

Checklist 1: How do we meet our notification obligations?

Information for organisations delivering human services in New South Wales

This fact sheet covers:

- ▶ What must your organisation notify the NSW government agency about?
- ▶ When must your organisation notify the NSW government agency?
- ▶ What must the NSW government agency notify your organisation about?

This checklist is part of the **Guide to the Human Services Agreement (Guide)**. The Guide provides information on organisations' key legal obligations under the Human Services Agreement. The Guide includes a suite of resources to help organisations meet their obligations.



Caution

The information contained in this document is intended as a guide only and is not legal advice. Interpreting contract terms is complex. If your organisation has a legal problem you should talk to a lawyer before making a decision about what to do. Refer to [our webpage on legal advice](#) to see if your organisation may be eligible for free legal advice.

This checklist has been prepared on the basis of the Agreement for Funding of Services – Standard Terms dated 16 October 2019 (**Standard Terms**) and Agreement for Funding of Services – Schedule dated 31 March 2017 (**Schedule**), published on the [BuyNSW website](#) (together referred to as the **Human Services Agreement** or **Agreement**).

If the terms on which your Human Services Agreement is based have been amended, please review the information in this document carefully to make sure they are consistent where necessary.



Note: organisations funded by the Department of Communities and Justice

The Department of Communities and Justice (**DCJ**) has added supplementary conditions to the standard form Schedule. The most recent DCJ Schedule, dated 16 October 2019 is available on the DCJ website.

This factsheet has not been amended to take into account the DCJ Schedule. If your organisation uses the DCJ Schedule, refer to Not-for-profit Law's fact sheet on the DCJ's supplementary conditions to understand how the DCJ conditions apply to your organisation's obligations under the Agreement.



Tip

Read this checklist with the Human Services Agreement and the Guide at hand for reference. Clauses that we refer to in this document will be the clauses in the Standard Terms (unless we state otherwise).

Before your organisation enters into the Human Services Agreement, you should understand:

- when your organisation must notify the NSW government agency of certain matters, and
- when the NSW government agency is required to notify your organisation of certain matters



Note

If an organisation fails to provide a notice when required, this can be a breach of the Agreement. Certain breaches allow the NSW government agency to terminate the Agreement.

A notification made under the Agreement must be in writing and signed by a duly authorised Officer with authority to sign on behalf of the organisation (clause 23.1). For information on who is regarded as an officer for the purpose of signing, see the definition of 'Officer' under clause 1.1 of the Agreement.

The table below lists the circumstances where:

- organisations and the relevant NSW government agency must provide notification, and
- organisations need to seek written approval from the NSW government agency before doing something

It's a good idea to include these notification obligations in your organisation's policy and procedure documents.



Tip

Each NSW government agency may have different practices for receiving a notification (for example, by uploading the notification to an online portal).

Your organisation should check how the NSW government agency that you receive funding from expects to receive notices (this should be in line with the requirements set out in your specific Agreement).

When is an organisation required to seek consent, obtain approval or notify the NSW government agency under the agreement?

Notification, approval or consent required	Description	Timing	Potential following action	Reviewed <input checked="" type="checkbox"/>
Sub-contracting	Intention to sub-contract services (clause 6.3(b))	Before entering into sub-contract	NSW government agency must provide prior written approval (clause 6.3(b))	<input type="checkbox"/>
Assets	Intention to buy an asset (clause 11.1(a)(ii))	Before buying the asset	NSW government agency must provide prior written approval (clause 11.1(b))	<input type="checkbox"/>
Assets	Intention to: <ul style="list-style-type: none"> encumber or dispose of an asset, or deal with or use an asset (clause 11.1(a)(ix))	Before the encumbrance, disposal, dealing with or use of asset	NSW government agency must provide prior written approval (clause 11.1(a)(ix))	<input type="checkbox"/>
Assets	Intention to sell or dispose of an asset (clause 11.1(a)(x))	Before disposal of asset	NSW government agency must provide prior written approval (clause 11.1(b))	<input type="checkbox"/>
Trade marks	If the organisation wants to use the NSW government agency's logo or trade mark (clause 21.1(c))	Before use of trade mark	NSW government agency must provide prior written approval (clause 21.1(c))	<input type="checkbox"/>
Publicity	If the organisation wants to make a press or other announcement relating to the Agreement (clause 21.1(b))	Before making the announcement	The NSW government agency may direct the organisation not to make a press or other announcement relating to the Agreement	<input type="checkbox"/>
Work health and safety	Non-compliance with work health and safety laws (clause 8.2(a))	Immediately	A failure to comply with relevant laws can result in suspension of funding until the organisation takes steps to address the issue (clauses 12.1(a)(vi) and (c)) May also give rise to termination if organisation doesn't remedy the breach (clause 13.1)	<input type="checkbox"/>



Notification, approval or consent required	Description	Timing	Potential following action	Reviewed <input checked="" type="checkbox"/>
Insolvency	Actions relating to insolvency (clause 8.2(b))	Immediately	Insolvency (ie not being able to pay debts) can give rise to termination (clause 13.1)	<input type="checkbox"/>
Disputes	Current, pending or threatened inquiries, investigations, disputes, or claims that may adversely affect the reputation of NSW government agency (clause 8.2(c))	Immediately	Conduct that has the effect of bringing the NSW government agency into disrepute can result in a breach of the Agreement (clause 6.1(f)(iii)) and potentially termination (clause 13.1)	<input type="checkbox"/>
Misconduct	Allegation of misconduct or a serious incident that may impact the organisation's ability to provide the services or may attract adverse publicity (clause 8.2(d))	Immediately	<p>Where an organisation's personnel has engaged in misconduct, the NSW government agency can direct the organisation to stop the personnel providing the services (clause 6.2)</p> <p>Further, a serious incident that interferes or is likely to interfere with an organisation's ability to deliver the services under the Agreement can result in suspension of funding (clause 12.1(a)(i))</p>	<input type="checkbox"/>
Items in the Schedule	Any circumstance stated in the Schedule (clause 8.2(e))	Immediately	May result in a breach of the Agreement and possibly termination	<input type="checkbox"/>
Conflict of interest	If there is any actual or possible conflict of interest and steps proposed to resolve (clause 7.2)	Immediately on becoming aware of the conflict	If the NSW government agency believes there is a conflict of interest which prevents the performance, they can terminate immediately or ask the organisation to take such steps to manage, eliminate, resolve or deal with the conflict (clause 13.1(h))	<input type="checkbox"/>
Conflict of interest	Where the organisation is notified of a conflict of interest (clause 7.3)	Immediately on receiving notification of the conflict	Where an organisation receives notification from the NSW government agency of	<input type="checkbox"/>



Notification, approval or consent required	Description	Timing	Potential following action	Reviewed <input checked="" type="checkbox"/>
			an actual or, possible conflict of interest, the organisation must make full disclosure of all relevant information relating to the conflict of interest and the steps it proposes to remedy. The NSW government agency may require the organisation to take steps to deal with the conflict of interest (clause 7.3)	
Intervening event	If the organisation can't carry out its obligations due to a natural disaster, explosion, unavoidable accident, terrorism or industrial dispute not limited to the organisation's workplace (clause 14)	As soon as the organisation is aware it can't carry out its obligations	Organisation must take reasonable steps to remove, overcome or minimise the effects of those events on its service delivery Termination if the organisation can't provide services for more than 2 months (clause 14.2(a))	<input type="checkbox"/>
Other funding or support	Receives funding any other agency or authority in relation to the facilitation of the Services (clause 9.8)	Within 10 business days of entering into the other arrangement	It's unclear what the potential following action may be. Organisations should consult the Schedule for more information.	<input type="checkbox"/>
Organisational details	Change of name, address, contact details (clause 8.1(a))	As soon as reasonably practical	There may be a risk of delay in payment or difficulty receiving notices and other communications	<input type="checkbox"/>
Constitution	Actual or proposed change to constitution (clause 8.1(b))	As soon as reasonably practical	May result in the NSW government agency terminating the Agreement if it believes the organisation is no longer eligible for the funds or can't comply with the Agreement (clause 13.1(f))	<input type="checkbox"/>
Other relevant matters	Anything relevant that the organisation thinks might affect service delivery (clause 8.1(c))	As soon as reasonably practical	May result in suspension of funding if the organisation has failed, or the NSW government agency thinks is likely to fail, to provide the services	<input type="checkbox"/>



Notification, approval or consent required	Description	Timing	Potential following action	Reviewed <input checked="" type="checkbox"/>
			under the Agreement (clause 12.1 (a)(i))	
Ownership or control	Change in ownership or control of the organisation (clause 8.1(d))	As soon as reasonably practical	NSW government agency can terminate if it believes the change in ownership or control will negatively impact on its decision to provide funds or the organisation's ability to perform its obligations under the Agreement (clause 13.1(d))	<input type="checkbox"/>
Termination	If the organisation decides to terminate the Agreement for convenience (clause 13.2)	6 months' written notice	The organisation will need to pay the NSW government agency's reasonable costs directly and necessarily incurred (clause 13.2(c))	<input type="checkbox"/>
Security procedures	Notify the NSW government agency of the organisations' current safety, security and privacy procedures and safeguards in respect of Confidential Information and personal information	At all times	The NSW government agency may provide feedback on these procedures	<input type="checkbox"/>
Security breach	Immediate written notice if organisation becomes aware of an actual, alleged or suspected breach of secrecy and security requirements	Immediately	Organisations must conduct an investigation and notify the NSW government agency of findings and steps taken to remedy	<input type="checkbox"/>

What must the NSW government agency notify your organisation about?

Circumstance	Description	Potential following action	Reviewed <input checked="" type="checkbox"/>
Extension of term	If the NSW government agency wants to extend the term of the Agreement (clause 3.2)	Organisation must continue to deliver services and fulfil obligations	<input type="checkbox"/>
Compliance	If the NSW government agency requires certain licences, approvals, consents, accreditations or registrations (clause 5.2(e))	Organisation must make sure it has all relevant qualifications and provide evidence of them to the NSW government agency	<input type="checkbox"/>



Circumstance	Description	Potential following action	Reviewed <input checked="" type="checkbox"/>
Suspension of funds	If the NSW government agency is suspending payment of all or part of the funds because it's not satisfied with the services delivered or financial reporting (clause 12.1)	Organisation must continue to deliver services and fulfil obligations while addressing concerns (unless the written notice requires the organisation to reduce the services provided to reflect the withholding of payment)	<input type="checkbox"/>
Termination for a reason	If the NSW government agency believes there is a basis for termination 'for cause' (for example, if the organisation has breached the Agreement) (clause 13.1)	Organisation has to take the specified action to rectify the breach (if it can). If the organisation fails to take such action, after 20 business days NSW government agency can immediately terminate the Agreement	<input type="checkbox"/>
Termination due to change of budget or policy	If the NSW government agency is required to stop funding due to a change in the State budget or policy (clause 13.2(a))	The Agreement terminates 90 days after receipt of notice (clause 13.2(a))	<input type="checkbox"/>
Termination for convenience	If the NSW government agency decides to terminate the Agreement for convenience (in situations where there is no particular reason, such as a breach of the Agreement) on 6 months' written notice (clause 13.2(b))	If the NSW government agency terminates it must pay 'reasonable costs directly and necessarily incurred' by the organisation (clause 13.2(c)) but only up to the amount of unpaid Funds (clause 13.3(b)). 'Reasonable costs' will be determined on an agency-to-agency basis	<input type="checkbox"/>
Termination of sub-contractor	If the NSW government agency considers that a sub-contractor is not complying with the requirements of the Agreement, then it can notify the organisation to immediately terminate its sub-contract (clause 6.3(e))	Organisation must immediately terminate arrangement with sub-contractor	<input type="checkbox"/>
Repayment of funds	If the NSW government agency requires repayment of funds and interest, allows the organisation to keep funds, makes adjustment to future payments or requires the organisation to otherwise deal with funds as directed (clause 9.5)	Organisation must follow the instruction set out in the written notice	<input type="checkbox"/>

Resources

Not-for-profit Law resources

Not-for-profit Law has developed a Guide to the Human Services Agreement which includes a fact sheet, a template sub-contract agreement, and a range of checklists which should be read together. See Not-for-profit Law's page on [Government Funding Agreements](#):

- ▶ [Fact sheet - Human Services Agreement: Department of Communities and Justice Supplementary Conditions](#)
- ▶ [Fact sheet – Human Services Agreement: Important clauses](#)
- ▶ [Checklist 1 – How do we meet our notification obligations?](#)
- ▶ [Checklist 2 – How do we meet our reporting obligations?](#)
- ▶ [Checklist 3 – How do we practically comply with the Human Services Agreement?](#)
- ▶ [Checklist 4 – How do we meet our privacy obligations?](#)
- ▶ [Checklist 5 – How do we meet our intellectual property obligations?](#)
- ▶ [Checklist 6 – What are our obligations when engaging Personnel?](#)
- ▶ [Checklist 7 – What records and registers do we need to keep?](#)
- ▶ [Checklist 8 – Things to consider before entering into a sub-contract agreement](#)
- ▶ [Template Sub-contract Agreement](#)

In addition, we have resources on the following related topics:

- ▶ [Conflicts of interest and other duties](#)
- ▶ [Intellectual Property](#)
- ▶ [Sub-contracts](#)

Other related resources

- ▶ [BuyNSW website](#)



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