

Insurance for Local Aboriginal Land Councils

Legal information for Local Aboriginal Land Councils

This fact sheet covers:

- ▶ How does insurance work?
- ▶ Is your LALC required to get insurance?
- ▶ What types of insurance should your LALC consider?
- ▶ What should your LALC do if something goes wrong?

This fact sheet provides information on insurance for Local Aboriginal Land Councils (LALCs).



Note

This fact sheet provides information on insurance for LALCs. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to the full disclaimer that applies to this fact sheet.

How does insurance work?

Insurance is one way that your LALC can protect itself from financial loss and is an important consideration for all LALCs. Insurance is sometimes required by law, or under the terms of a contract, and other times it is a choice for LALCs to consider.

Insurance can also help to protect individuals involved in a LALC (for example, employees, volunteers), by reducing the individual's financial responsibility for losses or damages resulting from their activities for the LALC.

Insurance allows your LALC to deal with particular risks that it can't afford, or avoid or minimise risks so they are carried by an insurance company.

When your LALC takes out insurance to cover it against certain risks, the insurance company agrees to take on the risk – that is, the insurance company agrees to be the one who will pay if things go wrong. However, the insurance company agrees to do this for a fee (usually called an insurance premium) and under certain terms and conditions which are outlined in the insurance policy.

Your LALC may purchase insurance directly from an insurance company or through an insurance broker (see below for information about insurance brokers).



Tip – insurance brokers

Insurance brokers provide advice on insurance and risk, and act as intermediaries between your LALC and insurance companies.

Insurance brokers are not employed by insurance companies so may advise you about the kind of insurance you should consider, as well as insurance available from a range of insurance companies. An insurance broker may be able to help you get a better price for your insurance.

Insurance brokers are legally required to be licenced and to represent your LALC's interests. The law requires that insurance brokers provide you with certain information about the insurance they are advising you about (including what they are paid by the insurer, and any commissions).

What is an insurance policy and insurance premium?

An insurance policy is the document that sets out the circumstances in which the insurance company agrees to insure your LALC against particular risks.

An insurance policy is a contract – a legal agreement between your LALC and the insurance company.

The insurance company charges a fee, called an insurance premium, for the insurance policy.

The insurance premium you pay will be calculated according to a number of factors, including the type of insurance and the amount of cover you take out. For example, you will pay a higher premium for more comprehensive cover.



Note

It's important to think about how much cover your LALC needs and take advice from an insurance broker. If you don't purchase enough cover, you may find that your insurance plan doesn't cover you when you need it.

It's estimated that 70% of small businesses affected by a major event such as a legal claim, fire or storm are under insured or uninsured and never recover their loss.

The written terms of an insurance policy are very important. Your LALC can only make a claim under the insurance policy if what goes wrong is covered by the policy and the LALC follows the procedures required by the policy.

For example:

- If financial loss because of a flood is not covered by the insurance policy, the insurance company does not have to pay to fix damage caused by a flood.
- If the insurance policy only covers financial loss to the amount of \$5,000, this amount will be all that the insurance company has to pay your LALC, even if your LALC suffers a loss of \$10,000.

It's important you understand exactly what is, and isn't, covered in the insurance policy.



What is a Product Disclosure Statement?

Insurers are required to provide a Product Disclosure Statement (**PDS**) for their insurance products.

A PDS is a plain English document that sets out all the terms, features, costs and restrictions of an insurance policy. It's very important to read the PDS, as this explains the contract between you and your insurer.

Also read the policy schedule and wording, (which details the terms and conditions of your insurance contract) carefully.



Tip

In Australia, there are national laws which regulate the way that insurance policies are sold and the information that insurance companies (and others who sell insurance on behalf of insurers) must give your LALC. Insurers are bound to conduct themselves in accordance with the General Insurance Code of Practice.

If your LALC has a complaint or concern about an insurance policy that it can't resolve with the insurance company, you can contact the Australian Financial Complaints Authority.

What should a LALC look for in an insurance policy?

Insurance can be expensive. If your LALC needs to spend money on an insurance policy you should make sure that the insurance cover is suitable, so your LALC can claim on the policy if something goes wrong.

Things to consider include:

- what the policy covers, and in what circumstances
- whether there are any events, causes, actions or people that are not covered by the policy (often called 'exclusions')
- how much the insurer agrees to pay for each different incident (these amounts are sometimes capped)
- if there is any 'excess' (an amount your LALC may have to pay to make a claim on the policy)
- whether there are any waiting periods before your LALC can make a claim, and
- how much the insurance policy will cost you each year (this is called a premium)



Example

A LALC insures its building and the building's contents.

Under the LALC's policy:

- the building and contents are insured up to \$500,000, and
- the LALC must pay an excess of \$5,000

The LALC makes a claim under this insurance policy following a storm that caused \$100,000 worth of damage. The LALC will therefore receive \$95,000 to fix the damage to the property.



What does your LALC need to do under an insurance policy?

An insurance policy is a contract – a legally binding agreement between your LALC and the insurance company.

Your LALC will have things that it's required to do to make sure the insurance policy is, and remains, valid. It's important to understand the details of the policy, so that you know what your LALC is required to do.

Some standard requirements under insurance policies are:

<p>1. Provide full and accurate information</p>	<p>Your LALC must answer all questions in the insurance policy application honestly and accurately.</p> <p>If you are not sure about a question, discuss this with your insurance company or insurance broker.</p> <p>If you give the insurance company the wrong information or fail to give information that is required, the insurance company may not be required to pay your insurance claims.</p> <p>There are also provisions in most insurance policies that allow the insurance company to end the policy if the information your LALC has provided is deliberately incorrect.</p>
<p>2. Keep your insurance up to date</p>	<p>It's just as important, particularly when your LALC renews its policy, to tell your insurer if your circumstances have changed (for example, if you renovate a LALC owned property).</p>
<p>3. Notify of an incident</p>	<p>Some insurance companies may require your LALC to notify them of an event, circumstance or incident that may give rise to a claim within a certain time period.</p> <p>Make sure your LALC knows what the policy requires you to do if there is an incident, and how to make a claim on your insurance.</p> <p>If you purchased the insurance policy through an insurance broker, they can assist your LALC with the notification process.</p>



Tip

It's a good idea to list insurance as an agenda item for discussion at least once per year at a meeting of the board. Your LALC can use this opportunity to review its insurance policies and decide whether the cover is suitable or needs to be reviewed or changed.

Is your LALC required to get insurance?

While your LALC can and should take steps to avoid or minimise risks in its activities or operations, it may be required to get insurance as well.

Consider the following three questions:

Is your LALC required by law to get insurance?

Is your LALC required to get insurance under a contract or agreement it has entered into?

Even if not required by law or contract, does your LALC need insurance?

Is your LALC required by law to get insurance?

There are national and New South Wales laws which make it compulsory for individuals or organisations, including LALCs, to get insurance in certain circumstances.

The two most common examples are:

Workers compensation insurance

As an employer, your LALC is required by law to get workers compensation insurance for its employees

Compulsory third party (CTP) motor vehicle insurance

If your LALC owns or leases vehicles, it is required by law to insure against injuries to third parties.

In New South Wales, you will need to obtain CTP insurance and then provide evidence that you have it to register your vehicle.

There may also be other laws that require LALCs operating in a particular field (such as social or community housing) or a profession (such as health) to get other types of insurance.

You should seek legal advice about whether there are any laws that might require your LALC to take out a particular type of insurance.



More information

Find more information about workers compensation insurance (and other types of insurance) in our [insurance and risk management guide for community organisations](#).

Is your LALC required to get insurance under a contract or agreement it has entered into?

Your LALC may enter into an agreement or contract with another party which requires the LALC to take out insurance for the LALC's benefit and, sometimes, for the other party.

For example, if your LALC is going to lease an office, building or land from another party, the lease agreement (which is a contract) may require you to have public liability insurance. You may be asked to provide evidence (such as a letter from the insurance company or a 'certificate of currency') to show that your LALC has taken out the required insurance.

Every time your LALC is considering entering a contract, read the contract carefully to check whether it requires your LALC to get insurance. If the contract does require your LALC to get insurance, check:

- whether it specifies the type of insurance you need
- how long you must have the insurance for
- the amount the insurance policy must cover, and
- who is to be insured under the policy

If your LALC does not take out insurance required under a contract, it will be in breach of the contract and may be at risk of a claim for loss or damages. If the insurance requirements in a contract are unclear, seek legal advice.



Tip

Even if the contract doesn't require your LALC to take out insurance, consider whether it would be a good idea to do so.

For example, some contracts might require your LALC to promise to compensate (or 'indemnify') the other party for loss or damage that they suffer either directly or indirectly because of the contract. If you agree to this under the contract, you may be agreeing to pay for damage that may occur because of your LALC's actions or the actions of others. You may need to seek advice about whether you can get insurance to cover your LALC for these risks before you sign the contract.



More information

Find more information on contracts in [our fact sheet on entering into important agreements for LALCs](#).

Even if not required by law or contract, does your LALC need insurance?

Even if not required by law or by contract, your LALC should consider whether it needs particular types of insurance, depending on its activities and operations.

Your LALC may wish to take out insurance if it recognises that:

- it faces certain risks (such as fire, floods or fraud)
- the risks it faces can't be avoided or minimised by putting risk management procedures in place, and
- the LALC can't afford to pay the amount of money that would be involved if the risk eventuated

To determine what risks your LALC faces (and what can be done to manage these risks), conduct regular and ongoing risk assessments in relation to the LALC's activities and the roles of its workers.

The following table is one example of a simple risk management tool.

Identify	Evaluate	Manage	Review
<ul style="list-style-type: none"> • What is the risk? • What could happen if the risk eventuates? 	<ul style="list-style-type: none"> • Rate how likely it is that the risk could happen (high, medium or low) • Rate the possible risk impact (high, medium or low) 	<ul style="list-style-type: none"> • List actions that can be taken to avoid or minimise the risk • Give each action a priority rating (high, medium or low) 	<ul style="list-style-type: none"> • Identify the person responsible for reviewing and reporting on the risk • Identify the date the review or report is required



More information

Find more information about identifying and managing risk in our [insurance and risk management guide for community organisations](#).



What types of insurance should your LALC consider?

The types of insurance cover your LALC needs will depend on the LALC's operations and activities. Some of the different types of insurance your LALC may consider taking out are summarised below.

Discuss what type of insurance cover is appropriate and recommended for your LALC with your insurance broker or seek legal advice.

Type of insurance policy	Who does it protect?	What does this type of insurance cover?
Volunteer personal accident insurance	Volunteers	Covers volunteers for certain expenses and lost income incurred because of an accident or injury sustained while performing volunteer work for your LALC.
Workers compensation insurance	Employees	Covers employees who are injured at work or become sick due to their work. Workers compensation insurance is compulsory for employers.
Public liability insurance	Members of the public	Covers claims relating to personal injury or property damage due to a breach in a LALC's duty of care to third parties. This insurance is important when your LALC is engaged to provide a good or a service that interfaces with the general public.
Professional indemnity insurance	Experts or advisors	Covers breaches of professional duty, as well as misleading and deceptive conduct claims. If your LALC provides professional advice or services such as designs, specifications and project management you might need this type of insurance.
Management liability insurance	Directors and officers	Covers claims arising from wrongful alleged acts against directors, officers and board members. This includes coverage and incurred costs for investigations by official bodies including the Independent Commission Against Corruption (ICAC).
Building or contents insurance	Property and assets	Covers your property and its contents (such as furniture, appliances, clothes, electronics) for loss or damage caused by events (such as fire, flood, storm, or theft).
Landlords insurance		Covers loss or damage, including loss of rent, where certain events occur that damage an investment property.
Fraud insurance		Covers financial damages resulting from fraud committed by third parties.
Cyber liability insurance		Covers loss and liability arising from data breaches and cyber events.
Product liability insurance	Selling goods or products	Covers personal injury, property damage and other losses caused by a defective product. Defects in products can include design defects, manufacturing defects, and instructional errors such as inadequate labelling that render the product dangerous.
Comprehensive motor vehicle insurance	Vehicles	Covers damage to your own and other people's property after an accident, plus damage from events like floods, storms, fire and theft.
Compulsory third party (CTP) insurance		Covers an at fault driver's liability for costs and compensation related to a third party's injuries. CTP insurance is compulsory if you have a motor vehicle.



What should your LALC do if something goes wrong?

If something goes wrong at your LALC, you need to take certain steps to maximise the benefit that will be available under an insurance policy.

Notify your insurer

It's important to notify your insurer as soon as possible of:

- any event that causes loss or damage (such as storm damage to a building owned by your LALC)
- a claim made or threatened against your LALC (for example, a member of the public brings a legal claim against your LALC), or
- any change in circumstance which may lead to a claim in future (do this before renewing your policy)



Example

A LALC becomes aware that a tenant has paid a builder for an extension on a community housing property, without the LALC's permission. The LALC should notify its insurer of this, as the LALC may wish to make a claim on its building insurance in the future (for example, if the building's extension suffers storm damage).

Claims against your LALC

Claims against your LALC may be made in a number of ways – for example, by receiving a letter of demand or by another party notifying your LALC of a legal claim against it.

An insurance policy may exclude cover for any claims made under the policy which arise from 'known circumstances' (for example, an issue which you became aware of before the start of each annual insurance policy renewal, which might later give rise to a claim).

This means it's very important to notify your insurer of anything that could give rise to a future claim as soon as possible, so that the issue can't be excluded from cover under the policy because of 'known circumstances'.

Dispute with your insurer

There may be times where you disagree with your insurer – for example, where the insurer refuses to accept a claim. There are steps you can take if you are unhappy with your insurer's decision.

If you don't agree with your insurer's decision, you can ask them to look at the matter again. This is called an **internal review**. The insurer must provide written reasons why they have rejected your claim, and you have the right to ask for copies of any reports, transcripts, recordings, statements or other information that the insurer relied on in assessing your claim.

Where you request an internal review, an independent person who works for the insurer will consider the matter again. They must respond to your request for internal review within 45 days.

If you still don't agree with the decision following an internal review, you can make a complaint to the Australian Financial Complaints Authority (**AFCA**). This is called **external dispute resolution**.

AFCA will ask the insurer to respond to your complaint within 21 days. The insurer may contact you in this time to try and resolve the dispute. If you can't resolve the dispute, the insurer will send their response to you and AFCA.

If you don't agree with the insurer's response, AFCA will try help resolve the dispute between you and the insurer. If you and the insurer can't reach a decision, AFCA will make a recommendation. The recommendation is not binding unless it's accepted by both the LALC and the insurance company.

If the parties don't accept the recommendation, AFCA will proceed to determination – for example, the AFCA might determine that your claim should be covered by the insurance company.

A determination by AFCA is final and your LALC will have 30 days to accept or reject the determination. If you accept the determination, you and the insurer will have to follow the decision.

If you don't accept the determination, you may be able to take other action against the insurer, including going to court. You should get legal advice before you go to court.



More information

See our [LALC Service Information Resources webpage](#) to access resources specifically targeted to LALCs.

Our website also has resources for not-for-profit community organisations on a range of related topics which may be useful to your LALC:

- **Important agreements** – This section includes resources on contracts, government funding agreements, IT agreements and leases.
- **Governance** – This section covers governance and includes information on inducting new board members, governance standards for registered charities, financial difficulties and more.
- **Insurance and risk** – This section covers insurance, background checks, negligence, work healthy and safety, criminal conduct and more.
- **Events** – This section provides information on organising and holding events, including issues related to food handling, alcohol service, and sport and adventure activities.
- **The people involved** – This section covers the relationships your organisation will have with clients, employees, members and volunteers, including recruitment, resignations and disputes.

Justice Connect's LALC Service provides free legal information, training and advice to LALCs. To find out more visit [our website](#) or [contact the LALC Service](#).

The [General Insurance Code of Practice](#) is published on the [Insurance Council of Australia website](#).

Relevant legislation

- [The Aboriginal Land Rights Act 1983 \(NSW\)](#) is the key piece of legislation that regulates LALCs.
- [The Aboriginal Land Rights Regulation 2020 \(NSW\)](#) is another supporting piece of legislation that also regulates LALCs.