

# Checklist 7: What records and registers do we need to keep?

Information for organisations delivering human services in New South Wales

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## This fact sheet covers:

- ▶ What records does your organisation need to keep?
- ▶ What records can a NSW government agency request?

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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).

## What records does your organisation need to keep?

The Human Services Agreement imposes a number of obligations on organisations to keep records. In addition to these requirements, organisations are required to keep and maintain documents and records under other sources of obligations (for example, under legislation or contract) including in relation to employees, tax, under governance standards for charities and in relation to potential litigation.



### Note: Additional record-keeping obligations



The checklist below lists specific obligations to keep records under the Human Services Agreement – it's not a complete list of all the records an organisation is required to keep by law.

Record keeping	Description	Reviewed <input checked="" type="checkbox"/>
<b>Records performance and Outcome Measures</b>	Put systems in place to record and measure performance against the Performance and Outcome Measures (clause 5.3).  The particular records that an organisation must keep depends on the Performance and Outcome Measures listed in the Schedule	<input type="checkbox"/>
<b>Complaints Register</b>	Keep a complaints register (clause 5.4(b))	<input type="checkbox"/>
<b>Aboriginal and Torres Strait Islander service provision</b>	If your organisation provides services to Aboriginal and Torres Strait Islander Persons, your organisation should keep records to demonstrate it's making required efforts to provide the Services in a culturally engaged and appropriate way (clause 5.5(b)).  Such evidence must be provided on request.	<input type="checkbox"/>



Record keeping	Description	Reviewed <input checked="" type="checkbox"/>
<b>Personnel records</b>	<p>Keep records of:</p> <ul style="list-style-type: none"> <li>copies of any documents to verify the person engaged has the required training or qualifications, if a role requires particular training or qualifications, (clause 6.1(b)), and</li> <li>relevant background checks for Personnel, including: <ul style="list-style-type: none"> <li>checks to make sure a person is not prohibited or disqualified from being employed or engaged in the role they are in (clause 6.1(c)(i))</li> <li>Working With Children Checks, and checks to make sure a person is not undesirable to work with children or vulnerable persons, where the person may have contact with children or vulnerable persons (clause 6.1(c)(i)), and</li> <li>national criminal record checks or other probity checks if relevant (clause 6.1(c)(ii))</li> </ul> </li> </ul>	<input type="checkbox"/>
<b>Working with children</b>	<p>Organisations subject to the <i>Child Protection (Working with Children) Act 2012</i> (NSW) (<b>CPWC Act</b>) should keep records of:</p> <ul style="list-style-type: none"> <li>the results of Working with Children Clearance Checks (clause 6.1(d)(i))</li> <li>risk assessment procedures and plans put in place to cover obligations under the CPWC Act (clause 6.1(d)(ii)), and</li> <li>documents, such as policies and procedures, to show that the organisations and people engaged to work with children, are aware of and comply with obligations under the CPWC Act (clause 6.1(f)(i) and (ii))</li> </ul>	<input type="checkbox"/>
<b>Sub-contracts</b>	<p>Organisations should keep records of any consents given to sub-contracted Services (clause 6.3(b)).</p> <p>Organisations are not allowed to sub-contract Services unless the relevant NSW government agency has given prior written consent</p>	<input type="checkbox"/>
<b>Conflicts of Interest</b>	<p>Keep records of all thorough enquiries and steps taken to ensure no Conflicts of Interest exist or are likely to arise in relation to the Agreement (clause 7.1(a)).</p> <div>  <p><b>Tip</b></p> <p>The Australian Charities and Not-for-profits Commission (<b>ACNC</b>) has a <a href="#">template register of interests</a> on its website</p> </div>	<input type="checkbox"/>
<b>Asset Register</b>	<p>Keep an asset register of the assets purchased with any part of the funds and valued above the amount set out in the Schedule (clause 11.3)</p>	<input type="checkbox"/>
<b>Intellectual Property</b>	<p>Keep records of all consents to use someone else's Intellectual Property. Organisations have to make sure that they have all rights and permissions to allow the NSW government agency to use the Intellectual Property produced under the Agreement, or incorporated into material used for the Agreement (clause 16.3(b)(ii))</p>	<input type="checkbox"/>
<b>Moral Rights (Intellectual Property)</b>	<p>Get consent from persons who have Moral Rights in work or material used in connection with the Agreement, for any acts that might infringe the person's Moral Rights (clause 16.4(a)). Records of</p>	<input type="checkbox"/>



Record keeping	Description	Reviewed <input checked="" type="checkbox"/>
	consents should be kept by the organisation so they can be provided on request (clause 16.4(b))	
<b>General records</b>	<p>Make and keep full records in relation to the Services, the use of the Funds or your obligations under the Agreement, which you are required to keep in accordance with:</p> <ul style="list-style-type: none"> <li>any reporting requirements in the Schedule or elsewhere in the Human Services Agreement</li> <li>applicable NSW government agency policies or guidelines</li> <li>relevant Accounting Standards Agreement in accordance with any applicable NSW government agency or NSW government policies, Standards (such as Australian Standards, or standards listed in the Schedule), Accounting Standards and law</li> <li>a direction by the applicable NSW government agency to keep and provide those records (clause 19.4)</li> </ul> <p> <b>Tip</b></p> <p>Check the Schedule and the relevant NSW government agency to confirm:</p> <ul style="list-style-type: none"> <li>the format in which they want your organisation to keep its records, and</li> <li>whether there are any relevant government policies or guidelines that your organisation must follow when compiling and providing reports and information</li> </ul>	<input type="checkbox"/>
<b>Financial records</b>	<p>Make and keep full records of the receipt and expenditure of the funds and allow access to the relevant NSW government agency for 7 years from the date of expiration of the Agreement, even if your organisation stops operating (clause 19.2)</p> <p> <b>Tip</b></p> <p>Keeping records of the use of funds is also important to be able to provide, if requested, evidence that funds were used appropriately under the Agreement (clauses 9.4, 9.5 and 9.6)</p>	<input type="checkbox"/>
<b>Operational records</b>	<p>Keep operational records to verify and demonstrate performance of the Agreement (clause 19.2(b)(iv)).</p> <p>Operational records are those that show that the organisation is performing the Services and its obligations under the Agreement. For example, operational records might include:</p> <ul style="list-style-type: none"> <li>annual reports and other reports on the results of programs, projects or services</li> <li>operating policies and procedures</li> <li>monitoring and evaluation reports</li> <li>meeting minutes, and contracts and agreements relating to the Services</li> </ul>	<input type="checkbox"/>
<b>Insurance</b>	Keep records of insurance policies to demonstrate that your organisation has taken out adequate insurance (clause 20.1)	<input type="checkbox"/>
<b>Notifications</b>	Keep records of any notices, requests or other communications under the Agreement to prove compliance with clause 23.1 (which requires that all such notices, requests or communications be made	<input type="checkbox"/>



Record keeping	Description	Reviewed <input checked="" type="checkbox"/>
	in writing, signed by an authorised officer and delivered to the physical or electronic address of the other party)	
<b>Security</b>	Keep records of your security procedures and document any amendments (clause 25)	<input type="checkbox"/>

## What records can a NSW government agency access?

A NSW government agency can request access to an organisation's records for a number of reasons under the Human Services Agreement, including to determine if an organisation is complying with its obligations under the Agreement. The checklist below lists the types of records that can be accessed.

Access	Description	Reviewed <input checked="" type="checkbox"/>
<b>Complaints register</b>	You must provide access to your organisation's complaints register and any material that is relevant to a complaint (clause 5.4(d))	<input type="checkbox"/>
<b>Personnel records</b>	You must provide access to Personnel records to show that your organisation is complying with its obligations under clause 6.1, including the requirements for personnel background checks and other checks under child protection legislation (clause 6.1(g))	<input type="checkbox"/>
<b>Records and premises</b>	You must provide access to records (including making copies) and to the premises where the funded activity is (or was) taking place, for up to 7 years after the expiry or termination of the Agreement (clause 15.2). The same access also needs to be provided for any sub-contract agreement your organisation enters into (clause 15.2(d))	<input type="checkbox"/>
<b>Records, reports and information</b>	You must provide all records (clause 19.2), reports and information required under the Agreement, the Schedule or otherwise requested (clause 19.4(a)). This includes any records or reports in relation to the Services, expenditure of the Funds or your organisation's obligations under the Agreement	<input type="checkbox"/>
<b>Government Information (Public Access) Act 2009 (NSW) (GIPA)</b>	You must provide immediate access to (and copies of) all information within 7 days of receiving a written request from the NSW government agency relating to a GIPA application (clause 19.3(b))	<input type="checkbox"/>

**Note: Ownership of records**

Where your organisation owns the records created relating to the funding, the Services or any obligations under the Agreement, a NSW government agency has an indefinite, fee-free licence to use, copy, modify and commercialise the Agreement Material which includes documents, records, information and data. However, under clause 19.4(e)(i) of the Agreement, the NSW government agency owns any reports provided under the Agreement.

# Resources

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## 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:

- ▶ [Documents and records](#)
- ▶ [Reporting to government](#)

## Other related resources

- ▶ [BuyNSW website](#)

## Legislation

- ▶ [Child Protection \(Working with Children\) Act 2012 \(NSW\)](#)
- ▶ [Government Information \(Public Access\) Act 2009 \(NSW\)](#)



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