

Defence Insurance Review

Chris Hilder
**Acting Director Commercial
Innovation and Practice**

Background

Defence and Australian Industry Group:

- working together to improve procurement processes

Joint Liability Working Group (2008-2009):

- standardised and benchmarked Defence's liability regime
- agreed methodology for conducting liability risk assessments

Joint Insurance Working Group (2009-):

- need for further guidance and analysis in relation to contractual insurance requirements
- reduce transaction costs (including cost of tendering)

Approved Contractor Insurance Program Initiative

Objective:

- improve competencies and reduce inefficiencies in formulating, negotiating and ensuring compliance with contractual insurance requirements

What is it?

- centralised review and approval (pre-qualification) of contractors' global/group insurance programs
- Approved Contractor status (subject to conditions)
- Approved Contractor insurance programs will be deemed compliant with contract insurance requirements (subject to express project-specific exceptions)

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Current Approach:

- individual procurement teams on a contract-by-contract basis responsible for reviewing contractor insurances for compliance with the contract insurance requirements and for ensuring ongoing compliance
- key problems:
 - lack of insurance expertise
 - confidentiality of contractor insurance programs
 - inconsistency
 - duplication

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Benefits:

- streamline management of contract insurance issues (reduce transactions costs to both Defence and Industry):
 - reduce tender data and contract data deliverable requirements
 - reduce contract negotiation and contract management effort
- continue to improve risk management within Defence, particularly in respect of insurable risks
- provide Defence with greater transparency to contractor insurance programs

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Benefits Continued:

- enhance the relationship between Defence and contractor global risk and insurance managers
- develop an internal centre of excellence (within Office of Special Counsel) on contractual insurance requirements

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Application:

- top dozen contractors with which Defence regularly contracts
- voluntary

Rationale:

- the review process has resource costs for both Defence and contractors, so diminishing returns in applying this Initiative below a certain scale

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Procurement Lifecycle:

- Develop Request Documentation:
 - Better Practice Guidance (TBD) and internal centre of excellence to provide guidance on contract insurance to procurement teams
- Tender Evaluation:
 - Approved Contractors' insurance program - no TDR response
 - Project-specific insurances - TDR response to be submitted
- Contract Negotiations:
 - Procurement team request ACIP Compliance Assurance Report
- Contract Management:
 - Procurement team relies on ACIP Compliance Assurance Report

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Parameters – what does not change for Defence procurement teams:

- procurement team's responsibility to properly manage risks by identifying appropriate contractual insurance requirements based on a liability risk assessment (LRA) and value for money
- procurement team's responsibility to manage any project specific insurances for risks not covered by the contractor's approved insurance program

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Parameters – what does not change for Contractors:

- contractor's responsibility to properly manage risks and their insurance program, and to discuss appropriate contractual insurance requirements with the procurement team (performing their own LRA if required)

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Parameters – what the initiative does not do:

- not an exercise in using information obtained from the reviews to obtain more insurance cover than is required
 - it is the LRA that drives contract insurance requirements (subject to value for money)
- not an exercise in benchmarking one contractor's insurance program against another
- not an exercise in Defence advising contractor's about their own insurance programs

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Overview of Review Process:

- inspection of contractor's insurance policies
- interview of contractor's key risk and insurance personnel
- typically 2 days at contractor's head office

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Outcomes of Review Process:

- sufficient insight into contractor's insurance (including reinsurance and captive) arrangements to satisfy due diligence requirements and to understand contractor's insurance arrangements
- confidence in the adequacy of contractor's insurance arrangements
- confidential report capturing the above (will provide to contractor for comment)
- if OK, granting of Approved Contractor status and listing on a register
- status subject to conditions and further periodic reviews

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Implementation Issues:

- we understand the commercial sensitivity of the information
- we will keep the confidential report closely held within Defence, it will not be made available to procurement teams (ie will be kept at 'arms length' from procurement teams and their advisers)
- the above does create some communication protocols, eg providing assurance reports only against what has been tendered or agreed in contract negotiations
- we will assist procurement teams with insurance issues based on general insurance expertise and knowledge of our advisers

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Current Status:

- ACIP Initiative has been trialled/piloted with six contractors (members of AiG)
- review reports in various stages of development
- working out internal implementation procedures

Next Steps

- Finalise internal procedures and set up internal implementation section within Office of Special Counsel
- Finalise review reports
- Grant Approved Contractor status and set up register
- Develop improved insurance clauses for ASDEFCON templates
- Develop and release Insurance Better Practice Guide
- Tackle other issues identified by the Insurance Working Group

QUESTIONS?