

PUBLIC LIABILITY INSURANCE EXPLAINED

Within a strata insurance policy, Public Liability (PL) insurance provides cover for damage to property that isn't owned, managed or maintained by a strata scheme, but where the strata scheme is held responsible for causing the damage and must pay compensation. It's a heavily misunderstood, yet important area of insurance.



Who's covered

All parties defined within the strata scheme on the policy – the Body Corporate, Owners Corporation, strata scheme employees and voluntary workers.

Who's not covered

Lot owners and onsite contractors, such as Building Managers, gardeners and cleaners who aren't paid employees of the strata scheme.

Public Liability vs Legal Defence Expenses cover

PL insurance gives the strata scheme a defence against legal action where a third party is seeking compensation. The claimant can be anyone who holds the strata scheme responsible for third-party property damage, injury or death. Claimants can include owners, occupants or visitors to the scheme, both members of the public and contractors.

Legal Defence Expenses cover helps with the cost of solicitors when the strata scheme is defending against legal action in connection with its ordinary business affairs. It might include ownership of common property, action brought under consumer protection legislation or disputes between the strata scheme and its employees and contractors.

Lot owners should organise their own PL insurance as the strata scheme's policy doesn't cover them for legal action where the owner is named as a Defendant. If an incident occurs within a lot, the lot owner will likely be held responsible and named as the Defendant. Personal and Landlord's Contents policies typically include Public Liability insurance for the owner.

Before allowing contractors on site, the strata scheme should ensure they have their own PL insurance in case they cause damage to the scheme's property or cause injury. A Building Manager, caretaker and anyone who is under contract with the scheme also needs their own PL cover.

Public liability claims

The strata scheme makes a claim when it receives a demand for compensation. There's no specific claim form for this purpose but providing BCB with as much information about the incident as you can is helpful.

BCB will review the information and ask more questions if we need further clarification. The scheme will be asked to share its version of events, which should be provided by someone who knows about the incident. A third-party claimant must never be asked to provide this information, as it's their responsibility to establish why they hold the scheme responsible for their loss.

All supporting information will help give the insurer a more rounded picture of what happened and help understand if the strata scheme has any liability exposure.

The scheme will be asked to provide information that may include but isn't limited to the following, depending on the circumstances.

- Photographs or CCTV footage where the incident occurred.
- Photographs of the damaged property.
- Information about what action has been taken to mitigate further loss, such as cordoning off an area, erecting signage or instigating immediate or temporary repairs.
- Photographs must be taken before and after any such repair or action is taken.
- Relevant invoices or work orders.

The strata scheme should also provide any documentation relating to the incident or the area where the incident occurred, such as Safety/Risk Management Audit Reports. This may signal to the insurer any prior knowledge or potential likelihood of an incident occurring or whether something similar has happened before.

You should submit the claim to BCB as soon as possible, along with any communication from the third party. The strata scheme mustn't engage directly with the third party, or provide any advice, admission of liability or settlement offers. All communication should be managed through BCB.

A streamlined process

1. BCB will lodge the claim with the insurer.
 - If no demand has been received from a third party, the matter will be lodged as a Report Only and no further action taken.
 - If a demand has been received, the insurer may appoint legal counsel and/or an investigator, or they may manage the property damage claim themselves.
2. BCB will keep the strata scheme up to date with progress by the insurer. Public liability claims can be drawn out matters, where not much occurs for long periods while the insurer determines liability. We'll request an update from the insurer at least every month.
3. The strata scheme must cooperate with the insurer and its appointed solicitor to provide information and help with the Defence of the matter. Members of the scheme and the strata manager may be called upon to communicate directly with the solicitors as the most direct way to investigate the circumstances. BCB will facilitate these communications wherever possible and introduce the parties.
4. We'll negotiate with the insurer around how often it will provide updates. This can be from 1 to 3 months, depending on the proceedings.

**If you have any questions about public liability insurance,
please contact your local BCB office.**

The information provided is general. It does not constitute legal advice and should not be relied upon as legal advice. BCB recommends seeking advice from a qualified lawyer on any legal issues affecting you before acting on any legal matter. Whilst BCB endeavours to ensure 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.

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QUESTIONS?

Please contact your nearest BCB office for any queries or advice.



