

Policy

Policy Directive: compliance is mandatory

Guarantees and Indemnities Policy Directive

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Summary The purpose of the Guarantees and Indemnities Policy Directive is to ensure that SA Health's exposure to guarantees or indemnities given is appropriately managed and meets the requirements of Treasurer's Instruction 20 *Guarantees and Indemnities*

Keywords Guarantees, Indemnities, Treasurer, Minister, Contract, Procurement, Treasurer's Instructions, Policy Directive, Finance

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Does this policy amend or update an existing policy? **N**
Does this policy replace an existing policy? **N**

Applies to All SA Health Portfolio

Staff impact All Staff

EPAS compatible N/A

Registered with Divisional Policy Yes

Contact Officer

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Guarantees and Indemnities Policy Directive

Version V1.0
Portfolio Executive Approved



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Contributors	Director, Financial Accounting, Finance and Corporate Services Director, Hospital Revenue Services, Finance and Corporate Services Director, Financial Business Advisory Services (FBAS), Finance and Corporate Services Regional Finance Director, FBAS Senior Manager, Policy and Compliance, Procurement and Supply Chain Management
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Guarantees and Indemnities Policy Directive

1. Objective

The purpose of this policy directive is to ensure that SA Health's exposure to guarantees or indemnities given is appropriately managed and meets the requirements of Treasurer's Instruction 20 (TI 20) *Guarantees and Indemnities*.

This policy directive should be read in conjunction with the *Procurement & Contract Management System Policy*.

2. Scope

This policy directive is applicable to all SA Health staff who may be required to give a guarantee or indemnity.

Guarantees or indemnities given to SA Health by third parties (i.e. parties outside of SA Health) are out of the scope of TI 20, and this policy directive, however where they are provided, sufficient due diligence must be undertaken to ensure the guarantees/indemnities can be fulfilled.

3. Principles

The following principles must be followed:

- > Compliance with TI 20 *Guarantees and Indemnities* and the *Public Finance and Audit Act 1987* (or other relevant Act of Parliament for which the Treasurer is the responsible Minister) must be undertaken when providing a guarantee or indemnity
- > Only the Treasurer or the Minister for Health, the Minister for Ageing, and Minister for Mental Health and Substance Abuse (the Minister) may provide guarantees or indemnities to a third party within SA Health.
- > A guarantee or indemnity given by the Treasurer for a public authority may be subject to fees and/or conditions.
- > The Chief Executive (CE) of SA Health or relevant Chief Executive Officer (CEO) of a public authority must ensure that a register is maintained of guarantees and indemnities which have been entered into by, or on behalf of, that public authority.
- > A public authority must provide any information in relation to a guarantee or indemnity to the Treasurer, at the request of the Treasurer.

4. Detail

When pursuing the execution of a contract, a guarantee or indemnity may be required. The CE, or relevant CEO, within SA Health will be required to obtain authorisation for any guarantees or indemnities from the Minister or the Treasurer, via the Minister, in accordance with TI 20.

In instances where the Minister requests from the Treasurer a guarantee or indemnity, that request must set out:

- > the total dollar amount of the guarantee or indemnity;
- > the probability of the guarantee or indemnity being invoked;
- > the obligation to be guaranteed or indemnified;
- > the policy objective/s to be achieved through the provision of the guarantee or indemnity;
- > the recipient of the guarantee or indemnity or the person or organisation that will benefit from the guarantee or indemnity;
- > alternatives to the provision of a guarantee or indemnity and the costs of implementing those alternatives;
- > the risks to which the Government can be expected to be exposed as a consequence of providing a guarantee or indemnity; and
- > 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.

A guarantee or indemnity given by the Treasurer may:

- > be subject to fees as determined by the Treasurer; and
- > be conditional, and otherwise on such terms as the Treasurer determines.

All SA Health staff must ensure that all executed contractual agreements are entered on the Procurement & Contract Management System (PCMS) in accordance with the *Procurement & Contract Management System Policy Directive*. After obtaining a guarantee or indemnity from the Minister or the Treasurer, the document must be included in the contract file details held in the PCMS.

Where there is uncertainty of whether an indemnity has an ancillary obligation, clarification can be sought from the Department of Treasury and Finance.

4.1. Delegated Authority

Approval for any guarantees or indemnities can only be given by either the Minister, or the Treasurer, on behalf of the given SA Health public authority. This cannot be sub-delegated by the Minister.

4.2. Guarantee and Indemnity Register

The CE/CEO, of a public authority must ensure that a register is maintained of guarantees, indemnities or letters of comfort given, which are entered into, or on behalf of, that public authority. That register must include:

- > the name of the person, or organisation, to which the guarantee, indemnity or letter of comfort is given;
- > the name of the person, or organisation, providing the guarantee, indemnity or letter of comfort;
- > the nature and purpose of the instrument;
- > the date from which it is operable;
- > the expiry date;
- > where the amount can be measured reliably, the amount; and
- > the circumstances under which it may be invoked.

4.3. Compliance

SA Health must provide to the Treasurer any information that the Treasurer requests that relates to compliance with TI 20, including (without limitation) details about the guarantees and indemnities provided by SA Health's public authorities.

Additionally, the CE of SA Health and the CEO of the relevant public authority must ensure that appropriate risk management strategies, controls and procedures are established to regulate the giving and monitoring of guarantees and indemnities.

5. Roles and Responsibilities

5.1. All staff

All staff involved with providing a guarantee or indemnity must:

- > assist the Minister in providing the Treasurer with the appropriate documentation in support of any proposed guarantee or indemnity; and
- > ensure any guarantee or indemnity provided to third parties is only given by the Minister or the Treasurer.

5.2. Chief Executive/Chief Executive Officers

The CE/CEO is responsible for ensuring:

- > a register is maintained of all guarantees & indemnities provided;
- > an annual copy of the register is provided to the PSCM, upon their request;
- > that appropriate risk management strategies, controls and procedures are established.

5.3. Financial Accounting

Financial Accounting shall disclose:

- > an entity's guarantees and indemnities under the Contingent Liabilities and Assets note to the Financial Statements; in accordance with AASB 137 *Provisions, Contingent Liabilities and Contingent Assets*.

6. Reporting

N/A

7. EPAS

N/A

8. Exemptions

N/A

9. National Safety and Quality Health Service Standards

N/A

10. Risk

Failure to comply with this policy directive will result in non-compliance with TI 20 *Guarantees and Indemnities* and the *Public Finance and Audit Act 1987*, which may result in adverse commentary from audit.

11. Evaluation

Compliance with this policy directive will be seen when:

- > SA Health always obtains approval for a guarantee or indemnity to a third party from the Treasurer or Minister;
- > the CE/CEO of a public authority have established and maintain a register of all guarantees and indemnities for that public authority; and
- > all Contingent Liabilities and Assets are noted in the Annual Financial Statements in accordance with AASB137 *Provisions, Contingent Liabilities and Contingent Assets*.

12. Definitions

In the context of this policy directive:

- > **ancillary obligation** is a secondary commitment to the main obligation in a contract
- > **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.
- > **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:
 - > required to be given by a public authority under an Act of Parliament;
 - > an ancillary obligation in a document, where the dominant purpose of that document is other than to give an indemnity; or
 - > given to persons in the performance of their duties for the State of South Australia.
- > **Letter of Comfort** can be provided to a third party to acknowledge an action or transaction.
- > **public authority** means a government department, or a statutory authority.

Currently there are seven public authorities within SA Health;

- > the Department for Health and Ageing (the department), Central Adelaide Local Health Network (CALHN), Southern Adelaide Local Health Network (SALHN), Northern Adelaide Local Health Network (NALHN), Country Health SA Local Health Network (CHSALHN), Women's and Children's Health Network (WCHN) and SA Ambulance Service (SAAS).

- > **SA Health** is the corporate identity used for the Department for Health and Ageing, the Local Health Networks and SA Ambulance Service

13. Associated Policy Directives / Policy Guidelines

- > [Procurement and Contract Management System Policy](#)

14. References, Resources and Related Documents

- > [Public Finance and Audit Act 1987](#)
- > [Treasurer's Instruction 2 Financial Management](#)
- > [Treasurer's Instruction 20 Guarantees and Indemnities](#)