

DSS Streamlined Grant Agreement

Legal information for community organisations in the social services sector

This fact sheet covers:

- ▶ what the DSS Streamlined Grant Agreement is
- ▶ important terms in the Agreement
- ▶ when written notification is required
- ▶ record and reporting requirements, and
- ▶ tips to assist organisations to be prepared.

The DSS Streamlined Grant Agreement comprises a number of documents. It is not just one document. Funded organisations must ensure they are aware of the terms of all the documents as together they all make up the DSS Streamlined Grant Agreement.

The DSS Streamlined Grant Agreement sets out the terms on which the Federal Department of Social Services (**DSS**) will provide a funded organisation with one (or more) grants to undertake specified activities.

The actual documents that form the Agreement between DSS and the funded organisation will vary between organisations and may include the following component documents:

- Grant Agreement
- Supplementary Terms (some, all, or none of these may apply – organisations need to check)
- General Grant Conditions (referred to as **general conditions** in this fact sheet)
- Grant Schedule (there may be more than one Grant Schedule), and
- Other documents referred to in the Grant Schedule(s).

In this fact sheet we will refer to all of the above as the **Grant Documents** and the entire agreement the **Agreement**. This fact sheet may make more sense if it is read with the Grant Documents at hand for reference.

NOTE

If your organisation receives a number of grants from DSS then each Agreement will have a Grant Schedule which applies to each particular grant. The terms of each Grant Schedule may be different so it is important to read through each Agreement carefully.



Importantly, if there are inconsistencies between two or more of the Grant Documents, organisations should look to the list set out in the Grant Documents (usually in the Schedule). The Grant Documents are listed in order of priority, and the inconsistent term in the document listed higher will apply.

! CAUTION

Your organisation must familiarise itself with policies, guidelines and compliance requirements specified in the Agreement which will be made available on the DSS website at www.dss.gov.au

In addition to requiring funded organisations to comply with the Grant Documents, the Agreement may require your organisation to comply with:

- DSS Departmental Policies in place from time to time, or
- other specified policies, guidelines and compliance requirements.

1. Important Terms in the Agreement

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

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 all the Grant Documents, and may need to seek legal advice if aspects are unclear or raise particular legal concerns.



TIP

Remember, this fact sheet may make more sense if it is read with the Grant Documents at hand for reference.

1.1 Termination (general conditions 20 and 21)

The Agreement can be brought to an end by DSS in two main ways:

1.1.1 If the organisation is in default (general condition 20)

Default means a number of things, and in this Agreement default can occur if:

- DSS believes that a funded organisation has breached the Agreement and it is not possible to fix the breach
- DSS believes the funded organisation has breached the Agreement and has notified the organisation to fix the breach within 10 days (eg by lodging late reporting) and this has not occurred
- the funded organisation has not been truthful in its application for funding
- the funded organisation is bankrupt or in other financial difficulties
- the funded organisation has breached any law in Australia
- there has been a change in control of the organisation, or
- there has been a change in circumstances (as defined in the Agreement) which can include loss of certain staff, changes to location, changes to your constitution or rules, changes to the financial management, an increase in adverse issues or financial difficulties. DSS must give you at least 20 days to address these changes in circumstances.

Organisations are required to notify DSS if some of the situations above occur – see 2. below for discussion.

CAUTION: CARRY OUT BACKGROUND CHECKS

A Change in Control includes **any** change in **any** person who **directly** exercises effective control over the organisation. If this occurs and DSS believes this will negatively impact upon the Agreement then DSS may terminate the Agreement. Undertaking background checks will help reduce the risk that a new appointee could be considered a risk to the Agreement.

For more information on background checks, go to www.nfplaw.org.au/recruitment.



1.1.2 If DSS decides to do so (general condition 21)

DSS can write to any funded organisation and terminate the Agreement at any time. There is no notice period set out in the Agreement and if an organisation receives written notice it must immediately do what the written notice says which may be to stop providing services or to reduce services. The organisation must also take steps to minimise any loss from the point in time that it receives the notice.

An organisation that receives a termination 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 termination.

If DSS terminates the Agreement under general condition 21, DSS will only compensate the organisation for:

- any monies due and owing as at the date written notice is received, and
- any **reasonable** expenses the organisation unavoidably incurs that relate directly to the termination (or reduction of services). It is important to note that the reasonable expenses that will be compensated are not all-encompassing, for example the Agreement makes it clear that an organisation will not be entitled to compensation for loss of prospective profits or benefits.

The Agreement also makes it clear that the dispute resolution procedure will not apply to a decision to terminate by DSS. The funded organisation is not entitled to terminate the Agreement itself (which means that any termination of the contract by the funded organisation could be a breach of the Agreement, and DSS could be entitled to contractual damages).

EXAMPLE

There are no specific examples of what would be **reasonable** expenses that DSS will reimburse if it terminates the Agreement. They may include cancellation fees to be paid to third parties, fees to be paid for winding up an organisation or for 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 DSS terminates the Agreement under general condition 21. This can help manage the costs associated with a termination of DSS funding.



CAUTION: REPAYMENT OF GRANT

If any of the grant money has not been spent at the date of termination of the Agreement then the unspent amount must be repaid to DSS. Funded organisations' budgets should provide for this possibility (ie DSS funds should not be applied to other activities of the organisation).



See general conditions 8 and 10.

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

The Agreement deals with intellectual property as follows. You will need to check which supplementary terms apply to your organisation, and also whether the Grant Schedule deals with any particular intellectual property issues.

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.

Type of Material	Ownership and use of Material
Activity Material being all material an organisation creates in performing the activities (general condition 12 and supplementary term G5)	The organisation owns the Activity Material If supplementary term G5 applies, the organisation gives DSS a licence to use the Activity Material indefinitely
Commonwealth Material being all material DSS provides to an organisation to enable it to perform the activities (supplementary term G10)	DSS owns the Commonwealth Material If supplementary term G10 applies, DSS gives the funded organisation a licence to use the Commonwealth Material but only as required to perform the activities and not for any other purpose An organisation that received Commonwealth Material must stop using the Commonwealth Material at the end of the Agreement
Reporting Material being all material an organisation provides to DSS for reporting purposes (general condition 12)	The organisation owns the Reporting Material The organisation gives DSS a licence to use the Reporting Material indefinitely
Existing Material being all material owned or created by an organisation other than in performing the activities (general condition 12)	The organisation owns its Existing Material (general condition 12) The organisation gives DSS a licence of its Existing Material to the extent which it is incorporated into the Reporting Material only, so that DSS can use the Reporting Material indefinitely

CAUTION: SUBCONTRACTORS AND VOLUNTEERS



Funded organisations must ensure that they legally own all intellectual property in the Activity Material and the Reporting Material (or have an appropriate intellectual property licence) enabling intellectual property to be shared with DSS in the ways required under the Agreement. Organisations 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 go to the Information Hub page on Intellectual Property at www.nfplaw.org.au/IP. For more information on whether a worker is an employee, subcontractor or volunteer, go to www.nfplaw.org.au/people.

1.3 Indemnity (general condition 16)

Organisations are responsible for all of their actions in performing the funded activities (including those of its officers, employees and contractors). Organisations should be mindful that they are required to indemnify (essentially repay) DSS for any loss it suffers due to the actions of the organisation. Funded organisations should ensure that they have appropriate insurance policies to mitigate this risk. For more information on insurance, go the Information Hub page on Risk and Insurance at www.nfplaw.org.au/riskinsurance.

1.4 Privacy (general condition 13)

If, in performing the activities, a funded organisation deals with personal information (being any information about a person from which that person can be reasonably identifiable) it must ensure that it does not do anything which, if it had been done by DSS, would breach the provisions of the *Privacy Act 1988* (Cth). If a funded organisation has not previously been required to comply with the Privacy Act it may need to seek advice from a privacy law specialist about systems that it will need to put in place.

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). Despite this the Agreement requires your organisation to familiarise itself with these obligations and ensure they are complied with at all times when dealing with personal information in performing the funded activities.

For more information on Australian privacy laws go the Information Hub Privacy page, at www.nfplaw.org.au/privacy.

2. Written Notifications

The Agreement provides that notifications must be made by one party to the other party about a number of issues. These notification requirements appear in several of the Grant Documents. It is very important that funded organisations provide notices where required, because failing to provide a notice can be a breach of the agreement (and certain breaches allow DSS to terminate the agreement). A notification made under the Agreement needs to be in writing and signed by a person

with authority to sign on behalf of the organisation (most organisations have delegation policies covering who is authorised in particular circumstances).

	Circumstance requiring notification	Potential action following notification
Notifications to be made by the funded organisation	If the organisation receives money or in-kind services from other places for the activity that the Agreement applies to (only if supplementary term G1 applies)	DSS can terminate the Agreement
	If there is anything reasonably likely to affect the performance of the funded activity (general condition 3)	NA
	If there is any actual, perceived or potential conflicts of interest (general condition 6)	NA
	If there has been any breach or possible breach of privacy requirements (general condition 13.2)	NA
	If the Specified Personnel in the Grant Schedule are unavailable or unable to undertake their expected role in the activity (general condition 17)	DSS must agree to any change in Specified Personnel
Notifications to be made by DSS	If DSS 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)	Organisation must satisfactorily address the reasons in the written notice, which will outline steps that the organisation needs to take
	If there is anything reasonably likely to affect the performance of the activity (general condition 3)	NA
	If DSS believes there is a basis for termination by default (eg if organisation has breached the Agreement) (general condition 20)	Organisation has to rectify (if it can) the breach
	If DSS decides to terminate the Agreement in (general condition 21)	Organisation must stop or reduce services

3. Records, Reporting and Access (Grant Schedule, general condition 11, supplementary terms)

The Agreement imposes a number of reporting obligations on your organisation which must be undertaken by the particular dates specified in the Agreement. There may be reporting requirements in several of the Grant Documents, for example, the Grant Schedule 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, and general conditions 5.2 and 11 also relate to record keeping and reporting.

CAUTION

Your organisation should be cautious to maintain proper records regarding its receipt and expenditure of the grant as giving false or misleading information to DSS is an offence under the *Criminal Code Act 1995* (Cth). An acknowledgement of this is provided in general condition 11, however the Criminal Code applies regardless of the acknowledgement in the Agreement.



Reporting obligation	Brief description
Record keeping	Records of the receipt and expenditure of the grant must be made and kept for 5 years from the end of the Agreement with copies provided to DSS on request (if supplementary term G3 applies, although it is always good practice to keep records regardless of a contractual obligation to do so)
Audited Financial Reports	Independently audited financial acquittal reports verifying the proper expenditure of the grant must be provided to DSS (if supplementary term G4 applies)
Financial Declaration	A Financial Declaration stating funds spent (and any unspent funds retained) must be submitted to DSS for each financial year in which the grant is received (if required by the Grant Schedule)
Asset Register	Organisations must obtain permission from DSS to use the grant money to purchase individual assets for more than \$5000 and must maintain a register of those purchases (if supplementary term G7 applies)
Subcontractors	Details of any subcontractors engaged to assist in undertaking the activities must be made available to DSS (general condition 5.2)
Providing access to materials	Organisations need to 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).

NOTE

A Financial Declaration must be certified by an organisation's Board, Chief Executive Officer, or another officer with authority to do so.



4. Action List

There are a number of practical steps that organisations can take to be ready for the Agreement.

Item	Steps to take
Activity Work Plan	<p>Funded organisations must prepare and submit an Activity Work Plan to DSS setting out key milestones and dates for completing the activities. Once agreed by DSS organisations will be obliged to complete the key milestones by specified dates.</p> <p>Your organisation should be realistic in proposing completion dates for key milestones.</p> <p>Once the Activity Work Plan is finalised your organisation should make note of any important dates and diarise them to ensure deadlines are met.</p>
Budget	<p>If supplementary term G4 applies, organisations must prepare a mutually agreed budget.</p> <p>Organisations should ensure the budget is realistic and continually review the budget to ensure funded activities are on track.</p> <p>Organisations should notify DSS if the budget is not being met and needs to be revised.</p>
Records	<p>Keep proper records and registers about how the grant has been spent and in particular whether the expenditure complies with the Activity Work Plan (if required by the Grant Schedule) and the Budget (if supplementary term G4 applies).</p>
Expenditure	<p>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).</p>

Resources

Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub (www.nfplaw.org.au) has resources on the following related topics:

- ✔ Intellectual Property at www.nfplaw.org.au/ip
- ✔ Employment at www.nfplaw.org.au/employees
- ✔ Privacy at www.nfplaw.org.au/privacy
- ✔ Risk and Insurance at www.nfplaw.org.au/riskinsurance
- ✔ Documents and Records at www.nfplaw.org.au/recordkeeping
- ✔ Financial Reporting at www.nfplaw.org.au/annual-reporting-government

Department of Social Services

- ✔ [Information on Grants](#) – including the selection process, applying for grants, program reporting and information for recipients.
- ✔ [DSS Streamlined Grant Agreement template](#)

Legislation

- ✔ [Criminal Code Act 1995 \(Cth\)](#)
- ✔ [Privacy Act 1988 \(Cth\)](#)

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

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