

# OFFICE BEARERS LIABILITY INSURANCE EXPLAINED

**An Office Bearer is any person, appointed (past or present) to act as an Office Bearer of a strata scheme, including a Chairperson, Secretary and Treasurer.**

Office Bearers are part of the strata committee, which collectively represents the owners and administers the day-to-day running of the strata scheme. They have a duty of care and diligence when making decisions on behalf of the strata scheme.



## Office Bearers Liability (OBL) insurance

Strata schemes should ensure they have adequate insurance in place to protect Office Bearers whilst acting in that role.

Office Bearers can face potential legal action if their errors, misstatements, omissions, neglect, or breach of duty, whilst acting in that capacity, result in financial loss to the strata scheme.

OBL insurance provides financial protection where an Office Bearer (past or present), becomes personally liable for alleged or actual Wrongful Acts while carrying out their duties on behalf of the strata scheme.

All committee members are generally considered to be Office Bearers (as well as the Chairperson, Secretary, and Treasurer) under most specialist strata insurance policies, but always check the cover provided by the Product Disclosure Statement (PDS) for confirmation.

Optional policy benefits may include advance payment of legal defence costs to cover legal fees and any other charges and expenses within the limit of the sum insured.

## Who can make a claim against an Office Bearer?

Anyone who has suffered a loss arising from a Wrongful Act committed by an Office Bearer or committee member can make a claim.

## Understanding some basic terms

Wrongful Act	Claim
<ul style="list-style-type: none"><li>An error, misstatement, act or omission, or neglect or breach of duty made, committed, attempted or allegedly made, committed, or attempted by an Office Bearer, acting in that position.</li></ul>	<ul style="list-style-type: none"><li>A written or verbal allegation of a Wrongful Act.</li><li>A civil proceeding following a complaint, summons, statement of Claim or similar pleading alleging a Wrongful Act.</li><li>A criminal proceeding based on a summons or charge alleging a Wrongful Act.</li></ul>
Defence Costs	Loss
<ul style="list-style-type: none"><li>Costs, charges and expenses incurred by the insurer, or with the insurer's written consent, while investigating, defending, monitoring or settling any Claim, proceedings or appeals.</li><li>Also includes the costs of appeal.</li></ul>	<ul style="list-style-type: none"><li>The amount payable for a Claim made against an Office Bearer.</li><li>Includes damages, judgements, settlements, orders for costs and Defence Costs.</li></ul>
Claims Made	"You, Your & Yours"
<ul style="list-style-type: none"><li>OBL insurance is issued on a "claims made" basis, which means the policy responds to claims first made and notified to the insurer during the policy year.</li></ul>	<ul style="list-style-type: none"><li>Refer to the definition of "You, Your &amp; Yours" in the PDS under the OBL Definition to find out who's covered by a policy.</li></ul>

## Getting cover

Most specialist strata insurance policies offer OBL as an additional optional cover. It's not compulsory but provides essential peace of mind for Office Bearers who carry out voluntary duties.

OBL is also available as a standalone policy via specialist insurers. Ask BCB if you would like to know more.

## What Limit of Liability should Office Bearers take out?

The appropriate level of cover will vary for each strata scheme, but it's wise to insure for limits proportionately relative to the size and/or complexity of the scheme. You should review the limits annually to ensure cover keeps pace with inflation and court awards etc.

Seek advice from BCB if you're not sure what's appropriate.

## Compulsory Management

When a tribunal appoints a strata management firm as a Compulsory Manager, the scheme's OBL cover should extend to the strata manager. Under Compulsory Management the strata manager is the sole Office Bearer for a scheme. Please ensure BCB is aware of this so we can confirm cover for the strata manager with the scheme's strata insurer.

## Important exclusions

General exclusions include the following.

- Defamation, libel and slander. However, the insurer may pay for Defence costs until/if the allegations are proven to be truthful or the matter is resolved without going to Court. If proven to be truthful, the Office Bearer may have to repay the Defence costs.
- Dishonesty, fraudulent, criminal or malicious acts.
- Claims made or notified outside of the policy period.
- Claims for death, bodily injury or property damage.
- Fines or penalties imposed by law.

As with all insurance, you should check the exclusions before buying a policy to ensure it's suitable for your circumstances.

## Claims

Most claims arise out of honest mistakes and good intentions.

As OBL insurance is a claims made cover, the Office Bearer or committee should report all circumstances that might give rise to a claim to the insurer when they first become aware of an issue, even if there's no demand or claim made against Office Bearers at the time.

It's also critical to ensure any notifications that are required to be made during the period of insurance are communicated to insurers. Failure to notify the insurer at the appropriate time could result in reduced cover or potentially a denial of indemnity.

Any written demands for compensation made against Office Bearers must also be notified immediately, or as soon as possible, as these formal claims usually have tight and specific timeframes for response. Failure to meet the timeframes can result in a court or tribunal making default judgements against the Office Bearer or committee member.

## Legal representation

The insurer reserves the right to take over the defence of a claim by appointing a solicitor from its panel. And in most cases, it will choose to do this. However, if the strata scheme feels strongly that its solicitor should represent them, the insurer may consider it, if there's good reason and the solicitor provides assurances to the insurer.

However, the insurer may limit its Defence costs to what it would have paid its panel lawyer. If the scheme's lawyer doesn't agree to these costs, the scheme will be responsible for any additional costs.

## Legal Defence Expenses and Public Liability insurance

Legal Defence Expenses insurance covers claims made against the strata scheme. It doesn't cover claims made against individuals acting as Office Bearers.

Public Liability insurance covers claims made against the strata scheme for damage to third-party property and/or injury. Defamation, libel and slander are injuries and when the scheme is named as the defaming party, cover is extended under its Public Liability policy. When an Office Bearer is the defaming party, there may be only limited cover under the Office Bearer's Liability policy.

## Possible OBL claim scenarios

### Balcony collapse

An overcrowded common property balcony collapses during a party, seriously injuring many people. Claims total \$25 million.

#### Exposure

The strata scheme has the minimum statutory amount of \$20 million in Public Liability insurance. This insufficient level of Public Liability cover leads to a financial shortfall of \$5 million for the strata scheme. The owners believe the amount of insurance is below the level required for their situation and bring legal action against the Office Bearers to make up the shortfall.

### Building defects

An Office Bearer fails to organise to have the number and extent of defects within a building properly assessed within the builder's warranty period. They also fail to lodge a claim within the warranty time period.

#### Exposure

The money needed to rectify the defects may have been covered by the builder's warranty insurance, but this is no longer available as the warranty period has expired.

### Council approvals

The Committee approves the strata scheme's request to build a common property carport but fails to get local Council approval. Once built, the strata scheme is ordered by the Council to remove the carport at its expense. The owners sue the Committee for loss of funds.

#### Exposure

Loss of strata scheme funds due to a mistake by the Committee.

## Finding the right level of protection

There's a widely held view of many specialist strata insurance brokers that OBL cover should be mandatory and that limits of cover taken by Office Bearers need to increase significantly.

Multi-party legal matters can be lengthy, often taking several years to finalise, so defence costs can become very expensive in our increasingly litigious society. And that's before you consider the amount of the settlement cost too. The limit of insurance protection bought today needs to be adequate for a date of settlement potentially several years into the future.

While an appropriate level of cover is a matter for each strata scheme to determine, we recommend schemes choose limits proportionate to the size and/or complexity of their scheme and adequate for inflationary pressures for claims payments some years ahead. BCB can offer advice if you're unsure.

**If you have questions about Office Bearers 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.

#### ADELAIDE

Phone 02 9024 3850  
Email sa@bcb.com.au

#### BRISBANE

Phone 02 9024 3850  
Email qld@bcb.com.au

#### DARWIN

Phone 0434 909 555  
Email nt@bcb.com.au

#### GOLD COAST

Phone 07 5668 7800  
Email qld@bcb.com.au

#### MELBOURNE

Phone 03 8609 2300  
Email vic@bcb.com.au

#### PERTH

Phone 08 6245 5300  
Email wa@bcb.com.au

#### SYDNEY

Phone 02 9024 3850  
Email nsw@bcb.com.au

#### QUESTIONS?

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



[WWW.BCB.COM.AU](http://WWW.BCB.COM.AU)

