NGO Insurance for PSA Claims: Phase 1 Final Report

NSW Department of Communities and Justice

September 2022

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Finity Consulting acknowledges the Gadigal of the Eora Nation as the First Peoples and Traditional Owners and Custodians of the land on which this report was prepared. We also acknowledge the past and present Aboriginal and Torres Strait Islander children and young people disproportionately represented in out of home care in Australia.

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finity

30 September 2022

Gavin Peek
A/Director Policy and Practice Partnerships
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Dear Gavin

NGO Insurance for PSA Claims: Phase 1 Final Report

We are pleased to provide this final report on Phase 1 of Finity's work to canvas and assess the available options for a national-level solution to physical and sexual abuse insurance issues for government-contracted or funded NGOs providing Out of Home Care, youth homelessness and some disability services.

We would like to acknowledge the assistance received from the NSW Department of Communities and Justice, the interjurisdictional working group, non-government advisory group and all other stakeholders consulted through this engagement.

Please do not hesitate to contact us if you would like to discuss our report further

Yours sincerely

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1 Executive summary

1.1 Background

In Australia, Non-Government Organisations (NGOs) play a critical role in the provision of essential Out of Home Care (OOHC), youth homelessness, and certain disability services. OOHC provides an alternative care arrangement for children unable to live safely with their families including foster care, relative or kinship care and residential care. As at June 2021, there were over 46,000[1] children in OOHC in Australia. Around 2,200 young people live in supported accommodation for the homeless. More than 400[2] NGO service providers are currently contracted by government agencies to provide the services that facilitate these care arrangements.

Most Australian jurisdictions, as part of their contractual arrangements, require NGOs to have current and adequate insurance for the services they are contracted to provide. In these jurisdictions, where NGOs are unable to obtain appropriate insurance, including cover for physical and sexual abuse (PSA) where relevant, this may constitute a breach of contract leading to the withdrawal of funding and subsequently the withdrawal of the service provider from the market. Over the last two years, many NGO service providers have had difficulty renewing or obtaining insurance policies with cover for PSA claims following many commercial insurers withdrawing PSA cover from the market.

Finity Consulting (Finity) has been engaged by the NSW Department of Communities and Justice (NSW DCJ), on behalf of the interjurisdictional working group (IJWG). This report represents our final report under Phase 1 of this engagement. The purpose of Phase 1 is to:

- Review and analyse the extent of the PSA issue at both a jurisdictional and a national-level, risks to the delivery of services provided by associated NGOs, and the broader impact of not taking any action.
- Identify and develop potential long-term solutions and recommend a preferred option for the PSA insurance issue for the IJWG's consideration.

The findings presented in this report follow extensive consultation with various stakeholders representing the government sector, Insurance sector and NGO service providers.

Phase 2 of Finity's engagement will focus on the design and implementation of the preferred solution. If the IJWG determines that the solution proposed in Phase 1 is not viable, the engagement will not progress to Phase 2.

1.2 Gauging the extent of the problem

The market for PSA cover in Australia has always been relatively narrow. Based on our stakeholder consultation we have reached the conclusion that at present, and subject to a small number of exceptions, it is virtually impossible for NGO service providers to secure suitable insurance coverage for PSA claims risk. The key drivers that have led to this outcome include:

- The removal of barriers and legal structures that have historically impeded sexual abuse survivors from making successful civil claims, such as the removal of the statute of limitations, among other changes.
- A substantial increase in the volume of civil claims, particularly following the *Royal Commission into Institutional Responses to Child Sexual Abuse* (2013-17), and the introduction of the National Redress Scheme.

[1] *Child protection Australia 2020-21*, https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/data

[2] Estimated figure only.

- A significant uplift in civil settlement amounts associated with PSA claims.
- The 'long tail' associated with PSA claims (i.e. the significant delay between abuse occurring and the survivor bringing a civil claim in respect of the abuse), making it difficult for insurers to accurately assess claims cost across an underwriting period. This challenge is exacerbated by a lack of claims data.
- The perceived reputational risks associated with providing PSA cover.
- A view held by insurers that current service delivery models mean that NGO service providers are exposed to risks which are difficult to manage.

In light of these challenges, many insurers have concluded that PSA claims risk for providers of OOHC and youth homelessness services is uninsurable.

The implications for NGO service providers are already apparent, with a significant number of NGOs unable to access insurance for PSA risks. In addition to potential breaches of government contracts, this has left many NGOs (and their Boards) with reduced appetite to provide these services.

The potential impact of en masse service provider withdrawal would be catastrophic, and create significant service disruption for vulnerable children, young people and their families, increased service costs for governments, and potentially result in PSA survivors being unable to access appropriate compensation.

In response to the PSA insurance withdrawal, some Australian jurisdictions have enacted short-term indemnity schemes to ensure continuity of service provision while a long-term solution is developed.

1.3 Assessment of options

In assessing and ultimately recommending a potential long-term solution for consideration by the IJWG, we have first canvassed all available options, before establishing a set of assessment criteria considering the needs of relevant stakeholder groups. Following an initial viability assessment of 10 options, a detailed evaluation (applying the established assessment criteria) was undertaken for three short-listed options.

The short-listed options are as follows:

- Option 1: NGO service providers establish a discretionary mutual fund (DMF)
- Option 2: Insurance or indemnity provided by state and territory governments
- Option 3: National insurance provided by Commonwealth Government.

1.3.1 Option 1: NGO providers establish a discretionary mutual fund (DMF)

A DMF is a group self-insurance pool formed by entities with similar risks. It is not subject to the prudential regulation that applies to insurers, although they operate in a similar way to an insurance company. DMF members pay contributions (equivalent to premium), which are pooled and used to meet claims and operating expenses. Depending on the size of the fund it is normal for the DMF to buy reinsurance from commercial markets to cover individual large claims or an accumulation of claims over a period. Successful DMFs typically require strength and continuity of membership, industry support, the ability to obtain reinsurance and quality of management of claims costs including the ability to apply effective risk management.

Table 1.1 – Advantages and disadvantages of a DMF

Advantages	Disadvantages
◦ Reduced need for government intervention	◦ High concentration of insurance risk ◦ Challenges in establishing and managing a DMF (especially noting the broad and diverse range of NGO

• Reduced reliance on commercial insurers and sheltering from insurance market trends/cycles • May provide a holistic solution for NGOs providing services across multiple sectors (subject to design considerations) • As a sector owned organisation, a DMF would be well positioned to enact industry-wide change (including uplifting collective risk management practices and collation of data)	service providers) and the need for a strong leader to drive the solution • Challenges with pricing contributions as well as the potential for disagreement among member organisations regarding perceived 'cross-subsidisation' of risk. • Potential gaps in membership and challenges in achieving sufficient scale to operate effectively • Risks to ongoing stability if member engagement is low or if some NGOs perceive they can get a 'better deal' elsewhere

1.3.2 Option 2: Insurance or indemnity provided by state and territory governments

An indemnity is an agreement where one party takes financial responsibility for the losses of another - in this case the government and the NGOs, respectively. The indemnity would be offered via a deed or letter issued by the relative government agency responsible for community services. This would be backed either directly by Treasury or through a government self-insurance agency. The structure of this arrangement is similar to the existing short-term indemnity schemes.

Unlike indemnities, issuing insurance would require the establishment of an insurance entity. Insurance differs from indemnity in that under this arrangement insurance policies would be issued with a contractual requirement to cover losses. For many states and territories, this would require changes legislation to enable the establishment of an appropriate insurance entity.

To facilitate a nationally consistent approach (which has been highlighted as particularly important by stakeholders consulted), each state and territory government could be responsible for their own indemnity or insurance scheme, established under a set of guiding principles agreed in advance.

Table 1.2 – Advantages and disadvantages of insurance or indemnity provided by state and territory governments

Advantages	Disadvantages
• Provide a high level of certainty with regards to: a) Long-term sustainability and service continuity for NGO service providers b) NGO service providers and government agencies meeting their contractual and legislative obligations c) Ongoing adequacy of compensation for survivors of abuse • The incremental financial cost may be minimal given that government agencies are already joined on most civil PSA proceedings and may already bear financial risk if an NGO is defunct or unable to pay claims • The fastest and simplest solution to implement with indemnities potentially being built into existing contracts	• Passes the financial cost and risk from the commercial insurance market to the government • Once affordable coverage is provided to NGOs, it may be difficult to discontinue that cover and disincentivise commercial insurers from providing specific cover • May reduce the incentives for NGOs to develop best-practice risk management practices • NGO service providers operating in multiple jurisdictions will need multiple indemnities • State and territory governments may need to provide cover for some services they do not directly contract or fund • Potentially foregoes an opportunity to establish a national data pool and may result in inefficiencies with duplication of tasks

	• May not be scalable to other impacted sectors (particularly sectors where state and territory governments have limited responsibility)

1.3.3 Option 3: National insurance provided by Commonwealth Government

This option is similar to Option 2 in that it is a government-backed solution. A national insurance scheme would be administered at federal level but requires agreement from each of the states and territories and the Commonwealth. A national entity would need to be established and might be responsible for policy administration, collection of premiums and management of pooled funds. An insurance premium would be charged to each NGO either directly or via state and territory governments. Legislation would be required to establish the insurance entity and to enable the collection of contributions.

Table 1.3 – Advantages and disadvantages of national insurance provided by Commonwealth Government

Advantages	Disadvantages
• A nationally coordinated solution would provide greater consistency for NGOs, particularly those operating across multiple jurisdictions. It would also enable the collection of valuable data that could be used to improve risk management and create efficiencies in data analysis and contribution setting etc. • Better suited to comprehensively cover all impacted NGO providers • While more difficult to establish in the first instance, this model can be more easily scaled to other sectors impacted by PSA insurance issues	• More complex to establish and administer than a state or territory-led solution • Challenges in co-ordinating interjurisdictional agreement on the parameters of the arrangement, including funding • As the primary responsibility for service delivery and administration of the OOHC sector rests with the states and territories, the Commonwealth may not be seen to have a role in co-ordinating a national solution • May take significant time to establish given the complexities • Re-entry of commercial insurers less likely

1.3.4 Evaluation against criteria

We have summarised our evaluation of each option (DMF, state and territory indemnity/insurance, National insurance) against the key assessment criteria in the following table.

Table 1.4 – Evaluation against criteria

Assessment criteria	Option 1: DMF	Option 2: States & territories	Option 3: National insurance
1. Continuity of service provision	Some risk if DMF solution cannot be established or if solution is established but is not stable	Low risk of service withdrawal	Short term risk while solution established. Low risk once established
2. Achievability	High risk that DMF solution unachievable	Simplest option. Minimal legislative change (for indemnity only, insurance more complex)	Complex solution. Requires support from Commonwealth, States & Territories
3. Time to deliver	Moderate (1-2 years)	Fast (less than 1 year)	Moderate (1-2 years)
4. Minimise government financial risk	If DMF able to place commercial reinsurance and source capital from members then minimal risk	States and territories will bear financial risk, but this risk is small relative to existing PSA exposure	Commonwealth bears financial risk and may require guarantee of funding from states and territories
4. Cost and efficiency	Establishment costs including capital may be significant for some NGOs	Establishment costs low for government. Some inefficiency (duplication of work)	Additional setup costs relative to Option 2 but greater efficiency over long-term
5. National Consistency	Nationally consistent	May be variations by jurisdiction	Nationally consistent
6. Support governance & risk management	DMFs provide incentive for risk management improvements. Opportunity to pool national data	Support of NGO governance & risk management dependent on design	Dependent on design. Also provides opportunity to pool and collect national data
7. Effective for all sectors of concern	Can provide a solution for all impacted NGOs, but subject to membership criteria	Can provide a solution for all impacted NGOs, but dependent on design	Can provide a solution for all impacted NGOs. Can also be scaled to other sectors
8.Commercial market re-entry	Potential role for commercial market as reinsurer. Market re-entry could destabilise DMF	While challenging, design could facilitate commercial re-entry (in the long term)	Less likely to facilitate commercial re-entry given development of national infrastructure
9. Fair compensation for survivors	Unlikely to cover historical claims. Fair compensation depends on capacity of NGOs to meet claims (or government under joint and several liability or redress)	Depends on design. If no historical cover, depends on capacity of NGOs to meet claims (or government under joint and several liability or redress)	Depends on design. If no historical cover, depends on capacity of NGOs to meet claims (or government under joint and several liability or redress)

Legend	
	Option supports criteria
	Substantial risk and/or compromise required
	Criteria difficult to achieve and/or high risk of failure

There are clearly compromises required under any of the options under consideration and there are no simple solutions.

1.4 Preferred solution

Having completed our assessment, we conclude that Option 2 – state and territory insurance or indemnity, ideally established under a set of nationally agreed principles – is the preferred solution. Where a government insurance solution does not already exist, indemnities provided by state and territory governments are preferable to insurance as they are simpler and do not require legislative change. We recommend Option 2 as the preferred solution on the basis that:

- It is the simplest and most timely solution to implement and can be built in to contracting arrangements

- It is the option that is most likely to succeed
- It ensures ongoing provision of essential services
- It provides certainty, assurance and consistency for NGO service providers
- While there are additional costs involved for government, these costs are associated with essential services contracted or funded by government, and in the event of any market failure, governments would likely be responsible for these costs in any circumstance
- While there are a number of challenges and risks relating to this option, many of these can be potentially addressed or mitigated with careful scheme design, planning and implementation.

Our key reasons for not recommending Option 1 (DMF) are:

- Our consultation has not identified a clear leader to drive this solution
- This option will probably require significant financial support from government initially and likely in the medium-term in the form of capital and additional insurance
- It is complex to establish and there is a reasonable chance that a DMF will not be achievable and/or sustainable.

Our key reasons for not recommending Option 3 (National insurance) are:

- As the primary responsibility for service delivery and administration of the OOHC sector rests with the states and territories, the Commonwealth may not be seen to have a role in co-ordinating a national solution.
- Establishment of a national scheme is more complex, requiring legislation and, agreements and funding arrangements to be reached with each state and territory. This may take significant time; we estimate around two years.
- Some individual states and territories may not see the national scheme as providing a cost-effective solution compared with the provision of an indemnity, noting that if the national scheme is fully funded by the states and territories there is no effective transfer of risk.

1.5 Reliances and limitations

The reliances and limitations are an important part of our advice and are contained in Section 11 of the report. These should be read in order to place our advice in its appropriate context.

2 Purpose and scope

2.1 Background

Government agencies across all Australian jurisdictions rely on Non-Government Organisations (NGOs) to provide out-of-home care (OOHC) and youth homelessness services to vulnerable children and young people. In 2021/22 there were more than 400[3] NGO service providers contracted across all Australian jurisdictions to deliver these critical services.

Most Australian jurisdictions, as part of their contractual arrangements, require NGOs to have current and adequate insurance for the services they are contracted to provide. In these jurisdictions, where NGOs are unable to obtain appropriate insurance, including cover for physical and sexual abuse (PSA) where relevant, this may constitute a breach of contract leading to the withdrawal of funding and subsequently the withdrawal of the service provider from the market. Some jurisdictions (including Queensland, South Australia and the Northern Territory) do not have specific contractual requirements for NGOs to hold insurance cover for PSA claims and may instead be required to address the risk of PSA claims through internal risk management processes.

Over the last two years, many NGO service providers have had difficulty renewing or obtaining insurance policies with cover for PSA claims following many commercial insurers withdrawing PSA cover from the market. The drivers of this withdrawal are discussed in detail in Section 5. NGO service providers who are not able to obtain adequate insurance cover may have substantial exposure to uninsured abuse claims which may lead to a breach of their service provision contracts with government or leave them subject to financial risk beyond their risk appetite. As such, many providers could be compelled to withdraw from service provision if a solution is not forthcoming.

The viability of the OOHC and youth homelessness sectors are threatened by the withdrawal of commercial insurance cover for PSA. The substantial number of vulnerable children and young people dependent on the services provided by these NGOs means that the impact of any large-scale exit of OOHC or youth homelessness providers would be catastrophic for all stakeholders involved including governments responsible for administering these service systems under legislative frameworks and the clients in receipt of these vital services.

Consultation across the insurance and government sectors has indicated that this is a national issue, impacting OOHC and youth homelessness service providers in every Australian jurisdiction, and the issue may expand into other areas such as education, aged care, child care, sporting and recreational sectors. The Community Service Ministers' meeting agreed to establish an interjurisdictional working group (IJWG) to explore possible responses to this issue. The IJWG is represented by community services agencies from every state/territory jurisdiction and the Commonwealth. The purpose of the IJWG is to identify feasible long-term options to respond to the issue at a national level, facilitate state, territory and Commonwealth-based approaches, and to share information to help support the development of a national response. The IJWG has also established a Non-Government Advisory Group (NGAG).

2.2 Scope

Finity Consulting Pty Ltd (Finity) has been engaged by co-chair of the IJWG, the New South Wales Department of Communities and Justice (NSW DCJ) on behalf of the IJWG regarding the difficulties for NGO providers of OOHC, youth homelessness and some disability services in obtaining liability insurance in respect of PSA claims.

[3] Estimated figure only.

The purpose of our engagement is to support the development of a co-ordinated national course of action for the government agencies represented in the IJWG with the main aims of the overall project being to:

1. Provide a sustainable long-term response to the withdrawal of insurance cover for PSA claims from the market for NGO service providers.
2. Address the risk to essential service delivery arising from the potential exit of NGO service providers from the market.

The specific requirements of our engagement are to provide advice over two key phases:

- Phase 1:
  - > Review and analyse the extent of the PSA issue at both a jurisdictional and a national-level, risks to the service delivery, and the impact of not taking any action.
  - > Identify and develop potential long-term solutions and recommend a preferred option for the PSA insurance issue for the IJWG's consideration.
- Phase 2:
  - > Design and cost the option selected by the IJWG.
  - > Develop a detailed concept implementation plan for the selected option, including an outline of the resources required to administer the selected option on an ongoing basis.

If the IJWG determines that the solution proposed in Phase 1 is not viable, the engagement will not progress to Phase 2.

2.3 This report

This is our final report under Phase 1 of this engagement. A preliminary progress report was provided in mid-July 2022. This report expands and builds upon the findings in our preliminary progress report, considering the feedback and further consultation conducted across the various stakeholder groups. The detailed requirements and tasks undertaken during Phase 1 of our engagement can be summarised as follows:

- Gauging the extent of the issue
  - > Investigate the drivers of commercial insurers withdrawing PSA cover for OOHC, youth homelessness and impacted disability service providers
  - > Investigate similar issues of market failure in other contexts
  - > Investigate other sectors that might be impacted if the issue expands
  - > Understand the likely outcomes and consequences if no action is taken
- Identifying and assessing potential solutions
  - > Assess options including:
    - Government led options
    - Sector led options
    - Market led options
    - A combination of the above
  - > This assessment should consider:

- The benefits and disadvantages of each option
- A cost benefit analysis of each option
- Risks and possible mitigation strategies
- Timeframes required to deliver each option

An important element of our engagement has been to consult broadly with a range of relevant stakeholders representing government, the insurance sector and the NGO providers of the services included in the scope of this work. We discuss our approach to stakeholder engagement in greater detail in Section 3.

2.4 Structure of this report

The remainder of this report is structured as follows:

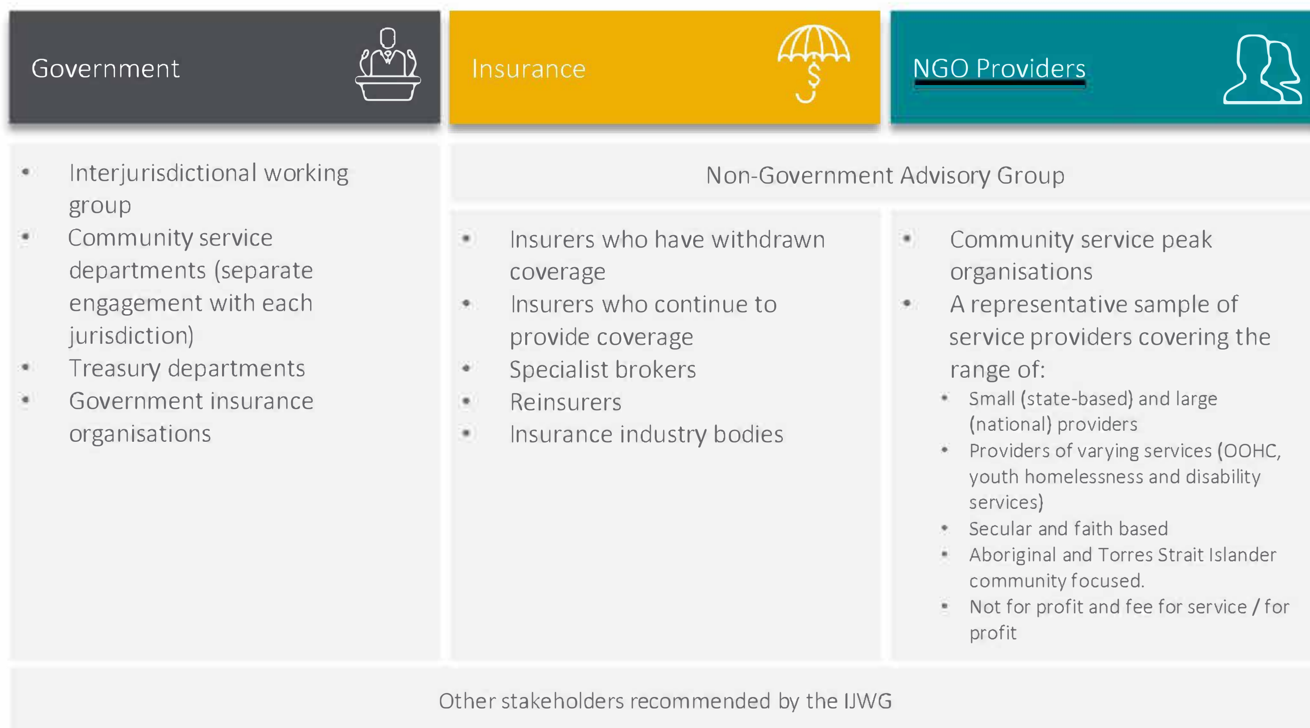
Section	Topic	Contents
3	Stakeholder engagement approach	Summary of our stakeholder consultation process and approach
4	OOHC and youth homelessness	Description of NGO service provision nationally
5	Gauging the extent of the problem	Background, drivers and impacts of the NGO PSA issue
6	Approach to recommending a solution	Identification and assessment of options for a long-term solution
7	Initial option assessment	Identifying available options and initial viability assessment
8	Short-listed options for consideration	Overview of short-listed options for further consideration
9	Detailed assessment	Detailed review of short-listed options against stakeholder criteria
10	Recommendation	Recommendation of the preferred long-term solution
11	Reliances and limitations	Important reliances and limitations of our work

3 Stakeholder engagement approach

3.1 Stakeholders and consultations

Stakeholder engagement is a critical element of this engagement. Due to the nature of the NGO PSA issue, there are a broad range of impacted stakeholders from various sectors, each with a unique perspective on the issue and differing requirements with respect to any potential long-term solution. The stakeholder engagement is being conducted across three broad categories as summarised in the diagram below.

Figure 3.1 – Key stakeholder groups



A detailed list of stakeholders consulted during this engagement is contained in Appendix A.

Our approach to stakeholder engagement includes a variety of approaches:

1. Informal interviews: for most stakeholder groups we have sought to conduct informal interviews to discuss the key issues and considerations relevant to this engagement. For some stakeholder groups, we have sought to meet with a small number of similar or related organisations concurrently in order to maximise the breadth of our consultation within time constraints.
2. Interactive workshops: for the IJWG and NGAG we have facilitated interactive workshops following key deliverables to provide an opportunity for review and feedback.
3. Data requests: for some stakeholders (particularly government sector), we have provided tailored requests for data to support our research and investigation.

Due to the restrictive timeframes for this engagement we have not explicitly requested written submissions from stakeholders, however some stakeholders have chosen to provide a written submission where this suits their particular circumstances.

4 OOHC and youth homelessness

4.1 Nature of care in Australia

4.1.1 Out of Home Care (OOHC)

OOHC is the system where children who are unable to live safely with their families are placed with alternative carers on a temporary, medium or long-term basis. Historically, OOHC took the form of children's homes, missions and other residential institutions. These facilities have now been replaced with contemporary OOHC arrangements, including:

- Foster care
- Relative or kinship care
- Contemporary residential care.

Foster care is the placement of a child or young person with a carer. There are various types of foster care including emergency/crisis care, respite care, short-term or temporary care and, long-term or permanent care.

Kinship care is a type of foster care where the child or young person is placed with a relative or someone they already know. Kinship care is common in Aboriginal and Torres Strait Islander communities.

Contemporary residential care is often referred to as Intensive Therapeutic Care (ITC) and provides shared home-based accommodation for young people with complex needs.

OOHC includes statutory (or legal court-ordered) and voluntary placements. The majority of OOHC is statutory and therefore, placements are approved by the department responsible for child protection in each jurisdiction.

Voluntary OOHC involves arrangements between the parent and the service provider directly without government direction. However, government agencies can often be involved in facilitating these arrangements. Voluntary OOHC includes short-term accommodation provided by the disability services sector through the National Disability Insurance Scheme (NDIS), as well as other short-term or long-term care arrangements.

4.1.2 Youth Homelessness

Youth homelessness services provide accommodation support, such as crisis accommodation or transitional housing, for young people (typically aged 16 and over) who have no place to live. Accessing youth homelessness services is voluntary.

Providers of youth homelessness services often provide wrap-around supports for young people such as mental health, drug and alcohol and crisis intervention services.

4.2 Numbers of children in care

The number of children in the OOHC system is rising. At 30 June 2021, there were more than 46,000 children in OOHC across Australia, a rate of 8 per 1,000 children[4]. During 2020/21, 11,500 children were admitted into OOHC, a rate of 2 per 1,000 children.

Of the children in OOHC, 54% were in relative/kinship care, 36% in foster care and 7% were in residential care.

[4] All statistics in this section are from *Child protection Australia 2020-21*, https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/data and https://www.aihw.gov.au/reports-data/health-welfare-services/child-protection/overview

The number of Aboriginal and Torres Strait Islander children in OOHC is disproportionately high in all jurisdictions. 1 in 17 Aboriginal and Torres Strait Islander children (around 19,500) were in OOHC at 30 June 2021; this rate is 7 times that for non-Aboriginal and Torres Strait Islander children.

Children from regional and remote areas are more likely to be in OOHC than those from major cities; the rate of children in OOHC in geographically remote areas was twice that of major cities at 30 June 2021.

Although available data is incomplete, children with disability are also significantly overrepresented in OOHC. In 2020/21, data on disability status was available for 63% of children in out-of-home care. Of these children, about 30% were reported as having a disability.

4.3 Numbers of homeless youth

Youth homelessness providers service a smaller cohort of the population compared to OOHC. Nationally, around 2,200 people aged 15-19 live in supported accommodation for the homeless[5].

4.4 The role of NGO service providers

Government agencies across Australia rely heavily on NGOs to provide OOHC and youth homelessness services to vulnerable children and young people. These NGOs provide critical services to a large number of clients.

While governments are responsible for administering and facilitating the care service systems, under legislative frameworks, the day-to-day responsibility for these services typically falls to NGOs. Each state and territory has its own legislation, regulations, standards, policies and procedures governing these service systems. While the proportion of services contracted to NGOs and the roles of the government agencies and NGOs vary by jurisdiction, all jurisdictions rely heavily on NGOs. The services provided by these NGOs are not easily replaced, particularly in remote areas where provider capacity is limited.

Across all jurisdictions in Australia, there were over 400[6] NGO service providers contracted in 2021/22 to deliver OOHC and youth homelessness services. Total NGO funding for these services is estimated to be around $2.5b in 2021/22; around 90% of the funding is for OOHC and around 10% for youth homelessness services. The majority of funding is concentrated in NSW, QLD, VIC and SA.

Governments also fund OOHC services, albeit indirectly, via the National Disability Insurance Scheme (NDIS). There are around 130 NGOs delivering 24/7 supports to a small number of children who live in accommodation outside of their family home. These providers are engaged by a participant's family or guardian to deliver these supports, and therefore, these services are voluntary. Many (but not all) of these NGOs also deliver OOHC or youth homelessness services to a broader population through state and territory government funding.

4.5 Types of NGO service providers

Through our consultation with the NGO sector, it is clear that there are a broad range of organisations providing OOHC and youth homelessness services. The nature, structure, level of government funding and service models vary. Some NGOs operate in one jurisdiction, some in multiple and some are national organisations. Many of the new NGOs are secular, while faith-based NGOs typically have a long history of providing care. Most NGOs

[5] Australia's Youth: Homelessness and Overcrowding, https://www.aihw.gov.au/reports/children-youth/homelessness-and-overcrowding#homelessness

[6] All statistics in this section are estimates only and are based on data collated from state and territory government agencies. Excludes NGOs contracted in Victoria. There may also be some duplication in these figures as some NGO service providers are contracted to deliver both OOHC and youth homelessness and/or are contracted by government agencies in multiple jurisdictions.

operate on a not-for-profit basis and are registered charities; however, there are some NGOs that are registered corporations that operate for profit and charge a fee-for-service.

Sometimes NGOs partner together to offer services and supports to the community.

Aboriginal Community Controlled Organisations (ACCOs) are NGOs governed and operated by the Aboriginal and Torres Strait Islander community. The role of ACCOs and the level of government contracted services delivered by ACCO varies by jurisdiction. ACCOs often support agencies and departments in decisions around foster and kinship care arrangements.

5 Gauging the extent of the problem

In this section we cover:

Section	Title	Coverage
5.1	Setting the scene	A brief timeline of historical developments relating to institutional abuse and civil litigation
5.2	Key drivers of commercial insurer withdrawal	A summary of the key drivers of commercial insurer withdrawal of PSA insurance cover
5.3	State of the insurance market	An overview of the current insurance market, including an assessment of the adequacy of historical NGO insurance coverage
5.4	Challenges faced by service providers	An overview of the key challenges related to PSA faced by NGOs
5.5	The likely consequences if no action is taken	Conclusions regarding the implications for government, NGO service providers, and children and young people if no action is taken
5.6	Similar issues in other contexts	An overview of similar contemporary and historical insurance issues in other contexts
5.7	Other sectors which might be impacted if the issue expands	Discussion of other sectors that may be potentially impacted by issues of PSA insurance affordability and availability in the future

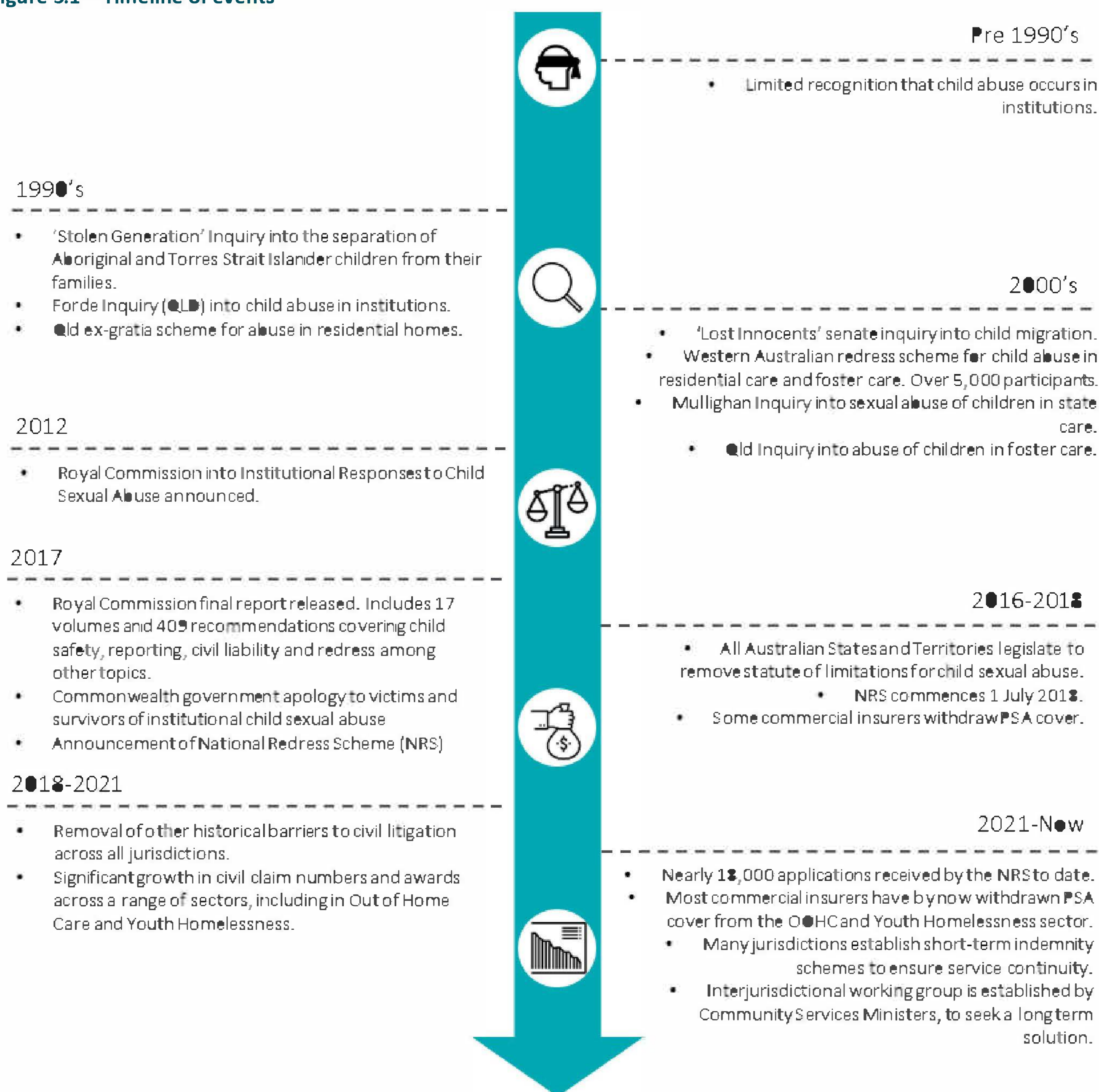
5.1 Setting the scene

Prior to the *Royal Commission into Institutional Responses to Child Sexual Abuse* (which ran from January 2013 until December 2017), there were few successful civil claims for institutional abuse nationally. Historically there were significant barriers to bringing a successful civil claim for child abuse, including:

- The potentially long periods of time before recognition of abuse as a child by a survivor, together with the historical lack of acknowledgement and support for many survivors
- A lack of evidence and supporting documents as a result of the long delays between instances of abuse occurring and being reported, as well as the often limited recall of details by a survivor abused as a child
- The statute of limitations (typically three years from a minor reaching the age of 18)
- The trauma of testing evidence through the judicial system.

The schema below summarises the key events in terms of the growing recognition and acknowledgement of institutional child abuse since the 1990s.

Figure 5.1 – Timeline of events



5.2 Key drivers of commercial insurer withdrawal

There are a number of key drivers that have led to the problem of commercial insurer withdrawal. These drivers are explored in greater detail in this section.

5.2.1 Removal of barriers to civil litigation

Over the last five years there have been a number of legislative changes nationally which have served to remove historical barriers faced by survivors of abuse in making successful civil claims. These changes, which are in keeping with the recommendations of the Royal Commission, include:

- The removal of the statute of limitations
  - This relates to the removal of limitation periods that applied to claims for institutional child sexual abuse, with retrospective effect. A number of jurisdictions also removed the limitation period for physical abuse.
  - Historically, legislation and court interpretations have varied by jurisdiction. The most common limitation period was three years, commencing from age 18 for a minor.
  - The removal of limitation periods means that claims can be brought against institutions or perpetrators regardless of time.
- Setting aside of deeds of release
  - This relates to the legislation enabling the setting aside of deeds of release signed upon historical settlement in specific circumstances.
  - This means that survivors of abuse can re-open past claims and take further civil action against the responsible institution.
- The abolition of the so-called 'Ellis defence'
  - Historically, an entity could only be sued if it had a distinct 'legal personality', meaning that it has legal rights, liabilities and duties, including the ability to sue and be sued.
  - The issue of legal personality presented a significant barrier to civil litigation for many survivors where an institution cannot be identified or no longer exists. The issue was particularly highlighted through the case of Ellis and Pell[7], and is often referred to as the 'Ellis defence'.
  - While there are some differences by jurisdiction, legislative reform in this area means that officials are able to nominate assets to discharge any abuse liability, and in some instances courts have the power to appoint trustees to be sued if institutions fail to nominate one.
- The reversal of the onus of proof
  - This legislation shifts the burden of proof onto the individual or institution accused to disprove the allegation, rather than requiring the survivor to prove the allegation occurred.
  - This change is typically prospective only (i.e. it does not apply to historical abuse).

A summary of the legislative changes enacted by jurisdiction are highlighted in the table below, showcasing the extent of the changes nationally.

[7] *Trustees of the Roman Catholic Church for the Archdiocese of Sydney v Ellis & Anor* [2007] NSWCA 117.

Table 5.1 – Legislative reform to remove barriers to civil litigation for survivors of abuse post Royal Commission

Jurisdiction	Removal of statute of limitations	Setting aside deeds of release	'Ellis defence' abolished	Reversal of onus of proof
ACT	✓**		✓	
NSW	✓*	✓	✓	✓
NT	✓*	✓	✓***	
QLD	✓*	✓	✓	✓
SA	✓*	✓	✓	✓
TAS	✓*	✓	✓	✓
VIC	✓*	✓	✓	✓
WA	✓**	✓	✓	

*Includes child sexual abuse, child serious physical abuse and psychological abuse related to sexual abuse or serious physical abuse

**Applies to child sexual abuse only

***Legislation passed but not yet commenced

A major issue for current and previous insurers is that the extent of the risk of civil liability claims arising from abuse was not anticipated or charged for when the policies providing PSA coverage (intentional or otherwise) were written. The law has changed and the environment has changed since the policies were issued

There are very few examples analogous to this kind of change. While not completely equivalent, liability for asbestos-related diseases is one example of the type of claim that led to significant unanticipated costs for insurance companies in legacy liabilities, and was quickly excluded from insurance coverage.

The legal situation remains fluid. There may be more legislative changes. Legal interpretations and the establishment of precedents is not yet in a stable situation where insurers feel they can make a reasonable forecast of the environment in the coming years.

With OOHC in particular, the sharing of liability between government and provider is a major uncertainty. For an insurer of NGO providers, their exposure to claims will depend a great deal on how any government co-defendants respond to claims and on how court decisions on shared liability develop. Commercial insurers are not comfortable with this kind of uncertainty.

5.2.2 Increases in civil claims

The commencement of the National Redress Scheme (NRS or Scheme) was intended to provide an alternative pathway for survivors of historical institutional child sexual abuse (occurring prior to 30 June 2018). Notwithstanding the significant number of survivors that have applied to the NRS, there has been a concurrent elevation in the volume of civil claims relating to historic abuse due to the removal of the once significant barriers to successful civil claims, as well as an environment of changing attitudes towards acknowledging the abuse of children. Consultation with the insurance sector has indicated that these increases have been particularly noteworthy in the OOHC sector.

As part of its research and investigation, the Royal Commission conducted a claims project which included the collation of PSA claims from various government bodies, institutions and the insurance sector. The claims project identified close to 3,200 civil claims resolved between 1995 and 2014[8]. While the claims project was not

[8] https://www.royalcommission.gov.au/system/files/2021-01/carc-national-redress-scheme-participant-and-cost-estimates-report.pdf

comprehensive, we understand that it included all government bodies, institutions and insurers with material institutional PSA exposures.

Since this time, the volume of civil claims for PSA in institutional contexts has increased materially. Initial estimates of potential participants in the NRS suggested an indicative range of between 40,000 and 80,000 survivors of historical sexual abuse might be eligible to participate in the NRS, or a mean estimate of 60,000 survivors. At the time of drafting this report, there have been nearly 18,000 applications to the NRS to date[9], however in 2020 and following the Scheme's actuarial advice, the NRS revised the estimated number of participants from 60,000 to 40,000[10] noting as one of the key reasons "the impact of recent changes in the law that has made it easier to pursue civil claims". This might indicate that 20,000 or more survivors of child sexual abuse, otherwise eligible for participation in the NRS, might now be expected to pursue civil litigation as an alternative pathway. We understand from our consultations with the insurance sector that some insurers have seen increases in the frequency of claims reported annually by as much as ten times or greater, relative to reporting periods prior to the Royal Commission.

In addition to an absolute increase in PSA claims, we also understand from some stakeholders that in more recent years NGO service providers are more likely to be joined on matters that previously might have only involved a relevant government agency. This increases the claims liability of NGO providers and their insurers.

A recent development impacting the number of civil claims is that there has been increasing evidence in some jurisdictions of 'claims farming' activities. In June 2022 the Queensland Government legislated changes aimed at stamping out claims farming practices in personal injury claims including relating to child abuse. Claims farming is a process by which a third party cold-calls, or approaches individuals to pressure them into making a compensation claim for personal injuries.

5.2.3 Increases in awards

At the same time as there has been a substantial uplift in the frequency of institutional PSA claims, there has also been a material uplift in the civil awards received by survivors of abuse. The Royal Commission claims project indicated that the mean compensation paid for (institutional child sexual abuse) civil claims resolved between 1995 and 2014 was around $82,000 and the median $45,000[11]. Based on our discussions with insurers, monitoring of court decisions and our experience working with governments and insurers in this space, we are aware that recent civil settlements have been significantly higher than these amounts.

Monitoring of court judgments illustrates that abuse[12] settlement amounts have increased significantly. Up until 2017, civil settlements were typically for general damages only. Abuse claim settlements through the courts ranged between $250,000[13] to $1.5m[14] over this period. From 2018 onwards, settlement sizes have increased significantly with many settlements including an allowance for general and aggravated damages, and past and future economic loss. Settlements through the courts are now generally over $600,000, ranging up to $3.5m[15].

5.2.4 Long tail of claims

Insurers establish products, set prices and accept risks on the basis of information known at the time. Most insurance such as property or motor is 'short tail', in that if an accident or event occurs it is known quickly and most claims finalised quickly – within a year or two. Alternatively, 'long tail' insurance, such as workers

[9] https://www.nationalredress.gov.au/about/updates/1511
[10] Final Report, Second year review of the National Redress Scheme, page 46
[11] https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final_report_-_redress_and_civil_litigation.pdf
[12] The cases referenced include a wide variety of abuse cases beyond institutional abuse
[13] *M v Nesbitt* [2012] NSWDC 152
[14] *DC v State of New South Wales* [2016] NSWCA 198
[15] *MC v Morris* [2019] NSWSC 1326

compensation, motor bodily injury or public liability, covers events that occur during the policy period but for which the claim might not be known and might not be finalised for some years; a period of five to seven years is typical for nearly all claims to be known and resolved.

For claims arising from child abuse, there are typically significant delays between when physical or sexual abuse occurs in an institutional setting and when a civil claim is brought in relation to that abuse. These reporting delays are not necessarily static over time, and all other things being equal, we would have expected these delays to have shortened following the work of the Royal Commission to reduce the stigma relating to the reporting of child abuse and to improve the reporting and investigation of abuse claims. Notwithstanding this, from our consultation with insurers we understand that in recent years delays from incident to reporting have been on average between 10 and 15 years, though can be as long as 50 years or greater. From an insurer's perspective, many of the recent claims being paid will relate to insurance policies that were underwritten multiple decades in the past when current levels of claims activity were not anticipated.

The very long delays from incident to reporting of claims mean that it is very difficult for insurers to accurately assess the cost of claims for a given underwriting period, particularly where the insurance is written on a claims occurrence basis (see section 5.3 for a description of the difference between claims occurrence and claims made insurance policies). The retrospective removal of the statute of limitations in all Australian jurisdictions has increased this uncertainty as there is now effectively no time limit within which claims must be reported and from an insurer's perspective, no time limit within which the claims liability for a given insurance period can be closed with certainty. For historical insurance policies, this means that historical premiums charged are proving to be grossly inadequate. From a future underwriting perspective, this also creates significant uncertainty and increases the risk that insurance premiums charged may ultimately prove to be inadequate.

5.2.5 Risk management challenges

Most of the discussion thus far has centred around the substantial increases in the number and cost of civil claims relating to PSA in institutional contexts generally. There are, however, some significant differentiating factors in the OOHC and youth homelessness sectors which have contributed to commercial insurers withdrawing PSA cover from these sectors.

In recent years, and particularly following the Royal Commission, we understand from our stakeholder consultation that across the majority of institutional care sectors there have been substantial improvements in risk management processes including improved staff and volunteer training, reporting systems and safety checks, among other things. While these improvements have arguably led to reduced risk, there is a perception that PSA risk may be more difficult to control in sectors involving ongoing care of vulnerable children and particularly where it is not reasonably possible to directly supervise carers and children at all times.

Providers of OOHC services rely on significant outsourcing of care from NGO service providers to the volunteer foster carers and relative (kinship) carers with whom the young people are placed. While NGOs can control some level of risk through risk assessments and the vetting of carers, the lack of direct supervision can lead to what insurers perceive to be a lack of control over the risks which the insured may be subsequently held vicariously liable for. This risk may also be exacerbated in an environment where there are often fewer volunteers available than would be needed to meet the service provision requirements. Similar risk management challenges are faced in the provision of youth homelessness services and facility-based care which often involve particularly vulnerable children with the highest level of needs.

5.2.6 Lack of data

In order to set premiums for an insurance product, insurers need to make some assumptions about the likelihood of a claim arising (frequency) and the expected average cost of a claim, should one arise (severity).

While it is always the case that an insurer must make judgements about the future trajectory of frequency and severity, the starting point needs to be based on recent experience.

At present there is limited data available on civil claims against providers of OOHC and youth homelessness service providers, and no availability of useful collateral information. Some of the previous insurers will have some data (which presumably shows losses on the business), and there is no availability of data for potentially interested insurers. While there may have been some changes to risk management and other practices that improve the underlying risk of claims, noting the reporting delays associated with PSA claims, it may be many years before data on the impact of these changes can be reliably measured.

5.2.7 Vicarious liability issues

An important development in PSA claims that was not anticipated when many historical public liability insurance policies were issued relates to the question of vicarious liability. Historically, institutions have generally had a non-delegable duty of care to children in their custody, but this duty did not extend to the deliberate criminal acts of employees or volunteers. As such, unless an organisation had breached its duty of care to a child (i.e. where reasonable actions were not taken to prevent the abuse from occurring), an organisation (insured) was not generally held liable for PSA claims. An institution's vicarious liability for criminal acts of employees and volunteers has been explored in case law in recent years[16], with vicarious liability being established in some instances with respect to volunteers. In some jurisdictions, legislation has been enacted to codify common law tests for vicarious liability.[17]

5.2.8 Reputational risk

Some insurance sector representatives consulted during the engagement highlighted the reputational challenges associated with providing PSA insurance generally. These challenges are twofold:

1. Many insurers and reinsurers face reputational challenges in providing PSA cover due to the association with physical and sexual abuse and the perception that they are providing cover for criminal acts. While the nature of the cover provided to organisations is different to that perceived, and serves an important function in enabling the provision of essential services, some insurers prefer to distance themselves from the negative publicity associated with such a sensitive topic.
2. An important element of a well-functioning insurance market is the ability of insurers and reinsurers to either honour or defend against claims based on their individual merits. Noting the sensitivities of PSA claims, there may be reputational challenges for some insurers where there is a need to defend against certain claims.

5.2.9 Conditions for a viable insurance market

The conclusion of the analysis above and the position of many commercial insurers that we have consulted with is that the risk of abuse claims against providers of OOHC and youth homelessness is currently uninsurable.

In Section 9 we consider the criteria for assessing potential long-term solutions. Among these criteria, we consider whether each option may facilitate the possible re-entry of commercial insurers in the long-term. We expect that some of the key drivers noted above would need to be adequately addressed for this to occur (particularly with respect to risk management and data).

[16] [Prince Alfred College Incorporated v ADC, 2016], [O'Connor v Comensoli, 2022]
[17] Civil Liability (Institutional Child Abuse Liability) Amendment Act 2021 (SA), Limitation Amendment (Child Abuse) Act 2017 (NT)

5.3 State of the insurance market

5.3.1 Market conditions prior to withdrawal of PSA cover

The insurance market for liability insurance for NGOs in the OOHC and youth homelessness sectors has never been straightforward. The provider market for PSA cover has always been relatively small with few insurance companies attracted to this market.

In addition to the PSA and sector specific issues noted earlier, the liability insurance market more broadly has been experiencing a market hardening. Like other sectors, the insurance industry tends to experience cyclical market developments. Hardening insurance markets are characterised by periods of increasing insurance premiums and reducing capacity for some classes of insurance. This environment creates additional affordability and capacity challenges in the market for PSA insurance for NGOs which is otherwise already compromised.

At the present time it is virtually impossible for an NGO provider of OOHC to obtain suitable insurance cover for any liabilities for past child abuse. Consultations with insurance brokers and insurance companies confirmed this conclusion. There are some exceptions to this, including:

- Some organisations from one religious group that have purchased insurance cover from one particular insurance company for some time are still able to renew their insurance covering future instances of abuse.
- There may be limited capacity available in the disability sector from one provider via medical indemnity cover.
- There are limited examples of very large NGO groups that have been able to secure PSA insurance.
- Some new market entrants with no risk of legacy claims have been able to source claims made cover.

5.3.2 Adequacy of historical coverage

Many of the NGO service providers are small enterprises, without a high level of commercial expertise and with little insurance knowledge. Based on our stakeholder consultations, we understand that many providers may not have had a clear idea of what insurance was needed and what gaps they may have in their previous coverage. We understand that some providers may have had no PSA coverage at all.

To better understand these gaps in historical coverage we clarify an important distinction between the two types of PSA insurance coverage offered to NGO service providers:

1. Claims occurrence cover: insurance for incidents that occur within the policy period regardless of when the claim is reported.
2. Claims made cover: insurance for incidents that are reported within the policy period, irrespective of the date when the incident occurred (normally subject to a retroactive date, i.e. claims need to have occurred after the retroactive date to be covered).

We understand that even before commercial insurer withdrawal of PSA cover, NGO service providers typically fit into one of three categories:

1. Complete cover: those service providers with continuous claims occurrence cover over the duration of their service provision.

2 Some gaps: service providers with non-continuous claims occurrence cover or claims made cover with limited retroactive cover could still be exposed to uninsured risk of PSA claims, depending on when the incident occurred and in the case of claims made cover, the retroactive date.

3 No cover: we understand that there are some service providers, who by choice or lack of understanding, did not have any PSA cover prior to commercial insurer withdrawal.

Noting the above circumstances, in designing any proposed long-term solution, consideration should be given to the likelihood of gaps in historical cover. In addition to the coverage gaps noted above, we understand that NGO service providers have been subject to a range of levels of historical coverage in respect of the sub-limits, deductibles and other details of their prior insurance arrangements which impacts the adequacy of the cover.

5.4 Challenges faced by service providers

The PSA claims environment has led to a number of challenges and concerns for service providers, as highlighted by our consultation with the sector.

The inability to secure PSA insurance has left many service providers exposed to significant uninsured claims risk. Some are experiencing difficulty in placing any liability insurance, not just PSA insurance. Retaining significant claims risk is not within the risk appetite of many NGOs, particularly as most operate on a not-for-profit basis.

The inherent risk associated with servicing vulnerable people has left many NGOs (and their Boards) with a reduced appetite to provide these services. For some vulnerable people, even the 'best' risk management measures cannot completely eliminate the risk of PSA which leaves NGOs in a challenging position.

Service providers have growing concerns around corporate governance and the risk that being uninsured exposes the Board of Directors to personal liability. This has led to challenges in securing and retaining quality Board members (especially as many Boards are comprised of volunteers).

Some service providers have raised the need to rethink the service delivery model, as the current model exposes service providers to significant vulnerability and risk. While the focus of this report is on the PSA insurance issues, we highlight that continued focus on the structure and risk management of service delivery is critical to reducing future PSA risk.

5.4.1 Short-term indemnity schemes

In response to the PSA insurance withdrawal, some state governments have implemented short-term indemnity schemes. While the intention of these schemes has been to temporarily resolve the PSA insurance issue and ensure the continuity of services, the limited scope of coverage has left some NGOs uninsured for some services. Generally, the schemes cover government funded or contracted OOHC and youth homelessness services. However, many service providers operate holistic, integrated service models with wrap-around supports. In addition, some services are not government contracted/funded; an integrated service model makes it difficult to separate state or territory contracted/funded services from those contracted/funded by other sources (including through the NDIS).

There is a lack of understanding among service providers as to the nature of these short-term indemnities and how they interact with commercial insurance (to the extent available). Participation in the indemnity schemes has required significant time investment and data collection for some NGOs.

5.5 The likely consequences if no action is taken

The likelihood of insurance availability issues resolving without external intervention is remote. As noted earlier, most Australian jurisdictions, as part of their contractual arrangements, require NGOs to have current and adequate insurance for the services that they are contracted to provide. In these jurisdictions, where NGOs are unable to obtain appropriate insurance for PSA, this may constitute a breach of contract leading to the withdrawal of funding and subsequently the withdrawal of the service provider from the market. In addition to contractual requirements, risk of insolvency may lead to providers exiting the market.

In other jurisdictions where there are no specific contractual requirements for NGOs to hold insurance cover for PSA claims, there remains a question of whether NGOs would be willing to operate with exposure to uninsured PSA claims risk. This is a question of governance for the Boards of NGO service providers and we understand that a number of NGOs are unwilling to take on this risk and may withdraw service provision if a solution is not forthcoming.

Noting the above, it is highly likely that taking no action will lead to some level of service provider withdrawal, and there is a potential for a 'mass exodus' of providers which could threaten the viability of the sector as a whole. The impacts of such an outcome would be catastrophic due to:

- Significant service disruption for vulnerable children, young people and families. We understand that the exit of even a small number of providers would have significant impacts on service delivery. If some providers exit the market it will be difficult and time consuming to find other providers willing to take on more risk and service additional children.
- A reduction in market competition and lack of new market entrants may lead to increases in the cost of service delivery to government departments.
- A reduction in diversity in service providers may arise, with smaller local providers, including Aboriginal service providers, more likely to be adversely impacted. Lack of provider diversity impacts the quality of services and the ability to meet the needs of different communities.
- Due to the high proportion of children in OOHC in remote areas, it is essential that service providers are spread across geographic locations in both metro and rural areas. If NGO providers exit the market this could compromise access to services in essential locations and to vulnerable communities.
- Without NGOs, government agencies would be unable to administer and facilitate the provision of services required of them under the various legislative frameworks. We understand from our consultations with government that in many cases it is not possible for government to replace the role of NGO service providers in the short or even medium-term, nor without significant expense. Some government departments have never provided youth homelessness services.
- There may be substantial transition costs for government in seeking to cover the resulting gaps in service provision.
- Victims of contemporary abuse and in some cases historical abuse may be unable to access appropriate compensation.

5.6 Similar issues in other contexts

Insurance is a voluntary commercial market subject to cycles and crises. A particular sector finding itself facing problems with availability of insurance (let alone affordability) is not a rare occurrence. The usual cause is the perception by insurers that the cover they are giving is too costly or too volatile for the premiums they are able to charge.

While each situation is different there may be lessons that can be learned from other similar circumstances. This section outlines some Australian case studies (noting there are many international examples as well):

- Medical indemnity
- The HIH collapse
- Terrorism insurance
- Cyclone risk
- Home warranty insurance

5.6.1 Medical indemnity

Indemnity protection for doctors in private practice was provided by mutual associations for many years, until the early 2000s, without the backing of insurance policies. One such association, covering nearly half of Australian doctors, was placed into administration in 2001 after under-reserving and losing money in the HIH collapse (it had bought reinsurance from HIH). The other associations were not sure they could survive in the aftermath of very high growth in medical indemnity claims during the 1990s.

The immediate consequence was the very real threat of the withdrawal of medical services. Doctors would not continue to practice if they were uninsured or could only insure by paying very high premiums. As medical services are a Commonwealth responsibility, the problem was quickly recognised by the Australian Government.

The resolution of the problem involved the following main steps:

- Government guaranteeing the obligations of the failing association
- Premium subsidies by government to reduce the market premiums payable by doctors
- Requiring the mutual associations to become authorised insurance companies regulated by APRA
- Providing a series of 'wrap-around' protections for large claims, cover after a doctor retires or dies, and continuation of cover if a doctor leaves private practice.

The revised regulations and the package of government supports continues to this day, and midwives have been included under similar arrangements since 2010.

5.6.2 The HIH collapse

In 2000, HIH Insurance was the second largest insurance company in Australia and dominated the market for liability insurance, including professional indemnity.

In 2001, HIH collapsed into insolvency. The impact was immediate – some individuals and organisations could no longer buy the insurance they needed, and claims against previous HIH policies would not be paid.

A Royal Commission followed, along with intense pressure on all governments to resolve the community's problems. The response involved Commonwealth and state/territory governments working together, with some of the outcomes being:

- State/territory governments picking up the liability for claims on workers compensation and motor injury insurance (an obligation already in the relevant state legislation)
- The Commonwealth government picking up the liability for unpaid claims from retail and small business customers through the HIH Claims Support Scheme (about $700m)

- A nationwide program of tort law reforms, resulting in new Civil Liability Acts (variously named) in each jurisdiction
- Data on insurance policies and claims provided to a national database run by APRA
- Some additional state and territory initiatives for particular segments, such as the government offering insurance or supporting facilities for particular segments
- Much higher insurance premiums than previously.

By and large, the tort law reforms achieved the desired goals of lower and more stable claims. Insurance market capacity returned, albeit with significantly higher premiums charged.

5.6.3 Terrorism insurance

Prior to 2001, insurance policies covered damage or liability caused by acts of terrorism without distinction from other perils such as fire or storm. This is in contrast to war or nuclear damage which had been excluded for many decades. Following the terrorist attacks on the World Trade Centre and the Pentagon in September of 2001 this changed quickly. Within months, insurance policies began to exclude acts of terrorism because the insurance markets regarded the risks as large and too unpredictable.

In Australia, cover continued to be available for homes, but commercial property and liability insurance no longer covered acts of terrorism.

By 2003, the property investment and development sectors were experiencing problems as insurance cover for terrorist acts was no longer available but was needed to meet expectations and contractual requirements of lenders and investors. In response the Australian Government introduced a terrorism reinsurance scheme (the Australian Reinsurance Pool Corporation) that provided the terrorism cover for commercial property and liability, with premiums collected from insurers and backed by a substantial government guarantee.

5.6.4 Cyclone risk

Many parts of Northern Australia are exposed to the risk of destructive cyclones. As a consequence, property insurance premiums are very high in exposed areas. After Cyclone Yasi in 2011, the issue was publicly debated and has been topical ever since.

In 2021, the Australian Government announced that it was introducing a reinsurance pool for cyclone and cyclone-related flooding with the aim of reducing insurance premiums in the highest risk areas. The Cyclone Reinsurance Pool commences during 2022/23 as insurance companies join the arrangement.

The Cyclone Reinsurance Pool does not receive direct government funding. It is intended to be cost-neutral to government in the long-term, with the savings being generated by pooling all of the cyclone risk in the market and reducing margins needed for the commercial insurance and reinsurance markets to participate. The government does, however, provide a large guarantee so that claims can be met following a major event, with the guarantee to be repaid by the pool.

5.6.5 Home warranty insurance

The laws of each state and territory provide a statutory warranty for home owners in respect of incomplete or defective building work. The warranty falls onto the builder, but in case the builder is insolvent (or dead or has disappeared) most jurisdictions have compulsory back-up insurance to protect the home owner.

This home warranty insurance has been provided by private insurers in various jurisdictions at different times in the past. High and unpredictable claim costs have, however, led to private insurers withdrawing from the market, with the most recent mass withdrawal occurring around 2010. Since that time the insurance has been

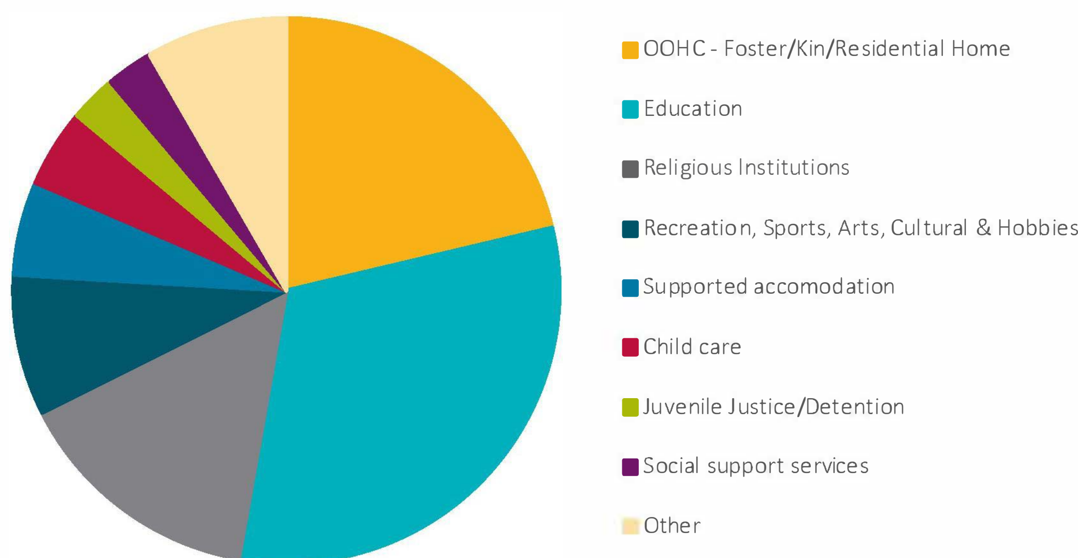
mainly provided by state governments using various mechanisms that are analogous to some of the options outlined in this report.

5.7 Other sectors which might be impacted if the issue expands

The difficulty in securing PSA insurance coverage is not unique to the OOHC and youth homelessness sectors. Other sectors that provide services to children, young people and vulnerable communities are facing similar challenges (albeit, not to the same extent as the OOHC sector).

Figure 5.2 below shows the mix of contemporary child sexual abuse by sector based on the private sessions conducted by the *Royal Commission into Institutional Responses to Child Sexual Abuse*.

Figure 5.2 – Contemporary abuse (1990s+) by sector (based on Private Sessions)



Sectors with a higher exposure are generally more at risk of facing PSA insurance challenges. In addition, sectors that involve high risk activities such as those with less oversight, more volunteers or those that involve particularly vulnerable communities are also at risk.

Based on our consultations with various stakeholders and analysis above, we have identified the following sectors that are currently experiencing or are at risk of experiencing PSA insurance challenges:

- Non-government education
- Sporting and recreation
- Family day care & child care services
- Disability services
- Aged care.

Any sector that provides services to children, young people and vulnerable communities may be at risk.

In evaluating long-term solutions to the problem of PSA insurance availability, consideration has been given to scalability, given the risk of PSA insurance market withdrawal in other sectors beyond OOHC.

6 Approach to recommending a solution

6.1 A framework for assessing options

A key purpose of our engagement is to identify and develop potential long-term solutions and recommend a preferred option for the PSA insurance issue for the consideration of the IJWG. Our approach to identifying and assessing potential long-term solutions can be summarised as follows:

1. **Canvas all available options**, based on consultation with key stakeholder groups and our knowledge of how similar issues have been addressed in other contexts. While some solutions are likely to be ultimately assessed as unviable, in the first instance the full range of potential solutions are considered to be 'on the table' for consideration. This is the option 'long-list'.

2. **Conduct an initial viability assessment**, based on consultation with key stakeholder groups, to identify which options do not require further consideration. The considerations for assessment of initial viability include:
   a. Meeting the minimum requirements of all key stakeholder groups
   b. Whether the solution is realistically achievable within an acceptable time frame.

3. **Establish the key assessment criteria** against which each short-listed option is to be assessed. The assessment criteria need to consider the specific requirements of each key stakeholder group including:
   a. Government agencies
   b. NGO service providers
   c. Commercial insurance providers
   d. Children, young people and families
   e. Survivors of abuse.

4. **Conduct a detailed assessment** of each shortlisted option, including evaluation against the key criteria. In completing our assessment, we have relied heavily on consultation with key stakeholder groups, considering:
   a. The benefits and disadvantages of each option
   b. A cost benefit analysis of each option
   c. Risks and possible mitigation strategies
   d. Timeframes required to deliver each option.

5. **Recommend a preferred option** for consideration by the IJWG, based on the findings of the detailed assessment and feedback from stakeholders. This also entails determining the key considerations, structures, risks and policy settings which will need to be explored in the implementation phase.

7 Initial option assessment

7.1 Identification of available options

In the first instance we have sought to canvas all available options, including those which are likely to be identified as unviable. We have categorised these into four broad option groups:

1. **Limited action options**: options where there is limited market intervention or proactive change
2. **Sector-led options**: options where NGO service providers work together to develop and implement a solution of their own design
3. **Market-led options**: options where commercial insurers who have exited the market, or new commercial insurers are encouraged to return to the market
4. **Government led options**: options where government intervenes to provide indemnities or insurance cover to NGO service providers
5. **Combination options**: other combination of the above options.

The options initially identified represent the 'long-list' of options for initial consideration.

7.2 Initial viability assessment

In the following sub-sections, we list at a high level the types of options that have been identified as potential long-term solutions and highlight our initial observations with respect to the viability of each.

7.2.1 Limited action options

Taking no action

Description	Maintain status quo with government taking no further action to address NGO service providers' inability to obtain PSA insurance cover.
Preliminary observations	As noted in Section 5.5 the risks associated with taking no action are significant. The likelihood of insurance availability issues resolving without external intervention are remote. NGOs in many jurisdictions have contractual obligations to hold insurance. Further, many NGO Boards may not have an appetite for uninsured claims risk. As such it is highly likely that taking no action will lead to service provider withdrawal. The impacts of such an outcome would be catastrophic as discussed earlier.
Viability assessment	**Taking no action is not considered a viable option.**

NGO service providers self-insure

Description	NGOs seek to self-insure against the risk of PSA claims. This involves NGOs setting aside reserves to fund the cost of PSA liabilities as they arise.
Preliminary observations	Self-insurance may be a viable option for some large NGOs in the short to medium-term, and we understand that some NGOs are already self-insuring. However, self-insurance is unlikely to be possible for smaller NGOs due to their inability to absorb losses potentially even as a result of a small number of PSA claims. The question of whether an NGO would be willing to self-insure is ultimately a question of risk and governance for NGOs. We understand that self-insurance is well outside the risk appetite for most not-for-profit NGOs and many would prefer to exit the market.
Viability assessment	**NGO self-insurance is not considered a viable option for most NGOs.**

NGO service providers explore cover provided by off-shore insurance markets

Description	NGOs explore cover provided by off-shore insurance, potentially with assistance from government.
Preliminary observations	Similar to the question of self-insurance, some NGOs may be able to access insurance cover from off-shore markets, however we understand that there are many limitations to accessing this cover including: ◦ It is typically only the largest NGOs who are able to access off-shore insurance capacity and particularly those with high revenue from other activities conducted. These NGOs may be attractive to some off-shore insurers due to their other streams of business (i.e. they have buying power). Small NGOs are unlikely to be able to access cover, even with significant assistance. ◦ Many of the questions of insurability of PSA cover locally are equally considered in off-shore markets and there is limited capacity globally. It is not certain whether current capacity will remain available in the long-term. ◦ For those NGOs who are able to access off-shore capacity, the cover is typically limited (i.e. claims made with no retroactive cover), with high deductibles and restrictive sub-limits which may result in outcomes not dissimilar to self-insurance. The cover is also typically expensive.
Viability assessment	**NGO insurance cover from off-shore insurance markets is not considered a viable option for many NGOs.**

7.2.2 Sector led options

NGO service providers establish a sector group insurance scheme or buying group

Description	NGOs collaborate as a sector and work with the insurance industry to establish a group insurance scheme.
Preliminary observations	Many of the challenges associated with the assessment of PSA cover as uninsurable for OOHC and youth homelessness providers remain, even if the sector groups together to increase its buying power. Challenges associated with these arrangements include: ◦ The OOHC and youth homelessness sectors represents a relatively narrow sector and the pooled risks associated with a group insurance scheme or buying group would remain highly concentrated. The challenges around poor data on historic claims remain and such arrangements would likely continue to be unpalatable to the insurance industry. ◦ Challenges in co-ordinating the diverse range of NGO providers of varying size, capability, geographic coverage and operating models. ◦ Issues of insurance affordability are likely to remain, even if the sector was able to establish a group insurance arrangement.
Viability assessment	**NGO group insurance schemes or buying groups are not considered a viable option.**

NGO providers establish a group captive or discretionary mutual fund (DMF)

Description	NGOs collaborate as a sector and establish a group captive or discretionary mutual fund (DMF)
Preliminary observations	Group captive insurers are insurance companies established and owned by a collection of organisations within a sector or industry that are insured by the captive. DMFs are similar to group captive insurers in that they are owned by a collection of organisations or members but operate under a mutual structure with claim payments and eligibility considered under discretionary arrangements. Once established, a benefit of a group captive or DMF is the continuity of cover that is likely to be provided due to the owner/member-controlled nature of the arrangement. Key challenges associated with these arrangements include: ◦ Challenges in co-ordinating the diverse range of NGO providers of varying size, capability, geographic coverage and operating models. ◦ Contribution arrangements may be complicated and NGOs with better risk management processes may not be willing to 'cross-subsidise' other NGOs viewed as 'higher risk'. ◦ These arrangements require initial capital which may be challenging for NGOs to arrange. This could necessitate up-front funding assistance and ongoing administrative support from governments. ◦ These arrangements typically require (re)insurance above a certain level of claims and commercial insurance is likely to be challenging in the current environment. This would require governments to fill this role in the short/medium-term. ◦ The process for establishing a group captive insurer may not be simple or straight-forward. A locally operating captive would require an insurance license from the regulator (APRA) in order to operate and be subject to minimum capital requirements.
Viability assessment	**A DMF model is likely to be preferred over a captive insurance company. While the challenges are significant it is an option worthy of further consideration.**

7.2.3 Market led options

Commercial insurers encouraged to re-enter the market

Description	Government and NGOs work with the insurance sector to identify the necessary requirements for commercial insurers to consider re-entering the PSA insurance market
Preliminary observations	From consultation with the insurance sector, it is clear that insurers who have exited the market do not have any appetite to re-enter unless there is significant change or external intervention that would circumvent the key drivers that have led to the sector becoming 'uninsurable'. While commercial market re-entry is not a viable standalone solution, it is a worthwhile exercise to explore the potential role of the insurance sector now and in the future as part of the government or sector led solution.
Viability assessment	**Commercial market re-entry is not a viable standalone solution, but may be facilitated in combination with other options over the longer term.**

7.2.4 Government led options

Indemnity provided by government(s)

Description	Governments could establish a single or multiple indemnity schemes to provide direct cover to government contracted NGOs under a permanent arrangement.
Preliminary observations	Some governments have already implemented indemnity schemes as a short-term response while a long-term solution is developed. It is important to note that the parameters of a long-term indemnity scheme may be different to those of the short-term indemnity schemes, which were in most cases established under restricted timeframes in order to circumvent risks to service continuity for the sector. Challenges associated with a long-term indemnity scheme include: ◦ Financial risk for governments increasing with respect to PSA claims relating to NGO service providers. ◦ Once government indemnity is provided at an affordable cost to NGO service providers, it may become difficult to discontinue that cover. The provision of government indemnities would disincentivise commercial insurers from providing specific cover. ◦ A singe national scheme may be preferable with regards to national consistency and coverage but an appropriate scheme structure at the national level may be difficult to achieve. Benefits of this solution include: ◦ Government agencies are already joined on many PSA claims relating to OOHC and some PSA claims relating to youth homelessness, which means Government will likely bear the financial risk if an NGO is defunct or unable to pay claims. Government-led solutions provide the most certainty with regards to service continuity for NGO service providers.
Viability assessment	**While there are risks and challenges, long-term government indemnity schemes may be a viable option and are worthy of further consideration.**

Government(s) establishes an insurance product for the sector

Description	State and territory governments establish an insurance product for government contracted service providers, similar to the Community Service Organisation (CSO) Program offered by the Victorian Government via the Victorian Managed Insurance Authority (VMIA).
Preliminary observations	The Victorian Government and VMIA have provided broad insurance protection, including PSA cover to many NGOs providing community services largely in Victoria for over 20 years. Many of the benefits and challenges of this option are similar to the 'Indemnity provided by government' option. The additional challenges associated with government backed insurance product include: ◦ There would be time and costs involved to enable government(s) to establish an insurance scheme(s), including the likely need to change state and territory legislation. ◦ A singe national insurance scheme might be preferable but this may be difficult to achieve. Establishment of individual state and territory insurance schemes may not be feasible for smaller jurisdictions. The additional benefits of this solution include: ◦ The insurance scheme structure enables scalability to other sectors and/or other classes of insurance. ◦ Any scheme, if established nationally, may enable the collection of consistent data.
Viability assessment	**While there are risks and challenges, a government insurance product may be a viable option and is worthy of further consideration.**

7.2.5 Combination options

Government(s) provides a reinsurance scheme to encourage commercial insurers to re-enter the market

Description	Governments establish a reinsurance pool or other government funded industry support package to reduce financial risk for insurers and improve access and affordability for NGOs.
Preliminary observations	There have been precedents in other similarly challenging sectors faced with market failure whereby government has intervened in commercial insurance markets to improve affordability and access to insurance. As noted in Section 5.2, it is highly unlikely that commercial insurers will re-enter the market without a change to the factors that have led to the sector being assessed as uninsurable. A long-term solution whereby government(s) provide what is effectively reinsurance cover to limit the cost of PSA claims could be a catalyst for commercial insurers to consider market re-entry, along with other changes including improvements to risk management and data collection. Challenges associated with this option include: ◦ Significant financial risk for governments with state and territory liabilities increasing with respect to PSA claims relating to NGO service providers. ◦ Co-ordination of a national, or nationally consistent solution may not be straightforward to establish and constrained by legislative frameworks.
Viability assessment	**There is no guarantee that this option would result in commercial insurers returning to the market and as such we consider it is better to explore commercial insurance in the context of other options in the long-term.**

Government(s) enact tort reform to limit the cost of claims and encourage commercial insurer re-entry

Description	Governments enact reform to limit the number and cost of civil claims relating to physical and sexual abuse, reducing financial risk for insurers and improve access and affordability for NGOs.
Preliminary observations	Legislative changes implemented nationally to reduce historical barriers to successful PSA claims are one of the drivers of the PSA insurance crisis for the sectors considered under this engagement. As such, any reform to unwind these changes or limit the cost of future claims may serve to facilitate commercial insurer re-entry in the long-term. Broad consultation has indicated a clear consensus that there is limited appetite to unwind these reforms which ensure fair access to compensation for survivors of abuse and generally reflect the key recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.
Viability assessment	**Tort reform to limit the cost of claims and encourage commercial insurer re-entry is not considered a viable option.**

8 Short-listed options for consideration

Based on our initial assessment in Section 7, we have shortlisted three options for further consideration and assessment:

- Option 1: NGO service providers establish a discretionary mutual fund (DMF)
- Option 2: Insurance or indemnity provided by state and territory governments
- Option 3: National insurance provided by government

In this section we provide an overview of each of these short-listed options.

8.1 Option 1: Discretionary mutual fund

A DMF is a group self-insurance pool formed by entities with similar risks. They operate in a similar way to an insurance company, the difference being that they are not authorised by APRA and are not subject to the extensive prudential regulation applied to insurance companies.

The key reason that DMFs can exist outside APRA authorisation is that the cover they provide is 'discretionary', i.e. claims are paid at the absolute discretion of the governing body. Under traditional insurance arrangements, policy holders have a contractual right to have their claims paid, subject to the terms of the policy. Under DMF arrangements, members of a DMF (who are also its owners) are entitled to submit a claim to the DMF who may or may not approve the claim, at its discretion. Notwithstanding this, the discretion to deny claims is rarely exercised. In section 7.2 we explained that this is the most viable option for a sector-led solution because of the lower costs to establish and the lower capital requirements.

A DMF is a mutual organisation, set up either as a Trust or as a Company Limited by guarantee. Members pay a contribution (equivalent to premium), which are pooled and used to meet claims and operating expenses. Depending on the size of the fund it is normal for the DMF to buy reinsurance from commercial markets to cover individual large claims or an accumulation of claims over a period. Most DMFs use the services of a professional manager.

In order to establish a DMF the first requirement is for a committed group of entities to develop the rules, promote the solution and fund its establishment This requires the engagement of professional advisers including legal, actuarial and audit as well as a manager for the operation.

Success depends on strength and continuity of membership, industry support, the ability to obtain reinsurance, quality of management and the trends in the cost of claims including the ability to apply effective risk management.

Examples of successful DMFs in Australia are UniMutual (covering universities), Capricorn (covering motor trades) and several in the local government sectors in individual states. DMFs can provide an effective model for delivery of insurance-like cover for sectors where:

- There is a lack of insurance availability or affordability
- The sector is easily defined and there are clear membership requirements
- The sector is organised and cohesive
- There is strong leadership and member buy-in
- Sufficient capital is available to establish the DMF and manage claims for the first few year

8.2 Option 2: Insurance or indemnity provided by state and territory governments

An indemnity is an agreement where one party takes financial responsibility for the losses of another, in this case the government and the NGOs, respectively. The indemnity would be offered via a deed or letter issued by the relative government agency responsible for community services. This would be backed either directly by Treasury or through a government self-insurance agency. The structure of this arrangement is similar to the existing short-term indemnity schemes. It is important to recognise, however, that these schemes were typically established under restricted timeframes to address immediate risks to service continuity and were not necessarily designed to be in place over the long-term. As such, the coverage, scope and NGO contribution arrangements of a long-term indemnity schemes might be different. An example in a different context where government provides indemnities via contracting arrangements is where NSW Health and Treasury Managed Fund (TMF) provide medical indemnity for public patient and private paediatric inpatient cover to all visiting medical officers (VMOs) who have a current, valid service contract with a public health organisation.

Unlike indemnities, issuing insurance would require the establishment of an insurance entity. Insurance differs from indemnity in that under this arrangement insurance policies would be issued with a contractual requirement to cover losses. For many states and territories, this would require changes legislation to enable the establishment of an appropriate insurance entity. This model is similar to the Victorian Community Service Organisation (CSO) Insurance Program issued by the Victorian Government Managed Insurance Authority (VMIA) although noting that the Victorian model provides broader insurance coverage, which includes PSA. Other examples of state government insurance entities are the Queensland Home Warranty Scheme (established under the Queensland Building and Construction Commission Act 1991) and the NSW Home Building Compensation Fund (established under the Home Building Act 1989).

Under this option, each state and territory government would provide either insurance or an indemnity to eligible NGOs for PSA claims. An important consideration will be the services and NGOs eligible to be covered.

To facilitate a nationally consistent approach (which has been highlighted as particularly important by stakeholders consulted), these schemes could be established under a set of guiding principles agreed in advance. Each state and territory government would be responsible for their own operations and would be required to provide or contract services such as financial administration, claims management and actuarial support (pricing and reserving).

8.3 Option 3: National insurance provided by Commonwealth Government

This option is akin to the state or territory insurance schemes described in the previous section. A national insurance scheme would be administered at federal level but require agreement from each of the states and territories and the Commonwealth. A national entity will need to be established and might be responsible for policy administration, collection of premiums and management of pooled funds. Insurance premiums might be charged to each NGO either directly or via state and territory governments. Legislation would be required to establish the insurance entity and to enable the collection of contributions.

Funding agreements would need to be agreed between the states, territories and the Commonwealth and we anticipate that each jurisdiction may be required to fully fund their share of cost (i.e. there would be limited risk transfer to the Commonwealth).

One example of a national scheme is the Run Off Cover Scheme (ROCS) which ensures provision of insurance to doctors who have left private practice. ROCS was established under the Medical Indemnity Act 2002 and the Medical Indemnity (Run-off Cover Support Payment) Act 2004 and associated regulations. The legislation requires the most recent medical indemnity insurer to grant indemnity to doctors who are eligible for ROCS and manage any claims that arise. The Commonwealth Government pays the cost of claims made under the scheme and reimburses medical indemnity insurers for the costs of managing claims. The cost of the scheme is funded

by a levy on medical indemnity insurers which is passed through to privately practicing doctors purchasing insurance.

9 Detailed assessment

9.1 Stakeholder requirements and assessment criteria

Before conducting a detailed assessment of each short-listed option for consideration, in this section we outline:

1. The key requirements of the various stakeholder groups that we have considered in our review of the advantages, disadvantages, costs, benefits and risks associated with each option
2. The key criteria by which we have assessed each option to inform our recommendation.

It is important to note that the stakeholder requirements considered and the assessment criteria adopted are interrelated; the assessment criteria represent a condensed amalgam of the various stakeholder requirements. We have established these requirements and criteria following our consultation with, and based on an understanding of, various perspectives of key stakeholders who have an interest in the development of a long-term solution to the PSA insurance problem.

Stakeholder requirements

A summary of requirements of the various stakeholders are outlined in the table below.

Table 9.1 – Stakeholder requirements

Stakeholder	Key stakeholder requirements
Universal **(All stakeholders)**	◦ Continuity of service: Ensuring that there is minimal or no disruption to the provision of essential services to vulnerable children, young people and their families ◦ Achievability: Minimise the risk of failure in the establishment of the long-term solution ◦ Time to deliver: A preference for the solution to be realised sooner rather than later
Government	◦ Financial risk: Minimising financial risk exposure and cost to government ◦ Legislative obligations: Ensuring government agencies are able to administer and facilitate the provision of services as required under the various legislative frameworks ◦ Market interference: Minimising government intervention in the insurance market ◦ Sustainability: Long-term sustainability of the solution ◦ Risk management: Encouragement of behaviours that promote positive risk management and risk mitigation ◦ Scalability: Consideration of whether a long-term solution can be extended to address issues of access and affordability of PSA in other sectors, if the PSA insurance issue expands
NGO service providers	◦ Contractual obligations: Satisfy the minimum requirements of government contracts (where relevant) ◦ Security: Certainty and continuity of ongoing cover ◦ Coverage: Provision of coverage for both contemporary and legacy claims risks to minimise exposure to uninsured risk ◦ Affordability: Cover can be afforded/obtained within the limitations of funding arrangements ◦ Risk appetite: The residual risk exposure retained by NGO service providers is within the risk appetite of the NGO Boards

	◦ Holistic solution: Where an NGO provides multiple services, or operates in more than one jurisdiction, that adequate insurance is available to cover all of the NGO's PSA risk ◦ Equity: Residual risk exposure and financial costs associated with the solution are commensurate with the risks undertaken by the organisation and not unduly impacted by the risks of other organisations
Insurance Sector	◦ Profitability: Minimise exposure to loss-making business ◦ Tail risk: Minimisation of exposure to tail risk (i.e. historical exposures) which cannot be adequately assessed or priced ◦ Data: Access to quality data to adequately price insurance cover and make an informed assessment of future claims costs ◦ Reputation: Minimise adverse implications of association with provision of cover for PSA
Children, young people and their families	◦ Safety: Ensuring services are provided in a safe environment ◦ Specific needs: Ensuring that the solution is responsive to the needs of Aboriginal and Torres Strait Islander communities, rural and regional communities, and other culturally diverse groups.
Survivors of abuse	◦ Compensation: Fair access to suitable compensation for harm caused by abuse (irrespective of whether the abuse is historical or contemporary)

Assessment criteria

It is important to note that while some of the above requirements are universally shared by all stakeholders, some requirements are, to an extent, in conflict and/or are unlikely to be fully met by any one particular long-term solution. After considering the requirements and priorities of each stakeholder, we have developed a list of key assessment criteria:

1. Continuity of service provision
2. Achievability
3. Time to deliver
4. Cost and efficiency
5. National consistency
6. Support governance, risk management and child safety
7. Effective for all sectors of concern (OOHC, youth homelessness and some disability service providers)
8. Allow for future commercial insurance re-entry
9. Fair compensation for survivors.

9.2 Advantages, disadvantages, risks and mitigation strategies

In this section we assess the various advantages and disadvantages of each shortlisted option, as well as highlighting the key risks associated with each and the strategies to mitigate these risks.

9.2.1 Review of Option 1: Discretionary Mutual Fund

The key advantages of Option 1 are detailed in the table below.

Table 9.2 – Option 1: Key advantages

#	Key advantages of a DMF
1	The establishment of a DMF would reduce the need for government intervention. While there may potentially be a requirement for government(s) to financially support a DMF, particularly during the establishment phase, it is expected that this commitment would reduce over time if the DMF is financially sustainable.
2	As DMFs are member owned and have less reliance on commercial insurance markets, service providers would be 'in control', which would assist with providing greater certainty of continuity of coverage.
3	The contributions required of DMF members would be sheltered from insurance market cycles. This may reduce variability of contributions required from year to year and result in fewer 'price shocks' than might be experienced in the commercial insurance market which can be impacted by the experience of other unrelated classes of insurance.
4	Subject to design considerations, a DMF established nationally may be able to provide a holistic solution to NGOs providing services across multiple areas including OOHC, youth homelessness including some providers of disability services (i.e. voluntary OOHC).
5	As a sector owned organisation with a very specific mandate and focus, a DMF can pool resources to lift the collective risk management and mitigation practices of its members. A DMF's ability to exclude potential members with poor risk management practices and its ability to collect valuable data from claims may contribute to the sustainability of the DMF, encourage positive risk management behaviours and child safety as well as restore confidence in the commercial insurance market (which would be important as the DMF would likely require reinsurance).

The key disadvantages and risks of Option 1, as well as possible risk management or design considerations to mitigate these, are detailed in the table below.

Table 9.3 – Option 1: Key disadvantages, risks and mitigation strategies

#	Key disadvantages and risks of a DMF	Mitigation strategies and considerations
1	Even if established nationally, NGO providers of OOHC and youth homelessness services represent a relatively small and niche sector with a high level of insurance risk concentration.	Risk concentrations can be mitigated through the DMF purchasing reinsurance from the commercial market, likely in the form of cover for individual large claims or an accumulation of claims over a period. Note that there may be limited appetite from the commercial market in the short to medium-term, requiring government(s) to fill this role.
2	The process to establish a DMF can be complicated in regards to co-ordinating the requirements of member organisation. This complexity is exacerbated by the wide range of types of NGO service providers operating across Australia, each with their own specific areas of focus, operating models, risk exposures, geographic coverage, organisation size and ethos. For example, the needs and interests of a large national organisation will be fundamentally different to those of an Aboriginal community-controlled organisation.	For an effective DMF to be established, it is of vital importance that there is an organisation or body in place to lead and co-ordinate the process, giving due regard to the specific requirements of member organisations. This leader should be viewed as capable, impartial and unbiased. It is not clear to us that such an organisation exists.

#	Key disadvantages and risks of a DMF	Mitigation strategies and considerations
3	A DMF as a privately-owned entity cannot be easily compelled to accept any NGO service provider into its membership. As such, unless a DMF with comprehensive membership can be established, there may remain gaps in coverage.	A DMF model should not be pursued unless there is a level of certainty that relatively comprehensive membership can be established and maintained.
4	Challenges with the pricing of contributions mean that NGO service providers may not agree on whether a DMF is equitable. For example, organisations with stronger risk management frameworks or fewer historical claims may not be willing to cross-subsidise other organisations with poorer risk management or a history of claim concentrations. In addition, pricing would need to consider differences in service delivery models by jurisdiction and differences in the historical insurance arrangements held by NGOs which vary considerably.	An important consideration is whether the DMF offers cover on a claims occurrence or claims made basis (with or without retroactive coverage). Allowing for legacy claims would be particularly challenging in terms of pricing and perceptions of equity. Excluding legacy claims means that many NGOs will retain uninsured PSA risks. If uninsured legacy claims threaten the continuation of service provision, Government(s) may need to step in to provide this cover via the offering of indemnities or insurance arrangements. Note that Government may also pick up the cost through joint and several liability under civil claims or as funder of last resort (FOLR) under the National Redress Scheme.
5	If participation in the DMF is inadequate, it may not achieve sufficient scale to operate effectively. Alternatively, once established, there is a risk to ongoing stability if member engagement with the DMF is low or if some NGO service providers perceive that they can get a 'better deal' elsewhere. This may be particularly relevant for larger NGO service providers who may have access to alternative commercial insurance arrangements.	The leadership of the DMF would need to demonstrate the benefit of ongoing membership beyond addressing the absence of accessible and affordable insurance coverage.
6	A significant challenge in establishing DMFs is the upfront capital funding required. Some NGO service providers, particularly those which are small in size, will have limited capacity to contribute.	Government may be required to support the initial funding arrangements. The detail of these funding arrangements may be complex. Alternatively, mutual capital instruments may be another means by which the DMF can source additional capital from more flexible sources. However, there may be challenges in obtaining support from capital markets.
7	The challenges associated with pricing this risk would be similar to any commercial insurance arrangement. This creates material financial risks for the DMF and its members, particularly if initial funding and ongoing contributions prove to be inadequate.	It will be important for initial seed funding of a DMF to be conservatively estimated. Typically, DMFs would require sufficient upfront seed capital to cover the first few years of expected claims costs. A more prudent approach may be appropriate for a DMF covering PSA risk, noting the uncertainties and potential risk concentrations.
8	It may take a considerable amount of time to establish a DMF. We estimate one to two years. There is no guarantee that a DMF will be successfully established, if pursued as the preferred option. This may possibly result in wasted time and resources.	Where appropriate, state and territory governments would need to extend short-term indemnity schemes in the interim.

#	Key disadvantages and risks of a DMF	Mitigation strategies and considerations
9	It would not be possible to scale a DMF solution for the OOHC and youth homelessness sectors to cover other sectors if the PSA issue expands.	Where appropriate, other impacted sectors could consider their own sector led solutions.

9.2.2 Review of Option 2: Insurance or indemnity provided by state and territory governments

The key advantages of Option 2 are detailed in the table below.

Table 9.4 – Option 2: Key advantages

#	Key advantages of Insurance or indemnity provided by state and territory governments
1	Government provided insurance or indemnities provide the most certainty of any options with regards to: ◦ Long-term sustainability and service continuity for NGO service providers ◦ NGO service providers and government agencies meeting their contractual and legislative obligations ◦ Ongoing adequacy of compensation for survivors of abuse. While there may be differences between the arrangements at a jurisdictional level, this can be minimised if state and territory governments adopt a nationally consistent approach, under a set of guiding principles agreed in advance. This would ensure consistency for NGO service providers, particularly those operating in multiple jurisdictions.
2	The additional financial cost for government may be minimal as government agencies are already joined on many PSA claims relating to OOHC and some PSA claims relating to youth homelessness. Government agencies likely already bear the financial risk if an NGO is defunct or unable to pay claims. We are not aware of government being joined on claims relating to voluntary OOHC or related disability services, however we understand from consultation that this is a relatively small subset of the OOHC sector.
3	State and territory governments hold direct responsibility for the provision of most OOHC and youth homelessness services. Relative to all other options, an indemnity provided directly by state and territory governments in relation to contracted or funded services is the fastest and simplest option to implement with indemnities potentially being built into existing contracts. Provision of insurance by government is similar, however there may be additional complexity (such as legislative change), resources and time required to implement.

The key disadvantages and risks of Option 2, as well as possible risk management or design considerations to mitigate these, are detailed in the table below.

Table 9.5 – Option 2: Key disadvantages, risks and mitigation strategies

#	Key disadvantages and risks of insurance or indemnity by states and territory governments	Mitigation strategies and considerations
1	A state and territory led solution passes the financial cost and risk (volatility) of PSA claims from the commercial insurance market to government.	Given that state and territory governments fund NGOs for the provision of OOHC and youth homelessness, it is arguable that they are already funding this cost. While PSA risks may be concentrated and potentially volatile, these risks are arguably small relative to the financial volatility that governments are already exposed to with respect to PSA for OOHC. The cost of providing cover is also expected to be small relative to the overall cost of service provision.

#	Key disadvantages and risks of insurance or indemnity by states and territory governments	Mitigation strategies and considerations
2	Once government cover is provided at an affordable cost to NGO service providers, it may become difficult to discontinue that cover. The provision of government indemnities could disincentivise commercial insurers from providing specific covers.	Current short-term indemnities in many jurisdictions have arguably already set a precedent for impacted sectors. There may be some ways to structure the long-term arrangements that more or less facilitate commercial market re-entry over a longer time horizon (see section 10.2 for further details on design considerations).
3	A state and territory led solution may reduce incentives for NGO service providers to adopt best practice risk management with respect to PSA risk.	This risk can be reduced by requiring NGO service providers to contribute to the cost of the solution through: ◦ Contributions or fees for the indemnity ◦ Per claim deductibles ◦ Limits of indemnity. Due to risks inherent to the OOHC sector and challenges under service delivery models, PSA will arguably always be a challenging risk for government and NGO service providers to manage, however there have been substantial improvements in risk management in recent years and further improvements may be possible.
4	NGO service providers operating in multiple jurisdictions will need multiple indemnities.	This disadvantage can be mitigated to the extent that state and territory governments conform to a set of mutually agreed nationally consistent principles.
5	There may be challenges with state and territory governments providing cover for services that they do not directly contract or fund (for example some disability service providers including providers of voluntary OOHC). There is a risk that some NGOs may withdraw services in areas where they are not insured or indemnified by government and face uninsured risk.	There may be arguments for states and territories to provide indemnities or insurance cover for services provided by some NGOs that are not directly contracted or funded (see Section 10.2). It may also be possible for states and territories to work collaboratively with the Commonwealth where there is an overlap in direct or indirect responsibility for service provision.
6	A state and territory led solution forgoes an opportunity to establish a national data pool, and may result in inefficiency in areas such as risk assessment and contribution setting (i.e. duplication of tasks in each jurisdiction).	There may be good arguments for government agencies to share data and learnings with respect to the insurance or indemnity arrangements.
7	Insurance or indemnity provided by state and territory governments may not be easily scaled to other sectors impacted by challenges of access and affordability of PSA cover (i.e. education, childcare, aged care etc). This is primarily because responsibility for these services typically sits with other state and territory government agencies or with the Commonwealth.	While not directly scalable, the principles of indemnity and insurance for the OOHC and youth homelessness sectors could be replicated by other relevant government agencies in other sectors if deemed appropriate.
8	Current short-term indemnities do not provide full cover for historical claims. Dependent on the design of insurance and indemnities, some NGOs may remain exposed to a level of uninsured PSA risk.	The extent of coverage will be an important design consideration.

9.2.3 Review of Option 3: National insurance provided by Commonwealth Government

The advantages, disadvantages and risks associated with Option 3 are generally very similar to those of Option 2. As such, in this section we have only focussed on the areas of key difference between the two.

The key advantages of Option 3 (which are different to Option 2) are detailed in the table below.

Table 9.6 – Option 3: Key advantages

#	Key advantages of national insurance provided by Commonwealth Government
1	A nationally co-ordinated insurance solution facilitated by the Commonwealth and funded by states and territories would provide greater consistency for NGO service providers, particularly those operating in multiple jurisdictions. It would also enable the collection of valuable data at the national level which could be used to improve risk management and create efficiencies in data analysis and contribution setting etc.
2	A national insurance solution may be better suited to comprehensively providing cover for all impacted NGO service providers, particularly those where states and territories do not directly contract or fund services (e.g. voluntary OOHC and other disability services).
3	A national insurance solution, while more challenging to establish in the first instance, provides a solution which can be more easily scaled to other sectors impacted by PSA insurance issues (i.e. education, childcare, aged care etc).

The key disadvantages and risks of Option 3 (which are different to Option 2), as well as possible risk management or design considerations to mitigate these, are detailed in the table below.

Table 9.7 – Option 3: Key disadvantages, risks and mitigation strategies

#	Key disadvantages and risks of national insurance provided by Commonwealth Government	Mitigation strategies and considerations
1	A nationally co-ordinated insurance solution facilitated by the Commonwealth is a much more complex solution than a direct solution provided by states and territories, both in terms of initial establishment and ongoing administration. There may be challenges in co-ordinating interjurisdictional agreement on the parameters of the arrangement, including funding. Differences in the role of government in the OOHC and youth homelessness sectors in each jurisdiction may make the pricing of contributions more challenging at a national level. As the primary responsibility for service delivery and administration of the OOHC sector rests with the states and territories, the Commonwealth may not be seen to have a role in co-ordinating a national solution. For the reasons noted above, there is a risk that a national solution, if pursued, may not be achievable.	The Commonwealth does have an interest in continuity of service provision for disability service providers, particularly in relation to voluntary OOHC services provided under the NDIS. It is also worth noting that the majority of these service providers also provide state and territory contracted OOHC and/or youth homelessness services.
2	Due to the complexities involved, it may take a considerable amount of time to establish a national insurance solution. We estimate around two years.	Where appropriate, state and territory governments would need to extend short-term indemnity schemes in the interim.

3	While commercial insurer re-entry appears unlikely under all solutions, the establishment of a national insurance solution might be expected to rule out this possibility entirely.	n/a.
4	Depending on the funding arrangements agreed, some individual states and territories may not see the national scheme as providing a cost-effective solution compared with the provision of an indemnity, noting that if the national scheme is fully funded by the States and Territories there is no effective transfer of risk.	n/a.

9.3 Cost benefit analysis

9.3.1 Scale of claims cost

It is beyond the scope of Phase 1 to produce an estimate of the annual cost of PSA in relation to services provided by NGOs in the OOHC and youth homelessness sectors. However, some consideration of the order of magnitude of this cost is important in assessing the suitability of any solution.

A review of information provided by various states and territories on the number of children supported by NGOs and the approach to the short-term indemnities suggests that the annual claims cost is in the 10s of millions of dollars rather than the 100s of millions of dollars.

In this context we make the following comments:

- For a DMF solution to be effective, an important requirement is that the size of the claims pool and related contributions must be sufficiently large for the sector establishing the DMF. While assessments may vary, one view of a threshold for viability of a DMF is a cost of claims per annum in excess of around $10m.
- As a general rule, government appetite to accept financial risk that might otherwise be held by commercial insurance markets is limited. Notwithstanding this, an understanding of the potential financial risk to government in providing insurance or indemnity to NGO service providers may help to inform a decision where other solutions are not forthcoming or require an unacceptable level of non-financial risk or compromise. The indicated PSA cost for the sector is a relatively small proportion of the total costs of funding for OOHC and youth homelessness nationally, which was around $2.5b[18] in 2021/22.

We therefore conclude that the three options being considered are each viable with respect to this rough indication of the scale of claims costs.

9.3.2 Cost benefit analysis of short list options

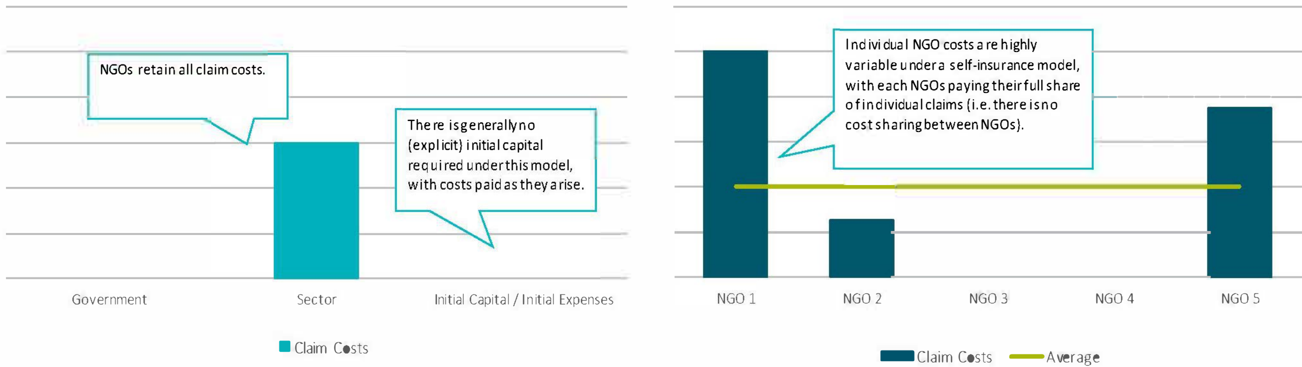
The key benefit of all the short-listed options (if established successfully) is the continuation of service provision in the impacted sectors, with minimal disruption to children, young people and their families.

The cost of each short-listed option includes annual claims costs and expenses, as well as the costs associated with the establishment of each option and any capital requirements. While the costs (especially the annual claims costs) are not known, we can consider the *relative* cost of each option and how this cost is shared

[18] Estimate only

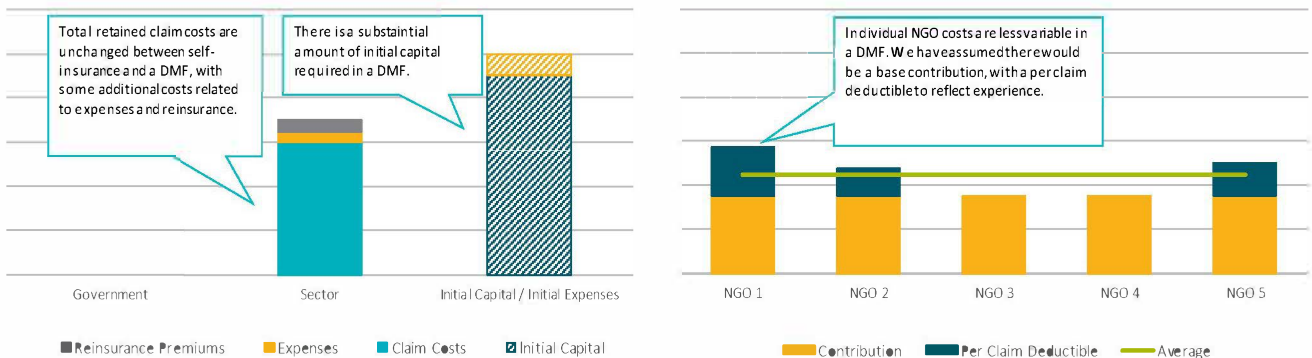
between the sector and governments. We illustrate the relative costs in the graphs below starting with a 'base scenario' where there is no insurance solution and NGO service providers each retain their respective share of claims costs related to the provision of OOHC and youth homelessness services (i.e. self-insurance). We have also provided a conceptual allocation of costs between individual NGOs (of a similar size and risk) to highlight cost variability for NGOs under each option.

Figure 9.1 – Cost analysis of self-insurance (base scenario)



Under a self-insurance model the NGO sector retains all claims cost. Annual costs are highly variable across individual NGOs since there is no pooling of risk; most will have no or limited costs in a given year, while for others the cost will test their financial capacity. This variability is why this option has been assessed as unviable.

Figure 9.2 – Cost analysis of short-listed options: DMF



A DMF has higher total annual costs for the NGO sector compared with self-insurance with unchanged claim costs but additional expenses relating to the administration of the DMF and the cost of reinsurance. Individual NGO costs are less variable due to the pooling of risk with differences relating to deductible payments for those NGOs with claims.

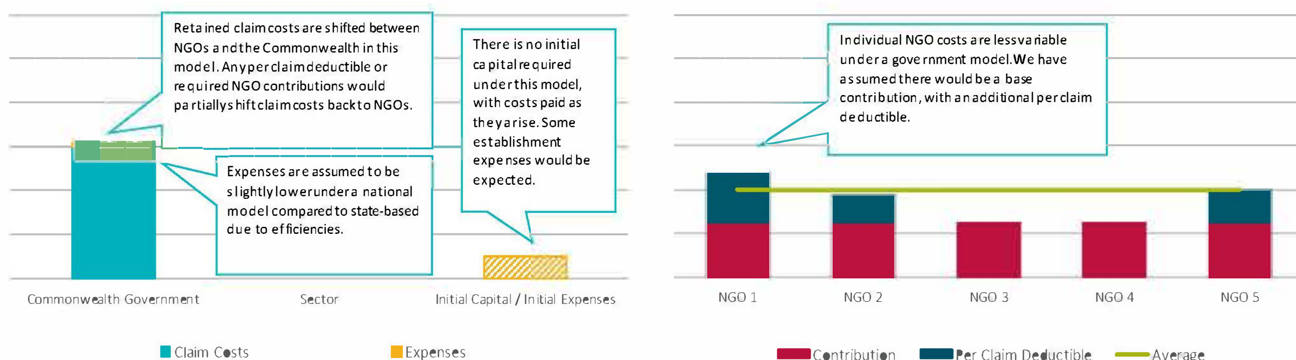
As described in earlier sections, a DMF requires initial capital to ensure that retained claims can be paid and to cover the costs of establishment.

Figure 9.3 – Cost analysis of short-listed options: state and territory government indemnity or insurance

The state and territory government indemnity (or insurance) model shifts the annual cost of claims from the NGO sector to the state and territory governments. The extent of this cost transfer depends on the contributions, deductibles and limits of the indemnity or insurance. If the state and territory governments seek full reimbursement of the expected cost then the cost remains with the NGO sector - however the state and territory governments are taking on the uncertainty/risk that costs will be higher than anticipated. There would be some additional expense for the state and territory governments in establishing the indemnity, including assessing contributions.

There is less variability in costs for NGOs limited to any per claim deductible imposed. We note that depending on each state and territory's funding arrangements there may be a small 'capital' amount required to be held.

Figure 9.4 – Cost analysis of short-listed options: National Commonwealth Government insurance



The National Government insurance model shifts the annual cost of claims from the NGO sector to the Commonwealth. There would be annual expenses associated with the national scheme which we have assumed would be lower (in aggregate) than the state and territory indemnities given some efficiencies at a National level.

The Commonwealth would fund the annual cost from contributions and deductibles from NGOs as well as any funding from the state and territory governments and, depending on funding arrangements, would be exposed to the risk that claims costs are higher than anticipated. We anticipate that the Commonwealth may require each jurisdiction to guarantee that they will fully fund their share of cost with respect to claims brought against NGOs they contract or fund (i.e. there would be limited risk transfer to the Commonwealth).

There will be some costs associated with the establishment of the national scheme which are higher than the costs associated with establishing the state/territory-based indemnities given the additional complexity.

In line with the state and territory model, there is less variability in costs for NGOs limited to any per claim deductible imposed.

9.4 Evaluation against the criteria

Considering the detailed assessment contained in the previous sections, we have summarised our evaluation of each option (DMF, state and territory indemnity/insurance, and national insurance) against the key assessment criteria in the following table.

Table 9.8 – Evaluation against criteria

Assessment criteria	Option 1: DMF	Option 2: States & territories	Option 3: National insurance
1. Continuity of service provision	Some risk if DMF solution cannot be established or if solution is established but is not stable	Low risk of service withdrawal	Short term risk while solution established. Low risk once established
2. Achievability	High risk that DMF solution unachievable	Simplest option. Minimal legislative change (for indemnity only, insurance more complex)	Complex solution. Requires support from Commonwealth, States & Territories
3. Time to deliver	Moderate (1-2 years)	Fast (less than 1 year)	Moderate (1-2 years)
4. Minimise government financial risk	If DMF able to place commercial reinsurance and source capital from members then minimal risk	States and territories will bear financial risk, but this risk is small relative to existing PSA exposure	Commonwealth bears financial risk and may require guarantee of funding from states and territories
4. Cost and efficiency	Establishment costs including capital may be significant for some NGOs	Establishment costs low for government. Some inefficiency (duplication of work)	Additional setup costs relative to Option 2 but greater efficiency over long-term
5. National Consistency	Nationally consistent	May be variations by jurisdiction	Nationally consistent
6. Support governance & risk management	DMFs provide incentive for risk management improvements. Opportunity to pool national data	Support of NGO governance & risk management dependent on design	Dependent on design. Also provides opportunity to pool and collect national data
7. Effective for all sectors of concern	Can provide a solution for all impacted NGOs, but subject to membership criteria	Can provide a solution for all impacted NGOs, but dependent on design	Can provide a solution for all impacted NGOs. Can also be scaled to other sectors
8.Commercial market re-entry	Potential role for commercial market as reinsurer. Market re-entry could destabilise DMF	While challenging, design could facilitate commercial re-entry (in the long term)	Less likely to facilitate commercial re-entry given development of national infrastructure
9. Fair compensation for survivors	Unlikely to cover historical claims. Fair compensation depends on capacity of NGOs to meet claims (or government under joint and several liability or redress)	Depends on design. If no historical cover, depends on capacity of NGOs to meet claims (or government under joint and several liability or redress)	Depends on design. If no historical cover, depends on capacity of NGOs to meet claims (or government under joint and several liability or redress)

Legend	
	Option supports criteria
	Substantial risk and/or compromise required
	Criteria difficult to achieve and/or high risk of failure

There are clearly compromises required under any of the options under consideration and there are no simple solutions.

10 Recommendation

10.1 Preferred solution

Having completed our assessment, we conclude that Option 2 – state and territory insurance or indemnity, ideally established under nationally agreed principles – is the preferred solution. Where a government insurance solution does not already exist, indemnities provided by state and territory governments are preferable to insurance as they are simpler and do not require legislative change. We recommend Option 2 as the preferred solution on the basis that:

- It is the simplest and most timely solution to implement and can be built in to contracting arrangements
- It is the option that is most likely to succeed
- It ensures ongoing provision of essential services
- It provides certainty, assurance and consistency for NGO service providers
- While there are additional costs involved for government, these costs are associated with essential services contracted or funded by government, and in the event of any market failure, governments would likely be responsible for these costs in any circumstance
- While there are a number of challenges and risks relating to this option, many of these can be potentially addressed or mitigated with careful scheme design, planning and implementation.

Our key reasons for not recommending Option 1 (DMF) are:

- Our consultation has not identified a clear leader to drive this solution
- This option will probably require significant financial support from government initially and likely in the medium-term in the form of capital and additional insurance
- It is complex to establish and there is a reasonable chance that a DMF will not be achievable and/or sustainable.

Our key reasons for not recommending Option 3 (National insurance) are:

- As the primary responsibility for service delivery and administration of the OOHC sector rests with the states and territories, the Commonwealth may not be seen to have a role in co-ordinating a national solution.
- Establishment of a national scheme is more complex, requiring legislation and agreements and funding arrangements to be reached with each state and territory. This may take significant time; we estimate around two years.
- Some individual states and territories may not see the national scheme as providing a cost-effective solution compared with the provision of an indemnity, noting that if the national scheme is fully funded by the States and Territories there is no effective transfer of risk.

10.2 Key design characteristics to be considered in implementation phase

If the IJWG determines that the preferred solution is viable, Finity's engagement will progress to the implementation phase. As part of this, there are a number of design characteristics that will need to be considered. In the following table we outline at a high level some of the important elements that will need to be explored in developing an implementation plan. We note that this list is not exhaustive and further consultation and investigation will be required in Phase 2 of this engagement to ensure all important issues are addressed.

Table 10.1 – Design characteristics for insurance or indemnity provided by state and territory governments

Consideration	Comments
National consistency	◦ Stakeholders consulted have highlighted the importance of national consistency in the development of a long-term solution to PSA insurance cover. While insurance or indemnity provided by state and territory governments may mean that there are some differences by jurisdiction, national consistency would be best achieved by establishing and agreeing on a set of guiding principles.
Mechanism for participation	◦ Governments would need to consider whether or not to compel NGOs to participate in the insurance or indemnity schemes. ◦ Government will also need to consider the requirements and conditions for participation (i.e. not being able to source cover from commercial markets, compliance with national child safe standards etc.)
Cover	◦ The design of any government insurance or indemnity scheme will need to consider the PSA claims risks that NGOs are exposed to, including contemporary and potentially historical risk. If the cover provided does not extend to historical claims, there is a risk that many NGOs remain exposed to uninsured risk and withdraw services.
Eligibility requirements	◦ The current short-term indemnities and the Victorian CSO insurance program all have limitations on the services covered by the arrangement. This means that not all NGOs providing OOHC or youth homelessness services are necessarily covered (for example, some for-profit service providers and voluntary OOHC providers may not be covered by current arrangements). ◦ Governments will need to consider which NGOs may be eligible to participate in the insurance or indemnity schemes as well as which services are covered. ◦ Particular questions may need to be answered regarding the eligibility of: a) Subcontracted services b) Service providers which are not government funded (i.e. private NGOs) c) NGOs providing services directly or indirectly funded by the Commonwealth ◦ There may also be specific considerations required for services provided in some unique locations (e.g. Norfolk Island) ◦ It would be preferable for indemnities/insurance to cover all OOHC and youth homelessness services; collaboration between governments (state/territory and Commonwealth) and NGOs on both design and funding will be required to achieve this.
Commercial insurer re-entry	◦ There may be ways to structure the indemnity that more or less facilitate commercial market re-entry in the longer term. For example, if the government cover is similarly structured to what commercial insurers might be willing to provide in future this might better facilitate commercial market re-entry (at least in respect of some NGOs). ◦ An important barrier to commercial market re-entry is lack of data. The indemnity schemes could facilitate this by establishing a structure for data sharing and possibly analysis. This would also provide a benefit for the individual schemes themselves from a pricing perspective.
Pricing	◦ An important consideration is whether or not to charge a fee to NGO service providers for the cover. While some jurisdictions have not charged for the current short-term indemnity arrangements, most stakeholders consulted have indicated it is desirable for providers to have some 'skin in the game' for a number of reasons. ◦ Where a contribution or fee is charged, governments are expected to face similar challenges to commercial insurers in determining the appropriate price to charge given

	the limited availability of data. An initial actuarial assessment would likely be required as well as ongoing review as claims are processed and other information becomes available. ◦ Where reasonable and practicable to do so, pricing should be sufficiently aligned with commercial markets such that NGOs able to source ongoing insurance cover from commercial markets are encouraged to continue these arrangements.
Interaction with current schemes	◦ Where relevant, state and territory governments will need to consider the potential interaction of current short-term indemnity schemes and any new long-term indemnity or insurance solutions. Particularly, the nature and level of cover may vary between the short-term and long-term solutions and any gaps arising should be identified and considered in the design of the long-term solution.

11 Reliances and limitations

11.1 Reliance on information

We have relied on the accuracy and completeness of information provided to us by the NSW DCJ, the IJWG, the NGAG and the various stakeholders that we have consulted with throughout this engagement. We have not independently verified the information but have reviewed it for general reasonableness. The reader of this report is relying on the various providers of this information and not Finity for the accuracy and reliability of the information provided. If any information is inaccurate or incomplete our advice may need to be revised and the report amended accordingly.

11.2 Distribution and use

This report is being provided for the sole use of the NSW DCJ and the IJWG for the purposes stated in Section 2.

At the request of the NSW DCJ, we have consented to the public release of this report. Third Parties should recognise that the furnishing of this report is not a substitute for their own due diligence and should place no reliance on this report which would result in the creation of any duty or liability by Finity to the Third party.

Finity has performed the work assigned and prepared this report in conformity with its intended utilisation by a person competent in the areas addressed and for the stated purposes only. Judgements about the conclusions drawn in this report should only be made after considering the report in its entirety, as the conclusions reached by a review of a section or sections on an isolated bases may be incorrect.

This report should be considered as a whole. Finity staff are available to answer any queries, and the reader should seek advice before drawing any conclusions on any issue in doubt.

Appendices

A Stakeholder consultation details

In this appendix we list the stakeholder consultations held to date and planned to be held prior to completion of Phase 1 of this engagement. We note that while we have sought to consult as broadly as practicable within the timeframes of this engagement, we have not been able to meet with all stakeholders. As much as possible, we have sought to engage with a representative sample of stakeholders.

A.1 Government sector

Jurisdiction	Stakeholder
NSW	Department of Communities and Justice
NSW	icare
NSW	Treasury
QLD	Department of Children, Youth Justice and Multicultural Affairs
QLD	Queensland Treasury
QLD	Queensland Government Insurance Fund
Commonwealth	Department of Social Services
Commonwealth	National Office of Child Safety
Commonwealth	Treasury
WA	Department of Communities
WA	Department of Treasury
WA	Insurance Commission of Western Australia
SA	Department for Child Protection
SA	South Australian Government Financing Authority
SA	South Australian Housing Authority
ACT	Justice and Community Safety Directorate
ACT	Community Services Directorate
ACT	Treasury and Economic Development Directorate
ACT	ACT Insurance Agency
TAS	Department of Communities
TAS	Department of Treasury and Finance
VIC	Department of Families, Fairness and Housing
VIC	Department of Justice and Community Safety
VIC	Victorian Managed Insurance Authority
NT	Department of Territory Families, Housing and Communities

A.2 Insurance sector

Type	Stakeholder
Insurer	Ansvar Insurance
Insurer	Catholic Church Insurance
Insurer	QBE Australia
Insurer	Syndicate 386 (feedback provided via QBE Australia)
Reinsurer	Swiss Re Australia & New Zealand
Broker	Anglican Insurance and Risk Services
Broker	Willis Towers Watson
Broker	Lockton Australia
Broker	Aon Australia
Broker	Scott & Broad
Industry Group	Insurance Council of Australia
Industry Group	National Insurance Brokers Association

A.3 Non-Government sector

Type	Stakeholder	Sector(s)
Non-Government Advisory Group representatives		
Peak Body	Child and Family Alliance WA	Child Peak Protection Body
Peak Body	PeakCare Queensland Inc	Child Peak Protection Body
Peak Body	The ACT Council of Social Service (ACTCOSS)	Peak Body for Community Service Providers
Peak Body	Queensland Aboriginal and Torres Strait Islander Child Protection Peak	Child Peak Protection Body
Industry Body	Community Employers WA	NFP Representative Body
Service Provider	Barnardos Australia	OOHC Services
Service Provider	Aboriginal Family Support Services Ltd	OOHC and Youth Accommodation
Service Provider	Kentish Lifelong Learning and Care	OOHC Services
Service Provider	Life Without Barriers	OOHC and Disability Services
Service Provider	Key Assets	OOHC and Disability Services
Service Provider	Allambi Care	OOCH, YH and Disability Services
Service Provider	Kennerly Childrens Home Inc	OOHC Services
Service Provider	Glenhaven Family Care	OOHC and Disability Services
Other NGO Representatives		
Peak Body	Association of Children's Welfare Agencies (ACWA)	Child Peak Protection Body

Peak Body	Child & Family Focus SA (CAFFSA)	Child Peak Protection Body
Peak Body	Family Day Care Australia	Family Day Care Providers Peak Body
Peak Body	Y Foundations	Youth Homelessness Peak Body
Service Provider	Kummara	Childcare and Family Support Services (Aboriginal and Torres Strait Islander focus)
Service Provider	OzChild	Foster and Kinship Care Services
Service Provider	Infinity Community Solutions Ltd	OOHC, Disability and Early Intervention Services
Service Provider	Uniting NSW	Disability, Foster and Kinship, and Youth/Family Services
Service Provider	Uniting Care QLD	Homelessness, Disability, Foster and Kinship, and Youth/Family Services
Service Provider	Brisbane Youth Service	Youth Homelessness Services
Service Provider	Youth Futures WA	Youth Homelessness Services
Service Provider	Connecting Families	Disability and Family Support Services
Service Provider	Care Choice	Disability and Family Support Services

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