: this is a supplementary benefit that usually applies to all Disability Income or Income Replacement Insurance policies and may also apply to some life insurance policies and personal superannuation plans. It means that the insurer will 'waive' all future premiums whilst you are disabled.

Health/Medical insurance:

Providing your cancer is not excluded as a 'pre-existing condition', your medical bills for treatment and operations may be reimbursed, this is dependant on the limitations of the particular policy you hold. Insurers offer a pre-approval service, which confirms whether your surgery/procedure is eligible, and any conditions that apply. You provide them with an estimate of costs from the health services provider and they will confirm the level of cover, including any excess or part payment payable by you. They may advise any estimated charges that exceed the policy limits, or what they regard as 'reasonable charges' for your intended healthcare service.

Travel Insurance:

All travel insurance policies exclude pre-existing conditions and you need to be aware of this before you travel overseas. This means air fare cancellation and any costs related to your cancer whilst travelling abroad are not recoverable. This is often dependent on the area of travel.

However, New Zealand has reciprocal healthcare arrangements with both Australia and the UK, which means treatment of any immediate or necessary nature, should be covered while in those countries and before returning home. This does **not** extend to treatment in private hospitals, or treatment that you have specifically travelled to that country to have. Medical repatriation is also not covered.

When applying for travel insurance, be sure to fully disclose your pre-existing condition. The insurer will make an assessment based on your current health and treatment status. They may decline full cover, but offer with special acceptance terms, or higher excess levels.

Sundry personal policies

Some credit card providers, employers, unions, credit unions and sporting or social clubs, have disability policies for their members. You should check your records with that organisation.

Making claims and appeals

Insurance claims can usually be made at any time although it is better to make a claim as soon as possible. If the insurance company rejects your claim, you can appeal their decision to the Insurance Ombudsman.

Obtaining new insurance policies

If you already have cancer, it will be difficult applying for a new policy for life and/or disability benefits, unless, of course, you have 'Guaranteed Insurability Rights' under an existing personal insurance policy. You will be asked to complete a full medical statement for the insurer and you must disclose everything that you know. In New Zealand, because of the Human Rights Act, all companies must genuinely *attempt* to offer you insurance. They will attempt to calculate their 'risk' and when they have, they will often charge a much higher premium – to protect all of their existing policyholders. If their actuaries cannot calculate the 'risk', usually because there is too much uncertainty in the information they have to work with, they will defer making a decision or decline to offer any terms, regardless of the type and stage of cancer.

Employer superannuation plans

Many people living with cancer may be able to claim a lump sum or pension if they have a superannuation plan with their employer. Many superannuation plans provide for a lump sum to be paid to you if you cannot keep working because of your illness. They may also pay a monthly benefit whilst you are sick. If you are not sure whether you are entitled to any disability benefits, or if you cannot find any of your statements, you should ask your employer, your superannuation trustees, or someone who has expertise in this area.

A new employer superannuation plan may offer death and disability benefits even though you have cancer, so if you are offered this, you should take it. Furthermore, if you leave your employer, be sure to 'convert' all your insurance benefits, within the prescribed period offered, as you **do not** have to complete any medical forms.

Returning to Work

If you have stopped work because of cancer, you can return to work if your health improves and you feel that you are able to go back to work. You will not have to repay your superannuation contributions, or any monthly disability benefits received. If you are receiving a pension or insurance benefit, you have to tell the superannuation trustees or insurer when you return to work. If you do not tell them, you may be liable to repay any over-payments you have received. Your employer may once again commence your superannuation contributions.

Kiwi Saver

You are able to take a contributions holiday for between three months and five years. You are able to withdraw your savings early if you suffer a serious illness or if you are experiencing significant financial hardship.

Income support

If you are ill, you may be able to get financial assistance from Work and Income.

Sickness Benefit

If you cannot work temporarily because of sickness, injury, or disability, you may be able to get financial assistance from a Sickness Benefit.

You must:

- have a job now but have had to reduce your hours because of sickness, or
- be unemployed or working part-time, and find it hard to look for and do full-time work because of sickness or disability.

Invalids Benefit

If you cannot work because of a more permanent sickness or disability, you may qualify for an Invalids Benefit. If you have a permanent sickness or disability that stops you working you may be able to get an Invalids Benefit to help meet your living costs.

To get an Invalids Benefit you need to be 16 or over and:

- unable to regularly work 15 hours or more a week because of a sickness, injury or disability which is expected to last at least 2 years, or
- be terminally ill, not expected to live more than 2 years and unable to regularly work 15 hours or more a week.

To get income support your (and your partner's) income must be under a certain level and you must be a New Zealand citizen or permanent resident who normally lives here. When you apply, you will need a medical certificate. You need to apply as soon as possible because the date you apply affects when your payments start. If you start work again, your income support payments may be affected, and you will need to keep Work & Income informed of any changes to your situation. They will be able to advise how lump sums from superannuation or insurance or superannuation pensions may be taken into account in an asset test.

You may also be able to get additional assistance from Work & Income, such as a Community Services Card to help with the costs of visiting your doctor and getting prescriptions. If you have dependent children under 18 you may qualify for Family Support. You may also be able to get other types of help through the health system, such as home support services or time off for caregivers. Please ask your doctor for details.

You can contact Work & Income by phoning 0800 559 009 (Monday to Friday 7am to 6pm, Saturday 8am to 1pm) for general enquiries about income support. There are a number of service centres.

Where can I get help?

There are a number of voluntary organisations that may be able to give you advice. You may like to contact the Citizen's Advice Bureau, Age Concern, Superannuitants Insurance Services, or the Disability Information Service (see contact details on the last page of this information sheet).

'Veterans' Affairs New Zealand (part of the NZ Defence Force) www.veteransaffairs.mil.nz/ ph 0800 483 8372 (0800 4 VETERAN), may be able to assist you if you are part of the veteran community.

You may wish to ask a lawyer who has expertise in superannuation and insurance for advice or see a financial advisor.

Effects on employment

Looking for a new job after cancer: Your legal obligations around disclosure of your the cancer

There is no obligation for a cancer survivor to disclose to a potential employer that they have had cancer/ finished cancer treatment unless the potential employer asks. It's more common for potential employers to ask general health questions, such as whether the applicant has been diagnosed with or treated for any medical conditions which would affect the applicant's ability to perform the tasks of the position. Questions that relate directly to performance of a position being applied for are likely to be lawful and are a common feature of employment forms. An applicant must answer these questions truthfully. For clarification, providing misleading information out of fear of discrimination is not an excuse for not answering truthfully.

Many employers will be supportive when an employee is diagnosed with cancer. However, if after a diagnosis of cancer you feel that your employer treats you unfairly or harshly, there are ways you can challenge this. The following are some common examples of what those living with cancer might experience.

Termination of Employment

If you are dismissed or your employment is terminated, it may be a case of unfair dismissal, giving rise to a personal grievance under the Employment Relations Act 2000.

For initial advice and referral to a lawyer who specialises in this area, see the contact details on the last page of this information sheet. You can also contact the Employment Relations Mediation Service at the Department of Labour in your area.

Personal Grievance

Legal proceedings can be brought for a personal grievance under the Employment Relations Act 2000. Where an application is lodged, mediation between the parties can be arranged promptly by the Department of Labour at no cost to you. A personal grievance may arise when:

- (a) the employee has been unjustifiably dismissed; or
- (b) the employee's employment, or one or more conditions of the employee's employment is affected to the employee's disadvantage by some unjustifiable action by the employer; or
- (c) the employee has been discriminated against in the employee's employment.

It is important to note than an application must be lodged within 90 days after the day on which the personal grievance occurred.

Unlawful termination

In some cases, the termination of employment will be unlawful (illegal). A relevant unlawful reason for terminating a person's employment is discrimination on the basis of race, colour, sex, sexual orientation, age, physical or mental disability, marital status, employment status, family status, pregnancy, religious or ethical beliefs, political opinion, ethnic or national origins. If you have cancer, the relevant reason here will be physical or mental disability.

Unlawful discrimination may happen when a person with a disability is treated less favourably than a person without that disability in the same or similar circumstances. Unlawful discrimination may also happen indirectly in the case where a person with a disability is required to comply with a requirement or condition which, due to his or her disability, cannot be complied with, and which is unreasonable in the circumstances.

Further, in general, an employer must not discriminate against an employee on the grounds of his/her disability or impairment in:

- (a) the terms or conditions of employment or work
- (b) denying or limiting access to opportunities for promotion, transfer or training or to any other benefits connected with the employment
- (c) dismissing the employee or otherwise terminating employment
- (d) retiring that employee, or requiring or causing that employee to retire or resign
- (e) subjecting the employee to any detriment.

If you feel discriminated against, the law that is relevant is the Employment Relations Act 2000, the Bill of Rights Act 1990, and the Human Rights Act 1993. If you believe that you have been unlawfully discriminated against because of a diagnosis of cancer you should seek legal advice. You can contact the Department of Labour's Employment Relations Service. You can also contact the Human Rights Commission for help. These contact details can be found on the last page of this information sheet.

Guardianship

After being diagnosed with cancer, you may have some concerns about your children and who will look after them if you die. In your Will you can say who you want to care and provide for your children. However, in the event that someone makes an application to the Family Court for guardianship of your children, the Family Court will consider your wishes, but will ultimately decide on the basis of what is in the 'best interests of the child'.

Euthanasia

There is no legislation in New Zealand that allows or has the effect of allowing euthanasia (the intentional killing of another). Accordingly, the act of euthanasia in New Zealand remains illegal and subject to penalties under the Crimes Act 1961.

For further information, you can contact the Voluntary Euthanasia Society, phone Auckland (09) 630 7035, email: ves@clear.net.nz or website: www.ves.org.nz or Wellington (04) 384 2646.

Further Information

This information sheet is based on a similar information handout from the Cancer Council Victoria, Australia. This information sheet is intended to be an information guide only, and is not a substitute for legal advice. You are advised to check any detail with the appropriate professional advisor or lawyer.

The Cancer Society's Information and Support Service is a New Zealand wide service and can answer further questions you may have, or refer you to appropriate services. For information and support from Monday to Friday, call our cancer information nurses on **0800 CANCER (226 237)**.

Useful Contact Details

Age Concern

Website: www.ageconcern.org.nz.

See your local telephone directory for phone contact

Citizen's Advice Bureau

Phone: 0800 FOR CAB (0800 367 222)

Website: www.cab.org.nz

Department of Labour's Employment Relations Service

Phone: 0800 800 863

Email: info@ers.dol.govt.nz.

Website: www.ers.dol.govt.nz

There is a helpful section 'Surviving Tough Times' on their website: www.ers.govt.nz/toughtimes/index.html

Department of Labour's Employment Relations Service – Mediation

Phone: 0800 209 020

Website: www.ers.govt.nz/problem/mediation.html

Disability Information Service

Phone: 0800 693 342

Website: www.diec.co.nz

Financial Planning & Insurance Advisers Association

Address: PO Box 5513, Wellington

Phone: 0800 404 422

Email: admin@ifa.org.nz

Website: ifa.org.nz

Human Rights Commission

Phone: 0800 496 877

Email: infoline@hrc.co.nz

Website: www.hrc.co.nz

The Office of the Insurance and Savings Ombudsman

Address: PO Box 10 845, Wellington

Website: www.iombudsman.org.nz

Work and Income

Website: www.workandincome.govt.nz

Legal Services Agency (Head Office)

Address: PO Box 5333, Wellington

Phone: (04) 495 5910

Fax: (04) 495 5912

Email: info@lsa.govt.nz or

Website: www.lsa.govt.nz

New Zealand Law Society (National Office)

Address: 26 Waring Taylor Street,

PO Box 5041, Wellington

Email: inquiries@lawsociety.org.nz

Website: www.lawsociety.org.nz

Public Trust

Phone: 0800 371 471

Email: info@publictrust.co.nz

Website: www.publictrust.co.nz

Community Law Centre

See your local telephone directory phone contact

Website: www.communitylaw.org.nz

Special Risk Insurance

Email: expert@srisks.co.nz

Website: www.srisks.co.nz