Australian Government
Department of Finance

Comcover Information Sheet
Management of Indemnities

December 2022

Management of Indemnities

Contracts, deeds or other documents may include indemnity clauses which potentially extend the liabilities of Comcover Fund Members, and effectively have Fund Members assuming the liabilities of a third party.

Comcover Statement of Cover

General Exclusion 18(3) of the Comcover Statement of Cover advises the limitations of cover provided:

Comcover will not pay for liability arising out of any indemnity unless:

- the liability would have arisen in the absence of such indemnity (for example, under common law); or
- the indemnity is contained in a contract, deed or other document where the contract, deed or other document was entered into prior to 1 July 2004; or
- the Fund Member has followed Australian Government policy on the issuing and managing of indemnities, and, after making reasonable inquiries, it is assessed that:
    - the likelihood of the event giving rise to the liability occurring is less than 5%; and
    - the most probable expenditure that would need to be made if the event giving rise to the liability occurred is less than $5,000,000.

If the indemnity provided falls within the above parameters, it is automatically covered under the Statement of Cover.

If the indemnity does not fall within those parameters, Comcover may consider extending cover to the additional insurable risks assumed. The Fund Member is to prepare a business case outlining:

- the indemnity clauses, plus any other relevant clauses of the contract, deed or other document;
- legal advice which specifically addresses the additional insurable risks to be assumed; and
- a copy of the risk assessment relevant to the additional insurable risk under consideration, including the consequence in dollar terms.

While Comcover will consider the request for cover, it cannot evaluate or provide advice on the business practices of Fund Members, nor can it coordinate approval from other areas of the Department of Finance. Fund Members must follow all applicable government policy, rules and guidelines in this respect. Depending on the likely level of expenditure, Fund Members may also need to engage with their Agency Advice Unit (AAU) and the PGPA Advisory Branch.

Comcover Contact

If you have any questions in relation to cover for indemnities, please contact your Relationship Manager directly. If you do not know the Relationship Manager assigned to your entity, please call 1800 651 540 - Option 3 or email comcover@comcover.com.au.