



**Australian Government**

**Comcover**

# **Insurance Policy 2011/2012**

## **Part 1**

Overview of Comcover

## **Part 2**

Policy Terms and Conditions

## **Part 3**

General Information

### **RELATIONSHIP BETWEEN PARTS 1, 2 AND 3 AND YOUR SCHEDULE OF COVER**

Comcover issues each Fund Member with a Schedule of Cover which specifies the particular cover, maximum limits, and excesses, if any, provided to each Fund Member. Any specific terms set out in your Schedule of Cover take precedence over the general terms and conditions in this policy to the extent of any inconsistency.

Parts 1 and 3 do not form part of the conditions of your cover.

Parts 1 and 3 are not to be used to interpret Part 2 or your Schedule of Cover. To the extent that there is any inconsistency between Parts 1, 2 and 3, Part 2 prevails.

### **IMPORTANT CONTACT NUMBERS**

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## **Part 1. Overview of Comcover**

### **1.1 A self-managed fund for insurable risks**

Since its inception on 1 July 1998, Comcover has been a vital part of the Australian Government's vision to champion an insurance and risk management culture within its agencies and organisations. Comcover represents an innovative and cost-effective way of managing and funding Commonwealth public sector insurable risks. Through the payment of premiums to Comcover, the budgets of Australian Government departments and statutory authorities are protected from the major costs that can arise from claims associated with insurable risks.

### **1.2 Helps members manage risks better**

Comcover also provides the necessary tools to enable Fund Members to be better risk managers. It does this by educating members about risk management and, in particular, how to identify, assess and treat their risks.

The benefits for Fund Members and the Australian Government are:

- protection of organisations and programs against unexpected insurable losses
- greater transparency and accountability in the management of the Australian Government's insurable risks
- the reduction, over time, in the cost of insurable losses to the Budget
- a co-ordinated and uniform approach to the management of claims against the Australian Government.

### **1.3 Comcover Member Services**

Comcover has outsourced the insurance account management and claims management functions to Gallagher Bassett Services Pty Ltd and they operate under the banner of Comcover Member Services (CMS). CMS is the principal point of contact between Comcover and its Fund Members for insurance and risk management advice and services. It provides Fund Members with such services as

- incident and claims recording
- claims management and payments
- calculation, notification and collection of member premiums
- general insurance and risk management advice and training
- insurable risk profiling services
- access to Comcover's claims system.

## **End of Part 1 – Overview of Comcover**

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## Part 2. Policy Terms and Conditions

- 2.1** The terms shown on **your Schedule of Cover** take precedence over any of the general terms and conditions in this part to the extent of any inconsistency.

The footnotes in this document are part of the terms and conditions of this policy.

- 2.2** Certain words in this policy have special defined meanings. Those words appear in bold and their meaning is explained in the Definitions clause.

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## 2.4 Definitions

<b>Amusement Device</b>	includes inflatables (such as jumping castles) and mechanical rides (such as merry-go-rounds and bumper boats or cars).
<b>Assets Schedule</b>	the schedule of assets, their locations and values as declared by the <b>Fund Member</b> and agreed by Comcover.
<b>Book Debts</b>	<ul style="list-style-type: none"> <li>• The difference between outstanding debit balances and the total amounts actually received</li> <li>• costs incurred in tracing and establishing debit balances including collection expenses in excess of your normal collection expenses</li> <li>• interest charges on any loan you take out to off-set impaired collection of your book debts.</li> </ul>
<b>Claim</b>	<ul style="list-style-type: none"> <li>• any writ, statement of claim, summons, application or legal notice</li> <li>• any written or verbal notice of demand for compensation, or</li> <li>• any claim made by <b>you</b> or a director or <b>officer</b> of a <b>Fund Member</b> on Comcover.</li> </ul>
<b>Comcover Member Services (CMS)</b>	the entity that has entered into a contract with Comcover to provide <b>claims</b> and account management services to <b>you</b> .
<b>Defence Costs</b>	reasonable legal costs and other expenses incurred in defending claims with the prior written consent of Comcover.
<b>Emergency Evacuation</b>	<p>an evacuation authorised by Comcover or its contracted service providers due to:</p> <ul style="list-style-type: none"> <li>• a medical treatment being immediately required and the medical condition being sudden and/or life threatening</li> <li>• a natural disaster such as earthquake, cyclone, flood, tsunami or volcanic eruption.</li> </ul>
<b>Employment Practices</b>	<ul style="list-style-type: none"> <li>• wrongful or unfair dismissal, discharge or termination, either actual or constructive, of an employment relationship in a manner which is against the law</li> <li>• workplace harassment (whether sexual or otherwise) of an employee</li> <li>• any form of discrimination</li> <li>• denial of natural justice to an employee</li> <li>• wrongful refusal to employ a potential employee</li> <li>• defamation from employment related matters</li> <li>• unfair demotion, failure to promote, unfair deprivation of career opportunity, wrongful discipline, negligent evaluation or failure to grant tenure or employment to an employee, or</li> <li>• misleading representation or advertising about employment in <b>your</b> organisation.</li> </ul>
<b>Excess</b>	<ul style="list-style-type: none"> <li>• the amount of <b>money you</b> contribute to the cost of a <b>claim</b> and <b>defence costs</b> – (this is shown on <b>your Schedule of Cover</b>)</li> <li>• if different excesses could apply to a claim under different covers, you must pay the higher or highest excess.</li> </ul>

	<ul style="list-style-type: none"> <li>• where more than one claim arises out of the same act or omission or a series of related acts or omissions, all of those claims will together be one claim for the purposes of determining the excess</li> <li>• where more than one claim resulting from any combination of fire, earthquake, flood, storm and tempest, riots or civil commotion arises out of the same event or a series of related events which occur during any 72 hour period nominated by you, all of those claims will together be treated as one claim for the purposes of determining the excess.</li> </ul>
<b>Expatriate</b>	a person outside his or her home country and who has been noted on Comcover's Schedule of Expatriates.
<b>Fund</b>	the fund established by the Commonwealth as part of the Comcover Special Account in accordance with the <i>Financial Management and Accountability Act 1997</i> .
<b>Fund Member</b>	the organisation named on <b>your Schedule of Cover</b> and all fully owned subsidiaries.
<b>Indemnity Period</b>	the period beginning with the occurrence of the damage, loss or unauthorised use, interference or access and ending not later than the period specified in <b>your Schedule of Cover</b> .
<b>Illness</b>	any sickness or disease.
<b>Land Value</b>	the sum certified by the relevant Valuer General to be the value of the land, taking into account any special circumstances that affected, or would have affected, its value before or after the damage or destruction.
<b>Loss</b>	all damages, legal costs awarded against a <b>Fund Member</b> (or if applicable an officer) and settlements negotiated with the prior written consent of Comcover or <b>Comcover Member Services (CMS)</b> , excluding any amount up to the excess.
<b>Medical Expenses</b>	expenses incurred and paid to a legally qualified health professional, hospital or ambulance service for medical surgery, hospitalisation or nursing treatment, including the costs of medical supplies and physician prescribed medicines and drugs.
<b>Money</b>	cash, credit cards, bank cards, bank or currency notes, cheques, traveller's cheques, postal or money orders or other negotiable instruments.
<b>Motor Vehicle</b>	<ul style="list-style-type: none"> <li>• any mechanically propelled land-use vehicle, its standard tools and all accessories, and anything ordinarily towed by the vehicle</li> <li>• a <b>substitute motor vehicle</b>.</li> </ul>
<b>Motor Vehicle Hire Agreement</b>	a contract or agreement for the use of a <b>motor vehicle</b> for a period not more than 6 months.
<b>Officer</b>	<ul style="list-style-type: none"> <li>• a person who is an official within the meaning of the <i>Financial Management and Accountability Act 1997</i></li> <li>• a <b>person</b> who is a past, present, or future director, secretary or executive <b>officer</b> of a <b>Fund Member</b> but does not include the Minister for the relevant <b>Fund Member</b></li> </ul>

	<ul style="list-style-type: none"> <li>• a <b>person</b> who is or was concerned in, or takes or took part in, the management of a <b>Fund Member</b> excluding externally appointed <b>officers</b>, such as receivers, managers, liquidators, administrators and the like</li> <li>• a person who is a past, present or future member of a committee or sub-committee (whether or not established by statute) which provides technical or professional advice to a <b>Fund Member</b> or officer of the <b>Fund Member</b>, for purposes in connection with assisting the <b>Fund Member</b> or the officer to exercise their powers or perform their functions</li> <li>• any past, present or future employee, secondee or other official of a <b>Fund Member</b>, or</li> <li>• any past, present or future <b>voluntary worker</b>.</li> </ul>
<b>Outside Directorship</b>	a directorship in an entity that is not the <b>Fund Member</b> , but is held at the request or nomination of the <b>Fund Member</b> .
<b>Period of Cover</b>	the period during which <b>you</b> are covered by Comcover, as shown on <b>your Schedule of Cover</b> .
<b>Person</b>	includes a natural person, body corporate, corporation sole, or statutory authority.
<b>Personal Effects</b>	includes tools of trade and field equipment but excludes <b>money</b> .
<b>Pollutants</b>	any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.
<b>Property</b>	<p>all real or personal property including:</p> <ul style="list-style-type: none"> <li>• <b>money</b></li> <li>• electronic data and records</li> <li>• structural improvements on or in land, and</li> <li>• landscaping and gardens</li> </ul> <p>which is <b>yours</b>, or is in <b>your</b> care, custody or control or is <b>your</b> responsibility, but excluding:</p> <ul style="list-style-type: none"> <li>• land</li> <li>• watercraft more than 15 metres in length</li> <li>• aircraft</li> <li>• rockets and satellites</li> <li>• livestock, animals, birds, and fish</li> <li>• standing timber, and</li> <li>• growing crops and pastures</li> </ul> <p>(unless noted on your <b>Assets Schedule</b>).</p> <p>Land does not include structural improvements on or in the land.</p>
<b>Reasonable Additional Costs</b>	all reasonable costs incurred over and above your normal operating costs less any reduction in your costs resulting from the interruption.
<b>Revenue</b>	gross business income or business receipts less any reduction in <b>your</b> costs resulting from the interruption.
<b>Residual Risk</b>	the risk exposure remaining after the risk consequence has been reduced by likelihood and the effectiveness of the

	relevant risk controls.
<b>Schedule of Cover</b>	the terms and conditions of cover issued to the <b>Fund Member</b> which include details of the type of cover, maximum limits of cover, applicable <b>excesses</b> , and special endorsements or other conditions.
<b>Schedule of Expatriates</b>	list notified to Comcover of <b>expatriates</b> nominated by the <b>Fund Member</b> as requiring cover.
<b>Short Term Venue Hire Agreements</b>	a contract or agreement for the use of a premises and auxiliary services for a period of not more than 7 days and excluding: <ul style="list-style-type: none"> <li>• use of watercraft</li> <li>• use of aircraft, or</li> <li>• physical activities including without limitation paintball, rock climbing, abseiling, use of go-karts, use of <b>amusement devices</b>, or any kind of sport.</li> </ul>
<b>Substitute Motor Vehicle</b>	a vehicle that <b>you</b> have authorised to be hired, borrowed or used for official purposes because <b>your</b> usual <b>motor vehicle</b> is being repaired, serviced or has broken down.
<b>Terrorism</b>	an act including but not limited to the use of force or violence or the threat of force or violence, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for or in connection with political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.
<b>Traveller</b>	a person on approved travel outside his or her home country, or his or her country of assignment (including travel to outlying Australian territories and islands) for up to one hundred and eighty (180) consecutive days including any approved accompanying persons.
<b>You/your</b>	the <b>Fund Member</b> .
<b>Voluntary worker</b>	a person who consents to undertake duties under the direction or at the request of your organisation and receives nil or nominal reward.
<b>Wrongful Act</b>	<ul style="list-style-type: none"> <li>• an error, either by omission or commission</li> <li>• a misstatement or misleading statement, or</li> <li>• neglect or breach of duty or breach of trust by a director or <b>officer</b> in their capacity as director or <b>officer</b>.</li> </ul>

## 2.5. General Liability and Professional Indemnity

2.5.1 If **you** are legally liable to pay compensation for

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish, mental injury or emotional distress
- (b) false arrest or imprisonment, wrongful detention, malicious prosecution and humiliation
- (c) wrongful entry or eviction
- (d) assault and battery that **you** did not commit or direct — except to protect natural persons or property
- (e) libel, slander or defamation
- (f) infringement of copyright, title or slogan, passing off or breach of intellectual property rights (including moral rights), or
- (g) breach of confidence, invasion of privacy or other similar misuse of information

**or**

- (h) property which is damaged, lost or which cannot be used<sup>1</sup>

**or**

- (i) **claims** that **your** advertising or publicity activities, in any media, gave rise to

- (i) libel, slander, or defamation
- (ii) infringement of copyright, title, or slogan
- (iii) unfair competition, piracy, misappropriation of ideas under an implied contract, or
- (iv) invasion of privacy

**or**

- (j) **claims** for **loss** caused by the execution or breach of **your** duty that arises from **your** operations or business

**and**

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<sup>1</sup> We will also indemnify any **traveller** if they are legally liable to pay compensation for those things listed in 2.5.1 items (a) to (h).

- (k) the **claim** for **loss** was made against **you** during **your period of cover**, and reported to Comcover during that **period of cover** or as soon as reasonably practicable

**then**

- (l) subject to any excesses shown on **your Schedule of Cover**, we will indemnify **you** for
- (i) damages or judgments, **defence costs** incurred by **you** with the prior written consent of Comcover and legal costs awarded against **you** up to a maximum amount of \$50,000,000 in total for all **claims** which arise out of **your** failure to monitor, control, regulate, sanction or license any entity over which **you** have a regulatory authority or which arise out of the failure of any entity over which **you** have regulatory authority, financial or otherwise
  - (ii) damages or judgments, **defence costs** incurred by **you** with the prior written consent of Comcover and legal costs awarded against **you** up to a maximum amount of \$50,000,000 in total for all **claims** which arise out of the provision by **you** of, or **your** failure to provide, medical care or advice [or other medical services] in a professional capacity
  - (iii) all other damages or judgments, and **defence costs**

2.5.2 if **you** report to us facts that might give rise to a claim against **you** as soon as reasonably practicable after becoming aware of these facts but within 60 days of the expiry of the period of cover, we will indemnify **you** under this cover for any claim that arises from those facts.<sup>2</sup>

### 2.5.3 Exclusions

We will not pay for

- (a) legal costs in any action **you** bring (including a cross claim, counter claim, set-off or similar action **you** bring) without the prior written consent of Comcover
- (b) any liability arising out of liquidated damages clauses or similar penalty clauses in contracts except to the extent that liability would have attached in the absence of such clauses

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<sup>2</sup> This cover extends to indemnities a member is able to give its **officers** in accordance with the *Commonwealth Authorities and Companies Act 1997*, the *Financial Management and Accountability Act 1997*, the *Judiciary Act 1903*, the *Corporations Act 2001* (whichever is appropriate) (including any Regulations, Orders, Legal Services Directions or Chief Executive Instructions or policies made or issued under them).

- (c) any liability arising out of **your** breach of contract unless liability would have arisen in the absence of that breach of contract
- (d) personal injury or death **claims** covered by any policy issued or which should have been issued under applicable transport accident compensation legislation
- (e) property damage arising out of the use of a registered **motor vehicle** or a **motor vehicle** which should be registered under applicable legislation
- (f) any fees or expenses including **defence costs** incurred by **you** without the prior written consent of Comcover
- (g) **loss** or any part of **loss** that represents compensation, reimbursement or return of fees, duties, tariffs, taxes, levies or charges or any other amounts incorrectly collected or received by **you**, or
- (h) any **claim** for or in any way connected with underpayment of employee entitlements<sup>3</sup>.

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<sup>3</sup> This exclusion does not apply to employee entitlements in respect of superannuation that arise from negligent misstatements.

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## 2.6 Directors' and Officers' Liability

2.6.1 If **you** are legally liable to pay for the consequences of a **wrongful act** of a director or **officer**

(a) of **your** organisation, or

(b) while they held an **outside directorship** and the **wrongful act** occurred during the period of the **outside directorship**

**or**

(c) if a director or **officer** is legally liable to pay for the consequences of a **wrongful act**

(i) as a director or **officer** of **your** organisation, or

(ii) while they held an **outside directorship** and the **wrongful act** occurred during the period of the **outside directorship**

**and**

(d) the **claim** for **loss** was made against **you**, the director or **officer**

(i) during **your period of cover**, and

(ii) reported to Comcover during that **period of cover** or as soon as reasonably practicable

(iii) even if the director or **officer** had ceased being a director or **officer**, during or before that **period of cover**<sup>4</sup>

**then**

(e) we will indemnify

(i) **you** for **your** own liability for **employment practices**

(ii) **you** for **your** liability to the director or **officer** if he or she is indemnified by **you**, and

(iii) the director or **officer** if he or she is not indemnified by **you**

(f) for any **loss** and **defence costs**, up to the maximum amount, less any excesses, shown on **your Schedule of Cover**, provided that

(i) such indemnity is not prevented by the *Commonwealth Authorities and Companies Act 1997*, the *Financial Management and Accountability Act 1997*, the *Judiciary Act 1903*, or the *Corporations Act 2001* (whichever is appropriate) (including any Regulations, Orders, Legal

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<sup>4</sup> This cover extends to liability against the estate, heirs or legal representatives of any deceased, mentally incompetent or insolvent **officer**.

Services Directions or Chief Executive Instructions or policies made or issued under them), to the extent, if any, they apply to **you**, the director or **officer**.<sup>5</sup>

- 2.6.2 If **you** report to us facts that might give rise to a **claim** against **you** or a director or **officer** as soon as reasonably practicable after becoming aware of these facts but within 30 days of the expiry of the **period of cover**, we will indemnify **you**, the director or **officer** under this cover for any **claim** that arises from those facts

We will pay, notwithstanding Exclusion 2.14.1(b) (iv) in respect of pollution, **defence costs** incurred in defending a loss in connection with the actual or alleged discharge, dispersal, release or escape of any **pollutant**.

### 2.6.3 Exclusions

- (a) We will not pay for any **claim** made against a director or **officer** for bodily injury, death, sickness, disease, disability, shock, fright, mental anguish, mental injury or emotional distress of any **person** or loss of, damage to or destruction of any physical property, including the loss of use of it provided, however, that emotional distress **claims** resulting from **employment practices** that are made by a director or **officer** in **your** organisation against **you** or **your** other directors or **officers** are not excluded<sup>6</sup>
- (b) We will not pay for any **claim** made against a director or **officer** that arises from
- (i) improper use of inside information or of his or her position as a director or **officer** to gain a personal advantage or to deliberately cause detriment to **you** or another **person**<sup>7</sup>
  - (ii) wilful breach of duty by the director or **officer** to **your** organisation
  - (iii) a breach of professional duty by a director or **officer**
  - (iv) any **claim** arising out of libel, slander or defamation
  - (v) medical malpractice
  - (vi) any **claim** made against a director or **officer** unless their liability arises from conduct in good faith

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<sup>5</sup> For FMA agency members, the Directions on Assistance to Commonwealth Employees for Legal Proceedings set out in Appendix E to the Legal Services Directions describe the basis upon which assistance may be provided to officials from FMA agencies. This indemnity includes all legal costs awarded against **you**, the director or **officer**. It also includes defence costs.

<sup>6</sup> Please note that we will not pay for what are or should be workers' compensation claims.

<sup>7</sup> If the director or **officer** is an employee within the meaning of the *Public Service Act 1999*, nothing done by the director or **officer** in performing their normal duties is to be regarded as improper.

- (vii) any **claim** for liability arising out of **your** breach of contract unless liability would have arisen in the absence of that breach of contract
- (viii) any **claim** made by **you** against a director or **officer** in **your** organisation
- (ix) any **claim** made by a director or **officer** in **your** organisation against **you** or **your** other directors or **officers** unless the **claim** is as a result of **employment practices**
- (x) loss which is treated as a redundancy payment or is in any way connected with redundancy
- (xi) any fees or expenses including **defence costs** incurred by **you** without the prior written consent of Comcover,<sup>8</sup> or
- (xii) any **claim** for or in any way connected with underpayment of employee entitlements.<sup>9</sup>

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<sup>8</sup> Please note that we will not pay for any fines, penalties, or multiple, punitive, exemplary or aggravated damages.

<sup>9</sup> This exclusion does not apply to employee entitlements in respect of superannuation that arise from negligent misstatement.

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## 2.7 Property

2.7.1 If **your property** is lost, destroyed or damaged as a result of an event that occurred during **your period of cover** then we will pay either

- (a) the actual replacement value of the **property** lost, destroyed or damaged, or<sup>10</sup>
- (b) the indemnity value should **you** choose not to rebuild or replace the **property**.<sup>11</sup>

2.7.2 We will also pay:

- (a) for reasonable architects', surveyors', engineers', legal and other fees and clerks of works' salaries for estimates, plans, specifications, quantities, tenders and supervision necessarily incurred following loss, destruction or damage excluding fees and salaries for preparing any **claim**
- (b) for the reasonable costs incurred in the removal, storage and disposal of debris, detritus or wreckage or in decontamination
- (c) for the reasonable costs incurred in demolition, dismantling, shoring up, propping, underpinning and other temporary repairs
- (d) for the reasonable costs incurred in extinguishing fires at or in the vicinity of **your property** which threaten to involve **your property**
- (e) for the cost of replacement locks and/or keys and/or combinations where a burglary or theft, or attempted burglary or theft, gives **you** grounds to believe that the keys may have been duplicated and also the cost of opening safes and/or strongrooms as a result of the theft of keys and/or combinations
- (f) any extra costs necessary to comply with the requirements of any statutory authority provided, however, **you** had not received notice of such requirements before the loss, destruction or damage occurred

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<sup>10</sup> The maximum replacement value we will pay is the cost necessary to repair or rebuild the **property** at the site, or replace it at the site with a **property**, in a condition substantially the same as but not better or more extensive than its condition when new. Where **your property** has a measurable capability or output and it can only be replaced with **property** which has a greater capability or output then we will pay for the cost of replacement with **property** which has the greater capability or output. Replacement and repair costs will be assessed at a date when **you** could reasonably be expected to have replaced or repaired the **property** or a later date if we agree. Where works of art, antiques or curios have been restored and/or repaired to a condition substantially the same as before the damage, then we will also pay for any reduction in market value that has occurred but for the **loss**, destruction or damage.

<sup>11</sup> The indemnity value is the value of the **property** immediately prior to the **loss**.

- (g) up to the maximum amount specified in **your Assets Schedule** less any **excess** as shown in **your Schedule of Cover**, and
- (h) if **you** are the tenant and as part of **your** lease responsible for breakage of glass, the reasonable costs that you are responsible for to replace the glass and also any incidental costs, including sign writing and temporary protection.

2.7.3 We consider foundations to be totally destroyed if

- (a) due to the actions or requirements of any statutory authority, replacement on the same site is not possible, or
- (b) due to damage to other **property** we cover, the foundations are unsuitable or have no further value.<sup>12</sup>

2.7.4 In addition if a relevant authority such as a local government council

- (a) does not allow **you** to rebuild buildings, we will pay an amount representing the difference between the **land value** before and after the destruction or damage
- (b) only allows **you** to partially rebuild buildings, we will pay an amount representing the difference between the **land value** before the damage or destruction and after the partial rebuilding
- (c) only allows **you** to rebuild subject to a reduced floor space ratio index, we will pay an amount representing the difference between the replacement value based on the floor space ratio before and after the rebuilding, or
- (d) requires **you** to abandon **your property**, we will pay the reasonable costs incurred in any necessary removal, repair or replacement of any of **your property**

less compensation paid by the relevant authority.

#### 2.7.5 **Exclusion**

We will not pay for

- (a) wear and tear, rust, latent defect, gradual deterioration, moths, vermin, disease, dampness or dryness of atmosphere, extremes or changes of

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<sup>12</sup> Our payment will include the costs of any necessary removal of the foundations. If the presence of abandoned foundations increases the resale value of the site, that increase will be treated as salvage and **you** will pay the amount of that increase to us.

temperature (other than freezing), or faulty workmanship, faulty material, faulty construction or faulty design<sup>13</sup>

- (b) unexplained inventory shortages, disappearances resulting from clerical or accounting errors, shortage in supply or delivery of items to or from **your** organisation
- (c) **loss**, destruction or damage to registered **motor vehicles**<sup>14</sup>
- (d) **loss**, destruction or damage caused by the action of the sea including tidal wave or high water unless such loss, destruction or damage is caused by or arises out of an earthquake or seismological disturbance<sup>15</sup>
- (e) **loss** resulting from any misrepresentations made in connection with benefits or liabilities under Commonwealth legislation, or
- (f) **property** undergoing construction, erection, alteration or addition when the value of the work exceeds \$5,000,000 unless noted on **your Assets Schedule**.

#### 2.7.6 Property in Transit

If the **property** is in the course of transit we will pay for losses to **your property** wherever incurred whilst the **property** is in transit between a port or ports or a place or places including being loaded on to or unloaded from a conveying vessel, vehicle or aircraft up to a maximum amount specified in **your Schedule of Cover**, less any **excess** shown on **your Schedule of Cover**; but we will not pay for:

- (a) ordinary leakage, ordinary loss in weight or volume or wear and tear of the property insured
- (b) **loss**, destruction, damage or expense caused by delay
- (c) **loss**, destruction, damage or expense arising from insolvency or financial default of the owners, managers, charters or operators of any vessel
- (d) **loss**, destruction, damage or expense arising from unseaworthiness of a vessel or craft, or unfitness of a vessel, craft, conveyance, container, or lift van for the safe carriage of the property insured where the **Fund Member** is aware of the unseaworthiness or unfitness at the time the **property** is loaded therein

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<sup>13</sup> This exclusion is limited to that part of **your property** immediately affected by the loss or damage.

<sup>14</sup> This exclusion does not apply to **your** registered mobile plant and equipment whilst on **your** premises.

<sup>15</sup> This exclusion in relation to action of the sea does not apply to a watercraft.

- (e) **loss**, destruction, damage or expense arising from inherent vice of the **property** insured, or
- (f) insufficient or unsuitability of packing or preparation of the **property** insured.

#### 2.7.7 **Fraud**

We will pay for losses to **your property** wherever incurred through any act or acts of fraud or dishonesty committed by any of:

- (a) **your** employees
- (b) **your** voluntary workers
- (c) a member of a board
- (d) a member of a commission, or
- (e) a member of another body

acting alone or in collusion with others, up to the amount shown in **your Schedule of Cover** less any **excess** as shown on **your Schedule of Cover**.

## 2.8. Business Interruptions

2.8.1 If **your** business or operations are interrupted:

(a) because of **property** being

- (i) lost
- (ii) destroyed, or
- (iii) damaged

and that **loss**, destruction or damage is insured under section 2.7 Property, or a similar type of cover issued by Comcover

**or**

(b) because of damage to **property**

- (i) at or of any electricity station or substation, gas works, water works or other public supply undertaking
- (ii) at any premises from which **you** obtain supplies, or
- (iii) at any premises to which **you** make supplies

**or**

(c) because access to **property** is prevented, or hindered by order of a competent public authority due to

- (i) damage to other **property** in the vicinity of that **property**
- (ii) infectious or contagious disease
- (iii) closure or evacuation of the **property** because of vermin or pests or defects in the drains or other sanitary arrangements at the **property**
- (iv) the outbreak of a notifiable sickness or disease directly caused by the consumption of food or drink provided on the **property**
- (v) murder or suicide occurring in or on the **property**, or
- (vi) a threat of immediate and violent damage to the **property** or threat of immediate and violent injury to **persons** while at the **property**

**and**

(d) as a consequence of the interruption, **your** organisation

- (i) loses **revenue**, and/or
- (ii) incurs reasonable additional costs for the purpose of resuming or maintaining normal business operations

**and**

- (e) the interruption commenced during **your Period of Cover** and **you** told Comcover of it during this period or within 30 days of **you** becoming aware of it

**then**

- (f) we will pay compensation for
- (i) the revenue lost during the indemnity period (excluding revenue derived from Australian Government sources), and/or
  - (ii) reasonable additional costs for the purpose of resuming or maintaining normal business operations during the indemnity period
  - (iii) contractual fines or damages for breach of contract you have to pay because you cannot perform your contractual obligations
  - (iv) recreating any records, including the cost of recreating the content contained in them
  - (v) book debts you had when the interruption commenced which you are not able to collect
  - (vi) reasonable professional fees incurred by you in preparing, making and settling your claim, and
  - (vii) up to the maximum amount shown on your **Schedule of Cover**, less any **excess**.

### 2.8.2 Exclusion

We will not pay compensation for

- (a) interruption that is a direct consequence of wear and tear, rust, latent defect, gradual deterioration, moths, vermin, dampness or dryness of atmosphere, extremes or changes of temperature (other than freezing), or faulty workmanship, faulty material, faulty construction or faulty design<sup>16</sup>
- (b) unexplained inventory shortages, disappearances resulting from clerical or accounting errors, shortage in supply or delivery of items to or from **your** organisation
- (c) claims arising out of **loss**, destruction or damage to a registered **motor vehicle**, or
- (d) loss, destruction or damage caused by the action of the sea including tidal wave or high water unless such **loss**, destruction or damage is caused by or arises out of an earthquake or seismological disturbance.

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<sup>16</sup> This exclusion is limited to that part of **your** interruption immediately affected by the loss or damage.

## 2.9 Motor Vehicles

2.9.1 If a **motor vehicle** owned or leased by **you** is lost, destroyed or damaged as a result of events that occurred during **your** period of cover, then we will repair or replace the **motor vehicle** or parts of it, at our discretion as described in this clause.

2.9.2 We will pay:

- (a) an amount not exceeding the market value of the **motor vehicle** before it was lost destroyed or damaged (provided that if the **motor vehicle** was less than 12 months old, we will replace the **motor vehicle** with the same make, model and series or its equivalent)
- (b) the reasonable cost of protection and removal of the **motor vehicle** to the nearest repairer, or any other place , approved by Comcover
- (c) the reasonable cost to perform necessary emergency or temporary repairs to enable **your motor vehicle** to be driven to the nearest practical place of safety
- (d) if **your motor vehicle** was lost destroyed or damaged as a result of theft, the reasonable cost of hiring a **substitute motor vehicle** for a period of up to 14 days from the date of the theft
- (e) if **your loss** is only in respect of breakage of windscreen and consequent scratching to body work, **your excess** will not apply.

2.9.3 If **you** are legally liable to pay compensation for **loss**, destruction or damage to property belonging to **persons** other than **you** resulting from:

- (a) the use of **your motor vehicle** or from goods falling from it, or
- (b) the use of a **substitute motor vehicle** if an employee or person authorised by **you** was using the **motor vehicle**

we will indemnify **you** for such compensation, defence costs and legal costs awarded against **you** up to the maximum amount specified in **your Schedule of Cover**.

2.9.4 We will also indemnify **you** for:

- (a) reasonable costs, charges and expenses necessarily incurred to clean up and remove any debris arising from goods falling or leaking from **your motor vehicle** up to a maximum of \$25,000 for any one event or series of events arising out of the one occurrence

- (b) costs up to \$2,000 for any one accident levied by a police service or official fire brigade or authority following an event involving **your motor vehicle** requiring or resulting in the attendance of members of a police force at the accident site or any official fire brigade or authority for the purpose of fire extinguishment or other purpose
- (c) costs up to a maximum of \$5,000 to replace **your** motor vehicle keys and/or locks, if the keys to **your** motor vehicle are lost or damaged or there are reasonable grounds to believe **your** keys may have been illegally duplicated
- (d) reasonable costs, up to a maximum of \$1,500 for any one **loss**, incurred to:
  - (i) hire another vehicle of similar make and model to complete the journey or to return **your** driver to where the journey first commenced, or
  - (ii) use alternative public transport to return **your** driver and passengers to where the journey first commenced, and
  - (iii) obtain overnight accommodation for **your** driver and passengers if the journey cannot be completed in the same day as the **loss** occurs

where the **loss** occurs more than 150 kilometres from where **your** motor vehicle is normally garaged.

2.9.5 We will not pay for **loss**, destruction or damage:

- (a) resulting from
  - (i) **your** inability to use the **motor vehicle**, depreciation, wear and tear, rust or corrosion, or mechanical or electrical breakdowns, failures or breakages
  - (ii) damage to tyres from using brakes, or by road punctures, cuts or bursts
  - (iii) unexplained inventory shortages, disappearances resulting from clerical or accounting errors, shortage in supply or delivery of vehicles to or from **your** organisation
- (b) if the **motor vehicle** is being used with **your** permission
  - (i) in contravention of any laws relating to the carriage of dangerous goods
  - (ii) for hire, fare, or reward
  - (iii) for racing, pacemaking, a reliability trial, or a speed or hill climbing test
  - (iv) by an unlicensed or suspended-licence driver
  - (v) by a person found guilty in a court of law (whether or not a conviction is recorded) of any offence connected with driving

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- under the influence of alcohol or drugs, under any law, by-law, or regulation
- (vi) by a person found guilty in a court of law (whether or not a conviction is recorded) of driving while having a blood alcohol level in excess of the percentage legally allowed in the state or territory where the person was tested
  - (vii) to carry more passengers, or carry or tow a heavier load, than the **motor vehicle** was designed for
  - (viii) to carry goods, when the **motor vehicle** is over the weight limit legally allowed for the carriageway or thoroughfare, or
  - (ix) for commercial bulk transport of liquid fuel, liquid gas, toxic chemicals, corrosive acids, compressed gases, organic peroxides, explosives or any oxidising or radio-active substance.

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## 2.10 Personal Accident

### 2.10.1 In the event of

(a) bodily injury or death to

- (i) a member of a board, commission, or other body, or
- (ii) a **voluntary worker**

**and**

(b) this occurs during their official duties on **your** behalf, including travel to and from official duties and approved travel within his or her home country, or his or her country of assignment

**then**

(c) we will pay **you**, or the person directly (or his or her estate) if they are not indemnified by **you**, the amount of compensation equivalent to the benefits that would have been payable under the *Safety, Rehabilitation and Compensation Act 1988* or, if applicable, the *Military Rehabilitation and Compensation Act 2004* had the person been indemnified by Comcare, or, if there is no equivalent, Comcover will, at its discretion, determine the appropriate amount up to a maximum period of 104 weeks and up to the limit specified on **your Schedule of Cover**, less any **excess**, provided that

- (i) there is a clear legal link between **your** powers and functions and the activity of the person
- (ii) indemnity is permitted by the *Financial Management and Accountability Act 1997*, the *Commonwealth Authorities and Companies Act 1997*, the *Corporations Act 1989* or the *Corporations Act 2001*, whichever is appropriate and applicable to **you**
- (iii) the person is not eligible to be indemnified by Comcare under the *Safety, Rehabilitation and Compensation Act 1988*, the *Military Rehabilitation and Compensation Act 2004* or any other workers' compensation or like legislation, and
- (iv) the event giving rise to the **claim** happened during **your period of cover**.

### 2.10.2 Exclusion

We will not pay for:

(a) expenses resulting from bodily injury including **illness** or death from

- (i) any deliberate or intentional self inflicted injury, suicide or attempt thereat
  - (ii) any sexually transmitted diseases, Acquired Immune Deficiency Syndrome (AIDS) disease or Human Immunodeficiency Virus (HIV) infection, unless acquired accidentally as a direct result:
    - (a) of medical or other health care treatment, or
    - (b) contact (other than injection) with an infected article or implement, or
    - (c) assault (including sexual assault)
  - (iii) engaging in, or taking part in, or training for any professional sports of any kind
- (b) expenses which are or can only be covered by Medicare or which we are prohibited by Law from paying.

## 2.11 Travel Outside Country

### Baggage and Personal Effects

#### 2.11.1 In the event of

- (a) the baggage and **personal effects** belonging to a **traveller**, or for which a **traveller** is responsible, being lost, destroyed or damaged

**then**

- (b) we will pay **you** or the **traveller** the cost of repair or replacement of the items, up to the limit specified on **your Schedule of Cover**, less any **excess**.

#### 2.11.2 If

- (a) money belonging to the **traveller** or for which the **traveller** is responsible is stolen or lost, then we will pay for the lost or stolen money up to a maximum of \$2,000
- (b) **you** or the **traveller** rent a vehicle which is damaged, stolen or involved in an accident, then we will pay the rental vehicle insurance excess up to a maximum of \$5,000
- (c) the **traveller's** baggage is delayed for more than 8 hours, then we will pay the reasonable cost of necessities
- (d) the trip is interrupted by unforeseen circumstances and the **traveller** is unable to arrive at the destination by the time scheduled for the purpose of attending the event for which the trip was arranged, and the event cannot be delayed, then we will pay up to \$10,000 for the reasonable additional cost of using alternative public transport
- (e) the trip is interrupted by unforeseen circumstances, then we will pay up to \$10,000 for the reasonable expenses incurred.

#### 2.11.3 If a major incident or natural disaster has occurred in the country the **traveller** is in, necessitating his or her immediate evacuation in order to avoid risk of personal injury or sickness,

- (a) we will commence arrangements for the evacuation of the **traveller** provided that evacuation will be initiated

- (i) after reasonable local measures to protect the health and safety of the **traveller** have been exhausted, or
  - (ii) when Comcover decide that the **traveller**, who is not in need of medical attention, is at high risk due to adverse local conditions
- (b) if Comcover considers that the situation will continue for less than 30 days duration, **emergency evacuation** will be made to the nearest location outside the impacted area, or
- (c) if Comcover considers that the situation will continue for more than 30 days duration, **emergency evacuation** will be made to the **traveller's** home country or country of assignment.

### Medical Expenses and Medical Emergencies

#### 2.11.4 In the event of

- (a) injury or illness to, or death of a **traveller**

#### **then**

- (b) we will pay **you**, or the **traveller** directly (or his or her estate) if they are not indemnified by **you**, the amount of compensation equivalent to the benefits that would have been payable under the *Safety, Rehabilitation and Compensation Act 1988* or, if applicable, the *Military Rehabilitation and Compensation Act 2004* had the **traveller** been indemnified by Comcare, or, if there is no equivalent, Comcover will, at its discretion, determine the appropriate amount up to a maximum period of 104 weeks and up to the limit specified on **your Schedule of Cover**, less any **excess**, provided that
  - (i) there is a clear legal link between **your** powers and functions and the activity of the **traveller**
  - (ii) indemnity is permitted by the *Financial Management and Accountability Act 1997*, the *Commonwealth Authorities and Companies Act 1997*, the *Corporations Act 1989* or the *Corporations Act 2001*, whichever is appropriate and applicable to **you**
  - (iii) the **traveller** is not eligible to be indemnified by Comcare under the *Safety, Rehabilitation and Compensation Act 1988*, the *Military Rehabilitation and Compensation Act 2004* or any other workers' compensation or other legislation, and
  - (iv) the event giving rise to the **claim** happened during **your period of cover**.

2.11.5 We will also pay

- (a) overseas medical expenses up to the maximum in **your Schedule of Cover**
- (b) the costs of medical emergencies, up to the maximum in **your Schedule of Cover**, covering
  - (i) **emergency evacuation** and/or repatriation under medical supervision
  - (ii) 24 hour worldwide medical information and assistance service
  - (iii) sending essential medication or equipment not locally available
  - (iv) sending a medical practitioner where appropriate
  - (v) repatriation of mortal remains and any related costs
  - (vi) medical monitoring
- (c) reasonable expenses incurred in sending a replacement employee to complete the injured or deceased **traveller's** duties or in returning the **traveller** to complete their duties
- (d) reasonable expenses incurred with Comcover's agreement for one person to travel to, remain with or accompany the **traveller** as a result of the **traveller** suffering an accident or **illness** (including death)
- (e) reasonable expenses incurred with Comcover's agreement and upon medical advice if the **traveller** is hospitalised and the **traveller** needs accommodation to recover from the **illness** or injury after leaving hospital
- (f) non-refundable travel, accommodation and any other expenses (paid in advance and not recoverable from any other source) which **you** or the **traveller** lose the benefit of, solely because of
  - (i) death, bodily injury, sickness or jury service of the **traveller** or any person authorised to travel with them
  - (ii) death, serious bodily injury or serious sickness of any relative or business colleague (under the age of 80 years) of the **traveller**, or
  - (iii) any unforeseen circumstances outside the control of the **traveller**.

### 2.11.6 Exclusions

We will not pay for:

- (a) expenses resulting from bodily injury including **illness** or death from
  - (i) any deliberate or intentional self inflicted injury, suicide or attempt thereat
  - (ii) any sexually transmitted diseases, Acquired Immune Deficiency Syndrome (AIDS) disease or Human Immunodeficiency Virus (HIV) infection, unless acquired accidentally as a direct result:
    - (a) of medical or other health care treatment
    - (b) contact (other than injection) with an infected article or implement, or
    - (c) assault (including sexual assault)
  - (iii) engaging in, or taking part in, or training for any professional sports of any kind
- (b) any **claim** for bodily injury or **illness** (including in the event of death) for which the **traveller** has been prescribed medication or treatment during 30 days immediately preceding the commencement of the approved travel and/or deployment.<sup>17</sup>
- (c) expenses for which a Medicare benefit is payable or which we are prohibited by law from paying.
- (d) the benefits in section 2.11.4 (b) if the **traveller** is an accompanying person.

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<sup>17</sup> This exclusion does not apply to item 2.11.5 (b) (v).

## 2.12 Expatriate

2.12.1 We will pay all reasonable and necessary **medical expenses** incurred outside Australia by an **expatriate** during their period of deployment, less any **excess** shown on **your Schedule of Cover** after commencement of cover for the **expatriate** under this policy, up to a maximum of 12 months per loss or claim from date of first treatment.

2.12.2 We will pay all reasonable and necessary expenses incurred for:

- (a) an **emergency evacuation** or reasonable travel costs as a consequence of a medical condition, provided such evacuation or travel cost is authorised by Comcover
- (b) one person to accompany an evacuated **expatriate** where:-
  - (i) the **expatriate** is aged 18 years or younger, or
  - (ii) it is considered necessary by Comcover
- (c) funeral or cremation expenses in the country in which the death of an **expatriate** occurs or the repatriation of their mortal remains to their home country and any related costs.
- (d) **emergency evacuation** of an **expatriate** as a consequence of a natural disaster occurring in the country where the **expatriate** is posted, provided such evacuation is authorised by Comcover. Comcover will commence arrangements for the **emergency evacuation** of the **expatriate**, provided that:
  - (i) **emergency evacuation** will be initiated after reasonable local measures to protect the health and safety of the **expatriate** have been exhausted or when Comcover decide that the **expatriate**, who is not in need of medical attention, is at high risk due to adverse local conditions
  - (ii) if Comcover considers that the situation will continue for less than 30 days duration, **emergency evacuation** will be made to the nearest location outside the impacted area, or
  - (iii) if Comcover considers that the situation will continue for more than 30 days duration, **emergency evacuation** will be made to the **expatriate's** home country.

### 2.12.3 Exclusions

We will not pay for:

- (a) expenses resulting from any deliberate or intentional self inflicted injury, suicide or attempt thereat
- (b) expenses resulting from any sexually transmitted diseases, Acquired Immune Deficiency Syndrome (AIDS) disease or Human Immunodeficiency Virus (HIV) infection, unless acquired accidentally as a direct result:
  - (i) of medical or other health care treatment, or
  - (ii) contact (other than injection) with an infected article or implement, or
  - (iii) assault (including sexual assault)
- (c) expenses resulting from engaging in, or taking part in, or training for any professional sports of any kind
- (d) expenses resulting from any elective and/or cosmetic procedure, treatment or surgery
- (e) expenses resulting from childbirth or pregnancy or any complications thereof incurred within the first 52 weeks of deployment
- (f) any medical expenses incurred in Australia for which a Medicare benefit is payable or which we are prohibited by law from paying
- (g) any loss or claim by any **expatriate** who has not undergone a pre-deployment medical examination
- (h) any loss or claim by any **expatriate** who has not been declared medically or dentally fit to be deployed to their country of posting
- (i) expenses resulting from any pre-existing condition not reviewed and agreed to by Comcover.

## 2.13 Personal Effects and Travel inside Country

### 2.13.1 If

- (a) the **personal effects** of an employee, or a member of a board, commission or other body, or a **voluntary worker** are lost, destroyed or damaged

**and**

- (b) this occurs in the approved workplace of an employee, or a member of the board, commission or other body, or a **voluntary worker**, or while on approved travel within his or her home country, or his or her country of assignment during **your Period of Cover**

**then** we will pay **you**

- (c) full replacement costs, up to the limit specified on **your Schedule of Cover**, less any **excess** shown on **your Schedule of Cover** provided that
  - (i) the employee has been indemnified by **you** for such **loss**, destruction or damage
  - (ii) indemnity is permitted by the *Financial Management and Accountability Act 1997*, the *Commonwealth Authorities and Companies Act 1997* or the *Corporations Act 2001*, whichever is appropriate and applicable to **you**, and
  - (iii) the employee's **loss**, destruction or damage is not otherwise covered by the *Safety, Rehabilitation and Compensation Act 1988*, the *Military Rehabilitation and Compensation Act 2004* or any other workers' compensation legislation.

### 2.13.2 If whilst on approved travel

- (a) the trip is interrupted by any unforeseen circumstances and the person is otherwise unable to arrive at the destination by the time scheduled for the event, attendance at which is the purpose of the trip, and the event cannot be delayed, we will pay up to \$10,000 for the reasonable additional cost of using alternative public transport
- (b) the trip is interrupted by unforeseen circumstances we will pay up to \$5,000 for the reasonable expenses incurred.

### 2.13.3 Exclusion

We will not pay for anything that occurs as a result of actions that are inconsistent with the relevant Chief Executive's Instructions, or their equivalent applicable to **your** organisation, and other applicable management policies.<sup>18</sup>

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<sup>18</sup> For example, if the CEI says that **personal effects** should be kept in locked drawers or cupboards, then we will not pay for loss from an unlocked drawer or cupboard.

## 2.14 General Exclusions

### 2.14.1 Excluded events

We will not pay for

(a) **loss**, destruction, damage or liability arising from

- (i) the deliberate disregard by **you** of the need to take all reasonable steps to prevent losses
- (ii) ionising radiation, or contamination by radioactivity, from any nuclear fuel waste or weapon – whether from a direct or indirect effect
- (iii) asbestos resulting from mining, handling, processing, manufacture, sale, distribution, storage, presence, use or removal of asbestos products and/or products containing asbestos (unless, in the case of removal, this is necessary following an incident which we cover), or

(b) any **claim** resulting from

- (i) war, invasion, act of a foreign enemy, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, or military or usurped power<sup>19</sup>
- (ii) any act of **terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss, including any loss, damage, cost or expense of whatever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of **terrorism**<sup>20</sup>
- (iii) confiscation, nationalisation, requisition, or damage to **property** ordered by a government or public or local authority except where such action was in the process of the defence of human life and or third party property, or<sup>21</sup>
- (iv) the discharge, dispersal, release or escape of **pollutants** or for the costs of removing, nullifying or cleaning up **pollutants** or for the cost of preventing the escape of **pollutants** unless it is a sudden, identifiable, unintended, unexpected and accidental happening which takes place in its entirety at a specific time and place.

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<sup>19</sup> This exclusion does not apply to the Property in Transit cover in Part 2.7.6, Personal Accident cover in Part 2.10; Travel Outside Country cover in Part 2.11 or Expatriate cover in Part 2.12.

<sup>20</sup> This exclusion does not apply to the Property in Transit cover in Part 2.7.6, Personal Accident cover in Part 2.10; Travel Outside Country cover in Part 2.11 or Expatriate cover in Part 2.12.

<sup>21</sup> This exclusion does not apply to the Property in Transit cover in Part 2.7.6.

### 2.14.2 Other liabilities and costs

We will not pay for

- (a) any liability arising from the ownership, maintenance, operation (which includes **your** means of access) or use by **you** of watercraft greater than 15 metres in length and all aircraft, rockets and satellites, that are in **your** possession, care, custody or control, unless specified in **your Schedule of Cover**
- (b) loss, destruction or damage to watercraft greater than 15 metres in length and all aircraft, rockets and satellites, that are in **your** possession, care, custody or control, unless specified in **your Schedule of Cover**<sup>22</sup>
- (c) any liability or costs connected with any **claim** or request for
  - (i) review of **your** decision-making under the grounds set out in the *Administrative Decisions (Judicial Review) Act 1977* or the *Judiciary Act 1903*
  - (ii) other judicial review of **your** decision-making, or
  - (iii) administrative or merits review of **your** decision-making<sup>23</sup>
- (d) liability arising out of any indemnity unless the liability would have arisen in the absence of such indemnity<sup>24</sup>
- (e) any **claim**, if **you** have admitted liability without Comcover's prior written approval or if **you** have otherwise compromised **your** legal position to the extent **you** have prejudiced Comcover's position

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<sup>22</sup> Exclusions 2.14.2(a) and 2.14.2(b) do not apply to liability **you** have as a charterer which is covered in Part 2.5. Exclusions 2.14.2(a) and 2.14.2(b) do not apply to watercraft and aircraft **you** lawfully seize in the exercise of **your** duties provided **you** notify us of their details as soon as possible after **you** have seized them.

<sup>23</sup> Decision-making includes **your** conduct and any action taken by **you**.

<sup>24</sup> This exclusion does not apply:

- to indemnities contained in a contract where the contract was entered into prior to 1 July 2004
- to indemnities contained in **short term venue hire agreements** or **motor vehicle hire agreements** provided that: Australian Government policy on the issuing and managing of indemnities as detailed in Financial Management Guidance No. 6 – Guidelines for Issuing and Managing Indemnities, Guarantees, Warranties and Letters of Comfort, September 2003 has been adhered to; and **you** have assessed the **residual risk** (excluding the risk control of insurance) as being not more than \$20,000,000, or
- for FMA Fund Members where FMA Regulations provide that Regulation 10 approval is not required in certain prescribed circumstances, and provided that: Australian Government policy on the issuing and managing of indemnities as detailed in Financial Management Guidance No. 6 – Guidelines for Issuing and Managing Indemnities, Guarantees, Warranties and Letters of Comfort, September 2003 has been adhered to; and the most probable expenditure is assessed at no more than \$5,000,000.

- (f) the liability of a manufacturer, supplier, contractor, or repairer unless such liability arises under the terms of a contract with **you**
- (g) any fines, penalties, or multiple, punitive, exemplary or aggravated damages
- (h) liquidated damage clauses or performance warranties unless proven that liability would have attached in the absence of such clauses or warranties
- (i) **your** costs incurred in appearing before any inquiry
- (j) any liability of **your** employees or **officers** arising from their deliberate disregard of the need to take all reasonable steps to prevent losses
- (k) any liability arising solely from a decision by **you** to terminate any contract or agreement,<sup>25</sup> or
- (l) the payment of entitlements to a third party which the **Fund Member** would have had to pay but for negligent advice by the **Fund Member** regarding such entitlements.

#### 2.14.3 Claims covered by other legislation

We will not pay for workers' compensation **claims** payable under the *Safety, Rehabilitation and Compensation Act 1988*, the *Military, Rehabilitation and Compensation Act 2004* or any other workers' compensation legislation in any jurisdiction or associated common law **claims**.

#### 2.14.4 Claims from incidents prior to commencement date

We will not pay for any **claim** based directly or indirectly on incidents which

- (a) **you** have, or should have, given written notice of under any contract of insurance held before **your** commencement date with Comcover, or
- (b) **you** knew about before **your** commencement date with Comcover and which **you** knew, or ought to reasonably to have known, could give rise to a **claim** under a previous insurance arrangement and **you** did not inform the previous insurers.

#### 2.14.5 Corruption of computer data

We will not pay for any loss caused directly or indirectly by erasure or corruption of information on computer systems or other records arising

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<sup>25</sup> This exclusion does not apply to the cover given under Part 2.6.3(b) (vi).

from a computer virus or incorrect programming, punching, labelling, insertion or cancellation.

**2.14.6 Date recognition**

We will not pay for any loss or damage directly or indirectly resulting from the failure of computer hardware or software, whether it is **yours** or another organisations, to

- (a) recognise correctly any date as its true calendar date
- (b) capture, save, manipulate, or process any data or instruction because it did not recognise the true date, or
- (c) capture, save, manipulate, or process any data or instruction because a computer software command caused the data to be lost or the inability to perform properly its function on or after any date.<sup>26</sup>

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<sup>26</sup> This exclusion applies to all computers, data processing equipment or media, microchips, integrated circuits or similar devices, and all computer software.

## 2.15 Other Conditions

### 2.15.1 Schedule of Cover

Comcover through **Comcover Member Services** issues each **Fund Member** with a **Schedule of Cover** which specifies the particular cover, maximum limits, and **excesses**, if any, provided to each **Fund Member**.

### 2.15.2 Retroactive date

If **you** had Directors' and Officers' and/or Professional Indemnity Insurance before joining Comcover, then we will set a date prior to **your** joining the **Fund** that will identify the time from which we will accept liability for execution or breach of **your** duty, or **wrongful acts**, which give rise to a **claim** made during **your period of cover** with us. The applicable date will be that shown in **your Schedule of Cover**. If **you** had General Liability insurance before joining Comcover, we will accept liability for events, which occurred after the time **you** join the **Fund**.<sup>27</sup>

### 2.15.3 Duty of disclosure

- (a) **you** have a duty of disclosure in respect of **your** risk exposures
  - (i) before accepting cover, **you** must tell Comcover every matter **you** know, or could reasonably be expected to know, is relevant to Comcover's decision to offer cover
  - (ii) at all times while **you** have cover, **you** must give Comcover written notice, as soon as possible, of everything that **you** are aware of in the ordinary course of business that is relevant to **your** risk exposures
  
- (b) **you** do not have to disclose a matter
  - (i) that diminishes the risk, or
  - (ii) that we know or in the ordinary course of our business ought to know.

### 2.15.4 Claims

When a **claim** is made on **you**, or an event occurs that may give rise to a **claim**, **you** must:

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<sup>27</sup> If **you** did not have cover for the classes of risks listed above before **you** joined the **Fund** then, subject to the terms of this Part 2 and **your Schedule of Cover**, Comcover will only accept liability for execution or breach of **your** duty, or **wrongful acts** for occurrences which happen after the time **you** joined the **Fund**.

- (a) provide written details, including details of any other insurance which covers the **claim**, to Comcover Member Services as soon as practicable<sup>28</sup>
- (b) not admit liability for, or settle, any **claim** or incur any costs in connection with a **claim** without the prior written consent of Comcover
- (c) pay the **excesses** and **your** share, if any, of the **defence costs** promptly, as and when instructed by Comcover.<sup>29</sup>

#### 2.15.5 Subrogation

- (a) If Comcover accepts a **claim** under the policy, Comcover will have **your** rights of recovery to the extent of the **claim** payment made by Comcover to **you**
- (b) **you** must allow Comcover to claim indemnity or contribution in **your** name from any party against whom **you** may have such rights
- (c) **you** must give us all the assistance we may reasonably require for the prosecution and settlement of recovery actions
- (d) If an amount is recovered then Comcover will be entitled to deduct from that amount any administrative or legal costs incurred or paid by Comcover in funding the recovery action
- (e) Where **you** have paid an **excess** in relation to that **claim**, **you** will be entitled to a refund of that **excess** in the proportion that the net amount recovered (less expenses) bears to the **claim** payment made by Comcover.

#### 2.15.6 Claims co-operation and settlement

- (a) Comcover is responsible for the defence and settlement of **claims**. **You** must give us all the assistance we may reasonably require for the defence and settlement of **claims** and recovery actions
- (b) If **you** want to contest a **claim**, which we believe should be settled, **you** may elect to do so but our liability for the **claim** will not exceed the amount for which, but for **your** election, the **claim** could have been settled together with costs and expenses we must pay **you** up to the date of **your** election
- (c) In the event that **you**, or a director or **officer** of **yours**, is party to a **claim** which is covered only in part under this policy, **you** (or **yourself** and **your** director and **officer**) and Comcover will use their best efforts

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<sup>28</sup>See Part 3 General Information for more details on how to report different types of claims.

<sup>29</sup> If **you** do not, then Comcover may directly deduct any amount owing from the amount required to settle the **claim** or refuse to manage the **claim**.

to agree upon a fair and proper allocation of loss, and fees and expenses including **defence costs** which should be insured under this policy and which relate solely to what is covered under this policy

- (d) In the event that an agreement cannot be reached, Senior Counsel (to be mutually agreed between us) will determine, as an independent expert but not an arbitrator, a fair and proper allocation. Until the Senior Counsel has made his or her determination, Comcover may, in its discretion, pay such **loss** and fees and expenses including **defence costs** as it considers appropriate.

#### 2.15.7 Comcover Member Services Contract

**You** must

- (a) acknowledge that the contract between **Comcover Member Services** and Comcover is the sole responsibility of Comcover
- (b) not enter into any separate contract, arrangement or understanding with **Comcover Member Services** in relation to the management of a **claim** or protection of **your** normally insurable risks.

#### 2.15.8 Other Insurance

**You** must advise Comcover if any risk placed with Comcover is also covered by an insurance policy issued by other insurers.

#### 2.15.9 Overseas operations

If **you** establish an operation outside of Australia, whether permanent or temporary, **you** must obtain any insurance as required by the local law for **you** to carry out **your** operations in that jurisdiction.

#### 2.15.10 Dispute resolution – Claims

- (a) A dispute includes disagreements about acceptance or settlement of a **claim** subject to the **claims** settlement condition
- (b) If the dispute is with **Comcover Member Services**, **you** must inform Comcover if the dispute lasts for more than 30 days
- (c) If the dispute cannot then be resolved within a further 30 day period the matter must be referred to a mutually agreed mediator
- (d) If the dispute is with Comcover and it cannot be resolved within 60 days, the dispute must be referred to a mutually agreed mediator

- (e) If the dispute cannot then be resolved then the matter will be referred to the Secretary of the Department of Finance and Deregulation and the Chief Executive Officer of the member organisation or their nominees
- (f) If the dispute cannot then be resolved then the matter will be referred to the relevant Ministers.

#### 2.15.11 Goods and Services Tax (GST)

(a) For all members

- (i) As part of the premium, we will charge **you** an amount on account of GST
- (ii) In relation to **claims**, our liability to **you** will be calculated taking into account
  - (a) any input tax credit to which **you** are entitled for any acquisition which is relevant to **your claim**, or to which **you** would have been entitled were **you** have made a relevant acquisition, and
  - (b) for business interruption **claims** only, the GST exclusive amount of any supply made by **your** business or operation, which is relevant to **your claim**
- (iii) If **your** sum insured or cover limit is not sufficient to cover **your** loss, we will only pay GST (less any relevant input tax credit) that relates to our proportion of **your** loss. We will pay that GST amount in addition to **your** sum insured or cover limit

(b) For members subject to the *Financial Management and Accountability Act 1997*:

- (i) we will indemnify **you** for any GST liability that **you** may have on a settlement of a **claim**. Our payment will be in addition to the sum insured or cover limit

(c) For other members

- (i) **you** must inform us of the extent to which **you** are entitled to an input tax credit for the GST included in **your** premium when **you** make a **claim**. No payment will be made to **you** for any GST liability that **you** may have on a settlement of a **claim** when **you** do not inform us of **your** entitlement or correct entitlement to an input tax credit
- (ii) 'GST', 'input tax credit', 'acquisition' and 'supply' have the meaning given in the *New Tax System (Goods and Services Tax) Act 1999*.

**2.15.12 Confidentiality**

(a) **you** must not disclose without the prior written consent of Comcover:

- (i) the nature and limit of the liabilities covered, or
- (ii) the amount of **your** member premium.

**End of Part 2 - Policy Terms and Conditions**

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## **Part 3. General Information**

### **3.1 Reporting incidents for a Claim**

- (a) Early notification of a claim or an event or loss that is likely to give rise to a claim is crucial to the ability of Comcover to protect the Fund Member's interest and minimise any subsequent loss
- (b) It is imperative that a Fund Member notifies Comcover Member Services of an incident that could lead to a claim of a liability nature against it, even if, at the time of notification, there has been no demand from a third party.

### **3.2 Incidents and Claims including those below the Fund Member's excess**

- (a) All incidents of a liability nature should be recorded by Fund Members for their own risk management purposes and be notified to Comcover Member Services
- (b) For non-liability incidents that are clearly below the excess, members should record those as part of their own risk management program
- (c) For non-liability related incidents that are approaching the excess, Fund Members should record these as part of their own risk management program and report them to Comcover Member Services as they may exceed the excess and become a claim
- (d) For non-liability related incidents that exceed the excess, Fund Members should record these as part of their own risk management program and report them to Comcover Member Services for processing as a claim.

### **3.3 Incident and Claim reporting procedures**

- (a) Fund Members should take the following action when they have information that there is a claim against them or that an incident has occurred that might give rise to a claim
  - (i) notify Comcover Member Services
  - (ii) preserve any evidence
  - (iii) complete claim form documentation
  - (iv) provide supporting documentation and information
  - (v) refer all communication concerning the matter to Comcover Member Services
- (b) Notification in the first instance can be by telephone, e-mail, facsimile, in person or by post. It is important to ensure that sufficient

information is given to Comcover Member Services regarding the claim, or possible claim

- (c) The following information needs to be given to Comcover Member Services
  - (i) name and telephone number of Fund Member contact officer
  - (ii) the policy number
  - (iii) name and address, if known, of the third party(s) involved in the incident
  - (iv) the time, date and location of the incident
  - (v) the name of the Fund Member employee or other persons involved
  - (vi) a full description of the incident
- (d) details of the claim made, or likely to be made against the Fund Member
- (e) names and addresses of witnesses
- (f) A claim form should be completed and forwarded immediately to Comcover Member Services, or at least, within 5 days of an incident occurring; a claim being made against the Fund Member; or where the Fund Member becomes aware of circumstances that are likely to give rise to a claim against it
- (g) When completing the claim form, the Fund Member should provide supporting information, including
  - (i) any originating application, writ, summons, demand or other correspondence from third party(s) and file notes of any telephone conversations with third party(s)
  - (ii) employee statements. The statement should be confined to the facts and not express an opinion on negligence/liability
  - (iii) witness statements
  - (iv) photographs of the incident site (if relevant)
  - (v) details of any other party(s) (not employees or affected third parties) who may have contributed to the incident
  - (vi) any other relevant information
- (h) The Fund Member should retain copies of all of the above documents and open its own file in relation to the claim.

#### 3.4 **Points to remember**

- (a) Refrain from making any statement to possible claimants or witnesses to an incident, or taking any action, that could be construed as an admission of liability

- (b) Where possible and appropriate, take all necessary steps to prevent further public access to the site where the incident took place (or any other actions to prevent further loss) until it can be visited by an assessor and made safe
- (c) Where possible and appropriate, take all necessary steps to provide assistance to a prospective claimant and reduce the likelihood of legal action (e.g. provide reassurance, first aid, ambulance). A conciliatory attitude at this stage can help settle any claim that is ultimately commenced against the Fund Member
- (d) Request all staff (or other persons associated with you such as contractors) who witnessed the incident to prepare written notes, or better still statements, dealing with the facts of the incident as observed by them. No attempt should be made to attribute blame
- (e) Where property is lost or stolen take all reasonable steps to recover the property. If the loss is caused by theft, report the loss to the police immediately
- (f) Report details of a motor vehicle accident that:
  - (i) damages the motor vehicle or property belonging to another party
  - (ii) injures people
- (g) Report the motor vehicle accident to the police as required by State and Territory motor traffic legislation
- (h) Report the theft of a motor vehicle or its contents
  - (i) If the vehicle is damaged, leave the vehicle at the premises of a repairer of your choice where it can be examined by an assessor (minor repairs will be attended to immediately).

### 3.5 **Indemnities, Guarantees, Warranties and Letters of Comfort**

- (a) The Australian Government's policy on issuing indemnities, guarantees, warranties and letters of comfort is to accept such risks only when the expected benefits, financial or otherwise, are sufficient to outweigh the level and cost of risk which the Government would be assuming. As a matter of principle, risks should be borne by those best placed to manage them
- (b) Sound risk management is fundamental to the effective management of exposures that result from the issue of indemnities, guarantees, warranties and letters of comfort. Agencies should have both an overall corporate risk management strategy and a separate, more specific and detailed risk management plan to apply to the

management of indemnities, guarantees, warranties and letters of comfort

- (c) Risk management involves assessing and accepting risk in a way that minimises the long term cost to the Commonwealth. The strategies for managing these exposures are aimed at
  - (i) managing the relationship with the indemnified party so as to reduce the likelihood that the contingency is triggered, and
  - (ii) managing the aggregate risks from an agency perspective including by
    - (a) establishing an awareness of the environment the agency is operating in
    - (b) identifying the risk to be managed
    - (c) analysing the risk, which involves consideration of the possible consequences of the risks and the likelihood that those consequences may occur
    - (d) treating the risks (such as they retained, reduced, eliminated, controlled or transferred), and
    - (e) monitoring and reviewing the risks on a periodic basis
- (d) Ideally, contracts entered into by Fund Members should, wherever possible, provide for insurance and indemnity from vendors, contractors and sub-contractors indemnifying the Commonwealth or Fund Member. As noted above, the Australian Government's policy on issuing indemnities to other parties is to accept such risk only when the expected benefits outweigh the potential losses
- (e) Before issuing an indemnity, potential losses should be assessed commensurate with the level of risk identified. Indemnities can only be issued by a duly authorised person
- (f) If it is necessary to provide an indemnity, Comcover may be able to provide insurance protection for some aspects of the indemnity. One relevant consideration will be whether members have followed Finance Management Guidance No 6 – Guidelines for Issuing and Managing Indemnities, Guarantees, Warranties and Letters of Comfort, September 2003.

### 3.6 Co-operating with Comcover Member Services

Comcover Member Services has performance obligations under its contract with Comcover. The Fund Member must do everything possible to co-operate with, and assist, Comcover Member Services in meeting these obligations.

### 3.7 Risk Management

- (a) One of the key functions of Comcover is to support the Australian Government's aim of achieving greater transparency and accountability in the management of the Australian Government's risks. The coverage of insurable risks provided by Comcover is but only one element in the overall management of risk (both insurable and non-insurable) by Australian Government agencies
- (b) Risk management is a central element of any corporate governance framework, whether for private or public sector organisations. Systematic risk management is essential for Australian Government agencies. Its implementation requires a considerable commitment by chief executives and senior management as well as investment and ownership by all staff in Australian Government agencies
- (c) A sound corporate governance framework, with a well integrated risk management strategy, will provide the essential discipline and structures needed by modern government organisations. Effective risk management will help in managing the risks confronting Australian Government agencies so that full advantage can be taken of opportunities while minimising the adverse impacts of risks
- (d) Comcover is committed to working in partnership with Fund Members, to help them develop a risk management culture within their organisation. Fund Members will have access to a wide range of risk management support through Comcover Member Services, including risk management training and networking opportunities, support to Boards, Executives and Senior Managers, professional risk management expertise and agency specific advice
- (e) While Comcover is happy to offer advice and support on managing agencies' risks, it is important to recognise that the ultimate responsibility for risk management continues to rest with agency chief executives and their senior management team. Chief executives need to take a close interest in and responsibility for their agency's risk management strategies and the implementation of the strategies, if their agencies are to effectively identify and respond to the wide and increasing variety of risks that now have to be faced by organisations.

**End**