

LEGAL DEFENCE EXPENSES INSURANCE EXPLAINED

Legal Defence Expenses (LDE) insurance helps the insured cover the cost of solicitors when defending against legal action in connection with their ordinary business affairs, action brought under consumer protection legislation, or regarding a dispute in employment terms and conditions that leads to civil or criminal proceedings under any discrimination legislation.

It's a technical definition but that's because it applies to many different industries. For Strata Plans, LDE might be needed where there are caretaking disputes, contractor payment disputes or civil action through Tribunals for example.

Acting when an issue arises

If a Strata Plan receives any of the following, then you might need to make a claim under LDE insurance.

- Written or verbal advice of intent to initiate legal proceedings or a civil or criminal action against the Strata Plan.
- Service of a summons, complaint or statement of claim.
- A criminal proceeding commenced by a summons or charge against the Strata Plan.

Cover isn't extended to any legal action taken against individuals or members of the Strata Plan. This includes Office Bearers, so it's sensible to consider whether a Strata Plan should take out separate Office Bearer's Liability cover.

Knowing when you need to make a claim

As with any insurance claim, timing is important. You should make the insurer aware of any circumstances that could give rise to a claim as soon as possible, as you'll need written consent before you incur any legal defence expenses.

The insurer will consider several things before providing its consent:

- The costs and expenses must be reasonable and necessary.
- There are reasonable grounds for defence of the claim.
- There are good prospects of successfully defending the claim.

An LDE policy responds to claims in date order, based on when a claim was made against the Strata Plan during the policy year NOT when the actual incident occurred. It's an important distinction that has caught many people out.

The current insurer will respond to a claim made against the Strata Plan even if they weren't the insurer when the incident occurred unless notification was made to the previous insurer. This is because legal action may not be instigated for some time and may then fall outside the current policy period.

However, if a new insurer is appointed at renewal and they aren't made aware of any potential or actual claim, LDE cover will likely not apply. The new insurer will determine the Strata Plan was aware of the matter before the policy started and the previous insurer will determine they were not notified of the matter during the applicable policy period.

Approximately 25% of claims are declined due to a failure to notify.

BCB's role in managing a claim

When reporting a potential or actual claim, you should submit all relevant documentation and/or a summary of the circumstances surrounding the incident.

We'll then request the following information before notifying the insurer and seeking indemnity advice.

- A Cost Estimate/Agreement from your legal counsel.
- A Statement of Prospects of Success from your legal counsel.
- A draft outline of the Defence Strategy from your legal counsel.
- Any information to help determine whether cover can be considered under this (or another) policy.



Once the insurer has decided whether to accept the claim, we'll let you know so you can advise the legal counsel whether to go ahead with their defence of the matter.

When settling the bills for legal costs, the Strata Plan must first pay all costs before being reimbursed by the insurer. BCB receives a copy of all tax invoices from the legal counsel and will pass them on to the insurer.

A claim is finalised either when the capped policy limit is reached or the matter is resolved by the legal counsel or in the Courts. With all policies, there's an annual capped policy limit and claims are aggregated. So, once you've reached the limit no further cover is provided. The limit does reset when a policy is renewed, but only for new claims.

Don't assume all legal costs are covered

There are some situations where LDE insurance doesn't apply, so you should always check the policy before liaising with legal counsel.

- Matters pursued without the insurer's written consent.
- Where the Strata Plan has pursued or defended a claim against the advice of their legal counsel.
- Where indemnity is provided under Office Bearer's Liability cover or Public Liability cover, regardless of whether the Strata Plan has these covers.
- Where there is a conflict of duty or interest of the Strata Plan.
- Where the claim was made, threatened or intimated on or before the inception date shown on the Policy Schedule UNLESS the Strata Plan has maintained continuous cover with the same insurer.
- Where the matter was notified after the policy expired and after the period prescribed in the policy (generally 30 days) UNLESS the Strata Plan has maintained continuous cover with the same insurer.
- From a claim arising from a deliberate act, including fraud and dishonesty committed with intent and purpose.
- From any proceedings brought by the insurer.
- For penalties, fines, compensation or awards of aggravated, exemplary or punitive damages made against the Strata Plan.
- Proceedings brought by the Strata Plan or on their behalf.

If you have any questions about Legal Defence Expenses, please contact your local BCB branch today.

The information provided is general. It does not constitute legal advice and should not be relied upon as legal advice. Body Corporate Brokers recommends seeking advice from a qualified lawyer on any legal issues affecting you before acting on any legal matter. Whilst Body Corporate Brokers endeavour to ensure that the content of this information sheet is accurate, it does not represent or warrant its accuracy, adequacy or completeness and is not responsible for any loss suffered as a result of or in relation to the use of this information sheet.

bodycorporatebrokers.com.au

Body Corporate Brokers Pty Ltd. ABN 95 002 809 298 AFS License No. 244529



New South Wales

02 9024 3850
nsw@bcb.com.au

Level 11, 338 Pitt Street
Sydney NSW 2000

PO Box 20288, World Square NSW 2002

Queensland

07 5668 7800
qld@bcb.com.au

Suite 1, 7-9 Burra Street
Chevron Island QLD 4217

PO Box 5579, Gold Coast MC QLD 9726

Victoria

03 8609 2300
vic@bcb.com.au

Level 12, 390 St Kilda Road
Melbourne VIC 3004

Western Australia

08 6245 5300
wa@bcb.com.au

155b, 22 St Georges Terrace
Perth WA 6000

PO Box 5655, Perth St Georges Terrace WA 6831