

Article Information

Authors: Tim O'Callaghan, Alister Waters

Service: Corporate & Commercial, Intellectual Property, Projects & Construction

Sector: Defence, Government, IT & Telecommunications

Ready for lift off? - General Obligations and Liabilities under the Space (Launches and Returns) Act 2018

With an increase in Space activity in Australia it can sometimes be difficult to navigate the obligations and liabilities that participants might face.

Australia's Space industry is rapidly expanding. With increased funding and drive from Government and academia, new players are frequently entering the market. One thing that is common to all entrants in the Space market is the need to understand the governing legislation, with respect to those looking to send objects into space this is specifically the [Space \(Launches and Returns\) Act 2018](#) (the Space Act) and associated Rules.

Key Terms

To understand the concepts involved in the Space Act, it is first necessary to understand some of the key terms. The following definitions are taken from the Space Act itself.

Launch

- a space object, means launch the whole or a part of the object into an area beyond the distance of 100 km above mean sea level, or attempt to do so; or
- a high power rocket, means launch the rocket into an area that is not beyond the distance of 100 km above mean sea level, or attempt to do so.

Launch facility means a facility (whether fixed or mobile) or place specifically designed or constructed as a facility or place from which space objects can be launched, and includes all other facilities at the facility or place that are necessary to conduct a launch.

Return a space object means return the space object from an area beyond the distance of 100 km above mean sea level to Earth, or attempt to do so.

Space object means:

- an object the whole or a part of which is to go into or come back from an area beyond the distance of 100 km above mean sea level; or
- any part of such an object, even if the part is to go only some of the way towards or back from an area beyond the distance of 100 km above mean sea level.

Permits and Authorisations

Arguably the main regulatory hurdle to launch is the attainment of a permit or authorisation. The Space Act sets out a number of permit types and when they are required.

Type of Permit

Launch facility licence

When required

When establishing and operating a launch facility in Australia.

Australian launch permit or authorisation certificate	When launching a space object from a launch facility in Australia, an Australian aircraft, or an overseas aircraft in Australian airspace.
Australian high powered rocket permit	When launching a high powered rocket in Australia.
Overseas payload permit or authorisation certificate	When an Australian national is launching a space object outside of Australia.
Australian launch permit, return authorisation or authorisation certificate	When a space object is returning to a place or area in Australia.
Return authorisation or authorisation certificate	When an Australian national is returning a space object to a place or area outside Australia.

All permits and licenses are to be approved by the Minister (or their delegate) with the Australian Space Agency currently taking responsibility for the processing of applications. An important thing to remember is that even if the launch is taking place outside of Australia, if an Australian person or company has a payload on that launch vehicle they are required to obtain an overseas payload permit in Australia.

Many of the requirements for obtaining licences and permits are contained in the [Space \(Launches and Returns\) \(General\) Rules 2019](#) (the General Rules) and can be quite onerous requiring a great deal of information across aspects including personnel names and details, company structure and financial details, intended flight path details and purposes of launch, as well as proof of insurances.

Insurance

As might be expected, insurance is a key launch requirement covered by the Space Act. Specific levels of insurance are set under the Space Act for each type of launch activity. The required levels are outlined in the [Space \(Launches and Returns\) \(Insurance\) Rules 2019](#). In an effort to improve access to space exploration by Australian companies the previous insurance requirements that existed prior to 2019 have been relaxed, with the general insurance requirement for launches in Australia currently set at \$100million.

Launch Safety Officer

Each Australian launch and return must have a Launch Safety Officer appointed by the Minister. The role of the Launch Safety Officer is to ensure that proper notice is given of launches and returns and to ensure that there is no danger to people or property from the launch or return of space objects.

The Launch Safety Officer also has broad rights with regard to inspection and enforcement at the launch site including powers to seize items in an emergency.

Fees

Interestingly the Space Act mandates that any person making an application for a licence or permit must pay the relevant fee prescribed under the General Rules. Currently no fees are payable for permits and licences in Australia, however the Australian Space Agency has announced that it will be conducting public consultation in the first half of 2020 with a view to introducing fees on a cost recovery basis.

Liability for Damage

The liability regime for damage in space set out by the relevant International Treaties is quite different from what is usually encountered on Earth with the country from which a space object originates being liable for damage rather than the owner or operator. The Space Act flows these liability obligations down to the responsible party for space objects originating in Australia.

For space objects, the responsible person for the launch or return of the space object is liable to pay compensation for any damage caused on Earth or to any aircraft in flight. Similarly, the responsible party is liable to pay compensation for any damage caused in space to another space object or to a third party or third party's property on board a space object, but only where the responsible party is at fault. With regard to high powered rockets, the launch party is liable to pay compensation for any damage caused on Earth or in the air, except where the damaged party has acted negligently or intended to cause damage.

Provided that the launch or return of a space object or high powered rocket was covered by a permit or authorisation issued by the Minister, and that any and all conditions of that permit or authorisation have been complied with, the responsible party's liability will be limited. Under such circumstances, the responsible party is only liable to pay compensation up to the required insured amount (\$100million). The Commonwealth will pick up the cost of any excess over and above the insured amount, up to a maximum excess amount of \$3billion.

In Conclusion

The regulatory structure surrounding launches and returns for space activities is complex and evolving. A great deal of information is required for permits and the penalties and liabilities that could be incurred for any mistakes are large. The best course of action when planning any activity covered by the Space Act is to seek legal advice early. Piper Alderman can help through all stages of the process and will ensure that the risk profile for your project is minimised.

- Space launch activity is tightly regulated in Australia
- Permits and authorisations are required for all launch and return activities
- Insurance of \$100million is required for most launch activities
- The Australian Space Agency is introducing permit fees in 2020
- Liability for damage caused by space objects and high powered rockets is limited if conditions are followed