

# LEGAL DEFENCE EXPENSES INSURANCE EXPLAINED

**Legal Defence Expenses (LDE) insurance helps the insured cover the cost of solicitors when defending against legal action related to its ordinary business affairs, action brought under consumer protection legislation, or concerning 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 schemes, LDE might be needed if there are caretaking disputes, contractor payment disputes or civil action through Tribunals, for example.

## Acting when an issue arises

Lot owners aren't covered by LDE insurance if they are personally named in proceedings. Only the strata scheme is.

If an Office Bearer or Committee Member is named, then the scheme will need to have Office Bearer's Liability insurance for them to be personally covered.

BCB recommends all strata schemes take out Office Bearer's Liability insurance to protect these vital voluntary positions from costly legal action brought about by that role. LDE doesn't cover third-party property damage, injury or death as these are claimable under the Public or General Liability section of the policy.

## Timing is everything when making 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 from the insurer before you incur any legal costs or defend the proceedings.

The insurer will consider several things before providing its consent.

- Whether the costs and expenses are reasonable and necessary.
- If there are reasonable grounds for defence of the claim.
- If there are good prospects of successfully defending the claim.

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

A LDE policy is issued on a "claims made" basis, which means the claim must be notified to the insurer during the policy year when the scheme first became aware of the possibility of legal action. The actual events that brought the claim about may have occurred much earlier but legal action may not have been obvious, or no threats made at the time. It's an important distinction that has caught many people out.

- The **current insurer** will respond to a claim made against the strata scheme even if they weren't the insurer when the series of events leading to the claim occurred (unless the strata scheme notified the previous insurer). This is because legal action may not be instigated for some time and may then fall outside the original policy period.
- If a **new insurer** is appointed at renewal and they aren't made aware of any potential or actual claim, this is a non-disclosure issue and cover will not be considered. Any known circumstance must be notified to the insurer on risk at the time.

The new insurer will rightly claim the strata scheme was aware of the matter before the policy started. And the previous insurer will claim they weren't notified of the matter during the applicable policy period.

## BCB's role in the claim process

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 tell your legal counsel whether to go ahead with its defence of the matter.

When settling the bills for legal costs, the strata scheme must pay all costs and will then be 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 Court. With all policies, there's an annual capped policy limit and claims are aggregated. So, once you've reached the limit, there's no further cover. The limit resets 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.
- Matters where the strata scheme has pursued or defended a claim against the advice of its legal counsel.
- Where indemnity is provided under Office Bearer's Liability cover or Public Liability cover, regardless of whether the strata scheme has these covers.
- Where there's a conflict of duty or interest in the strata scheme.
- Where the claim was made, threatened or intimated on or before the inception date shown on the Policy Schedule UNLESS the strata scheme 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 scheme has maintained continuous cover with the same insurer.
- Any claims arising from a deliberate act, including fraud and dishonesty that are committed with intent and purpose.
- Any proceedings brought by the insurer.
- Penalties, fines, compensation or awards of aggravated, exemplary or punitive damages made against the strata scheme.
- Proceedings brought by the strata scheme or on its behalf.

**If you have any questions about Legal Defence Expenses,  
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.



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