

# Treasury Managed Fund **Statement of Cover**

including the Scheme Structure

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VERSION 4.1.1

Version 4.1.1 takes effect on 18 August 2017

# Version Control Sheet

## Document information

Criteria	Details
Document ID:	
Document title:	Treasury Managed Fund –Statement of Cover including Scheme Structure.
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## Version control

Version	Date	Description	Updated by
V1.0	1989	NSW Government's self-explanatory document of its self-insurance scheme.	
V1.1	1995	Noting changes to the Scheme Structure regarding premium calculation method	
V1.2	2004	Reprinted in booklet form and includes Appendices	
V2.0	May 2008	Clarifies the extent of the coverage under the Contract of Coverage, such as specific reference to directors & officers liability cover (clause 4.2), expand clause 5 to specifically note that loss of revenue is covered, and expand clause 7 to clarify the Fidelity, Legal Costs and the Cancellation of Events covers.	R Lloyd
V3.0	Dec 2010	Clarifies that cover in terms clause 7.6 will only be available to meet the costs of legal costs associated with a claim or where it would be to the advantage of the TMF to provide representation. Clause 4.2 notes that the TMF will not provide cover for the costs of attendance, or legal costs associated with attendance, of inquiries such as those conducted by ICAC.	P English
V4.0	Sep 2012	Change of name from "Contract of Coverage" to "Statement of Cover" and to insert express language to make clear that it is a statement of Government policy only which does not give rise to legally enforceable rights on the part of TMF Agencies and individuals; to remove references to indemnification, premiums and to clarify the extent of cover including inventory shortage; Audit Risk Committee independent members now included in definition of Board member; and make other drafting changes.	R Lloyd
V4.1	June 2015	Clarify the extent of cover including; cover for Directors and Officers of SOCs following amendments to the NSW Self Insurance Corporation Act 2004; clarify that agencies joining the TMF are covered for wrongful acts for the 6 years prior to joining; clarify that Board member includes a member of an advisory group appointed by the NSW government; delete the reference to "Covered Persons" noted in version 4.0; clarify pollution cover; clarify an agency's legal liability to its voluntary workers; clarify the notification requirements and treatment of accumulated damage to motor vehicles; clarify that Personal Accident (Clause 7.3) is consistent with the Workers Compensation Legislation Amendment Act 2012; insert new clause regarding indemnities for eligible State officials (Clause 7.8); insert Appendix 6 in regard to Construction Insurance; insert Appendix 7 in regard to the SICorp deed poll of indemnity (Clause 7.8) in respect of Board Members, Directors and Officers; references to Office of Finance & Services following the transfer of SICorp from Treasury to Office of Finance and Services; and make other drafting changes.	R Lloyd
V4.1	Aug 2017	Update references to Insurance and Care and icare self insurance.	W Chandler

## Document approval

Version	Name	Title	Date
V3.0	S Hunt	Director SICorp	December 2010
V4.0	S Hunt	Director SICorp	10 September 2012
V4.1	S Hunt	General Manager SICorp	19 June 2015
V4.1.1	T Plant	Group Executive, Self Insurance, Community and Innovation, icare	18 August 2017

# Treasury Managed Fund - Statement of Cover Including the Scheme Structure

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# Purpose

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The purpose of the Statement of Cover is to:

- explain the scope of cover provided by the Treasury Managed Fund (TMF);
- provide information about how to make a claim; and
- set out the roles and responsibilities of:
  - the NSW Self Insurance Corporation and Insurance and Care NSW;
  - the TMF;
  - the agencies covered by the TMF (TMF Agencies);
  - the claims managers for TMF claims (Claims Managers); and
  - the TMF Agency Advisory Council.

This Guide is not intended to, and does not, give rise to any legally enforceable rights on the part of TMF Agencies or individuals.

## Preamble

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The NSW Government in 1989 decided to curb escalating insurance costs and guarantee certainty of cover for agencies by replacing traditional insurance arrangements with a managed fund scheme called the NSW Treasury Managed Fund (TMF). The purpose of the TMF is to compensate TMF Agencies for any loss or damage caused by unexpected events.

The TMF was the first of its kind in Australia with all other states since implementing similar schemes.

The TMF protects the State budget while at the same time ensuring TMF agencies and the NSW community have a comprehensive program of financial protection when they suffer liability and property losses. It provides the Government with confidence that these losses can be managed with controlled impact to the State budget.

The TMF covers unexpected loss or damage that TMF Agencies may suffer worldwide and is equal to or superior to current covers and emerging covers available in the commercial insurance market. In addition to this broad cover, TMF Agencies benefit from low contribution rates towards the cost of the TMF scheme that do not support a profit motive or capital requirements. Government agencies cannot acquire this comprehensive cover in the commercial insurance market.

NSW Treasury confirmed the Government's commitment to this approach in 2012 when they issued Treasury Circular 12/12 requiring all agencies, other than electricity generators and suppliers, to consult with the NSW Self Insurance Corporation (SICorp) with a view to joining the TMF for all their insurance requirements. As a result, a number of new agencies have joined the TMF since 2012.

The TMF maintains reinsurance protection against large or catastrophic loss. Bushfires and floods in other states have confirmed the value that this additional protection offers.

SICorp was established by the *NSW Self Insurance Corporation Act 2004*. It manages a multi-service provider model across the functions of claims management, actuarial and information services, reinsurance services and risk management services. The fundamental objective of a multi-service provider model is a competitive and contestable market supporting improved scheme performance, service and process innovation, and performance comparisons between providers. The service providers to the TMF community include many of Australia's leading organisations.

Insurance and Care NSW (icare) is established under section 4 of the *State Insurance and Care Governance Act 2015*, and provides services to SICorp and other NSW Government entities operating insurance and compensation schemes in accordance with that Act. Since September 2015, SICorp has rebranded to "icare self insurance".

icare self insurance will continue to develop and innovate to meet the changing demands of managing the Government's risk exposures.

# Scheme Structure

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## NSW Self Insurance Corporation

The NSW Self Insurance Corporation (now rebranded as “icare self insurance”) is the legal entity that operates the TMF but not an insurer in respect of the TMF. icare self insurance exists within the portfolio of the NSW Treasurer and Minister for Industrial Relations. The Chief Executive of icare self insurance (also the Chief Executive of icare) is responsible for the management of icare self insurance and reports to the Treasurer on policy issues relating to the TMF. icare self insurance has the following roles and responsibilities:

### Role

- coordinating policy advice with input from TMF Agencies for the Chief Executive’s consideration;
- maintaining relationships with contract Service Providers, TMF Agencies, the TMF Agency Advisory Council and other stakeholders, including the Audit Office; and
- promoting risk management and efficient claims management practices with TMF Agencies.

### Responsibilities

- review of strategies and policies for the administration of the TMF to minimise the cost of exposures and a general review of operational issues;
- the funding process including benchmarking, which provides key performance incentives;
- conduct of tenders for service providers with input from TMF Agencies;
- development and review of the performance criteria for service providers and financial incentives for performance;
- support the Model Litigant Policy adopted by all government agencies;
- coordination of financial and management reporting by external managers; sponsor forums to promote risk management; and
- arbitration of disputes between the Claims Managers and TMF Agencies.

# TMF Agency Advisory Council

The TMF Agency Advisory Council represents the broad spectrum of TMF Agencies and includes representatives from Agencies, Department of Finance & Services and the Claims Managers. Council members are from senior management positions in the corporate finance or work health and safety areas of their Agencies. The Advisory Council meets every three months or more regularly when needed.

## Role

The TMF Agency Advisory Council:

- serves as a consultative forum through which TMF Agencies can provide feedback to the Claim Managers and icare self insurance;
- facilitates greater participation by TMF Agencies in processes affecting the operation of the TMF;
- reviews and makes recommendations on issues affecting agency performance;
- reviews and fosters best practice across TMF Agencies;
- provides TMF Agencies with a forum in which concerns can be raised and information disseminated on issues impacting TMF Agencies;

## Responsibilities

- Council members' responsibilities include the consideration of the interests of all TMF Agencies, from a broad, high-level perspective.
- The Council through the Chair may provide advice to the Advisory Board of NSW Self Insurance Corporation.

# TMF Agencies

TMF Agencies have a number of broad risk management commitments including:

1. **Treasurer's Direction 900.01** (issued under Section 9 of the Public Finance & Audit Act 1983) states:  
  
"The Head of an Authority shall be responsible for Risk Management and Insurance arrangements effecting his/her organisation. He/she should report on risk management and insurance activities in their Authority's Annual Report."
2. **Internal Audit and Risk Management Policy for the NSW Public Sector (TPP09-5)**. Core Requirement 5 states:  
  
An enterprise risk management process that is appropriate to the department or statutory body has been established and maintained. The enterprise risk management process is consistent with the current Australian/New Zealand Standard (AS/NZS ISO 31000/NZS) on risk management.

## Role

In broad terms, the role of TMF Agencies is to:

- conduct regular risk assessments and perform risk management tasks for all exposures;
- implement appropriate risk identification measurements, mitigation and management procedures;
- respond to incentive arrangements that are part of the scheme; and
- report on results.

## Responsibilities

Generally, TMF Agencies' responsibilities are to:

- ensure appropriate risk management resources are available
- provide timely and accurate data required for calculation of the TMF agencies annual contribution towards the cost of the TMF scheme;
- promptly notify claims and potential claims to the Claims Manager;
- provide the Claims Managers, within agreed and statutory time frames, with all claims information necessary to effectively manage claims;
- deliver a timely, safe and durable return to work for injured workers;
- conduct regular proactive claims reviews;
- ensure that Agency staff are aware of statutory requirements and their responsibilities under service level agreements.



# Claims Managers

The Claims Managers are contracted to provide a wide range of services to meet the operational needs of the TMF.

## Role

- provide an arrangement that will enhance existing service levels;
- match current and future needs of TMF Agencies with risk management, injury management and claims handling methods supported by appropriate technology;
- provide TMF Agencies with information/tools/assistance to manage their risks; prevent losses/injuries and reduce the cost of claims;
- deliver improved communication between all parties;
- promote knowledge transfer between TMF Agencies to maximise leverage of existing expertise.

## Responsibilities

- manage the annual contribution processes in consultation with TMF Agencies, actuaries and icare self insurance;
- arrange and monitor the performance of third-party service providers including rehabilitators, medical providers, assessors and legal providers;
- manage claims and maintain appropriate records;
- develop a comprehensive program for the management of workplace injuries;
- review contractual arrangements of TMF Agencies in respect of indemnity and insurance provisions;
- provide operational risk management resources to TMF Agencies;
- ensure compliance with all statutory and regulatory responsibilities of the TMF (including the compilation of financial statements);
- comply with the terms of the Claims Management Agreement.

# The TMF

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The creation of the TMF by the NSW Government replaced traditional insurance arrangements by implementing a Government managed fund scheme to provide broad protection for asset and liability exposures (except Compulsory Third Party motor vehicle insurance) of TMF Agencies. TMF Agencies includes all budget sector agencies and a number of non-budget agencies.

The extent of the cover provided by the TMF is unique to TMF Agencies.

The TMF is not insurance and is not subject to the *Insurance Act 1973* (Cth) nor is it subject to the regulatory control of the Australian Prudential Regulation Authority. The TMF forms part of the NSW Government's self-insurance arrangements. It provides no risk cover in the nature of a contract of insurance and is exempt from claims for dual insurance.

Cover is provided for loss or damage incurred on or after 1 July 1989 or the date the agency joined the TMF.

## TMF Cover

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The TMF covers Agencies worldwide in respect of:

- Workers' Compensation according to NSW statute;
- Liability, including, but not limited to, public liability, products liability, professional indemnity, directors/officers liability and medical negligence;
- Property (full replacement, new for old, and consequential loss);
- Motor vehicle; and
- Other miscellaneous losses, including but not limited to, employee dishonesty, personal accident and protection during overseas travel.

Exposures not included are:

- illegal activities;
- wear and tear, and inherent vice;

### **The Treasury Managed Fund**

The TMF is a leader in public sector managed fund arrangements. This is due in no small part to the close cooperation built over the years between key participants. These key participants are:

- the NSW Self Insurance Corporation, which operates the TMF and sets the policies;

- the TMF Agency Advisory Council, a body that represents the broad spectrum of TMF Agencies;
- participating TMF Agencies (responsible for managing their operations so as to minimise costs);
- the contracted Service Providers, to which icare self insurance has outsourced the management of the services provided to TMF Agencies, particularly in the areas of claims management, risk management, reinsurance service providers and actuarial service providers.

### **The TMF and TMF Agencies**

It is important to understand the relationship between TMF Agencies and the TMF. The TMF covers TMF Agencies for most asset and liability exposures (except Compulsory Third Party motor vehicle insurance) and, through the Claims Managers, provides a set of defined services that are intended to assist and support TMF Agencies in managing risks. However, these risks remain the ultimate responsibility of the TMF Agencies' management.

For TMF Agencies, the obligation attached to the cover is accountability through the implementation and practice of risk management principles. Government, like the private sector, believes that observing risk management principles creates a more efficient management environment and reduces both the frequency and severity of losses, thus saving taxpayers' money. This philosophy is expressed as "this privileged protection equals accountability". Fundamental to every element of the managed fund concept is the active adoption of risk management practices by each TMF agency. In addition, TMF Agencies are required to promptly report every claim to their Claims Manager. Please refer to Appendix 1 for information on risk management.

### **Statement of Cover is not a Contract**

The Statement of Cover is a document that states Government policy only, and may be departed from by icare self insurance in its absolute discretion.

The Statement of Cover is not intended to give rise to legally enforceable rights on the part of participating TMF Agencies or individuals. The Statement of Cover is not intended to be, and is not, a contract of insurance or other type of legally binding contract or agreement.

### **Agency contributions to the TMF**

For information on the calculation of the contributions by Agencies towards the cost of claims, please refer to Appendix 2.

### **Purpose of Amendment**

The purpose of version 4.1.1 is to update the Statement of Cover version 4.1 to refer to Insurance and Care NSW and update references to "icare self insurance" and other associated changes.

## **Timing**

The version of the Statement of Cover that applies to a particular set of circumstances will be the version in force when a claim is made by (or on behalf of) the TMF Agency or individual. Please note that all claims must be made within the particular time noted in clause 9.1 of the Statement of Cover. Claims made outside this time will not be paid. Claims already determined cannot be re-opened.

## **Notes**

Various notes in square brackets ([ ]) included throughout the Statement of Cover are to help understand the cover or clarify the extent of the cover, and in some instances, impose requirements on TMF Agencies or individuals before cover will be extended by the TMF. These notes form part of the Statement of Cover.

## **Questions**

**For any questions about the Statement of Cover, please consult the client service manager nominated by your Claims Manager.**

## **Important**

The Statement of Cover commences on the next page. All information contained in previous pages (including this page) is by way of background and explanation only and does not form part of the Statement of Cover.

# Statement of Cover

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## 1. Defined terms & interpretation

### 1.1 Defined terms

In this Statement:

**Board Member** includes, without limiting the breadth of the expression, (1) any member of an Audit and Risk Committee established by a TMF Agency for the purpose of compliance with NSW Treasury Policy Paper 09-05 (TPP09-05) "Internal Audit and Risk Management Policy for the NSW Public Sector" (or successor Government policy), including a person described within the meaning of that policy as an independent member, or as the independent chairperson, of any such committee and/or (2) a member of an advisory group or such like appointed by the NSW government.

**Claim** means any demand in writing by a third party against a TMF agency or an eligible State official (as applicable) for compensation and includes a statement of claim, summons, complaint or other originating process.

**claim** means a request by a TMF Agency or an eligible State official for cover, payment or benefit provided by the TMF under this Statement of Cover.

**Claims Manager** means the third party service provider engaged by icare self insurance under a Claims Management Agreement to, among other things, collect information from TMF Agencies and manage claims on behalf of TMF Agencies, and who is assigned by icare self insurance to a particular TMF Agency and/or claim type.

**contribution** means the money received by icare self insurance as contributions from TMF Agencies towards the cost of the TMF scheme.

**Director or Officer** has the meaning given respectively to each of these terms by the *Corporations Act 2001* (Cth), except that:

(a) in relation to an eligible State official who is a Director or Officer of an authority of the State, references in that Act to a corporation are taken in this document to be a reference to the relevant authority of the State; and

(b) in relation to an eligible State official who is an Officer of a statutory State owned corporation, **Officer** has the meaning given to it by clauses 3, 5 and 11 of Schedule 10 the *State Owned Corporations Act 1989* (NSW).

**eligible State official** has the same meaning as given in the definition provided in the *NSW Self Insurance Corporation Act 2004* (NSW).

*[Note 1: At the time of publication of v.4.1.1, "Eligible State official" is defined in cl.3(1) of the NSW Self Insurance Corporation Act to mean a person who is (a) an employee or officer of the State or (b) an employee, or a member, director or other officer, of an authority of the State and, without limiting paragraph (a) or (b), includes a member of a committee or other body established for the purpose of assisting an authority of the State (including Public Service agency or a Minister) in the exercise of its functions.]*

**icare** means Insurance and Care NSW, constituted by the *State Insurance and Care Governance Act 2015* (NSW).

**icare self insurance** means the NSW Self Insurance Corporation, whose powers and functions are governed by the *NSW Self Insurance Corporation Act 2004* (NSW).

**Minister** means the Minister responsible for a TMF Agency.

**Motor vehicle** means a mechanically propelled vehicle designed for use on land only, its standard tools and accessories and extends to include trailers, caravans and any vehicle used in substitution of a vehicle covered by this Statement of Cover, similar to the vehicle which it replaces, whilst that vehicle is not in use as a result of a claim under this Statement of Cover.

**Period of Cover** means from 1 July 1989, and if the TMF Agency joined the TMF scheme after 1 July 1989, then from the date of joining, to when the TMF scheme is cancelled by order of the Minister for Finance and Services, the TMF Agency withdraws from the TMF scheme or the cover for the TMF Agency is otherwise cancelled.

**SICorp** means the NSW Self Insurance Corporation, whose powers and functions are governed by the *NSW Self Insurance Corporation Act 2004* (NSW).

**TMF** means the scheme implemented by the NSW Government on 1 July 1989 known as the Treasury Managed Fund. Where in this Statement of Cover, it is indicated that the TMF provides cover or performs some other act, it is a reference to icare self insurance (acting as the administrator of the TMF and as agent for the State of New South Wales), which from time to time acts through Claims Managers.

**TMF Agencies** means the NSW Government budget sector entities and the non-budget entities named from time to time in the schedule held by icare self insurance.

**Voluntary Worker** means a person who voluntarily performs work for no or nominal reward.

**Wrongful Act** means any actual or alleged breach of duty, breach of trust, neglect, error, misstatement, misleading statement, omission, breach of warranty of authority or other act.

## 1.2 Interpretation

In the Statement of Cover, unless the contrary intention appears:

- (a) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (b) a reference to 'includes' or 'including' must be construed without limitation;
- (c) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (d) 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;
- (e) a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing;
- (f) a reference to any thing is a reference to the whole or any part of that thing;
- (g) the singular includes the plural and vice versa;
- (h) a reference to a clause is a reference to a clause to this Statement of Cover;

- (i) a reference to an instrument, a document or agreement, including this Statement of Cover, includes a reference to that instrument, document or agreement as novated, altered or replaced from time to time;
- (j) a reference to \$ is a reference to Australian currency;
- (k) a reference to writing includes typewriting, printing, photocopying and any other method of representing words, figures or symbols in a permanent visible form; and
- (l) no provision of this Statement of Cover will be construed adversely against a party because that party was responsible for drafting the provision.

## 2. Cover

- (a) The TMF commenced on 1 July 1989 and TMF Agencies are covered as from the date they joined the TMF or the date agreed by icare self insurance.
- (b) Cover is provided to TMF Agencies and individuals in certain circumstances as noted in this Statement of Cover.
- (c) The cover is worldwide.
- (d) This Statement of Cover is not intended to, and does not, give rise to any legally enforceable rights on the part of TMF Agencies or individuals. This Statement of Cover is not intended to be, and is not, a contract of insurance or other type of legally binding contract or agreement.
- (e) The TMF provides protection on an occurrence basis. That is, an agency that ceases to be covered by the TMF (e.g. privatised) will retain cover for incidents giving rise to a claim that occurred during the agency's period of cover by the TMF.

## 3. Workers Compensation

- (a) The TMF covers a TMF Agency for its liability to workers or deemed workers pursuant to the NSW Workers Compensation and Injury Management legislation.
- (b) Each TMF Agency shall comply with all provisions of the NSW Workers Compensation and Injury Management legislation and indemnify the NSW Government and icare self insurance against any punitive actions (whether in court proceedings or not) brought about by the TMF Agency's failures and/or errors and omissions in relation thereto.

*[Note 2: The NSW Government complies with the requirements of the NSW Workers Compensation legislation.]*

## 4. Legal Liability

In clause 4 of this Statement of Cover, an occurrence includes a 'Wrongful Act'. A 'Wrongful Act' means any actual or alleged breach of duty, breach of trust, neglect, error, misstatement, misleading statement, omission, breach of warranty of authority or other act.

### 4.1 TMF Agencies and their employees

- (a) The TMF covers all sums which the TMF Agency shall become legally liable to pay by way of compensation and damages (or which the TMF Agency shall be called upon to pay by reason of the fact that the TMF Agency would have been legally liable to pay damages if sued) in respect of Claims, caused by an occurrence, in connection with the activities of that agency worldwide and happening during the Period of Cover.
- (b) The TMF covers an Agency for a Wrongful Act committed during the period of six years before the date on which the TMF Agency joined the TMF. Where in connection with a Wrongful Act, a Claim or circumstances that may give rise to a Claim has been notified to a previous insurer, or ought to have been given to a previous insurer, liability arising from or connected with the Claim or circumstances notified, or ought to have been notified, is excluded from cover.
- (c) The cover in clause 4.1(a) above is extended to an employee and a voluntary worker of a TMF Agency (including where a demand in writing for compensation is made by a third party against the employee or voluntary worker), subject always to the exclusions in clause 4.3 below.

*[Note 3: The TMF covers all sums which the TMF Agency shall become legally liable to pay by way of compensation and damages. However, the cover in clause 4.1(a)(b) that is extended to employees and voluntary workers of a TMF Agency may be refused or withdrawn by the TMF if at any stage it appears to the TMF that the employee or voluntary worker did not act reasonably in the circumstances, and within the scope of his or her employment/engagement and/or did not make full and frank disclosure of all relevant circumstances. In such circumstances, any legal costs incurred or amount of damages awarded (or compensation determined) may be the responsibility of the employee or voluntary worker.]*

*[Note 4: Legal liability cover for agencies under cl.4 will include (subject to its terms) cover for an agency's legal liability to its voluntary workers such as under an indemnity provided by the agency to those workers.]*

- (d) The TMF covers:
  - (i) all legal costs, charges and expenses incurred in the settlement or defence of Claims covered under clause 4.1(a)(b) above where such costs, charges and expenses are incurred by the TMF, or TMF Agency, or employee of the TMF Agency or voluntary worker covered under clause 4.1(c) above, with the written consent of the TMF; and
  - (ii) all legal costs, charges and expenses recoverable from the TMF Agency, or employee of the TMF Agency or voluntary worker covered under clause 4.1(c) above, by any claimant in respect of Claims covered under clause 4.1(a) (b) above.

*[Note 5: It is intended that this liability cover be broad and encompass virtually any compensation or damages arising under common law, contract and/or statute. This includes, but is not limited to, public*



*liability, professional indemnity, products liability and completed operations liability. It includes a Local Health District's liability to indemnify visiting and honorary medical officers and certain staff specialists (see Appendix 3).]*

*[Note 6: Retroactive liability cover is provided from 30 June 1986 for the Department of Health and from 30 June 1987 for the National Parks & Wildlife Service within the Office of Environment and Heritage.]*

*[Note 7: The TMF will not provide cover for the costs of attendance or legal costs associated with attendance by TMF Agencies, or employees or voluntary workers of TMF Agencies at inquiries (such as Coronial or Independent Commission Against Corruption inquiries) unrelated to a Claim by a third party, claim, potential claim or where the TMF has no financial interest in the outcome. These costs are regarded as normal operating costs of a TMF Agency.]*

## **4.2 Board Members, Directors and Officers**

*[Note 8: Cover under this clause extends in some circumstances to past Board Members, Directors or Officers of a TMF Agency.]*

- (a) The TMF covers an eligible State official for any legal liability arising out of any Wrongful Act committed by that eligible State official whilst acting in the capacity of a Board Member, Director or Officer of a TMF Agency, provided that the Wrongful Act was committed during the Period of Cover.
- (b) The cover in clause 4.2(a) above extends to:
  - (i) a Wrongful Act committed by the eligible State official anywhere in the world whilst acting in the capacity of a Board Member, Director or Officer of the eligible State official's TMF Agency;
  - (ii) a Wrongful Act committed in the eligible State official's capacity as a Board Member, Director or Officer of another entity (external to the TMF Agency) where that position is held at the request of the eligible State official's TMF Agency;
  - (iii) any proceeding, inquiry or investigation (including any order or other requirement under law to produce documents) held or conducted by a regulatory body, a government authority, a self-regulatory body recognised as such by the applicable law (including a royal commission, commission of inquiry or stock exchange) or an external administrator of a body corporate in relation to, or in connection with, a Wrongful Act committed by the eligible State official whilst acting in the capacity of a Board Member, Director or Officer of:
    - (A) the eligible State official's TMF Agency; or
    - (B) an outside entity in the circumstances referred to in clause 4.2(b)(ii) above; and
  - (iv) a Wrongful Act committed during the period of six years before the date on which the eligible State official's TMF Agency joined the TMF, provided it was committed by the eligible State official whilst acting in the capacity of a Board Member, Director or Officer of the TMF Agency. Where in connection with such a Wrongful Act,

notification of a Claim or circumstances that may give rise to a Claim has been given, or ought to have been given, to a previous insurer, liability arising from or connected with the Claim or circumstances notified, or ought to have been notified, is excluded from cover under this extension.

- (c) Where the TMF provides cover under clause 4.2(a) or (b) above (and that cover is not excluded under clause 4.3):
- (i) the TMF covers the Board Member, Director or Officer for damages and legal costs awarded against the Board Member, Director or Officer (which may be paid in advance as noted in clause 4.3(c)), and settlements negotiated with the written consent of the TMF in respect of the Claim;
  - (ii) the TMF covers the Board Member, Director or Officer for legal costs and expenses incurred by the Board Member, Director or Officer in respect of the Claim, proceedings, investigation or inquiry, which are approved in advance by the TMF (and which may be paid in advance as noted in clause 4.3(c)). Where it was not practicable to have obtained the TMF's prior approval to incurring the legal costs and expenses, the TMF will provide cover for Board Member, Director or Officer for reasonable costs and expenses, provided that such costs and expenses were reasonably incurred. This includes costs and expenses incurred by a Board Member, Director or Officer in defending or investigating the Claim or proceedings, or responding to inquiries or investigations referred to in paragraph 4.2(b)(iii) above;
  - (iii) the TMF covers the Board Member, Director or Officer for non-legal costs and expenses actually incurred by the Board Member, Director or Officer in respect of the Claim, proceedings, investigation or inquiry, which are approved in advance by the TMF (and which may be paid in advance as noted in clause 4.3(c)). Where it was not practicable to have obtained the TMF's prior approval to incurring the non-legal costs and expenses, the TMF will reimburse the Board Member, Director or Officer for reasonable costs and expenses, provided that such costs and expenses were reasonably incurred. This includes costs and expenses incurred by a Board Member, Director or Officer in defending or investigating the Claim or proceedings, or responding to inquiries or investigations referred to in paragraph 4.2(b)(iii) above;
  - (iv) the TMF will allow a Board Member, Director or Officer to select their legal representative to act for him or her in any Claim, proceedings, inquiry or investigation, subject to that representative being appropriately qualified and experienced and approved by the TMF; and
  - (v) unless otherwise requested by a Board Member, Director or Officer, the TMF will appoint legal representation for the TMF Agency and the Board Member, Director or Officer. If so, the TMF will consult with the TMF Agency and /or the Board Member, Director or Officer prior to giving instructions to the legal representative on matters related to the Claim, proceedings, inquiry or investigation.

*[Note 9: Prior to receiving any payment or other benefit under clause 4.2, a Board Member, Director or Officer may be required to enter into a legally binding agreement with icare self insurance such that*

*any amounts paid to the Board Member, Director or Officer by the TMF are able to be recovered as enforceable debts.]*

*[Note 10: In the event of a Claim relating to pre-existing contaminated property against an employee and/or eligible State official, the Claim should be notified to the Claims Manager. The TMF will cover an employee and/or eligible State official under 4.2 pending direction from the appropriate Minister. Also see Note 11.]*

### **4.3 Not covered by Legal Liability cover**

- (a) The TMF will not cover a TMF Agency, or an employee of a TMF Agency, or a voluntary worker of a TMF Agency, under clause 4.1, or an eligible State official who is a Board Member, Director or Officer of a TMF Agency or an outside entity under clause 4.2, for any liability, damages, costs or expenses:
  - (i) arising from death of or bodily injury to any person, arising out of or in the course of the employment of that person in the service of the TMF Agency, except under the cover provided in clause 3 above - Workers Compensation;
  - (ii) in respect of any Claim for payment under any Workers' Compensation Act or Ordinance by any person in the service of any contractor or sub-contractor to the TMF Agency or by any dependant of such person;
  - (iii) arising from any pollution or contamination to persons, property or the environment emanating from the TMF Agency's operations, unless wholly sudden and accidental and not preventable by reasonable precautionary maintenance.
  - (iv) arising from pollution or contamination to property owned, leased or occupied by the TMF Agency where that pollution or contamination existed before the TMF Agency became the owner, lessee or occupier of the property.
  - (v) arising out of building or infrastructure projects where government and non-government entities are to be covered under a single insurance policy. For further details refer to Appendix 6.

*[Note 11: The Crown owns or may acquire contaminated real properties. Many have been assigned to various TMF Agencies who may be required either to defend actions by third parties or to indemnify third parties leasing or buying those same properties from the TMF Agencies. Also see Note 10.]*

*The TMF does not provide cover where pre-existing contaminated property is involved. All such matters are handled by the Agencies and should be brought to the attention of the appropriate Minister for direction.]*

- (vi) subject to clause 4.3(c), arising out of any illegal activity, except where the TMF Agency, employee and/or eligible State official (as applicable) had no knowledge of and could not have reasonably been expected to know of the activity;
- (vii) subject to clause 4.3(c), arising out of any fraudulent, dishonest or malicious conduct, act or omission, except where the TMF Agency, employee and/or eligible State official

(as applicable) had no knowledge of and could not have reasonably been expected to know of the conduct, act or omission;

- (viii) subject to clause 4.3(c), in respect of any fine or penalty;
- (ix) for personal injury or death covered by any Compulsory Third Party policy issued under the NSW Motor Accidents Compensation legislation or similar statutes in other jurisdictions; or
- (x) if icare self insurance determines that there has been conduct by the TMF Agency, its employee and/or eligible State official (as relevant) involving a lack of good faith or a failure to make full and frank disclosure of all relevant circumstances.

*[Note 12: Compulsory Third Party insurance for NSW Government vehicles is covered under a separate arrangement purchased by the Office of Finance and Services.]*

*[Note 13: Liability – Every contract (including all building construction, modification or refurbishing contracts) entered into by the TMF agency shall provide for insurance and indemnity from vendors, contractors and sub-contractors indemnifying the NSW Government and the contracting entity for all losses and/or damage arising out of or in connection with the sale, works, products or services which are the subject of the contract, including public liability, workers' compensation and employers' liability. This requirement extends to include bid and performance bonds for contract tenders.*

*The contractors' liability to indemnify the State should be reduced proportionately to the extent that any act or omission of the State or its employees or agents contributed to the loss or liability. This requirement applies without regard to the value of the contract.*

*It is common for a contractor or service provider to request limits on the amount of indemnity they provide. Where the contractor or service provider is a participant in a scheme approved by the Professional Standards Council in accordance with the Professional Standards Act then liability may be limited in accordance with that scheme. Other requests to limit liability should be supported by a risk assessment of the likely exposure and be approved by the agency CEO.*

*Any contract involving more than \$20 million in physical assets must be reported to the Claims Manager with full details as soon as they are known - preferably before signing.*

*The requirements shall be adhered to unless an exemption is granted by the TMF.]*

- (b) The TMF will also not cover an eligible State official who is a Board Member, Director or Officer of a TMF Agency or an outside entity under clause 4.2:
  - (i) for liability for which the Board Member, Director or Officer is indemnified by the TMF Agency or by the external entity to which s/he has been appointed as Board Member, Director or Officer at the request of his/her TMF Agency (but excluding any indemnity provided by the TMF or where otherwise agreed by the TMF);
  - (ii) where prevented from doing so by legislation and/or regulations, orders, instructions or policies issued pursuant to any legislation;

*[Note 14: Under Section 8(3) of the NSW Self Insurance Corporation Act 2004, which commenced operation in June 2013, the provisions of the State Owned Corporations Act 1989 do not prevent the*

*TMF from covering a Board Member, Director or Officer who is a director or other officer (or any other person concerned, or taking part, in the management) of a State Owned Corporation, to cover certain liabilities of such a director, officer or person. The TMF Deed Poll of Indemnity attached to the Statement of Cover is conditional on the indemnified person first claiming on the TMF. It is possible that in limited circumstances self insurance may agree to allow holders of other indemnities with a similar condition to first claim under the TMF. This would be the exception rather than the rule.]*

- (iii) for liability arising out of the following:
  - (A) proceedings brought by the Australian Securities and Investments Commission or a liquidator if the allegations are found by a court to have been established;
  - (B) conduct involving a wilful breach of duty in relation to the TMF Agency or outside entity;
  - (C) improper use of information acquired because of the eligible State official's position as a Director, Board member or Officer, or improper use of the eligible State official's position as a Director, Board member or Officer, to gain a personal advantage or to deliberately cause detriment to the TMF Agency or another entity/person;
  - (D) conduct involving a lack of good faith of the Board Member, Director or Officer, including but not limited to fraudulent, dishonest or malicious conduct, act or omission; and
  - (E) criminal proceedings in which the Board Member, Director or Officer is found guilty.
- (c) **Advancement of costs:** Unless the TMF determines that cover should be withdrawn under clause 4.3(a)(x), nothing in this clause 4.3 otherwise precludes an eligible State official who is or was a Board Member, Director or Officer of a TMF Agency or an outside entity at the request of his/her TMF Agency from being covered by the TMF (pursuant to clause 4.2(d)) for costs and expenses incurred by him or her in respect of the Claim, proceedings, investigation or inquiry. Unless cover is withdrawn under clause 4.3(a)(x), the TMF must advance such costs and expenses to the eligible State official until such time as a court, or a commission (including a royal commission or special commission of inquiry, the Independent Commission Against Corruption), tribunal, board or other regulatory or investigative body constituted under State or Commonwealth law, finds that the conduct or grounds referred to in clause 4.3(a) (vi) – (viii) or clause 4.3(b)(iii) have been established. Costs and expenses so advanced are repayable to the TMF in the event of such a finding.

## 5. Property

### 5.1 Scope of cover

(a) The TMF covers a TMF Agency for:

(i) loss and/or damage

- 1) to all real and personal property it owns or has an interest in, including aircraft hulls and watercraft,
- 2) from sudden and accidental pollution to all real and personal property it owns or has an interest in, including aircraft hulls and watercraft,
- 3) to property in the care, custody or control of the TMF Agency for any reason and for which the TMF Agency is responsible,  
provided the loss and/or damage is fortuitous, real and can be quantified in monetary terms and the occurrence giving rise to the loss or damage happened during the Period of Cover;

(ii) consequential loss and increased costs of operation as a direct result of the physical loss of or damage sustained by the property referred to in clause 5.1(a)(i) above; and

(iii) loss of revenue and/or reasonable additional costs incurred with the TMF's approval if the business or operation of a TMF Agency is interrupted as a direct result of:

- 1) loss and/or damage to any property and the occurrence giving rise to the loss or damage happened during the Period of Cover; or
- 2) access to property of the TMF Agency being prevented or restricted by direction of a competent regulatory authority,

and the interruption began during the Period of Cover and the loss of revenue and/or reasonable additional costs were incurred during the Period of Cover.

(b) Cover for the loss and damage to property is for full replacement or reinstatement (new for old) without any deduction by reason of the condition of the property replaced or reinstated.

(c) The loss of revenue referred to in clause 5.1(a)(iii) above is to be calculated by taking the revenue the TMF Agency would have earned but for the loss or damage, and deducting from that amount the costs and expenses the TMF Agency has saved as a result of the loss or damage.

*[Note 15: Where an item cannot be replaced with the same item such as art work or items of cultural significance, then an item of equal declared value to the lost or damaged item may be purchased as replacement.]*

### 5.2 Not covered by Property cover

1. The TMF does not cover a TMF Agency under clause 5.1 for loss or damage arising out of:

- (a) any illegal activity or any fraudulent, dishonest or malicious conduct, act or omission;
- (b) wear and tear;

- (c) inherent vice;
- (d) building or infrastructure projects where government and non-government entities are to be covered under a single insurance policy. For further details refer to Appendix 6;
- (e) inventory shortages or unexplained loss unless the loss is established by other evidence. Any inventory computation is to only prove the amount of loss; and
- (f) losses that reflect poor bookkeeping, mathematical errors, waste, or mismanagement.

2. Motor Vehicles covered by clause 6 of the Statement of Cover.

*[Note 16: Properties acquired at any time are automatically covered.]*

*Where properties of less than \$20 million replacement value are acquired during a financial year, Agencies are not required to advise the TMF of the addition to the property schedule until the next annual schedule is completed.*

*Where properties exceeding \$20 million replacement value are acquired during a financial year, Agencies must advise the Claims Manager as soon as possible of the details of acquisitions.*

*The Claims Manager will advise the TMF agency if an additional contribution is required.]*

*[Note 17: The Crown owns or may acquire contaminated real properties. Many have been assigned to TMF Agencies who may have the responsibility to remediate the contaminated property.*

*The TMF does not provide cover for remediating property where pre-existing contaminated property is involved. The cost of remediation in these cases is an operating cost of that TMF Agency.]*

## 6. Motor Vehicle

*[Note 18: This cover includes third party legal liability for property damage as described in clause 6.2 below.]*

### 6.1 Scope of cover – loss or damage

- (a) The TMF covers loss of or damage to a Motor Vehicle which occurred during the Period of Cover, provided that the TMF may at its option, in respect of all loss or damage arising out of any one incident, as far as circumstances permit and in a reasonably sufficient manner:
  - (i) repair, reinstate or replace the vehicle or parts thereof; or
  - (ii) pay an amount not exceeding the actual replacement cost, new for old.
- (b) Notwithstanding anything to the contrary in clause 6.1(a) above, the TMF must replace the covered Motor Vehicle if the cost of repairs to the vehicle for any one incident will be fifty-one percent or more of the actual market value of the vehicle immediately prior to the loss or damage.
- (c) The TMF also covers the reasonable cost of protection and removal of the damaged Motor Vehicle covered by clause 6.1(a) above to the nearest repairer, place of safety or other place approved by the TMF.
- (d) The TMF also covers the reasonable costs of hiring a vehicle similar to the Motor Vehicle damaged or stolen for no more than 14 business days if a substitute vehicle cannot be provided to the TMF Agency. This cover does not extend to the vehicle's running costs, the cost of optional/extra features or services, or any security deposit. This cover ceases before the expiry of 14 business days if:
  - (i) the Motor Vehicle covered is repaired and returned to the TMF Agency;
  - (ii) the Motor Vehicle covered is returned undamaged;
  - (iii) the Motor Vehicle is replaced; or
  - (iv) a substitute vehicle is made available for use by the TMF Agency.

*[Note 19: Agencies must notify their Claims Manager of each incident of loss or damage to a motor vehicle covered by the TMF at the time the incident happens and provide a repair quotation where a third party is at fault. Agencies may keep the vehicle on the road until a time that is appropriate for the repair to take place. The minimum amount claimable applies to each incident (see 8.1). Provided each incident of loss or damage to a motor vehicle is notified to their Claims Manager at the time each incident happens a vehicle may accumulate damage caused by multiple incidents and be submitted for repair with accumulated damage (due to multiple incidents) at a time more suitable to the Agency. The TMF will not pay for repairs where the Agency has not notified their Claims Manager of an incident of loss or damage.]*



## 6.2 Scope of cover – liability to third parties

- (a) The TMF covers the TMF Agency against civil liability for loss of or damage to property resulting from:

- (i) the use of the Motor Vehicle;
- (ii) goods falling from the Motor Vehicle; and
- (iii) the operation of loading or unloading the Motor Vehicle, which shall not include the collection or delivery of the load beyond the limits of any carriageway or thoroughfare,

provided that the occurrence giving rise to the loss or damage happened during the Period of Cover.

- (b) The TMF covers the TMF Agency against civil liability at law for all costs, charges and expenses for removing or cleaning up debris caused by an accident involving a Motor Vehicle in the circumstances described in clause 6.2(a) above.
- (c) The cover in clauses 6.2(a) and (b) above extends to any person driving, using or in charge of, entering into or alighting from, a Motor Vehicle for the purpose of or in connection with the TMF Agency's business.
- (d) The TMF covers the TMF Agency or the person referred to in clause 6.2(c), as the case may be, against:
- (i) all legal costs and expenses incurred with the TMF's approval in the defence of any Claim;
  - (ii) all costs awarded against them in any Claim; and
  - (iii) all costs incurred with the TMF's approval at any inquest or other official inquiry,
- arising from an event for which cover is provided by clauses 6.2(a)(b)(c) above.

*[Note 20: In the event of criminal charges being brought against the driver, the conduct of the defence of the driver will be at the discretion of the Attorney General]*

## 6.3 Additional cover

The TMF will also cover:

- (a) *Automatic additions:* to the extent legally permitted, any other party who owns an interest in the Motor Vehicle to the extent of that interest if the cover in clause 6.1 above is triggered.
- (b) *Third party contingent liability:* the TMF Agency in respect of legal liability as set out in clause 6.2 above where the Motor Vehicle is not owned or supplied by the TMF Agency, but is being used by an employee of the TMF Agency or a person authorised to use such vehicle for the purpose of or in connection with the business of the TMF Agency. The cover is also extended to that employee or person.

*[Note 21: Clause 6.3 relates to the use of personal vehicles for TMF Agency business. Cover is provided for authorised use. However, in many, if not all, instances, the vehicle owner will be required to have:*

- (i) a certificate of registration;*
  - (ii) compulsory third party insurance;*
  - (iii) comprehensive motor vehicle insurance;*
  - (iv) a valid driver's licence;*
  - (v) a safety-checked vehicle; and*
  - (vi) if the use is more than three times in any month, vehicle owners are required to include a Principal's indemnity cover under their motor vehicle policies.]*
- (c) **Cross liability:** TMF treats each TMF Agency and each of its Directors, Board Members and Officers and employees in the same manner as if that party were the only party named as the TMF Agency and the TMF waives all rights of subrogation or action which it may have or has acquired against such parties.

## **6.4 Not covered by Motor Vehicle cover**

- (a) The TMF will not cover the TMF Agency under clause 6.1 above for:
- (i) loss of use, depreciation, wear and tear, rust or corrosion, mechanical or electrical breakdowns, failures or breakages; or
  - (ii) damage to tyres by application of brakes or by road punctures, cuts, deflation or bursts.
- (b) Unless approval in writing is given by the TMF, the TMF will not cover the TMF Agency under clause 6.2 above for any loss, damage, liability or Claims arising out of Motor Vehicles being:
- (i) used in or tested in preparation for racing, pace making, reliability trials, speed or hill-climbing tests;
  - (ii) used for the conveyance of passengers for hire, fare or reward; or
  - (iii) used in contravention of any laws relating to the carriage of dangerous goods.
- (c) The TMF will not cover the TMF Agency under clause 6.2 above in respect of Claims arising out of personal injury or death covered by any compulsory third party policy issued under the *NSW Motor Accidents Compensation Act 1999* or similar statutes in other jurisdictions.

## **6.5 Motor Vehicle Conditions**

- A. The TMF Agency must:
- (i) submit a separate claim notification for each incident at the time the incident happens. Multiple incidents cannot be submitted on the one claim notification

- (ii) maintain all vehicles in a safe and roadworthy condition at all times; and
- (iii) purchase third-party personal injury and comprehensive motor vehicle insurance available from the supplier when hiring cars (such as while travelling interstate or overseas).

B. The TMF Agency must not knowingly:

- (iv) allow the use of vehicles by an unlicensed driver nor a driver with a suspended licence;
- (v) provide protection for any individual charged with any offence under any law, by-law or regulation in connection with driving under the influence of alcohol or drugs or driving while having a blood alcohol level in excess of the percentage of alcohol permitted by law, as indicated by analysis of the person's breath or blood;
- (vi) allow vehicles to be used to convey a greater number of passengers or carry or tow a load in excess of that for which the vehicle was designed.

## 7. Miscellaneous covers

*[Note 22: Clause 7 refers to miscellaneous categories of loss not covered by clauses 3 to 6 above, including but not limited to cancellation of event, fidelity, unauthorised actions and cover for personal accident as noted at Treasurer's Direction 920 (issued under Section 9 of the Public Finance & Audit Act 1983 .]*

### 7.1 Fidelity

- (a) The TMF covers the TMF Agency against loss sustained during the Period of Cover of money and/or property owned by the TMF Agency or for which it is legally liable or has accepted responsibility, and is sustained through any fraudulent or dishonest acts committed by any person deemed by the TMF Agency to be in its service for the purpose of this clause.
- (b) The cover in clause 7.1(a) above extends to losses resulting directly from a computer virus, the fraudulent input, modification, or destruction of any electronic data stored or run within a computer/communication system deemed by the TMF Agency to be in its control.
- (c) In the event of a claim under clause 7.1 of this Statement of Cover, any unpaid salary, commission or other monies of the person deemed by the TMF Agency to be in its service shall be used toward compensating for the loss before any payment is made by the TMF in respect of the claim.

### 7.2 Unauthorised Actions

The TMF covers the TMF Agency against loss sustained during the Period of Cover directly caused by any person deemed by the TMF Agency to be in its service and acting:

- (a) in excess of permitted financial limits;
- (b) outside of permitted product lines;
- (c) dealing with a person or organisation not authorised by the TMF Agency; or
- (d) otherwise acting outside his or her authority,

as set out in the written policies and procedures of the TMF Agency.

### 7.3 Personal Accident

- (a) The following persons are covered for death or injury sustained during the Period of Cover arising out of or in the course of official duties, even if that may be 24 hours a day.
  - (i) NSW Parliamentarians, members of the Judiciary, members and Directors of boards, commissions and other like groups within a TMF Agency, and other persons working for the TMF Agency not covered by NSW Workers Compensation legislation.

- (b) The following unpaid workers are also covered for death or injury sustained during the Period of Cover:
  - (i) Voluntary Workers while actively engaged in voluntary work with, or at the request of, a TMF Agency; and
  - (ii) NSW public school and TAFE students while engaged in educational work experience programs.
- (c) ***Air Travel within Australia.*** The following persons are covered for death or injury sustained during the Period of Cover anywhere in the Commonwealth of Australia while the person, as a passenger, is being carried in, or is entering or alighting from any aircraft used for bona fide transport purposes, including piloting of privately owned or chartered aircraft and the person was doing so for the purpose of or in connection with the TMF Agency's business.
  - (i) NSW Parliamentarians, members of the Judiciary, members and Directors of boards, commissions and other like groups within a TMF Agency, and other persons working for the TMF Agency that are not covered by NSW Workers Compensation legislation.
- (d) The cover in clause 7.3(c) above extends to death or injury sustained during leisure and recreational periods:
  - (i) by the persons listed in clause 7.3(c); and
  - (ii) by TMF Agency employees who are not covered by NSW Workers Compensation legislation for death or injury sustained during these periods,

whilst the person is travelling for the purpose of or in connection with the TMF Agency's business provided that approval in writing is obtained from the TMF Agency for that person to be so covered prior to the commencement of travel.
- (e) ***Official Visits Abroad.*** NSW Parliamentarians, members of the Judiciary, members and Directors of boards, commissions and other like groups within a TMF Agency, and other persons working for the TMF Agency that are not covered by NSW Workers Compensation legislation, are covered for death or injury sustained during the Period of Cover, caused by accident while travelling abroad for the purpose of or in connection with the TMF Agency's business. (Refer to **Appendix 5** for information regarding overseas travel.)
- (f) The cover in clause 7.3(e) above:
  - (i) extends to persons not referred to in clause 7.3(e) above, provided that approval in writing is obtained from the TMF Agency for those persons to be so covered prior to the commencement of travel
  - (ii) extends to death or injury sustained during leisure and recreational periods whilst the person is away, provided that approval in writing is obtained from the TMF Agency for that person to be so covered prior to the commencement of travel.

***Definition of injury under the cover.*** Under the cover provided in this clause 7.3, the definition of injury is the same as the definition under section 4 of the *Workers Compensation Act 1987* (NSW).

- (g) **Benefits payable under clause 7.3.** The TMF will pay benefits in accordance with and equivalent to the benefits payable under Part 3 of the *Workers Compensation Act 1987* (NSW), except that the Workers Compensation Commission, the WorkCover Authority of NSW, or the WorkCover Independent Review Officer have no jurisdiction in respect of this cover and each reference to the Commission or the Authority or the Independent Review Officer in that Part is to be read as a reference to the Chief Executive of the Office of Finance & Services.
- (h) **Medical expenses.** NSW Parliamentarians, members of the Judiciary, members and Directors of boards, commissions, other like groups within a TMF Agency and other persons working for the TMF Agency and are not covered by NSW Workers Compensation legislation, are covered for medical expenses up to \$1,000,000 incurred while outside of Australia and while they are travelling for the purpose of or in connection with the TMF Agency's business.
- (i) The cover under clause 7.3(h) above:
  - (i) extends to persons not referred to in that sub-clause if approval in writing is obtained from the TMF Agency for those persons to be so covered prior to the commencement of travel; and
  - (ii) extends to death or injury sustained during leisure and recreational periods whilst the person is abroad, provided that approval in writing is obtained from the TMF Agency for that person to be so covered prior to the commencement of travel.
- (j) **Not covered by Personal Accident cover.** The cover under clause 7.3 shall not apply to death or injury, which is directly or indirectly attributable to or is a consequence of:
  - (i) intentional self-injury or suicide (whether felonious or not) or any attempt thereof;
  - (ii) sexually transmitted diseases; or
  - (iii) engaging in professional sport(s).

## 7.4 Personal Effects

- (a) Subject to clause 7.4(b) below, the TMF covers a person employed by a TMF Agency, NSW Parliamentarians, members of the Judiciary, members and Directors of boards, commissions, and other like groups within a TMF Agency and other persons working for the TMF Agency not covered by NSW Workers Compensation legislation, for loss of or damage to personal effects, including baggage, tools of trade and field equipment, owned by that person if the loss or damage is sustained during the Period of Cover:
  - (i) in the workplace (or assigned working environment); or
  - (ii) while travelling on official business in the Commonwealth of Australia or while travelling abroad in the course of official duties.
- (b) The cover under clause 7.4(a) above is subject to the following condition precedents:
  - (i) the claim for loss or damage is first submitted under Workers' Compensation legislation, if applicable; and

- (ii) the cover accords with the management policies of the TMF Agency.
- (c) The basis of the cover under clause 7.4(a) above is full replacement or reinstatement costs, but shall be limited to:
  - (i) \$5,000 per claim for loss or damage in the workplace; and
  - (ii) \$10,000 per claim for loss or damage while travelling on official business.
- (d) The cover under clause 7.4(a)(ii) above:
  - (i) extends to persons not referred to in that sub-clause if approval in writing is obtained from the TMF Agency for those persons to be so covered prior to the commencement of travel; and
  - (ii) extends to loss of or damage sustained during leisure and recreational periods, provided that approval in writing is obtained from the TMF Agency prior to the commencement of travel.

## 7.5 Event Cancellation

- (a) In clause 7.5 of this Statement of Cover, 'Event' means any organized activity attended by members of the general public or a particular group of the public and includes an attraction, celebration, contest, competition, display, fundraisers, performance, spectacle, play, drama, match, game, meet, exhibition or curtain raiser.
- (b) The TMF covers the TMF Agency for losses due to the cancellation of a TMF Agency organised Event to be held during the Period of Cover, provided the loss is fortuitous and beyond the control of the TMF Agency.
- (c) Losses falling within the cover in clause 7.5(b) above include losses as a consequence of an occurrence that makes the venue unusable, for example fire or earthquake; severe or life threatening weather conditions such as flood, tropical cyclones or lightning; pollution; power failures; mechanical breakdown; and equipment delays.
- (d) The TMF will not cover the TMF Agency under clause 7.5(b) for losses:
  - (i) caused by a cancellation of an event for the sole reason that the event would not be financially viable, for example, due to lack of ticket sales, lack of sponsorship, or lack of support;
  - (ii) caused by a cancellation of an event for the sole reason that the TMF Agency failed to make all necessary arrangements essential to ensure the event can be held on time and at the appropriate venue;
  - (iii) assumed by contract, warranty or agreement unless such losses would have attached to the TMF Agency in the absence of such contract, warranty or agreement;
  - (iv) in connection with any illegal activity.

## **7.6 Legal Costs additional to those covered by Clauses 4 and 6**

- (a) The TMF covers the TMF Agency, its employees, voluntary workers or an eligible State official for legal costs, expenses and charges incurred by:
  - (i) the TMF Agency;
  - (ii) the employee;
  - (iii) voluntary worker; or
  - (iv) the eligible State official in his/her capacity as a Board Member, Director or Officer of the TMF Agency or of an external entity where that position is held at the request of the eligible State official's TMF Agency,

with the TMF's prior written approval, in defending a prosecution, or responding to an inquiry, inquest, investigation or complaint that:

- (v) is brought in a Commonwealth or State or Territory board, tribunal, complaints unit, commission, court or coronial court ; and
- (vi) arises from an act, omission or conduct during the Period of the Policy and in the course of the TMF Agency's business; and
- (vii) is commenced in Australia.

Cover under clause 7.6 is available only to meet legal costs associated with a claim or where it would be to the advantage of the TMF to provide representation.

- (b) The cover in clause 7.6(a) above is extended to pursuing or defending an appeal from a decision or judgment (interlocutory or final) in proceedings of the kind referred to in that clause, provided that in relation to pursuing an appeal, the TMF considers that the appeal has merit and reasonable prospects of success.
- (c) Any amounts payable by the TMF to a TMF Agency, TMF Agency employee, voluntary worker or Board Member, Director or Officer under clauses 7.6(a) and (b) above shall be reduced by any amount the TMF Agency, employee, voluntary worker, Board Member, Director or Officer receives in relation to the legal costs, expenses and charges under an order or agreement for costs in the proceedings of the kind referred to in those clauses. If the TMF has already paid the legal costs, expenses and charges (in whole or in part) to the TMF Agency, TMF Agency employee, voluntary worker or Board Member, Director or Officer, or their respective lawyers, the TMF Agency, TMF Agency employee, voluntary worker or Board Member, Director or Officer must reimburse the TMF the amount the TMF Agency, TMF Agency employee, voluntary worker, Board Member, Director or Officer receives. If the TMF Agency or TMF Agency employee, voluntary worker, Board Member, Director or Officer has paid legal costs, expenses and charges in addition to those paid by the TMF, then the reimbursement will be on a pro-rata basis.

*[Note 23: Prior to receiving any payment or other benefit under clause 7.6(a) or (b) above, a TMF Agency employee or voluntary worker or Board Member, Director or Officer may be required to enter into a legally binding agreement with icare self insurance such that any amounts paid to them by the TMF are able to be recovered as enforceable debts.]*



- (d) If cover is granted by the TMF under clauses 7.6(a) and (b) above, the TMF Agency may appoint its lawyer, or TMF Agency employee, voluntary worker, Board Member, Director or Officer appoint his or her lawyer, to act (for example Crown Solicitors Office), but subject to the TMF's approval ('Approved Lawyer').
- (e) The TMF Agency, TMF Agency employee, voluntary worker or Board Member, Director or Officer must not do anything recklessly or wilfully that might give rise to any proceedings of the kind referred to in clauses 7.6(a) and (b) above.
- (f) The TMF Agency, TMF Agency employee, voluntary worker or Board Member, Director or Officer must co-operate with its Approved Lawyer in resolving the matter in a satisfactory, timely and cost-effective way, including giving its Approved Lawyer any relevant information or documents, conferring with its Approved Lawyer and executing any relevant documents. The TMF is entitled to any relevant information or documents provided to the Approved Lawyer and the TMF Agency, TMF Agency employee, voluntary worker or Board Member, Director or Officer waives privilege and confidentiality to the extent that its Approved Lawyer is required to keep the TMF fully informed.
- (g) If any invoice rendered by the Approved Lawyer is sent to the TMF Agency, TMF Agency employee, voluntary worker or Board Member, Director or Officer, the TMF Agency, TMF Agency employee, voluntary worker or Board Member, Director or Officer must send the TMF a copy of it as soon as reasonably practicable.
- (h) The TMF may decide not to continue paying the TMF Agency's, TMF Agency employee's or voluntary worker or Board Member's, Director's or Officer's legal costs, expenses or charges in relation to defending or pursuing the proceedings of the kind referred to in clauses 7.6(a) and (b) above if the TMF believes that there are no reasonable grounds for defending those proceedings or pursuing an appeal. The TMF will take into account the Approved Lawyer's advice before making that decision. If that decision is made, the TMF will notify the TMF Agency, TMF Agency employee, voluntary worker or Board Member, Director or Officer in writing. The TMF will pay the legal costs, expenses and charges incurred prior to the date on which that notification is given. The TMF will only pay the legal costs, expenses and charges incurred on and after that date by the TMF Agency, TMF Agency employee, voluntary worker or Board Member, Director or Officer if the TMF Agency, TMF Agency employee or voluntary worker or Board Member, Director or Officer is successful in the proceedings.
- (i) The TMF Agency, TMF Agency employee, voluntary worker or Board Member, Director or Officer must be reasonable in relation to settlement. The TMF Agency, TMF Agency employee, voluntary worker or Board Member, Director or Officer must not act unreasonably in rejecting a settlement or an offer of settlement, which the TMF or the Approved Lawyer recommends to the TMF Agency, TMF Agency employee, voluntary worker or Board Member, Director or Officer.

## **7.7 Legal costs not covered by Clause 7.6**

- (a) The TMF does not cover the TMF Agency, TMF Agency employee, voluntary worker or Board Member, Director or Officer under clause 7.6 for:

- (i) legal costs, expenses or charges in relation to proceedings referred to in clauses 7.6(a) and (b) above if those proceedings:
  - (A) arise from or are in connection with any pollution or contamination to persons, property or the environment emanating from the TMF Agency's operations, unless wholly sudden or accidental and not preventable by reasonable precautionary maintenance;
  - (B) arise from or are in connection with fraudulent, dishonest or malicious conduct, act or omission, where the fraud, dishonesty and maliciousness is proven against the TMF Agency, TMF Agency employee or Board Member, Director or Officer; or
- (ii) any fine or penalty;
- (iii) the TMF Agency's, TMF Agency employee's or Board Member's, Director's or Officer's out-of-pocket expenses, including travelling to conferences and hearings;
- (iv) the TMF Agency's, TMF Agency employee's or Board Member's, Director's or Officer's expense of providing information to the Approved Lawyer;
- (v) amounts paid to another party as a result of a costs order against the TMF Agency, TMF Agency employee or Board Member, Director or Officer or agreement between that party and the TMF Agency, TMF Agency employee or Board Member, Director or Officer;
- (vi) any legal costs, expenses or charges if the TMF Agency, TMF Agency employee or Board Member, Director or Officer:
  - (A) does not follow the advice of the Approved Lawyer;
  - (B) does not provide information and documents reasonably requested by the Approved Lawyer;
  - (C) causes delay which in the TMF's reasonable opinion prejudices the outcome of the case;
- (vii) any legal costs, expenses or charges not reasonably incurred;
- (viii) if there has been conduct by the TMF Agency, TMF Agency employee or Board Member, Director or Officer (as relevant) involving a lack of good faith or a failure to make full and frank disclosure of all relevant circumstances; or
- (b) The TMF does not cover a TMF Agency employee or Board Member, Director or Officer under clause 7.6 to the extent that the TMF Agency employee or Board Member, Director or Officer is indemnified by his/her TMF Agency or by the external entity to which that person has been appointed as Board Member, Director or Officer at the request of the TMF Agency (but excluding any indemnity provided by the TMF or where otherwise agreed by the TMF).

## **7.8 Indemnity for eligible State officials**

icare self insurance will give the deed poll of indemnity attached to this Statement of Cover (Appendix 7) for the benefit of eligible State Officials covered under the Statement of Cover in their capacity as a Board Member, Director or Officer of a TMF Agency or of an external entity where such position is held at the request of their TMF Agency in respect of liabilities for which cover is provided under the Statement of Cover to these persons in that capacity.

## **8. Guidelines and General Operating Conditions**

### **8.1 Minimum claim**

Every claim, with the exception of a claim under clause 3 Workers' Compensation, is subject to a minimum amount claimable of \$300 excluding GST. Where the minimum amount is reached then the claim is paid in full.

*[Note 24: For example: for a claim of \$200, no amount is paid. However, for a claim of \$310, the claim is paid in full. (In contrast, an excess is an amount deducted from a claims payment e.g. for a \$310 claim subject to a \$300 excess, \$10 is paid.)]*

### **8.2 Reporting to the Claims Manager**

- (a) Approximately six months prior to 30 June each year, all TMF Agencies are required to provide updated information - including details of assets , operating changes, a census of personnel numbers and wages, and other data or information required by the Claims Managers, by means of either an electronic form or a contact interview by Claims Manager personnel. This process collects the data for the calculation of the annual contributions payable by TMF Agencies.
- (b) The TMF Agency must report to the Claims Managers any major or substantial change in exposure to risk(s), identified or created during the Period of Cover.
- (c) The Claims Managers remain the TMF Agency's primary source of operational risk management guidance and information.
- (d) The Risk Management Services Provider personnel are available on request to help establish risk management departments, committees and procedures.

### **8.3 Disputes**

- (a) Any claim in respect of loss, damage, liability, costs or expenses shall be reviewed by and decided upon by the Claims Managers.
- (b) In the event of conflict or disagreement in resolving claims or coverage disputes between the TMF Agency and the Claims Manager, the Chief Executive of the Office of Finance and Services or delegate shall act as arbitrator and adjudicate such claims or coverage disputes.

## 8.4 Overseas operations

TMF Agencies must ensure, prior to setting up temporary or permanent operations overseas, that they have purchased any mandatory insurance cover required by the law of that country.

*[Note 25: This may entail such cover being purchased from an insurer in the particular country's local market. This is likely to include Workers' Compensation, employers' liability and CTP-type cover, but may also include public liability, professional indemnity and non-owned motor vehicle cover.]*

## 9. Claim notices, handling and settlement

### 9.1 Notices

- (a) The TMF Agency shall give written notice as soon as possible to the Claims Managers:
  - (i) of any loss or damage, accident, Claim, writ, summons or proceedings or of any impending prosecution, investigation or inquest or any circumstance(s) likely to give rise to a Claim falling within the workers compensation, legal liability and Directors, Board Members and Officers covers (clauses 3-4 above); and
  - (ii) of any material change(s) in the facts or circumstances from those existing at the commencement of the reported Claims, proceedings, investigation or inquiry.
- (b) The Claims Manager is to be notified in writing of all losses, damage or injury claimed under the property, motor vehicle and miscellaneous covers (clauses 5-7 above) within **twelve months** of the date of the loss, damage or injury.
- (c) The Claims Manager is to be notified in writing of all losses, damage or injury claimed under Legal Liability (clause 4 above) within **twelve months** of the Agency becoming aware of the loss, damage or injury.
- (d) In the event of a breach of clauses 9.1(a) or (b) above, the TMF is entitled to refuse to pay the TMF Agency or any person, who but for this sub-clause (c) would have been entitled to payment for the loss, damage, injury, liability, Claim, damages, costs or expenses.

### 9.2 Conduct of defence

- (a) The Claims Manager shall be entitled to take over and conduct in the name of the TMF Agency (or TMF employee, board member, director or officer, as applicable), the defence or settlement of any Claim, proceedings, investigation or inquiry falling within the cover in clauses 3-4 above.
- (b) The Claims Managers, with the approval of the General Manager NSW Self Insurance Corporation, shall be entitled to defend or settle any Claim, proceedings, investigation or inquiry falling within the cover in clauses 3-4 above and to exercise the TMF Agency's (or TMF employee, Board Member, Director or Officer, as applicable) legal right of recovery or otherwise against any other party for the benefit of the TMF.

- (c) The Claims Managers shall have full discretion in the conduct of any Claim, proceedings, investigation or inquiry and the TMF Agency (or TMF Employee, Board Member, Director or Officer, as applicable) shall give all information and assistance as the Claims Managers may require in the prosecution, defence or settlement of any Claim, proceedings, investigation or inquiry.

### 9.3 Rights of recovery and admission of liability

- (a) All TMF Agencies (or TMF employee, Board Member, Director or Officer, as applicable) shall protect and not do anything to prejudice all of their rights of recovery at law, except as approved by the Claims Manager in writing. Upon payment of any claim under this Statement of Cover, the TMF shall be subrogated to the rights of the TMF Agency or the person covered by this Statement of Cover, against any third parties to recover payments made under this Statement of Cover.
- (b) The TMF Agency (or TMF employee, Board Member, Director or Officer, as applicable) shall not, without the consent of the Claims Managers, make any admission, offer, promise or payment in connection with any accident or Claim, proceedings, investigation or inquiry, other than as part of an apology made in accordance with the *Civil Liability Act 2002*.

[Note 26: Any admission of fault made as part of such an apology is not admissible in any civil proceedings as evidence of fault or liability. Please refer to Appendix 4 for the Public Sector fact sheet No 1 produced by the NSW Ombudsman in relation to apologies.]

## 10. Special conditions for State Owned Corporations and Public Trading Entities

### 10.1 Definitions

In this clause 10:

**SOC** means a corporation within the meaning of the *State Owned Corporations Act 1989* (NSW).

**PTE** means a corporation within the meaning of the *Corporations Act 2001* (Cth) or an incorporated association within the meaning of the *Associations Incorporation Act 2009* (NSW).

### 10.2 Application

This clause 10 applies only to TMF Agencies which are either SOC or PTEs.

### 10.3 Cessation of cover on privatisation

The TMF will not cover a SOC or PTE, or its Board Members, Directors, Officers or employees for:

- (a) any loss, damage, cost, expense, death or injury incurred or sustained; or
- (b) any liability, settlement or costs arising out of an occurrence happening,

on or after the date the SOC or PTE issues any share in the SOC or PTE to parties other than the State of New South Wales or Government agency representing the State, or on or after the date any share

in the SOC or PTE is transferred to parties other than the State or Government agency representing the State.

*[Note 27: The TMF will not pay claims in accordance with this Statement of Cover if the SOC or PTE becomes 'privatised'. If the SOC or PTE becomes 'privatised', it must obtain insurance from a private insurer. The TMF scheme is for the benefit of Government agencies only.]*

#### **10.4 Notification**

The SOC or PTE must notify the TMF of:

- (a) any resolution by its Directors, Officers and/or managers to issue any share or allow the transfer of any share in the SOC or PTE to parties other than the State of New South Wales or Government agency representing the State within 14 days of the resolution; and
- (b) the issue of any share or the transfer of any share in the SOC or PTE to parties other than the State of New South Wales or a Government representing the State agency within 14 days of the issue or transfer.

**End of Statement of Cover**

# Appendix 1 – Risk Management

Risk Management is defined as the culture, processes and structures that are directed towards the effective management of potential opportunities and adverse events. Government, like the private sector, believes that following risk management principles creates a more efficient management environment and reduces both the frequency and severity of losses, thus saving taxpayers' money.

While the TMF covers the TMF Agencies for most types of loss or damage, these risks remain the ultimate responsibility of the TMF Agencies' senior management. For TMF Agencies, the obligation attached to the cover is accountability through the implementation and practice of risk management principles.

The TMF is designed to financially reward TMF Agencies that manage risk and penalise those that do not. This principle provides a fundamental incentive for TMF Agencies to seek to understand and manage the organisational systems and processes that lead to the wide range of unwanted outcomes which, in this environment, become evident in the form of claims against the TMF.

## Service Provider Context

There are three sources of specialised risk management expertise available to icare self insurance and TMF Agencies, each of which is focussed on a different aspect of risk management:

- Claims Management Services providers who provide operational risk management services
- Risk Management Services provider who provide strategic risk services, and
- Reinsurance Services provider who coordinate with lead re-insurers to provide property and liability risk engineering services

The risk management-related roles of the three types of providers are summarised as follows:

<b>Claims Management Services providers</b>	<b>Risk Management Services provider</b>	<b>Reinsurance Services provider</b>
<ul style="list-style-type: none"><li>• Post incident focussed</li><li>• Risk treatment (control)</li><li>• React to increased frequency/cost of claims</li><li>• Improvement short to medium term</li><li>• Agency or claim specific</li><li>• Agency claims/injury management relationship</li></ul>	<ul style="list-style-type: none"><li>• Prevention focussed</li><li>• Risk consulting</li><li>• Aimed at building risk management capability</li><li>• Improvement medium to longer term cost of risk</li><li>• Multiple agency/whole of Fund impact</li><li>• Agency executive/ strategic tier relationship</li></ul>	<ul style="list-style-type: none"><li>• Exposure focussed</li><li>• Risk engineering</li><li>• Evaluating/minimising Maximum Loss</li><li>• Improvement in annual reinsurance cover</li><li>• Whole of Fund reinsurance impact</li><li>• Insurance/ reinsurance market relationship</li></ul>

The objective of the Risk Management Services provider is to focus on building risk management capability of TMF Agencies. The types of activities undertaken by the Risk Management Services provider include:

- A range of risk management activity known as Core Services
  - Committee support, coordination and facilitation for the various committees comprising the TMF Communities of Practice
  - Event and Seminar Management
  - Learning & Development programs
  - Research/Product & Tool development
  - Agency Relationship Management, and
  - Mentoring and Ad-Hoc advice and support.
- Risk management projects incorporating:
  - Core projects that are identified and agreed between the Risk Management Services provider and icare self insurance and support the Core Services, and
  - Sponsored Projects that are formal requests from Agencies or TMF Agency Advisory Council either directly to icare self insurance or via the Risk Management Services provider and that have been approved by icare self insurance.
- Agency Services whereby the Risk Management Services provider may work directly with an Agency on fee-for-service basis, where the work is outside the scope of the abovementioned activities and the Agreement.



# Appendix 2 – Contributions

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## Contributions towards the cost of the TMF scheme: An Overview

Through the New Start initiative of 1995/96, NSW Government agencies were introduced to experience-based contributions and external benchmarks to provide incentives for better performance.

**Detailed information relating to the contribution methodology and changes to the workers' compensation contribution methodology, which are effective from the 2008/09 fund year, is on icare's website and can be accessed at the following URL: [www.icare.nsw.gov.au](http://www.icare.nsw.gov.au).**

Agencies make an annual contribution towards the cost of the TMF scheme. The first step in the contribution setting process is the calculation by actuaries of target contributions for each financial year. The target contribution represents the actuarial global estimate of the total fund claims costs and expenses for the ensuing year. These contributions and the investment income earned will be used over many years to pay claims and expenses such as reinsurance.

Target contributions are then allocated to Agencies as deposit contributions.

Deposit contributions are set based on a weighting between an agency's **own experience** and an appropriate **external measure** (for workers' compensation, this is known as the industry benchmark contribution). The sum of all deposit contributions will add to the total target contribution for the TMF.

It is necessary to include Agencies' **own experience** in the calculation of their deposit contributions because this lessens cross-subsidisation among the members of the TMF and provides incentives to improve performance. However, the TMF also takes into account the varying sizes of its members in applying the experience contribution to ensure that smaller Agencies in particular are not unduly impacted by random claims events.

The **external measure** allows Agencies to be benchmarked against a broader industry portfolio. More weighting is given to this industry benchmark portfolio for the smaller Agencies as their own claims experience is often sparse.

Budget dependent Agencies are allocated funding to assist in covering their contribution costs. Non-budget Agencies are required to fund their contribution costs from their own resources.

A surplus/deficit between the funding and deposit contribution indicates an agency's performance. Budget dependent Agencies will fund any deficit or receive the benefit of any surplus.

For workers' compensation and motor vehicle policies, the contribution methodology incorporates a hindsight adjustment mechanism. An agency whose experience has improved from the original contribution calculation will receive a hindsight incentive payment. However, where an agency's experience has deteriorated, that agency is required to make a hindsight payment.

Further detail on the specific classes of business is provided below.

# Workers Compensation

## **Deposit Contribution**

There are separate pools for Sydney Water, Health, Police, Education, RTA and all other Agencies (known as the Primary pool)..

A deposit contribution is paid into the TMF by each agency to cover the expected cost of claims that will occur in the upcoming Fund year. For Agencies that are not in their own pool, the deposit contribution is a blend of an agency's own experience and the industry benchmark rate. For Agencies that are their own pool, their deposit contribution is the same as the pool target contribution which is based entirely on the pool's own experience.

## **Experience Component**

The experience of each agency is based on its own capped incurred cost of claims for the last two full calendar years preceding the start of the Fund year. Capped Reported Incurred Costs are the sum of the payments plus an estimate of future costs on claims still current at the time the valuation takes place for those claims with a date of injury in the last two calendar years that have been reported to the TMF. Capping claims costs allows amounts above the cap to be shared proportionately across all Agencies within the pool which then protects Agencies from the adverse impacts of very large claims.

## **Industry Benchmark**

The industry benchmark is used in the calculation of deposit contributions. The industry benchmark rate is applied to projected wages to arrive at the industry benchmark contribution. An agency's industry benchmark contribution is mixed with its experience contribution through the use of a size factor to calculate the deposit contribution.

The industry benchmark contribution is incorporated into the funding calculations for budget Agencies.

## **Hindsight Adjustment**

For workers' compensation, hindsight contribution adjustments are calculated at 3 years (interim) and 5 years (final).

# Motor Vehicle

The contributions for motor vehicles are calculated using a method similar to the one for workers' compensation. Thus, the benchmark is used for funding and a deposit contribution is paid into the TMF, adjusted by a single hindsight contribution.

Because motor claims are reported and finalised within a short period of time, the hindsight adjustment takes place 18 months after the commencement of the relevant Fund Year.

The contributions are a combination of experience and benchmark contributions.

The benchmark is provided by reference to claims experience of vehicle fleets in the private sector, as recorded by insurers.

# Liability

As Agencies join the TMF, they pay a contribution that reflects their risk profile. That base contribution is then adjusted yearly according to the fluctuations in the total pool's costs of claims. If there is an increase in costs, all members of the pool contribute an extra amount.

An agency's own claims experience is taken into account, but because the great majority of Agencies have encountered few liability claims over the years, there is not a great deal of experience available on an individual basis. However, a handful of larger Agencies pay a contribution that is weighted for their own claims record.

There is no hindsight adjustment for liability. The budget allocation for liability (and property) contributions is based on the premise that Agencies are fully funded for large claims but the costs of small claims are shared with the Treasury 50/50. This provides an incentive for Agencies to manage or prevent small claims, as they are the ones that Agencies are more likely to be able to control. The overall funding is therefore around 95% of contributions. (NB: small claims threshold for Liability – \$5,000)

# Property

Agencies pay a contribution based on the overall loss experience of the TMF's property portfolio and the value of their own assets. There is no hindsight adjustment for this cover.

# Miscellaneous

Agencies pay a contribution on the overall loss experience reflected in claims against the TMF for personal accident (non-Workers' Compensation), overseas travel, fidelity, personal effects etc, together with declared exposures in relation to those items. There is no hindsight adjustment for this cover.

# Appendix 3 – VMO, HMO & SS

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## VISITING and HONORARY MEDICAL OFFICERS and LEVEL 2-5 STAFF SPECIALISTS EXERCISING RIGHTS OF PRIVATE PRACTICE (VMO, HMO & SS)

### **MEDICAL INDEMNITY FOR TREATING PRIVATE INPATIENTS (and, subject to certain conditions) NON-INPATIENTS in NSW PUBLIC HOSPITALS**

*Note 1: All employee doctors including Staff Specialist Level 1 including when treating private patients and Level 2-5 Staff Specialists when treating public patients are covered by the liability section of the Statement of Cover.*

There are six types of Indemnity Contracts.

#### **1. VMO/HMO CONTRACT OF LIABILITY COVERAGE FOR PUBLIC PATIENTS ONLY**

Introduced to cover incidents from 1 January, 2002 for treating public patients in NSW public hospitals.

#### **2. RURAL VMO/HMO CONTRACT OF LIABILITY COVERAGE (INCLUDING PRIVATE INPATIENT INDEMNITY COVER)**

Commenced from 1 July, 2003. Cover is provided for public patients and for private patients treated in Rural Public Hospitals.

#### **3. RURAL VMO CONTRACT OF LIABILITY COVERAGE (INCLUDING PRIVATE INPATIENT AND NON-INPATIENT INDEMNITY COVER)**

A form of the Private Patient indemnity contract which includes cover for private non-inpatients treated in Rural Public Hospitals has been prepared for those VMOs who undertake private practice in the public hospital system under similar arrangements to Staff Specialists exercising rights of private practice (mainly applicable to certain VMO radiologists and pathologists), and it also commenced from 1 July, 2003.

This indemnity is only available to VMOs where arrangements with the relevant public health organisation (PHO) satisfy clause 2.3 of that contract, namely:

- (i) the VMO treats the patient under an established arrangement with the PHO, whereby the VMO is entitled to treat private non-inpatients at the relevant public hospital/s in return for facility fees substantially commensurate with the monthly infrastructure charges paid by Salaried Medical Officers in a similar specialty exercising rights of private practice at the relevant public hospital/s, and which complies with any relevant and current Department of Health policy in respect of such arrangement;
- (ii) Similar to Salaried Medical Officers exercising rights of private practice at the relevant public hospital/s, the PHO bills the relevant patient on behalf of the VMO.

*NOTE 2: A claim will not be met for a non-inpatient service rendered by a VMO unless the conditions of clause 2.3 are satisfied.*

**4. LEVEL 2 – 5 STAFF SPECIALISTS CONTRACT OF LIABILITY COVERAGE FOR THE TREATMENT OF PRIVATE PATIENTS IN RURAL PUBLIC HOSPITALS (that is: when exercising Rights of Private Practise)**

Commenced from 1 July, 2003. It is similar to Rural VMO contract except also covers private non inpatients, treated in Rural Public Hospitals.

**5. VMO/HMO CONTRACT OF LIABILITY COVERAGE FOR PRIVATE PAEDIATRIC INPATIENTS**

Commenced from 1 January, 2004. Any VMO who treats private paediatric inpatients in any public hospital is eligible to participate.

**Paediatric patient** means:

- (i) a patient age 18 years or under; or
- (ii) a patient admitted as an inpatient or who is treated as a privately referred non inpatient in one of two public hospitals within the Sydney Children's Hospitals Network,
  - a. The Royal Alexandra Hospital for Children (The Children's Hospital at Westmead), and
  - b. Sydney Children's Hospital, Randwick; and also in
  - c. John Hunter Children's Hospital, Newcastle; or
- (iii) a patient admitted as an inpatient or who is treated as an outpatient or a privately referred non inpatient by Visiting Medical officers (VMOs), Honorary Medical Officers (HMOs), Staff Specialists or Clinical Academics providing outreach services where such services are being provided by the Sydney Children's Hospitals Network or by John Hunter Children's Hospital to another hospital or Local Health District through the "Outreach" network; or
- (iv) any patient who continues to receive health care from a VMO, HMO, Staff Specialist or Clinical Academic provided the health care is part of a course of treatment initiated when the patient was aged 18 years or under; or
- (v) under relevant circumstances, an extension of cover may be applied to individual liability coverage when treatment is provided in a Children's Hospital under the Specialist Children's Network.

A rural VMO who has a contract under Contract 2 "Rural VMO/HMO Contract for Liability Coverage (including Private Indemnity Cover)" or Contract 3 "Rural VMO Contract of Liability Coverage (including Private Inpatient and non-inpatient Indemnity Cover)" is already covered for incidents of this nature. Therefore, they do not need to execute Contract 5.

**6. PAEDIATRIC LEVEL 2-5 STAFF SPECIALIST CONTRACT OF LIABILITY COVERAGE FOR TREATMENT OF PRIVATE PAEDIATRIC PATIENTS IN PUBLIC HEALTH ORGANISATIONS**

Commenced 1 January, 2004.

All staff specialists are eligible to participate.

A staff specialist who has Contract 4 "Level 2 Salaried Medical Practitioner (SMP) Contract of the Treatment of Private Patients in Rural Public Hospital" is already covered for paediatric private patients. Therefore, they do not need to execute Contract.

Note 3:

- *Rural Hospitals include all rural health service public hospitals and nominated hospitals at Illawarra and Hunter.*
- *Privately operated hospitals with contracts to treat public patients are specifically excluded from Contracts 2 to 6 (this includes Hawkesbury District Hospital.)*
- *Coverage under Contract 1 will be considered on a case by case basis, following written submissions to the Department from the Health Service Chief Executive Officer.*

## **TMF LIABILITY COVER FOR VMOs**

Under the Statement of Cover, the TMF covers Local Health Districts (as TMF Agencies) for their liability assumed by agreement to indemnify VMOs, HMOs and SSs pursuant to the six types of Contracts of Liability Coverage outlined above. Accordingly, the TMF indirectly indemnifies those doctors. With respect to VMOs in particular, the TMF indirectly indemnifies them in the following way:

(a) Public Patient Cover (for incidents on and from 1 January 2002)

TMF indemnity is granted for legal liabilities arising from health care claims made in respect of the treatment of public patients in public hospitals or through health services under the control of a PHO.

(b) Private Patient Indemnity Cover (for incidents on and from 1 July 2003).

TMF indemnity is granted for legal liabilities arising from health care claims made in respect of the treatment of private inpatients in public hospitals or through health services under the control of a PHO. Cover is also granted to private non-inpatients conditional upon:

- (i) the VMO treating the patient under an established arrangement with the PHO, whereby the VMO is entitled to treat private non-inpatients at the relevant public hospital/s in return for facility fees substantially commensurate with the monthly infrastructure charges paid by Staff Specialists in a similar specialty exercising rights of private practice at the relevant public hospital/s, and which complies with any relevant and current Department of Health policy in respect of such arrangement; and
- (ii) similar to Staff Specialists exercising rights of private practice at the relevant public hospital/s, the PHO billing the relevant patient on behalf of the VMO.

(c) Private Paediatric Patient Indemnity Cover (for incidents on and from 1 January 2004).

TMF indemnity is granted for legal liabilities arising from health care claims made in respect of the treatment of private paediatric inpatients in public hospitals or through health services under the control of a PHO.

## **WHAT IS A HEALTH CARE CLAIM?**

A health care claim in the context of the TMF is a claim for damages or monetary compensation, through legal proceedings or a verbal or written demand, against the VMO, HMO or indemnified staff specialist in

respect of any injury or death allegedly caused wholly or partly by the VMO, HMO or indemnified staff specialist in providing health care to public patients.

## **IS TMF INDEMNITY AVAILABLE FOR THE COSTS OF LEGAL REPRESENTATION?**

TMF indemnity is not provided for representation, legal and other costs or penalties arising out of disciplinary proceedings, criminal proceedings, coronial inquests and any other similar actions or inquiries such as those taken by the Medical Board, Health Care Complaints Commission and other disciplinary tribunals.

There may from time to time be a particular matter that will necessitate TMF monitoring progress and providing assistance for representation at an inquest. This will be reviewed in the light of preserving the integrity of the TMF, and future possible civil claim.

Applications for assistance with an inquest will be reviewed on that basis and the Ministry of Health will provide instructions as to whether assistance may be granted. This does not prevent the Local Health District from otherwise providing assistance to a doctor should they consider it prudent to do so, however the funds must be drawn from hospital/LHD revenue.

**WHAT CLAIMS ARE EXCLUDED FROM COVERAGE?** The TMF will not cover any claim that does not fall within the terms of coverage set out in the contract of liability coverage between the Local Health District and the VMO. Coverage is only for civil liability arising from health care claims for occurrences during the coverage period in relation to the provision of medical services to patients in public hospitals or health services (including failure to warn and consent issues relating to patients).

Note: Cover continues for a claim arising from an incident incurred during the contract period even though the VMO, HMO or SS may have resigned, retired or died.

The following claims are specifically excluded from coverage:

- (a) Any claim arising from the manufacture of any products or the construction, alteration, repackaging, repair, servicing, treating of any products sold, supplied or distributed by the VMO or any claim arising out of the failure of any product to fulfil the purpose for which it was designed, specified, warranted or guaranteed to perform, other than products supplied to the VMO by the PHO.
- (b) Any claim that arises out of VMO conduct that constitutes a criminal offence or any other serious and wilful misconduct.

## **VMO RESPONSIBILITIES**

1. The VMO or their practice company must have a written service contract and the VMO must also have a contract of liability coverage with the PHO. Both documents must be signed by both parties.
2. VMO's must report in writing using a standard form, to the Claims Manager through the PHO, any incident that may trigger the liability cover as soon as the VMO becomes aware of such an incident (The relevant TMF Incident Report pro forma is attached to the VMO Contract of Liability Coverage).

3. VMO's must co-operate with and participate in clinical quality assurance, quality improvement and risk management processes, performance review processes, projects and activities as required by the PHO.
4. VMO's must, within 10 days of being requested by a PHO, provide a record of their claims history for the last 6 years.
5. VMO's must co-operate in full with the PHO, Claims Manager and legal service providers appointed for the purpose of managing and conducting the claim. (The VMO Contract of Liability Coverage provides that the management and conduct of any claim passes to the PHO and TMF).
6. VMO's are advised to ensure they retain copies of all signed contracts and service agreements and any lodged incident reports and acknowledgements, in a secure and accessible location
7. VMO's are advised that should they lodge an incident report form and not receive acknowledgement of same within 21 days, VMO's must contact their Risk Manager and/or TMF Claims Manager to ensure notification has been received.

## **INCIDENT REPORTING**

A claim is defined as a demand for compensation, communicated in writing or by service of legal proceedings against a VMO, HMO or SS. Compare to the Defined Terms

An incident is something which occurs during the patient's course of treatment that the doctor believes could give rise to a possible health care claim. It includes matters such as incorrect surgical procedure, incorrect drug treatment program, inadequate warnings of risk, alternative treatments or inadequate post-surgical regimes.

Some assistance in identifying what types of matters should be reported may be drawn from The Quality in Health Care Study\*. It defines an adverse event, and such events will on most occasions be the likely subjects of reporting. The definition includes an unintended injury or complication that results in disability; and death or prolongation of hospital stay that is caused by health care management rather than the patients' disease. The course of patient disease and patient expectations will often create a situation where the possibility of a claim will arise even though health care management has not been a cause of the outcome.

VMOs, HMOs and SSs are required to comply with incident reporting requirements as outlined in the relevant Contract of Liability Coverage.

\*Wilson RM, Runciman WB, Gibberd RW, et al. The Quality in Australian Health Care Study. Med J Aust 1995; 163: 458-471.

## **TMF INCIDENT REPORTS**

It is a condition of the VMO Contract of Liability Coverage that the VMO must promptly report incidents using the form provided.

It is expected that where practicable the form will be completed and referred to the PHO Liaison Officer within 48 hours of a VMO becoming aware of an incident.



The PHO will enter the details onto the Visiting Medical Officers Incident reporting System (VMOIRS). This will be used primarily to assist in the future management and conduct of any subsequent claim, including obtaining legal advice and representation.

Aggregated information from Incident Reports may also be used to assess opportunities for clinical improvement within the health system.

Incidents are to be generally reported within 48 hours.

Early reporting of incidents is an effective risk management technique as it allows an incident to be investigated, equipment retained, reports gathered and relevant facts obtained at a time when the incident is fresh in the minds of those involved.

Documents will also be usually more readily accessible. This will assist early assessment of the legal position and ensure that any future claim can be conducted effectively.

Circumstances sometime place a VMO in a position where the earliest he or she can practically report an incident is more than 48 hours after its occurrence. The prompt reporting requirement in clause 3 of the contract will be satisfied provided that the VMO acts in good faith, is able to demonstrate that it was not practicable to report within 48 hours, and reports the incident as soon as practicable after becoming aware of it.

## **WHERE A VMO IS NOT AWARE THAT AN INCIDENT IS ONE THAT SHOULD BE REPORTED UNTIL SOME TIME AFTER IT OCCURS OR UNTIL THE CLAIM IS ACTUALLY MADE**

The contract of liability coverage requires a VMO to promptly report incidents that can reasonably be expected to trigger liability cover, as soon the VMO becomes aware of them.

In rare circumstances, a VMO may not be aware of an occurrence that may trigger the liability cover until much later on or until a claim is actually made. Provided the VMO acts in good faith, and has genuinely been unaware that an incident might give rise to a claim, the VMO will be covered.

The following three examples are given: -

1. During a surgical operation, an accident occurs with a scalpel that causes serious damage to the patient in a part of their body for which no surgical intervention was anticipated or expected by the patient. Long term and/or short term physical impairment is highly probable. The lodgement of an incident report within 48 hours of completing the operation is expected.
2. An inpatient is prescribed a particular drug regime prior to discharge and is required to have a consultation in 7 days. After 3 days the patient makes contact concerning adverse and unexpected complications. Further investigations reveal the patient was allergic to some of medication and recovery will now be significantly longer and more difficult. The lodgement of an incident report within 48 hours of the results of the investigation being made available is expected as the original incident occurred whilst the patient was a public inpatient.
3. Several years after treating a patient in a public hospital a VMO becomes aware that the patient may be seeking information, as they appear less than satisfied with their treatment. It would be

expected that upon the VMO becoming aware that the patient is seeking information an incident form will be completed within 48 hours as the original incident involved a public hospital.

The VMO should also notify using the Incident Form if they receive a letter of complaint or demand from patient or through a third party for example a solicitor, the Health Care Complaints Commission, PHO or Medical Board.

ENQUIRIES REGARDING CONTRACT OF LIABILITY COVERAGE SHOULD BE DIRECTED TO THE RELEVANT HEALTH SERVICE WHO WILL REFER TO THE MINISTRY OF HEALTH IF NECESSARY.

# Appendix 4 – Apologies

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Acknowledgement of fault is not the same as being legally liable. The determination of legal liability is a separate process.

The *Civil Liability Act 2002* defines an apology as “an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter whether or not the apology admits or implies an admission of fault in connection with the matter” (s.68).

## **Are apologies an admission of liability?**

The Civil Liability Act 2002 (the Act) provides that an apology does not constitute an admission of liability, and will not be relevant to the determination of fault or liability, in connection with civil liability of any kind. Furthermore, evidence of an apology is not admissible in a court hearing as evidence of fault or liability (other than the categories of civil liability excluded by s.3B of the Act).

The following fact sheet is produced by the NSW Ombudsman.

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<https://www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/state-and-local-government/apologies-2nd-ed>

## Apologies

### Why apologise?

When things go wrong, many complainants demand no more than to be listened to, understood, respected and, where appropriate, provided with an explanation and apology. A prompt and sincere apology for any misunderstanding is likely to work wonders. It often will avoid the escalation of a dispute and the significant cost in time and resources that can be involved.

In the Second Reading speech to amendments to the *Civil Liability Act 2002* (the Act) the then Premier explained the benefits of an apology:

*Injured people often simply want an explanation and an apology for what happened to them. If these are not available, a conflict can ensue. This is, therefore, an important change that is likely to see far fewer cases ending up in court. (Hansard, L.A. 23/10/02)*

### Are apologies an admission of liability?

The Act provides that an apology does not constitute an admission of liability, and will not be relevant to the determination of fault or liability, in connection with civil liability of any kind. Furthermore, evidence of an apology is not admissible in a court hearing as evidence of fault or liability (other than the categories of civil liability excluded by s.3B of the Act). An apology is defined in the Act as 'an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter whether or not the apology admits or implies an admission of fault in connection with the matter' (s.68). The general effect of an apology on liability is set out in the Act in the following terms:

- (1) An apology made by or on behalf of a person in connection with any matter alleged to have been caused by the person:
  - a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter, and
  - b) is not relevant to the determination of fault or liability in connection with that matter.
- (2) Evidence of an apology made by or on behalf of a person in connection with any matter alleged to have been caused by the person is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter. (s.69)

The *Defamation Act 2005* contains similar protection from liability (ss. 20 & 38).

### How should an apology be worded?

The most appropriate form and method of communication of an apology will depend on the circumstances of the particular case, the harm suffered, and what is hoped to be achieved by giving the apology (for example restoration of reputation, acknowledgement of the wrong done, reconciliation or an assurance that a problem has been addressed or will not recur).

In principle, the most effective apologies incorporate the following ten elements which can be grouped under the six headings – recognition, responsibility, reasons, regret, redress and release:

#### Recognition:

1. **description of the wrong** – a description of the relevant problem, act or omission (the wrong) to which the apology applies
2. **recognition of the wrong** – an explicit recognition that the action or inaction was incorrect, wrong, inappropriate, unreasonable, harmful, etc
3. **acknowledgement of the harm** – an acknowledgement that the affected person has suffered embarrassment, hurt, pain, damage or loss.

#### Responsibility:

4. **acceptance of responsibility** – an acknowledgement/admission of responsibility for the wrong and harm caused.<sup>1</sup>

#### Reasons:

5. **explanation of the cause** – a simple, plain English explanation of the reasons for or cause of the problem<sup>2</sup>, or a promise to investigate the cause (which could include a reference to any mitigating circumstances, eg, whether the act or omission was not discretionary or was unintentional).

#### Regret:

6. **apology** – an expression of sincere sorrow or remorse, eg. that the action or inaction was wrong or at the very least an expression of regret
7. **sincerity of communication** – a form or means of communication of an apology is very important as such matters can indicate or emphasise the level of sincerity of the apologise.

<sup>1</sup> It should be recognised that while an apology cannot be used in court to prove fault or liability on the part of the person or body who made the apology, on the other hand the giving of the apology does not absolve the person or body from any potential liability.

<sup>2</sup> Although an apology and information conveyed in an apology may not be admissible, the apology may convey information that can be used to obtain information in an admissible form in other ways for use in court proceedings.

## Apologies

### Redress:

8. **action taken or proposed** – a statement of the action taken or specific steps proposed to address the grievance or problem, by mitigating the harm or offering restitution or compensation<sup>3</sup>
9. **promise not to repeat** – a promise or undertaking that the action or inaction will not be repeated.

### Release:

10. **request for forgiveness** – a release from blame (an optional element).

## What apologies are not protected by the Civil Liability Act (the Act)?

The types of civil liability that are not covered by the protection for apologies in the Act (see s.3B) can be briefly summarised as liability for:

- a) an intentional violent act done with intent to cause injury or death (including sexual assault or misconduct)
- b) the contraction of a dust disease, or for a personal injury allegedly caused by smoking or the use of tobacco products
- c) economic loss, non-economic loss or psychological/psychiatric injury to an injured person and liability for the compensation of relatives of a deceased person that arises from a motor accident (or transport accident as defined in the *Transport Administration Act 1998*) to which the *Motor Accidents Act 1988* applies, or from a motor accident or public transport accident to which the *Motor Accidents Compensation Act 1999* applies
- d) damages payable by an employer for the injury or a worker or the death of a worker resulting from or caused by an injury, and compensation under various workers compensation legislation, the *Victims Support and Rehabilitation Act 1996* or the *Anti-Discrimination Act 1977*, or for a benefit payable under the *Sporting Injuries Insurance Act 1978*.

<sup>3</sup> In proceedings relating to liability for negligence, 'the subsequent taking of action that would (had the action been taken earlier) have avoided a risk of harm does not of itself give rise to or affect liability in respect of the risk and does not of itself constitute an admission of liability in connection with the risk' (s.3C of the Act).

Although these exclusions appear at first glance to be extensive, in practice they have little relevance to the vast majority of the day-to-day interactions between public officials and members of the public.

Where a matter that falls (or is thought to fall) into any of the categories listed in s.3B, an apology should not be made until legal advice has been obtained. This approach is recommended because an apology provided in such a matter may act as an admission of liability and may therefore breach a contract of insurance held by the agency. When legal advice is sought by an agency in such circumstances, the agency should clearly ask its legal adviser to consider whether a 'without prejudices' offer of an apology could still be made, as it may facilitate an agreement between the parties that settles the matter.

In the limited circumstances where the protections of the Act do not apply to an apology, it may still be appropriate to offer an expression of sympathy or regret. Where even an expression of sympathy or regret is considered too sensitive to issue, subject to legal advice, a statement could still be made that describes or explicitly acknowledges the grievance or alleged problem (but only in general terms without referring to causation or acknowledging liability), and states the action taken or the specific steps that are proposed to help address the grievance or alleged problem.

## Options for redress

Guidance on options for dealing with persons who have been detrimentally affected by maladministration can be found in *Options for Redress – Guidelines for redress for detriment arising out of maladministration* at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

## Insurance

The content of coverage issued by NSW SICorp (the Treasury Managed Fund) to TMF agencies provides that:

*9.3 (b) The TMF Agency shall not, without the consent of the Claims Managers, make any admission, offer, promise or payment in connection with any accident or Claim proceedings, investigation or inquiry, other than as part of an apology made in accordance with the Civil Liability Act 2002. [Emphasis/s added]*

## Contact us for more information

Our business hours are: Monday to Friday, 9am–5pm (Inquiries section closes at 4pm)

If you wish to visit us, we prefer you make an appointment. Please call us first to ensure your complaint is within our jurisdiction and our staff are available to see you.

Level 24, 580 George Street  
Sydney NSW 2000

Email [nswombo@ombo.nsw.gov.au](mailto:nswombo@ombo.nsw.gov.au)  
Web [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

General inquiries 02 9286 1000  
Facsimile 02 9283 2911

Toll free (outside Sydney metro) 1800 451 524  
Tel. typewriter (TTY) 02 9264 8050

Telephone Interpreter Service (TIS): 131 450  
We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.



# Appendix 5 – Information for overseas travellers

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NSW Self Insurance Corporation has a contract with **Dynamiq Pty Ltd** to provide TMF Agency staff with emergency travel assistance, emergency medical, security services and emergency evacuation services.

This assistance is 24 hours a day, 7 days a week, worldwide. Dynamiq can be contacted by reverse charge anytime and from anywhere in the world.

Contacting Dynamiq:

Phone +61 2 9978 6682

Fax +61 2 9888 3609

SMS +61 416 907 493

Email [assistance@dynamiq.com.au](mailto:assistance@dynamiq.com.au)

Non-emergency related enquiries should be directed to your Client Service Manager.

Overseas travel assistance, emergency medical and security services means:

- Medical advice and assistance
- Pre-travel advice on security issues in the destination country
- Emergency evacuation and repatriation
- A travel locator and portal to enable agencies to immediately locate the number of staff they have in any overseas location, their accommodation and flight details.

TMF agency staff intending to travel overseas on agency business should obtain the latest travel information from Dynamiq prior to departure.

Agency staff can obtain up-to-date information on medical, health and security issues for their travel destination by accessing Dynamiq's services via their website.

Follow these steps to access these services:

- Login to icare's website and find the Dynamiq page under "Services"
- Click on the link that will become available on the left hand menu of this page called "Login"
- On the "Login" page, click on the link and you will be taken to Dynamiq's portal.

# Appendix 6 - Construction Insurance

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Construction Insurance is a separate form of cover that is not provided by the TMF. The TMF is for the protection of government assets and liabilities whereas Construction Insurance covers both government and non-government entities.

The NSW Self Insurance Corporation Act 2004 makes provision for Construction Insurance to be provided by icare self insurance subject to the Agency obtaining prior approval from icare self insurance. The NSW Self Insurance Corporation Act 2004 operates in conjunction with Treasury Circular 12/11, which mandates all agencies, other than State Owned Corporations, to place Construction Insurance through icare self insurance for all government capital works projects estimated to cost \$10 million or more.

Construction Insurance cover is also available from icare self insurance for Agencies with projects valued under \$10 million per contract.

For details of terms and conditions (Policy Wording) of the Construction Insurance cover contact the Director, Construction Risks at icare self insurance.

icare self insurance will work with Agencies to develop tailored insurance programs for the project and provide confirmation of cover for all Construction Insurance projects by way of insurance policy wordings and certificates of currency as evidence that cover is in place.

Agencies before releasing Requests for Tender for capital works projects estimated to cost \$10 million or more, should contact the Director, Construction Risks at icare self insurance to discuss the Construction Insurance cover required, project scope, risk parameters, policy requirements and related project specific details as early as possible and prior to release of any RFT to facilitate the development of specific project insurance requirements.

## **What is Construction Insurance?**

Construction Insurance means a structured arrangement whereby the parties involved in a building or infrastructure contract / project including the Principal, the Contractor and the various sub-contractors can be covered by icare self insurance for all contract works on behalf of the NSW Government.

The Principal in these contracts / projects is the NSW public sector agency on behalf of the NSW Government, and/or other parties as in Public Private Partnerships and/or Alliance type structures.

Construction Insurance programs are individually placed programs for construction / infrastructure projects. Construction Insurance programs do not have automatic cover, however where required for the project to cover projects, facilities, manufacturing locations, marine transit requirements and / or other covers, arrangements can be made to provide cover that can be extended world-wide.

## **The cover**

Construction Insurance covers Public liability (including general and product liability); Contract works (material damage); and other covers as appropriate for the contract such as Marine Transit, Advanced Consequential Loss , Delayed Start Up and various project specific insurance requirements as needed for the project. International marine transit risks are not included unless specifically arranged.

## **Overseas operations**

It may be necessary to extend cover to various manufacturing or other overseas sites and / or extend cover to include international marine transit. These requirements will be project specific and will require discussion with icare self insurance as to the mechanisms to arrange this insurance cover.

## **What is not covered**

Construction Insurance does not include Workers' Compensation insurance; loss or damage to registered and unregistered mechanically propelled vehicles; tools, plant and equipment including temporary works belonging to contractors and/or subcontractors or for which they are remain responsible to insure. Construction Insurance is not an automatic class of cover, it is project specific and arranged on notification from the Agency and acceptance by icare self insurance who will issue policy wordings and certificates of currency.

## **Benefits of Construction Insurance**

Construction Insurance replaces the need for the contractor to arrange separate contract works and public liability insurances for the building or infrastructure contract / project.

The benefits of Construction Insurance include:

- Greater control of risk on behalf of NSW Government
- Reduced administrative costs
- Elimination of insurance gaps within the various contracting parties' policies
- Elimination of cross-litigation actions
- More bargaining power to negotiate the best possible premium terms for all parties through realising economies of scale
- Increased flexibility in securing broad and market-competitive terms of cover
- The ability to consider insurance protection for NSW Government from delay in start-up for certain key projects.

## **Claim notices, handling and settlement**

In respect to Construction Insurance programs all incidents that are likely to or may give rise to a claim are to be advised to icare self insurance's Claims Manager within 48 hours of the project manager becoming aware of the incident. Contractors must be advised of these requirements and the need to provide advice without delay. In the event of an incident emergency steps can be initiated to mitigate any further loss.

## **Premiums**

Programs are rated on a project basis depending on the scope, nature and risk of the works involved. The premium is based on the projects nature, value, liability requirements on a sum insured basis for material damage, public liability and other required covers.

## **Role of Claims Manager**

The Claims Manager is contracted to provide a wide range of services to meet the operational needs of icare self insurance, provide claims management services in regard to Construction Insurance programs and on receipt of an initial Construction Insurance incident or claims notification take the necessary steps to manage claims activities.



# Appendix 7 – Deed Poll of Indemnity

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NSW Self Insurance Corporation

**Deed Poll of Indemnity**  
**for the Benefit of**  
**Board Member, Director or Officer**

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THIS DEED POLL is made by

**NSW Self Insurance Corporation ("SICorp")**

for the benefit of each Eligible State Official covered under the Treasury Managed Fund Statement of Cover in their capacity as a Board Member, Director or Officer of a TMF Agency or of an external entity where that position is held at the request of the Eligible State Official's TMF Agency.

**RECITALS:**

- A. SICorp is a corporation constituted pursuant to s.4 of the *NSW Self Insurance Corporation Act 2004* (the "*SICorp Act*").
- B. SICorp's functions include:
  - (a) the operation of Government managed fund schemes within the meaning of the *SICorp Act*;
  - (b) the provision of indemnities to Eligible State Officials within the meaning of the *SICorp Act* in respect of liabilities to which a Government managed fund scheme applies; and
  - (c) acting for an Eligible State Official in dealing with claims under a Government managed fund scheme (including the recovery of amounts payable to an Eligible State Official in connection with such claims).
- C. SICorp operates the Treasury Managed Fund as a Government managed fund scheme under the *SICorp Act*.
- D. The Treasury Managed Fund covers certain liabilities of an Eligible State Official where acting in his/her capacity as a "Board Member" and/or "Director or Officer" (as defined in the Statement of Cover for that fund) of a TMF Agency or of an external entity where that position is held at the request of their TMF Agency.
- E. SICorp intends, on the terms of this Deed Poll, to indemnify each Eligible State Official in respect of those liabilities for which they are covered under clauses 4.2 and 7.6 of the Treasury Managed Fund in their capacity as a Board Member, Director or Officer of a TMF Agency or of an external entity where that position is held at the request of their TMF Agency.

**Operative provisions**

**1. Interpretation and Definitions**

**1.1** In this deed poll, unless the context otherwise requires:

- (a) **Board Member** has the same meaning as in the SoC;

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- (b) **Claims Manager** has the same meaning as in the SoC, to the extent referable to this Deed Poll;
- (c) **Director or Officer** has the same meaning as in the SoC;
- (d) **Effective Date** means the date on which the Indemnified Person is or was appointed as a Board Member, Director or Officer of the relevant TMF Agency or external entity at the request of the TMF Agency;
- (e) **Eligible State Official** has the same meaning as in the *SICorp Act*;
- (f) **Indemnified Person** means an Eligible State Official who may claim indemnity under this Deed Poll;
- (g) **Indemnity** means the indemnity given in this deed poll;
- (h) **SICorp** means NSW Self Insurance Corporation, constituted under the *SICorp Act*;
- (i) **SICorp Act** means the NSW Self Insurance Corporation Act 2004;
- (j) **SoC** means the Statement of Cover for the Treasury Managed Fund as published from time to time, available through [www.sicorp.nsw.gov.au](http://www.sicorp.nsw.gov.au); and
- (k) **TMF Agency** has the same meaning as in the SoC.

**1.2** In this deed poll:

- (a) headings are for convenience only and do not affect interpretation;  
and unless the context indicates a contrary intention:
- (b) a reference to SICorp includes any successor entity to SICorp that assumes relevant statutory functions of that entity;
- (c) a reference to this deed poll or to any other deed, agreement or document includes, respectively, this deed poll or that other deed, agreement or document as amended, supplemented, varied or replaced from time to time;
- (d) words importing the singular include the plural (and vice versa), words denoting a given gender include all other genders, and words denoting individuals include corporations (and vice versa);
- (e) a reference to a clause is a reference to a clause of this deed poll;
- (f) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (g) a reference to any legislation or to any section or provision thereof includes any statutory modification or re-enactment or any statutory provision substituted for it, and ordinances, by-laws, regulations, and other statutory instruments issued thereunder; and
- (h) a reference to any defined term or provision of the SoC (in this paragraph (h), "Referenced SoC Provision") includes:

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- (i) a reference to any definitions of that document to the extent that they are referenced in the defined term or Referenced SoC Provision;
- (ii) a reference to any provision that states exclusions from the Referenced SoC Provision, to the extent necessary to determine the scope of the Referenced SoC Provision; and
- (iii) a reference to any later provision that amends or replaces the Referenced SoC Provision from time to time.

## **2. Indemnity**

### **Scope of Indemnity referable to SoC**

**2.1** Subject to this deed poll, on and from the Effective Date SICorp indemnifies the Indemnified Person against any liability:

- (a) for which cover is provided to an Eligible State Official under clauses 4.2 and 7.6 of the SoC in his/her capacity as a Board Member, Director or Officer of a TMF Agency or of an external entity where that position is held at the request of the Eligible State Official's TMF Agency; and
- (b) that is incurred by the Indemnified Person in his or her capacity as a Board Member, Director or Officer of that TMF Agency or external entity.

### **Exclusions**

**2.2** Subject to clause 2.3, the Indemnity does not apply in respect of any liability of the Indemnified Person for which cover may be excluded under the SoC for an Eligible State Official.

**2.3** The Indemnity is effective notwithstanding that SICorp seeks to exercise its absolute, general discretion to exclude cover arising under clause 2(b) of the SoC (also referred to in the TMF introductory wording under the heading "The Treasury Managed Fund and the Statement of Cover" and the subheading "Statement of Cover is not a Contract", which states that the SoC is Government policy only and may be departed from by SICorp in its absolute discretion). (To avoid doubt, this exception to clause 2.2 does not apply if SICorp seeks to exercise a specific discretion to exclude cover under other provisions of the SoC including, without limitation, a discretion to exclude cover under clauses 4.2 or 7.6 of the SoC on the basis of one of the stated exclusions to that cover as listed in that document.)

## **3. Conditions of Indemnity**

### **Initial claim to be made under SoC**

**3.1** Before making any claim under this deed poll the Indemnified Person must first make a claim through his/her TMF Agency under the SoC and have that claim dealt with under and in accordance with that document.

### **Minimum claim**

**3.2** Every claim under this deed poll is subject to a minimum amount claimable of \$300 excluding GST. Where the minimum amount is reached then, subject to the terms of this deed poll, the claim is paid in full.

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### **No double recovery**

- 3.3** The Indemnified Person may not recover under the SoC and under this deed poll in respect of the same liability. If the Indemnified Person is entitled to cover under the SoC in respect of those liabilities that are covered under this Indemnity the Indemnified Person may not make any claim under this Indemnity.
- 3.4** If the Indemnified Person is insured or entitled to any other indemnity from a third party (other than the Crown in right of the State of NSW and/or other than under the SoC) for any liability for which the Indemnified Person is entitled to be indemnified under this deed poll, the Indemnified Person:
- (a) must claim under the applicable third party insurance policy or other indemnity.
  - (b) is not required to await the outcome of a claim under the third party insurance policy or other indemnity before claiming under this deed poll but may be required to refund moneys paid in respect of a claim under this Deed poll for which the Indemnified person also receives payment under a third party insurance policy or indemnity.

### **Full and frank disclosure**

- 3.5** The Indemnity is conditional upon the Indemnified Person making full and frank disclosure to SICorp of all relevant circumstances pertaining to a claim under this deed poll.
- 3.6** If at any stage it becomes apparent to SICorp that the Indemnified Person has failed to make full and frank disclosure of all circumstances pertaining to a claim under this deed poll:
- (a) SICorp may decline to indemnify the Indemnified Person in respect of the claim;
  - (b) any moneys already paid under the this deed poll in respect of the claim may be recovered from the Indemnified Person as a debt due and owing to SICorp.

## **4. Claim notices, handling and settlement**

### **Notices**

- 4.1** On and from the date of execution of this deed poll the Indemnified Person must give written notice as soon as possible to SICorp:
- (a) if any loss or damage, accident, claim, writ, summons or proceedings or of any impending prosecution, investigation or inquest or any circumstance(s) likely to give rise to a claim under this deed poll; and
  - (b) of any material change(s) in the facts or circumstances from those existing at the commencement of the reported claims, proceedings, investigation or inquiry.
  - (c) In the event of a breach of clause 4.1, SICorp is entitled to refuse to pay the Indemnified Person, who but for this clause 4.1(c) would have been entitled to payment under this deed poll.

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- 4.2** A notice under this clause 4 is properly given if the Indemnified Person delivers it by hand, posts it or transmits a copy electronically (email or facsimile) to the address last advised by SICorp to the Indemnified Person (which, as at the date of execution of this deed poll, is the address given below). If the notice is given electronically, the Indemnified Person must obtain an acknowledgement of receipt.

- 4.3** SICorp's address for notices is:  
 NSW Self Insurance Corporation  
 Attention The Director  
 Address Level 17, 201 Elizabeth Street  
 Sydney 2000  
 Fax (02) 9228 3870  
 Email sicorp@sicorp.nsw.gov.au

#### **Conduct of defence**

- 4.4** SICorp, through the Claims Manager, shall be entitled to take over and conduct in the name of the Indemnified Person, the defence or settlement of any third party claim giving rise to a claim under this deed poll.
- 4.5** The Claims Manager, with the approval of the Director of SICorp, shall be entitled to defend or settle any third party claim, proceedings, investigation or inquiry giving rise to a claim under this deed poll and to exercise the Indemnified Person's legal right of recovery or otherwise against any other party for the benefit of SICorp.
- 4.6** The Claims Manager shall have full discretion in the conduct of any third party claim, proceedings, investigation or inquiry giving rise to a claim under this Indemnity and the Indemnified Person shall give all information and assistance as the Claims Manager may require in the prosecution, defence or settlement of any such claim, proceedings, investigation or inquiry.

#### **Rights of recovery and admission of liability**

- 4.7** The Indemnified Person must protect and not do anything to prejudice all of his/her rights of recovery at law, except as approved by the Claims Manager in writing. Upon payment of any claim under this deed poll, SICorp shall be subrogated to the rights of the Indemnified Person against any third parties to recover payments made under this deed poll.
- 4.8** The Indemnified Person must not, without the consent of the Claims Manager, make any admission, offer, promise or payment in connection with any accident or claim, proceedings, investigation or inquiry giving rise to a claim under this deed poll, other than as part of an apology made in accordance with the *Civil Liability Act 2002*.

### **5. General**

#### **Variation or termination**

- 5.1** This deed poll may be varied or terminated by SICorp at any time, by publication on its website of a notice of variation or termination, provided that such variation or termination will not affect the right of the Indemnified Person to claim indemnity under and subject to this deed poll in respect of liabilities arising (whether before or

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after such variation or termination) from conduct of the Indemnified Person that occurred prior to the date of that variation or termination, which right will survive such termination or variation.

#### **Governing law**

- 5.2** This deed poll is governed by the laws of the State of New South Wales.

#### **Severability**

- 5.3** If any provision of this deed poll is invalid or of no force or effect under any statute or other law, then this deed poll is to be construed as if that provision is not in this deed poll, but the remainder of this instrument retains its full force and effect.

#### **No assignment of the benefit of this deed poll**

- 5.4** The Indemnified Person may not assign, transfer, mortgage or deal with any of its rights under this deed poll, which are personal to the Indemnified Person.

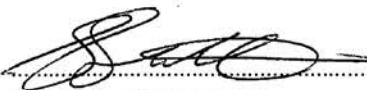
#### **Compliance with law**

- 5.5** Nothing in this deed poll requires SICorp to act, or not act, contrary to any law.

#### **EXECUTED AS A DEED POLL:**

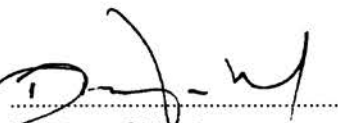
**SIGNED SEALED AND DELIVERED BY** )  
 the Minister for Finance, Services and Property )  
 for and on behalf of the NSW Self Insurance )  
 Corporation, but not so as to incur personal )  
 liability, )  
 in the presence of: )

STEWART SCARLETT )  
 Name of witness: )

  
 Signature of witness: )

Dated: 8.5.2015

DOMINIC PELLETIER )  
 (Name of Minister) )

  
 Signature of Minister )

Dated: 8/5/15 )

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