

CONTRACTOR INSURANCE REQUIREMENTS

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SCOPE

This Policy applies to all staff globally.

POLICY

The purpose of insurance in contracts is to effectively allocate risk. It assists in reducing risk to the parties and making outcomes more certain. It is also a necessary part of TA's due diligence on parties with which it contracts and can indicate that the insured is well-managed.

Comcover and other insurers

TA is member of the Commonwealth's self-managed fund Comcover. Comcover is not an insurance company but acts as a kind of insurance cover to TA and other government agencies. It provides broad cover for normal general insurable risks to certain limits and in certain situations. As with all insurance providers, Comcover's cover is limited by exemptions provided in the policy.

Comcover does not cover liability arising from the actions of a third-party such as a contractor or supplier.

As part of TA's risk management strategy and Comcover requirements, TA will only enter into transactions with other parties who hold satisfactory reasonable insurances relevant to the activity or provision of goods/services. What is considered reasonable will vary based on the kind of activity, goods/services, entity involved, monetary value of the possible risk, amongst many other matters.

The Legal & Governance team should be consulted on insurance matters for advice. There are some cases where the team must be consulted according to TA policy, as set out further below.

Determining insurance requirements

It is Tourism Australia policy that all contractors and suppliers engaged by Tourism Australia:

1. via a contract for goods or services valued at A\$25,000 above; or
2. via a contract for goods or services valued at under A\$25,000, but where it is deemed that there is a higher risk of potential damages,



that the contractor/supplier must provide evidence of its own insurance(s).

The purpose of the other party effecting and maintaining appropriate insurance is to reduce the risk of financial claims against TA, made by the contractor or supplier, or a third party who may suffer some damage, injury or loss. In addition, insurance can:

- Facilitate negotiations;
- Reduce the need for limits of liability and soften indemnities;
- Act as a back up for risk allocations determined by the parties' contractual obligations; and
- Indicate that the supplier or contractor is/is not a reputable and commercial party, from the outset.

Insurance requirements will vary depending on the goods or services being provided, the risk of damages, and/or the nature of the relationship between the parties and activity being undertaken. In general, the types of insurance(s) which may be required to be held by a contractor/supplier are:

1. Public / General Liability Insurance: relevant for risk of third party injury and tangible property damage;
2. Professional Indemnity Insurance: relevant for risk of liability for breach of professional duty or error/omission in judgment of a professional, such as for lawyers, accountants, PR services.
3. Products liability insurance: relevant for risk of third party injury and property damage caused by the insured's products.
4. Workers' Compensation Insurance: relevant for companies (Pty Ltd, Ltd, LLC, inc. etc,)

There are many other types of insurance and this does not preclude the requirement for other insurances to be held. Other useful types of insurance can include for example, insurance for property damage/loss, transit, business interruption, travel insurance and motor vehicle (CTP and comprehensive), etc.

In some cases, the Legal & Governance team may require that the contractor/supplier must show evidence of that insurance. In other circumstances, TA may be happy to accept risks without the party showing evidence of insurance. In such cases, whether or not that contractor/supplier holds insurance(s) will be a matter purely for the contractor/supplier to assess having regard to its own business and commercial needs.

Insurances commonly required by TA

At a minimum, TA must obtain satisfactory evidence of insurance in the following circumstances, and for the corresponding amounts:

- *Venue for a TA function Public liability insurance with (at minimum) A\$10 million for any one occurrence*: The venue must produce a Certificate of Currency of their insurance as evidence;

- *Exhibitor at a TA event Public liability insurance with (at minimum) A\$10 million for any one occurrence:* The exhibitor must produce a Certificate of Currency of their insurance as evidence;
- *Supplier or contractor Public liability insurance with (at minimum) A\$5 million for contracts with a product or service total value under A\$100,000, and minimum A\$10 million for contracts with a total value of A\$100,000 or above:* The supplier or contractor is also required to have product liability insurance if they are providing products (e.g. hardware);
- If the contractor or supplier is providing professional advisory services they are also required to have professional indemnity insurance with (at minimum) A\$5 million for contracts with a total value under A\$100,000, and minimum A\$10 million for contracts with a total value of A\$100,000 or above.

Evidence of these insurances must be obtained prior to entering into any contract with the supplier/contractor.

Notwithstanding this, the above minimum thresholds may be inadequate if the potential liability to Tourism Australia is significant. In this case, the Legal & Governance Team must be consulted for assessment. Subject to the advice offered by the team, Tourism Australia may be required to request an increased limit of insurance cover from the contractor/supplier.

For example, where, regardless of cost to TA, TA is engaging a high risk operator, evidence of insurance from that supplier must be sought, for an appropriate amount.

As a guide, the following is a list of some common high-risk operators:

AIR (Aircraft Category)	LAND (Attraction Category)	WATER (Watercraft Category)
Ballooning Helicopter flights Hang-gliding Paragliding Para-sailing Scenic Flights Skydiving	Abseiling & Rock Climbing Bungy Jumping Canyoning Caving/ Spelunking Mountain Biking Skiing or Snowboarding Zip-lining	Air-boating Jet Skiing Canoeing Kayaking Scuba diving White water rafting Water Skiing
SELF DRIVE (Tours & Transport Category)	WILDLIFE (Attraction or Tours & Transport Category)	OTHER (Tours & Transport Category)
Self-drive Self - drive (remote areas) Quad biking/off road Motorcycling Race car driving Go-carting	Wildlife tours Crocodiles	Hunting



Please contact the Legal & Governance team to discuss, as additional insurance requirements will depend on the individual circumstances. [For advice on specific circumstances or activities seek advice from the Legal and Governance Team.](#)

Evidence of insurance

Tourism Australia must obtain from the contractor or supplier a copy of their Certificate of Currency which assures that the relevant insurance will be current at the relevant time, applies in the relevant country, and is for a sufficient value. It is not acceptable to obtain an email or letter which states only that insurance is held.

A copy of the Certificate of Currency should be uploaded together with the relevant contract, when having your contract registered with the Finance & Procurement Team.

Alternatively, all teams arranging events and/or famils must use the ATEC System for managing insurance requirements. ATEC is an external party contractor which TA has engaged to manage insurances for common suppliers that TA engages in delivering events and famils. For more information, please speak to the Legal & Governance team.

No evidence of insurance

If a contractor or supplier that is providing goods or services valued at A\$25,000 or above,

1. has no insurance, or
2. does not meet Tourism Australia's minimum requirements or those deemed necessary by the Legal & Governance team, or
3. refuses to provide a Certificate of Currency,

then the contractor or supplier must not be engaged until approval to proceed has been granted by the General Counsel, Legal and Governance.

To obtain an exemption for no evidence of insurance, the following process should be followed:

1. When sending a contract to the Legal team for review, staff should note that the party has no/a lesser amount of insurance, than required under the Policy.
2. The Legal team will send an exemption form to the staff member via DocuSign. Staff must complete the form noting the type of services being provided, the value of the contract, whether Tourism Australia has an existing relationship with the contractor or supplier, and any potential risks along with their mitigation strategies.
3. Once completed by the staff, the Legal team will be automatically notified and will either approve the request, or require further information from staff.
4. Where a request is not approved, a different contractor or supplier that meets Tourism Australia's insurance standards must be sourced. To avoid delays and disappointment, it is strongly recommended that staff include insurance requirements as evaluation criteria when procuring goods or services.

Please note that in addition to the above exemption, the decision to engage the supplier outside the advice of the Legal & Governance Team will ultimately rest with the relevant ELT manager of the person making the request for exemption.

Listing 'Additional Insured' or 'Named Parties'

Comcover insures only assets and liabilities of the Australian Government and does not offer insurance to third parties. Consequently, Tourism Australia cannot agree to list 'Additional Insured' parties under its insurance policies.

Where a third-party insists it be listed as an Additional Insured, Tourism Australia should explain that Comcover is not able to do this and offer to provide Certificates of Currency. If the third-party still insists on being listed as an Additional Insured, Tourism Australia must obtain written permission from Comcover to engage an additional insurer for the purpose of listing the Additional Insured.

Tourism Australia must then pay the premiums for the additional insurance.

Guests at TA Events

Tourism Australia does not usually require guests invited to its events to produce evidence of their insurance, but may in certain circumstances. Please enquire with the Legal & Governance team as to further details.

Journalists and other persons attending Tourism Australia events should be advised to arrange their own travel insurance, except as expressly stated otherwise.

Making a claim and reporting incidents

In the event of an incident causing loss or damage, employees should at all times respond as if they are uninsured and notify as soon as possible the General Counsel, Legal and Governance who will liaise with Comcover on Tourism Australia's behalf. At no time should any employee comment on liability or fault, or make any admissions as to liability or fault directly or indirectly, without first having consulted the Legal & Governance Team.

In this regard all communication, queries, claims and incidents must immediately be reported to the General Counsel for advice.

Any claims for insurance will be handled by the Legal & Governance team. No communication in relation to claims is permitted without prior consultation with the Legal & Governance team.

Indemnities

Draft contracts should be checked for indemnities that Tourism Australia is asked to give in favour of the contractor or supplier. These clauses typically state that "Tourism Australia indemnifies the contractor or supplier for all loss or damage arising under the contract", meaning Tourism Australia must take responsibility for any loss or damage suffered by the contractor or supplier when carrying out their obligations under the contract.

Comcover will not automatically insure Tourism Australia if the contractor or supplier makes a claim against Tourism Australia under an indemnity.

Where draft contracts include indemnities, employees should request to remove these indemnities.

Where a contractor or supplier refuses to remove an indemnity, the General Counsel, Legal and Governance must be advised so that they can liaise with Comcover to determine whether insurance cover will be provided. Comcover has a response time of roughly 15 working days.

In some circumstances Comcover may require an additional insurance premium to be paid, or may refuse to provide cover. If the contractor or supplier insists on an indemnity, Tourism Australia should reconsider using the contractor or supplier due to the impacts on resources and delays in undertaking the approval process with Comcover.

It would also be reasonable to request a reduction in the fees payable to the contractor or supplier to cover additional premium payments to Comcover.

To avoid delays, select contractors or suppliers that do not require Tourism Australia to indemnify them.

If the most suitable contractor or supplier requires an indemnity, request a reduction in fees to cover additional premiums which may be payable to Comcover (noting that the contractor or supplier may not pass Comcover's risk assessment, in which case a different contractor or supplier will need to be sourced).

DEFINITIONS

Comcover The Australian Government's general insurance fund that provides insurance to Australian Government departments and agencies. As a statutory authority, Tourism Australia is required to use Comcover to insure its assets and liabilities.

Contractor An individual (with a company name and applicable tax number) engaged directly by Tourism Australia to provide services (i.e. not contracted through a recruitment agency and not paid through Tourism Australia payroll). Contractors often work on Tourism Australia premises.

Public liability insurance Refers to legal liability the contractor or supplier may have for negligent acts or omissions which have caused death or injury to third-parties, loss or damage to property, or loss of property of third-parties.

Professional indemnity insurance Refers to the legal liability a contractor or supplier may have for losses a third-insurance party incurs as a result of relying on the contractor's or supplier's incorrect advice.

Product liability insurance Refers to the legal liability a contractor may have for losses a third-party incurs as a result of the use of a product. In Australia product liability insurance is usually combined with public liability insurance.

Supplier A company engaged directly by Tourism Australia (usually via the procurement process) to provide services.

FORM(S)

Insurance Exemption Form (to be provided by Legal & Governance team)