Honan.
Insurance. Advice. Support.

PUBLIC LIABILITY COVER:
FAQS & TOP TIPS

"Are we covered? And for what?" These have become the most commonly asked questions from Lot Owners, Committee Members, and Strata Managers following an incident in a common area resulting in an injury, or damaged personal belongings.

It is relatively well known that Public Liability (PL) cover is a mandatory requirement for a Strata scheme (also known as Owners Corporation or Body Corporate) and that each State's Strata Laws come with minimum requirements for PL cover, there is less public understanding around what to do in the instance of a PL event, and what the insured party is covered for.

In this article, we address some of the FAQs, debunk a common myth associated with PL claims and share some helpful actions Lot Owners and Strata Managers can take in the event of a claim.

WHAT LOSSES ARE COVERED BY PL INSURANCE?

PL cover provides protection to an Owners Corporation (OC) for losses arising out of its legal liability for third-party property damage or personal injury, subject to policy terms and conditions.

This includes settlement awards, damages awards, and court-ordered costs, up to the insured Limit of Liability shown on the policy schedule.

In addition, PL insurance extends to cover the investigation and legal defence costs if the insurer does not perceive the OC to be liable for losses claimed by the third-party claimant.

WHOSE INTERESTS ARE PROTECTED?

The OC is the insured entity as named on the Strata Policy Schedule. This means that the policy only responds to claims made against the OC. It does not respond to claims made against Lot Owners in their private capacity. That said, certain policies may extend coverage to other parties who may be enjoined into proceedings against the OC by the claimant. For example, both Strata Unit Underwriters and Strata Community Insurance's residential and commercial strata policies include an extension of cover for employees of the OC, office bearers, and volunteer workers under certain circumstances.

The above policies also extend to Strata Managers if they have been enjoined by the claimant solely by virtue of the relationship between themselves and the OC under certain circumstances.

Honan.
Insurance. Advice. Support.

MYTH BUSTER: CAN LOT OWNERS & COMMITTEE MEMBERS CLAIM AGAINST OCS?

Questions often arise as to whether a Lot Owner or Committee Member can claim compensation against the OC for personal injury or property damage. The answer is YES, and it will be a claim considered under a PL policy. It is important to note, however, that the Policy is intended to indemnify the OC within Policy terms and conditions, but not to indemnify the Lot Owner, Committee Member, or any other third-party claimants. This means that when the insurer does not perceive the OC to be liable, the insurer will deny liability on behalf of the OC to the Lot Owner or other claimants and will not be compensating the Lot Owners or other claimants for losses.

DOS & DON'TS IN THE EVENT OF A CLAIM

There are numerous policy conditions applicable to PL claims. Failure to comply can result in insurers limiting their contributions or refusing to grant indemnity.

It is a requirement to notify insurers of circumstances that could give rise to a public liability claim, even before legal action is threatened or taken. For example, if you are aware of a fall in a common area leading to a personal injury, reporting it right away ensures best practice compliance with policy conditions.

Insurers have considerable discretion and control over PL claims once indemnity is granted. So, preserving the incident area, co-operating with claim investigators, and avoiding direct communications with the claimant allow insurers to understand the circumstances and manage the claim efficiently and effectively.

Strata policies also provide insurers with control over the appointment of solicitors and the decision-making process, including whether to accept liability on behalf of the OC or defend its position. Allowing your broker and strata insurer to work together and manage such communications can prevent you from making statements that can be interpreted as an admission of liability or an offer of settlement.

WITH YOU ALL THE WAY

Our Strata Team has a wealth of experience in PL claims and can guide you in the right direction from the moment you become aware of circumstances that could give rise to such claims, through to advising on critical actions required to help protect your interests.

We can also support you in identifying your risk exposures and advise you on measures to minimise your exposure to costly and unnecessary PL claims. Please don't hesitate to reach out at any time.

MELBOURNE
HEAD OFFICE
LEVEL 9, IBM CENTRE
60 CITY RD SOUTHBANK
VIC 3006
t — +61 3 9947 4333

SYDNEY
LEVEL 6
1 MARGARET ST
SYDNEY
NSW 2000
t — +61 2 9299 0767

BRISBANE
LEVEL 13
40 CREEK ST
BRISBANE
QLD 4000
t — +61 7 3368 3708

ADELAIDE
5 PEEL STREET
ADELAIDE
SA 5000
t — +61 437 080 655

PERTH
LEVEL 4
251 ST GEORGES TCE
PERTH
WA 60[illegible]
t — +6