

Government Indemnity of Touring Exhibitions

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Preamble

In 1986 Cabinet formally established the Government indemnity scheme for touring exhibitions. The scheme was revised in 1999 to enable concurrent exhibitions and exhibitions of high value to be indemnified more readily. Indemnity is granted on the recommendation of the Minister for Arts, Culture and Heritage by the Minister of Finance under the provisions of the Public Finance Act 1989.

The fundamental principle of the scheme is accessibility: the Government is interested in facilitating the public's access to significant exhibitions. It does this through assuming a high proportion of the risk of presenting exhibitions and thereby minimising the amount of commercial insurance that an applicant needs to purchase.

Part A: Background and Conditions

1. Qualifying Exhibitions

In order to be eligible for the indemnity scheme the touring exhibition is to have a minimum value of NZ\$ 2.5 million.

As the principle of the scheme is accessibility to the New Zealand public, the Government prefers indemnified exhibitions to be shown at two or more venues in New Zealand. However, consideration will be given to indemnifying exhibitions that will be shown at only one venue.

The exhibition is to be shown in New Zealand at a cultural institution and is to comprise cultural property from overseas and/or New Zealand collections. A single artwork can be considered as an exhibition.

The application for indemnity is to include a statement of the significance of the exhibition to New Zealand audiences. This may well emphasise the art historical significance of the exhibition and applicants may also wish to consider the availability of this type of material, or complementary material, in New Zealand collections.

2. Administration Charge

In line with Cabinet's decision applicants may be charged for the administrative costs associated with the application. It is in the applicants' best interests to supply as much information as possible at the outset, as this invariably reduces administrative costs.

3. Consignment Value - Limit of Indemnity

The exhibition is to travel in consignments that have a value not exceeding \$50 million. However, if the value of an individual item exceeds \$50 million this will need to be approved by the Minister of Finance. Any other exceptions to the consignment limit are to be negotiated with the Ministry and will require the approval of the Minister of Finance.

The Government indemnifies the full value of the exhibition, but for its administrative purposes the Government also assesses the level of risk associated with each exhibition. The level of risk is not the same as the total value of the exhibition - the risk is the maximum *probable* call on the indemnity. Government assesses the risk as the exhibition's single highest value consignment (or, in cases where transit does not need to be indemnified, the value of the single item that has the highest value). The total amount of risk that will be indemnified by the Government at any one time is \$150 million.

As Government does not assess its risk as the total exhibition value there is no upper limit on the total value that can be indemnified, but there is a limit of \$150 million of risk that can be indemnified at any one time.

For example, an exhibition may have a total value of \$160 million and may travel in four consignments valued at \$50, \$45, \$35 and \$30 million. The Government assesses the risk of loss with this exhibition as \$50 million, even though it indemnifies it to its full value. Another concurrent exhibition may have a total value of \$225 million and travel in five consignments of \$45 million each. The Government assesses the risk of loss with this second exhibition as \$45 million, again while fully indemnifying it. The combined risk of the two exhibitions is thus \$95 million, which is still below the limit of risk the Government will carry of \$150 million. In summary, concurrent exhibitions can be fully indemnified so long as the total of the risk is less than \$150 million.

4. Commercial Insurance

First risk

The applicant is required to take out first risk insurance with a commercial insurance company for the duration of the indemnity. The amount of insurance required is dependent on the total value of the exhibition as follows:

Exhibition Value NZ \$	First Risk Insurance NZ \$
2,500,000 - 24,999,999	50,000
25,000,000 - 49,999,999	90,000
50,000,000 - 74,999,999	130,000
75,000,000 - 99,999,999	170,000
100,000,000 - 124,999,999	210,000
125,000,000- 149,999,999	250,000
150,000,000- 174,999,999	290,000
175,000,000 -199,999,999	330,000
200,000,000 - 224,999,999	370,000
225,000,000 - 249,999,999	410,000
250,000,000 - 274,999,999	450,000
275,000,000 +	500,000

First risk insurance shall cover the exhibition to the determined level in respect of any one event and shall be unlimited in the aggregate. That is, the applicant shall be insured against multiple accidents, each up to the determined level. This cover shall be against the risk of reparable damage, irreparable damage, loss, or destruction up to the specified amount.

Top-up on Consignments

The applicant may be required to obtain commercial top-up insurance for transit periods should the value of a consignment exceed \$50 million (see section 3).

5. Budget and Report

The applicant is required to submit a draft exhibition budget showing income streams and expenditure. The applicant will be required to report against this budget (or a revised one should an updated budget be submitted) at the close of the exhibition as part of its exhibition report.

6. Security

The applicant shall seek from the lender a written assessment of any factors that the lender believes are relevant to the security of the items to be lent. Copies of this shall be supplied to the Ministry and to the New Zealand Police.

The applicant shall liaise directly with local branch Police with regard to the security and travel arrangements for the exhibition.

Each consignment shall be accompanied by an experienced courier. The Police may also require that consignments be accompanied by a Police or security escort for transit by road within New Zealand. If any consignment is valued at more than \$15 million the applicant shall also liaise directly with the crime prevention unit of Police National Headquarters regarding the provision of a security escort.

The applicant shall demonstrate to the Ministry that the Police have approved the proposed arrangements for transit and exhibition.

7. Confidentiality

At all times from the outset of negotiations between the applicant and the lender(s), the values of the individual items and the values, or approximate values, of all or any group of the items shall not be made public, but are to be confidential to the lenders, the applicant and the Government. All transport schedules are to remain confidential with no publicity given to the transit, arrival or departure of any of the items.

8. Transit - Schedules and Values

The transport schedules and any variation to them are to be supplied to the Ministry along with the value of each consignment in both the lender's currency and NZ dollars with the exchange rate stated.

9. Environmental Conditions

The loan agreement/exhibition contract between the lender and the applicant may stipulate special environmental conditions, which may be referred to in the indemnity Deed. In the unlikely event that the Ministry is not satisfied that these stipulations are adequate to protect the items from deterioration the Ministry may require that further conditions are met, in which case these will be stipulated in the Deed.

10. Credibility of Valuations

The applicant shall confirm to the Ministry that the valuations are reasonable with regard to recent sales catalogues or other standard references. The applicant shall arrange for an independent confirmation of the valuations if it is unsure of a valuation. This confirmation ensures that the items are indemnified for their true market value.

The valuation of each item shall be in the currency specified by the lender; the consignment values and the total value shall be both in New Zealand dollars, with the exchange rate stated, and in the currency specified by the lender. Valuations for items from overseas collections shall be GST exclusive. Valuations for items from New Zealand collections shall be GST inclusive.

11. Publicity

As the New Zealand Government acts as a major sponsor by providing indemnification, this support should be fully acknowledged in all publicity. Unless otherwise agreed, the credit line should read:

Indemnified by the New Zealand Government

Accompanying logos for the Ministry and for the New Zealand Government are available from the Ministry.

12. Condition Reporting

Indemnity generally covers the items 'nail to nail', that is, for all transit and exhibition periods. Progressive condition reporting is fundamental to the operation of the indemnity.

Unless negotiated otherwise, the period of indemnity for each item shall begin on completion of the first condition report by a senior conservator acting for the lender. This shall be completed immediately prior to packaging. Throughout the exhibition tour, condition reports shall be completed at each stage on arrival at each venue and prior to dispatch.

Similarly, unless negotiated otherwise, the period of indemnity shall end when the item has been unpacked and examined by a senior conservator nominated by the lender on its return, or on arrival at a third country for further exhibition. That conservator shall provide immediate written notification of the item's condition to the applicant, which shall then immediately inform the Ministry.

13. Incidents: Damage or Loss

The applicant must report *any* instance of loss, damage or deterioration occurring to the indemnified items during the period of indemnity to the relevant lender(s) and the Ministry within 24 hours, regardless of whether the scale is sufficient to result in a claim on the Government indemnity.

No conservation work is to be undertaken without the consent of the lender unless the case is one of extreme emergency. In this case the conservation work is to be no more than is necessary to halt the damage or deterioration.

14. Indemnity

Where the applicant's liability to the lender(s) exceeds the amount of first risk insurance cover, under the terms of the Deed the Government covers the liability above the first-risk coverage. If the applicant intends to claim on the indemnity, the Government must be advised of this as soon as the need to call on the indemnity becomes apparent.

Payments will be made by the Government to the applicant, which is then required to pay the lender promptly. Should the item be lost or destroyed the Government will pay to the value of that item as stipulated in the lender's currency in the Deed: the amount paid will reflect the exchange rate at the time of payment, rather than at the time the indemnity is granted.

Should reparable damage that exceeds the first risk insurance coverage occur the Government will cover the cost of conservation under the indemnity. If the damage is irreparable, or if conservation will result in a reduced value for the item, the reduced value will be settled by negotiation between the applicant, the lender and the Government. The procedure for resolving disagreements between parties on these issues is set out in the model deed of indemnity. It involves arbitration subject to the provisions of the Arbitration Act 1996 within New Zealand's jurisdiction.

An item that is lost or stolen and subsequently recovered shall be returned to the lender by the applicant at the applicant's expense. The lender shall repay to the applicant any compensation it has received under the indemnity, less any amount to which it may be entitled due to damage. The applicant shall repay the Government in turn for any payments made pursuant to its indemnity.

If the Government makes a payment under the indemnity it is then entitled to act in place of the applicant or the lender in any legal claim against a third party that contributed to the damage or loss.

15. Breaches of Conditions

Any breaches of the terms of the Deed will be investigated by the Ministry and will be brought to the attention of the Minister for Arts, Culture and Heritage and the Minister of Finance. If the applicant is in breach of its obligations under the Deed and such a breach causes or contributes to an instance of damage, loss or destruction, the applicant shall reimburse the Government any sum paid by the Government under the indemnity. Any dispute between the Government and the applicant shall be referred to arbitration.

16. Notification in Parliament

Following the signing of the Deed, the government's indemnity is formally tabled in Parliament, although the dollar amount is not stipulated. However, the fact that there is an indemnification does appear as a contingent liability on the Crown's financial statements.

17. Competing Applications

Should two or more applications be submitted that, when the values of the risks are combined, exceed the \$150 million limit, the Ministry will endeavour to arrive at an outcome which is satisfactory to all parties. For this reason early notification of proposed indemnities is appreciated.

18. Extension of Period of Indemnity

An applicant may request an extension for a period of indemnity if opportunities for further exhibition arise, whether at a scheduled venue or at further venues. However, the viability of an extension depends first of all on the availability of the indemnity limit: in other words, the balance of the \$150 million of available risk must not have been 'used up' by other touring exhibitions during the proposed extension period.

An extension shall be processed in a similar way to the original application: the Minister for Arts, Culture and Heritage, should s/he approve the extension, makes a recommendation to the Minister of Finance, with whom the decision of whether to grant the extension rests. An amendment to the Deed must be negotiated and drawn up, signed by the Minister of Finance and the applicant's representative and tabled in Parliament. As negotiating an extension is an elaborate process and incurs further administrative costs it is preferable to have the touring schedule finalised at the outset.

19. Applicant's Institutional Details

If an applicant has not previously applied for indemnity, or if the Ministry requires further information, the applicant may be required to supply institutional details including the organisational structure, financial situation, environmental conditions and security measures. The applicant may also be asked to supply details of any insurance claims relating to exhibition items that have been made in the last three years.

20. Provision of Information

The Ministry may request additional information regarding the exhibition from the applicant at any stage.

Part B: The Application Process

1. Preliminary Negotiations

Applicants are expected to notify the Ministry for Culture and Heritage up to two years in advance of likely applications for government indemnity. The Ministry prefers as much advance notification as possible as there may be competing claims for indemnity in any given period.

From the outset of its negotiations with the lender it is in the applicant's interests to ensure that the lender is familiar with the model indemnity deed. The Deed is the formal document between the Government and the applicant that sets out the conditions of the indemnity.

2. Loan Agreement Negotiations

When negotiating the loan agreement(s) with lender(s) the applicant ("the Museum") must ensure that each agreement incorporates the following clauses:

1. The Lender shall give written notice to the Museum and to the Chief Executive of the New Zealand Ministry for Culture and Heritage of the Lender's intention to make any claim for compensation in respect of the damage, loss or destruction of any item within one calendar month of the damage, loss, or destruction being discovered or ascertained.
2. The Lender shall lodge such claim within three calendar months of the damage, loss or destruction being discovered or ascertained.
3. The Museum shall not be liable with respect to any loss or destruction caused by the Lender of the item in question.
4. If any of the items is lost or stolen and is subsequently recovered that item shall be returned to the relevant Lender by the Museum at its sole expense. The Lender shall thereupon refund to the Museum any compensation that it has been paid less any amount to which the Lender may be entitled in respect of damage to the items as agreed between the Lender and the Museum.
5. If the Crown in right of New Zealand is required to indemnify the Lender in respect of any claiming arising out of the loan agreement, then the Crown shall have the right to be subrogated for the Lender in respect of any claim against a third party.
6. Any dispute between the Lender and the Museum in respect of subclause (e) shall be referred to arbitration under the New Zealand Arbitration Act 1996 or any Act passed in amendment or substitution for it.

If there is any difficulty in incorporating these clauses into the loan agreement(s) the applicant must notify the Ministry at an early stage.

The applicant may wish to seek legal advice to ensure that it does not unwittingly enter into any risk through signing a loan agreement that will not be covered by indemnity.

3. The Application

At least six months prior to the commencement of the exhibition the applicant sends a formal application to the Ministry. The information which must be included at this stage includes:

- title of exhibition
- list of items in the exhibition (title or descriptive title, media and size) with individual values and total value in home currency, and total value in NZ dollars with the exchange rate stated
- probable value of consignments in home currency and in NZ dollars with the exchange rate stated
- advice of any single item which is valued at over NZ\$50 million
- period for which indemnity is sought (i.e. clarification of the condition reports at which indemnity commences and ceases)
- schedule of New Zealand venues with approximate dates
- exhibition budget
- statement of the significance of the exhibition

See [Part A](#) for clarification of items above.

4. Granting Approval

The Ministry prepares a report for the Minister for Arts, Culture and Heritage regarding the application. The Minister, if s/he endorses the application, then makes a recommendation to the Minister of Finance for approval, subject to the negotiation of the Deed. The Minister of Finance receives advice from his/her officials at the Treasury, who may seek further information, and determines whether to grant the indemnity, subject to the negotiation of the Deed. This process can take some weeks.

5. Negotiating the Deed

The model deed is the basis of the Deed of indemnity. The Deed can be prepared by the applicant or the Ministry. The details of each deed will be particular to the exhibition in question. The applicant and the Ministry may need to negotiate aspects of the Deed. Examples of matters that may require negotiation include:

- the period of the indemnity relative to the coverage that other countries may be providing for an international touring exhibition
- the value of the consignments
- the dispute resolution procedures with the lender(s)
- the verification of valuations

The applicant must also confirm that the loan agreement(s) include the six clauses referred to above in section 2(a) – (f) under 'Loan Agreement Negotiations'.

The negotiation of the details can be a lengthy process. The Ministry recommends to applicants that they should have as much information finalised at the time of application as possible.

6. Executing the Deed

Following the negotiations, the following documents shall be provided to the Ministry at least four weeks before the outset of the indemnity period:

- loan agreement(s) for indemnified items
- confirmation of valuations
- evidence of first risk insurance

- details of transport schedules and consignment values in the lender's currency and NZ dollars with the exchange rate stated
- lender's assessment of any factors relevant to security
- evidence that the New Zealand Police (local branch or national headquarters depending on consignment values) has approved the security and travel arrangements
- confirmation of Government acknowledgement in proposed publicity

See [Part A](#) for clarification of items above.

Two copies of the Deed, which set out the conditions under which indemnity is granted, are drafted and signed by the Minister of Finance and the applicant.

7. Documents Required

The applicant will be in breach of its obligations under the terms of the Deed and so not be covered by Government indemnity, even if the Deed has been signed, unless all of these documents are supplied:

- loan agreement(s) for indemnified items
- verification of valuations
- evidence of first risk insurance
- details of transport schedules for the exhibition and consignment values
- evidence that the New Zealand Police have approved the security and travel arrangements

8. The Applicant's Ongoing Obligations

The applicant is required to advise the Ministry of the progress of the exhibition at the time of arrival and throughout its tour. The applicant must notify the Ministry in writing on the return of the items to the lender at the conclusion of the indemnification period.

The applicant must immediately report to the Ministry any instance of loss, damage or deterioration as detailed in Part A of these guidelines.

The applicant is required to submit a report within two months of the end of the indemnification period. This report must cover the following areas:

- attendance numbers per venue
- demographic information relating to attendance - the type of detail that is supplied will depend on the circumstances of the exhibition
- final exhibition budget

Copies of media clippings, posters, flyers, catalogues or other promotional material not previously supplied should also be forwarded to the Ministry.

Further information

For further information regarding the scheme please contact:

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