



JMD ROSS

INSURANCE BROKERS

AFTER THE EVENT  
INSURANCE

# WHY ARRANGE AFTER THE EVENT INSURANCE?

After The Event Insurance (ATE) is primarily utilised by plaintiffs, often on the recommendation of their legal advisors, Insolvency Practitioners and Litigation Funders. The product can add value in transactional risks by 'de-risking' liabilities associated with, for example, mergers and acquisitions.

ATE Insurance provides the following benefits:

## FOR CLAIMANTS

- **The opportunity to pursue legitimate rights:** ATE Insurance enables claimants to pursue damages with confidence knowing that they will be indemnified for adverse costs up to the policy limit. In particular, smaller enterprises are empowered to contest larger and stronger defendants that may have access to significant resources.
- **Balance sheet protection:** ATE Insurance can serve to expunge contingent liabilities held on the balance sheet to address prospective adverse costs liabilities.

## FOR LEGAL PRACTICES

- **Competitive advantage:** An understanding of ATE Insurance provides a competitive advantage for the Practice, and is a valuable tool in the generation of new business opportunities. It can be addressed with existing, or prospective, clients in advance or after a commercial dispute has arisen. In all scenarios, JMD Ross seeks to ensure that the Practice maintains a close involvement with submissions put to Insurers, and remains involved throughout the process.
- **Insurance specialists:** JMD Ross' senior management team is available to meet, under the direction of the Practice, with the Practice's clients and prospects to identify the benefits of ATE Insurance and the processes involved in expeditiously securing competitive insurance terms.

## FOR INSOLVENCY PRACTITIONERS

ATE Insurance is attractive to Insolvency Practitioners as it provides indemnity for personal liabilities that can be incurred from appointments. Key areas of risk are where:

- Liquidator statutory recovery actions under the Corporations Act such as, claims in relation to insolvent trading, unfair preferences uncommercial transactions or director related recoveries prove to be unsuccessful or if the claim is abandoned.
- Before going into administration a company had commenced a legal action and the Practitioner elects to continue to pursue this action without success.
- New Proceedings are commenced after appointment and these Proceedings prove to be unsuccessful and the company does not have funds to pay adverse costs. In this instance, whilst the claimant is the company, The Practitioner can be liable for those costs.
- A Bankruptcy Trustee becomes liable for unsuccessful claims brought by the bankrupt party before the Trustee's appointment.

## FOR LITIGATION FUNDERS

The policy can reduce the Funder's exposure and protect the funded party, including a class in a representative action, where there is an adverse outcome.

## FOR THOSE INVOLVED IN PROVIDING ADVICE ON MERGERS AND ACQUISITIONS

The experience of JMD Ross to identify where ATE Insurance can enhance the suite of transactional risk insurances, can be drawn upon.

“AS A LEGAL PRACTITIONER I HAVE ENGAGED WITH JAMES IN HIS CAPACITY AS A SPECIALIST BROKER FOR OVER 17 YEARS I AM CONFIDENT THAT JAMES WITH HIS SIGNIFICANT TECHNICAL EXPERTISE PERTAINING TO AFTER THE EVENT INSURANCE AND WITH HIS SOLID RELATIONSHIP WITH THE KEY UNDERWRITERS LOCALLY AND IN THE UNITED KINGDOM WILL CONTINUE TO PROVIDE THE LEGAL FRATERNITY AND OTHERS SUCH AS INSOLVENCY PRACTITIONERS WITH QUALITY BROKING SERVICES IN THIS INSURANCE SECTOR.”

**Andrew Sutherland, Principal**  
Cornwalls

## ATE INSURANCE PREMIUM OPTIONS AND DEED FOR SECURITY FOR COSTS

Prior to issuance of a policy, a premium type is negotiated to meet the requirement of the submission:

- **Full premium:** The premium is calculated as a percentage of the policy limit and is paid in full to the Insurer at the inception of the policy. The amount paid is generally lower than with other premium types as regardless of the outcome of the case, the premium is non-refundable.
- **Contingent premium:** The full premium is set when the policy is issued. A minimum and non-refundable percentage of this premium, often 10-15 percent, is paid at the inception of the policy. The remainder of the premium will only be due after a successful outcome. Should the case settle favourably before a hearing then at that point a lower amount of the remaining premium is paid.
- **Fully contingent premium:** ATE Insurers can, in some instances, offer a fully contingent premium where the premium will only be payable on a successful outcome. Insurers would closely consider the merits of the claim when considering this premium type.

ATE Insurers can also be approached to offer terms on a 'portfolio' basis, whereby the Insurer undertakes that during an agreed period, all ATE Insurance requirements that meet pre-agreed criteria and terms will be covered.

A portfolio approach may well deliver premium advantages and facilitate in the ease of management.

ATE Insurers can generally offer a **Deed for Security for Costs** as an adjunct to the ATE Insurance policy. The fee for a Deed are typically 10 per cent of the Deed amount, of which the fee is non-refundable.

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“I HAVE HAD A POSITIVE EXPERIENCE WITH JAMES IN HIS SUCCESSFUL NEGOTIATION WITH INSURERS, SOLICITORS, AND LITIGATION FUNDERS IN SECURING AFTER THE EVENT INSURANCE FOR COMPLEX REPRESENTATIVE ACTIONS. AS A SPECIALIST BROKER, AND WITH STRONG CONNECTIONS WITH KEY MARKETS, JAMES ADDED SIGNIFICANT VALUE IN THIS PROCESS. AS THE REQUIREMENT FOR AFTER THE EVENT INSURANCE CONTINUES TO EXPAND IN AUSTRALIA WITH APPLICATIONS INCLUDING FOR INSOLVENCY PRACTITIONERS, I FORESHADOW THAT JAMES WILL REMAIN A KEY PARTICIPANT IN THE AFTER THE EVENT INSURANCE SECTOR.”

**Robert White, Barrister**

12 Wentworth Selborne Chambers – Sydney Barristers

## FOR MORE INFORMATION, CONTACT:

**James Walker**

Authorised Representative (1246967)

JMD Ross Insurance Brokers Pty Ltd

P: (02) 9906 1199

M: +61 414 241 690

E: [jwalker@jmdross.com.au](mailto:jwalker@jmdross.com.au)

A: Level 6, 1 Chandos St, St Leonards NSW 2065

W: [jmdross.com.au](http://jmdross.com.au)

ABN: 59 001 706 289

AFSL: 238 356