Comcover Statement of Cover 2015-16

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Chapter 1 – Preamble

1. The Comcover Fund

(1) In this Statement of Cover certain words have defined meanings. When words appear in bold they have the meaning given to them in section 6 (under Chapter 2).

(2) The Department of Finance, through Comcover, manages the Commonwealth’s self-insurance arrangements. Comcover is part of the Risk, Insurance and Special Claims Branch in the Department of Finance. The Parliamentary Secretary to the Minister for Finance has portfolio responsibility for Comcover.

(3) The Comcover Fund was established in 1998 to provide a cost-effective approach to managing the Commonwealth’s insurable risks. Comcover is an internal government mechanism that helps protect the Commonwealth Budget while at the same time ensuring Commonwealth entities have a comprehensive programme of financial protection.

(4) All corporate Commonwealth entities and non-corporate Commonwealth entities operating within the General Government Sector (Fund Members) are required to participate in the Comcover Fund, unless they have been exempted by the Minister for Finance. Entities not classified within the General Government Sector are not covered by this Statement of Cover.

(5) The Comcover Fund provides Fund Members with cover for all normally insurable risks, with the exception of workers’ compensation, which is the responsibility of Comcare.

(6) The Comcover Fund is a financial mechanism by which annual premiums collected from Fund Members are pooled to meet the cost of the Commonwealth’s insurable losses. Although the risk is retained within the Commonwealth, the Comcover Fund spreads the risk across the Fund Members, minimising any adverse impact on a single entity or on the Commonwealth Budget.

(7) The calculation of the annual premium pool to keep reserves in the Comcover Fund is based on the actuarially assessed risk of losses associated with Fund Members’ operations, assets and liabilities. Premiums are allocated to Fund Members according to their proportion of the assessed risks across the Fund. These Premiums, as well as excesses, provide price signals to each Fund Member and emphasise the focus on risk management.

(8) The Comcover Fund also supports the Government’s aim of achieving greater transparency and accountability in the management of the Commonwealth Government’s risks.

1 We have followed the convention of using capital letters for certain words that are commonly capitalised, particularly descriptors of Government agencies and functions. No further meaning should be implied from the use of capitals in these cases.
(9) The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) requires that accountable authorities of Commonwealth entities establish and maintain appropriate systems of risk oversight and management and of internal control for the entity. Non-corporate Commonwealth entities must also comply with the *Commonwealth Risk Management Policy*.

(10) Comcover is committed to working in partnership with Fund Members to help them develop a risk management culture within their organisation. As part of this, Comcover provides Fund Members with access to a wide range of risk management support, including risk management training and networking opportunities, support to Boards, Executives and Senior Managers, professional risk management expertise and entity-specific advice.


2. Introduction

(1) The Statement of Cover is an internal policy arrangement for the management of losses affecting Commonwealth entities within the General Government Sector. The Statement of Cover is not intended to, and does not, give rise to any legally enforceable rights on the part of Fund Members or individuals against Comcover.

(2) The Statement of Cover does not constitute a contract of insurance or other type of legally binding contract or agreement.

(3) The Statement of Cover is provided to explain the terms under which losses incurred by a Fund Member will be funded out of the Comcover Fund.

3. About Comcover

(1) The Risk, Insurance and Special Claims Branch (Comcover) is part of Business, Procurement and Asset Management within the Department of Finance. The Parliamentary Secretary to the Finance Minister (the Minister) has portfolio responsibility for Comcover.

4. Conditions of Cover

(1) Duty of disclosure

(a) You have a duty of disclosure in respect of your risk exposures, which means that:

(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; and

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2 Section 16, PGPA Act.
(ii) at all times while this Statement of Cover applies, 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) Comcover looks to the support and cooperation of our Fund Members in the provision of services. It is expected that Fund Members will:

(a) ensure that your staff are aware of statutory requirements and their responsibilities under relevant legislation, regulations and instructions.

(b) exercise reasonable care at all times to protect against losses;

(c) do everything that is reasonably practicable to minimise the extent of a loss;

(d) do everything that is reasonably practicable to investigate the circumstances where it appears the illegal or deliberate actions of any person may have caused or contributed to a loss, and if appropriate:

(i) identify the perpetrators;

(ii) prosecute or assist in the prosecution of any perpetrators; and

(iii) assist us to seek full recovery of the loss from any perpetrators to the maximum extent possible.

(e) comply with the terms of the Comcover Statement of Cover and all applicable law and policies;

(f) participate in arrangements that are part of the Comcover services;

(g) participate in education activities provided by Comcover;

(h) complete the annual Comcover benchmarking program within Comcover’s required timeframes;

(i) complete the annual renewal questionnaire within Comcover’s required timeframes;

(j) ensure your Assets Schedule is kept up-to-date and includes accurate replacement values;

(k) support Comcover in undertaking claims management responsibilities by providing information requested promptly and comprehensively;

(l) disclose all matters relating to a possible or actual claim promptly and comprehensively; and

(m) conduct regular risk assessments and implement risk management solutions for all exposures.

(3) Claims

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

(a) provide written details, including details of any other insurance
which covers the claim, to Comcover as soon as practicable; and

(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.

(4) Excess

(a) When a claim is made against you, or an event occurs that may give rise to a claim, you must pay the excess promptly, as and when instructed by Comcover.3

(b) If different excesses apply to a claim under different covers, you must pay the higher or highest excess.

(c) 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.

(d) Where more than one claim resulting from any combination of events or a series of related events which occur during any 120 hour period, all of those claims will together be treated as one claim for the purposes of determining the excess.

(5) Subrogation

(a) If Comcover accepts a claim under this Statement of Cover, Comcover will have your rights of recovery to the extent of the claim payment made by Comcover to you or on your behalf to any other party.

(b) You must allow and assist 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.

(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

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3 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.
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 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.

(7) Comcover Services

You must not enter into any separate contract, arrangement or understanding with any supplier of Comcover Services in relation to the management of a claim or protection of your normally insurable risks without the express approval of Comcover.

(8) Other Insurance

You must advise us as soon as practicable if any risk that we cover is also covered for you by any other insurance policy.
5. **The Statement of Cover**

(1) This Statement of Cover has effect from 1 July 2015.

(2) The Statement of Cover may be terminated, or amended at any time by notice:

(a) given in writing to each **Fund Member** by us; and

(b) posted on our website.

(3) All cover provided under this Statement of Cover is subject to **you** not being prevented from maintaining such cover by any law or policy that applies to **you**, including but not limited to enabling legislation, internal policies, Accountable Authority Instructions and Legal Services Directions.

(4) The terms and conditions shown on **your Schedule of Cover** take precedence over any of the general terms and conditions in the Statement of Cover to the extent of any inconsistency.

(5) The **excess** shown against each section on **your Schedule of Cover** applies to all individual **claims** for that section.

6. **Defined terms**

**Assets Schedule** means the schedule of assets, their locations and values as declared by the **Fund Member** and agreed by **Comcover**.

**book debts** means:

(a) the difference between outstanding debit balances and the total amounts actually received;

(b) costs incurred in tracing and establishing debit balances including collection expenses in excess of **your** normal collection expenses; or

(c) interest charges on any loan **you** take out to off-set impaired collection of **your** book debts.

**claim** means:

(a) any demand by a third party against a **Fund Member** for compensation; or

(b) a request by **you** for indemnity in accordance with **your Schedule of Cover** and this Statement of Cover.

**Comcover** includes service providers contracted by **Comcover** to assist in delivering services to **Fund Members**.

**defence costs** means reasonable legal costs and other expenses incurred in defending **claims** with the prior written consent of **Comcover**.

**excess** means the amount that **you** must contribute towards the cost of any loss.
**expatriate** means a person outside his or her home country and who has been noted on the **Schedule of Expatriates** provided to **Comcover** by the **Fund Member**.

**Fund** and **Comcover Fund** mean the **Fund** established by the Commonwealth and managed by **Comcover** as a Branch of the Department of Finance for the purposes of protecting **Fund Members** from defined losses.

**Fund Member** means the organisation named on your **Schedule of Cover** and all subsidiaries.4

**indemnity period** means the period beginning with the occurrence of the damage, **loss** or unauthorised use, interference or loss of access and ending not later than the period specified in your **Schedule of Cover**.

**loss** means all damages, legal costs awarded against a **Fund Member** (or if applicable an officer) and settlements negotiated with the prior written consent of **Comcover**.

**medical expenses** means expenses incurred and paid to a legally qualified health professional, hospital or ambulance service for treatment, including the costs of medical supplies and legally prescribed medicines and drugs.

**motor vehicle** means:
(a) any mechanically propelled land-use vehicle, its standard tools and all accessories, and anything ordinarily towed by the vehicle; or
(b) a **substitute motor vehicle**.

**period of cover** means the period during which you are covered by **Comcover**, as shown on your **Schedule of Cover**.

**personal effects** includes tools of trade and field equipment but excludes money.

**property** means, all real or personal property including:
(a) money;
(b) electronic data and records;
(c) structural improvements on or in land; and
(d) landscaping and gardens;
which is yours, or is in your care, custody or control or is your responsibility, but excluding:
(i) land;
(ii) watercraft more than 15 metres in length;
(iii) aircraft;
(iv) rockets and satellites;
(v) livestock, animals, birds, and fish;

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4 “Subsidiary” has the meaning as defined in section 8 of the PGPA Act.
(vi) standing timber; and
(vii) growing crops and pastures,
(unless noted on your Assets Schedule).

(e) Land does not include structural improvements on or in the land.

**Schedule of Cover** means the terms and conditions of cover issued to the **Fund Member** which include details of the type of cover, maximum limits of cover, applicable **excesses**, and special endorsements or other conditions.

**Schedule of Expatriates** means the list notified to Comcover of **expatriates** nominated by the **Fund Member** as requiring cover.

**substitute motor vehicle** means a vehicle that you have authorised to be hired, borrowed or used for official purposes because your usual **motor vehicle** is being repaired, serviced or has broken down.

**traveller** means a person approved by you, including any approved accompanying persons, on 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.

**we, us and/or our** means Comcover.

**you/your** means the **Fund Member**.

**voluntary worker** means a person who consents to undertake duties under your direction or at your request and receives nil or nominal reward.

**wrongful act** means:
(a) an error, either by omission or commission;
(b) a misstatement or misleading statement; or
(c) neglect or breach of duty or breach of trust by a director or officer in their capacity as a director or officer.
Chapter 3 – Liability

7. General Liability and Professional Indemnity

(1) If you are legally liable to pay compensation for:

(a) injury or illness or death;
(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);
(g) unfair competition, piracy, misappropriation of ideas under an implied contract; or
(h) breach of confidence, invasion of privacy or other similar misuse or disclosure of information,
(i) property which is damaged, lost or which cannot be used,
(j) a loss caused by the execution or breach of your duty that arises from your operations or business,

and

(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) we will indemnify you for all damages or judgments, and defence costs.

(2) To the extent that it is lawful to do so, directors, officers, employees, members of committees and advisory councils appointed by you, voluntary workers and travellers, are also covered, whilst acting in good faith in fulfilment of their duties and responsibilities to you.\(^5\)

(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) without the prior written consent of Comcover;

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\(^5\) This cover extends to indemnities a Member is able to give its officers in accordance with applicable Commonwealth legislation or regulation, including the Public Governance, Performance and Accountability Act 2013, the Judiciary Act 1903, the Corporations Act 2001 (whichever is appropriate) including any Regulations, Orders, Legal Services Directions or Accountable Authority Instructions or policies made or issued under them.
(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;
(c) any liability arising out of your breach of contract unless liability would have arisen in the absence of that breach;
(d) property damage arising out of the use of a registered motor vehicle or a motor vehicle which should be registered under applicable legislation;
(e) any fees or expenses including defence costs incurred by you without the prior written consent of Comcover;
(f) 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
(g) any claim for or in any way connected with underpayment of employee entitlements.6

8. Directors’ and Officers’ Liability

(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 the director or officer held an outside directorship appointed by or representing you,
or
(2) if a director or officer is legally liable to pay for the consequences of a wrongful act:
(a) as a director or officer of your organisation; or
(b) while the director or officer held an outside directorship appointed by or representing you,

and

(3) the claim for loss was made against you, the director or officer:
(a) during your period of cover; and
(b) reported to Comcover during that period of cover or as soon as reasonably practicable;
(c) even if the director or officer had ceased being a director or officer, during or before that period of cover,7

then

(4) we will indemnify:

6 This exclusion does not apply to employee entitlements in respect of superannuation that arise from negligent misstatements.
7 This cover extends to liability against the estate, heirs or legal representatives of any deceased, mentally incompetent or insolvent officer.
(a) you for your own liability for employment practices;
(b) you for your liability to the director or officer if he or she is indemnified by you;
(c) the director or officer if he or she is not indemnified by you;
(d) you for any loss and defence costs up to the maximum amount, provided that such indemnity is not prevented by any law of the Commonwealth, including but not limited to, the Public Governance, Performance and Accountability Act 2013, the Judiciary Act 1903, or the Corporations Act 2001 (whichever is appropriate) (including any Regulations, Orders, Legal Services Directions or Accountable Authority Instructions or policies made or issued under them), to the extent, if any, they apply to you, the director or officer;
(e) the spouse, de facto spouse or domestic partner of a director or officer for financial loss incurred due to a wrongful act of a director or officer, provided that:
   (i) the claim is made against the spouse, de facto spouse or domestic partner only because he or she is the spouse, de facto spouse or domestic partner of the director or officer; and
   (ii) the loss relates to property either jointly held by the director or officer and his or her spouse, de facto spouse or domestic partner or transferred by the director or officer to his or her spouse, de facto spouse or domestic partner for legitimate purposes.
(5) 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 we will indemnify you, the director or officer for any claim that arises from those facts.
(6) Notwithstanding General Exclusion 19 in respect of pollutants, we will pay defence costs incurred by a director or officer in defending a loss in connection with the actual or alleged discharge, dispersal, release or escape of any pollutant.
(7) Exclusions
   (a) We will not pay for any claim made against a director or officer for injury or illness of any person or loss of, damage to or destruction of any physical property, including the of use of it provided, however, 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.  
   (b) We will not pay for any claim made against a director or officer that arises from that director or officer’s:  
      (i) improper use of inside information to gain a personal advantage or to deliberately cause detriment to you or another person;  
      (ii) wilful breach of their duty to your organisation;  
      (iii) breach of professional duty;

Please note that we will not pay for what are or should be workers’ compensation claims.
(iv) libel, slander or defamation;
(v) medical malpractice;
(vi) conduct other than in good faith;
(vii) liability arising out of your breach of contract unless liability would have arisen in the absence of that breach; or
(viii) claim against you or your other directors or officers unless the claim is as a result of employment practices.

(c) We will not pay for any claim made against a director or officer that arises from:

(i) any claim made by you against a director or officer in your organisation;
(ii) loss which is treated as a redundancy payment or is in any way connected with redundancy;
(iii) any fees or expenses including defence costs incurred by you without the prior written consent of Comcover; or
(iv) any claim for or in any way connected with underpayment of employee entitlements.9

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9 This exclusion does not apply to employee entitlements in respect of superannuation that arise from negligent misstatement.
9. **Property**

(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 replacement value of the property lost, destroyed or damaged; or

(b) the indemnity value should you choose not to rebuild or replace the property,\(^1\)

and

(c) 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;

(d) for the reasonable costs incurred in the removal, storage and disposal of debris, detritus or wreckage or in decontamination;

(e) for the reasonable costs incurred in demolition, dismantling, shoring up, propping, underpinning and other temporary repairs; or

(f) any extra costs necessary to comply with the requirements of any competent authority provided you had not received notice of such requirements before the loss, destruction or damage occurred, up to the maximum amount declared for that property in your Assets Schedule, where applicable. The amounts specified in your Assets Schedule at the time of loss are the limits that Comcover will pay. You are responsible to ensure the values recorded in your Assets Schedule are correct and include allowance for the additional costs specified in sub-clause (1) above.

(2) We will also pay:

(a) for the reasonable costs incurred in extinguishing fires at or in the vicinity of your property which threaten to involve your property;

(b) 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; and

(c) 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

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\(^1\) 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 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 because of the loss, destruction or damage, restoration or repair.

\(^1\) The indemnity value is the value of the property immediately prior to the loss.
glass and also any incidental costs, including sign writing and temporary protection.

(3) Exclusion

We will not pay for loss, destruction or damage:

(a) caused by wear and tear, rust, latent defect, gradual deterioration, moths, vermin, disease, dampness or dryness of atmosphere, extremes or changes of temperature (other than freezing), or faulty workmanship, faulty material, faulty construction or faulty design;

(b) caused by unexplained inventory shortages, disappearances resulting from clerical or accounting errors, shortage in supply or delivery of items to or from your organisation;

(c) to registered motor vehicles;

(d) 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;

(e) resulting from any misrepresentations made in connection with benefits or liabilities under Commonwealth legislation; or

(f) to property undergoing construction, erection, alteration or addition when the value of the work underway exceeds $5,000,000 unless specifically noted on your Assets Schedule.

10. Property in Transit

(1) We will pay for losses to your property:

(a) whilst the property is in transit between a place or places; and

(b) whilst being loaded and unloaded; and

(c) whilst temporarily being stored at any interim place between the initial point of dispatch and the destination,

up to a maximum amount declared in your Schedule of Cover.

(2) We will not pay for:

(a) ordinary leakage, ordinary loss in weight or volume or wear and tear of the property insured;

(b) expense caused by delay;

(c) 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

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12 This exclusion is limited to that part of your property immediately affected by the loss or damage and not any subsequent damage.

13 This exclusion does not apply to your registered mobile plant and equipment whilst on your premises.

14 This exclusion in relation to action of the sea does not apply to a watercraft.
loaded therein;

(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.

11. Fraud

(1) 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 officers, employees or directors;

(b) your voluntary workers; or

(c) your members of boards, commissions or other bodies, acting alone or in collusion with others, up to the amount shown in your Schedule of Cover.

12. Business Interruption

(1) If your business or operations are interrupted:

(a) because of property being lost, destroyed or damaged and that loss, destruction or damage is covered 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 direction from a competent authority,

and

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

(i) loses revenue; and/or

(ii) incurs additional costs for the purpose of resuming or maintaining normal business operations,

and

(e) the interruption commenced during your Period of Cover,

then
(f) we will pay compensation up to the amount shown on your Schedule of Cover for:

(i) the revenue lost during the indemnity period (excluding revenue derived from Australian Government sources); and/or

(ii) 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.

(2) Exclusions

We will not pay 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 design15;

(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;

(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; or

(e) interruption that is a direct consequence of industrial action by your employees.

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15 This exclusion is limited to that part of your interruption immediately affected by the loss or damage and not any subsequent damage.
Chapter 5 – Motor Vehicle

13. Motor Vehicle

(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) 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 24 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; and

(e) if your loss is only in respect of breakage of windscreen and consequent scratching to body work, your excess will not apply.

(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.

(4) We will also pay:

(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;

(b) costs for any one accident charged by a competent authority following an event involving your motor vehicle requiring or resulting in the attendance of members of the competent authority;

(c) costs 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, 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 100 kilometres from where your
       motor vehicle is normally garaged; and
   (e) the replacement cost of sign writing or fixed advertising signs or materials
      forming a permanent part of your vehicle at the time of the loss,
      destruction or damage.

(5) If your vehicle is damaged beyond an amount we consider economical to
repair and the pre-loss market value is less than the amount owing by you
(a) under a valid hire purchase, leasing or other finance agreement we will
    also pay such additional amount, not exceeding 20% of the market
    value, as necessary to settle the amount owing; or,
(b) under the whole of government motor vehicle fleet management and
    leasing services arrangement, we will also pay such additional amount as
    necessary to settle the amount owing,
(c) but less any:
   (i) payments and interest in arrears at the time of the loss; and
   (ii) discount in respect of finance charges and/or interest for the unexpired
        term of such an agreement;

(6) We will not pay:
   (a) for your inability to use the motor vehicle;
   (b) for damage resulting from the normal wear and tear, rust or corrosion to
       your motor vehicle;
   (c) when the damage is structural failure, electrical, electronic or mechanical
       breakdown;
   (d) for damage to tyres from using brakes, or by road punctures, cuts or
       bursts; or
   (e) if the motor vehicle is being used with your permission in contravention
       of any laws.16

16 This includes, but is not limited to, being driven by an unlicensed driver, a suspended-licence driver or a person under the
   influence of drugs or alcohol.
Chapter 6 – Personal Accident and Travel

14. Personal Accident

(1) In the event of:

(a) 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 the person is 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, provided that:

(i) there is a clear legal link between your powers and functions and the activity of the person;

(ii) indemnity is not prohibited by any law of the Commonwealth, 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) Exclusion

We will not pay for:

(a) expenses resulting from injury or death from:

(i) any deliberately self inflicted injury, suicide or attempted suicide; or

(ii) 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.
15. Travel Outside of Country - Baggage and Personal Effects

(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.

(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.

(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.

(c) the traveller’s baggage is delayed for more than 8 hours following the arrival of the traveller at that destination, 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 for the reasonable additional cost of using alternative public transport.

(e) the trip is interrupted by unforeseen circumstances, then we will pay for the reasonable expenses incurred.

(3) If the traveller is in a country or region which experiences a major incident or natural disaster and the traveller is at risk of injury or illness:

(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 agrees 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.

(4) Exclusions

We will not pay for:

(a) any loss or claim unless the travel has been approved in accordance with the relevant legislation and your internal policies, instructions and guidelines;
(b) any loss or claim where payment is prohibited by any law of the Commonwealth applicable to you; or

(c) any loss or claim if the traveller is 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.

16. Travel Outside of Country - Medical Expenses and Medical Emergencies

(1) In the event of:

(a) injury, illness 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, provided that the event giving rise to the claim happened during your period of cover.

(2) We will also pay:

(a) 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 registered health professional where appropriate;

(v) repatriation of mortal remains and any related costs; and

(vi) medical monitoring.

(c) reasonable expenses incurred in sending a replacement employee to complete the injured, ill 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 injury or illness (including death);

(e) reasonable expenses incurred with Comcover’s agreement and upon medical advice if the traveller needs accommodation to recover from the illness or injury;

(f) reasonable expenses incurred with Comcover’s agreement if the traveller’s trip is interrupted as a result of the traveller suffering an injury or
illness; and

(g) 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) injury, illness, death or jury service of the traveller or any person authorised to travel with them;

(ii) serious injury or serious illness or death of any relative or business colleague of the traveller; or

(iii) any unforeseen circumstances outside the control of the traveller.

(3) **Exclusions**

We will not pay for:

(a) expenses resulting from injury, illness or death from:

(i) any deliberately self inflicted injury, suicide or attempted suicide; or

(ii) engaging in, or taking part in, or training for any professional sports of any kind.

(b) any claim where the traveller would be reasonably considered unfit for travel or is travelling against the advice of a medical practitioner;

(c) expenses for which a Medicare benefit is payable or which we are prohibited by law from paying;

(d) the benefits in section 16 (1) (b) if the traveller is an accompanying person;

(e) any loss or claim unless the travel has been approved in accordance with the relevant legislation and your internal policies, instructions and guidelines;

(f) any loss or claim where payment is prohibited by any law of the Commonwealth applicable to you;

(g) any loss or claim if the traveller is 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

(h) expenses from any routine medical, optical or dental treatment or consultation.

17. **Expatriate**

(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, up to a maximum of 12 months per loss or claim from date of first treatment.

(2) We will pay all reasonable and necessary expenses incurred for:

(a) an emergency evacuation or reasonable travel costs as a consequence of

17 This exclusion does not apply to item 2. (b) (v).
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, 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.

(3) **Exclusions**

We will not pay for:

(a) expenses resulting from any deliberately self inflicted injury, suicide or attempted suicide;

(b) expenses resulting from engaging in, or taking part in, or training for any professional sports of any kind;

(c) expenses resulting from any elective and/or cosmetic procedure, treatment or surgery unless essential to recovery;

(d) expenses for which a Medicare benefit is payable or which we are prohibited by law from paying;

(e) any loss or claim by any expatriate who has not undergone pre-deployment medical and dental examinations;

(f) any loss or claim by any expatriate who has not been declared medically and dentally fit to be deployed to their country of posting; or

(g) expenses resulting from any pre-existing condition not reviewed and agreed to by Comcover prior to deployment. Pre-existing condition includes pregnancy or childbirth and/or any related complications.
18. Personal Effects and Travel inside Country

(1) If:

(a) the personal effects of, or in the care, custody and control 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:
   (i) in the approved workplace of an employee, or a member of the board, commission or other body, or a voluntary worker; or
   (ii) 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 in your Schedule of Cover, provided that:
   (i) the employee has been indemnified by you for such loss, destruction or damage;
   (ii) indemnity is not prohibited by any law of the Commonwealth applicable to you; and
   (iii) the 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) 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 the reasonable additional cost of using alternative transport.

(b) the trip is interrupted by unforeseen circumstances, we will pay the reasonable and necessary expenses incurred.

(c) money belonging to the employee, member of the board, commission or other body, or a voluntary worker, or for which he or she is responsible is stolen or lost, then we will pay for the lost or stolen money.

(3) Exclusion

We will not pay for anything that occurs as a result of actions that are inconsistent with Commonwealth laws, the relevant Accountable Authority Instructions or their equivalent applicable to your organisation, or other applicable management policies.\(^{18}\)

\(^{18}\) For example, if the AAI 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.
Chapter 7 – General Exclusions

19. General Exclusions – what we do not cover

(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;
   (ii) confiscation, nationalisation, requisition, or damage to property ordered by a competent authority except where such action was in the process of the defence of human life and or third party property; or
   (iii) 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.

(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 Assets Schedule.

19 This exclusion does not apply to the Property in Transit cover in Section 10; Personal Accident cover in Section 14; Travel Outside Country cover in Sections 15 and 16; or Expatriate cover in Section 17.

20 This exclusion does not apply to the Property in Transit cover in Section 10.

21 Exclusions 19.2(a) and 19.2(b) do not apply to liability you have as a charterer which is covered in Part 7. Exclusions 19.2(a) and 19.2(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.
(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-making22.

(d) 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;

(e) any fines, penalties, or multiple, punitive, exemplary or aggravated damages;

(f) liquidated damages clauses or performance warranties unless proven that liability would have attached in the absence of such clauses or warranties;

(g) your costs incurred in appearing before any inquiry without the prior agreement of Comcover;

(h) any liability of your employees or officers arising from their deliberate disregard of the need to take all reasonable steps to prevent losses;

(i) any liability arising solely from a decision by you to terminate any contract or agreement;23 or

(j) 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.

(3) Indemnity

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

(a) the liability would have arisen in the absence of such indemnity; or

(b) the indemnity is contained in a contract where the contract was entered into prior to 1 July 2004; or

(c) you have followed Australian Government policy on issuing and managing indemnities and, after making reasonable inquiries, you have assessed:

(i) the likelihood of the event giving rise to the liability occurring as less than 5%; and

(ii) the most probable expenditure that would need to be made if the event giving rise to the liability occurred as less than $5,000,000.

(4) Claims covered by other legislation

We will not pay for:

(a) any workers’ compensation claims payable under the Safety, Rehabilitation and Compensation Act 1988, the Military, 22 Decision-making includes your conduct and any action taken by you.

23 This exclusion does not apply to the cover given under 8.(4)(a).
Rehabilitation and Compensation Act 2004 or any other workers’ compensation legislation in any jurisdiction or associated common law claims; or

(b) any personal injury or death claims covered by any policy issued or which should have been issued under applicable transport accident compensation legislation.

(5) **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.

(6) **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 from your incorrect programming, punching, labelling, insertion or cancellation.

END