

Human Services Agreement: Department of Communities and Justice Supplementary Conditions

Information for organisations funded by the NSW Department of Communities and Justice using the NSW Human Services Agreement

This fact sheet covers:

- ▶ What are the DCJ Supplementary Conditions?
 - ▶ What are the differences between the DCJ Supplementary Conditions (contained in the Department of Communities and Justice Schedule) and the Human Services Agreement Standard Terms?
 - ▶ How to work out whether a DCJ Supplementary Condition or a Standard Term applies?
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This fact sheet is for organisations that provide Department of Communities and Justice (DCJ) funded services. It is part of our 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.

What are the DCJ Supplementary Conditions?

While it's intended that the terms of the Human Services Agreement will be largely consistent across NSW government agencies, each NSW government agency has the right to amend the Human Services Agreement to make sure it's fit-for-purpose (ie. that it fits the relevant government agency's specific funding needs). Generally most amendments to the Human Services Agreement will be limited to the conditions in the Agreement for Funding of Services – Schedule (the Schedule) rather than the Standard Terms.

To ensure the Human Services Agreement meets DCJ's contracting requirements, DCJ has amended the Schedule and included Supplementary Conditions. In this factsheet we refer to these as the DCJ Schedule and the DCJ Supplementary Conditions.

The DCJ Supplementary Conditions are listed towards the end of the DCJ Schedule. The DCJ Supplementary Conditions prevail over the Standard Terms to the extent of any inconsistency.

If your organisation is using the DCJ Schedule it is important to understand how the DCJ Supplementary Conditions impact the Standard Terms so that you can make sure you are complying with the correct clauses in the Agreement.

**Tip**

Read this factsheet with the Human Services Agreement and the Guide at hand for reference.

**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 fact sheet has been prepared on the basis of the Agreement for Funding of Services – Standard Terms dated 16 October 2019 (**Standard Terms**) and the DCJ Agreement for Funding of Services – Schedule dated October 2019 (**DCJ Schedule**) available on the [DCJ website](#).

If the terms on which your Standard Terms or DCJ Schedule is based have been amended, please review the information in this document carefully to make sure they are consistent where necessary.


If your organisation intends on subcontracting all or part of the Services make sure your sub-contract Agreement takes into account the impact of the DCJ Supplementary Conditions on the Standard Terms.

The differences between DCJ Supplementary Conditions and Standard Terms – working out what terms apply to your organisation

DCJ Supplementary Condition	Description of the DCJ Supplementary Condition	Relevant Standard Terms clause	What does this mean?
Clause 1 - Effect of Supplementary Conditions	Where there is any inconsistency between the DCJ Supplementary Conditions and the Standard Terms, the DCJ Supplementary Conditions prevail over the Standard Terms to the extent of the inconsistency.	Clause 2.1(c)	<p>Clause 1 of the DCJ Supplementary Conditions replaces clause 2.1(c) of the Standard Terms.</p> <p>Where there is a conflict between the DCJ Supplementary Conditions and the Standard Terms, the DCJ Supplementary Conditions apply.</p>
Clause 2 – Definition of ‘Financial Year’	Financial Year means each 12 month period commencing 1 July and ending 30 June.	None	<p>The DCJ Supplementary Conditions include a definition of ‘Financial Year’.</p> <p>This makes it clear to the parties that the relevant 12 month period is from 1 July - 30 June each year (rather than a calendar year).</p>

DCJ Supplementary Condition	Description of the DCJ Supplementary Condition	Relevant Standard Terms clause	What does this mean?
Clause 2- Definitions of 'Program Specifications'	Program Specifications means the document as amended and replaced by DCJ.	None	<p>The Program Specifications is a document that is specific to the DCJ Schedule.</p> <p>The obligations placed on the Provider in relation to the Program Specifications are set out under clause 4 of the DCJ Supplementary Conditions.</p>
Clause 3(a) and 3(b) - Option to extend	<p>This gives DCJ a right to extend the Initial Term.</p> <p>DCJ will notify the Provider in writing within 30 days before the expiry of the Initial Term if it wishes to exercise the option.</p>	Clause 3.2 - Extension period	<p>Clauses 3(a) and 3(b) of the DCJ Supplementary Conditions are substantially the same as clause 3.2 in the Standard Terms.</p> <p>Clause 3(a) of the DCJ Supplementary Conditions expressly provides that DCJ's right to extend the Initial Term is an option to extend the term. This means that it is not obligatory for DCJ to extend the Initial Term.</p>
Clause 4 - Program Specifications	<p>The Provider must comply with the Program Specifications which may be amended or replaced by DCJ at any time.</p> <p>DCJ will take reasonable steps to notify the Provider of any changes to the Program Specifications that may have a material impact on the Services. However, it's the Provider's obligation to make sure it gets the current version of the Program Specifications and provides Services accordingly.</p>	None	<p>The Program Specifications are specific to the DCJ Schedule.</p> <p>It's expressly required that the Provider complies with the Program Specifications (as amended or replaced from time to time). The Program Specifications may be amended or replaced by DCJ at any time, and, if it's a material change, DCJ will notify the Provider.</p> <p>This supplementary condition is additional to the Standard Terms.</p>
Clause 5 - Accounts and records	The Provider must keep proper accounts and records of its use of the Funds separately from other accounts and records.	Clause 19.2(b)(i) - Record keeping	<p>Clause 5 of the DCJ Supplementary Conditions requires that a Provider keeps proper accounts and records.</p> <p>Clause 19.2(b)(i) of the Standard Terms, requires that an organisation keep sufficient records.</p> <p>Both the DCJ Supplementary Conditions and the Standard Terms require that accounts and records regarding use of the Funds be kept separate to the Provider's (or organisation's) other accounts and records.</p>
Clause 6 - Funds held on trust	The Provider agrees that the Funds are the property of DCJ and are held by the Provider on	None	This is an additional clause not included in the Standard Terms.

DCJ Supplementary Condition	Description of the DCJ Supplementary Condition	Relevant Standard Terms clause	What does this mean?
	trust for the benefit of DCJ until the Provider delivers the Services.		The effect of this clause is that the Funds provided by DCJ to the Provider are held by the Provider on behalf of DCJ until the Provider applies the Funds for the purpose of delivering the Services.
Clause 7 - Additional funds	The Provider must give DCJ details of any additional monetary contributions it receives from another agency or authority that relate to the specific Services funded by the DCJ.	Clause 9.8 - Additional contributions	<p>The DCJ Supplementary Conditions impose additional requirements on a Provider to include details of:</p> <ul style="list-style-type: none"> any additional funding amount the agency providing it, and the outputs and outcomes in connection with the funding. <p>There is a slight difference between the wording of clause 7 in the DCJ Schedule and clause 9.8 of the Standard Terms.</p> <ul style="list-style-type: none"> The DCJ Schedule requires notification for additional funding relating to the provision of 'the specific services funded' The Standard Terms requires notification for additional funding in relation to the 'facilitation of the Services.' <p>Organisations should seek legal advice if they are unsure whether to notify.</p> <p>Providers must still notify DCJ in writing within 10 Business Days of receiving additional funds under clause 9.8 of the Standard Terms.</p>
Clause 8 - Asset register	The Provider must give a copy of its Asset Register to DCJ within 4 months of the end of each Financial Year.	Clause 11.3 - Register of Assets	<p>This is an additional obligation imposed by DCJ. It means a Provider must regularly provide DCJ a copy of its Asset Register.</p> <p>Under the Standard Terms, an organisation only needs to record Assets in the Asset Register and provide a copy to the NSW government agency when requested or as part of any reporting requirements.</p>
Clause 9 - Termination without fault	DCJ and the Provider may terminate the Agreement at any time for any reason by giving the other party 90 days' notice.	Clause 13.2(b) - Termination without fault	<p>Under the Standard Terms, a party must give the other party 6 months' notice to terminate the Agreement without fault.</p> <p>Under the DCJ Supplementary Conditions, DCJ and the Provider</p>

DCJ Supplementary Condition	Description of the DCJ Supplementary Condition	Relevant Standard Terms clause	What does this mean?
			only need to provide each other 90 days' notice.
Clause 10 - Privacy Legislation	The applicable Privacy Legislation is read down to exclude the <i>Privacy Act 1988</i> (Cth).	Clause 18.1(a) - Compliance with Privacy Legislation	<p>Under the Standard Terms, 'Privacy Legislation' is defined to include the <i>Privacy Act 1988</i> (Cth) (Act).</p> <p>Under the DCJ Supplementary Conditions, the Act is specifically excluded from having application.</p> <p>Caution</p> <p> This doesn't necessarily mean that your organisation isn't required to comply with the Act– it may have to comply for other reasons.</p>
Clause 11 - Records	<p>Where the Provider supplies out-of-home-care services, it must:</p> <ul style="list-style-type: none"> comply with section 170 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW), and maintain files of a child or young person. <p>This requirement applies for 7 years after the Provider stops being responsible for the placement of the child or young person.</p> <p>The Provider must deliver these records to DCJ either at the expiration of the 7 year period or if it stops being a designated agency within the 7 year period.</p> <p>The Provider must also deliver to DCJ all records relating to the placement in statutory or supported out-of-home-care of Aboriginal or Torres Strait Islander child or young persons within 60 days after the child or young person is no longer in the care of the Provider or in statutory or supported care.</p>	Clause 19.2 - Record keeping	Clause 11 of the DCJ Supplementary Conditions imposes compliance requirements that are specific to DCJ programs and in addition to the record keeping requirements under clause 19.2 of the Standard Terms.
Clause 12(a) - (e) - Reporting: Organisational Level	<p>The Provider must:</p> <ul style="list-style-type: none"> Where the Provider is required to prepare audited financial statements it must provide to DCJ copies of its audited financial statements accompanied by an audit certificate prepared by an independent auditor that meets the Accounting 	Clause 19.4 - Reports and information	<p>The DCJ Supplementary Conditions contain reporting requirements that are in addition to the reports and information requirements under clause 19.4 of the Standard Terms.</p> <p>The DCJ Supplementary Conditions require the Provider to give DCJ specific documents depending on whether or not it is required to prepare audited financial statements (certain types</p>

DCJ Supplementary Condition	Description of the DCJ Supplementary Condition	Relevant Standard Terms clause	What does this mean?
	<p>Standards within 4 months of the end of the Financial Year,</p> <ul style="list-style-type: none"> Where a Provider is not required to prepare audited financial statements, it must provide to DCJ statements for profit and loss, financial position and changes in equity and cash flow. It must also provide notes, a Responsible Person's declaration and a compilation report. This must be done within 4 months of the end of the Financial Year. 		<p>of organisations such as public companies are required to prepare these statements).</p> <p>Note - under clause 12(d) of the DCJ Supplementary Conditions, local councils, universities and other bodies established under NSW legislation do not need to provide DCJ any of the documents listed under clauses 12(a)-(c).</p>
Clause 12(f)-(g) - Reporting: Services	<p>The Provider must provide an income and expenditure statement to DCJ for the Services it provides for Funds valued above \$25,000 and any additional Funds provided by DCJ within 4 months before the end of each Financial Year and at expiry or termination or on DCJ's request.</p> <p>The Provider must also give DCJ a certificate signed by two board members that certifies the Funds were spent in accordance with the Agreement. The certificates must be provided to DCJ within 4 months of the end of each Financial Year.</p>	Clause 19.4 - Reports and information	<p>Clause 12(f)-(g) of the DCJ Supplementary Conditions require the Provider to give DCJ specific documentation where certain conditions are met.</p> <p>These requirements operate in addition to the reports and information requirements contained in clause 19.4 of the Standard Terms.</p>
Clause 13 - Data sharing	DCJ may share data, information and documents in relation to the Agreement under the <i>Data Sharing (Government Sector) Act 2015</i> (NSW).	None	<p>DCJ's right to share data is in addition to its rights under the Standard Terms.</p> <p>Note - any data sharing must be in compliance with the <i>Data Sharing (Government Sector) Act 2015</i> (NSW).</p>
Clause 14 - Research, evaluation and data collection	<p>The Provider must give information to DCJ when requested for use in authorised surveys and research. If the Provider or a third party intends to conduct research into funded activities, it must notify DCJ and make sure the research complies with DCJ's guidelines.</p> <p>The Provider must collect and provide to DCJ information required to report on the Provider's performance under the Agreement, delivery of the Services and information in accordance with data collection</p>	None	The Provider's obligations to collect and provide this information to DCJ operate in addition to the Standard Terms.

DCJ Supplementary Condition	Description of the DCJ Supplementary Condition	Relevant Standard Terms clause	What does this mean?
	requirements or for authorised surveys or research.		
Clause 15 - Reasonable access	<p>The Provider must supply the Services in a way that enables reasonable access to all persons in the Target Group (as set out under the DCJ Schedule to the Standard Terms) and take reasonable action to make sure any usual places where the Services are provided are physically accessible to the particular client.</p> <p>If there is no Target Group specified in the DCJ Schedule, the Provider must provide reasonable access to all persons.</p>	None	The Provider's obligations to ensure reasonable access and physical accessibility is provided operate in addition to the Standard Terms.
Clause 16 - Audits	<p>DCJ will endeavour to give the Provider:</p> <ul style="list-style-type: none"> • 48 hours notice if it intends on accessing the Provider's premises • 14 days notice if DCJ wants to attend a client or carer's home • 10 Business Days notice if DCJ wants to review, audit or investigate performance, and • reasonable prior notice in any other circumstances. <p>DCJ will endeavour to give the Provider details, reports and an opportunity to respond to an audit.</p> <p>If DCJ has serious concerns about the provision of Services, it has the right to attend the Provider's premises or inspect documents without giving the Provider notice.</p>	Clause 15.2 - Access to premises and records	<p>This DCJ Supplementary Condition has the effect of removing the operation of clause 15.2(b).</p> <p>This means that DCJ does not need to give the Provider 'reasonable prior notice' when it wants to access the Provider's premises, attend a client or carer's home or review the Provider's performance. Instead, the timeframes under clause 16(b) of the DCJ Supplementary Conditions apply. For all other circumstances, DCJ will endeavour to provide 'reasonable prior notice'. This term is not defined in the DCJ Supplementary Conditions or Standard Terms.</p> <p>DCJ's rights to attend a client or carer's home and attend the Provider's premises or inspect documents without notice where it has 'serious concerns about the provision of the Services' is additional to its rights under the Standard Terms.</p>
Clause 17 - Cooperation and assistance	The Provider must give DCJ access to its premises at no cost to DCJ.	Clause 15.3 - Cooperation and assistance	Clause 17 of the DCJ Supplementary Conditions operates in addition to DCJ's rights under the Standard Terms.
Clause 18 - Notice sent to the DCJ contract management portal	Notices, requests or other communications may be sent by DCJ and the Provider through the contract management portal (Correspondence).	Clause 23.1 - Notice requirements	Clause 18 of the DCJ Supplementary Conditions operates in addition to the notice requirements in the Standard Terms.



DCJ Supplementary Condition	Description of the DCJ Supplementary Condition	Relevant Standard Terms clause	What does this mean?
	Correspondence must be signed by an authorised representative of the sending party.		Clause 18 of the DCJ Supplementary Condition allows for correspondence via the DCJ contract management portal.
	If using the contract management portal, Correspondence will be deemed to be delivered when the sender receives an automated message confirming delivery or 30 minutes after the time it was sent.	Clause 23.2 - Receipt of notices	

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](#)

Other related resources

- ▶ [NSW Department of Communities and Justice](#)

Legislation

- ▶ [Privacy Act 1988 \(Cth\)](#)
- ▶ [Children and Young Persons \(Care and Protection\) Act 1998 \(NSW\)](#)
- ▶ [Data Sharing \(Government Sector\) Act 2015 \(NSW\)](#)



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Human Services Agreement: Important clauses

Information for organisations delivering human services in New South Wales

This fact sheet covers:

- ▶ What is the Human Services Agreement?
- ▶ Will the Human Services Agreement apply to your organisation?
- ▶ What is the difference between the Standard Terms and the Schedule?
- ▶ What are some of the important clauses in the Human Services Agreement?

This fact sheet 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 fact sheet 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 (**DCJ 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 fact sheet 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 is the Human Services Agreement?

The Human Services Agreement is a NSW Government document that sets out the standard terms and conditions that apply to organisations (referred to as non-government organisations on the BuyNSW website) that deliver human services funded by NSW government agencies.

The Human Services Agreement is made up of the following parts which must be read together:

1. **Agreement for Funding of Services – Standard Terms** (referred to as the **Standard Terms** in this fact sheet)
2. **Agreement for Funding of Services – Schedule** (referred to as the **Schedule** in this fact sheet)

The Schedule may include or refer to 'Attachments'. These Attachments also form part of the Agreement.

Your organisation must make sure it's aware of the terms in all the Human Services Agreement documents because together they make up your organisation's contract with the relevant NSW government agency that is funding your organisation.

Will the Human Services Agreement apply to your organisation?

The Human Services Agreement will apply to all organisations funded by a NSW government agency to deliver 'human services'.

Human services are defined by the NSW Government as programs, facilities or services provided to meet the health, welfare and social needs of individuals, families and communities.



Note: when the Human Services Agreement will not apply to your organisation

The Human Services Agreement does not apply to:

- funding arrangements in place before 1 August 2017 and which have not yet expired
- grant funding
- funding arrangements that are transitioning to the National Disability Insurance Scheme
- asset-based contracts or contracts with a significant asset-based component such as housing, fleet, or ICT, and
- social impact investment transactions, for example social benefit bonds

What is the difference between the Standard Terms and the Schedule?

The Standard Terms is a template that NSW government agencies must use whenever contracting organisations to deliver human services. This means the contents (the terms and conditions) of the Standard Terms will largely be the same no matter which agency is using it. However, you should read the note below, 'agency specific terms, policies and compliance requirements', for information on when there may be variations in the Standard Terms.

The Schedule contains conditions that are specific to the funding arrangement your organisation has with the relevant NSW government agency. This means the contents of the Schedule will vary between funding arrangements. A separate Schedule will be signed by both the NSW government agency and your organisation for each different funding arrangement.

As a result, if your organisation receives multiple sources of funding from a NSW government agency or multiple NSW government agencies, you will have multiple Agreements. It's important to read through each Schedule to make sure you are aware of any conditions that differ between the Agreements.

If there are inconsistencies between the Standard Terms and the Schedule, your organisation should use the order of priority of documents contained in clause 2.1 to work out which of two conflicting provisions prevails.



Note: agency specific terms, policies and compliance requirements

While it's intended that the terms of the Human Services Agreement will be largely consistent across NSW government agencies, you should be aware that each NSW government agency has the right to amend the Human Services Agreement to ensure that it is fit-for-purpose (ie. that it fits the relevant government agency's specific funding needs).

It's expected that most amendments to the Agreement will be limited to the conditions contained in the Schedule rather than the Standard Terms. However, you must:

- check (with the NSW government agency that is intending to fund your organisation) whether the Human Services Agreement (including the Standard Terms) has been varied, and
- make sure you are aware of any differences in the documents,

before signing the Agreement. This is especially important if you receive funding from different NSW government agencies and program areas.

This fact sheet reflects the content of the Human Services Agreement available on the BuyNSW website as at 20 December 2022. Your organisation should seek legal advice on any agency specific terms.

Your organisation is also required to comply with NSW government departmental policies when notified by the NSW government agency of those policies (**Notified Policies**). This should be discussed with the relevant NSW government agency.

What are some of the important clauses in the Human Services Agreement?

The terms of every written contract should be clearly understood by all parties to the contract.

Some of the important clauses in the Standard Terms are summarised below.

This fact sheet is not an exhaustive summary of the Standard Terms, and funded organisations should carefully read all the Human Services Agreement documents. You may need to seek legal advice if some parts are unclear or raise particular concerns.

Performance and Outcome Measures (clause 5.3)

Your organisation agrees to meet or exceed the Performance and Outcome Measures that are specified in the Funding Schedule. Under clause 5.3, your organisation agrees to participate in performance reviews to make sure you are complying with the Performance and Outcome Measures.



Note

The Standard Terms require you to have systems in place to record and measure your organisation's performance against the Performance and Outcome Measures. It's a good idea to think about this before you sign the Agreement.

Conflict of interest (clause 7)

What is a conflict of interest?

Under the Standard Terms, a conflict of interest is defined as the organisation or its Personnel having an interest (whether personal, financial or otherwise) which conflicts, or which may reasonably be perceived as conflicting, with your organisation's ability to fairly, objectively and independently perform its obligations under the Agreement (see definition of Conflict of Interest in clause 1.1).

A conflict of interest situation arises when a person, who has a duty to act in the best interests of another, is presented with the opportunity or potential to use that position in some way for their own personal benefit (or for the benefit of relatives or another organisation).



Note

The definition of Personnel in the Agreement is very broad and includes Officers, employees, volunteers, agents, contractors and sub-contractors. Officer is defined in clause 1.1 of the Agreement.



Examples of a conflict of interest

- Best Start, a community organisation, enters into a Human Services Agreement for the delivery of counselling services to young people. Under the Agreement, Best Start must hire a youth counsellor to deliver the services. The CEO's daughter is a youth counsellor and would like to apply for the role.

This is a conflict of interest because the CEO can use their influence to benefit a relative through employment.

- Shannon is a board member of ABC community organisation and also runs a for-profit training service. ABC community organisation plans on sub-contracting some of their obligations under the Human Services Agreement to another organisation – including the provision of training. Shannon wonders whether his training service could be contracted by ABC to deliver the training.

While it may be possible that Shannon's business is a reliable supplier and offers the lowest price in the region, because Shannon stands to benefit personally from a decision, there is a conflict of interest.

What are your obligations under the Human Services Agreement?

When your organisation enters into the Agreement, it must take all steps reasonably practical to make sure no conflict of interest exists or is likely to arise.

Your organisation must also agree that it won't do anything or obtain any interest that will give rise to a conflict of interest. In addition, your organisation must take reasonable steps to make sure its Personnel don't do anything or obtain any interest that will give rise to an actual or possible conflict of interest.

If your organisation becomes aware of an actual or possible conflict of interest, it must immediately notify the NSW government agency in writing and take any steps to manage, eliminate, resolve or otherwise deal with the conflict of interest as determined by the NSW government agency (see clause 7.2).

The NSW government agency can also notify your organisation if it believes your organisation has an actual or possible conflict of interest, and require you to take steps to deal with the conflict of interest (see clause 7.3).

How can your organisation better manage conflicts of interest?

In addition to managing the conflict of interest in accordance with any directions given by the NSW government agency, organisations can manage conflicts of interest by:

- having an organisational policy on conflicts of interest (for example, any staff, volunteer, agent, contractor, sub-contractor and board member with a personal interest must declare their personal interest and should not be present in a meeting where the matter is being discussed or voted on)
- training staff, contractors and volunteers to identify and appropriately report on actual or possible conflicts of interest, and

- recording conflicts on a conflict of interest register

Funding (clauses 9 and 12)

Under the Standard Terms, funding can only be used for the purposes of the Agreement, in accordance with the Budget (if stated in the Schedule) and will be paid based on services actually provided. Your organisation may be required to provide an updated Budget to demonstrate use of the funds (see clause 9.2).

Under clause 9.5 of the Standard Terms, if the NSW government agency forms the reasonable opinion after discussion with your organisation that there are any unspent or uncommitted funds at any time during the term of the Agreement, it may provide written notice that:

- requires repayment of the funds
- permits the organisation to retain the funds and any interest
- adjusts a future payment, or
- otherwise deals with the funds including any interest

The notice may provide for one or more of these things.

However, once the Agreement has expired or is terminated, any unspent or uncommitted funds have to be paid back to the NSW government agency within 20 business days (see clause 9.6).



Caution

Organisations should consult the NSW government agency that funds them, or program guidelines, for guidance on how funds may be used. For example, some agencies may allow funds to be used for internal operational costs (such as WorkCover claims), while others will not.

Your organisation is also required to notify the NSW government agency of any funding provided to it by any agency or authority in relation to the facilitation of the Services within 10 business days (see clause 9.8).

The NSW government agency may suspend funding or a portion of it if any of the following occur (see clause 12.1):

- the organisation fails to provide the Services
- funds have been spent outside the terms of the Agreement
- the organisation's ability to provide the Services is impacted by a circumstance beyond its control (for example, a natural disaster)
- the organisation breaches the Agreement
- the NSW government agency suspects the organisation is not Financially Stable
- the organisation or its Personnel have breached, or the NSW government agency suspects a breach of any laws relating to providing the Services, or
- the organisation stops the Services in a way not allowed under the Agreement



Note

The NSW government agency may suspend funding for any type of breach of the Agreement. The breach doesn't have to be serious enough to make the Agreement unworkable (ie. the breach doesn't have to be material).

The NSW government agency doesn't have to prove that the organisation is financially unstable. All that is required to allow the government to suspend funding is it to 'suspect financial instability.' The term suspect is not defined, so this term could be broadly applied

If funding is suspended or withheld, the organisation may be required to:

- proportionately reduce the Services it provides, and
- take steps to address the NSW government agency's reasons for why funding has been suspended or withheld.



Note

'Financially Stable' is defined in the Agreement to be consistent with the going concern principle. An organisation is a going concern when it's considered to be able to pay its debts as and when they are due, and continue operating without any need to liquidate or wind up for at least 12 months.

Termination (clauses 13 & 14)

The Agreement can end in four main ways (explained below).

The NSW government agency can terminate immediately in certain circumstances (clause 13.1)

This is called 'Termination for cause'. In the Agreement the NSW government agency can terminate the Agreement if the NSW government agency is of the view that (the below lists only some of the reasons that the NSW government agency can terminate the Agreement – for a full list of reasons, see clause 13.1):

- the organisation has breached the Agreement, and the NSW government agency has notified the organisation to fix the breach within 20 days (for example, by lodging late reporting) but this has not occurred
- the Board or Committee or membership of the organisation changes and the NSW government agency believes it will adversely impact the organisation's obligations under the Agreement, or
- the organisation fails to notify the NSW government agency of a conflict of interest, the organisation does not resolve the conflict of interest, or a conflict of interest exists which prevents the organisation from performing the Agreement



Note

If either party terminates the Agreement under clause 13, written notice must be provided to the other party's physical address and e-mail address (see clause 23.1).



Caution: complying with a written notice

If your organisation receives written notice under the Agreement, it must immediately do what the written notice says, which may be to stop providing or reduce services. The organisation must also take steps to minimise any loss from the time it receives the notice.

An organisation that receives written notice of termination may need to notify parties such as its insurers (depending on its policy) and may consider getting legal advice on consequences of termination.

If there is a dispute about a decision to terminate by the NSW government agency, your organisation can use the dispute resolution procedure set out in clause 22.

The NSW government agency can terminate with 90 days' notice in certain circumstances (clause 13.2(a))

This is called 'termination without fault'. The NSW government agency can terminate the Agreement due to changes in government policy or budget by giving at least 90 days' notice. The notice must be in writing and meet the requirements set out in clause 23.

Both parties can terminate with six months' notice for any reason (clause 13.2(b))

This is also called 'termination without fault'. Both the NSW government agency and your organisation have the option to terminate without giving any reasons by providing at least six months' written notice.



Tip

Your organisation should include clauses in its contracts with others (such as suppliers) that allow your organisation to end these contracts if the NSW government agency terminates the Agreement under clause 13. This can help manage the costs associated with a termination of NSW government agency funding.



Caution: repayment of funding

If at any time, any of the funding money is unspent or uncommitted, (including at the date of expiry or early termination) the unspent amount may be required to be repaid to the NSW government agency.

Your organisation's budgets should provide for this possibility and the NSW government agency funds should not be applied to other activities (see clause 9.6).

The NSW government agency can terminate if there is an Intervening Event (clause 14.2)

The NSW government agency can terminate the Agreement if your organisation can't provide services for more than two months due to a fire, flood, natural disaster, explosion, unavoidable accident, terrorism or industrial dispute – this is called an 'Intervening Event' under the Agreement (see clause 14.2(a)).



Note: payment of reasonable costs of termination in some circumstances

If either party terminates the Agreement under clause 13.2 of the Standard Terms (see discussion above at paragraphs 4.4.2 and 4.4.3), then that party agrees to pay the reasonable costs directly and necessarily incurred by the other party as a result of the termination. However, loss of profits or income is not covered.

In addition, the party claiming the costs has to prove that they were costs incurred as a direct and necessary result of the termination (see clause 13.2(c)). The NSW government agency will consider what are 'reasonable costs' on a case-by-case basis.

**Note: dispute resolution**

There is a dispute resolution procedure set out in the Standard Terms in clause 22. If problems arise during the term of the Agreement, your organisation and the NSW government agency should consider this, as the first step, to resolve the dispute.

Although clause 22 doesn't specify use of an independent mediator to help resolve disputes, organisations should raise this as an option with the NSW government agency as a further alternative before the matter is referred to senior representatives of the parties (see clause 22.1(e)).

Performance reviews (clause 15)

The NSW government agency can conduct an audit of your organisation to monitor compliance with the Agreement at any time during the term and for seven years after the end of the Agreement as long as, if practical, it has provided reasonable notice to access premises.

Your organisation is required to cooperate with and provide assistance to the NSW government agency (or the entity conducting the audit) at no cost or expense to the NSW government agency. For example, this could include full access to all documents, records, software, goods, images, information and data stored by any means by your organisation.

**Tip**

If your organisation sub-contracts any of its responsibilities under the Agreement, you should include clauses in the sub-contract agreement that allows the NSW government agency access to the sub-contractor's premises and relevant records.

Intellectual property (clause 16)

Intellectual property is property created through intellectual and creative efforts and includes copyright, designs, trade marks, and patents. Intellectual property will exist in materials created under the Agreement, including in any written materials such as reports.

Agreement Material is all material an organisation or an organisation's Personnel creates in connection with the Agreement. Personnel includes officers, employees, volunteers, agents, contractors and sub-contractors, as defined under clause 1.1.

Unless otherwise agreed between the NSW government agency and the organisation, and subject to clause 19.4(e)(i) under the Agreement (which is specifically about ownership of Intellectual Property Rights in any reports provided by the organisation), your organisation:

- owns the Agreement Material (see clause 16.1(a)), and
- gives the NSW government agency a broad licence to use the Agreement Material indefinitely (see clause 16.2(a)). This means that the NSW government agency has the right to use, copy and change, including for commercial purposes, any material that has been created or developed using the NSW government agency funding. This licence does not end when the Agreement ends.



Note: ownership of existing intellectual property

If your organisation has existing material that was created by your organisation other than in performing the funded activities (called Other Material in the Standard Terms), your organisation owns its existing material and would only be giving the NSW government agency a licence to use existing material if this material is incorporated or supplied with Agreement Material.



Caution: contractors, sub-contractors, volunteers, officers and agents

Organisations must make sure they own all intellectual property in the Agreement Material (or have an appropriate intellectual property licence) so they can share intellectual property with the NSW government agency in the ways required under the Agreement.

To this end, organisations must make sure any contractors, sub-contractors, volunteers, officers and agents that contributed to the creation of Agreement Material or reports assign (or licence) the intellectual property to them.



Related Not-For-Profit Law resource

For more information, read our online resource on [intellectual property](#). And for more information on whether a worker is an employee, sub-contractor or volunteer, read our resources on [the people involved](#).

Privacy (clauses 18 and 19.3)

An organisation entering into the Human Services Agreement must comply with the:

- [Privacy and Personal Information Protection Act 1998 \(NSW\)](#) (usually this Act only applies to NSW public sector agencies, but under the Standard Terms your organisation must also comply with it)
- [Health Records and Information Privacy Act 2002 \(NSW\)](#), and
- [Privacy Act 1988 \(Cth\)](#)

Every NSW government agency must comply with the [Government Information \(Public Access\) Act 2009 \(NSW\) \(GIPA Act\)](#). Under the GIPA Act, the public can access information held by the NSW public sector.

So that a NSW government agency can comply with a request from the public for information (made under the GIPA Act), a funded organisation may be required to provide the NSW government agency with the information within seven days (see clause 19.3(b)). This excludes information that the funded organisation may not disclose to the NSW government agency under law.

Information that the organisation may not disclose under law includes information regulated by privacy laws or prohibited under Schedule 1 of the GIPA Act. However, the organisation may be required to include information that a person:

- should be likely to be aware would be disclosed, or
- has been made aware will be disclosed to the NSW government agency

If your organisation provides information to a NSW government agency (as required), your organisation must inform the person that provided that information to the organisation.



Caution: privacy principles

Depending on the size and nature of your organisation, it might not have had to comply with privacy laws before. However, the Standard Terms require that your organisation comply with privacy obligations at all times when dealing with personal information in performing the funded activities.

If your organisation is not sure about the systems it will need to put in place to comply with additional privacy obligations (such as under the [Privacy Act 1988 \(Cth\)](#)), it may need to consult a privacy law specialist.



Related Not-For-Profit Law resource

For more information, read our online resources on [privacy](#).

Insurance and Indemnity (clause 20)

Organisations are responsible for all their actions in performing the funded activities (including those of its officers, employees, contractors, sub-contractors, volunteers, and agents). And organisations are required to indemnify (repay) the NSW government agency and its personnel for any loss suffered due to certain wrongful actions of the organisation (see clause 20.2 for full detail), including:

- any unlawful, negligent, reckless or deliberately wrongful act or omission in relation to the Agreement
- a breach or claimed breach of a third party's Intellectual Property Rights or Moral Rights that relates to the Agreement, or
- any death, personal injury or loss of or damage to property relating to the Agreement

To reduce this risk, your organisation should make sure it has appropriate insurance policies in place. Certain insurances are required and will be stated in the Schedule (see clause 20.1(b)), but your organisation may need additional insurance for its activities.

You should speak to your organisation's insurance broker about what additional insurance your organisation might need to manage these risks.

Security (clause 25)

Organisations are responsible for establishing and maintaining safety, security and privacy procedures and safeguards to guard against unauthorised access, use, disclosure, destruction, loss or alteration of Confidential Information and personal information (see clause 25.1(a)).

Under the Agreement, organisations are also responsible for notifying the NSW government agency of these procedures and safeguards, including any amendments made to these procedures and safeguards.

**Tip**

Confidential Information is defined under clause 1.1 of the Agreement. See checklist 4 of the Guide for more information on 'personal information'.

Organisations should follow the procedures and safeguards set out in any Notified Policies.

Examples of procedures and safeguards could include:

- the conduct of information audits – to work out what kinds of Confidential Information and personal information your organisation collects, stores and uses
- the development of checklists, guidelines and manuals to help Personnel understand how the organisation uses, stores and safeguards Confidential Information and personal information, and what to do if there is an unauthorised access, use, disclosure, destruction, loss or alteration of this information, or
- training Personnel in what to do if there is an unauthorised access, use, disclosure, destruction, loss or alteration of Confidential Information or personal information.

If an organisation (or its Personnel) becomes aware of an actual, alleged or suspected security breach, it must give the NSW government agency immediate written notice (see clause 25.2(b)) (referred to as a 'secrecy and security breach').

Organisations must also conduct an investigation within 48 hours of a secrecy or security breach to:

- determine whether a breach has in fact occurred, the nature of the breach and the consequences of the breach, and
- work out a remediation plan.

The organisation must share its findings with the NSW government agency, remedy the security breach and notify the NSW government agency of the outcome.

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:

- ▶ [Background checks](#)
- ▶ [Conflicts of interest and other duties](#)
- ▶ [Documents and Records](#)
- ▶ [Employees](#)
- ▶ [Financial Reporting](#)
- ▶ [Intellectual Property](#)
- ▶ [Privacy](#)
- ▶ [Risk and Insurance](#)
- ▶ [Volunteers](#)

Other related resources

- ▶ [Buy NSW website](#)

Legislation

- ▶ [Government Information \(Public Access\) Act 2009 \(NSW\)](#)
- ▶ [Health Records and Information Privacy Act 2002 \(NSW\)](#)
- ▶ [Privacy Act 1988 \(Cth\)](#)
- ▶ [Privacy and Personal Information Protection Act 1998 \(NSW\)](#)



This resource was developed with financial support from the NSW Department of Finance, Services & Innovation.

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?](#)
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- ▶ [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](#)



This resource was developed with financial support from the NSW Department of Finance, Services & Innovation.

Checklist 2: How do we meet our reporting obligations?

Information for organisations delivering human services in New South Wales

This fact sheet covers:

- ▶ What are your reporting obligations to the NSW government agency?
- ▶ When must you report to the NSW government agency?

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

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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 think about how your organisation will meet its reporting obligations.

Under the Human Services Agreement, an organisation must meet a number of reporting obligations by particular dates specified in the Agreement. Your organisation may have reporting requirements in each of the documents that make up the Human Services Agreement. For example, the Schedule may have a specific reporting timeline and particular performance reports related to the funded activity.



Note

Check the entire Agreement for reporting obligations and timelines.

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

What are your reporting obligations and when must your organisation report to a NSW government agency?

Reporting obligation	Description	Timing	Reviewed <input checked="" type="checkbox"/>
Budget	<p>The organisation must provide:</p> <ul style="list-style-type: none"> an initial budget. and an updated budget <p>for the expenditure of funds if specified in the Schedule (clause 9.2 and the Schedule)</p>	<ul style="list-style-type: none"> When entering into the Agreement on or before any dates specified in the Schedule, or when the NSW government agency requests this at any time (clause 19.4(a) and 19.4(c)) 	<input type="checkbox"/>



Reporting obligation	Description	Timing	Reviewed <input checked="" type="checkbox"/>
Interest	The organisation is required to report the amount of interest earned on funds held (clause 9.4(c))	At the request of the NSW government agency at any time (clause 19.4(a) and 19.4(c))	<input type="checkbox"/>
Performance measurement	The organisation must report on their performance against the performance measures from time-to-time (clause 5.3 and the Schedule)	<ul style="list-style-type: none"> On any date specified in the Schedule, or when the NSW government agency requests this at any time (clause 19.4(a) and 19.4(c)) 	<input type="checkbox"/>
Reports and information	<p>The organisation must provide the NSW government agency with all reports and information at the times and in the format specified by the NSW government agency (clause 19.4(a)).</p> <p>The reports and information must be provided in accordance with any applicable NSW government policies and guidelines (if specified by the relevant NSW government agency) and any Accounting Standards (clause 19.4(b))</p>	<ul style="list-style-type: none"> On any date specified in the Schedule, or when the NSW government agency requests this at any time (clause 19.4(a) and 19.4(c)) 	<input type="checkbox"/>
Services, expenditure of the Funds and obligations under the Agreement	In addition to any reporting and information requirements specified in the Agreement, the organisation agrees to provide any information, records or reports in relation to the Services, the expenditure of the Funds or the organisation's obligations under the Agreement, when requested to do so (clause 19.4(c))	When the NSW government agency requests this at any time (clause 19.4(c))	<input type="checkbox"/>
Publication to third parties	<p>The organisation must get written consent from the NSW government agency before publishing reports or providing them to third parties (clause 19.4(e)).</p> <p>This is because all intellectual property in reports provided by the organisation transfers to the relevant NSW government agency (unless otherwise stated in the Schedule)</p>	Before providing reports to third parties or publishing	<input type="checkbox"/>
Rejected documents	<p>The organisation must address any comments from the NSW government agency on any document that is prepared and required to be submitted by the organisation under the Agreement and resubmit the document.</p> <p>This is because the NSW government agency may, within 10 Business Days of the organisation submitting the document, reject and request amendments to any</p>	At the request of the NSW government agency, if that request occurs within 10 Business Days of the organisation submitting the document	<input type="checkbox"/>



Reporting obligation	Description	Timing	Reviewed <input checked="" type="checkbox"/>
	document required to be submitted (clause 19.1)		

Resources

Not-for-profit Law resources

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- ▶ [Fact sheet - Human Services Agreement: Department of Communities and Justice Supplementary Conditions](#)
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- ▶ [Checklist 1 – How do we meet our notification obligations?](#)
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- ▶ [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](#)

Other related resources

- ▶ [BuyNSW website](#)



This resource was developed with financial support from the NSW Department of Finance, Services & Innovation.

Checklist 3: How do we practically comply with the Human Services Agreement?

Information for organisations delivering human services in New South Wales

This fact sheet covers:

- ▶ What are the practical steps your organisation can take to comply with the key obligations under the Agreement?

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).

Organisations can take a number of practical steps to ensure compliance with the Human Services Agreement.

Use this checklist to review your policies and procedures to check that you will be able to comply with your obligations under the Agreement.

Obligation	Steps to take	Reviewed <input checked="" type="checkbox"/>
Acknowledgement	Acknowledge the funding received from the relevant NSW government agency in publications and publicity related to the services including in your annual report (clause 21)	<input type="checkbox"/>
Complaints	Have a complaints process and a complaints process and register (clause 5.4)	<input type="checkbox"/>
Conflict of interest	<p>Notify the NSW government agency if an actual or potential conflict of interest arises during the term of the Agreement and take steps to deal with the conflict (clause 7).</p> <p>Note: Your organisation should have its own written conflict of interest policy</p>	<input type="checkbox"/>
Constitution	Comply with your constitution, governing rules memorandum of association or articles of association when carrying out the Services (clause 5.2(d))	<input type="checkbox"/>
Expenditure	Make sure the funds are only spent on the activities to be provided under the Agreement and not on other aspects of your organisation – funds that are improperly spent may need to be repaid (clause 9.5)	<input type="checkbox"/>
Insurance	Take out insurance as set out in the Schedule	<input type="checkbox"/>



Obligation	Steps to take	Reviewed <input checked="" type="checkbox"/>
Intellectual property	<p>Make sure your organisation legally owns all intellectual property in the Agreement Material (ie. intellectual property created in connection with the Agreement; see definition at clause 1.1) so that intellectual property can be shared with the NSW government agency and used in the ways required under the Agreement</p> <p>Make sure your organisation gets an assignment (or licence) of intellectual property from its contractors, sub-contractors, volunteers and agents when they create any Agreement Material (ie. intellectual property created in connection with the Agreement) (clause 16)</p>	<input type="checkbox"/>
Personnel	<p>Employ personnel who 'hold legally required authorisations, accreditations, permits and clearances' to provide the Services (clause 6.1). This will usually include conducting background checks such as working with children checks, criminal record checks and qualification checks</p> <p>Note: The Agreement defines personnel to include volunteers, agents, contractors and sub-contractors as well as Officers and employees. All must be properly authorised, screened and trained</p>	<input type="checkbox"/>
Privacy	<p>Comply with Privacy Legislation which includes having a privacy policy and being aware of the Notifiable Data Breaches scheme. More information is available on the Office of the Australian Information Commissioner's website (clause 18)</p>	<input type="checkbox"/>
Records	<p>Keep proper records and registers about how the funds have been spent and comply with Privacy Legislation (clause 19)</p>	<input type="checkbox"/>
Security	<p>Put in place security and privacy procedures and safeguards and keep the NSW government agency up-to-date. Comply (and ensure Personnel comply) with the secrecy and security requirements in the Notified Policies (clause 25)</p>	<input type="checkbox"/>
Sub-contractor	<p>Ensure any sub-contract agreement includes the same terms and conditions as the Agreement, including a condition allowing NSW government agency to access the premises of the sub-contractor to conduct a performance review or audit (clause 6.3 and 15.3)</p> <p>Note:</p> <ul style="list-style-type: none"> • Sub-contracting arrangements will vary according to circumstance and agency • These resources don't take the place of formal legal advice 	<input type="checkbox"/>
Termination	<p>Provide outstanding reports or data due under the Agreement within 20 days of expiry or termination of the Agreement (clause 13.3)</p>	<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:

- ▶ [Background checks](#)
- ▶ [Conflicts of interest and other duties](#)
- ▶ [Documents and records](#)
- ▶ [Employees](#)
- ▶ [Intellectual Property](#)
- ▶ [Privacy](#)
- ▶ [Risk and insurance](#)
- ▶ [Sub-contracts](#)
- ▶ [Volunteers](#)

Other related resources

[BuyNSW website](#)



This resource was developed with financial support from the NSW Department of Finance, Services & Innovation.

Checklist 4: How do we meet our privacy obligations?

Information for organisations delivering human services in New South Wales

This fact sheet covers:

- ▶ What is a privacy policy?
- ▶ Does your organisation need a privacy policy?
- ▶ What types of information do privacy laws cover?
- ▶ What should your privacy policy say?
- ▶ How can your organisation make sure its privacy policy complies with privacy laws and the Human Services Agreement?

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. For example, the DCJ Schedule has a direct impact on organisations privacy 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 is a privacy policy?

A privacy policy sets out how your organisation will manage personal information, including:

- the types of personal, health and sensitive information your organisation collects
- how information is collected and stored
- the circumstances when you will disclose personal, health or sensitive information to someone else, and
- how a person can correct information your organisation holds or lodge a complaint about its handling

Does your organisation need a privacy policy?

Yes.

Under the Standard Terms your organisation has agreed to comply with privacy laws as if it were the relevant NSW government agency (clause 18.1(a)).

This means that your organisation must comply with the following Acts, as if it were a 'public sector agency':

- Privacy and Personal Information Protection Act 1998 (NSW) (**PPIP Act**), which creates the Information Privacy Principles (**IPPs**)
- Health Records and Information Privacy Act 2002 (NSW) (**HRIP Act**), which creates the Health Privacy Principles (**HPPs**), and
- Privacy Act 1988 (Cth) (**Privacy Act**), which creates the Australian Privacy Principles (**APPs**) (together referred to as the **Privacy Laws**).

Under section 33 of the PPIP Act, the NSW government agency (and therefore your organisation) is required to prepare and implement a privacy policy.

APP 1 of the Privacy Act provides that your organisation must:

- have a clearly-expressed, up-to-date privacy policy, and
- make this policy available as soon as is practically possible (for example, on your website).

If anyone asks you for the policy, you must give them a copy (for example, by posting it to them).

Handling personal information in a lawful, transparent and respectful way is an important part of building trust with the people your organisation provides services to as well as partner organisations.



Caution

Failure to comply with the Privacy Laws could amount to a breach of the Standard Terms or the Privacy Laws, and could result in financial or legal penalties.

What types of information do Privacy Laws cover?

- **Personal information:** Any information that identifies a person, including for example, their name, address, photographs, fingerprints.
- **Health information:** Information or opinions about a person's physical and mental health, disability, health preferences, use of health services, bodily donations and genetics.
- **Sensitive information:** Any information about a person's race, ethnicity, political, religious or philosophical beliefs, professional or trade association membership, sexual preferences or practices, criminal record, credit information and health or biometric information.

What should your privacy policy say?

- **Under the IPPs:** Your privacy policy must outline how your organisation will collect, use, disclose, secure and provide access to the personal, sensitive and health information it holds. All NSW government contractors and their sub-contractors must make sure their privacy policy complies with the matters set out in checklists 1 and 2 (see below).
- **Under the APPs:** Your privacy policy should outline how your organisation will manage a data breach, including how your organisation will comply with mandatory data breach notification obligations. Organisations must make sure their privacy policy complies with checklists 1 and 2 (and also checklist 3 if your organisation is a health service provider under the HRIP Act) (see below).
- **Under the HPP:** If your organisation is also a health service provider, or is an organisation that collects, uses or holds health information, then it must ensure its privacy policy complies with the matters set out in checklists 1, 2 and 3 (see below).



Tips for privacy policies

- Don't copy text from another organisation's policy, because the text might:
 - not be relevant to your organisation's practices
 - be prepared according to laws from different states or countries from those that apply to you
 - not cover requirements you're obliged to meet, or
 - be protected by copyright.
- Keep it easy to read. Draft your privacy policy in plain, easy-to-understand language to help your clients and staff understand the policy and avoid potential legal ambiguity.
- Keep it updated. The ways your organisation collects and uses personal information can change, and so do technology and laws. Review your privacy policy regularly to make sure it reflects your current practices and obligations.
- Keep it easy to access. The best place for your privacy policy is on your website, with a clearly visible link and an easily downloadable resource. It's also a good idea to keep a hard copy in your office.

How can your organisation make sure its privacy policy complies with Privacy Laws and the Human Services Agreement?



Tip: How to use the checklists

Checklists 1 and 2 are compulsory and apply to ALL organisations providing services under the Human Services Agreement.

Checklists 1, 2 and 3 are compulsory and apply to certain organisations (ie. health service providers).

Review your privacy policy against the checklists that apply to make sure your policy meets your organisation's legal obligations.

The checklists summarise the key points that your privacy policy should cover. Instead of copying the list word-for-word, adapt each point so that it specifically addresses how your organisation will handle personal, health and sensitive information.



Tip

Complying with the security requirements in clause 25 is one way your organisation can add an additional layer of safety towards meeting your privacy law obligations.

Checklist 1: Applies to ALL organisations (based on obligations under the IPPs)

Things your privacy policy should cover	Relevant IPP	Explanation	Reviewed <input checked="" type="checkbox"/>
How your organisation will collect personal information	IPP 1 – Lawful	Your organisation can only collect a person's personal information for a lawful purpose. It must be required for the organisation's activities	<input type="checkbox"/>
	IPP 1 – Lawful	Your organisation can't collect personal information by unlawful means	<input type="checkbox"/>
	IPP 2 – Direct	Only collect information directly from the person that the information relates to, or their parent or guardian if authorised	<input type="checkbox"/>
	IPP 3 – Open	Take steps to make sure the person is aware the information is being collected, why it's being collected, and who will be using it and storing it. Tell the person how to access their personal information and how to make sure it is correct	<input type="checkbox"/>
	IPP 4 – Relevant	Make sure information collected is relevant, accurate, up-to-date, complete, and not excessive	<input type="checkbox"/>



Things your privacy policy should cover	Relevant IPP	Explanation	Reviewed <input checked="" type="checkbox"/>
Explain how your organisation will store personal information	IPP 5 – Secure	Store information securely. Don't keep it longer than needed and dispose of it securely	<input type="checkbox"/>
Explain how the individual can access their information	IPP 6 – Transparent	Provide the person with details about the personal information your organisation is storing, the reasons why you are storing it and how they can access it to make sure it is correct	<input type="checkbox"/>
	IPP 7 – Accessible	Allow access to the person's personal information in a reasonable time and make sure access isn't costly	<input type="checkbox"/>
	IPP 8 – Correct	Allow the person to update, correct or amend their personal information	<input type="checkbox"/>
Explain how your organisation will use information	IPP 9 – Accurate	Make sure information is correct and relevant before using it	<input type="checkbox"/>
	IPP 10 – Limited	Only use a person's personal information for the reason the organisation collected it	<input type="checkbox"/>
Explain when and how your organisation will disclose personal information to a third party	IPP 11 – Restricted	Only release a person's information to a third party if they consent to its release, if they reasonably would not object to its disclosure, or if the information is needed to deal with a serious risk of harm	<input type="checkbox"/>
	IPP 12 – Safeguarded	Don't disclose sensitive information such as racial, ethnic, political, religious, sexual activity or trade union membership without the person's consent	<input type="checkbox"/>
Explain that your organisation is obliged to disclose a person's personal information in certain circumstances	N/A	<p>Tell people that the personal information the organisation collects may be disclosed to the applicable NSW government agency for the following purposes:</p> <ul style="list-style-type: none"> • NSW government agency audits or assessments of the organisation's compliance with the Human Services Agreement (clause 18.2(b)), or • if the NSW government agency requests information so that it can comply with its obligations under the <i>Government Information (Public Access) Act 2009</i> (NSW) (clause 19.3 of the Human Services Agreement) 	<input type="checkbox"/>
	N/A	Explain that your organisation is obliged to notify the applicable NSW government agency immediately if it has reasonable grounds to believe there has been a breach of the Privacy Laws in connection with the organisation's delivery of the Services under the Human Services Agreement (clause 18.2(a) of the Human Services Agreement)	<input type="checkbox"/>
	N/A	Outline that because your organisation receives funding from the NSW government agency, it must comply with any direction from the NSW government	<input type="checkbox"/>



Things your privacy policy should cover	Relevant IPP	Explanation	Reviewed <input checked="" type="checkbox"/>
		agency in respect to compliance with the Privacy Laws (clause 18.1 of the Human Services Agreement)	

Checklist 2: Applies to ALL organisations (based on obligations under the APPs)

Things your privacy policy should cover	Relevant APP	Explanation	Reviewed <input checked="" type="checkbox"/>
Explain that your organisation will only collect sensitive information in certain circumstances	APP 3 – Collection APP 5 – Notification	Sensitive information can only be collected with consent, or where permitted by law. If collecting sensitive information, make sure you have consent for such collection, use or disclosure	<input type="checkbox"/>
Provide individuals with a right to anonymity	APP 2 – Anonymity	Individuals must have the option of not identifying themselves, or of using a pseudonym (where lawful and practical)	<input type="checkbox"/>
Explain if and how information will be transferred across borders	APP 8 – Cross-border disclosure	Before your organisation discloses personal information to an overseas recipient, it must take steps to make sure the overseas recipient is subject to similar privacy laws	<input type="checkbox"/>
Prepare a Data Breach Response Plan	APP 11 – Security	Your organisation must prepare a Data Breach Response Plan that clearly sets out the steps to take and the people responsible for responding to a data breach	<input type="checkbox"/>
Explain your organisation's mandatory data breach notification obligations	N/A	If your organisation suspects that an 'eligible data breach' has occurred, and there is a real risk of serious harm to the person as a result of the breach, your organisation is required to notify both the person affected and the Office of the Australian Information Commissioner as soon as possible by completing a Data Breach Notification Statement	<input type="checkbox"/>



Tip

If you believe a data breach has occurred, you should get legal advice about whether the mandatory data breach notification obligations apply. Penalties apply for organisations that don't comply with the mandatory data breach notification regime.

Checklist 3: Applies to Health Service Providers and organisations that collect, hold and use health information (based on obligations under the HPPs)

Things your privacy policy should cover	Relevant HPP	Explanation	Reviewed <input checked="" type="checkbox"/>
Outline how your organisation will collect personal information	HPP 3 – Direct	Only collect information directly from the person that the information relates to, unless it is unreasonable or impractical to do so – making sure to check any guidelines issued by the Privacy Commissioner on collection	<input type="checkbox"/>
Explain that your organisation can make appropriate amendments to health information held on an individual	HPP 8 – Correct	At the request of a person, make appropriate amendments (whether by way of corrections, deletions or additions) to make sure the health information is accurate, relevant, up-to-date, complete and not misleading Private Sector health providers (ie. non-public sector agencies earning over \$3million a year) should refer to sections 33-37b of the HRIP Act which sets out specific obligations in relation to amendment or addition to records	<input type="checkbox"/>
Explain your organisation will only disclose an individual's health information in limited circumstances	HPP 10 and HPP 11 – Limited	Only disclose a person's health information for the reason it was collected, otherwise get a separate consent from the person	<input type="checkbox"/>
State that you will only use ID numbers in certain circumstances	HPP 12 – Unidentified	Only give a person an ID number if it's reasonably necessary	<input type="checkbox"/>
Explain that individuals have a right to anonymity where possible	HPP 13 – Anonymous	Give a person the option to provide their information anonymously where practical	<input type="checkbox"/>
Explain that your organisation will only transfer health information outside NSW in certain circumstances	HPP 14 – Controlled	Only transfer health information outside NSW in accordance with the procedure set out in HPP 14 which includes: <ul style="list-style-type: none"> making sure the person consents to the transfer the other party who is receiving the information is required to follow privacy obligations similar to those under the HPPs, and your organisation reasonably believes the transfer is necessary to lessen or prevent a serious threat to public health or safety 	<input type="checkbox"/>
Explain that your organisation is only authorised to use health record linkage systems in certain circumstances	HPP 15 – Authorised	Only use health records linkage systems (such as MyHealth Record) with consent	<input type="checkbox"/>



Other things to think about

Issue	Explanation	Reviewed <input checked="" type="checkbox"/>
Cloud storage	If your organisation uses internet (or cloud) based storage systems, it must take reasonable steps to make sure third party storage providers comply with the Privacy Laws. If your provider breaches those laws, your organisation may be accountable for those breaches	<input type="checkbox"/>
Privacy audit	Consider conducting a quarterly audit to determine what types of information your organisation collects, uses and discloses and update your privacy policy accordingly	<input type="checkbox"/>
Privacy officer	Appoint a person in your organisation to be responsible for its privacy compliance	<input type="checkbox"/>



Caution

The above checklists are not exhaustive, and if in doubt, you should seek legal advice about your privacy policy.

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 topic:

- ▶ [Privacy and the notifiable data breaches scheme](#)

Other related resources

- ▶ [BuyNSW website Office of the Australian Information Commissioner](#)
- ▶ [The Information and Privacy Commission, New South Wales](#)

Legislation

- ▶ [Health Records and Information Privacy Act 2002 \(NSW\)](#)
- ▶ [Government Information \(Public Access\) Act 2009 \(NSW\)](#)
- ▶ [Privacy and Personal Information Protection Act 1998 \(NSW\)](#)
- ▶ [Privacy Act 1988 \(Cth\)](#)



This resource was developed with financial support from the NSW Department of Finance, Services & Innovation.

Checklist 5: How do we meet our intellectual property obligations?

Information for organisations delivering human services in New South Wales

This fact sheet covers:

- ▶ What is intellectual property?
- ▶ What are moral rights?
- ▶ What are the different categories of 'material' and how are they treated under the Human Services Agreement?
- ▶ How can your organisation make sure it complies with its intellectual property obligations under the Human Services Agreement?

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.



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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 is intellectual property?

Intellectual property (**IP**) is property created through intellectual and creative efforts. It gives legal rights to creators of certain materials.

The most common types of IP are listed in the table below.

IP protection category	What the IP protection covers
Copyright	Original ideas and information which are written down or 'fixed' in material form (ie. not simply ideas). This can include writing, drawings, diagrams, patterns etc. Copyright is protected under the <i>Copyright Act 1968</i> (Cth) (Copyright Act)
Trade marks	Brands, service or product marks and logos. Trade marks are registered under the <i>Trade Marks Act 1995</i> (Cth)
Patents	Inventions and innovations. Patents are granted under the <i>Patents Act 1991</i> (Cth)
Designs	Shapes, configurations, patterns and ornamentation of products. Designs are registered under the <i>Designs Act 2003</i> (Cth)
Moral rights	Personal rights of the author or performer of a work to be attributed, not to have their authorship or performership falsely attributed, and to have the integrity of their authorship or performership maintained. Moral rights are created under the Copyright Act

What are moral rights?

Moral rights are personal rights that belong to the individual author or performer of copyright material. They are separate to copyright and can't be waived or assigned (transferred). However, the person with moral rights can consent to certain uses of their material.

Only people (not organisations) have moral rights. Moral rights generally last for the same period as copyright protection (which is generally for the creator's life plus 70 years). This rule varies for films.

Moral rights are made up of the right to:

- be properly attributed as the author or performer of material
- not have material falsely attributed to someone else, and
- not have material treated in a 'derogatory' way

In practice, the moral rights provisions of the Copyright Act mean that your organisation must, in addition to not infringing copyright in materials:

- correctly acknowledge the person who created the copyright material if it is reproduced (in addition to seeking permission to use copyright material, or even if you own copyright), and
- not use that material in a derogatory way.

'Derogatory' is generally taken to mean that material is treated in a way which would be damaging to the creator's reputation or honour.

There is, however, a defence of reasonableness, and the Copyright Act sets out a range of matters to be taken into account in determining what is reasonable in the circumstances.

Moral rights consent

In Australia, a person's moral rights are personal and can't be assigned, sold, licensed or waived. This is different to copyright (which includes for example, the right to copy or publish a literary work), which may be transferred or licenced.

However, a person who has moral rights in copyright material may give their consent to another person doing something (or not doing something) that would otherwise infringe their moral rights.

What are the different categories of 'material' and how are they treated under the Human Services Agreement?

Intellectual property rights are dealt with under clause 16 of the Standard Terms and in the Schedule.

Under the Standard Terms, organisations have different obligations in relation to different categories of material.

Intellectual Property Rights

Intellectual Property Rights are all rights given by law in relation to copyright works, trade marks, patents, designs and other products of intellectual activity whether the right are registrable or not.

Agreement Material

Agreement Material is all material an organisation or an organisation's Personnel (which includes officers, employees, volunteers, agents, contractors and sub-contractors, as defined under clause 1.1 of the Standard Terms) creates in connection with the Human Services Agreement.

Under the Standard Terms, the organisation:

- owns the Intellectual Property Rights subsisting in the Agreement Material (see clause 16.1(a)) (this is the default position in the Standard Terms, however, this may not be the case in your specific funding arrangement – see further discussion below), and
- gives the NSW government agency a broad royalty free licence to use the Agreement Material indefinitely (see clause 16.2(a)). This means that the NSW government agency has a non-exclusive right to use, copy and change, including for commercial purposes, any material that has been created or developed using NSW government funding. The licence does not end when the Human Services Agreement ends and is transferable.

Third Party Material

Third Party Material is all material (documents, records, software, goods, images, information and data) that is owned by a third party that is part of or used together with the Agreement Material (for instance, this could be some written material that you are quoting in a report or an image that you are using that belongs to a third party).

Under the Human Services Agreement, the organisation gives the NSW government agency a broad royalty free, non-exclusive licence to use the Third Party Material indefinitely (see clause 16.2(b)). This



means that the NSW government agency has the right to use, copy and change, including for commercial purposes, the Third Party Material, but only in conjunction with the Agreement Material. The licence doesn't end when the Human Services Agreement ends. If you are using Third Party Materials, you should check if the third party licence allows you to grant a licence of this nature.

Your Other Material

Your Other Material means any material (documents, records, software, goods, images, information and data) owned by you before the date of the Human Services Agreement or which is created independently of the Human Services Agreement.

To the extent that this material is part of or used together with the Agreement Materials, you grant the NSW government agency a broad licence to use, copy, modify and exploit Your Other Materials but only in conjunction with the Agreement Materials.



Tip

While the default position in the Standard Terms is that the organisation will own the Intellectual Property Rights in the Agreement Material, there may be instances where the NSW government agency wants to own the intellectual property in the Agreement Material.

To be sure of who owns the Agreement Material, you should refer to the Agreement for Funding of Services – Schedule, and the item that deals with 'Ownership or licensing of Intellectual Property Rights'.



Note – Ownership of intellectual property


Existing intellectual property

If your organisation has existing material that was created by your organisation other than in performing the funded activities (called Other Material in the Standard Terms), your organisation owns its existing material and would only be giving the NSW government agency a licence to use existing material if this material is incorporated or supplied with Agreement Material.

Employees and intellectual property

In most cases, an employer will own the copyright in materials created by an employee in performing their role. However, this may not be the case in all circumstances and may depend on what is included in the terms of the contract of employment. Therefore, it's prudent to get an assignment (transfer) of intellectual property rights (and a moral rights consent) from all employees if this is not already included in the employee's contract of employment terms.

How can your organisation make sure it complies with its intellectual property obligations under the Human Services Agreement?

Material category	Explanation	Reviewed 
Agreement Material (Material created in connection with the Human	The following applies regarding: <ul style="list-style-type: none"> material created in connection with the Human Services Agreement (including any sub-contract agreement), and 	



Material category	Explanation	Reviewed <input checked="" type="checkbox"/>
Services Agreement, including any Sub-contract Agreement) and Your Other Material	<ul style="list-style-type: none"> your pre-existing material or material created independently of the Human Services Agreement (including any sub-contract agreement) but which is incorporated into or used in conjunction with the Agreement Material: 	
	Written assignment - You will need to get a written assignment of all worldwide, present and future intellectual property rights from all contributors to the Agreement Material and Your Other Material including from your employees, officers, volunteers, agents contractors, and sub-contractors Note: If it's not possible to get a written assignment, an appropriate licence may suffice.	<input type="checkbox"/>
	Warranty - You should also get a warranty (ie. promise) from all contributors to the Agreement Material and Your Other Material to the effect that their contribution to the material does not and will not infringe anyone's intellectual property or moral rights	<input type="checkbox"/>
	Moral rights consent - You should also get a written moral rights consent from all contributors to the Agreement Material and Your Other Material that consents to you and any sub-licensees doing any act (or omitting to do any act) which would otherwise infringe the contributor's moral rights	<input type="checkbox"/>
	Supply copies on request - You must provide the NSW government agency with copies of Agreement Material, promptly on request	<input type="checkbox"/>
Third Party Material (Material owned by a third party incorporated into or used in conjunction with the Agreement Material)	If any Third Party Material is incorporated in or used in conjunction with the Agreement Material, the following will apply:	
	Licence - You will need to get a licence from the relevant intellectual property owner or licensee in respect of the Third Party Material to allow you to use, copy, modify and exploit the Third Party Material, in conjunction with the Agreement Material. The Licence must: <ul style="list-style-type: none"> be perpetual, irrevocable, worldwide, non-exclusive and transferrable, and include the ability to sub-licence to your Prime Contractor (sometimes referred to as a lead contractor) (if applicable) or the NSW government agency (each of whom must also be allowed to sub-licence) on a royalty-free basis 	<input type="checkbox"/>
	Moral Rights - You should get copies of all moral rights consents relating to the Third Party Material from the third party that is licensing the Third Party Material	<input type="checkbox"/>
	Warranty - You should also get a warranty from the third party to the effect that you and any sub-licensee's use of the Third Party Material does not and will not infringe anyone's intellectual property or moral rights	<input type="checkbox"/>
Moral Rights Consents	Consents - As set out above, you should get a moral rights consent from any person creating or who has created material in which copyright subsists and which is to be owned or used by you or your sub-licensees	<input type="checkbox"/>



Material category	Explanation	Reviewed <input checked="" type="checkbox"/>
	<p>This includes moral rights consents relating to copyright material that pre-dates the Human Services Agreement (for example, Third Party Material and Your Other Material), which may be difficult to get</p> <p>In relation to material for which you are unable to obtain blanket moral rights consents you may need to consider the following:</p> <ul style="list-style-type: none"> • Have the appropriate authors have been credited? <ul style="list-style-type: none"> – If not, was it reasonable in the circumstances for the author not to have been credited (having regard to the factors set out in the explanation at the beginning of this checklist)? • Has there been or will there be any false attribution of authorship? • Has the work been or will it be subject to derogatory treatment (for example, changed or treated in a way that is prejudicial to the author's reputation)? <ul style="list-style-type: none"> – If so, is it reasonable in the circumstances for the work to be subject to derogatory treatment (having regard to the factors set out in the explanation at the beginning of this checklist)? 	
	Supply copies of consents on request - You must supply copies of all moral rights consents on request by the NSW government agency	<input type="checkbox"/>
	Notify - You must notify the NSW government agency if you can't get any required moral rights consents	<input type="checkbox"/>
Aboriginal Persons and Torres Strait Islander Persons	<p>Do the services provided under the Human Services Agreement involve or impact on the cultural and intellectual property rights of Aboriginal Persons or Torres Strait Islander persons?</p> <p>If so, you must respect those rights and, where practical, take measures to protect those rights</p>	<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 topic:

- ▶ [Intellectual property](#)

Other related resources

- ▶ [BuyNSW website](#)
- ▶ [IP Australia](#)

Legislation

- ▶ [Copyright Act 1968 \(Cth\)](#)
- ▶ [Designs Act 2003 \(Cth\)](#)
- ▶ [Patents Act 1990 \(Cth\)](#)
- ▶ [Trade Marks Act 1995 \(Cth\)](#)



This resource was developed with financial support from the NSW Department of Finance, Services & Innovation.

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

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- ▶ [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 \(NSW\)](#)

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

Information for organisations delivering human services in New South Wales

This fact sheet covers:

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

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Tip

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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"/>
Records performance and Outcome Measures	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"/>
Complaints Register	Keep a complaints register (clause 5.4(b))	<input type="checkbox"/>
Aboriginal and Torres Strait Islander service provision	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"/>
Personnel records	<p>Keep records of:</p> <ul style="list-style-type: none"> 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 relevant background checks for Personnel, including: <ul style="list-style-type: none"> 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)) 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 national criminal record checks or other probity checks if relevant (clause 6.1(c)(ii)) 	<input type="checkbox"/>
Working with children	<p>Organisations subject to the <i>Child Protection (Working with Children) Act 2012</i> (NSW) (CPWC Act) should keep records of:</p> <ul style="list-style-type: none"> the results of Working with Children Clearance Checks (clause 6.1(d)(i)) risk assessment procedures and plans put in place to cover obligations under the CPWC Act (clause 6.1(d)(ii)), and 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)) 	<input type="checkbox"/>
Sub-contracts	<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"/>
Conflicts of Interest	<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>Tip</p> <p>The Australian Charities and Not-for-profits Commission (ACNC) has a template register of interests on its website</p> </div>	<input type="checkbox"/>
Asset Register	<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"/>
Intellectual Property	<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"/>
Moral Rights (Intellectual Property)	<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))	
General records	<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"> any reporting requirements in the Schedule or elsewhere in the Human Services Agreement applicable NSW government agency policies or guidelines 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 a direction by the applicable NSW government agency to keep and provide those records (clause 19.4) <p> Tip</p> <p>Check the Schedule and the relevant NSW government agency to confirm:</p> <ul style="list-style-type: none"> the format in which they want your organisation to keep its records, and whether there are any relevant government policies or guidelines that your organisation must follow when compiling and providing reports and information 	<input type="checkbox"/>
Financial records	<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> Tip</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"/>
Operational records	<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"> annual reports and other reports on the results of programs, projects or services operating policies and procedures monitoring and evaluation reports meeting minutes, and contracts and agreements relating to the Services 	<input type="checkbox"/>
Insurance	Keep records of insurance policies to demonstrate that your organisation has taken out adequate insurance (clause 20.1)	<input type="checkbox"/>
Notifications	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)	
Security	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"/>
Complaints register	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"/>
Personnel records	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"/>
Records and premises	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"/>
Records, reports and information	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"/>
Government Information (Public Access) Act 2009 (NSW) (GIPA)	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

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 \(NSW\)](#)



Finance,
Services &
Innovation

This resource was developed with financial support from the NSW Department of Finance, Services & Innovation.

Checklist 8: Things to consider before entering into a sub-contract agreement

Information for organisations delivering human services in New South Wales

This fact sheet covers:

- ▶ What is the Template Sub-contract Agreement?
- ▶ What should parties consider before deciding to enter into a sub-contracting agreement?
- ▶ What do both parties need to understand before signing or negotiating the Template Sub-contract Agreement?
- ▶ How do both parties complete Schedule 1 of the Template Sub-contract Agreement?
- ▶ How do both parties sign the Template Sub-contract Agreement?

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.

What is the Template Sub-contract Agreement?

Where an organisation (the Prime Contractor - sometimes referred to in the sector as the lead contractor) is funded by a NSW government agency to provide services under the Human Services Agreement, it may decide to sub-contract some or all of its obligations to another organisation (the Sub-contractor) in exchange for a fee. To do this, it must first get written approval from the NSW government agency.

Under the Human Services Agreement, the Prime Contractor is responsible for making sure that its Sub-contractor complies with the terms of the Human Services Agreement as if they were a party to that Agreement. In this situation, the Prime Contractor and Sub-contractor are required to enter into a written contract setting out the obligations of both parties.

A Template Sub-contract Agreement has been developed by Not-for-profit Law to help the Prime Contractor and Sub-contractor better understand and negotiate their obligations to each other.

The Template Sub-contract Agreement is made up of two parts:

- Sub-contract Agreement (referred to as **the Agreement** in this checklist), and
- Schedule 1 to the Sub-contract Agreement (referred to as **Schedule 1** in this checklist)

In this checklist we will refer to all of the above component documents as the Template Sub-contract Agreement.

The Template Sub-contract Agreement is a generic agreement which will not suit all arrangements.

Parties should:

- review each clause carefully
- decide whether each clause is appropriate in the circumstances, and
- decide whether it should be deleted, changed or kept

This checklist provides:

- guidance on the kinds of issues Prime Contractors and Sub-contractors must address before entering into a sub-contract agreement, and
- tips on tailoring the Template Sub-Contract Agreement to meet each party's needs



Note to Prime Contractors


Sub-contracting Services, or any part of the Services under the Human Services Agreement does not in any way reduce the Prime Contractor's responsibility for those Services.

The Prime Contractor is ultimately responsible for the Sub-contractor's acts or omissions as if they are its own. It's the Prime Contractor's responsibility to make sure the sub-contract is consistent with the Human Services Agreement and that the Sub-contractor complies with the Human Services Agreement as if it were a party to it.

What should parties consider before deciding to enter into a sub-contracting agreement?

Issue	Explanation	Reviewed <input checked="" type="checkbox"/>
Consent	Under the Human Services Agreement the Prime Contractor must get written consent from the NSW government agency before sub-contracting any part of the Services	<input type="checkbox"/>
Authority and power	<p>Parties should check their internal process for entering into a contract before negotiating or signing the Template Sub-contract. For example, does your organisation's constitution allow you to enter into a contract of this nature? Who has authority to negotiate and execute the Template Sub-contract? Does the Template Sub-contract require approval of the board?</p> <p> Tip</p> <p>Approval processes for contracts vary by organisation. At some organisations, for example, all contracts, or contracts that fall into certain categories, must be approved by the board. Find out what approval processes apply when you start to negotiate a contract, so that you can arrange those approvals in time and avoid delays in the process.</p>	<input type="checkbox"/>
Working together – culture and communication	<p>Sub-contracting arrangements require ongoing good communication and collaborative working. Both parties should consider the nature of the organisation that they are contracting with, conduct some due diligence and think practically about how the organisations will work together.</p> <p>The Template Sub-contract Agreement includes a clause on collaborative working to help parties collaborate, communicate and meet their respective obligations under the Template Sub-contract Agreement (see clause 27). It also includes a clause that the Sub-contractor provide all reasonable assistance and information to the Prime Contractor so the Prime Contractor is able to meet its obligations under the Human Services Agreement (see clause 4.1(b)).</p> <p> Tip</p> <p>Both parties can always ask sector contacts about what it's like to work with a particular organisation. You could also search online for information about the other organisation and conduct searches to check if there is any pending litigation against it.</p>	<input type="checkbox"/>



Issue	Explanation	Reviewed <input checked="" type="checkbox"/>
 Tip The Prime Contractor should also verify that the Sub-contractor (and its Personnel) has the correct, licenses, approvals, consents, accreditations and registrations to perform the Services (see clause 6.1).		
	Negotiation The Prime Contractor is not able to negotiate certain clauses in the Template Sub-contract Agreement. These are clauses that flow through from the arrangement they have with the NSW government agency. However, it may be possible to negotiate other terms of the Template Sub-contract Agreement. You may want to seek advice from a lawyer about the meaning or consequences of clauses in the Template Sub-Contract Agreement. Lawyers can also draft alternative clauses proposed as part of negotiations.	<input type="checkbox"/>

**Note**

The list above is not complete, and you should always seek legal advice about any agreement your organisation intends to sign.

What do both parties need to understand before signing or negotiating the Template Sub-contract Agreement?

The negotiating parties should carefully consider and make sure they understand all the terms of the Template Sub-contract Agreement before signing it.

However, the Template Sub-contract Agreement is not a tailored agreement, so it will not suit all arrangements. Parties should use the Template Sub-contract Agreement as a starting point in discussions with each other and negotiate specific changes to the terms as needed and appropriate.

We have listed some of the terms to look out for and to 'check off' that you understand below. We have also provided tips to help organisations work with the Template Sub-contract Agreement.

This checklist is not a complete summary of the Template Sub-contract Agreement – organisations should carefully read all the clauses in the Template Sub-contract Agreement. Always get legal advice before entering into a contract.

**Caution for the Prime Contractor**


As mentioned above, the Prime Contractor can't negotiate certain clauses if they are clauses that reflect obligations the Prime Contractor has under their funding arrangement with the NSW government agency.

If the parties negotiate clauses in the Template Sub-contract Agreement, the Prime Contractor should get legal advice to make sure the Sub-contractor is still obliged to comply with the obligations in the Human Services Agreement as if they were the Prime Contractor.



Clause in Template Sub-contract Agreement	Explanation	Reviewed <input checked="" type="checkbox"/>
Performance and Outcome Measures (clause 7)	<p>The Sub-contractor should understand, in detail, the Performance and Outcome Measures that the provision of Services will be measured against. The Performance and Outcome Measures are outlined in Item 19 of Schedule 1</p> <p> Tip Sub-contractors must make sure that they have systems in place to monitor and report on their performance against the Performance and Outcome Measures</p> <p> Tip Prime Contractors must make sure that the Performance and Outcome Measures listed in Item 19 of Schedule 1 fit with those listed in the Funding Schedule</p>	<input type="checkbox"/>
Personnel (clauses 10 and 11)	<p>The Sub-contractor is responsible for all Personnel engaged by it to provide the Services, including payment of any wages and other entitlements. The Sub-contractor must engage appropriate Personnel, conducting necessary checks where appropriate and required under the template Sub-contract Agreement</p> <p> Tip The definition of Personnel is broad – it includes officers, employees, volunteers, agents, contractors or sub-contractors. Sub-contractors should make sure they have appropriate recruitment, screening, training and supervision for all these different types of Personnel. The Template Sub-contract Agreement also contains a definition of Officer to mirror the Human Services Agreement</p> <p>The Prime Contractor may object to the Sub-contractor engaging particular Personnel to deliver the Services in certain circumstances, for example if they have engaged in misconduct (see clause 11.1), or if they don't have the required authorisations, accreditations, permits and clearances necessary to carry out their roles in relation to the Services (see clause 10.2)</p> <p> Tip The Sub-contractor must communicate with the Prime Contractor about staff changes to help continued collaboration and enhance transparency between the parties</p> <p> Tip The Prime Contractor should consult the Human Services Agreement, the NSW government agency or Notified Policies, for guidance on the required authorisations, accreditations, permits and clearances for the Sub-contractor's Personnel</p>	<input type="checkbox"/>
Notifications (clause 12, 13.1, 20.1, 28, 29.1, 30.2, 33.4, 34.3, 35.2, 43.9, 46.1, 50, 56 and 57)	<p>Before the parties enter into the Template Sub-contract Agreement, it's important to understand when you need to notify the other party of certain matters, and when the other party is required to notify you.</p> <p>It's important that the Sub-contractor provides notices where required. This is because, failing to provide a notice, can be a breach of the Agreement (and certain breaches allow the Prime Contractor to terminate the Agreement)</p>	<input type="checkbox"/>
Use of Funds and Interest (clauses 15 and 16)	<p>The Prime Contractor is responsible for paying the Sub-contractor the Funds. Funds paid to the Sub-contractor, including any interest earned on the Funds, can only be used for the provision of the Services, or to obtain any property needed to provide the Services.</p>	<input type="checkbox"/>





Clause in Template Sub-contract Agreement	Explanation	Reviewed <input checked="" type="checkbox"/>
	<p>Sub-contractors need to be very clear about the scope of the Services and the Funds in Items 7 and 11 of Schedule 1</p> <p>The use of the Funds, and any interest earned on the Funds, must also comply with the Budget (if any) set out in Item 14 of Schedule 1</p> <p>Funds should not be committed where payment will occur after the end of the Template Sub-contract Agreement</p>	
Review of Services (clause 25)	<p>This clause imposes obligations both during and after the Term of the Template Sub-contract Agreement</p> <p>It is particularly important that the Sub-contractor is aware that - for 7 years after the end of the Template Sub-contract Agreement, the Sub-contractor must allow the Prime Contractor (and certain other persons) access to its premises or relevant records</p> <div>  Tip </div> <p>This is an important clause. There is a specific requirement in clause 15.2(d) of the Human Services Agreement for the Prime Contractor to make sure any sub-contract it enters into includes clause 25.2 of the Template Sub-contract Agreement</p> <p>If the Sub-contractor enters into a sub-contracting arrangement, it must make sure the arrangement gives the Prime Contractor (and any persons nominated by the Prime Contractor, and any Public Accountability Body) the right to access the sub-sub-contractor's premises or relevant records (see clause 25.5)</p>	<input type="checkbox"/>
Conflict of interest (clause 30)	<p>It's usual practice to include a clause in a sub-contract that outlines how the parties will manage actual or perceived conflicts of interest</p> <p>Clause 30 of the Template Sub-contract Agreement requires the Sub-contractor to:</p> <ul style="list-style-type: none"> take all steps as reasonably practical to make sure it has no conflicts of interest, and immediately notify the Prime Contractor if an actual or possible conflict of interest arise <p>Under the Template Sub-contract Agreement, the Prime Contractor is also able to notify the Sub-contractor of an actual or possible conflict of interest, and require the Sub-contractor to take steps to deal with the conflict of interest to the Prime Contractor's satisfaction.</p>	<input type="checkbox"/>
Sub-contracting (clause 31)	<p>The Prime Contractor is responsible to the NSW government agency for the actions of the Sub-contractor. It's usual practice to include a clause that the Sub-contractor must not delegate any of its obligations to another party without the express written consent of the Prime Contractor (ie. it must not sub-contract any of its obligations). This is an important clause</p>	<input type="checkbox"/>
Dispute resolution (clause 32)	<p>It's vital to include a clause that sets out how disputes will be managed and addressed clearly. A good dispute resolution procedure will encourage open communication and resolution of the matter in a timely and inexpensive manner</p> <p>The Template Sub-contract Agreement requires prompt notification of a dispute in writing, followed by a face-to-face meeting between senior representatives, and then formal mediation</p>	<input type="checkbox"/>

Clause in Template Sub-contract Agreement	Explanation	Reviewed <input checked="" type="checkbox"/>
	<p>The parties must follow the dispute resolution procedure before taking legal action</p> <p> Tip Negotiating or mediating a dispute is likely to be easier and more cost effective for all parties than litigation in court</p> <p> Tip Clause 32.6 of the Template Sub-contract Agreement allows the parties to nominate an independent party to appoint a mediator if they can't agree on a mediator.</p>	
Insurance and indemnities (clauses 33 & 34)	<p>It's usual practice to include clauses in a sub-contract that deal with insurance and indemnity. This includes:</p> <ul style="list-style-type: none"> • whether insurance is required and which party is required to take out appropriate insurances (and at what value), and • whether one or both parties agrees to (wholly or partly) indemnify (pay back) or protect the other party from any loss or liability associated with the activities <p>The insurance clause in the Template Sub-contract Agreement outlines the required insurance policies</p> <p>The indemnity clause in the Template Sub-contract Agreement also outlines circumstances where both the Sub-contractor and Prime Contractor agree to indemnify (pay back) the other party for any losses. In the interests of having a balanced agreement, this has been drafted as a 'mutual indemnity' - that is both parties agree to indemnify the other in certain circumstances, rather than a 'one-sided' obligation. Both parties should consider whether an alternative indemnity arrangement is more appropriate</p> <p> Tip It's important to understand your organisation's obligations for obtaining insurance and indemnifying the other party. Think about:</p> <ul style="list-style-type: none"> • Is the party bearing the risk in the best position to prevent loss? • Are both parties willing to accept the proposed indemnities? • Will you be able to obtain the required insurance in your budget? • Does entering into the sub-contract affect your insurances? Have you notified your insurer? <p>If you are not sure about these obligations, get legal advice or speak to your insurance broker</p> <p> Tip If the Prime Contractor has specific insurance policies that the Sub-contractor is required to obtain, these should be listed in Item 20 of Schedule 1</p>	<input type="checkbox"/>
Privacy and information sharing (clause 38)	<p>The Sub-contractor must review its privacy obligations and current privacy practices in detail. This includes having an appropriate privacy policy, collection notices, consents and record management practices in place. Failure to comply with Privacy Laws could result in legal and financial penalty and amount to a breach of the Template Sub-Contract Agreement</p> <p>Sub-contractors are required to make certain information available to the NSW government agency (via the Prime Contractor) to comply with the NSW government agency's obligations under the</p>	<input type="checkbox"/>



Clause in Template Sub-contract Agreement	Explanation	Reviewed <input checked="" type="checkbox"/>
	<p><i>Government Information (Public Access) Act 2009</i> (NSW). This should also be disclosed in a Sub-contractor's Privacy Policy</p> <p> Tip If your organisation is not sure about its obligations around privacy and information-sharing, it should get legal advice</p>	
Record keeping (clause 40)	<p>The Template Sub-contract Agreement requires the Sub-contractor to keep full and accurate Records in relation to the Template Sub-contract Agreement, during the Term, and for 7 years after the end of the Agreement.</p> <p>Records must be of a sufficient standard. Sub-contractors must meet the standard that is required of their Records, particularly financial Records</p> <p>The Sub-contractor must dispose of the Records 7 years after the end of the Template Sub-contract Agreement (unless they are otherwise required to retain the Record for internal governance and compliance purposes)</p> <p> Tip There are legal requirements about the disposal of certain types of records. It's helpful to have clear document management policies in place that address these issues</p> <p> Tip The Prime Contractor should consult the Human Services Agreement, the NSW government agency or program guidelines, for guidance on the retention, return, destruction and ownership of the Sub-contractor's Records and make sure this is reflected in the Template Sub-contract Agreement</p>	<input type="checkbox"/>
Reports and Information (clause 42)	<p>Before the Sub-contractor enters into the Template Sub-contract Agreement, think about how the organisation will meet its reporting obligations</p> <p> Tip It's a good idea to add the reporting obligations listed in clause 42 of the Template Sub-contract Agreement and Item 24 of Schedule 1 into any organisational policies and procedures on record management</p>	<input type="checkbox"/>
Intellectual Property (clause 43)	<p>It's usual practice for sub-contracts to have a clause dealing with who owns the intellectual property (IP) created through the contract. IP is a legal term that refers to property created through intellectual effort</p> <p>IP will exist in materials created under the Template Sub-contract Agreement, including in any written materials such as reports</p> <p>The Template Sub-contract Agreement provides that unless otherwise agreed, IP rights are owned by the Sub-contractor, who grants the Prime Contractor an ongoing licence to use and exploit that IP. If Services involve or impact on the cultural and IP rights or Aboriginal or Torres Strait Islander Persons, both parties must take measures to protect those rights</p> <p>Sub-contractors must make sure they own all relevant IP prior to agreeing to this clause in the Template Sub-contract Agreement</p>	<input type="checkbox"/>

Clause in Template Sub-contract Agreement	Explanation	Reviewed <input checked="" type="checkbox"/>
	<p> Tip</p> <p>When reviewing an IP clause consider:</p> <ul style="list-style-type: none"> • What does the Human Services Agreement contemplate? Prime Contractors must make sure the IP clause in the Template Sub-contract Agreement (including Schedule 1 of the Template Sub-contract Agreement) reflects what they have agreed with the relevant NSW government agency under the Human Services Agreement • What IP will be created by the Services? • Who will be creating the IP? Will it be employees, officers, volunteers, agents, contractors or sub-contractors? Can the Sub-contractor obtain the correct licenses, consents or assignments to the IP? • Has the Sub-contractor made sure that it owns any pre-existing IP used as part of providing the Services (for example, through staff contracts)? • How will the IP be used? Who will need to be able to use it? <p>Any licence granted by the Sub-contractor to Prime Contractor must include the right to sub-licence the Sub-contractor's IP to the relevant NSW government agency</p>	
Termination (clause 44)	<p>It's usual practice for sub-contracts to include clauses that allow parties to terminate the agreement, particularly if one party fails to fulfil its obligations and is not in a position to fix the breach</p> <p>The Template Sub-contract Agreement sets out the circumstances in which both parties can terminate. The termination clause in the Template Sub-contract Agreement includes:</p> <ul style="list-style-type: none"> • the right for the Prime Contractor to terminate immediately in certain circumstances, such as breach of the Agreement. This is to make sure the Prime Contractor can meet its obligations under the Human Services Agreement • the right for the Prime Contractor to terminate at any time by providing 85 days' notice. This is to allow the Prime Contractor to terminate if the Human Services Agreement is terminated by the NSW government agency • the right for Sub-contractor to terminate for any reason by providing 7 months' notice. This is to allow the Prime Contractor enough time to terminate the Human Services Agreement if they are no longer able to deliver the Services because of the Sub-contractor's termination <p> Tip</p> <p>Think carefully about the circumstances when each party may terminate the Template Sub-contract Agreement. You may decide that there are other circumstances in which you should be able to terminate</p>	<input type="checkbox"/>
Security Procedures (clause 56 and 57)	<p>The Template Sub-contract Agreement requires the Sub-contractor to put safety, security and privacy procedures in place as set out in the Notified Policies and keep the Prime Contractor updated on its safety, security and privacy procedures.</p> <p>The Sub-contractor must immediately notify the Prime Contractor if there is a Security Breach. It must also investigate the Security</p>	





Clause in Template Sub-contract Agreement	Explanation	Reviewed <input checked="" type="checkbox"/>
	Breach with 24 hours, remedy the Security Breach as soon as reasonably practicable and notify the Prime Contractor as soon as the remedy has been applied.	

How do both parties complete Schedule 1 of the Template Sub-contract Agreement?

Schedule 1 in the Template Sub-contract Agreement includes details specific to the parties.

Parties should take their time to make sure the information in Schedule 1 is correct.

The table below provides some guidance on how to complete Schedule 1.

Item	Explanation	Reviewed <input checked="" type="checkbox"/>
Parties (Items 1 and 2)  Tip We recommend check each organisation's correct name and ABN using the ABN Lookup tool	Schedule 1 must clearly name the correct contracting parties, including the ABN and contact details Schedule 1 must clearly name the correct contracting parties, including the ABN and contact details	<input type="checkbox"/>
Individual contacts (Items 3 , 4, 5 and 6)  Tip Put an internal policy or procedure in place to make sure you let the other party know if the nominated people change	Include the correct name and contact details for the nominated people to make sure both parties receive communications and notices under the Template Sub-contract Agreement Include the correct name and contact details for the nominated people to make sure both parties receive communications and notices under the Template Sub-contract Agreement	<input type="checkbox"/>
Services (Item 7)  Tip The Prime Contractor must make sure this matches with its obligations under the Human Services Agreement	Clause 5 of the Template Sub-contract Agreement imposes obligations on the Sub-contractor for delivery of the Services Item 7 of Schedule 1 provides space for the parties to describe the Services to be delivered. Make sure this is done clearly and comprehensively. Identify what will be done, when, by who, and how. Make sure the description of the Services includes all the elements that have been agreed. This is the final record of your negotiations and it must be comprehensive and correct	<input type="checkbox"/>
Term (Item 10)  Tip Keep a calendar and reminder of dates. You may have an option to extend that can only be exercised in a certain time window	Make it clear when the Template Sub-contract Agreement starts and ends, and whether the commencement is conditional on any particular event occurring (such as the start of the Human Services Agreement). Include any options or extension provisions that the parties have negotiated	<input type="checkbox"/>



Item	Explanation	Reviewed <input checked="" type="checkbox"/>
Funds and Invoicing (Items 11 and 12)	Set out the agreed Funds, the basis for payment of Funds, the Sub-contractor's bank account details and any particular time frames for use and invoicing of the Funds	<input type="checkbox"/>
Management Fees (Item 13)  Tip Sub-contractors can seek an itemised breakdown of the anticipated administration and other costs for transparency around what the management fee relates to	Include any fee the parties have agreed the Sub-contractor must pay the Prime Contractor to cover its administration expenses. Whether a Management Fee is applied will depend on what the parties have negotiated and the level of Services provided by the Prime Contractor to the Sub-contractor	<input type="checkbox"/>
Budget (Item 14)  Tip If the Prime Contractor must provide a Budget to the relevant NSW government agency using a particular template or program or in a particular way, the Sub-contractor should provide a Budget in the same format and be notified of this from the start	A budget does not have to be set, but where it is, the details should be set out clearly, including whether the Sub-contractor is required to submit an updated budget and timeframes for submission of an updated budget	<input type="checkbox"/>
Reporting requirements (Item 24)  Tip If the Prime Contractor must report to the relevant NSW government agency using a particular template or program or in a particular way, the Sub-contractor should report in the same format and be notified of this from the start. Keep a calendar and reminders of reporting dates  Tip If the Prime Contractor must provide a Budget to the relevant NSW government agency using a particular template or program or in a particular way, the Sub-contractor should provide a Budget in the same format and be notified of this from the start	Clause 42 of the Template Sub-contract Agreement imposes reporting obligations on the Sub-contractor. Item 24 of Schedule 1 includes details, such as the form and timing, of those reports	<input type="checkbox"/>
Intellectual Property Rights (Item 25)  Tip This may be reversed if specified in this Item (ie. that the Prime Contractor owns the IP). If the Prime Contractor wants to reverse the position in clause 43 of the Template Sub-contract Agreement, the Sub-contractor should carefully consider the implications of this, particularly if they want to use any relevant material in the future	Under clause 43 of the Template Sub-contract Agreement, the Sub-contractor owns the IP in material created in connection with the Template Sub-contract Agreement	<input type="checkbox"/>

How do both parties sign the Template Sub-contract Agreement?

Both parties must sign the Template Sub-contract Agreement in order to make it binding (enforceable against the other party).



Top tips

Step	Reviewed <input checked="" type="checkbox"/>
If changes have been negotiated, make sure you are signing the final version. If there are any last minute changes to the sub-contract, both parties must initial any changes	<input type="checkbox"/>
If the Template Sub-contract Agreement can be signed in 'counterpart' (the Template Sub-contract Agreement provides for this at clause 52), this means the parties can each sign their own copy of the contract and exchange (or swap) them. Parties must sign the full copy of the Template Sub-contract Agreement, they can't just print the 'signing page'	<input type="checkbox"/>
Make sure the signature block properly identifies the person signing the document on behalf of the organisation Make sure the signatory has the appropriate authority to sign on behalf of the organisation	<input type="checkbox"/>
If using electronic signatures, follow appropriate validity and security processes	<input type="checkbox"/>
Signatories should write the date on which they sign the Template Sub-contract Agreement on the document. It's not a problem if the parties sign on different dates. The Template Sub-contract Agreement should be dated the date that the final signatory signed	<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](#)
- ▶ [Dispute resolution and mediation](#)
- ▶ [Documents and records](#)
- ▶ [Employment](#)
- ▶ [Financial reporting](#)
- ▶ [Intellectual property](#)
- ▶ [Privacy](#)
- ▶ [Risk and Insurance](#)

Other related resources

- ▶ [BuyNSW website](#)

Legislation

- ▶ [Government Information \(Public Access\) Act 2009](#) (NSW)



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