

Operational policy

Corporate Management

Insurance and indemnity requirements for QPWS authorities

Operational policies provide a framework for consistent application and interpretation of legislation and for the management of non-legislative matters by the Department of National Parks, Sport and Racing. Operational policies are not intended to be applied inflexibly in all circumstances. Individual circumstances may require a modified application of policy.

Purpose

This policy establishes the general insurance and indemnity standards required for Queensland Parks and Wildlife Service (QPWS) authorities granted in relation to QPWS managed areas.

Background

When QPWS grants rights to external parties to occupy or use QPWS managed areas, it assumes a degree of responsibility for that party and their actions, thus increasing its own risk. Insurance and indemnity requirements are used to reduce exposure to risk and protect the State and its employees. In addition to the insurance and indemnity provisions, QPWS must also take steps to meet its due diligence. It is particularly important that a risk management approach for the safety of others be considered when establishing conditions for authorities granted to undertake activities in QPWS managed areas.

The majority of QPWS managed areas are both public places and work sites for QPWS employees, lessees, commercial operators and others including the general public. When granting authorities in relation to those areas QPWS must consider any risk that activity may pose to other users of the area. The authority must then have conditions attached to address those risk, including requiring an appropriate level of public liability insurance.

For further information about when a breach of duty-of-care may arise see the *Civil Liability Act 2003*.

Definitions

Australian Prudential Regulation Authority is a statutory body created under the *Insurance Act 1973* (C'wth) to regulate members of the finance, insurance and superannuation industry. The list of APRA registered companies can be found under 'General Insurance' at the APRA web site at <http://www.apra.gov.au>

QPWS authorities include all permits, licences, agreements and other authorities issued by QPWS. They include authorities issued under the *Nature Conservation Act 1992*, *Forestry Act 1959*, *Recreation Areas Management Act 2006*, *Marine Parks Act 2004* and associated subordinate legislation, as well as any other authorities granted in relation to QPWS managed areas.

QPWS managed areas include:

- protected areas (State land), including national parks and regional parks dedicated under the *Nature Conservation Act 1992*
- forest reserves dedicated under the *Nature Conservation Act 1992*
- State forests (other than State plantation forests) declared under the *Forestry Act 1959*

- marine parks dedicated under the *Marine Parks Act 2004*
- any other area managed by QPWS, including areas managed under the *Recreation Areas Management Act 2006*

Standard and Poor's credit rating means Standard and Poor's credit rating under the Financial and Performance Management Standard 2009. The Standard and Poor's credit rating can be checked at their website; <http://www2.standardandpoors.com>.

Policy statements

Public liability insurance is required for **all activities undertaken on QPWS managed areas** under a permit or other authority unless that insurance is expressly not required. See the **Procedure** below and **Appendix 1**.

QPWS will encourage use of the areas it manages through applying efficient, flexible and reasonable insurance requirements which adopt a risk based approach.

The standard **level of public liability insurance** cover required for all authorised activities is **\$20 million**. However, the level of public liability insurance coverage required may be varied as follows:

- Set at a level specified by a relevant statutory scheme; or
- Increased or reduced (but not below \$10 million) on the basis of assessed risk. See the Procedure below, and Appendix 2 and Appendix 3.

For example, coverage may be reduced to \$10 million if:

- a risk assessment, taking into consideration the particulars of specific application, indicates that the \$10 million public liability insurance provides sufficient coverage for the activity that is being authorised, or
- the applicant can demonstrate to the satisfaction of the Department, that an insurance event would not result in more than \$10 million damage or injury. Activities assessed as having higher potential consequences will be required to hold higher levels of coverage and may be subject to additional conditions.

Liability Insurance Requirements

Companies providing public liability insurance cover must be:

- registered with the Australian Prudential Regulatory Authority (APRA) and have a Standard and Poor's (S&P) credit rating of no less than A–; or
- a non-Australian insurer with a Standard & Poor's rating of no less than A–; or
- another insurer with the written approval of the Executive Director, Technical Services.

Written approval for another insurer must **not be given for:**

- public liability insurance policies that exclude the participants in an activity; or
- hull or vessel insurance policies that do not cover activities that are to be undertaken on land (e.g. terrestrial marine park areas or island national parks); or
- insurance policies that only indemnify the State when the authority holder is negligent.

Workers' compensation insurance under the *Workers' Compensation and Rehabilitation Act 2003* must be held by an authority holder unless:

- the applicant is a self-employed sole operator, then personal injury insurance, income protection insurance and death and disability insurance of a standard equivalent to WorkCover is required, or
- the applicant is a foreign entity not required to maintain insurance under the *Workers' Compensation and Rehabilitation Act 2003*. In these circumstances other workers compensation insurance approved by the relevant QPWS Director is required.

Procedure

1. Determine if public liability insurance is required

A range of activity types and their public liability insurance requirements are shown in **Appendix 1**. Use this table to identify if public liability insurance is required.

If public liability insurance is not required, go to **4. Workers' compensation insurance requirements**.

2. Assess the level of risk

Use the risk assessment matrix shown in **Appendix 2** to assess the level of risk of a proposed activity. The risk assessment matrix is used to quantify the level of risk posed by an activity by jointly considering:

- the severity of the possible consequences in an incident (the horizontal axis of the matrix); and
- the likelihood of an incident occurring (the vertical axis of the matrix) .

Factors to consider when assessing risk and determining public liability insurance requirements

The potential consequences of an activity will vary depending on the nature of the activity, location, participants and timing, and as such must be assessed on a case by case basis. While the list is not exhaustive, the following factors should be considered -

- the nature of the activity and the type of incident that might occur
 - Is the activity high risk?
 - Does the activity require specialist qualifications, skills and abilities to be conducted safely?
 - What type of incident might occur?
 - Will alcohol be served/available?
- the nature of equipment and supporting materials being used
 - Will recreational vehicles or aircraft be used?
 - Will chemical storage or refuelling be required?
- the number of people that might be affected by an incident
 - How many people are involved in the activity at any time?
 - How many other people are likely to be in the area?
 - What is the proximity of the activity to a road, a lookout or other areas in which people congregate or gather?
- the possible impacts on high value assets (for example - plantation forests, heavy plant, buildings or other structures)
 - Are there high value assets in the area?
 - What is the replacement value?

- How much damage might an incident cause?
- Any mitigating actions such as:
 - Required training or accreditation that is obtained by the applicant/people involved in the activity
 - Safety plans/protocols
 - Safety equipment such as life jackets, helmets, etc.

3. Determine the appropriate response

Use Appendix 3 to determine the appropriate responses (including public liability insurance requirements) based on the assessed level of risk.

As the level of risk and potential consequences of an activity increases, so does the required level of approval and public liability insurance coverage required.

Liability insurance requirements for low risk activities

While \$20 million is the current standard public liability requirement, it may be reduced to \$10 million:

- Where \$10 million public liability insurance provides sufficient coverage for the activity that is being authorised; and,
- with the approval of the relevant Manager, Director or other senior officer.

It is the applicant's responsibility to demonstrate that than an insurance event would not result in more than \$10 million damage or injury.

Reduction of PLI to \$10 million may be appropriate for activities that are:

- passive or non-competitive,
- non-motorised,
- conducted in groups of less than 10,
- involve short stays, and
- are conducted in developed or popular areas with frequent management oversight.

Reduction of PLI below \$20 million is generally not appropriate for activities that are:

- motorised or involve the take-off or landing of a motorised aircraft,
- conducted in groups of 10 or more,
- involve lengthy stays, or
- are conducted in undeveloped or remote areas with infrequent management.

4. Workers' compensation insurance requirements

Workers' compensation insurance is required where employees or agents of the authority holder are accessing QPWS managed areas.

Workers' compensation insurance is not required if the authority holder is a self-employed sole operator; however sole operators must hold personal injury insurance, income protection insurance and death and disability insurance.

Businesses employing Queensland workers are required to insure with WorkCover Queensland. Interstate-based workers working in Queensland will usually be covered by reciprocal arrangements between states with

complementary schemes. Most foreign-based workers working in Queensland will be covered by their employers' compensation schemes.

If there is uncertainty about the jurisdiction of workers, or appropriate workers' compensation policy, contact WorkCover Queensland on 1300 362 128.

5. Approved clauses

All authorities are to include conditions covering compliance with laws, indemnity, warranties and risk as shown in the example in Appendix 4 and the standard insurance conditions set out in Appendix 5 unless a variation clause has been prepared by In-House Legal and approved by the Executive Director, Technical Services.

The standard insurance conditions may be modified to reflect the identified level of public liability insurance required.

If the activity has been identified as not requiring public liability insurance in Appendix 1, it is preferable that the standard insurance conditions be included in the authority with the level of public liability insurance required adjusted to \$0 (zero dollars).

The standard insurance conditions have been developed to address the needs of the majority of authority holders including:

- other Queensland and Commonwealth government departments, agencies or statutory bodies
- local authorities
- incorporated entities, including Australian Business Number (ABN) holders
- self-employed sole operators
- commercial entities that are globally insured.

6. Additional conditioning

Additional conditions are to be included in authorities, where practicable, to mitigate the potential risk associated with an activity. Additional conditions must match the level of risk associated with the activity and must be tailored to the specifics of the individual activity.

7. Requiring certificates of insurance

Authority holders are required to provide a certificate of currency of insurance coverage to QPWS on request. Authority holders will be asked to supply a certificate of currency at least every two years, but no more than once annually as a matter of usual practice, unless there is reason to believe the insurance is not in place or is no longer suitable.

8. Validating certificates of insurance

Unless an alternative insurance arrangement has been approved, all public liability insurers must be with either

- an Australian insurer that is registered with APRA and has an S&P credit rating of no less than A–; or
- a non-Australian insurer with an S&P rating of no less than A–.

The list of APRA registered companies can be found under 'General Insurance' at the APRA website - <http://www.apra.gov.au>

S&P credit ratings can be checked at their website - <http://www2.standardandpoors.com>

References and additional information

Civil Liability Act 2003

Nature Conservation (Administration) Regulation 2006

Worker's Compensation and Rehabilitation Act 2003

The details of WorkCover Queensland and what they require of employers can be found at <http://www.workcoverqld.com.au/>, or contacted directly on 1300 362 128.

Disclaimer

While this document has been prepared with care, it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of National Parks, Sports and Racing should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

Approved By

Ben Klaassen

Signature

18/11/2014

Date

Deputy Director-General
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Appendix 1 – When public liability insurance is required

Instructions

This table indicates when public liability insurance will be required as part of authorities issued over QPWS managed areas. It is intended as a general guide and should be applied in the context of the overall policy.

To use this table, find the activity or activities (note: there may be more than one) in the left hand column. The centre column sets out the cases when public liability insurance **is not** required for this activity. That is, when the activity is exempt. The right hand columns indicate when public liability insurance is required for that activity.

Activity type	Public liability insurance is	
	Not required	Required
Aircraft		
Over flights		Required for: <ul style="list-style-type: none"> Commercial Group activities <i>Examples: spraying, mosquito control, reserve based tourism, mustering</i>
Take-off and landing		Always required
Commercial activities		
Filming	Not required for: <ul style="list-style-type: none"> groups of up to 10 no structures stay of up to 10 days <i>Note: variable on the basis of risk.</i>	Required for: <ul style="list-style-type: none"> groups of more than 10 activities involving structures stay of more than 10 days
Public transport		Required for all authorities <i>Examples: ferry, water taxi, hovercraft</i>
Community activities		
Soliciting donations or information	Not required <i>Example: charity collection</i>	

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Recreation, education and tourism		
Camping	Not required	
Commercial tourism and commercial recreation		Required for all authorities
Education	Not required for Queensland Government agencies <i>Examples: Department of Education schools</i>	Always required except for Queensland Government agencies
Fishing	Not required for fishing competitions	Required for commercial fishing
Fossicking		Required for commercial activities
Group activities	Not required for: <ul style="list-style-type: none"> • weddings • passive and small group activities <i>Example: nature study groups, bushwalking groups.</i>	Required for: <ul style="list-style-type: none"> • intensive or competitive activities • when entry fees are charged • high risk activities <i>Examples: running races, endurance events, motor rallies, club events including hang gliding, vehicle based activities, orienteering, rock climbing, dog sledding, bicycle riding, training and horse riding.</i>
High risk activities		Always required <i>Examples: rock climbing and hang gliding</i>
Recreational craft		Always required
Special activity permits (under NCA)		Always required
Beekeeping apiculture	Not required	
Motorised activities		Required for: <ul style="list-style-type: none"> • group activities • commercial operators • intensive activities • competitive events <i>Examples: rally, club rides and paid tours</i>
Non-motorised vehicle and animal	Not required for: <ul style="list-style-type: none"> • non-competitive activities • small groups <i>Examples: Horse riding, walking and bicycle riding</i>	Required for: <ul style="list-style-type: none"> • large groups • commercial activities • intensive or competitive activities

Resource use and management (Commercial and non-commercial including take and extraction)		
Exploration and mining		Always required <i>Examples: Access agreements</i>
Gravel extraction and quarrying		Always required
Grazing	<p>Not required for travelling and mustering stock:</p> <ul style="list-style-type: none"> • in low risk situations, and • with the approval of the Area Manager <p><i>Examples: Neighbours removing a small number of animals where public contact is unlikely</i></p>	<p>Required for travelling and mustering stock unless exempted by the Executive Director, Technical Services.</p> <p>Always required for:</p> <ul style="list-style-type: none"> • stock grazing • activities involving firearms • activities conducted by contractors
Harvesting and collection		Always required <i>Examples: seeds, foliage and flowers harvesting. Marine collections plants and animals.</i>
Mariculture, aquaculture		Always required
Pest management		Always required <i>Examples: Shooting, trapping, spraying and baiting.</i>
Timber harvesting	<p>Not required for:</p> <ul style="list-style-type: none"> • private fire wood collection • private fence posts cutting 	Required for all commercial and contracted timber harvesting
Water extraction	Not required	

Science and research		
Collection for biodiscovery		Always required
Other scientific	<p>Not required for:</p> <ul style="list-style-type: none"> • groups of less than 10 • observation or low impact • non-motorised • short stays <p><i>Examples: small non-lethal traps, Eliot traps, collection of plant materials and invertebrates.</i></p>	<p>Required for:</p> <ul style="list-style-type: none"> • groups of 10 people or more • activities involving structures • activities involving interviews with visitors • collection techniques deadly to humans • use of vehicles in research activities <p><i>Examples: use of firearms; unmonitored traps; vehicles for radio tracking, spotlighting or trap dropping.</i></p>
Construction of Works and infrastructure		
Major		<p>Always required</p> <p><i>Examples: services facilities, telecommunications, pipelines and power lines, marinas, under water pipelines, channel dredging, erosion control, reclamation and lands fill ocean outfalls.</i></p>
Minor	<p>Not required in most cases</p> <p><i>Examples: private mooring buoys; single dwelling domestic water supply, fences and stock grids.</i></p>	<p>Required for:</p> <ul style="list-style-type: none"> • runnelling for mosquito control • all contracted works.

Appendix 2 – Authority and Insurance Risk Assessment Matrix

		Potential Compensation Consequences				
		Consequences are unimportant or not material.	Consequences are relatively unimportant or small scale.	Consequences are serious but covered by insurance of \$10m.	Consequences are very serious or very significant and require insurance of \$20m	Consequences are extremely serious or disastrous and require insurance of more than \$20m.
LIKELIHOOD		Insignificant	Minor	Moderate	Major	Catastrophic
		<ul style="list-style-type: none"> No injuries or only first aid treatment required Incident of low-level short-term inconvenience Insignificant detrimental impact on the environment no damage to property 	<ul style="list-style-type: none"> Minor injury or sickness requiring medical treatment. Minor threat to safety systems Low level incident. Minimal or short term detrimental impact on the environment Minor damage to property 	<ul style="list-style-type: none"> Serious injury or sickness requiring medical treatment Potential for fatality or extensive injuries requiring hospitalisation for 1-2 people Safety system breach Significant incident Significant detrimental impact on the environment. Able to be contained with specialist assistance Significant damage to property 	<ul style="list-style-type: none"> Potential for fatality or extensive injuries requiring hospitalisation for 3-4 people Safety system major failure Severe long term detrimental impact on the environment Major property damage 	<ul style="list-style-type: none"> More than 4 fatalities or extensive injuries requiring hospitalisation with long term injuries Large scale medical attention/hospitalisation Complete breakdown of safety system Long term or permanent damage to the environmental viability of the impact area Large scale property damage
Almost Certain The event is expected to occur in most circumstances.	Medium (11)	Medium (16)	High (20)	Extreme (23)	Extreme (25)	
Likely The event will probably occur in many circumstances, a 70% chance or greater of occurring.	Low (7)	Medium (12)	High (17)	High (21)	Extreme (24)	
Possible Identified factors indicate the event could occur at some time. There is clear evidence of such occurrences or there is a general view that such events could occur.	Low (4)	Medium (8)	Medium (13)	High (18)	High (22)	
Unlikely The event could occur at some time but is not expected. There is a history of the event within the type of activity, work, industry or environment.	Low (2)	Low (5)	Medium (9)	Medium (14)	High (19)	
Rare The event may occur, only in exceptional circumstances. No history of such an event occurring	Low (1)	Low (3)	Low (6)	Medium (10)	Medium (15)	

Appendix 3 – Authority and Insurance Risk Response Table

Risk Level	Risk Score	Response	Example
Extreme	23–25	<p>Grave consequences</p> <p>An activity assessed at this risk level is not to be authorised unless exceptional circumstances exist.</p> <p>Exceptions may be authorised only by an Executive Director or the Deputy Director General, QPWS.</p> <p>Level of indemnity insurance will vary dependant on the potential compensation consequences, but insurance must specify that the activity is covered.</p> <p>Involve risk management strategy agreed to by an Executive Director.</p>	'Wingsuit' flying
High	17–22	<p>Consequences not acceptable unless addressed</p> <p>An activity assessed at this risk level may be authorised:</p> <ul style="list-style-type: none"> • in exceptional circumstances only • by the relevant Director, Regional Director or more senior officer <p>Level of indemnity insurance will vary dependant on the potential compensation consequences, but insurance must specify that the activity is covered.</p> <p>Involve risk management strategy agreed to by an Executive Director.</p>	Swimming with whales Certain aviation activities
Medium	8–16	<p>Consequences not acceptable unless addressed</p> <p>An activity assessed at this risk level may be authorised by as per the relevant delegations.</p> <p>Authorities must:</p> <ul style="list-style-type: none"> • identify responsibility for control of risk and incident response (the risk owner) • require the risk owner to prepare procedures for risk monitoring, avoidance, response and reporting • require the risk owner to monitor and record the progress of risk treatments <p>Level of indemnity insurance will vary dependant on the potential compensation consequences.</p>	Manned aviation activities, permanent infrastructure
Low	1–7	<p>An activity assessed at this risk level may be authorised by as per the relevant delegations.</p> <p>Level of indemnity insurance will vary dependant on the potential compensation consequences.</p> <p>An activity involving a low level of risk will inform decisions makers about the requirements for authorisation.</p>	Filming and photography

Appendix 4 – Indemnity, no warranty and compliance with laws

Instructions

The following clauses are to be included in all QPWS authorities unless an alternative is prepared and approved by In-House Legal.

Check highlighted words for consistency with those used throughout the authority and under the definition section of the authority.

The clauses must be renumbered to align with the authority to which they are applied.

Standard clauses

1. Compliance with Laws

- 1.1 The Grantee must at its own expense punctually comply with all statutes, ordinances, local laws, regulations or rules in force at the time, which apply to the Authority Area and Adjoining Land and/or the Grantee's use of the Authority Area and Adjoining Land.

2. Indemnity

- 2.1 The Grantee –

- (a) indemnifies; and
- (b) releases and discharges

the State from and against all actions, proceedings, claims, demands, costs, losses, damages, liability and expenses which may be brought against, or made upon the State or which the State may pay, sustain, or be put to by reason of, or in consequence of, or in connection with this Authority and the occupation and use of the Authority Area by the Grantee, except to the extent of any negligent act of the State.

- 2.2 The Grantee must notify the Chief Executive in writing of any death, injury, loss or damage immediately upon the Grantee becoming aware of such death, injury, loss or damage.
- 2.3 If the Grantee breaches its obligations under this clause 2, the Chief Executive may give notice to the Grantee stating the breach and if the breach is not remedied in accordance with the timeframe set out in that notice, the Chief Executive may immediately terminate this Authority by written notice to the Grantee.

3. No Warranty and Risk

- 3.1 The Chief Executive does not warrant that the Authority Area is free from defect or that it is safe, fit, suitable or adequate for the Permitted Use. To the full extent permitted by law, all warranties as to fitness, suitability and adequacy implied by law are expressly negative.
- 3.2 The Grantee uses the Authority Area entirely at its own risk and must first check the Authority Area to ensure that it is suitable for the Permitted Use under this Authority before undertaking the Permitted Use or any Works.

Appendix 5 – Standard insurance conditions for inclusion in authorities

Instructions

These standard insurance conditions are mandatory inclusions for all authorities granted over QPWS managed areas identified as requiring insurance.

Check highlighted words for consistency with those used throughout the authority and under the definition section of the authority. The clauses will need to be renumbered.

Standard clauses

Definitions

Appropriate Insurer means an insurer which –

- (a) is authorised under the *Insurance Act 1973* (Cwlth);
- (b) is registered with the Australian Prudential Regulation Authority as an authorised insurer; and
- (c) has a Standard & Poor's rating of no less than A–.

4. Insurance

4.1 For the **Term** of this **Authority**, the **Grantee** must effect and maintain the following insurances –

- (a) insurance under the *Workers' Compensation and Rehabilitation Act 2003* or its equivalent with the consent of the **Chief Executive** to cover workers, eligible persons, self-employed contractors, directors, trustees and partners; and
- (b) a public liability insurance policy for not less than \$20 million arising from any one event in respect of the death of, or injury to persons, or loss or damage to property.

4.2 From time to time the **Chief Executive** may issue a notice to the **Grantee** increasing the minimum insurance cover required by this **clause 4** if the **Chief Executive** reasonably believes increased insurance coverage is required:

- (a) to maintain a level of coverage that is consistent with the insurance market standards for public liability insurance coverage; or
- (b) to provide sufficient coverage of new or varied activities undertaken by the **Grantee** or
- (c) by a change in law.

4.3 The **Grantee** must ensure that the insurance policies required under this **clause 4** are -

- (a) with an **Appropriate Insurer**; or
- (b) if the **Grantee** is globally insured, another insurer with a Standard & Poor's rating of not less than A–; or
- (c) another insurer with the **Chief Executive's** written approval.

(a) To remove any doubt, an approval issued under **clause 4.3(c)** will form part of this **Authority** and must be complied with as such.

4.4 The **Grantee** must ensure that the insurance policies that it has effected to cover the insurable interests pursuant to this **clause 3** cover all invitees, employees, contractors, agents, members or clients of the **Grantee** and names the **State** as an interested party.

Insurance and indemnity requirements for QPWS authorities

- 4.5 Before undertaking any activities on the Authority Area, the Grantee must have in place all insurances required by this clause 4.
- 4.6 In any circumstance where the insurances required under this Authority are cancelled, altered or expire before the Expiry Date of this Authority, the Grantee must cease all activities on the Authority Area until such time as alternative insurance policies that comply with the requirements of this clause 3 have been obtained.
- 4.7 The Grantee must provide copies of certificates of currency for the insurances required under this clause 4 if requested by the Chief Executive. Subject to clause 4.8 the Chief Executive will only request certificates of currency once annually as a matter of usual practice.
- 4.8 The Chief Executive, acting reasonably, reserves the right to request the Grantee to provide certificates of currency for the insurances for any reason, and at any time, to ensure compliance with this clause 4. The Chief Executive will not act vexatiously in requesting certificates of currency.
- 4.9 If the Grantee is an individual or sole trader, then clause 4.1(a) is satisfied if the Grantee maintains –
- (a) personal accident insurance covering all medical treatment, hospitalisation and medical expenses; and
 - (b) income protection insurance; and
 - (c) death and disability insurance;
- equivalent to the coverage and entitlements provided to employees under the statutory provisions of the *Workers' Compensation and Rehabilitation Act 2003*.
- 4.10 Where the Grantee –
- (a) is a Commonwealth, State or Territory government department, agency or statutory body; and
 - (b) is a self-insurer; and
 - (c) has provided the Chief Executive with a certificate from an appropriately authorised officer to that effect,
- the Grantee is deemed to have complied with this clause 4.
- 4.11 If the Grantee breaches its obligations under this clause 4, the Chief Executive may immediately terminate this Authority by written notice to the Grantee.