

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 \(NSW\)](#)



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