

Tabled, by leave, *18* *13/8/24*

**NSW SELF INSURANCE CORPORATION AMENDMENT
(SPECIAL LIABILITY INSURANCE) BILL 2024**
STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

Non-government organisations (NGOs) contracted by the Department of Communities and Justice (DCJ) to deliver out-of-home (OOHC) care and youth accommodation services on behalf Government are required to have appropriate insurance coverage.

Most commercial insurers have withdrawn public liability insurance for physical and sexual abuse from the market. This follows the significant increase in the number and size of claims and settlements in response to the Royal Commission into Institutional Responses to Child Sexual Abuse.

The lack of commercially available and affordable public liability insurance for physical and sexual abuse means some OOHC and youth homelessness service providers may be forced to stop delivering services, putting the sector and vulnerable clients at risk.

A Government-backed insurance scheme is intended to address the immediate risk of service providers being unable to obtain the required insurance and thereby exiting contracts, disrupting service delivery and limiting Government's ability to fulfil its statutory obligations to children in care.

Objectives: What is the policy's objective couched in terms of the public interest?

The objective is to enable NGO access to appropriate insurance that will allow the continued delivery of essential OOHC and youth homelessness services. Government contracted service providers currently support around 7,300 children and young people in OOHC and 4,300 young people in youth homelessness accommodation.

The establishment of an insurance scheme will also support entry of new service providers into the sector, in particular Aboriginal community-controlled organisations and support increased Aboriginal service delivery in line with this Government's Closing the Gap commitments.

Options: What alternative policies and mechanisms were considered in advance of the bill?

To support the continued delivery of essential OOHC and youth homelessness services, government-backed indemnity or insurance arrangements were considered.

National and sector led solutions were excluded from consideration given:

- primary responsibility for service delivery and administration of the OOHC and youth homelessness sectors rests with states; and
- the same insurance availability issues would apply to sector led insurance arrangements, which would also be unlikely to succeed due to the level of complexity to establish and administer.

Analysis: What were the pros/cons and benefits/costs of each option considered?

A specific insurance scheme is being progressed as it supports ongoing service delivery, enables better governance, underwriting controls and risk management.

An indemnity arrangement does not offer the same protections or conditions as insurance and would leave NGO service providers at risk. A DCJ indemnity arrangement also risks a conflict of interest with Government having a dual role of contractor and 'insurer', along with having the power to manage a claim against a service provider whilst also being a defendant in the same matter.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The insurance scheme is intended to commence on 1 January 2025, with icare to administer the scheme.

Following the legislation's enactment, icare will establish the scheme's statutory fund, develop underwriting guidelines and policy wording in consultation with DCJ, issue quoted premiums to eligible applicants and issue insurance policies. DCJ will brief service providers on the scheme's establishment and how to apply.

A full review of the scheme is to occur as soon as possible after two years of operation, to assess the commercial physical and sexual abuse market and determine whether the scheme needs to be altered or wound down.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

DCJ, Treasury and icare have worked collaboratively on the design of the insurance scheme. DCJ also conducted briefings with relevant peak organisations and service providers on design options and scheme parameters.