



# Cover of Indemnities

March 2015

## Summary

This Fact Sheet sets out details and principles of Comcover's position in respect to indemnities granted by a Comcover Fund Member.

Contracts, deeds or other documents may include indemnity clauses and these indemnity clauses may extend the liabilities of the Comcover Fund Member.

At all times, Fund Members are required to follow all applicable government policy, rules and guidelines in relation to the granting of an indemnity and the management and risks relating to the indemnity.

## Conditions under the Comcover Statement of Cover

Section 19(3) of the *Statement of Cover* advises what cover is automatically given in respect to indemnities. This section of the *Statement of Cover* states that Comcover will not pay for liability arising out of any indemnity unless:

- The liability would have arisen in the absence of such indemnity (for example, under common law); or
- The indemnity is contained in a contract, deed or other document where the contract, deed or other document was entered into prior to 1 July 2004; or
- You have followed Australian Government guidance on the issuing and managing of indemnities. For non-corporate Commonwealth entities, this is contained in [\*Resource Management Guide No. 414 – Indemnities, guarantees or warranties granted by the Commonwealth\*](#) in relation to the indemnity and, after making reasonable inquiries, you have assessed:
  - the likelihood of the event giving rise to the liability occurring is less than 5%; and
  - the most probable expenditure that would need to be made if the event giving rise to the liability occurred is less than \$5,000,000.

If the above conditions are met, the insurable risks in respect to the indemnity is covered by the Comcover *Statement of Cover*.

## **What does a Fund Member need to do where the indemnity does not fall within the conditions stated in Section 19(3) of the *Statement of Cover*?**

Where the assessed exposure exceeds any of these thresholds and you would like Comcover to consider extending cover for the insurable liabilities associated with the indemnity (or indemnities) you have given, then you must provide Comcover with the following information for their consideration:

1. The indemnity clauses, plus all other relevant clauses of the contract, deed or other document;
2. Legal advice which specifically addresses the additional risks you have assumed or will assume by granting this indemnity. Comcover is only interested with insurable risk, but the legal advice should show all the extra risks you are assuming by giving the indemnity.
3. Risk assessment, Comcover only needs to see the part of the risk assessment on the additional risks you are assuming by giving the indemnity. Your risk assessment should show the consequence of each risk in dollar terms.
4. Confirmation that you are proceeding with the indemnity and any other supporting information on the reasoning behind your business decision to grant the indemnity.

Comcover will base their decision on the information provided and will respond with 10 business days.

If you have any questions in relation to cover for indemnities, or the *Statement of Cover*, please contact [comcover@comcover.com.au](mailto:comcover@comcover.com.au) or phone the Relationship Managers on 1800 651 540 (option 3).