

Commonwealth Letter of Agreement

Legal information

This fact sheet covers:

- ▶ what the Commonwealth Letter of Agreement is
- ▶ important terms in the Commonwealth Letter of Agreement



Disclaimer

This fact sheet provides general information about the **Commonwealth Letter of Agreement**. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to [the full disclaimer](#) that applies to this fact sheet.

The Department of Finance has developed a [suite of grant agreement templates](#) which can be used by non-corporate Commonwealth entities when entering into grant arrangements with non-government stakeholders, such as industry, small business and the not-for-profit sector.



Note

The Department of Finance published updated [grant agreement templates](#) in October 2024 to align with changes to the Commonwealth Grant Rules and Principles (**CGPRs**) which came into effect on 1 October 2024.

The templates are designed to replace agency-specific grant agreement templates and include:

- a Letter of Agreement
- a Simple Grant Agreement, and
- a Standard Grant Agreement

What is the Commonwealth Letter of Agreement?

The Commonwealth Letter of Agreement may be the best option to use with **straightforward, low risk grants**.



When is it not appropriate to use the Commonwealth Letter of Agreement?

It's not appropriate to use the Commonwealth Letter of Agreement if:

- the funded activity will involve contact with vulnerable people or contact with children that is a usual part of (ie. more than incidental to) the grant activity
- the grant is considered low risk, but requires an agreement with simple terms and conditions, or
- the grant is considered medium to high risk and includes a standard set of terms and conditions (risks that would cause the agreement to be considered medium or high risk could include the risk of fraud or if multiple grants are to be included under a single agreement)

The Commonwealth Letter of Agreement may not be appropriate if:

- the funded activity includes the development of Indigenous intellectual property, matters with a distinct religious, spiritual, moral or ethical context, work where there is a high degree of artistic sensitivity, or work that may need to be heavily adapted or edited by the Commonwealth (as there are no provisions dealing with moral rights in the Commonwealth Letter of Agreement Template), or
- significant additional provisions beyond the provisions in the Commonwealth Letter of Agreement Template are required

The Commonwealth Letter of Agreement is made up of a number of sections.

The sections that make up the Commonwealth Letter of Agreement between the Commonwealth government entity (Commonwealth) and the funded organisation (Grantee) will vary and include:

- the **Covering Letter** describing:
 - the details of the Parties
 - the Parties' contact details
 - the name of the Grant opportunity, and
 - the total amount of the Grant, and
- the **Schedule** specifying:
 - the purpose of the Grant
 - the details of the Grant Activity to be undertaken
 - the Grant payments to be made
 - the banking details of the Grantee, and
 - signatures page

Letter of Agreement Conditions (included in the template) may be attached to the Commonwealth Letter of Agreement.

In this fact sheet we will refer to all the above as the **Agreement**.



Tip

We recommend that you read this fact sheet with the Agreement at hand for reference.

**Note**

Sections of the Agreement should not be re-ordered or deleted other than as specified in the Agreement.

**Caution**

Your organisation must familiarise itself with policies, guidelines and compliance requirements specified in the Agreement which are made available on the [Department of Finance website](#).

Important terms in the Agreement

Each party should carefully consider every written agreement before signing it.

Some important terms in the Agreement are summarised below.

This fact sheet is not an exhaustive summary of the Agreement, and funded organisations should carefully read the Agreement. You may need to seek legal advice if aspects are unclear or raise any legal concerns.

Termination for default (Commonwealth Letter of Agreement Conditions clause 14)

If the Commonwealth Letter of Agreement Conditions are included, the Agreement can be terminated by the Commonwealth if the Grantee:

- is in breach of the Agreement
- provided false or misleading statements in their application for the Grant, or
- has become bankrupt or insolvent, entered into a scheme of arrangement with creditors, or come under any form of external administration

Grantees should therefore ensure that they comply with the terms of the Agreement at all times to avoid its termination for default.

Clause 13 of the Commonwealth Letter of Agreement Conditions also states that the dispute resolution procedure will not apply to a decision to terminate by the Commonwealth.

There is no express right enabling a Grantee the right to terminate the Agreement. Seek legal advice if you feel that you need to terminate an Agreement.

**Tip**

If you contract with third parties to assist you to perform the grant agreement, ensure that these sub agreements can be terminated if your grant agreement is terminated. This can help manage the costs associated if the Commonwealth's funding stops.



Caution – repayment of grant

Grantees are required under clause 6 of the Commonwealth Letter of Agreement Conditions to repay:

- any money which has been spent other than in accordance with the Agreement, and
- any grant money which has not been spent at the date of termination or expiration of the Agreement

Privacy (Commonwealth Letter of Agreement Conditions clause 8)

If, in performing the grant activities, a Grantee deals with personal information (being any information about a person from which that person can be reasonably identified), the Grantee must ensure that it doesn't do anything which, if it had been done by the Commonwealth, would breach the provisions of the *Privacy Act 1988* (Cth). The Grantee will also need to continue to comply with any obligations it has under any privacy legislation that applies to it.



Caution – Australian Privacy Principles

Depending on the size and nature of your organisation, it might not ordinarily be required to comply with the Australian Privacy Principles (APPs) included in the *Privacy Act 1988* (Cth).

The Grantee must familiarise itself with the APPs and always ensure compliance with the APPs when dealing with personal information in performing the funded activities.

Grantees should consider seeking legal advice about what systems it might need to put in place if they haven't previously been required to comply with the *Privacy Act 1988* (Cth).



For more information on Australian privacy laws, see [our webpage on privacy](#).

Written notifications

Under clause 3 of the Commonwealth Letter of Agreement Conditions, the Grantee is required to provide notice to the Commonwealth if:

- there is anything reasonably likely to affect the performance of the funded activity, or
- there is any actual, perceived or potential conflicts of interest

It's very important that the Grantee provides notification when required. This is because failing to provide a written notice can be a breach of the Agreement (and certain breaches allow the Commonwealth to terminate the Agreement – see above).



Note

Clause 10 of the Commonwealth Letter of Agreement Conditions requires each party to obtain the other party's written consent before disclosing any confidential information (unless required or authorised by law or Parliament).

Spending the Grant (clause 5 of the Commonwealth Letter of Agreement Conditions)

Clause 5 of the Commonwealth Letter of Agreement Conditions states that the Grantee must spend the Grant for the sole purpose of undertaking the Grant Activity. The Grantee must also provide a statement to the Commonwealth verifying that the Grant Activity has been undertaken and the Grant was spent in accordance with the Agreement.

Record keeping (clause 7 of the Commonwealth Letter of Agreement Conditions)

Clause 7 of the Commonwealth Letter of Agreement Conditions relates to record keeping. Records of the receipt and expenditure of the grant must be made and kept for the period specified in the grant schedule with copies provided to the Commonwealth on request.

The Grantee must ensure that it has adequate and accurate records of how the grant was expended to demonstrate that the grant has been expended in accordance with the Agreement. The Commonwealth grantor is likely to check your compliance. This obligation survives termination, cancellation or expiry of the Agreement.



Caution

Make sure your organisation maintains proper records regarding its receipt and expenditure of the grant, as giving false or misleading information to the Commonwealth is an offence under the *Criminal Code Act 1995* (Cth). The Criminal Code applies regardless of what is contained in the Agreement.

Licences and approvals (clause 12 of the Commonwealth Letter of Agreement Conditions)

Clause 12 of the Commonwealth Letter of Agreement Conditions states that the Grantee must ensure that all persons engaged to work on the Grant Activity obtain and maintain all relevant licences, registrations or other approvals required by applicable laws or as directed by the Commonwealth. This includes licences or approvals such as police checks, Working With Children checks and Working with Vulnerable People checks. This obligation also extends to subcontractors engaged by the Grantee for the purposes of the Agreement.

National Redress Scheme (clause 1.2 of the Commonwealth Letter of Agreement Conditions)

Clause 1.2 of the Commonwealth Letter of Agreement states that the Grantee must meet the eligibility requirements relating to the National Redress Scheme set out under the relevant grant opportunity guidelines.

Preparation tips

The [Grant Opportunity Guidelines](#) for grant opportunities set out the requirements for each application, so organisations must make sure they are aware of, read, and understand the guidelines

Examples of Commonwealth Letter of Agreements

You can find a range of guidance and template forms of the Agreement on the [Department of Finance website](#).