

Treasurer's Instruction No	1403
Title	Claims Management
Effective date	7 April 2016
Objective and Background	Provides instruction and guidance for agencies on the management of claims made against the Tasmanian Risk Management Fund for loss of or damage to property, personal injury or a potential liability (but excluding workers compensation).
Version Number	2

Black letter (or bold) items within these Instructions are mandatory and other plain font items are instructional or for the purpose of providing guidance only.

- (1) **This Instruction is to be read in conjunction with Treasurer's Instruction 1118 Procurement of Legal Services: goods and services.**

BACKGROUND

The Tasmanian Risk Management Fund is the Tasmanian Government's self-insurance fund and was established on 1 January 1999 to provide a whole-of-government approach to funding and managing specific identified insurable liabilities of inner-Budget agencies, including personal injury, legal liability, property and travel.

The Department of Treasury and Finance is responsible for the management of the Fund.

All inner-Budget agencies are required to participate in the Fund and, subject to their date of joining, are covered for identified risks to which they are exposed or wish to accept responsibility and for which the Fund has agreed to cover. Further information on the Tasmanian Risk Management Fund can be located at www.treasury.tas.gov.au/trmf

The services of a Fund Administration Agent are retained on a contract basis for claims administration, provision of advice in relation to claims management and for the placement of insurance as required.

(2) Agencies:

- (a) **must, at the time of an incident giving rise to a claim:**
- (i) **take immediate action to minimise the extent of personal injury and/or property damage;**
 - (ii) **notify an appropriate agency contact in accordance with established agency protocols;**
 - (iii) **record details of the incident, including witnesses' names and contact details; and**
 - (iv) **contact the police (if a crime has been committed); and**

- (b) must not:**
- (i) admit liability, either verbally or in writing; or**
 - (ii) agree to pay or settle any third party costs.**

Action by an employee to minimise the extent of personal injury and/or property damage incurred following an incident should only be taken if it does not place that person at risk.

Agencies may have additional internal incident reporting requirements which should be followed in accordance with established agency protocols.

(3) Agencies must:

- (a) instruct the Fund Administration Agent, in writing and, where appropriate and in accordance with clause (6) herein, the Office of the Solicitor-General, regarding the management of all claims.**

On receipt of instruction from an agency, the FAA will provide claims management services, including instructing assessors/investigators where necessary, providing ongoing claims management (not legal) advice and assistance to the agency, forwarding agency instructions to the Office of the Solicitor-General where applicable, and liaising between the Office of the Solicitor-General and the agency. It is important that all claims are registered by the FAA to ensure that the Crown's contingent liability is not underestimated.

The Office of the Solicitor-General is exclusively responsible for providing legal advice on claims. Upon initial receipt of a claim, the FAA will allocate a unique claim number to the claim and register it on its claims administration database. This number should be referenced in all contacts with the FAA and the Office of the Solicitor-General.

Agencies are ultimately responsible for the management of claims and can choose to accept or reject the advice of the FAA.

- (b) sign and forward to the FAA, as soon as possible after becoming aware of all incidents, a claim/incident report form for incidents which:**
- (i) are likely to result in a claim; or**
 - (ii) involve personal injury and/or property damage.**

Claim/incident report forms for various risk exposures are available on the Tasmanian Risk Management Fund website at www.treasury.tas.gov.au/trmf.

Completed report forms should be sent to the FAA within 24 hours of the agency becoming aware of an incident, together with any relevant supporting documentation.

- (4) **If a writ or other legal demand is received by an agency, it must be forwarded to the Office of the Solicitor-General, with a copy sent to the FAA, as soon as possible to allow the Office of the Solicitor-General to provide advice to an agency on the Crown's liability. The Office of the Solicitor-General and the FAA must also be advised of details of any impending inquests or official enquiries.**

It is important that the Office of the Solicitor-General is provided with any legal demands received by an agency as soon as possible to ensure there is adequate time in which to provide appropriate advice to the agency and to lodge a defence. Agencies should contact the FAA for a claim number to accompany the referral to the Office of the Solicitor-General.

Any other communication received from a third party should be forwarded to the FAA as soon as possible.

- (5) **Where a writ is forwarded directly to the Office of the Solicitor-General, the Office of the Solicitor-General must notify the appropriate agency contact of the details of the writ in writing, with a copy sent to the FAA.**
- (6) **The Office of the Solicitor-General must be involved in all negotiations, settlements, or court appearances regarding large and/or complex claims and any claims concerning personal injury.**

For the purposes of this Instruction, large and/or complex claims include all claims EXCEPT FOR claims that meet ALL the following criteria:

- (a) the amount claimed is less than \$10 000 (including legal costs) arising from the one event or connected series of events; and
- (b) the State's legal liability is clear; and
- (c) there is unlikely to be any suggestion in future that settlement constitutes a precedent for other claims.

Also for the purposes of this Instruction, claims concerning personal injury do not include claims made by approved agency volunteers in respect of which the Tasmanian Risk Management Fund has afforded cover, where the amount of the claim does not, or is not likely to, exceed \$10 000.

- (7) **The Tasmanian Risk Management Fund will only reimburse agencies if the Office of the Solicitor-General considers there to be a legal liability on the part of the Crown and that a settlement amount is reasonable. Agencies are directly responsible for any additional amounts paid. If an action is to be settled, a Deed of Release must first be prepared by the Office of the Solicitor-General and signed by the claimant.**

The FAA is under instruction not to release a settlement cheque without a Deed of Release having been signed. A Deed of Release prevents the claimant from bringing a future action arising from the same incident.