

Legal Alert

Corporate

December 2018

Space Law and SME's

In a Nutshell

With Adelaide announced this week as the base of the new Australian Space Agency headquarters, the commercial space industry looks set to benefit from increased Government funding into the sector over the coming years.

This development builds on recent amendments to the *Space Activities Act 1998* (Cth) which regulates commercial space activities. The changes, which came into effect on August 2018, contain a number of beneficial developments for SME's including measures to reduce barriers to entry and decrease the insurance requirements.

Regulation of Commercial Space Activities

Adelaide is set to become the space industry capital yet again, 50 years on from the historic Woomera satellite launch. However, these days it is private enterprise, rather than nation States, that lead the space race with the commercialisation of nanosatellites and other space technology.

In recognition of this changing landscape the 2016 review into Australia's space industry recommended a number of amendments to current legislative requirements. The resulting *Space Activities Amendment (Launches and Returns) Act 2018* (Cth) clarifies a number of the regulatory requirements in an effort to streamline the approval process for commercial space activities.

Legislation Overview

Amendments to the *Space Activities Act 1998* came into effect in August 2018. While there was not a complete overhaul of the legislation as first indicated by the Government, a number of areas have been updated, including:

- consolidation of approval processes for launches and returns;
- updates to launch facility licences, launch and return permits for space objects, high power rocket permits and overseas payload (launch) permits; and
- a significant reduction in required insurance amounts.

Insurance Requirements

The launch and return of a space objects and use of high powered rockets and overseas payloads must be insured before the Minister will grant a permit.

The insurance must cover against any possible liability incurred under the Act or damage to third parties caused by the launch or return of a space object.

While the maximum insurance requirements have been lowered from AUD\$750 million to AUD\$100 million,¹ it remains the responsibility of the permit holder to organise insurance for both themselves and on behalf of the Commonwealth.

¹ *Space Activities Act 1998* (Cth) s 48(3).

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Environmental and Financial Considerations

Parties operating launch facilities will also need to obtain relevant environment approvals under State and Commonwealth laws and prepare an environmental plan. This contingent approval process requires consideration of a wide range of factors by businesses.

The environmental plan should designate procedures for monitoring any negative impact of the facility, as well as steps taken to mitigate damage. There must also be an effective mechanism for ongoing reporting on implementation of the plan.²

There must also be evidence that the operator has the ability to fund construction and ongoing operation of a launch facility. Financial reports and other relevant information, such as those prepared by an auditor, must be available.

Liability for Damage

Permit holders will be liable for any damage to third parties caused by the launch or return of space objects and high powered rockets. Similar to overseas Governments, the Commonwealth will cover compensation amounts that exceed the insured amount up to \$3 billion.

Damage covers anything that occurs on Earth, in the air or in space, whether within or outside Australia, as long as it is within the liability period. The liability period is 30 days from launch for space objects and rockets. For returns it is until the object makes landing back on Earth.

² *Space Activities Regulations 2001* (Cth) Reg. 2.17