

TREASURER'S DIRECTIONS

SECTION (16) – INSURANCE MATTERS & LITIGATION

Authorities: Financial Administration and Audit Act

Section

26. Duties of Accountable Officers

35. Treasurer's Directions

77. Prosecutions

16.1 The Territory Government's policy is that departmental risks of an insurable nature are self insured, i.e., to the greatest extent possible the Territory Government acts as its own insurer for all property under its control and accepts insurable risks as early as possible in the production of property to be purchased by it.

16.2 If the amount of any loss or settlement cannot be met by a department in the normal budgetary context the Northern Territory Treasury should be approached with the full details of the matter for it to be dealt with under the self insurance arrangement.

16.3 Arrangements have been made to provide for Government self insurance. The arrangements include establishment by formal Agreement of a self insurance fund to be managed by the Territory Insurance Office (T.I.O.). The purpose of this fund is to provide the Government with the capacity to meet insurable risks of departments and authorities that could not be met by ordinary budgetary means. The fund is not intended to cover minor claims or those for which departments already have capacity, e.g. under the Repairs and Maintenance Programme. It has been established to meet losses that would otherwise cause significant distortions to departmental budgets. Whether or not the Fund is drawn upon or recommendation made to impact Treasurer's Advance will be a matter for the Northern Territory Treasury to consider in accordance with any particular self insurance arrangements notified as having application to that form of risk and the Agreement with the T.I.O. Each decision will have regard to the circumstances of the relevant department.

16.4 This section details the general framework for dealing with matters of an insurance nature. Reference to specific occurrences has been avoided wherever possible because of the great diversity in departmental assets and prospective liabilities; the arrangements are intended to apply to occurrences that would otherwise constitute a serious financial burden. Whenever there is doubt on the appropriate course of action departments should consult with the Northern Territory Treasury. All references to the Solicitor for the Northern Territory are references to the Solicitor of the Northern Territory.

INSURANCE OF PUBLIC PROPERTY OWNED, HIRED OR BORROWED BY THE TERRITORY GOVERNMENT.

- 16.5 In accepting insurable risks on behalf of the Territory Government under the self insurance arrangements, Accountable Officers shall ensure that:-
- (a) there is a saving to the Territory Government by accepting the risks and avoiding the cost of premiums which would otherwise be payable directly or indirectly from Territory Government funds;
 - (b) the property is under effective departmental control and all safeguards are exercised against occurrence of risks for which the Territory Government is acting as insurer;
 - (c) there is a clear line of demarcation between property for which the Territory Government accepts the risks and property for which it does not, i.e. should a loss occur, there would be no doubt about the identification of the property after the loss as having been property on which the Territory Government had specifically accepted insurable risks;
 - (d) if the Territory Government does not effect a saving in a contract price by acting as its own insurer, a contractor shall not be relieved of responsibility for Territory Government-owned property or property being manufactured for the Territory Government; and
 - (e) the Territory Government is not placed in the position of relieving the contractor's insurers of claims through destroyed property owned by the contractor being represented as Territory Government property.

PERSONNEL

- 16.6 Where, as a matter of Territory Government policy, approval is given for the Territory Government to indemnify personnel against special risks such as air travel risk, the Territory Government will carry its own risk. Except to the extent to which general authority is given in Direction 15/33 the amount of cover to be given, if any, in each case shall be subject to specific Treasurer's approval.

“KNOCK FOR KNOCK” AGREEMENTS

- 16.7 The Territory Government will not be conducting “Knock for Knock” agreements with insurance companies or other self-insurers. Departments are financially responsible for repairing their own vehicles. The Territory Government will meet any third party property liability attributable to it or recover costs arising from accidents as elsewhere provided in this Section.

- 16.8 The “Knock for Knock” principle applies as between Territory Government departments and corporations and where damage to vehicles, or public property of one department is caused either directly or indirectly by a vehicle owned or controlled by another, each department will bear its own costs without claiming on the other.

D1609

CLAIMS AGAINST THE TERRITORY GOVERNMENT

- 16.9 Procedures detailed in these Directions are to be applied to all common law claims including vehicle third party property claims against the Territory Government. In all cases it is mandatory that as a minimum, a written report should be prepared immediately and include comments from each witness to the incident. These reports should then be passed on to the Department of Law with all other relevant information such as any plan, diagram or photograph of the accident scene. Any case to which the procedure outlined in these Directions – is not applicable should be referred to the Northern Territory Treasury by the department after the views of the Solicitor for the Northern Territory have been obtained.

- 16.10 Claims against the Territory Government shall be referred to the Solicitor for the Northern Territory and the contingency reported to the Northern Territory Treasury. The procedure to be followed is:-

- (a) if the Solicitor for the Northern Territory is satisfied that the case ought to be settled he will:-
 - (i) settle the claim if it can be done within a limit of \$10 000 excluding the costs to the claimant without seeking further instructions from the client department. In seeking funds from the department to enable settlement to be effected the Solicitor for the Northern Territory will give a certificate on the claim form that the expenditure is reasonable in accordance with the settlement negotiations. Claims are to be treated as urgent and paid without delay;
 - (ii) if the settlement will exceed \$10 000 excluding the costs of the claimant, advise the client department of the legal position and other relevant factors and the amount which he recommends should be offered in settlement. The client department shall submit the case, with its recommendation and the departmental file, to the Northern Territory Treasury;

In coming to the conclusion that the case ought to be settled, the Solicitor for the Northern Territory will take into account all relevant matters including the prospect of the Territory Government being held to be liable, and the likely cost of defending the action.

- (b) if the Solicitor for the Northern Territory is satisfied:-
- (i) that a Court would hold the Territory Government liable but settlement cannot be agreed upon and that it is desirable that an amount not exceeding \$10 000 be paid into Court, the Solicitor for the Northern Territory shall so advise the client department. Such a request for funds shall be treated as urgent and paid without delay;
 - (ii) that a Court would hold the Territory liable but a settlement cannot be agreed upon and that it is desirable to pay into Court an amount exceeding \$10 000, the Solicitor for the Northern Territory will advise the client department of the legal position and the relevant factors, and the course of action he recommended. The client department will submit the case, together with the recommendation and the departmental files to the Northern Territory Treasury.
- (c) if the Solicitor for the Northern Territory is satisfied that the matter is not capable of a reasonable settlement, or should not be settled, he shall defend the action accordingly and shall keep the instructing department informed of progress of the action and the likely amount for which the Territory Government will be liable if the defence is unsuccessful. If the Court finds in favour of the plaintiff, the client department shall, as soon as the decision is known, advise the Northern Territory Treasury thereof together with full particulars of the claim. Unless an appeal against the Court's award is being considered by the Solicitor for the Northern Territory action in accordance with Direction 16/11 should proceed.

SETTLEMENT OF CLAIMS

- 16.11 Payments of amounts awarded by the Court or for settlements negotiated in accordance with Direction 16/10 shall be made by the Solicitor for the Northern Territory from funds advanced by the department concerned. A claim for an advance of funds necessary to effect settlement or to pay into Court shall be submitted by the Solicitor for the Northern Territory to the client department on Form 12. Claims are to be treated as urgent and paid without delay (see also Direction 13/13). Payment under a negotiated settlement will be made without an admission of liability and without prejudice to the rights of the Territory Government. The source of the funding available to the department for this purpose is a matter to be considered in terms of the principles in Directions 16/2 and 16/3.

D1612

INCIDENTS INVOLVING TERRITORY GOVERNMENT EMPLOYEES

- 16.12 An employee involved in an incident occurring in the course of his employment with the Territory Government, including an accident involving a departmental vehicle, whereby civil or criminal, proceedings against him may arise or have arisen, shall immediately submit a detailed and comprehensive report concerning the incident to his Accountable Officer. The report should give details of any suggestion of which the employee is aware that any police or other legal action may be brought against him. The Accountable Officer shall review the case to ensure that the Territory Government's interests are protected, that all material evidence is obtained (and retained until no longer required) and, where necessary, that the advice of the Solicitor for the Northern Territory is sought without delay.
- 16.13 Instructions issued by an Accountable Officer to drivers of departmental vehicles should provide for an immediate report to the Accountable Officer on the institution of police or other legal action against the driver in respect of an incident arising out of the use of a departmental vehicle. On receipt of such a report the Accountable Officer, in addition to any action required under Directions 16/15 – 16/18 shall make a further review of the case and, where necessary, ensure that the advice of the Solicitor for the Northern Territory is sought. Where a departmental vehicle, operated by a department other than that owning the vehicle, is involved in an accident, copies of reports and all correspondence should be referred to the Accountable Officer of the department owning the vehicle to enable him to take any necessary recovery action as contemplated in Direction 16/14.
- 16.14 Where public property owned or held by the Northern Territory Government is damaged or destroyed by a person not in the Northern Territory Government's employ, the Accountable Officer shall seek compensation in full from that person for the loss incurred, in accordance with Section 7 of these Directions.
- The amount of such compensation is determined by the Accountable Officer where Direction 7.8 applies, and includes costs of repairing or replacing the property, and any other damages suffered by the Northern Territory Government.
- No action shall be taken against any Northern Territory Government employee in respect of property which was damaged by a non-employee, except in accordance with Direction 16.15.
- 16.15 (a) An employee driving a Northern Territory of Australia vehicle or boat which is damaged in an accident will not be liable to the Territory for the cost of repairs to the Territory vehicle or boat (or any consequential loss) so long as –

- (i) the circumstances are not such as would (if the vehicle were insured under a standard motor insurance policy) amount to an exception under the policy; or
 - (ii) the employee is not in breach of any law relating to the use of a motor vehicle; or
 - (iii) the employee is not in breach of any internal regulation or direction as to the use of a vehicle.
- (b) Where an employee is liable the Accountable Officer shall take appropriate recovery action.
- (c) For the purpose of this Direction, “employee” includes a spouse and a dependant of an employee and a person driving a Territory vehicle pursuant to a contract for the provision of services to the Territory by that person or his employer.

16.16 It is the responsibility of the department having control of the property giving rise to a claim or possible claim (acting through the Solicitor for the Northern Territory) to institute recovery action as early as practicable and to take reasonable steps to mitigate the Territory Government’s losses (e.g. by the lawful withholding of any moneys due to the employee by the Territory Government). All evidence necessary to prove the amounts owing to the Territory Government is to be retained until at least two years after the matter is finalised.

16.17 The Accountable Officer should determine, in the circumstances of each case, whether disciplinary action is to be taken under the terms of the Northern Territory Public Service Act against any employee for negligence.

16.18 In cases to which Direction 16/15 applies the department shall as soon as practicable inform the Northern Territory Treasury of the circumstances of the misuse of the departmental property, the nature of any injury or damage sustained by persons or the Territory Government and the departmental action taken.

D1619

DEFENCE OF TERRITORY GOVERNMENT EMPLOYEES OTHER THAN MEMBERS OF THE POLICE FORCE

16.19 An employee who desires legal assistance from the Territory Government in respect of civil or criminal proceedings in which he is or may be involved arising out of any incident occurring in the course of his employment with the Territory Government shall notify the appropriate Accountable Officer on becoming aware of the

proceedings and make application for his legal representation to be arranged at Territory Government expense.

16.20

Where an incident referred to in Direction 16/19 occurs, the Accountable Officer shall refer the matter to the Solicitor for the Northern Territory who shall consider whether the circumstances are such as would justify the legal representation of the employee being arranged at Territory Government expense, on the basis of the following guidelines:

- (a) The proceedings must arise directly from something done or alleged to be done by the employee in the course of his employment with the Territory Government.
- (b) The Solicitor for the Northern Territory must be told about the proceedings or proposed proceedings as early as is reasonably practicable, and must be supplied with all information requested by him to enable him to ascertain in advance the amount of money likely to be involve.
- (c) It is not intended that the Territory Government's obligation be open-ended or unlimited, for example, the engagement of counsel or incurring expenses for witnesses, will have to be approved in advance.
- (d) Each case will be assessed according to its merits and the Solicitor for the Northern Territory reserves the right in any case to decline to provide legal assistance or to pay any cost without advancing any reasons for its decision.
- (e) Before any payment of legal costs is made by the Territory Government, the employee concerned must satisfy the Solicitor for the Northern Territory that he has made reasonable efforts to recover his costs from his adversary, and any amount so recovered will be taken into proper account.
- (f) In a proper case costs will be payable in advance of the case.
- (g) The Solicitor for the Northern Territory will be the sole judge of what is a reasonable amount to be paid.
- (h) If the employee is entitled to legal aid, that fact (and the value of any legal aid actually received) shall be taken into account by the Solicitor for the Northern Territory in assessing the extent (if any) to which the Territory Government should meet the cost of the employee's legal representation.
- (i) In proper cases the arrangement applies to appeals.
- (j) No legal assistance will be provided without the approval of the Northern Territory Treasury.

- 16.21 Where it is decided to arrange for the defence of an employee at Territory Government expense no undertaking shall be given to pay any fine imposed or damages awarded against the employee.

INQUESTS

- 16.22 Where the death of a person, including a Territory Government employee, occurs in circumstances which could lead to a civil action against the Territory Government, the Accountable Officer will inform the Solicitor for the Northern Territory.

GENERAL AVERAGE

- 16.23 All claims against the Territory Government for general average in respect of goods shall be referred to the Solicitor for the Northern Territory for advice.

WORKMENS COMPENSATION ARRANGEMENTS

- 16.24 Accountable Officers will recognise the Territory Insurance Office as their agent for determining whether liability should be accepted in respect of claims for compensation made by employees.
- 16.25 In cases where proceedings are commenced to determine the liability for or quantum of compensation, the Solicitor for the Northern Territory is to be briefed to represent the employing government entity.
- 16.26 An Accountable Officer will appoint a Liaison Officer, or Liaison Officers, for the purpose of the compensation provision of the Work Health Act and the Compensation (Commonwealth Government Employees) Act.
- 16.27 Each Liaison Officer will be responsible for:-
- (a) the prompt transmission of claims for compensation under the Work Health Act, and related reports, to the Territory Insurance Office.
 - (b) to provision of supplementary information required by the Territory Insurance Office.
 - (c) to provision of any information required by the Solicitor for the Northern Territory in disputed claims.
 - (d) the arrangement of payment of compensation and expenses, or recognition of payments made, arising out of claims when liability is determined and advised by the Northern Territory Insurance Office.
 - (e) The reference of material to the delegate under the Compensation (Commonwealth Government Employees) Act in relevant cases.