

Commonwealth Standard Grant Agreement

Legal information

This fact sheet covers:

- what the Commonwealth Standard Grant Agreement is
- ▶ important terms in the Commonwealth Standard Grant Agreement
- tips to help organisations be prepared for operating under the Agreement





Disclaimer

This fact sheet provides general information about the **Commonwealth Standard Grant 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 <u>suite of grant agreement templates</u> 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 <u>grant agreement templates</u> in October 2024 to align with changes to the Commonwealth Grant Rules and Principles (**CGPR**s) which came into effect on 1 October 2024.

These 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 Standard Grant Agreement?

The Commonwealth Standard Grant Agreement is used for is used for grants which are rated as **medium** to high risk and includes a standard set of terms and conditions.





When is it not appropriate to use the Commonwealth Standard Grant Agreement?

The Commonwealth Standard Grant Agreement will **not** be appropriate if the grant is considered a 'very low-risk grant', a 'low risk grant' or a 'straightforward, low risk grant'.

The Commonwealth Standard Grant Agreement is made up of a number of documents.

The documents that make up the Commonwealth Standard Grant Agreement between the Commonwealth government entity (Commonwealth) and the funded organisation (Grantee) will vary and may include the following documents:

- the Commonwealth Standard Grant Agreement template, including:
 - introductory information
 - the Grant Details, and
 - any Supplementary Terms from the Clause Bank (some, all, or none of these may apply the Grantee will need to check)
- the schedules, including the **Commonwealth Standard Grant Conditions** (referred to as Standard Grant Conditions in this fact sheet), and
- other documents referred to in the Grant Details (as applicable)

Funded organisations must make sure they are aware of the terms of all the documents as together they make up the Commonwealth Standard Grant Agreement.

In this fact sheet we will refer to all the above as the **Grant Documents** and to the entire agreement as the **Agreement**.



Tip

We recommend that you read this fact sheet with the Grant Documents at hand for



Note

While it's possible for multiple grants to be described in the one Agreement, this may affect the risk of the Agreement overall and the Agreement may require additional oversight.

A new grant may be a standalone Agreement or may form part of an existing Agreement.

If your organisation receives a number of grants from the Commonwealth as standalone Agreements, there will be a Grant Details section and a Supplementary Terms section which applies to each particular grant. The terms of each Grant Details section and Supplementary Terms section may be different, so it's important to read through each Agreement carefully.

If your organisation receives a new grant as part of an existing Agreement, that is called a grant variation. A grant variation may only be effected in writing, signed by both parties. Only grants with the same Grantee can be covered by the one Agreement. Where the Grantee is a different legal entity – even where it is part of the same corporate 'group' – a new Agreement should be used.



If there are inconsistencies between two or more of the Grant Documents, organisations should refer to the listed order of priority set out in the Grant Documents.

The Grant Documents are listed in order of priority in the Agreement – to the extent of any inconsistency between any Grant Documents, the terms in the Grant Document listed higher in the order of priority will apply. For example, the Supplementary Terms (if any) take priority over the Standard Grant Conditions.

In addition to requiring the Grantee to comply with the Grant Documents, the Agreement may require the Grantee to comply with other specific legislative or policy requirements or industry standards related to the Grantee's activities.



Note

Terms and conditions of the Agreement can't be amended other than as specified in the template.



Caution

Your organisation must familiarise itself with policies, guidelines and compliance requirements specified in the Agreement which are made available on the <u>Department of Finance website</u>.

Important terms in the Agreement

Every written contract has terms that should be clearly understood by all parties to the contract.

A summary of some important terms in the Agreement is below. This fact sheet is not an exhaustive summary of the Agreement, and the Grantee should carefully read all the Grant Documents. You may need to seek legal advice if aspects are unclear or raise any legal concerns.



Tip

Read this fact sheet with the Grant Documents so it makes more sense.

Also read the Commonwealth Standard Grant Agreement Template User Guide.

Reduction, suspension, termination and cancellation (Standard Grant Conditions 19 and 20)

The Agreement can be ended by the Commonwealth in two main ways – if the Grantee is in default (known as reduction for fault, suspension, or termination for fault) or if the Commonwealth decides to do so for reasons other than a default (known as a cancellation or reduction for convenience).

If the Grantee is in default (Standard Grant Condition 19 – reduction, suspension and termination):

Under the Agreement:

- a reduction in scope for fault can occur if:
 - the Grantee does not comply with an obligation under the Agreement and the Commonwealth believes that the non-compliance is not capable of remedy, or



- the Grantee does not comply with an obligation under the Agreement and the Commonwealth believes that Grantee has failed to comply with a notice to remedy
- a suspension can occur if:
 - the Grantee does not comply with an obligation under the Agreement and the Commonwealth believes that the non-compliance is capable of remedy
 - the Commonwealth reasonably believes that the Grantee is unlikely to be able to perform the grant activity or manage the grant money in accordance with the Agreement, or
 - the Commonwealth reasonably believes that there is a serious concern relating to the Grantee or the Agreement that requires investigation
- a termination for fault can occur if:
 - the Grantee does not comply with an obligation under the Agreement and the Commonwealth believes that the non-compliance is not capable of remedy or the Grantee has failed to comply with a notice to remedy
 - the Grantee has provided false or misleading statements in relation to the grant, or
 - the Grantee has become bankrupt or insolvent, entered into a scheme of arrangement with creditors, or come under any form of external administration

The Commonwealth may terminate the Agreement by notice if it reasonably believes that any of these situations have occurred. The Grantee is also required to notify the Commonwealth in writing if any of these situations have occurred – see below for more information about written notifications.

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

If the Commonwealth decides to end the Agreement for reasons other than default (Standard Grant Condition 20 – cancellation or reduction for convenience):

The Commonwealth can cancel or reduce the scope of the Agreement, even though the Grantee may not have breached its obligations under the Agreement.

The Commonwealth may provide notice to the Grantee and cancel or reduce the scope of the Agreement due to:

- · a change in government policy, or
- a 'Change in the Control' (as defined in Standard Grant Condition 22) of the Grantee, which the Commonwealth reasonably believes will negatively affect the Grantee's ability to comply with the Agreement

There is no notice period set out in the Agreement. Once a Grantee receives a written notice of cancellation or reduction for convenience it must stop or reduce the performance of its obligations as specified in the notice, take all available steps to minimise any loss resulting from the cancellation or reduction, continue to perform any part of its obligations not affected by the notice if requested to do so, and report on and return any grant money or otherwise deal with the grant money as directed by the Commonwealth.

A Grantee that receives a cancellation or reduction for convenience notice may need to notify parties such as its insurers (depending on its policy) and may consider getting legal advice on the consequences of the cancellation or reduction in scope.

If the Commonwealth cancels the Agreement under Standard Grant Condition 20, the Commonwealth will only be liable to the Grantee for:

- any part of the grant monies due and owing to the Grantee under the Agreement as at the date of the
 notice issued by the Commonwealth (in the event of reduction, the amount of the grant monies will be
 reduced in proportion to the reduction in scope of the Agreement), and
- any other reasonable and substantiated expenses the Grantee unavoidably incurs that relates directly
 and entirely to the cancellation or reduction in scope of the Agreement



Note – the Commonwealth's liability to pay any amount is subject to the Grantee's compliance with the Agreement and the total amount of the grant. Standard Grant Condition 20.6 makes it clear that a Grantee will not be entitled to compensation for loss of prospective profits or benefits. The Commonwealth's liability can't exceed the amount of the grant.

Standard Grant Condition 18.6 also makes it clear that the dispute resolution procedure will not apply to a decision to terminate or cancel by the Commonwealth. There is no clause that enables the Grantee to terminate the Agreement itself (which means that the Grantee should seek legal advice before seeking to terminate the Agreement and depending on the circumstances a termination of the Agreement by the Grantee could be a breach of the Agreement, and the Commonwealth could be entitled to contractual damages).



Example

There are no specific examples of what would be **reasonable** expenses that the Commonwealth will reimburse if it cancels the Agreement.

Reasonable expenses may include cancellation fees to be paid to third parties, or fees for winding up an organisation or notifying regulatory bodies. Redundancy payouts are unlikely to be considered compensable reasonable expenses, however organisations should seek legal advice on their specific circumstances.



Tip

In addition to ensuring that your organisation effectively manages how it spends any grant and the timing of any payments to third parties, your organisation may be able to add clauses into its contracts with others (such as suppliers) that allow your organisation to end these contracts if the Commonwealth terminates the Agreement under Standard Grant Condition 20 to manage any costs which may be associated with those arrangements. This can help manage the costs associated if the Commonwealth's funding stops.



Caution - repayment of grant

Grantees are required under Standard Grant Condition 11.1 to repay:

- any grant money which has been spent other than in accordance with the Agreement, and
- · any grant money which is additional to the requirements of the grant activity

If the Grantee has another agreement with the Commonwealth, the amount repayable may be deducted from the amounts payable by the Commonwealth under the other agreement.

If the Grantee does not repay within the time period specified in the notice, the Grantee must pay interest.

Intellectual property (Standard Grant Condition 17, and Supplementary Terms CB3, CB3A, CB3B and CB10)

'Intellectual property' is a legal term which refers to property created through intellectual effort including copyright, designs, trademarks and patents. Intellectual property will exist in materials created under the Agreement including in any written materials such as reports.



The table below sets out how the Agreement deals with intellectual property.



Tip

Check which Supplementary Terms apply to your organisation and whether the Grant Details deal with any particular intellectual property issues.

Type of Material

Ownership and use of Material

Activity Material being all material (other than Reporting Material) a Grantee creates or develops in performing the activities (Standard Grant Conditions 17 and 22 and Supplementary Terms CB3 and CB3A)

The Grantee owns the intellectual property in Activity Material.

If Supplementary Term CB3 or CB3A applies, the Grantee gives the Commonwealth a licence to use (includes modifying, communicating, reproducing, publishing, adapting and sublicensing) the Activity Material indefinitely.

The Grantee is required to obtain written moral rights consents from all authors prior to the Material being provided to the Commonwealth (as set out in Supplementary Term CB3.4 and/or CB3.5).

Commonwealth Material being all material provided by the Commonwealth to the Grantee for the purposes of the Agreement or derived at any time from that material (Supplementary Term CB10)

The Commonwealth (as defined in Standard Grant Condition 22) owns the intellectual property in Commonwealth Material.

If Supplementary Term CB10 applies, the Commonwealth gives the Grantee a licence to use the Commonwealth Material but only as required to perform the activities under the Agreement and not for any other purpose.

A Grantee that received Commonwealth Material must return or destroy all copies of Commonwealth Material at the expiration or earlier termination of the Agreement as directed by the Commonwealth (Supplementary Term CB10.4).

A Grantee that receives Commonwealth Material must comply with any directions or requirements notified by the Commonwealth when accessing the facilities and assistance or using and storing Commonwealth Material (Supplementary Term CB10.6).

Reporting Material being all material the Grantee is required to provide to the Commonwealth for reporting purposes – but excludes any Existing Material incorporated in or supplied with the Reporting Material (Standard Grant Conditions 17 and 22 and Supplementary Term CB3B)

The Grantee owns the intellectual property in Reporting Material.

The Grantee gives the Commonwealth a licence to use (includes modifying, communicating, reproducing, publishing, adapting and sub-licensing) the Reporting Material for Commonwealth Purposes (as defined in Standard Grant Condition 22) indefinitely.

If Supplementary Term CB3B applies, the Reporting Material may be sub-licensed to the public under a Creative Commons Attribution licence.

Existing Material being all material developed independently of the Agreement that is incorporated or supplied as part of Activity Material or Reporting Material (Standard Grant Conditions 17 and 22)

The Grantee owns intellectual property in its Existing Material.

The Grantee gives the Commonwealth a licence to use (includes modifying, communicating, reproducing, publishing, adapting and sub-licensing) its Existing Material, when it's incorporated into the Reporting Material.





Caution - subcontractors and volunteers

Grantees must make sure they own all intellectual property in the Activity Material and the Reporting Material (or have an appropriate intellectual property licence) allowing intellectual property to be shared with the Commonwealth in the ways required under the Agreement. Grantees should make sure they obtain an assignment (or licence) of intellectual property from volunteers or subcontractors that contribute to the creation of Activity Material or Reporting Material.



For more information, see:

- our webpage on intellectual property
- our guide Employee, contractor or volunteer?

Indemnity (Supplementary Term CB19)

Grantees are responsible for all their actions in performing the grant activities.

Grantees should be mindful that they are required to indemnify (essentially compensate) the Commonwealth, the Commonwealth's officers, employees and contractors for any claim, loss or damage arising from the actions of the Grantee in connection with the grant activities. Grantees should ensure that they have appropriate insurance policies to mitigate this risk and have procedures to minimise the risk of its actions causing loss or damage to the Commonwealth or any other party in place.



For more information on insurance, see our webpage on risk and insurance.

Privacy (Standard Grant Condition 14)

If, in performing the activities, a Grantee deals with personal information (being any information about a person from which that person can be reasonably identified), it must ensure that it doesn't do anything which, if it had been done by the Commonwealth, would breach an Australian Privacy Principle under 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 (**APP**s) included in the *Privacy Act 1988* (Cth).

However, the Agreement requires Grantees organisation to familiarise themselves with the APPs and ensure compliance with the APPs when dealing with personal information in performing the grant 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

Grantees and the Commonwealth are required to provide written notification to the other party about various issues. The notification requirements appear in the Grant Documents.

It's very important that the Grantee provides written 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).

A notification made under the Agreement needs to be in writing and signed by a person with authority to sign on behalf of the Grantee (most Grantees have delegation policies covering who is authorised in particular circumstances).

	Circumstance requiring notification	Potential action following notification
Notifications by either party	 If either party waives any of its rights under the Agreement (Standard Grant Condition 8.4) 	• NA
	 If either party reasonably believes that the grant activity is unlikely to fully meet the purpose of the grant or there are risks that need to be addressed (Standard Grant Condition 13.4) 	 The parties must work co-operatively to consider, negotiate and implement any change required by variation
Notifications by the grantee	 If there is any actual, perceived or potential conflicts of interest (Standard Grant Condition 7.2) 	 Take action to resolve the conflict in accordance with Standard Grant Condition 7.2
	 If the Grantee becomes or is required to become registered for GST (Standard Grant Condition 9.3 and/or 9.6) 	• NA
	 If the Grantee becomes aware of an actual or possible breach of Standard Grant Condition 14 by the Grantee or any of its subcontractors or personnel (Standard Grant Condition 14) 	• NA
	 If the Grantee enters into any arrangement that entitles it to receive any additional monetary or in-kind contributions in respect of the grant activity (Supplementary Term CB1.5) 	• NA
	If the Grantee's Specified Personnel are unable to perform the required work (Supplementary Term CB6.2)	• NA
	If the Grantee conducts any risk assessment in relation to Vulnerable Persons (Supplementary Term CB8.5)	The Grantee must provide the Commonwealth with copies of relevant documentation on request



- If the Grantee becomes aware that a
 person performing work on any part of
 the grant activity involving a Vulnerable
 Person is charged with or convicted of a
 Serious Offence or Other Offence
 (Supplementary Term CB8.6)
- In the case of conviction of a Serious Offence, the Grantee must ensure the person does not perform any work relating to the grant activity from the date of conviction
- If the Grantee fails to comply with child safety obligations under the Agreement (Supplementary Term CB9.5)
- NA
- If the Grantee becomes aware of a Fraud in relation to the performance of the grant activity or any other Fraud that has had or may have an effect on the performance of the grant activity (Supplementary Term CB13.5)
- The Grantee must also report the Fraud to all appropriate law enforcement and regulatory agencies and within 5 Business Days and every 5 Business Days thereafter provide a written report on the incident to the Commonwealth until otherwise notified by the Commonwealth

Notifications by the Commonwealth

- payment of any amount of the grant because it reasonably believes the Grantee has not complied with the Agreement or is unlikely to be able to undertake the grant activity or there is a serious concern relating to the Grantee or the Agreement that requires investigation (Standard Grant Condition 2.2)
- The Grantee must satisfactorily address the reasons in the written notice, which will outline steps that the Grantee needs to take to address those reasons
- If the Commonwealth believes there is a basis for reduction for fault, suspension, or termination for fault (Standard Grant Condition 19)
- The Grantee must remedy the noncompliance if it can and/or otherwise follow the instructions set out in the notice by the Commonwealth
- If the Commonwealth decides to cancel or reduce the scope of the Agreement for convenience (Standard Grant Condition 20)
- The Grantee must stop or reduce the performance of its obligations and take all available steps to minimise any loss resulting from the cancellation or reduction and/or otherwise follow the instructions set out in the notice by the Commonwealth
- If the Commonwealth requires repayment of any amount of the grant money (Standard Grant Condition 11)
- The Grantee must repay the amount within the time period specified in the notice
- If the Commonwealth requires one or more additional reports due to concerns regarding the performance of the grant activity of the management of the grant (Standard Grant Condition 13.3)
- The Grantee must provide the requested report(s) within the time period specified in the notice



- If the Commonwealth requires access to premises where the grant activity is being performed and/or Material relating to the activity is being kept (Supplementary Term CB4.1)
- The Grantee must facilitate such access within the time period specified in the notice
- If the Commonwealth conducts a review of the Grantee's compliance with child safety obligations under the Agreement (Supplementary Term CB9.4)
- NA
- If the Commonwealth has any directions or requirements that the Grantee must comply with when accessing the facilities and assistance or using and storing the Commonwealth Material (Supplementary Term CB10.6)
- NA
- If the Commonwealth exercises Step-In Rights (Supplementary Term CB16)
- The Grantee must provide all reasonable assistance and comply with any directions by the Commonwealth
- If the Commonwealth appoints an administrator to oversee the performance of the grant activity and the management of the grant (Supplementary Term CB17)
- The Grantee must consider any advice by the Grant Administrator, co-operate and provide assistance, and comply with all directions
- If the Commonwealth appoints an adviser to perform functions as determined by the Commonwealth (Supplementary Term CB18)
- The Grantee has 14 days to provide the Commonwealth with reasons why a Management Adviser should not be appointed
- If the Commonwealth requires the Grantee to comply with Commonwealth policies (Supplementary Term CB20.3)
- NA
- If the Commonwealth requires the Grantee to comply with reasonable directions and procedures relating to work health and safety and security (Supplementary Term CB21.3)
- NA

Note

Standard Grant Condition 15 requires each party to obtain the other party's written consent before disclosing any confidential information (unless required or authorised by law or Parliament).

Supplementary Term CB28 applies to preserve the intellectual property status and confidentiality of certain Indigenous materials (where relevant).



Records, reporting and access (Grant Details, Standard Grant Condition 12, Supplementary Terms)

The Agreement imposes a number of reporting obligations on Grantees which must be done by the particular dates specified in the Agreement.

There may be reporting requirements in several of the Grant Documents. For example, the Grant Details may have a specific reporting timeline and particular performance reports related to the grant activity.

Standard Grant Condition 12 (subject to Supplementary Term CB28) relates to record keeping, Standard Grant Condition 10 relates to audit and acquittal, and Supplementary Term CB4 relates to audit and access.

The Grantee will need to review the Grant Documents to identify the required reports and reporting timelines. This varies greatly between grants and depends on the terms and conditions in the specific 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



Note

The default position is that the acquittals require a signed statement by the Grantee verifying that the grant was spent in accordance with the Agreement (Standard Grant Condition 10).

Preparation tips

The <u>Grant Opportunity Guidelines</u> for grant opportunities set out the requirements for each grant application, so organisations must make sure they are aware of, read, and understand the guidelines.

Practical steps that organisations can take to be ready for the Agreement

Item	Steps to take	
Activity milestones	Grantees may be required to negotiate with the Commonwealth about setting out key performance indicators, milestones and dates for completing the activities before signing the Agreement. Once agreed by the Commonwealth, organisations will be obliged to complete the milestones by specified dates.	
	Your organisation should be realistic in proposing completion dates for milestones as they will need to be met.	
	Once the milestones are finalised, your organisation should make note of any important dates and diarise them to ensure deadlines are met.	
Budget	If organisations must prepare a budget agreed with the Commonwealth showing how grant funds will be spent on the grant activity, organisations should ensure the budget is realistic and appropriately flexible (for example, by expressing the budget with reference to clear categories of expenditure rather than listing expenditure for all individual line items) and continually review the budget to make sure grant activities are on track.	



	It may also be appropriate to budget for the equipment and assets to be purchased by the Grantee. Once a budget is included as part of the Agreement, it can only be varied in accordance with the process outlined in the Agreement. Organisations should notify the Commonwealth if the budget is not being met and needs to be revised (organisations should do this proactively to maximise the chances that any revised changes to any budget are agreed).
Identify potential risks	Legal and non-legal risks can arise because of the requirements of the grant activity, the nature of the organisation or the specific activities that the organisation will perform. Examples of risks that organisations should consider include financial risk, working with vulnerable people, property damage and personal injury.
	Organisations should identify potential legal and non-legal risks and consider how those risks might be managed. This will place organisations in a better position to understand what insurance is required and what other steps should be implemented to manage the implementation of the grant activity.
Letter of support	The Grant Opportunity Guidelines may provide that the application form must attach at least one letter of support (no template provided) from a supporting organisation. Letters of support can also be from organisations that are collaborating with the applicant to support or deliver the project.
Records	Keep proper records and registers about how the grant has been spent and in particular whether the expenditure complies with the milestones and the budget.
Expenditure	Ensure grant money is only spent on the activities and not on other aspects of your organisation – grant money improperly spent will need to be repaid, and the repaid amount may be deducted by the Commonwealth from subsequent grant payments. It may also provide the Commonwealth with the right to terminate the Agreement.