

Checklist 6: What are our obligations when engaging Personnel?

Information for organisations delivering human services in New South Wales

This fact sheet covers:

- ▶ What is Personnel?
- ▶ What are your organisation's obligations when engaging with Personnel?
- ▶ What key checks should your organisation conduct before engaging Personnel?
- ▶ What documents should your organisation get Personnel to sign?
- ▶ What key terms should your organisation include in employment contracts and volunteer agreements?

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 [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).

The Human Services Agreement places specific requirements on organisations when engaging and managing Personnel. In addition, organisations must make sure that any sub-contracting arrangements they enter into pass the Personnel obligations in the Human Services Agreement onto the sub-contractor.

This checklist is a summary of the requirements that the Human Services Agreement places on organisations when they engage Personnel. Use this checklist to help you meet these requirements.



Note

Organisations must make sure that any sub-contracting arrangements they enter into pass the Personnel obligations in the Human Services Agreement onto the sub-contractor.

What is Personnel?

Under the Human Services Agreement, 'Personnel' means an organisation's:

- officers
- employees
- volunteers
- agents
- contractors, and
- sub-contractors

Under the Human Services Agreement, 'Officer' means a person who:

- is an office holder of the organisation (for example, a director)
- makes or participates in making decisions that impact the organisation
- can significantly impact the financial standing of the organisation
- can manage the organisation and its property
- sits on the governing body, board of directors or a decision-making body of the organisation, and
- the organisation's directors act in accordance with the instructions or wishes of

**Note**

If you are not sure about your Personnel obligations, we recommend you seek legal advice before engaging any employees, volunteers, agents, contractors or sub-contractors.

What are your organisation's obligations when engaging with Personnel?

Obligation	Steps to take	Evidence required	Reviewed <input checked="" type="checkbox"/>
You must comply with the law	<p>Make sure your organisation and your Personnel comply with all applicable laws (clause 5.2(a)), including laws relating to:</p> <ul style="list-style-type: none"> • child protection • work health and safety • superannuation • workers compensation • employment screening • privacy • workplace relations • tax 	Your organisation may be required to provide reports and information to the NSW government agency from time-to-time demonstrating compliance (clause 19.4)	<input type="checkbox"/>
You must comply with Notified Policies	<p>Make sure your organisation and your Personnel comply with all policies and standards relating to Personnel provided by the NSW government agency (clause 5.2(b)).</p> <p>This is in addition to any internal policies of your organisation</p>	Your organisation may be required to provide reports and information to the NSW government agency from time-to-time demonstrating compliance (clause 19.4)	<input type="checkbox"/>
You must comply with Standards	Make sure your organisation and your Personnel comply with any applicable Australian Standards, other nationally recognised standards, any standards stated in the Schedule, and any standards that the NSW government agency notifies the organisation of (clause 5.2(c))	Your organisation may be required to provide reports and information to the NSW government agency from time-to-time demonstrating compliance (clause 19.4)	<input type="checkbox"/>
You must comply with the constitution	Make sure your organisation and your Personnel comply with the organisation's constitution, governing rules, memorandum of association or articles of association (clause 5.2(d))	Your organisation may be required to provide reports and information to the NSW government agency from time-to-time demonstrating compliance (clause 19.4)	<input type="checkbox"/>
You must hold all necessary licences	<p>Make sure your organisation and your Personnel hold and maintain all:</p> <ul style="list-style-type: none"> • licences 	Your organisation may be required to provide reports and information to the NSW government agency from time-to-	<input type="checkbox"/>



Obligation	Steps to take	Evidence required	Reviewed <input checked="" type="checkbox"/>
	<ul style="list-style-type: none"> • approvals • consents • accreditations, and • registrations <p>that are necessary to provide the Services, including those that the NSW government agency reasonably requests in writing (clause 5.2(e))</p>	time demonstrating compliance (clause 19.4)	
You must comply with health and safety laws	Take steps to ensure the health and safety of Personnel (clause 5.2(f))	Your organisation may be required to provide reports and information to the NSW government agency from time-to-time demonstrating compliance (clause 19.4)	<input type="checkbox"/>
You must engage with Aboriginal Personnel where appropriate	Where the Target Group for the Services are Aboriginal People or Torres Strait Islander people, you agree to use your best endeavours to engage relevant individuals, families, cultural custodians, clan and language groups, community organisations, communities or representatives in the design, provision and evaluation of the Services so that the Services are appropriate to local community and cultural needs (clause 5.5(b))	On request, you must provide the NSW government agency with evidence of compliance (clause 5.5(c))	<input type="checkbox"/>
You must pay your Personnel	<p>Put systems in place to make sure that your organisation is able to pay:</p> <ul style="list-style-type: none"> • wages (as required by law, including under a relevant Award or Enterprise Agreement) • entitlements • superannuation • payroll and other tax, and • any other associated costs (clause 6.1(a)(ii)) <p>Note: The obligation to pay Personnel does not apply to a true volunteer, who gives their time freely and willingly without expectation of reward</p>	On request, you must provide the NSW government agency with any information it may reasonably require in order to assess compliance (clause 6.1(g))	<input type="checkbox"/>
You must engage qualified Personnel	<p>Put systems in place to make sure you are only using appropriately:</p> <ul style="list-style-type: none"> • trained • qualified, and • experienced Personnel 	On request, you must provide the NSW government agency with any information it may reasonably require to assess compliance (clause 6.1(g))	<input type="checkbox"/>



Obligation	Steps to take	Evidence required	Reviewed <input checked="" type="checkbox"/>
	<p>who hold all legally required:</p> <ul style="list-style-type: none"> • authorisations • accreditations • permits, and • clearances <p>necessary to carry out their roles in relation to the Services (clause 6.1(b))</p>		
You must conduct Personnel checks	<p>Before engaging Personnel for any role, take steps to make sure Personnel:</p> <ul style="list-style-type: none"> • are not prohibited or disqualified under any law, and • are not considered undesirable to work with children or vulnerable persons if applicable <p>Consider whether any national criminal record check or probity check is relevant or may impact on the suitability of the Personnel (clause 6.1(c))</p>	<p>Provide evidence to the NSW government agency to its satisfaction of your compliance (clause 6.1(c)(iii))</p>	<input type="checkbox"/>
You must meet extra obligations if engaging in child-related work	<p>If your organisation provides Services under the Human Services Agreement that are 'child-related work' and you are an 'employer' according to the <i>Child Protection (Working with Children) Act 2012</i> (NSW) (CPWC Act), your organisation must make sure:</p> <ul style="list-style-type: none"> • Personnel engaged to work in 'child-related work' have had all mandatory employment screening (Working with Children Check clearances) before starting work (clause 6.1(d)(i)) • you have risk assessment procedures and plans in place to ensure compliance with the CPWC Act (clause 6.1(d)(ii)) • you don't engage Barred Persons or persons who are otherwise undesirable to work with children (clause 6.1(e)) • you identify and comply with all statutory obligations when engaging in 'child-related work' (clause 6.1(f)(i)) • Personnel are aware of and comply with their own statutory obligations when engaging in 'child related work' (clause 6.1(f)(ii)) 	<p>Check Working with Children Check clearances for all relevant Personnel before they start work with your organisation (section 9A CPWC Act).</p> <p>On request, you must give the NSW government agency any information it may reasonably require in order to assess compliance (clause 6.1(g))</p>	<input type="checkbox"/>



Obligation	Steps to take	Evidence required	Reviewed <input checked="" type="checkbox"/>
You must avoid conduct that damages reputation	Make sure your organisation and your Personnel don't engage in any conduct that could bring the NSW government agency into disrepute or lead to Reputational Proceedings being commenced (clause 6.1(f)(iii))	On request, you must provide the NSW government agency with any information it may reasonably require in order to assess compliance (clause 6.1(g))	<input type="checkbox"/>
Removal of Personnel	You must remove Personnel from the provision of Services under the Human Services Agreement if requested to do this by the NSW government agency (clause 6.2)	Your organisation may be required to provide reports and information to the NSW government agency from time-to-time demonstrating compliance (clause 19.4)	<input type="checkbox"/>
You must avoid Conflicts of Interest	Make sure Personnel don't engage in any activity or obtain any interest that gives rise to a Conflict of Interest (clause 7.1(b))	Your organisation may be required to provide reports and information to the NSW government agency from time-to-time demonstrating compliance (clause 19.4)	<input type="checkbox"/>
You must provide access to Personnel	Make sure your organisation is able to provide the NSW government agency with full and free access to your Personnel so the agency can conduct a review, audit or investigation of your performance under the Agreement (clause 15.3(c))	Your organisation may be required to provide reports and information to the NSW government agency from time-to-time demonstrating compliance (clause 19.4)	<input type="checkbox"/>
Don't infringe Intellectual Property Rights	Make sure your Personnel don't infringe any person's Intellectual Property Rights or Moral Rights or authorise the infringement of any such rights (clause 16.3(a))	Your organisation may be required to provide reports and information to the NSW government agency from time-to-time demonstrating compliance (clause 19.4)	<input type="checkbox"/>
Confidentiality deeds	Arrange for Personnel to sign individual confidentiality deeds, if requested by the NSW government agency to do so (clause 17.1(c))	Your organisation may be required to provide reports and information to the NSW government agency from time-to-time demonstrating compliance (clause 19.4)	<input type="checkbox"/>
You must make sure Personnel comply with security requirements	Make sure Personnel comply with the secrecy and security provisions in Notified Policies	Your organisation may be required to provide reports and information to the NSW government agency from time-to-time demonstrating compliance (clause 19.4) or information to government specifically about security procedures and safeguards (clause 25.1 and clause 25.2).	<input type="checkbox"/>



Note: General right to advocacy

The Human Services Agreement doesn't restrict the ability of an organisation or its Personnel from entering into public debate or advocacy activities, so long as the organisation and its Personnel comply with their obligations relating to confidentiality, privacy and Conflict of Interest (clause 21.2).

What are the key checks your organisation should conduct before engaging Personnel?

What organisations does this apply to?	Checks	Reviewed <input checked="" type="checkbox"/>
All organisations	<ul style="list-style-type: none"> Confirm Personnel hold all legally required authorisations, accreditations, permits and clearances necessary to carry out their roles in relation to the Services (clause 6.1(b)) 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Confirm Personnel are not prohibited or disqualified under any law from being employed or engaged to undertake role or function (clause 6.1(c)(i)) 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Confirm Personnel are not considered undesirable to work with children or vulnerable persons if applicable (clause 6.1(c)(i)) 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Conduct national criminal record checks if relevant (clause 6.1(c)(ii)) 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Conduct probity checks if relevant (clause 6.1(c)(ii)) 	<input type="checkbox"/>
Organisations engaging Personnel in child-related work	<ul style="list-style-type: none"> Confirm Personnel are not 'Barred Persons' (clause 6.1(e)) 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Obtain Working with Children Check Clearances for all Personnel (clause 6.1(f)(i)) 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Make sure Personnel are aware of their obligations when working with children (clause 6.1(f)(ii)) 	<input type="checkbox"/>
Organisations engaging sub-contractors	<ul style="list-style-type: none"> Make reasonable enquiries to make sure the sub-contractor can comply with the Personnel obligations contained in the Human Services Agreement (these are summarised in this checklist) 	<input type="checkbox"/>

What documents should your organisation's Personnel sign?

Personnel	Documents	Reviewed <input checked="" type="checkbox"/>
Employee	<ul style="list-style-type: none"> Contract of employment 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Confidentiality Agreement 	<input type="checkbox"/>



Personnel	Documents	Reviewed <input checked="" type="checkbox"/>
	<ul style="list-style-type: none"> Any applicable organisational or NSW government agency policies 	<input type="checkbox"/>
Volunteer	<ul style="list-style-type: none"> Volunteer Agreement 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Confidentiality Agreement 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Any applicable organisational or NSW government agency policies 	<input type="checkbox"/>
Contractor	<ul style="list-style-type: none"> Contractors Agreement 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Confidentiality Agreement 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Any applicable organisational or NSW government agency policies 	<input type="checkbox"/>
Sub-contractor	<ul style="list-style-type: none"> Sub-contractors Agreement 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Confidentiality Agreement 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Any applicable organisational or NSW government agency policies 	<input type="checkbox"/>
Officer	<ul style="list-style-type: none"> Confidentiality Agreement 	<input type="checkbox"/>
Agent	<ul style="list-style-type: none"> Agency Agreement 	<input type="checkbox"/>
	<ul style="list-style-type: none"> Confidentiality Agreement 	<input type="checkbox"/>

What key terms should your organisation include in employment contracts and volunteer agreements?

A summary of sample key terms that an organisation should include in any employment or volunteer contract to help with compliance is below. The organisation should add these terms to their existing employee or volunteer contracts.

Term	Reference in Human Services Agreement	Reviewed <input checked="" type="checkbox"/>
The [employee OR volunteer] will undertake all necessary checks to confirm they are not a 'barred person', including a working with children check. The [employee or volunteer] consents to the organisation	Clause 6.1	<input type="checkbox"/>



Term	Reference in Human Services Agreement	Reviewed <input checked="" type="checkbox"/>
performing a criminal record check or any other enquiry as required by law to confirm they are suitable for the role		
The employee is not prohibited or disqualified under any law from being employed or engaged to undertake [insert details of role or function]	Clause 6.1	<input type="checkbox"/>
The organisation will own the intellectual property in all material created by the [employee or volunteer], unless otherwise agreed in writing. The organisation will obtain all necessary moral rights consents from the employee or volunteer in respect of the material created by the employee or volunteer.	Clause 16.1	<input type="checkbox"/>
<p>The [employee OR volunteer] will:</p> <ul style="list-style-type: none"> comply with all applicable laws (including laws relating to child protection, work health and safety, superannuation, workers compensation, employment screening, privacy, workplace relations and tax) comply with all applicable policies and standards (as notified to apply), and hold and maintain all licences, approvals, consents, accreditations or registrations that are necessary and apply to their work, or as notified from time-to-time 	Clause 5.2	<input type="checkbox"/>
The [employee OR volunteer] will participate fully in any review, audit or investigation of the organisation's performance conducted by a Public Accountability Body which includes the NSW Auditor General and the NSW Ombudsman	Clause 15.3	<input type="checkbox"/>
<p>The [employee OR volunteer] agrees to sign a confidentiality deed (if requested) and promptly provide a signed copy to the organisation.</p> <p>The [employee OR volunteer] agrees not to disclose the organisation's Confidential Information* without the prior written approval of the organisation</p> <p>*Confidential Information is information disclosed to the employee or volunteer in the course of their work with the organisation that is:</p> <ul style="list-style-type: none"> by its nature confidential designated by the organisation or a NSW government agency as confidential, and the employee or volunteer knows or ought to know is confidential 	Clause 17.1	<input type="checkbox"/>



Note

Be aware that the Human Services Agreement can come to an end after the expiry of 90 days' written notice (clause 13.2). Organisations should bear this in mind when retaining Personnel.

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:

- ▶ [Employees, volunteers or contractor](#)
- ▶ [Volunteers](#)
- ▶ [Intellectual property](#)
- ▶ [Screening checks for employees and volunteers](#)

Other related resources

- ▶ [BuyNSW website](#)

Legislation

- ▶ [Child Protection \(Working with Children\) Act 2012 \(NSW\)](#)