

Australian Capital Territory

Financial Management (Public Liability Insurance – Non Profit Entities) Determination 2007

Notifiable Instrument NI2007-98

The Treasurer makes the following determination under the *Financial Management Guidelines (Public Liability Insurance) 2005*, section 5(2).

Dated 10 April 2007

JON STANHOPE, MLA
Treasurer

Financial Management (Public Liability Insurance – Non Profit Entities) Determination 2007

Notifiable Instrument NI2007-98

Made under the

Financial Management Guidelines (Public Liability Insurance) 2005, section 5(2).

1 Name of instrument and Intended Scope of Operation

This instrument is the *Financial Management (Public Liability Insurance – Non Profit Entities) Determination 2007*.

2 Commencement

This instrument commences on 13 April 2007.

3 Appropriate levels of public liability insurance

A. The *Financial Management Act 1996*, section 31 (2) (f) requires chief executives of Territory entities, inter alia, to ensure that adequate control is maintained over the incurring of liabilities by the Territory entity. This determination is issued pursuant to the *Financial Management Guidelines (Public Liability Insurance) 2005*, section 5(2).

A1. This determination relates to the securing of appropriate levels of public liability insurance from non-profit or community entities in the ACT (**Community Entity**) under the terms of an **Insurance**

Agreement, as defined in the *Financial Management Guidelines (Public Liability Insurance) 2005*, Section 5 (2).

This Determination does affect include community entities which are proposing to use or occupy Territory land or premises, or performance of services or supply of goods or works which arises out of a process to which the *Government Procurement Act 2001* applies.

A2. The determination establishes procedures by which Territory entities can effectively determine adequate levels of public liability insurance based upon objective, standardised risk criteria.

A3. Territory entities have discretion as to whether it is appropriate, in terms of the Territory entity's overall risk position under the ACT Government Enterprise Wide Risk Management Framework to require a **Community Entity** to obtain public liability insurance under an agreement, the terms of which include activities that would otherwise constitute an **Insurance Agreement**.

A4. Territory entities should consult the ACT Insurance Authority (ACTIA) and obtain guidance as to whether, in particular circumstances an **Insurance Agreement** is appropriate.

B1. In any case where a Territory entity decides to and then does enter into an **Insurance Agreement**, the following procedure will apply with respect to the level of public liability insurance required under such agreement.

B2. The Territory entity shall require the **Community Entity** to nominate each and all of the proposed activities the **Community Entity** wishes to undertake and shall incorporate those activities in a schedule to the **Insurance Agreement (Activity Schedule)**.

B3. The Territory entity shall require the **Community Entity** to register on the ACT Government risk advisory web site <http://www.insuranceriskadvice.act.gov.au> (the **Site**).

B4. The Territory entity shall require the **Community Entity** to create a risk profile consisting of entering the activities specified in the Activity Schedule in the Site's risk profiler and submitting the

results of the profile, which consists of the profiler's insurance risk rating, to the Territory entity. Schedule 1 to the Determination provides an example of what is required.

B5. If the insurance risk rating established is 6 or below, the level of public liability insurance required by the *Community Entity* shall be \$10 million, required for the duration of the *Insurance Agreement*.

B6. If the insurance risk rating established is 7, subject to paragraphs B10 through B12 inclusive, the following procedure applies:

B7. If the *Community Entity* is an ACT Affiliate (branch, subsidiary, division or member) of a national *Community Entity* and the affiliate *Community Entity* is a named insured on a national public liability insurance policy, the level of public liability insurance required by the *Community Entity* shall be \$10 million or the value of the policy (whichever is greater), required for the duration of the *Insurance Agreement*.

B8. If the *Community Entity* is a named insured in a group non profit or community insurance scheme, such as but not limited to insurance cover provided or arranged by Local Community Insurance Services, GIO Insurance, Sports Underwriting Australia, AON under its Volunteers Vital Pack, The National Insurance Brokers Association or a named insured under any other community insurance scheme recognised as such by ACTIA, the level of public liability insurance required by the *Community Entity* shall be \$10 million or the value of the policy (whichever is greater), required for the duration of the *Insurance Agreement*.

B9. In all other cases the level of public liability insurance required by the *Community Entity* shall be \$20 million, required for the duration of the *Insurance Agreement*.

B10. In all cases where the insurance risk rating established is 7, the Territory entity shall cause the *Community Entity* to—

- (a) Complete a risk management plan as provided on the Site; and

- (b) Submit the risk management plan to the Territory entity; and
- (c) Submit the risk management plan to ACTIA.

An example of a risk management plan is appended at Schedule 2 to this Determination.

B11. The Territory entity and ACTIA shall review the risk management plan. If either ACTIA or the Territory entity considers the risk management plan to be deficient in any way, the Territory entity shall cause the *Community Entity* to revise the risk management plan and resubmit it.

B12. In no case where a Territory entity enters into an *Insurance Agreement* with a *Community Entity* shall the Territory entity permit the *Community Entity* to undertake any activity under an *Insurance Agreement* until the Territory entity and ACTIA approve the risk management plan.

B13. If the insurance risk rating established is 8 or above, the following procedures apply:

B14. If the *Community Entity* is a named insured in a group non profit or community insurance scheme, such as but not limited to insurance cover provided or arranged by Local Community Insurance Services, GIO Insurance, Sports Underwriting Australia, AON under its Volunteers Vital Pack, The National Insurance Brokers Association or a named insured under any other community insurance scheme recognised as such by ACTIA, the level of public liability insurance required by the *Community Entity* shall be \$10 million or such other amount as ACTIA may determine not exceeding \$20 million, in consultation with the Territory entity, required for the duration of the *Insurance Agreement*.

B15. In all other cases where the insurance risk rating is 8 or above, the level of public liability insurance required by the *Community Entity* shall be \$20 million or such other amount as ACTIA may determine, in consultation with the Territory entity, required for the duration of the *Insurance Agreement*.

B16. In all cases where the insurance risk rating established is 8 or above, the Territory entity shall cause the *Community Entity* to—

- (a) Complete a risk management plan as provided on the Site; and
- (b) Submit the risk management plan to the Territory entity; and
- (c) Submit the risk management plan to ACTIA.

B17. The Territory entity and ACTIA shall review the risk management plan. If either ACTIA or the Territory entity considers the risk management plan to be deficient in any way, the Territory entity shall cause the *Community Entity* to revise the risk management plan and resubmit it.

B18. In no case where a Territory entity enters into an *Insurance Agreement* with a *Community Entity* shall the Territory entity permit the *Community Entity* to any activity under an *Insurance Agreement* until the Territory entity and ACTIA approve the risk management plan.

B19. Any policy of public liability insurance taken out by a *Community Entity* shall be with an insurer that is either:

- On a schedule of acceptable insurers published by ACTIA; or
- Authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia; or
- If not authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia, rated at A- or better by a ratings agency acceptable to ACTIA.

4 repeal of existing Determination

C.1 this Determination replaces *Financial Management Guidelines (Public Liability Insurance) Determination 2005* (Notifiable

Instrument NI 2005-342). NI 2005-342 is hereby repealed, effective 13 April 2007.