

Commonwealth Simple Grant Agreement

Legal information

This fact sheet covers:

- ▶ what the Commonwealth Simple Grant Agreement is
 - ▶ important terms in the Agreement
 - ▶ when written notification is required
 - ▶ record and reporting requirements, and
 - ▶ tips to help organisations be prepared for operating under the Agreement
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What is the Commonwealth Simple Grant Agreement?

The Department of Finance (DoF) has developed a suite of whole-of-government 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

This fact sheet provides general information about the Commonwealth Simple 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.



Note

The DoF published updated whole-of-government grant agreement templates in December 2018. These are designed to replace Agency-specific grant agreement templates, including the Department of Social Services (**DSS**) templates.

The DSS Streamlined Grant Agreement is not part of the DoF's whole-of-government suite of templates and is being phased out as DSS enters into new grant agreements with community-based organisations.

The Commonwealth Simple Grant Agreement is based on and replaces the previous 'Low Risk Grant Agreement' and it includes more drafting options for the supplementary terms.



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

The Commonwealth Simple Grant Agreement is only to be used for 'low-risk grants' across the Australian Government.

The Commonwealth Simple Grant Agreement will **not** be appropriate 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 'medium' or 'high risk', or
- fraud is a risk

The Commonwealth Simple Grant 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)
- multiple grants are to be included under a single agreement
- significant additional provisions are required beyond the general conditions and supplementary terms, or
- the grant agreement contains provisions that require specific persons to perform specific tasks



Note – the Commonwealth Simple Grant Agreement is not just one document

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

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



What documents make up the Agreement between the Commonwealth government entity and the funded organisation?

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

- Commonwealth Simple Grant Agreement template, including introductory information, the Grant Details and any Supplementary Terms (some, all, or none of these may apply – organisations need to check)
- the schedules, including the Commonwealth General Grant Conditions (referred to as general conditions in this fact sheet), and
- other documents referred to in the Grant Details

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 reference.



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 Federal Government, there will likely 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 there are inconsistencies between two or more of the Grant Documents, organisations should refer to the list set out in the Grant Documents.

The Grant Documents are listed in order of priority – the inconsistent term listed higher in the order of priority will apply. For example, the Supplementary Terms take priority over the general 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 – for example, in relation to working with children (ie. where it is possible or likely Grant personnel will interact with children) (if supplementary term G8 or G8A applies).



Note

Terms and conditions of the Commonwealth Simple Grant 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 [DoF website](#).

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 funded organisations 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.

Termination and cancellation (general conditions 18 and 19)

The Agreement can be ended by the Commonwealth in two main ways – if the grantee is in default or if the Commonwealth decides to do so.

If the Grantee is in default (general condition 18 – termination for default)

Under the Agreement, a Grantee can be in default if the Commonwealth reasonably believes that the Grantee:

- has breached the Agreement
- has provided false or misleading statements in its application for funding, or
- is bankrupt or in other financial difficulties

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.

If the Commonwealth decides to end the Agreement (general condition 19 – cancellation for convenience)

The Commonwealth can cancel the Agreement in limited circumstances, even though the Grantee may not have breached its obligations under the Agreement.

The Commonwealth can write to any Grantee and cancel the Agreement due to:

- a change in government policy, or
- a 'Change in the Control' (as defined in general condition 21) of the Grantee, where the Commonwealth believes this 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 it must immediately stop providing services and take all available steps to minimise any loss that may occur due to the cancellation of the Agreement.

A Grantee that receives a cancellation 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.

Where the Commonwealth cancels the Agreement under general condition 19, the Commonwealth will only compensate the Grantee for:

- any monies due and owing as at the date of the written notice is issued by the Commonwealth, and
- any reasonable expenses the Grantee unavoidably incurs that relate directly to the cancellation of the Agreement

Note – the reasonable expenses that will be compensated are not all-encompassing and will depend on the Grantee's compliance with the Agreement and the total amount of the Grant. General condition 19.5 makes it clear that a Grantee will not be entitled to compensation for loss of prospective profits or benefits. The compensation can't exceed the amount of the Grant.

General condition 17.3 also makes it clear that the dispute resolution procedure will not apply to a decision to terminate by the Commonwealth. The Grantee is not entitled to terminate the Agreement itself (which means that any termination of the contract 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

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 general condition 19. This can help manage the costs associated if the Commonwealth's funding stops.



Caution – repayment of grant

Grantees are required under general condition 10.1 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/cancellation of the Agreement

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



Intellectual property (general condition 12, and supplementary terms G5 and G10)

'Intellectual property' is a legal term which refers to property created through intellectual effort including copyright, designs, trade marks 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 a Grantee creates in performing the activities (general conditions 12 and 21 and supplementary term G5)	<p>The Grantee owns the Activity Material.</p> <p>If supplementary term G5 applies, the Grantee gives the Commonwealth a licence to use (includes reproducing, publishing and adapting) the Activity Material indefinitely.</p>
Commonwealth Material being all material the Commonwealth provides to the Grantee to enable it to perform the activities (supplementary term G10)	<p>The Commonwealth (as defined in general condition 21) owns the Commonwealth Material.</p> <p>If supplementary term G10 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.</p> <p>A Grantee that received Commonwealth Material must stop using (includes reproducing, publishing and adapting) it at the end of the Agreement.</p>
Reporting Material being all material the Grantee provides to the Commonwealth for reporting purposes (general conditions 12 and 21)	<p>The Grantee owns the Reporting Material.</p> <p>The Grantee gives the Commonwealth a licence to use (includes reproducing, publishing and adapting) the Reporting Material for Commonwealth Purposes (as defined in general condition 21) indefinitely.</p>
Existing Material being all material owned or created by the Grantee other than in performing the activities that is incorporated or supplied as part of Reporting Material (general conditions 12 and 21)	<p>The Grantee owns its Existing Material.</p> <p>The Grantee gives the Commonwealth a licence to use (includes reproducing, publishing and adapting) its Existing Material, when it's incorporated into the Reporting Material.</p>



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.



More information

For more information, see [our webpage on intellectual property](#).

For more information on whether a worker is an employee, subcontractor or volunteer, go to [our webpage on managing people](#).

Indemnity (general condition 16)

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

Grantees should be mindful that they are required to indemnify (essentially repay) 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 funded activities. Grantees should ensure that they have appropriate insurance policies to mitigate this risk.



More information

For more information on insurance, go to [our webpage on risk and insurance](#).

Privacy (general condition 13)

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 the provisions of the *Privacy Act 1988* (Cth).

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).



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 included in the *Privacy Act 1988* (Cth).

However, the Agreement requires Grantees organisation to familiarise themselves with the Australian Privacy Principles and ensure compliance at all times when dealing with personal information in performing the funded activities.



More information

For more information on Australian privacy laws go to [our webpage on privacy](#).



Written notifications

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

It's very important that Grantees provide written notification where 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 to be made by the Grantee	<ul style="list-style-type: none"> If there is anything reasonably likely to affect the performance of the funded activity (general condition 3.1) 	NA
	<ul style="list-style-type: none"> If there is any actual, perceived or potential conflicts of interest (general condition 6) 	Take action to resolve the conflict in accordance with condition 6
Notifications to be made by the Commonwealth	<ul style="list-style-type: none"> If the Commonwealth is withholding payment of any amount of the Grant because of belief of non-compliance with Agreement or inability to undertake the activity (general condition 8.2) 	The Grantee must satisfactorily address the reasons in the written notice, which will outline steps that the Grantee needs to take
	<ul style="list-style-type: none"> If there is anything reasonably likely to affect the performance of the activity (general condition 3.1) 	NA
	<ul style="list-style-type: none"> If there are changes to the Agreement that are minor or of an administrative nature that do not increase the Grantee's obligations under the Agreement (general condition 3.3) 	NA
	<ul style="list-style-type: none"> If the Commonwealth believes there is a basis for termination by default (for example, if the Grantee has breached the Agreement) (general condition 18) 	The Grantee must rectify the breach if it can
	<ul style="list-style-type: none"> If the Commonwealth decides to cancel the Agreement (general condition 19) 	The Grantee must immediately stop providing services and take all available steps to minimise any loss



Note

General Condition 14 requires each party to obtain the other party's consent before disclosing any confidential information (unless required or authorised by law or Parliament).



Records, reporting and access (grant details, general condition 11, 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 funded activity.

Supplementary term G3 relates to record keeping, supplementary term G4 relates to audits, supplementary term G6 relates to access to material, and general conditions 5.2 and 11 also relate to record keeping and reporting.



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.

Reporting obligation	Brief description
Record keeping	Records of the receipt and expenditure of the grant must be made and kept for five years from the end of the Agreement with copies provided to the Commonwealth on request (if supplementary term G3 applies, although it is always good practice to keep records regardless of a contractual obligation to do so). This obligation survives termination, cancellation or expiry of the Agreement.
Audited Financial Reports	Independently audited financial acquittal reports verifying the proper expenditure of the grant must be provided to the Commonwealth (if supplementary term G4 applies)
Financial Reporting Requirement	Depending on the grant value and risks associated with the funded activities, the Agreement may set out the reporting requirements that apply to that Agreement. The default financial reporting requirement for each Commonwealth grant acquittal is a signed statement to be submitted by the Grantee, although more detailed reports can be required (if specified by Grant Detail term E and supplementary term G4)
Asset Register	The Grantee must obtain permission from the Commonwealth to use the grant money to purchase individual assets for \$5,000 (including GST) or more, and must maintain a register of those purchases and provide the register to the Commonwealth on request (if supplementary term G7 applies)
Fraud	The Grantee must report to the Commonwealth and all appropriate law enforcement regulatory agencies within five business days if it becomes aware of any Fraud (as defined in supplementary term G9A.1) associated with the funded activities. The Grantee is required to investigate any Fraud at its own cost and in accordance with the Australian Government Investigations Standards (if supplementary term G9A applies). The Grantee is also required to co-operate and provide reasonable assistance at its own cost to any investigation conducted by the Commonwealth in relation to the Fraud.
Subcontractors	Details of any subcontractors engaged to assist in undertaking the activities must be made available to the Commonwealth on request (general condition 5.2)
Providing access to materials	The Grantee must provide access to the premises where the funded activity is taking place, and access to materials (including making copies of the materials) related to the activity (if supplementary term G6 applies)



Other Contributions If the Commonwealth grant is contingent on the Grantee securing a contribution from someone other than the Commonwealth (for example, cash, access to equipment, secondment of personnel), supplementary term G1 may be applicable and the Grantee will be required to provide details of those contributions in the Agreement.

**Note**

The default position is that the acquittals require a signed statement by the Grantee (general condition 9.2).

If your Agreement requires a Financial Declaration each year, the Financial Declaration must be certified by the Grantee's Board, Chief Executive Officer, or another officer with authority to do so.

Preparation tips

The Grant Opportunity Guidelines for each funding round set out the requirements for each application, so organisations must make sure they are aware of the guidelines. These guidelines can be found on the [GrantConnect](#) website.

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

Item	Steps to take
Activity milestones	<p>Grantees must 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 key milestones by specified dates (according to Grant Details terms B and C).</p> <p>Your organisation should be realistic in proposing completion dates for key milestones.</p> <p>Once the milestones are finalised, your organisation should make note of any important dates and diarise them to ensure deadlines are met.</p>
Budget	<p>If supplementary term G2 applies, organisations must prepare a budget agreed with the Commonwealth showing how grant funds will be spent on the funded activity.</p> <p>Organisations should ensure the budget is realistic and flexible (by expressing the budget as categories of expenditure rather than listing expenditure for all individual line items) and continually review the budget to make sure funded activities are on track.</p> <p>It may also be appropriate to budget for the equipment and assets to be purchased by the Grantee (according to the details in supplementary term G7). Once a budget is included as part of the Agreement, it can only be varied in accordance with the process outlined in the general conditions (G7).</p> <p>Organisations should notify the Commonwealth if the budget is not being met and needs to be revised.</p>
Identify potential risks	<p>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.</p> <p>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 to manage the implementation of the grant activity</p>
Letter of support	<p>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</p>



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 activity milestones (if required by the Grant Details) and the budget (if supplementary term G2 applies).
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 (general condition 10), 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 (if supplementary term G1 applies).

Examples of Commonwealth Simple Grant Agreements

Some Agencies have published samples which may assist your organisation with preparing your Agreement.

Agency	Brief description
Department of Defence (DoD)	<p>DoD have published the sample Agreement template for the Industry Skilling Program Enhancement Schools Pathways Programme Grant for the financial years 2017/2018 to 2019/2022.</p> <p>The template sets out the purpose of the grant, a description of the grant activity, payment of grant monies to the Grantee, reporting requirements, applicable supplementary terms and a Schedule containing a 'Milestone Activity Table'.</p>
Australian Trade and Investment Commission (Austrade)	<p>Austrade have published the sample Agreement template for the Export Market Development Grants program.</p> <p>The template sets out the background and scope of the Agreement, the purpose of the grant, a description of the grant activity, the activity schedule and milestones, payment of grant monies to the Grantee, reporting requirements, applicable supplementary terms and a Schedule containing reporting templates.</p>
Department of Industry, Science, Energy and Resources (DISER)	<p>DISER have released under the <i>Freedom of Information Act 1982</i> (Cth) a complete copy of its executed Agreement with B'NAI B'IRITH RETIREMENT VILLAGES LIMITED for a Safer Communities Fund Round 5 Infrastructure Grants grant opportunity.</p>
National Blood Authority Australia (NBAA)	<p>NBAA have published the sample Agreement template for the National Blood Sector Research and Development Program.</p> <p>The template sets out the background and scope of the Agreement, the purpose of the grant, details of the grant activity, payment of grant monies to the Grantee, reporting requirements, applicable supplementary terms and Schedules which contain reporting templates.</p>