



## *Express law* fast track information for clients

21 May 2010

### **Government releases new Liability Risk Assessment Guide for FMA Act Agencies**

The Department of Innovation, Industry, Science and Research (DIISR) has released the *Liability Risk Assessment Guide for FMA Act Agencies* (the Guide). The Guide is designed to help agencies to assess liability risks when conducting procurements, including before the approach to market, when assessing responses and during contract negotiations.

#### ***Aim of the Guide***

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The Guide consists of a risk assessment guide, case studies and a model liability clause. Among other things, the Guide is designed to:

- help agencies to set appropriate insurance requirements
- help agencies to assess the risk of any liability caps proposed by suppliers
- help suppliers to understand the management and allocation of liability risk within Commonwealth contracts.

#### ***Application of the Guide to FMA Act agencies***

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While the Guide was developed as part of the Government's commitment to making it easier for small business to do business with the Government, the Guide is not small business specific. On 4 May 2010, the Minister for Finance and Deregulation wrote to all portfolio ministers asking them to recommend that agencies within their portfolio use the Guide when undertaking procurement activities.

Due to the need to assess risk on a case-by-case basis, the Minister stated that the Guide should 'be used as a "best practice guide", with the model liability clause to be the starting point for less complex procurements, and only altered if a risk assessment deems it prudent to do so'.

The Guide and model clause are not intended to apply to information and communications technology (ICT) procurement, as there is other Commonwealth policy relating to the liability approach for procurements of [ICT](#).

The Guide can be found at <http://www.innovation.gov.au/lraguide>. There will soon be a link to the Guide from the Finance website ([www.finance.gov.au](http://www.finance.gov.au)) and [www.business.gov.au](http://www.business.gov.au) as well.

For those who would like more information about the Guide, AGS will be holding a Government Law Group seminar entitled 'Risky business: Assessing liability risk in Commonwealth procurement' on 3 June 2010 in Canberra. For details on the seminar, please see our [flyer](#).

AGS's Linda Richardson and Grant Follett assisted DIISR with the preparation of the Guide.

Agencies may also wish to review their template contracts in light of the Guide.

See also [AGS Legal Briefing 86, 'Indemnities in Commonwealth Contracting'](#) (12 January 2009).

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