

Liability Insurance VS Legal Expenses Insurance

What do my liability insurances cover?

Your current insurances are there to protect you from costs/damages that you may be asked to pay by customers, suppliers, employees or the general public. These arise through various laws (such as the requirement to pay compensation in the event of an injury to an employee) or in some cases through customer or supplier contracts where you are required to take on certain liabilities (e.g. a customer requiring that you are liable for any injury as a result of a defect in the goods you have supplied).

As part of these insurances, the insurer will cover the costs of a lawyer to defend a liability claim against you. The purpose of this is to protect your organisation (and therefore the insurer!) from having to pay damages, protect your reputation and if damages are payable, to reduce the cost of these wherever possible. If the lawyer cannot successfully defend these allegations against you, the insurance will pay the damages claimed against you.

The legal costs covered under your liability insurances are limited to defending the liability claim against you. Therefore, a lawyer appointed by your Worker's Compensation insurer for example, will only defend you from a claim from an injured employee, but nothing more.

What does Legal Expenses Insurance cover?

Legal Expenses Insurance also covers the cost of lawyers, however the legal costs covered are those which are not covered by your liability insurances and arise from multiple areas, not just liability for damages following injury or the requirement to pay costs/damages.

Legal Expenses Insurance is available for claims arising from contractual disputes, employment matters, property problems, licencing issues and many more. For example, your professional indemnity policy may cover the cost of a professional negligence/error claim against you, but it certainly would not fund a lawyer to enforce a debt that you were owed by a non-paying customer.

Does Legal Expenses Insurance cover all legal costs I may have?

It is unlikely to cover all the possible legal expenditure your business might face, not least some of this expenditure would not be insurable under any type of policy e.g. the legal work required when acquiring another company.

Keystone's cover is designed to cater for the main risks you may face, such as being in dispute with a customer, supplier, landlord, tenant or employee. It also protects you from costs of defending criminal matters and licencing issues.

In addition to the insurance, the policy includes complimentary access to our Legal Helpline.

Does this mean there is duplication of cover?

Generally no, but there are some areas of a legal expenses policy where cover may be similar or overlap with some other liability insurances. This is not intended, but is merely a result of certain types of Legal Expenses Insurance cover being sold as a package which covers the main business risks that organisations face. Where this does occasionally occur, the overlap is very minor and doesn't impact on either policy's coverage or the cost of either policy.

Legal Expenses Insurance is not a replacement for your liability policies, but rather an additional product to ensure your wider business legal risks are protected.

Can I use the Legal Expenses Insurance to pursue a claim?

Yes – there are a number of areas in the policy that cover both pursuit and defense of claims. This is unlike almost any other type of insurance available, as it gives the policyholder the ability to instigate a claim. For example, you have dispute with a customer over the non-payment of an invoice. In this scenario there would be no cover under a liability insurance as no claim has been made against you. A Legal Expenses Insurance policy however would fund this type of claim.

A further example may be where you have a dispute with a tenant in your property. If you believe the tenant is in breach of the terms and conditions of their lease, you have a legal right to take action against them. They have not made a claim against you, so no liability policy will fund such a claim.

Why does my business need Legal Expenses Insurance?

Disputes and resultant legal action are on the rise in today's increasingly competitive world. Australia is no exception and there are several factors influencing the pressure of legal budgets and litigation spending:

- Rising legal costs are preventing access to justice in Australia. Legal fees have reached a level where businesses are having to consider whether to participate in actions even where they have a strong case. SMEs have been hit especially hard by these rises and there are regular scenarios where business owners have had to make the tough decision not to enforce their legal rights, simply because the cost of enforcement has been too great.
- SMEs are losing confidence when it comes to trading with larger entities given the inability to protect their business in the event of a dispute. Often, they are forced to the back of the queue for payments, with large corporates safe in the knowledge that they hold the power. SMEs need the reassurance that if things do go wrong, they can enforce their position; this restores the balance and give them confidence to enter contracts with major customers and suppliers. It is not about encouraging them into taking legal action, but merely provides peace of mind that they can act should it be necessary.
- The SME of today is faced with a huge burden of keeping up to date with business legislation and regulatory requirements in addition to dealing with disputes. Even the most straightforward business is subject to regulatory requirements for employment, health and safety, data protection and many others that are industry specific. Compliance often must be achieved without the benefit of in-house expertise, risking penalties due to lack of knowledge, or having to pay for external advice and consultation.
- Pressure inevitably comes down on budgets which are not considered everyday essentials in keeping the business running, as world and local economies falter. It can often be unwise to remove budgets entirely, but partial or total replacement of a legal budget with a smaller Legal Expenses Insurance premium allows capital to be released, whilst maintaining access to funds should a dispute arise.
- A slowing economy forces business to protect themselves should revenue be lost due to non-payment of customer invoices or disputes with suppliers, without encouraging people to turn to litigation. Clearly spending further funds on expensive legal consultation and possible further action is not attractive when margins are already squeezed.