



Communities
& Justice

Short-Term Indemnity Scheme Program Guidelines



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1 Purpose

These program guidelines provide an overview of the Short-Term Indemnity Scheme (the Scheme) including the aim of the Scheme, scope, terms and conditions and the approach to implementation.

This document is intended only as a guide. The legal terms and conditions of the Short-Term Indemnity will be contained in a separate offer of indemnity that will be provided to eligible service providers after an application has been received and assessed by the Department of Communities and Justice (DCJ). Service providers should review the offer of indemnity carefully as it will contain the terms and conditions that will govern the provision of the Short-Term Indemnity.

2 Aim

Under the Scheme, DCJ will provide a short-term financial indemnity, underwritten by the Treasury Managed Fund (TMF), to eligible contracted out-of-home care (OOHC) and youth homelessness providers who have been unable to obtain insurance cover for physical and sexual abuse (PSA) claims.

The Scheme is a temporary measure which aims to address the immediate risk to OOHC and youth homelessness services, arising from the withdrawal by commercial insurers of PSA cover from the market, whilst work to develop a sustainable and long-term solution is progressed.

3 Eligibility

Non-government organisations currently contracted by DCJ to deliver OOHC and/or youth homelessness services who have been unable to obtain commercial insurance cover for PSA claims are eligible to participate in the Scheme.

This includes service providers who are contracted to deliver OOHC and or youth homelessness services under the following programs:

- Permanency Support (OOHC) Program (PSP)¹
- Residential OOHC
- Short-Term Emergency Placement Model (STEP)
- Specialist Homelessness Services (SHS) (including Service Support Fund)
- Homelessness Youth Assistance Program (HYAP)
- Premier's Youth Initiative (PYI)

¹ This includes Temporary Care Arrangement (TCA) placements delivered under the PSP

Also included in the category of eligible service providers are service providers engaged via fee-for-service to deliver:

- 'Other' OOHC placement types including Alternate Care Arrangements (ACAs), Individual Placement Arrangements (IPAs), Overnight Respite under the Casework Support Scheme (CSS) and Special Care placements.
- Youth accommodation services.

4 Scope and Limit

4.1 Scope of the Indemnity

The indemnity will be available to eligible service providers from either the date the service provider applies to the Scheme or from when the service provider was unable to obtain or ceased to have insurance cover for claims of physical and or sexual abuse, up until 31 December 2024.

The indemnity will be provided from no earlier than 1 February 2021 for service providers who join the scheme by 30 September 2022. For service providers who join the scheme on or after 1 October 2022, the indemnity will be provided from no earlier than the date the service provider applied to the scheme.

The period during which the cover will apply is referred to in this document as the indemnity period.

The indemnity will cover physical abuse and/or sexual abuse claims made against the service provider where:

- the Claim was first made against the service provider during the indemnity period; and
- the Claim was notified to icare during the indemnity period; and
- the Claim relates to an alleged Incident(s) of physical and/or sexual abuse of a child or young person that first occurred after 30 June 2017; and
- the Claim arises from the delivery of contracted OOHC or youth homelessness services by an eligible service provider on behalf of DCJ.

The indemnity will include legal liability and defence costs incurred in connection with the investigation, defence and/or settlement of a physical and or sexual abuse claim.

4.2 Limit of Liability

The amount of the indemnity provided to the service provider will be limited to the sum of \$5 million (inclusive of costs such as defence costs and inclusive of GST) for any one Incident, and \$5 million in the aggregate for all claims made against the service provider.

In the event the costs associated with one or all claims in the period exceed \$5 million, the service provider will bear those costs above \$5 million.

The service provider will be required to cover the first \$15,000 (inclusive of GST) of each and every claim.

5 Conditions and Limitations

5.1 Conditions of the Indemnity

The indemnity will be provided to the service provider subject to the following conditions:

- in the event of a claim, icare will manage the conduct of the claim on behalf of the service provider and will defend or settle a claim or matter as it sees fit.
- in the event of a claim, the service provider must cooperate with icare by:
 - not settling, or offering to settle, any claim, or incur any costs, charges, fees or expenses, or admit any liability in connection with any claims, without the prior written consent of icare; and
 - providing icare with any and all available and relevant information, evidence, documentation, assistance and co-operation in connection with the claim in a timely manner; and
 - executing and/or signing documents including but not limited to statements, affidavits, deeds and releases in connection with the claim; and
 - at all times act in good faith and make full and frank disclosures; and
 - fully assisting and cooperating with icare in the defence, investigation or settlement of a matter giving rise to a claim.

5.2 Limitations of the Indemnity

DCJ will not indemnify a service provider:

- where the indemnity would extend to any individual or person involved in or causing or assisting in the abuse of any person;
- for claims arising from any illegal activity by, or on behalf of, the service provider, except where:
 - the service provider had no knowledge of the illegal activity
 - the illegal activity was not a deliberate act of the service provider
- where an indemnity is available from previous insurers;

- where the service provider was aware of the Incident or Circumstances prior to inception of the indemnity period and failed to declare knowledge of the Incident or Circumstance to icare before the inception of the indemnity or to their previous insurer (where relevant);
- for Incidents or Circumstances that are not Claims notified to icare during the indemnity period, even where a Claim is made after the indemnity period;
- in respect of a fine or penalty, the insurance of which is not allowed or is prohibited by law; and
- in respect of any punitive, exemplary or aggravated damages.

6 Approach to implementation

6.1 Extension of DCJ's TMF cover

The indemnity will be provided to eligible service providers as an extension of DCJ's cover under the TMF, which is managed by icare on behalf of NSW Treasury.

icare will create and maintain a separate policy for DCJ specifically for the Scheme which will include all service providers who accept an offer of indemnity.

DCJ will pay an additional agency contribution to the TMF for the overall cost of the Scheme.

6.2 Service providers with ongoing contract arrangements

For service providers with ongoing contract arrangements with DCJ, the indemnity will be provided by way of a variation to the service provider's contract(s).

The variation to the contract(s) will include:

- the addition of clauses covering the scope and limit of the indemnity, and the conditions and limitations as outlined in sections 4 and 5 of the program guidelines; and
- indemnity fee

6.3 Service providers without ongoing contract arrangements

For service providers that deliver OOHHC placements via fee-for-service arrangements with DCJ, the indemnity will be provided by way of a variation to the Standard Offer Agreement (SOA) or Panel Deed that the service provider has with DCJ. As per above, the variation will include the addition of clauses covering the scope and limit of the indemnity, and the conditions and limitations as outlined in sections 4 and 5 of the program guidelines.

Where the service provider does not have a SOA or Panel Deed with DCJ, the indemnity will be provided by way of a stand-alone indemnity agreement.

Service providers without ongoing contract arrangements with DCJ will be invoiced the calculated fee for the indemnity.

7 Pricing

Service providers will be required to pay a fee to DCJ to access the Scheme.

The fee will be determined by:

- the type of program(s) or service type(s) the service provider is contracted to deliver;
- the service provider's contracted service levels; and
- the length of the service provider's indemnity period.

8 Application and claims management

8.1 Applying for an indemnity

Service providers will apply to DCJ to access the Scheme. As part of the application process, service providers will be required to provide:

- a claims declaration signed by an authorised representative notifying icare of any Incidents or Circumstances that could give rise to a Claim; and
- details of lapsed, declined or expired insurance cover for PSA, including the insurer and the date cover lapsed, expired or was declined, as evidenced by a copy of correspondence from the service provider's insurer or broker.

Once an application is assessed, DCJ will prepare an offer of indemnity for the service provider, as outlined in sections 6.2 and 6.3 of the program guidelines, and a quote for the cost of the indemnity.

If the service provider wishes to accept the offer of indemnity, the contract variation letter or indemnity agreement must be signed by the service provider's authorised signatories or delegates.

Once the letter of contract variation or indemnity agreement has been executed, DCJ will notify icare of the service provider's indemnity and provide icare with either a copy of the service provider's letter of contract variation or indemnity agreement.

8.2 Applying for an extension of indemnity

Service providers can apply to DCJ to extend the period of cover under their organisation's indemnity agreement until 31 December 2024. The application process is:

- Service providers will be required to provide confirmation of their organisation's particulars, including nominating two authorised signatories.
- Once the application is received by DCJ, an offer of extension will be prepared, including details of the revised indemnity fee.
- If the service provider wishes to accept the offer of extension, a Letter of Extension must be signed by the service provider's authorised signatories or delegates.
- Once the Letter of Extension is executed, DCJ will notify icare of the service provider's extension of indemnity and provide icare with a copy of the service provider's Letter of Extension.

8.3 Claims management

icare will manage the conduct of claims on behalf of service providers indemnified under the Scheme, even where the claim may settle below the excess amount of \$15,000.

Where a claim is made against one or more service providers and DCJ, icare will allocate separate claim managers to the service provider(s) and DCJ.

icare will notify and may request assistance from DCJ in the event the service provider is not complying with the conditions of the indemnity, and/or a claim is rejected.

9 Dispute handling

Disputes arising in relation to the application process or an offer of indemnity to a service provider will be managed by DCJ.

Disputes arising in relation to the management of a claim will be managed by icare, who will provide documented reasons for its decisions on indemnity and liability to the service provider. A decision by icare on a claim can be referred to icare's internal dispute handling procedure.

10 Glossary

The table below is a list of terms, keywords and/or abbreviations used throughout this document.

Term	Definition
Claim	Any demand in writing by a third party against the service provider for compensation or damages, and includes a statement of claim, summons, complaint or other originating process.
Circumstance	Any fact or situation which the service provider officials or any insured knew about prior to the commencement of the indemnity period and which a reasonable person in the circumstances would have considered might result in a claim covered by the indemnity. Circumstance includes notification of someone making a claim against the redress scheme.
Excess	The payment a service provider will need to make if they make a claim under the Short-Term Indemnity Scheme and icare accepts that claim.
icare	icare is a NSW government agency responsible for managing the TMF on behalf of NSW Treasury. icare will manage the conduct of all claims made by service providers under the Short-Term Indemnity Scheme.
Incident	Includes one or multiple incidents of sexual and/or physical abuse involving a person which takes place over multiple policy periods and shall be deemed as one Incident and shall be subject to the coverage and limits in effect at the time of the first incident.
Physical Abuse	Any intentional act causing injury or trauma to another person by way of bodily contact and includes mental illness arising as a direct result of that contact.
Physical and Sexual Abuse (PSA) cover	Insurance cover provided for physical and/or sexual abuse claims, also termed 'sexual abuse' and/or 'molestation' cover.
Sexual Abuse	Any unwanted, criminal or improper sexual behaviour by one person upon another, including adult to child or child to child, whether such act is the subject of criminal investigation or not.
Treasury Managed Fund (TMF)	The Treasury Managed Fund is a self-insurance scheme created by the NSW government to insure NSW government agency risk.