

Australian Capital Territory

Financial Management (Public Liability Insurance) Determination 2007

Notifiable Instrument NI2007-99

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) Determination 2007

Notifiable Instrument NI 2007-99

Made under the

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

1 Name of instrument

This instrument is the *Financial Management (Public Liability Insurance) 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 Entities, including Community Entities in cases where the Community Entity's proposed use or occupation of Territory land or premises, or performance of services or supply of goods or works arises out of a process to which the *Government Procurement Act 2001* applies.

A2. This determination establishes procedures by which Territory entities can effectively verify adequate levels of public liability insurance covering an insurance agreement, as defined in the *Financial Management Guidelines (Public Liability Insurance) 2005 (Insurance Agreement)* based upon objective, standardised risk criteria.

A3. The principles behind this Determination and the risk parameters and insurance levels reflective of those parameters apply to all procurements. It will be incumbent upon Territory entities to establish the applicable insurance risk at the commencement of the procurement cycle.

A4. 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 an Entity to obtain public liability insurance under an agreement, the terms of which include activities that would otherwise constitute an ***Insurance Agreement***.

A5. Territory entities should consult the ACT Insurance Authority (ACTIA) and obtain guidance as to whether, in particular circumstances an ***Insurance Agreement*** is appropriate.

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4. Procedures Generally

B1. 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 the *Insurance Agreement*.

B2. The Territory entity shall create a risk profile consisting of entering the activities specified in the *Activity Schedule* in the Site's risk profiler and:

1. (a) **If the insurance *Risk Rating* established is 6 or below**, the level of public liability insurance required shall be \$10 million, required for the duration of the *Insurance Agreement*; or
- (b) **If the insurance *Risk Rating* established is 7 or above**, the level of public liability insurance required shall be \$20 million, required for the duration of the *Insurance Agreement*.

B3. Any request for tender, bid or other solicitation document issued by a Territory Agency shall contain a provision specifying the insurance level required commensurate with the *Risk Rating*.

B4. If, prior to execution of the *Insurance Agreement*, the actual activity to be undertaken by an Entity under an *Insurance Agreement* is found to differ in any material respect from the proposed *Activity Schedule* and changes the *Risk Rating* the insurance level shall be adjusted accordingly. Territory entities may consult the General Manager ACTIA with respect to such adjustments.

B5. In no case shall the Territory entity permit the Entity to use or occupy Territory land or premises, or commence performing services or supplying goods or works under the *Insurance Agreement* until the Territory receives a certificate of insurance.

B6. This Determination does not apply:

- (a) In any case where the Territory's Principal Controlled Insurance Scheme for construction contracts governs insurance arrangements.
- (b) In the case of any procurement with respect to which either the public liability insurance risk or the applicable public liability insurance level has been separately determined under an applicable Australian Standard or under Commonwealth law or the law of any State or Territory, or under a professional standards scheme with respect to which Schedule 4 of the *Civil Law (Wrongs) Act 2002* applies.

5. Adequacy of Insurance Provider

B7. Any policy of public liability insurance taken out by an Entity shall be with an insurer that is either:

- (a) On a schedule of acceptable insurers published by ACTIA; or
- (b) Authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia; or
- (c) 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.

6. Miscellaneous

B8. "Territory entity" has the same meaning as "Territory entity" in the *Government Procurement Act 2001*.

"Risk Rating" is the rating determined after creating a risk profile consisting of entering the activities specified in the Activity Schedule in the Site's risk profiler.

“Activity Schedule” is a schedule created by entering each and all the proposed activities the Entity wishes to undertake.

“Site” means the ACT Government risk advisory web site <http://www.insuranceriskadvice.act.gov.au>.

B9. This Determination replaces *Financial Management Guidelines (Public Liability Insurance) Determination 2005* (Notifiable Instrument NI 2005-341). NI 2005-341 is hereby repealed, effective 13 April 2007.