

# Special Liability Insurance – Physical & Sexual Abuse (PSA) Policy Wording

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# Important Information

## About icare

At icare, we provide insurance and care services to the businesses, people and communities of NSW.

We provide care and support to businesses, government agencies, builders, homeowners, and those injured on NSW roads or in the workplace. Our purpose is to care for the people of NSW, building confidence and trust so our communities can thrive.

## Our Special Liability Scheme

In 2024, the NSW Government passed legislation to create a scheme to assist out-of-home care services and youth homelessness service providers who have been unable to obtain insurance to cover claims resulting from physical and sexual abuse. The scheme has been created to ensure essential service delivery is able to continue where appropriate.

The purpose of the scheme is to provide a long-term solution, backed by government, for the ongoing lack of available and affordable physical and sexual abuse insurance coverage in the private insurance market.

Non-government organisations contracted to deliver out-of-home care services and/or youth homelessness services on behalf of the NSW Department of Communities and Justice are eligible to participate in the scheme.

## About this document

The purpose of this document is to set out the terms and conditions of the special liability insurance cover provided by icare.

This document contains two sections:

1. The 'Important Information' section, which provides general information about the special liability insurances
2. The Policy Terms, which contains terms and conditions of the special liability insurance

Once your proposal form is accepted, you will be issued the Policy Terms and the Policy Schedule. The terms of any endorsements noted on your Policy Schedule contain the full terms of the contract of insurance between you and icare, including conditions and limitations of the cover provided by icare.

You should read this document carefully to understand the terms of your cover and the benefits and risks of special liability insurance before you apply for this insurance.

## Contact Us

icare (Insurance and Care NSW ABN 16 759 382 489) is the issuer of this insurance policy. icare's registered office is Level 10/309 Kent Street, Sydney NSW 2000. Call us on (02) 7922 1366, email us at [NGOPSA@icare.nsw.gov.au](mailto:NGOPSA@icare.nsw.gov.au) or visit us at [icare.nsw.gov.au/Special-Liability-Insurance-Scheme](https://icare.nsw.gov.au/Special-Liability-Insurance-Scheme)

# Changes To The Policy Wording

The information in this Policy Wording was current at the date of preparation and is subject to change. We may update the information from time to time without notifying you if the change is not materially adverse to you. You can find out if we have updated the Policy Wording and obtain a copy of any updated information by contacting us on (02) 7922 1366 or visiting our website at

[icare.nsw.gov.au/Special-Liability-Insurance-Scheme](https://icare.nsw.gov.au/Special-Liability-Insurance-Scheme) We will provide you with a free copy of any updates by email if you request them.

## Cooling Off Period

You have 21 days from the commencement of this insurance policy to determine if the policy meets your needs. During this time, you may cancel the policy by giving notice to us via the email address or postal address shown under the ‘Contact Us’ section above. Any refund of the premium may be reduced by the amount of non-refundable tax or duty paid on the premium and/or reasonable administration costs that we have incurred in connection with the policy. No refund of premium is payable if you have made a claim or intend to claim under the policy. You may also be able to cancel the policy after the cooling off period in limited circumstances. Please refer to the terms of the policy relating to cancellation.

## How your excess and premium are calculated

The following table summarises how certain key factors will affect your premium.

| Factors affecting your premium  | What factors increase your premium   | What factors decrease your premium   |
|---|--|--|
| Size of Organisation – Number of Children in out-of-home care and youth homelessness services | Large number of children in care.  | Small number of children in care.  |
| Claims History  | High frequency of claims or incidents and/or higher claim amounts.   | Low frequency of claims or incidents and/or lower claim amounts.   |
| Risk Management   | Poor risk framework and lack of training.  | Strong risk management framework, policies, procedures, and protocols, and regular training.                   |
| Number of Years of Experience   | New business venture with minimal history.   | Well established business operations with documented history.  |
| Exposure to Historical Claims   | Organisation does not hold cover under a previous insurance policy for incidents that occurred on or after 30 June 2007. | Organisation holds cover under previous insurance policy for incidents that occurred on or after 30 June 2007. |

Your excess is determined by your annual out-of-home care services and youth homelessness services funding from the NSW Department of Communities and Justice as follows:

- \$10,000 per claim – if your NSW Department of Communities and Justice out-of-home care services and youth homelessness services funding is \$20,000,000 or less per year; or

- \$50,000, per claim – if your NSW Department of Communities and Justice out-of-home care services and youth homelessness services funding is more than \$20,000,000 per year.

## NSW Stamp Duty

NSW Stamp Duty may be payable by you in relation to premiums. If you are a non-profit organisation having as one of your objects a charitable, benevolent, philanthropic or patriotic purpose, your purpose may be eligible for a NSW Stamp Duty Exemption. To apply for the NSW Stamp Duty Exemption please visit [revenue.nsw.gov.au/taxes-duties-levies-royalties/insurance-duty/exemptions](https://revenue.nsw.gov.au/taxes-duties-levies-royalties/insurance-duty/exemptions) and follow the instructions on that web page. For NSW Stamp Duty to be removed from your payable premium, you must submit to us your letter from the Office of State Revenue confirming your exemption, which will be valid for 3 years.

## Resolving Complaints and Disputes

icare is committed to resolving any complaints in relation to our products and services, or the handling of personal information. Our process has the following key stages.

1. Talk to us, discuss your complaint with us by calling (02) 7922 1366 or sending an email outlining your concerns to [NGOPSA@icare.nsw.gov.au](mailto:NGOPSA@icare.nsw.gov.au) and one of our team members will assist you. We will acknowledge receipt of your complaint within one business day or as soon as practicable. The team member will refer you to a manager if they are unable to resolve the matter for you. If you are not satisfied with the response, please go to step 2.
2. You may request a review of your complaint by our Dispute Resolution Committee. Our service team will contact you if they require further information and they will provide you with an outcome within 30 calendar days of us receiving notice of the complaint, unless a longer period of time is reasonably required to consider and resolve your complaint. Please ensure you provide us with your preferred contact details.

## Retention of Documents

It is important that you read the following documents and keep them in a safe and convenient place:

1. this Policy Wording;
2. your policy schedule; and
3. any endorsements.

Remember to regularly review your insurance policy, particularly at renewal or when your operations change, to ensure your policy provides the cover that you currently need.

Incidents which may result in a claim under the policy sometimes only come to light after a long period of time, in some cases many years. The long-term security of documents that could be relevant to a claim, including your risk management procedures, any employment records and your policy documents can be of crucial importance should a claim arise in the future. All relevant documents should be securely retained for many years to ensure that they are available in the event of any allegations arising. We recommend holding such documents for a period of 50 years. The individuals mentioned in the documents should also be notified that information about them may be held for a long period of time as part of a client protection risk management programme. In addition, secure storage for all such documents should be arranged in the event that you cease operations. Generally acceptable methods of

storage in these circumstances include storage at the office of a solicitor, accountant or at a professional secure storage company.

As your insurance provider, icare will also collect and hold incident reports in case any claims are made in future, which will be destroyed after 50 years from the date of incident.

## Your Privacy

Due to the nature of this policy, icare places the highest priority on protecting the privacy of personal information we handle.

### Why we collect personal information

The information we collect is used to assist us to provide you with our products and services, including to issue you with cover, to work out the premium payable, to process and settle claims, and generally to manage our relationship with you.

If you do not provide the personal information we require, we may not be able to provide you with our products and services.

### How we collect personal information

Information is generally collected from you when you are applying for or enquiring about our insurance products, or when making a claim. We may also collect your personal information from the NSW Department of Communities and Justice and from people who are involved in a claim, or who assist us in investigating or processing claims. At times we rely on third-party suppliers (agents, lawyers, other insurance companies, assessors, investigators, loss adjusters, market research and mailing houses) to perform specialised activities for us. Your personal information may be provided to them so that they can carry out their agreed activities. They are bound by confidentiality agreements and are prohibited from using the information for any other purpose. Your personal information may also be provided to the NSW Department of Communities and Justice in connection with your provision of out-of-home care services and/or youth homelessness services under contract from the NSW Department of Communities and Justice.

## Risk Management Resources

The NSW Office of the Children's Guardian is a statutory NSW government agency. It oversees organisations that provide services to children.

The NSW Office of the Children's Guardian regulates and oversees organisations to uphold children and young people's right to be safe by building capability and using risk-based enforcement powers. It enables organisations to take action to prevent harm to children and young people through risk identification and management.

The NSW Office of the Children's Guardian:

- promotes child safe practices
- identifies gaps in protection
- monitors performance and trends, and
- detects and acts on non-compliance.

The NSW Office of the Children's Guardian requires organisations to use, and provides guidance on, the Child Safe Standards CSS under the *Children's Guardian Act 2019* (NSW) to implement child safe

practices within their organisations. Organisations are expected to demonstrate how they create and maintain cultures where children's interests and rights are prioritised.

Free training events, resources and eLearning are available from the NSW Office of the Children's Guardian to help your organisation be child-safe. More information is available on their website at [ocg.nsw.gov.au/training-and-resources](https://ocg.nsw.gov.au/training-and-resources)

## Policy Terms

### The Contract between you and icare

If we accept your proposal for insurance cover, and in consideration for payment of your premium, we will insure you under this policy as shown in your policy schedule. Your insurance commences from the time we accept your proposal or variation and premium and concludes at 4.00pm Australian Eastern Time (Australian Eastern Daylight Savings time when applicable) on the final day of the period of insurance shown in the policy schedule. If you do not comply with the terms of this policy, we may reduce or cancel your cover if and to the extent that your non-compliance prejudices our interests.

## Definitions and interpretation

### Definitions

Certain words and phrases that appear in this policy in *italics* have special meanings as set out below.

**authorised carer** means any person that has been engaged and authorised by a NSW designated organisation to provide services to you or on your behalf for your benefit in the carrying out of your operations, for providing services to you or on your behalf.

**child** means a person who is under the age of 16 years.

**claim** means a claim for indemnity under this *policy*.

**compensation** means monies that you are ordered to pay under a judgment or award made by a judicial or quasi-judicial body, or agree to pay to settle a *proceeding*, in respect of any *occurrence* covered by this policy, but does not include costs incurred by *you* to comply with any non-monetary relief. For the avoidance of doubt, compensation includes legal costs, interest and other costs, that you are ordered to pay, or agree to pay to settle a *proceeding*.

**counselling services** means the giving or provision of counselling or advice to a child or young person in connection with your *operations*.

**defence costs** means any reasonable costs and expenses incurred by *us*, or by *you* with our prior written consent (such consent not to be unreasonably withheld), for legal representation in defending, investigating, attending or monitoring a *proceeding*, official investigation, examination, inquiry or a *proceeding* or like legal proceeding, including in conducting or defending appeals from a *proceeding*. *Defence costs* do not include revenue forgone as a result of defending a *proceeding*, or the regular or overtime wages, salaries or fees of any official or *employee* of *you* involved in the *proceeding*.

**employee** means any person who is under a contract of service or apprenticeship:

- with *you*;
- with another employer but seconded to work for *you*;
- with *you* under a work experience scheme; or
- in respect of whom you are deemed to be the employer under the *Workplace Injury Management and Workers Compensation Act 1998*.



**excess** means the amount you must contribute towards each *claim* under this policy as shown in the policy schedule or any endorsement.

**known circumstance** means any fact, situation, event or circumstance which *you* were aware of prior to the start of the *period of insurance* and which a reasonable person would have considered at any time might result in a *claim* under this *policy*.

**known sexual offender** means:

- any person who has been convicted of a sexual offence, including grooming and child pornography;
- any person who has been charged with a sexual offence;
- any person who is currently being investigated by Police for a sexual offence, although charges may not have been laid; and
- any person who has been the subject of an adverse finding of sexual misconduct in a child-related workplace investigation.

**legislation** shall mean any Act of the Parliament of the Commonwealth of Australia or of any State or Territory of Australia, including any subordinate or delegated legislation or regulation made under and any amendment, consolidation or reenactment of any of those Acts.

**limit of liability** means the amount stated in the policy schedule which is the maximum amount we will pay for any one *occurrence* and in respect of all *claims* relating to one or more *occurrences* during the *period of insurance*.

**Named Insured** means the person(s), partnership, company, corporation, organisation or other entity named as the Named Insured in the Policy Schedule.

**NSW Department of Communities and Justice** means the Department of the Public Service known as the 'Department of Communities and Justice' and, if responsibility in relation to the safety and wellbeing of children and young people and protecting them from the risk of harm, abuse and neglect is transferred to another Department of the Public Service, that Department of the Public Service.

**NSW Office of the Children's Guardian** means the Office of the Children's Guardian established by the *Children's Guardian Act 2019*.

**occurrence** means an event or series of events, including continuous or repeated exposure to substantially the same general conditions, which results in physical abuse or sexual abuse of a child or young person:

- (a) receiving *out-of-home care services*; or
- (b) receiving *youth homelessness services*.

All *physical abuse* and *sexual abuse* attributable to one source or original cause shall be deemed to be the result of one *occurrence*.

**operations** means the business activities or services specified in the policy schedule, and any activities or services incidental to them, in any case carried out by you. This includes business activities or services undertaken by *employees*, *volunteers* or *authorised carers* for which you are responsible.

**out-of-home care services** means the provision of 'out-of-home care' as defined in section 135 of the *Children and Young Persons (Care and Protection) Act 1998*. *Out-of-home care services* include services to achieve children and young people's case plan goals of preservation, restoration, guardianship, open adoption and long-term care.

**penalty** shall mean any monetary sum payable by *you* to any regulatory authority, pursuant to an order of a court of competent jurisdiction made under *legislation*, but excluding:

- any amounts payable as *compensation*;
- any compliance, remedial, reparation or restitution costs;
- any amounts payable for income tax, customs duties, excise duty, stamp duty, sales tax or any other State or Federal tax or duty;
- any exemplary or punitive damages;

- liabilities that are not insurable at law;
- any legal and other costs directly attributed to the penalties levied on you; and
- any consequential or economic loss.

**period of insurance** means the interval of time described as such in the policy schedule.

**physical abuse** means physical contact with a *child* or *young person* that causes, or is likely to cause, physical harm that is more than minimal or transient.

**policy** means the contract of insurance entered into between *you* and *us* on the terms of these Policy Terms, your policy schedule and any endorsements noted on *your* policy schedule.

**proceeding** means any writ, summons, application, or other originating legal or written demand or arbitral proceedings, cross claim or counter-claim alleging any liability from an *occurrence* issued against and served upon *you*.

**proposal form** means the most recent proposal form or other document that *you* submitted to *us* to apply for, or to renew, insurance on the terms of this *policy*.

**retroactive date** means 30th June 2007.

**senior counsel** means a barrister in active practice who is entitled to use the post-nominals K.C. or S.C. in any one or more superior courts in Australia or New Zealand.

**sexual abuse** means an act or omission in relation to a person, when the person is a *child* or a *young person*, which exposes or involves them to sexual processes beyond their understanding or contrary to accepted community standards, such as penetrative and non-penetrative sexual contact, voyeurism, exhibitionism, exposure to pornography, grooming, threats, coercion or intimidation deliberately undertaken to overcome the *child* or *young person's* resistance to sexual or indecent conduct.

**subcontractor** means a person that is engaged to deliver part or all of the *out-of-home care services* or *youth homelessness services* that the NSW Department of Communities and Justice has contracted another person to deliver.

**sub-limit of liability** means a limit of liability specified in the policy schedule as applying to a particular kind of claim and identified as a sub-limit of liability in the policy schedule.

**subsidiary** means any organisation or other incorporated entity which by law is directly or indirectly under *your* control, over which you exercise active management and whose accounts are consolidated with your accounts in accordance with applicable accounting standards.

**volunteer** means any person who is engaged by you to work or to provide services to *you* or on your behalf for your benefit in the carrying out of your operations and who receives no monetary remuneration, or any other benefit, for providing services to you or on your behalf.

**we, us, our** means icare (Insurance and Care NSW) ISBN: 978-0-6453353-4-7, acting on behalf of the NSW Self Insurance Corporation.

**you, your, yours** means the *Named Insured*.

**young person** means a person who is aged 16 years or above but who is 24 years of age or under.

**youth homelessness services** means support and/or accommodation for *children* and *young persons* who are homeless or at risk. *Youth homelessness services* also deliver services aimed at intervening early to prevent people from becoming homeless.

## Interpretation

In this policy, unless the context otherwise requires:

- (a) headings are merely descriptive and do not affect interpretation;
- (b) a reference to legislation is a reference to NSW legislation, unless stated otherwise;
- (c) mentioning anything after 'includes', 'including', 'for example', or similar expressions, does not limit what else might be included;
- (d) nothing in this *policy* is to be interpreted against a party solely on the ground that the party put forward this Policy Wording or a relevant part of it;
- (e) the singular includes the plural, and the converse also applies;
- (f) a gender includes all genders;
- (g) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (h) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (i) a reference to an agreement or document is to the agreement or document as amended, supplemented, novated or replaced, except to the extent stated otherwise in this Policy Wording or that other agreement or document;
- (j) a reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form;
- (k) a reference to a party to this contract or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (l) a reference to *legislation* or to a provision of *legislation* includes a modification or re enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (m) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (n) a reference to *dollars* or *\$* is to Australian currency;
- (o) a reference to an amount for which a person is contingently liable includes an amount that that person may become actually or contingently liable to pay if a contingency occurs, whether or not that liability actually arises; and
- (p) a month means a calendar month, unless stated otherwise.

## Special Liability Insurance – Physical or sexual abuse

### What is Covered?

#### Physical Abuse or Sexual Abuse

We will indemnify *you* against legal liability to pay *compensation* in respect of an *occurrence*:

- (a) in connection with your *operations*; and
- (b) in the course of providing services under a contract with the *NSW Department of Communities and Justice*; and
- (c) during the *period of insurance*.

#### Counselling Services extension

We will indemnify *you* against legal liability to pay *compensation* in respect of an *occurrence* caused by any act or omission during the *period of insurance* by any person appointed or authorised by *you* to provide *counselling services*:

- (a) that is not covered by another insurance policy or is in excess of the limitation of liability of any other insurance policy under which *you* are covered for legal liability in connection with *counselling services*; and

(b) provided that *you* have taken all reasonable care and diligence in selecting, appointing and supervising the persons providing *counselling services*.

### **Retroactive date extension**

We will indemnify *you* against legal liability to pay *compensation* arising from an *occurrence* that occurred on or after the *retroactive date* and is notified to us during the *period of insurance*, but only to the extent that *you* are not entitled to be indemnified in respect of that liability under another insurance policy. For the avoidance of doubt, we will not indemnify *you* under this extension if *you* notify us of the *occurrence* outside the *period of insurance*.

### **Subsidiaries extension**

We will indemnify each *subsidiary* of *you* that *you* have specified in your *proposal form* against any legal liability that, were the *subsidiary* a *Named Insured*, we would be required to indemnify the *subsidiary* against, provided that:

- (a) *our* obligation to indemnify the *subsidiary* is subject to the same conditions and limitations as *our* obligation to indemnify *you* under this *policy*; and
- (b) the amount that we will pay in respect of any *occurrence*, and in aggregate in respect of all *claims* made by *you* and each of *your subsidiaries* during the *period of insurance*, will not exceed the *limit of liability*.

## **What is Not Covered?**

Our obligation to indemnify *you* against any loss or liability is subject to the following limitations.

### **Counselling Services**

We will not pay more than the lesser of \$1,000,000 (including *defence costs*) and any amount specified in the policy schedule as the *sub-limit of liability for counselling services*, for any one *claim* and in the aggregate for all *claims* in relation to *counselling services* in any *period of insurance*.

### **Fines and Penalties**

We will not:

- indemnify *you* against any *penalty* arising out of a failure to comply with any lawful consent, demand, determination, notice, order, or the like issued under the *Education and Care Services National Regulations (2011)*; or
- pay more than \$100,000 (including *defence costs*) in respect of any one or more *proceedings* seeking an order for a *penalty* in any *period of insurance*.

### **Direct or intentional abuse**

We will not indemnify *you* against any liability resulting from *physical abuse* or *sexual abuse* that was committed by *you* personally, procured by *you* or knowingly allowed to occur by *you*.

### **Known circumstances**

Except as provided under the retroactive date extension, we will not indemnify *you* against liability resulting from a *known circumstance*.

### **Assumed liability**

We will not indemnify *you* in respect of any loss or liability of another person that *you* have voluntarily assumed, such as under an indemnity, guarantee or other contract or agreement.

This exclusion does not apply to the extent that *you* would have incurred the loss or liability even if *you* had not voluntarily assumed it, such as if *you* would be vicariously liable at law for another person's conduct regardless of any contractual arrangement providing for the same effect.



### Known sexual offender

We will not indemnify you against any liability if, at the time of the conduct giving rise to the *claim*, you had engaged a *known sexual offender* to perform any child-related work, whether as an *employee* or otherwise.

### Missing, expired or failed Working With Children Check (WWCC)

We will not indemnify *you* against any liability if *you* engage any person who does not have a current Working With Children Check clearance for any reason, including if their Working With Children Check expired without being renewed or if they have been refused a Working With Children Check clearance by the *NSW Office of the Children's Guardian*, to perform child-related work.

### Liability indemnified under another insurance policy

We will not indemnify *you* against any liability resulting from or relating to an *occurrence* which, prior to the commencement of the *period of insurance*, has been notified to an insurer under another insurance policy.

However, this exclusion does not apply to the extent that the insurer under the other insurance policy refuses to indemnify you in respect of the liability.

## How Much We Will Pay

### Limit of Liability

Except where we agree otherwise in writing and subject to 'Additional Payments' below, the maximum amount that we will pay in respect of any *occurrence* is the *limit of liability*. However, if your policy schedule specifies a *sub-limit of liability* in respect of a particular kind of occurrence, the maximum amount that we will pay in respect of a *claim* relating to an *occurrence* is the applicable *sub-limit of liability*.

Subject to 'Additional Payments' below, the maximum amount that we will pay in respect of all *claims* relating to one or more *occurrences* during the *period of insurance* is the *limit of liability*. However, if your policy schedule specifies a *sub-limit of liability* in respect of a particular kind of *occurrence*, the maximum amount that we will pay in respect of all *claims* relating to one or more *occurrences* of that kind is the applicable *sub-limit of liability*.

### Additional Payments

Except in respect of *claims* relating to *counselling services*, we will make the following payments in addition to the limit of liability or any applicable *sub-limit of liability*:

- (a) subject to the conditions listed under the 'Defence Costs' below, *defence costs* in relation to an actual or alleged *occurrence*, even if the *occurrence* is groundless, false or fraudulent; and
- (b) if *you* are a natural person, loss of salaries or wages by *you*, net of tax, because of *your* attendance at hearings or trials at *our* request, subject to such loss not being recoverable from any other source.

### Defence Costs

*Our* obligation to indemnify you against *defence costs* is subject to the following conditions:

- where *your* entitlement to indemnity in respect of a *proceeding* has been confirmed in writing by *us*, following *our* assessment of the *proceeding* or the completion of an independent review reasonably required by *us*, we will pay *defence costs* as they are incurred;
- where *your* entitlement to indemnity in respect of a *proceeding* has been confirmed in writing by *us*, we, after considering *your* interest and preference, may take over and conduct the defence and settlement of the *proceeding* at our expense;

- where we have not confirmed *your* entitlement to indemnity in respect of a *proceeding* and we elect not to take over the entire conduct of the defence or settlement of the *proceeding*, we will pay *defence costs* which have been incurred at *our* direction, provided always that any direction to incur *defence costs* is at our discretion after taking into consideration your interest and preference;
- if *proceeding* is withdrawn or we determine that *you* are not entitled to be indemnified in respect of the *proceeding*, we will cease to indemnify you in respect of *defence costs* relating to the *proceeding*; and
- we may recover any *defence costs* paid by us under this *policy* from *you* if and to the extent that it is subsequently established by judgment or other final adjudication that there was no entitlement to indemnity under this *policy*.

## Non-Accumulation

If you are also entitled to indemnity under another insurance policy issued by *us*, the limits of liability under each policy are not cumulative, meaning that the maximum amount that we will pay you in respect of a *claim* covered by both policies shall be the highest *limit of liability* (or applicable *sub-limit of liability*) under the respective policies.

## Other conditions applicable to the policy

Our obligation to indemnify you under this *policy* is subject to the conditions set out below.

If a condition imposes an obligation on *you* and *you* breach that obligation, we may cancel the contract, reduce the amount that we pay to the extent that *your* conduct prejudiced *our* interests (which may result in the amount that we pay being reduced to zero), or both.

## Your Duty of Disclosure

Before *you* enter into a contract of insurance with us in respect of this *policy*, *you* must disclose to us every matter known to *you* that *you* know to be relevant to our decision of whether to insure you under this *policy* and on what terms to provide insurance to *you* (or which a reasonable person in the circumstances would be expected to know to be relevant to that decision). If we ask *you* questions, *you* must tell us anything that *you* know and that a reasonable person in the circumstances would include in answering the questions. *You* must tell us about any new matters that arise until we agree to insure *you*. *You* must also disclose these matters to us before each time *you* renew, extend, vary or reinstate this policy.

You do not need to tell *us* anything that:

- reduces the risk we insure *you* for;
- is common knowledge;
- we know, or should know, as an insurer; or
- we waive *your* duty to tell *us* about.

If you do not tell *us* anything *you* are required to tell *us*, we may cancel *your* insurance or reduce the amount we will pay *you* if you make a *claim*, or both. If *your* failure to tell *us* was fraudulent, we may refuse to pay a *claim* and treat the insurance contract as if it never existed.

## Your Obligations to Notify us about Potential Claims

If you become aware of *physical abuse* or *sexual abuse* which may or is likely to give rise to a *claim*, *you* must notify us as soon as reasonably possible after becoming aware and promptly provide any information we request, in the form that we reasonably request *you* to provide the information in.

We may also appoint a lawyer or investigator to investigate, on *our* behalf, any circumstances which may give rise to a *claim*, and *you* must provide any assistance reasonably requested by the lawyer or investigator.

## Letters of Demand and Other Proceedings

*You* must, as soon as reasonably practicable:

- (a) forward to *us* every letter of demand, writ, summons, or legal process of any description upon receipt or service thereof alleging *physical abuse* or *sexual abuse*; and
- (b) inform *us* in writing of any prosecution, inquest or allegation of *physical abuse* or *sexual abuse*, relating to your *operations* which *you* become aware of, as soon as practicable after becoming so aware.

## Disputes

If there is a dispute between *us* and *you* about whether a *proceeding* should be contested, a *senior counsel* (mutually agreed upon by *us* and *you* or, in default of such agreement, selected by the chairperson or president of the local Bar Council) will be retained to advise on whether the *proceeding* should be contested. In formulating their advice, the *senior counsel* shall take into consideration the economics of the matter, including the prospects of *you* successfully defending the action, the likely *defence costs* and the potential liability to any other party to the *proceeding*.

The costs of such *senior counsel's* opinion shall be treated as part of the *defence costs*. If the *senior counsel* advises that, having regard to all the circumstances, the *proceeding* should not be contested and should be settled on terms which, in the *senior counsel's* opinion, are reasonable, then *you* shall not object to any such settlement and shall co-operate with *us* to effect such settlement.

## Settlement of Claims

We may, at our expense, take legal action in *your* name against any person to recover any payment which we have made or may make to *you* or on *your* behalf under this policy, whether or not we have fully indemnified you for the loss or damage which gave rise to the *claim*. We are entitled to commence, conduct and settle any *proceeding* brought in *your* name. *You* must give *us* all information and assistance that *we* request in conducting or settling any such *proceeding*.

We are entitled to attend any inquest or inquiry relating to *physical abuse* or *sexual abuse* in respect of which we may be required to indemnify *you* under this policy.

If *you* refuse to consent to any settlement of a *proceeding* recommended by *us* and elect to contest or continue any legal proceedings in connection therewith, our liability in respect of the *proceeding* shall not exceed the amount for which the *proceeding* could have been settled, less the excess, plus *defence costs* incurred up to the date of such refusal.

If at the time any *claim* arises, there is another insurance policy in force covering the same liability, *you* must promptly notify *us* of the full details of such other insurance, including the identity of the insurer and the policy number, and provide any further information that *we* reasonably request.

## Fraudulent Claims

If *you* make a fraudulent *claim*, *we* may refuse to pay any amount in connection with the *claim*, cancel this *policy*, or both.

We reserve the right to take legal action against *you* if *you* make a fraudulent *claim*.

## Compliance with Child Protection Legislation

*You* must comply with the *Children's Guardian Act 2019* and the *Child Protection (Working with Children) Act 2012*, to the extent that those Acts impose obligations on *you*.

## Contract with NSW Department of Communities and Justice

You are only eligible for cover under this *policy* if you:

- (a) either:
- (i) are a party to or propose to enter into a contract with the *NSW Department of Communities and Justice* to provide services to the *NSW Department of Communities and Justice*; or
  - (ii) are a *subcontractor* of a party to a contract with the *NSW Department of Communities and Justice*; and
- (b) are endorsed by the *NSW Department of Communities and Justice* as being eligible for cover under this *policy*.

If you cease to satisfy any of the above criteria, we may cancel *your policy* (although you will remain covered in respect of any *occurrence* that happened before we cancelled *your policy*).

## Incident Notification and Information Provision

You must notify us as soon as reasonably possible and promptly provide any information we request in relation to action taken in relation to child safety and/or risks to children and young people that you become aware of in the course of your *operations*, including from (but not limited to):

- (a) an incident involving an actual or suspected *occurrence* of *physical abuse* or *sexual abuse*; or
- (b) a reportable conduct investigation.

## Additional Parties

If there is more than one *Named Insured* named in the policy schedule, this *policy* applies to each *Named Insured* in the same manner as if a separate policy had been issued to each of them, provided that, in so doing, the *limit of liability* and any *sub-limit of liability* shall not be increased and shall apply across all *Named Insureds*.

Any:

- failure by one *Named Insured* to comply with any obligation under this *policy*; or
- misrepresentation by one *Named Insured* to us before this *policy* commences; or
- dishonest, fraudulent, criminal or malicious conduct by one *Named Insured*,

shall not prejudice the right of the remaining *Named Insureds* to indemnity under this policy, provided that the remaining *Named Insureds* did not have prior knowledge of the failure, non-compliance, misrepresentation or conduct and notified us in writing about the failure, non-compliance, misrepresentation or conduct as soon as practicable after becoming aware of it.

## Authorised Persons

We may treat a person authorised by you to enter into this *policy* on your behalf as being authorised to do any other thing in relation to this policy on your behalf. This means that, for example, we may give notices to and accept notices from that person, accept the payment of premiums from that person, pay refunds of premiums to that person and rely on their acceptance of endorsements or other variations to this *policy*.

## Cancellation

You may cancel this *policy* at any time by notifying us in writing. We may retain premiums in respect of the period during which this *policy* has been in force prior to its cancellation. We may also retain any government taxes or duties that we cannot recover from the relevant government. If you have made a *claim* under this *policy* and we have paid or agreed to pay any part of the *claim*, we will not refund any part of the premium upon cancellation.



## Changes

You must tell us as soon as reasonably practicable after you become aware of any changes to your operations which significantly or materially affect the risk that we are exposed to under this policy. We will advise you in writing if we agree to accept the changes and extend the cover under this policy to your operations as changed.

We may determine that we will only extend the cover under this policy to your changed operations if you pay an additional premium.

If you do not tell us of any material changes, we do not agree to accept the material changes, or you do not pay us any additional premium we notify to you, we will not indemnify you against any liability that results from or is contributed to by the changes to your operations.

## Excess

You must pay the excess in respect of each claim that you make under this policy, including a claim in respect of defence costs only. We will not indemnify you against any loss or liability in relation to a claim if you do not pay the excess.

The excess does not form part of any limit of liability.

## Goods & Services Tax

You must inform us of the extent to which you are entitled to an Input Tax Credit (ITC) for the premium each time that you make a claim under this policy. No payment will be made to you in respect of any GST liability that you may incur on the settlement of a claim if you have not informed us of your entitlement, or your correct entitlement, to an ITC.

Notwithstanding anything contained in this policy, our liability to indemnify you under this policy will be calculated taking into account any ITC to which you are entitled for any acquisition relevant to a claim, or to which you would have been entitled if you were to have made the relevant acquisition.

If the limit of liability is not sufficient to cover your loss, we will only pay GST (less any relevant ITC) that relates to our proportion of your loss. We will pay the GST amount in addition to the limit of liability or any applicable sub-limit of liability.

For the purposes of this condition, 'GST', 'ITC', 'acquisition' and 'supply' have the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth (as amended or replaced from time to time).

## Premium payments

If you fail to pay your premium before the commencement of the period of insurance or at such other times as agreed in writing by us, including if any premium instalment is dishonoured by your financial institution, we may cancel this policy or refuse to indemnify you in respect of any liability under it. We may refuse to pay a claim in whole or in part if, at the date of the loss or claim, any premium instalment is due and has been unpaid for at least 14 days.

If we settle your claim by paying any amount to you, we will deduct any outstanding premium instalments from the amount that we pay to you.

If your financial institution returns or dishonours a direct debit payment, we will charge you for any direct or indirect costs that we as a result of the payment being returned or dishonoured.

## Transfers

You cannot transfer your interest in this policy without our written consent and the written consent of the NSW Department of Communities and Justice.

## Renewal

This *policy* is a non-renewal policy, meaning that *you* will not automatically be entitled to renew the *policy* at the end of the *period of insurance*.

At least 90 days before the end of the *period of insurance*, we will send *you* a new proposal form, which *you* must complete and return to *us*. We will consider the information provided in the proposal form and determine whether we agree to renew your *policy* and on what terms (including the premium payable).

## Governing Law & Jurisdiction

This *policy* shall be governed by and construed in accordance with the laws New South Wales, Australia. *You* submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia, in respect of any dispute arising out of or in connection with this *policy*.

## Privacy and information retention and disclosure

*You* consent to *us* disclosing to the *NSW Department of Communities and Justice* any information about *you* that is relevant to *our* administration of this *policy* or to the *NSW Department of Communities and Justice's* functions. Such information may include information about your *operations*, personal information about *you* or individuals employed or otherwise engaged by *you* and information about *claims* made under this policy. *You* must also procure each *employee*, contractor or volunteer who *you* engage to provide services in connection with *your operations* to consent to *us* collecting, using and disclosing personal information about them.

Without limiting the generality of the above, *you* consent to *us* disclosing to and discussing with the *NSW Department of Communities and Justice* any amounts that *you* owe to *us* in connection with this *policy* but have failed to pay (for example, overdue premium instalments), or if *you* or *we* cancel this *policy* in accordance with its terms.

*You* consent to the *NSW Department of Communities and Justice* sharing with *us* any information about *you* that is relevant to *our* administration of this policy, and to *us* seeking and obtaining such information from the *NSW Department of Communities and Justice*. *You* must notify the *NSW Department of Communities and Justice* of this consent, or execute a signed record of this consent, if we request *you* to do so.

*You* consent to *us* retaining any information that *we* obtain or produce in connection with this policy for as long as *we* reasonably consider to be necessary. *You* must also procure each *employee*, contractor or volunteer who *you* engage to provide services in connection with *your operations* to consent to *us* retaining personal information about them for as long as *we* reasonably consider to be necessary.

