



Australian Government
Department of Defence

ASDEFCON – INSURANCE CASE STUDIES

CASE STUDY #3

GFF LICENCE

NOTES TO READER

This case study has been prepared to assist drafters in the use of the ASDEFCON insurance clauses. This case study is to be used by drafters in conjunction with all other applicable guidance, policies and procedures for procurements including the ASDEFCON Insurance Handbook.

This case study is intended to provide guidance to drafters in respect of what insurances may be required from a contractor. The content of this document is a case study only and is not intended to be prescriptive. Certain contracts, even those with similar facts to that of the fictional contract below may warrant different insurance treatment. Appropriate advice should be sought in relation to any contract involving significant risks to be insured.

If drafters have any questions or comments regarding this case study or the use of the ASDEFCON insurance clauses, please contact the ACIP Management Team at ACIP.ManagementTeam@defence.gov.au.

FICTIONAL CONTRACT

The contractor has been engaged to provide certain non-professional services for Defence. As part of that engagement, the contractor is being granted a licence to occupy GFF. The GFF is a large office building facility on Defence property in Australia. The licence allows the contractor to occupy one floor of the building for the purposes of carrying out the contract. The licence period is for 6 months.

WHAT INSURANCES SHOULD BE REQUIRED?

Based on the fictional facts and circumstances outlined above, the following insurances will be required:

- (a) **Workers' compensation insurance** should be required. As the contract is being performed wholly in Australia, drafters do not need to select the alternative workers compensation clause that is only to be used where workers engaged by the contractor will be performing work outside of Australia.
- (b) **Public liability insurance** should be required. As discussed in paragraphs 15 to 29 of Part C of the ASDEFCON Insurance Handbook, public liability insurance provides cover to the insured for its liability for:
 - (i) loss of, damage to, or loss of use of tangible property; and
 - (ii) bodily injury, disease, illness or death of any person (other than an employee of the insured),

suffered by third parties (which would include the Commonwealth) as a result of the operations or activities of the insured.

The public liability insurance must cover the contractor's activities on or around the licensed areas and common areas. The ASDEFCON insurance clauses contemplate this requirement.

The public liability policy should have a limit sufficient to cover the maximum probable liability of the contractor to the Commonwealth and others (i.e. the public) arising out of the contractor's occupation of the GFF.

The ASDEFCON insurance clause requires drafters to specify a sublimit for cover for the contractor's liability for loss of or damage to Commonwealth property (including GFF) in the care, custody or control of the contractor (unless and to the extent that property is insured against the risks of loss and damage under the property policy or retained by the Commonwealth (see the introductory paragraphs to the ASDEFCON insurance clause)). This is because cover for this particular risk is usually subject to a sublimit. As noted at paragraph 2 of Part C of the ASDEFCON Insurance Handbook, the introductory paragraphs to the ASDEFCON insurance clause provides that the contractor does not need to double insure any particular risk so it will be satisfactory if this risk is insured under the property policy.

- (c) **Property insurance** should be required. As discussed in paragraphs 39 to 46 of Part C of the ASDEFCON Insurance Handbook, property insurance covers the loss of or damage to tangible property owned by the insured and property for which the insured is responsible to insure.

In this fictional scenario, the contractor should not be required to effect property insurance over the entirety of the building, only the licensed fittings and the contractor's property on the site. As discussed at paragraph 45 of Part C of the ASDEFCON Insurance Handbook, property of the Commonwealth (including Defence) is generally insured by Comcover. Rarely will it be appropriate to require a contractor to insure an entire building owned by Defence. Even where the contractor occupies the entirety of the building, the contractor will usually only be liable for loss or damage it causes and the contractor's liability risk may be adequately covered under the public and products liability insurance policy.

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