

## TREASURER'S INSTRUCTION 20

### GUARANTEES AND INDEMNITIES

Re-issued 28 March 2012

Effective 20 February 2007

#### Scope

20.1 This instruction applies to all public authorities unless otherwise stated.

#### Objective

20.2 To ensure the Government's exposure to guarantees or indemnities given by public authorities is appropriately monitored and managed.

20.3 To require each public authority to maintain a register of guarantees and indemnities given by it.

#### Interpretation and Definitions

20.4 This instruction should be interpreted and applied in accordance with Treasurer's Instruction 1 *Interpretation and Application*.

20.5 Whilst administrative units are able to impose legal obligations on the Crown in right of the State of South Australia through the actions of its individual officers, an administrative unit has no legal personality. As such the Minister for the relevant administrative unit is the appropriate contractual party to any guarantee or indemnity to be documented.

20.6 For the purposes of this instruction:

20.6.1 "guarantee" includes a legally binding promise to assume responsibility for the debt of, or performance of obligations by, another person should that person default but excludes a guarantee that is required to be given by a public authority under an Act of Parliament. Instruments intended to be covered include those commonly known as guarantees, performance bonds or guarantees and letters of credit.

20.6.2 "indemnity" includes a legally binding promise to accept the risk of, or compensate for, loss or damage that another person may suffer but excludes an indemnity that is:

20.6.2.1 required to be given by a public authority under an Act of Parliament;

20.6.2.2 an ancillary obligation in a document, where the dominant purpose of that document is other than to give an indemnity; or

20.6.2.3 given to persons in the performance of their duties for the State of South Australia.

If a public authority is uncertain as to whether or not a particular indemnity is an ancillary obligation in a document it may consult the Department of Treasury and Finance which has authority to clarify the nature of that obligation for the purposes of this Instruction.

## Instruction

- 20.7 A public authority that is a Minister or an administrative unit must not give a guarantee or indemnity unless the Minister is expressed to be able to give that guarantee or indemnity under an Act of Parliament.
- 20.8 A Minister or administrative unit requiring a guarantee or indemnity in respect of its operations may request the Treasurer to give a guarantee or indemnity under the *Public Finance and Audit Act 1987* (or other relevant Act of Parliament for which the Treasurer is the responsible Minister).
- 20.9 When making a request of the Treasurer under clause 20.8, the Minister or administrative unit must provide the Treasurer with a request in writing setting out the following information:
- 20.9.1 the total dollar amount of the guarantee or indemnity;
  - 20.9.2 the probability of the guarantee or indemnity being invoked;
  - 20.9.3 the obligation to be guaranteed or indemnified;
  - 20.9.4 the policy objective/s to be achieved through the provision of the guarantee or indemnity;
  - 20.9.5 the recipient of the guarantee or indemnity or the person or organisation that will benefit from the guarantee or indemnity;
  - 20.9.6 alternatives to the provision of a guarantee or indemnity and the costs of implementing those alternatives;
  - 20.9.7 the risks to which the Government can be expected to be exposed as a consequence of providing a guarantee or indemnity; and
  - 20.9.8 where it is proposed that a guarantee or indemnity be given in respect of a project, an evaluation of the project, to enable an assessment to be made of the extent to which the expected costs of the project incorporate any guarantee or indemnity.
- 20.10 A guarantee or indemnity given to a public authority by the Treasurer pursuant to the *Public Finance and Audit Act* (or other relevant Act of Parliament for which the Treasurer is the responsible Minister):
- 20.10.1 may be subject to fees as determined by the Treasurer; and
  - 20.10.2 may be conditional, and otherwise on such terms as the Treasurer determines.
- 20.11 The Chief Executive of a public authority must ensure that appropriate risk management strategies, controls and procedures are established to regulate the giving and monitoring of guarantees and indemnities (via the *Public Finance and Audit Act* or other relevant Act of Parliament). This should include procedures for:

- 20.11.1 ensuring transparency in the evaluation and decision making process and its review;
  - 20.11.2 managing the ongoing risks associated with the giving of a guarantee or indemnity; and
  - 20.11.3 maintaining physical security of relevant instruments and associated documents.
- 20.12 The Chief Executive of a public authority must ensure that a register is maintained of guarantees and indemnities entered into by or on behalf of that public authority. That register must include:
- 20.12.1 the name of the person or organisation to which the guarantee, indemnity or letter of comfort is given;
  - 20.12.2 the name of the person or organisation providing the guarantee, indemnity or letter of comfort;
  - 20.12.3 the nature of the instrument under which the guarantee, indemnity or letter of comfort was given;
  - 20.12.4 the date from which the guarantee, indemnity or letter of comfort was given or became operable;
  - 20.12.5 the expiry date of the guarantee, indemnity or letter of comfort;
  - 20.12.6 where the amount can be measured reliably, the amount of the guarantee, indemnity or letter of comfort; and
  - 20.12.7 the circumstances under which that guarantee, indemnity or letter of comfort may be invoked.
- 20.13 Where a public authority is a parent entity according to accounting principles and practices applying by law or that are generally accepted and consistently applied in Australia its register of guarantees and indemnities is to include details of guarantees and indemnities given by its subsidiary entities.
- 20.14 A public authority must provide to the Treasurer any information that the Treasurer may request that relates to a public authority's compliance with this Instruction, including (without limitation) details as to guarantees and indemnities provided by a public authority.

For queries contact:  
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