



Aged care providers—will your insurance cover some costs associated with the Royal Commission?

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Aged care providers will have incurred costs in connection with the Royal Commission into Aged Care Quality and Safety. This includes the costs associated with responding to the request for written submissions and the 8 specific questions and costs to obtain legal or other expert advice on the responses prepared.

Providers should consider whether:

- any of their insurance policies provide coverage for these costs; and/or
- they qualify for legal financial assistance provided by the Government.

INSURANCE COVERAGE

There are a number of policies that providers should have and if in place, should have reviewed to determine whether the coverage will permit them to make a claim for costs associated with the Royal Commission.

Management liability policies

These policies typically provide entity cover for the provider as well as cover for officers of the providers for a wide range of costs incurred in relation to official enquiries.

Directors and officers policies

For larger providers, the costs of compliance by their officers in relation to an official enquiry may be covered by directors and officers policies as well as costs of attending the enquiry.

Professional indemnity policies

Some professional indemnity policies contain sub-limited extensions for attendances in response to a direction or subpoena for an official enquiry.

Combined liability policies

Some combined liability insurance policies contain elements of each of the above policies.

Most of these policies require notification to, and consent of, the insurer before incurring these costs but they may cover the costs regardless of prompt notification and consent.

LEGAL FINANCIAL ASSISTANCE

Legal financial assistance may be provided to an entity for reasonable legal representation and disbursement costs resulting from:

- being called, or granted leave to appear, as a witness at a hearing of the Royal Commission, or
- being requested to attend, or attending an interview of the Royal Commission, or
- being requested to provide a written statement that will be used as evidence in the Royal Commission, and/or
- complying with a notice to produce issued by the Royal Commission, and
- where the entity, excluding an individual, would not be able to meet these costs without incurring serious financial hardship.

Practically the legal financial assistance is not helpful for those providers who have incurred costs in responding to the request for information but who have not been called to appear, requested to attend, etc.

For those providers who have been called to appear, requested to attend, etc, it may still be difficult to demonstrate that “serious financial hardship” will be incurred.

Providers will also provide information regarding the applicant’s financial circumstances, including annual income from all sources, total value of assets and total balance of savings/shares. In addition to this, supporting documentation in the form of recent bank statements, tax assessments and annual financial statements should also be provided.

Whilst the information is treated in confidence by the Attorney-General’s Department, providers should carefully consider the information which is being disclosed.

HOW CAN MCINNES WILSON LAWYERS HELP?

McInnes Wilson Lawyers can assist with a range of matters including:

- reviewing insurance policies to determine whether claims could be made;
- any dispute with insurers who refuse valid claims;
- preparing responses to any requests for information from the Royal Commission.

Contact the article author for more info



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