



# Guiding Partnerships – The Funding Managers’ Guide

For ACT Government and Community Organisations

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## Part 1: Overview

### 1.1 Purpose of the Funding Managers' Guide

The purpose of *Guiding Partnerships – the Funding Manager's Guide* (Guide) is to help government and community sector employees understand the processes involved in managing government funded community services. Understanding the funding management process will promote effective partnerships between government and community organisations, and is important to ensure optimal outcomes for service users. The Guide will progress the Hawke Review recommendations and provide for greater coordination, cohesion and consistency of effort by officials in the pursuit of Government priorities.

It is intended that the Guide be a user-friendly, plain English reference text that can be referred to as needed. It is hoped that the Guide will be a living document that is useful to both Government and non-government officers in understanding the Agreement management process and in resolving specific queries.

As different ACT Government Directorates fund a diverse range of programs, the Guide aims to provide a set of strategies and guiding principles, rather than prescriptive rules. The Guide does, however, provide information about policy and legislative requirements that will apply to all Agreement management, such as insurance and record management requirements.

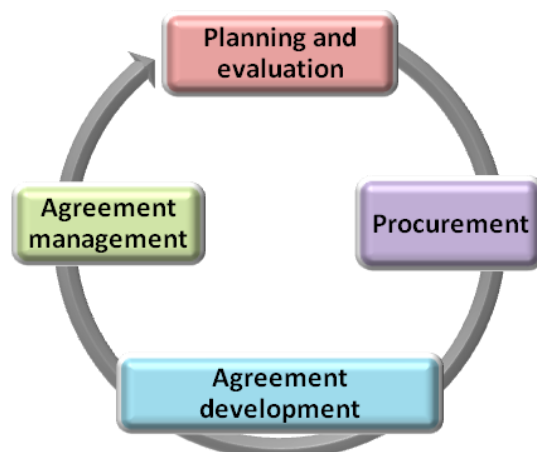
### 1.2 Who is the Guide for?

The Guide aims to assist both government and the community sector. It is primarily written to provide guidance to government Agreement Managers, though it is hoped that it will also provide useful insights for those in the community sector responsible for managing ACT Government funded community services.

### 1.3 The Funding Agreement Life Cycle

The process for funding and managing community services can be represented as a 'Funding Agreement Life Cycle'. Each of the stages of the cycle corresponds to a section in this Guide:

- Part 2 - policy context, planning and evaluation processes;
- Part 3 - procurement processes;
- Part 4 - development and negotiation of Agreements; and
- Part 5 - Agreement management.



## Part 2 – Policy, planning and evaluation

### 2.1 Policy and legislative context

There is a range of legislation and policy which guides funding of community services by the ACT Government. These documents instruct government officers in how to achieve value for money, accountability, effective partnerships and optimal outcomes for service users.

The *Canberra Social Plan* sets out a vision that “all people reach their potential, make a contribution and share the benefits of an **inclusive community**”. In developing the 2011 update of the Plan, three themes have evolved that support our vision of an inclusive community:

- **Connection** – creating a socially cohesive society;
- **Belonging** – making sure every individual has the opportunity to reach their potential and participate in the community; and
- **Collaboration** – working together to improve the lives of all Canberrans.

The *Social Compact* is a statement of understanding between the ACT Government and the community sector, outlining principles of good communication and partnership. The Compact sets out undertakings that each sector has committed to in working together for the public good. This includes undertakings by the ACT Government to ensure fairness and transparency in funding, to seek the sector’s views, respect its right to challenge government policy, and to publicly acknowledge the value, autonomy and contribution of the sector. The community sector undertakes to communicate openly and constructively with government, to maintain a central focus on consumer and community needs, to engage in quality improvement, planning and policy development.

The *Community Sector Funding Policy* outlines a collaborative approach to funding between government and the community sector. This partnership adopts a consistent whole of government approach with three-year funding cycles and multi-year Funding Agreements to support effective service delivery. The Policy aims to enhance the viability of the sector, the effectiveness of its service provision and to maximise client outcomes.

Legislation guiding government purchasing includes the *Government Procurement Act 2001*, *Financial Management Act 1996*, *Territory Records Act 2002* and the *Government Procurement Regulation 2007* (available from <http://www.legislation.act.gov.au>). Shared Services Procurement has developed procurement guidelines (known as ‘Circulars’) on a range of procurement related matters to assist government employees in their procurement activities. These Circulars are available from the Shared Services Procurement website at [http://www.procurement.act.gov.au/about\\_us/procurement\\_policy](http://www.procurement.act.gov.au/about_us/procurement_policy). Further information on procurement is available in Part 3 of this guide.

### 2.2 Principles for working together

Under *The Social Compact* a number of principles provide the positive basis for partnership and constructive working relations between the community sector and government, including:

- trust, openness and transparency of communication and processes;
- mutual respect for the capacity, capabilities and limitations of each sector;
- respect for the diversity and independence of community organisations and groups;
- integrity, ethical practice, accountability and leadership in the way each sector operates;
- consumer and community participation in planning, policy development and other decision making processes; and
- innovation and continuous improvement in the planning and delivery of services.

## 2.3 Planning and evaluation

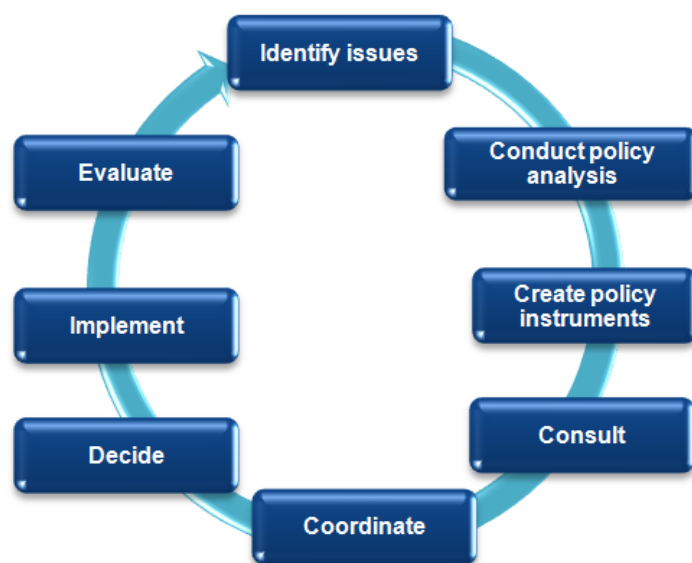
To ensure that community needs are met and value for money is achieved, it is important that government has rigorous planning processes in place. In addition to the policy documents outlined above there are a range of specific strategic plans and national agreements that guide this process. These documents, such as the *National Partnership Agreement on Homelessness* and the *ACT Young People's Plan*, set out broad policy directions and high-level targets. Within this framework, government Directorates must undertake planning and develop policy that is both evidence based and responds to community expectations.

When determining priorities and courses of action, Directorates go through a policy development process that can be represented as a cycle. The policy development cycle involves identifying an issue that requires government action, conducting analysis, consulting with the community, coordinating across government, developing and implementing a policy approach, and then evaluating its success.

It is important that these processes are used to inform the procurement and management of specific programs and services, and that the objectives of funded services are tied to the objectives of the Directorate and those of the government as a whole.

The ACT Government uses sub-sector funding plans to fund specific 'sub-sectors', enabling multiple services to be bundled together in one procurement process. These funding plans are based on policy and planning processes, and provide a systemic link between broad policy directions and specific funding decisions. More information on sub-sector funding plans is provided in [Part 3.4](#) of this Guide.

### The policy development cycle



Source: Davis G and Bridgeman P 2007, cited in Chief Ministers Department 2010, *ACT Government Evaluation Policy and Guidelines*.

### Consultation

### Evaluation

In December 2010 the ACT Government released the *ACT Government Evaluation Policy and Guidelines*. The policy defines evaluation as

the process of measuring and assessing the impacts and merits of government policies, strategies and programs. It is a means of determining the appropriateness, effectiveness and efficiency of government policies and programs, and contributing to policy improvements and innovation (p3).

The policy goes on to state that "evaluation is a key component of the policy cycle or the process of conceiving, developing, implementing and modifying public policies" (p3). The ACT Government *Evaluation Policy and Guidelines* are available from:

[http://www.cmd.act.gov.au/data/assets/rtf\\_file/0005/175433/ACT-Evaluation-Policy-Guidelines.rtf](http://www.cmd.act.gov.au/data/assets/rtf_file/0005/175433/ACT-Evaluation-Policy-Guidelines.rtf)

## Part 3 – Procuring goods and services

### 3.1 What is procurement?

The *Government Procurement Act 2001* (the Act) defines procurement as:

- the process of acquiring goods, services, works or property by purchase, lease, rental or exchange; and
- the process of disposing of goods, works or property including by sale.

ACT Government Directorates are required to keep reasonable records of all purchasing activities and to seek approval of proposed expenditure in accordance with financial delegations. A Directorate may manage a procurement valued under \$25,000 itself but any procurement with a value of \$25,000 or more **must be** referred to Shared Services Procurement to facilitate the process.

The threshold for a notifiable contract is \$25,000. A copy of all notifiable contracts must be provided to Shared Services Procurement to enable publication of the contracts on the ACT Government Contracts Register.

Grants are not covered by the Act and are **not** defined as a procurement activity. Information about grant processes is provided at [Part 6](#) of this Guide.

The Act also states that a Territory entity must pursue value for money in undertaking any procurement activity. In pursuing value for money, defined in the Act to mean the best available procurement outcome, the entity must have regard to the following:

- probity and ethical behaviour (see Circular PC21);
- management of risk (see Circulars PC24 and 2007/14);
- open and effective competition;
- optimising whole of life costs (see Circular 2010/11); and
- anything else prescribed by regulation.

#### **Who is Shared Services Procurement?**

In 2005 the ACT Government announced the centralisation of procurement activities. The Government's decision was that Shared Services Procurement, part of Treasury Directorate, would provide all capital works delivery and the procurement of all goods and services above a threshold of \$25,000 on behalf of Directorates.

The role of Shared Services Procurement includes, but is not limited to;

- providing advice about or managing procurement processes, including preparing procurement proposals and obtaining quotes;
- assisting ACT Government Directorates in evaluating tenders received; and
- proof reading draft contracts to ensure they comply with formatting conventions.

#### **What role does the purchasing Directorate play?**

When undertaking procurement processes, ACT Government Directorate responsibilities include:

- seeking Shared Services Procurement's advice and assistance for all procurements with a value of \$25,000 or more;
- clearly defining the scope of each procurement and preparing functional briefs and/or statements of requirements;

- considering the procurement plan, which, if agreed by the relevant Directorate delegate, undertaking the procurement, authorises ‘expenditure of public monies’;
- participating in the evaluation of tenders relating to that entity and making decisions on selecting preferred tenderers; and
- managing Agreements for the provision of goods and services.

### **What role do community organisations play?**

Community organisations can:

- look for funding opportunities advertised by government in newspapers and on the Shared Services Procurement website ([http://www.procurement.act.gov.au/tenders\\_advertised](http://www.procurement.act.gov.au/tenders_advertised)); and
- submit offers (e.g. a quote, tender, proposal or expression of interest) when government approaches the market with a Request for Offer.

### **For more information:**

- *ACT Government Purchasing Guide*, available from [http://sharedservices/actgovt/ProcDocs/ACT\\_Govt\\_Purch\\_Guide.pdf](http://sharedservices/actgovt/ProcDocs/ACT_Govt_Purch_Guide.pdf)
- Procurement Circulars are available from [http://www.procurement.act.gov.au/about\\_us/procurement\\_policy](http://www.procurement.act.gov.au/about_us/procurement_policy)
- *ACT Government Tendering Guide* <http://sharedservices/actgovt/ProcDocs/TenderingGuide.pdf>

Source: The above information is adapted from *Procurement Circular 2009/01 ACT Government Procurement Framework – an Overview* ([http://www.procurement.act.gov.au/about\\_us/procurement\\_policy](http://www.procurement.act.gov.au/about_us/procurement_policy)).

## **3.2 Quotation and tender thresholds**

The value of a project will determine how proposals are sought for the delivery of the service. Under the *Government Procurement Regulation 2007* (as amended in 2009), Government Directorates are required to comply with the following quotation and tender thresholds when purchasing goods, services and works:

### **Quotation and Tender Threshold requirements**

Section 5	<b>Direct Sourcing (Single Select Tendering)</b> at least one quotation must be sought for all procurements valued under \$25,000.
Section 6	<b>Select Sourcing (Select Tendering)</b> a minimum of three written quotations must be sought for all procurements valued at \$25,000 or more and less than \$200,000.
Section 9	<b>Open Tendering</b> a Territory entity must invite public tenders for all procurements valued at or above \$200,000.

**As thresholds are amended from time to time it is important to check the current thresholds when undertaking each procurement process.** These can be checked at the following website:

[www.procurement.act.gov.au/about\\_us/procurement\\_policy](http://www.procurement.act.gov.au/about_us/procurement_policy).

Shared Services Procurement has a Procurement Circular on Select and Single Select Procurements (PC25) to provide advice to Directorates, available from the Shared Services Procurement website and the Shared Services Customer Portal.

### **Exemptions from quotation and tender threshold requirements**

Section 10 of the Regulation provides that the responsible Director-General (or delegated officer) may, in writing, exempt the entity from complying with either the quotation or tender threshold requirements as



described in sections 6 and 9. The Director-General (or delegated officer) must be satisfied, on reasonable grounds, that the benefit in giving the exemption outweighs the benefit in complying with the threshold.

Examples of when an exemption might be given:

- only a single or limited number of suppliers are available because of an organisations specialist knowledge or experience;
- only one organisation can supply a particular good or service;
- social procurement;
- the use of another jurisdiction's common use arrangements; and/or
- the time within which a particular procurement activity must be completed prevents the calling of public tenders.

The exemption must be in writing, must state the procurement proposal to which it applies and the responsible Director-General's (or delegate's) reasons for the exemption.

Source: adapted from *Procurement Circular 2010/23 Quotation and Tender Thresholds*, available from [http://www.procurement.act.gov.au/about\\_us/procurement\\_policy](http://www.procurement.act.gov.au/about_us/procurement_policy).

### 3.3 Undertaking a procurement process

Once the relevant quotation threshold is identified it is possible to proceed with the procurement. The relevant ACT Government Directorate employee will work with Shared Services Procurement to develop the specifications of the purchase and the procurement plan. The procurement plan must be approved by the relevant delegate in order to proceed.

The *Government Procurement Regulation 2007* defines which procurement proposals must be presented to the Government Procurement Board for consideration. Generally, it applies to procurements valued at \$5 million or more, except when procuring information and communication technology (ICT) development; or a disposal activity, in which case a \$1 million threshold applies.

Where the tender thresholds dictate that a public tender process is to occur, advertising must be done in a manner that gives all organisations a reasonable opportunity to be aware of the procurement activity (e.g. through the Canberra Times and the Shared Services Procurement website, [www.procurement.act.gov.au](http://www.procurement.act.gov.au)). Shared Services Procurement also publishes the Goods and Services Forecast and the Call Tender Schedule on its website to assist industry in forward planning.

Where an exemption from quotation thresholds has been obtained it is possible to undertake Direct Sourcing (otherwise known as a 'Single Select' tender). This process avoids the need for public advertising of a tender when there are strong reasons for directly approaching a single organisation. Similarly 'Select Sourcing' (also known as a 'Select Tender') allows proposals to be invited from several known organisations rather than advertising publicly through an open tender.

Once the time period for tender responses, quotations or proposals has expired, the Directorate must evaluate the submissions in accordance with the *Government Procurement Act 2001* and the approved evaluation methodology described in the procurement plan. Shared Services Procurement can provide assistance with this process. Written approval must be obtained from the Director-General (or relevant delegate) in order to engage a particular service provider for the goods, services or works. The submission seeking delegate approval should detail the evaluation methodology and the basis for recommending the preferred service provider above other service providers, including a comparative statement. In the case of direct sourcing, an evaluation should be undertaken of the proposal to verify that a value for money outcome is achievable.

Once the procurement process is complete, it is possible to commence service funding negotiations with the successful tenderer.

For further information:

- *ACT Government Purchasing Guide*, available from [http://sharedservices/actgovt/ProcDocs/ACT Govt Purch Guide.pdf](http://sharedservices/actgovt/ProcDocs/ACT_Govt_Purch_Guide.pdf)
- Procurement Circulars are available from [www.procurement.act.gov.au/about\\_us/procurement\\_policy](http://www.procurement.act.gov.au/about_us/procurement_policy)
- *ACT Government Tendering Guide* [www.procurement.act.gov.au/\\_data/assets/pdf\\_file/0004/121468/Tendering\\_Guide\\_1.3.pdf](http://www.procurement.act.gov.au/_data/assets/pdf_file/0004/121468/Tendering_Guide_1.3.pdf)
- *Procurement circular PC02* on Social Procurement is available from [www.procurement.act.gov.au/\\_data/assets/pdf\\_file/0004/134752/2010\\_02\\_Social\\_Procurement.pdf](http://www.procurement.act.gov.au/_data/assets/pdf_file/0004/134752/2010_02_Social_Procurement.pdf)
- Procurement circular 2007/08 on Sustainable Procurement is available from [www.procurement.act.gov.au/\\_data/assets/pdf\\_file/0016/16027/2007\\_08\\_Sustainable\\_Procurement.pdf](http://www.procurement.act.gov.au/_data/assets/pdf_file/0016/16027/2007_08_Sustainable_Procurement.pdf)

### 3.4 Sub-sector Funding Plans

In 2004, as part of the *Community Sector Funding Policy*, the ACT Government committed to three-year funding cycles and multi-year funding arrangements for services that are performing well. In order to implement the change, the ACT Government introduced sub-sector funding plans (Funding Plans).

These Funding Plans are developed by government for specific 'sub-sectors', enabling multiple services to be bundled together in one procurement process. For example, there is a sub-sector funding plan dedicated to homelessness services, enabling the ACT Government to procure multiple homelessness services in one process rather than engaging in a separate process for each one.

Funding Plans:

- are based on policy and planning information following sub-sector review;
- provide a systemic link between broad policy directions, planning information, and specific funding decisions; and
- specify the optimal mix of service types to meet identified community needs.

The Funding Plan process allows Service Funding Agreements for multiple services to be renewed for further multi year periods, negating the need to regularly undertake open tender processes. However a service provider is only able to be considered for this process if the service is:

- able to meet priority needs;
- likely to be able to maintain services for the proposed funding Agreement term;
- actively engaged in quality improvement; and
- currently providing the service and meeting all performance measures and funding requirements.

Funding Plans provide the option of directly negotiating with existing service providers where the above conditions have been met. Where funding is available, the service is part of a Funding Plan and the resources have been allocated to this purpose, multi-year Agreements should be considered.

From time to time funding may be identified as available to address a specific government priority not covered by a sub-sector funding plan. In order to allow for flexibility to address such matters when they arise, it is possible to provide a one-off grant or to undertake a single select procurement.

### 3.5 Outcomes Based Purchasing Framework

In 2010 the ACT Government commenced a project to develop an Outcomes Based Service Funding Agreement - Purchasing Framework for the procurement and quality improvement of community services funded by the Community Services Directorate (CSD). Once implemented within CSD, the framework may be transferable across ACT Government delivering community services.

The project will develop a population based approach and measure the achievement of specific population results over a 10 year period, in relation to improving social and economic outcomes for vulnerable Canberrans.

#### **What will a Purchasing Framework look like?**

It is anticipated that all organisations funded to deliver human services by the CSD will have:

- a Pre-qualification Framework;
- a maximum 10 year Service Funding Agreement consisting of a fixed term with option periods and agreed performance milestones;
- an outcomes based quality framework;
- standard common terms and conditions in their Service Funding Agreements; and
- work within a common performance reporting framework.

## Part 4 – Developing and negotiating agreements

### 4.1 Key tasks and practices in funding management

Each year the ACT Government provides approximately \$130 million in funding to the community sector<sup>1</sup>, incorporating over 150 community organisations. Through this government funding, these organisations are able to provide a range of services to the ACT community, including accommodation for the homeless, and support to children, families, people with disabilities and those with mental illness.

To ensure that public monies are used effectively and properly accounted for, it is important that strong management processes are put in place. In its 2007 Better Practice Guide, *Developing and Managing Contracts*, the Australian National Audit Office (ANAO) identifies a number of factors that are important at all stages of the contracting process.

These are:

- managing risks;
- managing relationships;
- managing resources;
- specifying responsibilities;
- behaving ethically; and
- keeping records.

Part 4 of the Funding Managers Guide covers these and related issues. Section 4.2 covers the types of Agreements that may be used, 4.3 covers performance indicators and measurement, 4.4 discusses negotiations and 4.5 covers contract finalisation. Coverage is then provided on the important topics of risk management and insurances. Record keeping is covered in Section 5.9.

### 4.2 Developing the Agreement

When there is significant risk or expenditure, important outcomes or specific outputs required, it is important that Government use written Agreements as evidence of terms agreed with other parties. In developing Agreements there are a number of key steps involved:

- Determining the form of the Agreement;
- Identifying the key tasks and performance indicators; and
- Establishing a reporting and performance management regime.

#### **Determining the form of Agreement**

In order to ensure consistency across services the ACT Government developed a number of standardised Agreement templates. The following table is provided to assist Agreement Managers to determine the appropriate template to use for particular purposes:

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<sup>1</sup> Source: Chief Minister Jon Stanhope, Hansard, 12 February 2009 <http://www.hansard.act.gov.au/hansard/2009/week02/782.htm>

Standard ACT Government Agreement templates			
Agreement template	Purpose	Alternative templates	
Service Funding Agreement (SFA)	Funding of community services (e.g. family support services)	Single service SFA template	
		Short form SFA template - for use when : <ul style="list-style-type: none"> <li>there is low risk (i.e. the public liability insurance risk rating determined for the Agreement is 6 or lower); <b>AND</b></li> <li>the service is of low value (total estimated value (excluding GST) of the procurement is \$50,000 over 1 year, or \$150,000 over 3 years).</li> </ul>	
		Multiple services	Multiple Schedule 2 SFA template (for use when Schedules 1 and 3 to 6 proposed for each service <b>ARE</b> identical for each service.
			Appendix model SFA template (for use when Schedules 1 and 3 to 6 proposed for each service <b>ARE NOT</b> identical for each service.
Consortia	Sub-contracting SFA (where a lead organisation sub-contracts other organisations)		
	Multi-organisation SFA (where multiple organisations are jointly funded to deliver a service in a single SFA)		
Services Agreement (Consultancy)	Consultancies – (e.g. for a program evaluation report)		
Services Agreement (Contractor)	Contracting – for time-limited projects or ongoing funding of non-human services (e.g. architectural services)		
Deed of Variation	Changes to an existing Agreement		
Deed of Grant	Grants – for one-off funding ‘gifts’ with minimal reporting requirements		
Sponsorship Agreement (Territory Providing Sponsorship)	Sponsorship – providing financial or in-kind support for an event or activity in exchange for promotion (e.g. festival or conference sponsorship with Directorate banners on display)		
Sponsorship Agreement (Territory Receiving Sponsorship)			
Goods Agreement	Procuring goods		
Service Partnership Agreement	Establishing high level protocols and processes across Government		
Exchange of Letters	Low value, low risk items (e.g. below \$20,000). A Letter of Offer can be drafted by the funding entity, detailing the terms and conditions of the funding. The letter is then signed by the recipient and returned for signature by Government.  Note: Letters of offer should be used with caution as they provide a lower level of protection to the Territory than the standard Agreements. Unless there are strong grounds for using a Letter of Offer, standard Agreement templates should be used to ensure that the Territory’s interests are protected.		

Agreement templates are available to ACT Government staff from the Shared Services intranet site: <http://sharedservices/actgovt/default.htm?tab=7#servcfunding>.

The ‘front-end’ (body) of the Agreement should not be edited as it contains important content that should be in all Agreements, including definitions, conditions for termination, and dispute resolution. It has been written by the Government Solicitors Office to ensure that it contains necessary conditions to protect the Territory and other parties.

The actual specifications for the Agreement are included in Schedules attached at the back of the SFA. It is in the Schedules that the particular outcomes and outputs of the Agreement are specified, in addition to administrative processes including reporting and payment processes.

Shared Services Procurement can review draft Agreements to ensure that they comply with formatting conventions. Within CSD, the Contracts and Grants Unit can also assist with quality control by reviewing Agreements internally.

Guidance on the body and schedules of the standard Service Funding Agreement is provided at [Appendix 1](#).

#### Important notes:

1. **It is important that the words “draft” or “without prejudice” are included on the front cover and/or as a watermark on all draft Agreements.** These terms indicate to other parties that the version provided to them is not the final version and is still subject to change and negotiation. Failure to include such a caveat raises the risk that a draft Agreement can be interpreted as the final version by the other party, potentially resulting in the Territory being legally bound to those terms despite the fact that it had intended to modify the draft further prior to finalisation. When the final version is agreed upon, the terms “draft” and “without prejudice” should be removed prior to printing and signing.
2. Territory officers should be careful not to inadvertently commit to, or make an offer to, enter into a binding Agreement prior to the procurement process being conducted or management approval. **Legally enforceable contracts may inadvertently be made if officers verbally (or in writing) state to an organisation that the Territory wishes to engage that organisation to deliver a service and that organisation agrees.**

### 4.3 Establishing performance indicators and a reporting regime

Before an offer of an Agreement is made to a service provider, the Directorate needs to determine which activities are critical to the success of the service and what good performance by the funded organisation would look like. From this understanding of good performance, performance indicators can be developed and the service’s performance over the life of the Agreement measured against these indicators.

Specific performance indicators should be included in the terms of the Agreement. The level of performance required to satisfy performance indicators must be clearly defined in Schedule 2 of the SFA, in order to properly protect both the Territory’s and the community organisations’ interests by ensuring that there are clear expectations and the service performs as expected.

The outcomes, outputs and performance indicators included in an Agreement should align closely with the proposal put forward by the community organisation at the tendering stage. If a specific funding level or service model were key to the organisation winning the tender, it is important that the Territory ensures that these features form part of the Agreement. Both parties should also have the opportunity to negotiate on the conditions of the Agreement (see section 4.4 below).

Within the standard Service Funding Agreement, outcomes, outputs and performance indicators are included in Schedule 2, with reporting requirements in Schedule 3. Guidance on how to complete the SFA template is provided at [Appendix 1](#) of this Guide.

Source: adapted from Queensland Government (2000) *Better Purchasing Guide: Managing and Monitoring a Suppliers’ Performance* ([http://www.ggm.qld.gov.au/02\\_policy/complete\\_series.htm](http://www.ggm.qld.gov.au/02_policy/complete_series.htm)).

## **Establishing a reporting and performance management regime**

The objective of regular reporting is to formally track the progress of a service against Funding Agreement objectives. A range of reports can be required from organisations under the Agreement, including:

- regular performance and financial reports from the service provider (usually six-monthly);
- annual reports and audited financial reports;
- other management information;
- external reviews or evaluations; and/or
- quality assurance certification reports, if applicable.

Performance monitoring can be undertaken by the funding Directorate (liaising directly with service users), by the service provider (e.g. through performance reporting) or by a third party (e.g. through an independent evaluation or annual accreditation process). Where monitoring is devolved to the community organisation, information should be verified through a range of means, such as audits, service visits or benchmarking against similar services. Third party monitoring may be appropriate where particular technical knowledge is needed to assess data and to provide an independent assessment to the funding body and funded organisation. Third party assessments may, however, involve greater cost.

Greater detail on the reporting and performance management is included in [Part 5](#) of this Guide, and an SFA Reporting Checklist is provided at [Appendix 3](#). Reporting requirements are included in Schedule 3 of the standard SFA. Guidance on how to complete the SFA template is provided at [Appendix 1](#) of this Guide.

## **4.4 Negotiations**

Effective negotiations ensure that both parties discuss and understand each other's position and parameters and agree on the final content of an Agreement. Successful negotiations require that the personnel involved have the relevant experience, skill and authority to act, and that both parties are acting in good faith, with mutual understanding and a commitment to amicably resolve issues that may arise.

Negotiations are more likely to be successful when they:

- involve senior management in setting the policy parameters and communicating progress;
- define the objectives and constraints of the negotiation;
- agree the terms and conditions that will be subject to negotiation;
- ensure that those involved have the legal authority (or delegation) to act on behalf of the party they represent; and
- identify any problems or barriers as well as opportunities, and an approach to address these.

It is important that Agreement negotiations are conducted in a professional and structured manner. This can be achieved by addressing the following issues:

- agreeing on the make-up of the negotiating team of both parties;
- agreeing the location and agenda for each negotiating session;
- establishing timeframes in which negotiations will be conducted;
- establishing any interrelationships between individual issues/provisions that are subject to negotiation to ensure these are taken into account during negotiations (e.g. there will generally be a relationship between service levels and funding amount);
- focusing on achieving the objective sought over the life of the Agreement, rather than on short-term gains;

- keeping issues that are not negotiable to a minimum and being prepared to trade-off less important requirements to achieve objectives;
- keeping unresolved issues to a minimum and agreeing arrangements for their later resolution; and
- taking formal minutes of the negotiations and ensuring minutes are circulated and agreed within specified timeframes.

In order to ensure that the optimal outcomes are achieved, a formalised negotiation plan may need to be written. This should include the key objectives and outcomes required, those items which are negotiable and those which are non-negotiable.

A useful guide on negotiation is available from <http://mams.rmit.edu.au/6jk40wqopx78z.pdf>.

Source: adapted from Australian National Audit Office (ANAO) (2007), *Better Practice Guide on Developing and Managing Contracts* ([http://www.anao.gov.au/uploads/documents/Developing\\_and\\_Managing\\_Contracts.pdf](http://www.anao.gov.au/uploads/documents/Developing_and_Managing_Contracts.pdf)).

## 4.5 Formalising the Agreement

Once negotiations are complete and the terms of the Agreement agreed, it must be signed by an authorised officer in each organisation. Shared Services Procurement will print and bind two (or more) copies of the Agreement and forward these to the responsible Government Directorate. That Directorate will then provide all copies to the funded organisation to be signed and returned. This is the last opportunity for the organisations to check the accuracy and completeness of the contract before legally committing to it. Once the signed copies are received by the Government Directorate they will be signed by the appropriate delegate and one copy returned to the service.

Under the *Government Procurement Act 2001*, the Director-General is responsible for publishing all their Directorate's contracts and Funding Agreements worth \$25,000 or more on the publicly available Contracts Register. Agreement Managers should scan and email signed contracts to Shared Services Procurement (or provide a hard copy) in order that they can be placed on the register.

The ACT Government Contracts Register includes a search facility and can be accessed from the Shared Services Procurement website:

[http://www.procurement.act.gov.au/contracts/contracts\\_register/contracts\\_register\\_functionality/contracts\\_search](http://www.procurement.act.gov.au/contracts/contracts_register/contracts_register_functionality/contracts_search).

## 4.6 Identifying and managing risks

Managing risk is an integral part of good management. It is a process that is best embedded into existing practices or business processes. The management of risks should therefore be an integral part of all aspects of procurement, including the development and management of contracts (ANAO 2007).

Two risk management sections are included in this Guide. This first section introduces the topic of risk management and provides examples of risks that may be encountered when developing Agreements, while the second is included in Part 5 of the Guide, and addresses risks in the Agreement management phase.

Risk management involves the identification of potential events with adverse impacts, and planning to respond to these events if they eventuate. [Procurement Circular 2009/24](#) outlines the importance of applying effective risk management techniques when undertaking government procurement. The circular states that ACT Government “must, in the procurement of goods, services or works:

- identify, analyse and evaluate any likely risks; and
- implement sound risk management strategies to mitigate them.”

There is also an expectation that funded organisations will undertake similar processes.



In its *Risk Management Guide* (2004), the ACT Insurance Authority (ACTIA) outlines the steps involved in managing risk in the following flowchart:



ACTIA also provide tools to assist government and community organisations to understand and manage risks. Risk Management Plans and a Risk Management Toolkit are available from the ACTIA website <http://www.treasury.act.gov.au/actia/index.htm>

The Australian National Audit Office has identified a range of risks that may be encountered in developing Agreements. These include:

Sources of risk	Means of addressing risk
Agreement deliverables	<ul style="list-style-type: none"> <li>• Ensure Agreement deliverables described in clear, unambiguous terms</li> <li>• Obtain stakeholder and/or end-user input into Agreement deliverables</li> </ul>
Performance measurement	<ul style="list-style-type: none"> <li>• Specify performance indicators that can be effectively measured and ensure effective monitoring and assessment of performance</li> <li>• Link Agreement payment to satisfactory performance</li> </ul>
Payments	<ul style="list-style-type: none"> <li>• Cap Agreement expenditure</li> <li>• Establish payment milestones that are linked to Agreement performance (where appropriate)</li> </ul>
Other Agreement provisions	<ul style="list-style-type: none"> <li>• Ensure inclusion of relevant legislative and policy requirements in the Agreement (e.g. privacy, security, record keeping)</li> <li>• Ensure inclusion of all relevant Agreement provisions (e.g. Agreement variations, disputes, termination)</li> </ul>
Actions of the funder	<ul style="list-style-type: none"> <li>• Protect against unknowingly entering into a contract orally or by exchange of non-contract letters or documents</li> <li>• Ensure that the Agreement is signed prior to work commencing</li> </ul>
Negotiations	<ul style="list-style-type: none"> <li>• Focus Agreement negotiations on key outcomes</li> <li>• Ensure the negotiating team understands the extent of their authority</li> <li>• Ensure the negotiating team has sufficient skills, experience, or access to specialist advice</li> <li>• Ensure that final negotiating position achieves the value for money outcome</li> </ul>
Final Agreement drafting	<ul style="list-style-type: none"> <li>• Ensure that all required outcomes are reflected in the final Agreement</li> <li>• Ensure that the interests of service users are paramount in the Agreement</li> </ul>

Source: adapted from Australian National Audit Office (ANAO) (2007), *Better Practice Guide on Developing and Managing Contracts* ([http://www.anao.gov.au/uploads/documents/Developing\\_and\\_Managing\\_Contracts.pdf](http://www.anao.gov.au/uploads/documents/Developing_and_Managing_Contracts.pdf)).

## 4.7 Insurance

Appropriate insurance is an important consideration in determining how to manage the financial risks for the ACT Government (and funded organisations), and is a condition of entering into a Service Funding Agreement (SFA). It is imperative that adequate insurances are identified and mitigation strategies established to protect both parties.

The main insurance requirements specified in a SFA are identified in schedule 6, item 1, Insurances, of the Agreement. This section provides information that guides the level of Public Liability insurance required, and if the funded activities also require Professional Indemnity insurance. Public Liability insurance will be required in the majority of SFA's while Professional Indemnity Insurance will only be required for specific Agreements where professional advice is being provided (e.g. financial counselling services).

### **Risk Profile rating and Public Liability insurance**

Public Liability insurance protects the parties against the financial risk of being found liable to a third party for death or injury, loss or damage of property or 'pure economic' loss resulting from negligence. The *Financial Management Guidelines 2011* stipulates procedures to be undertaken to determine appropriate levels of public liability insurance in relation to a funded activity.

Funded community organisations **are required to** register on the ACT Government risk advisory website (<http://www.insuranceriskadvice.act.gov.au/riskadvisory/risk.nsf>) and to complete a Risk Profile by completing a checklist of the activities the organisation will be undertaking. The online Risk Profile tool will then determine an overall Risk Rating for the organisation, between 0 and 10. Community organisations are required to submit the profile and rating to Government along with evidence that that an appropriate level of public liability insurance has been purchased. If the rating is 7 or above the organisation is also required to submit a Risk Management Plan.

If an organisation, during the funded period, undertakes significantly different and potentially higher risk activities, it would be advisable for the organisation to undertake a further risk assessment to determine if a higher level of insurance is required.

### **Identifying the required Public Liability Insurance coverage**

The levels of Public Liability insurance required by non-profit community organisations are:

<b>Minimum Public Liability Insurance coverage</b>	<b>Applies to these organisations/risk rating levels</b>
\$20 million	<ul style="list-style-type: none"><li>• Risk rating of 7 or greater</li><li>• Risk rating of 6 or less; or</li><li>• Risk rating of 7 or greater where the organisation is named as insured on a group insurance scheme or a national insurance policy (as a part of a national organisation).</li></ul>
\$10 million	



### **Professional Indemnity Insurance**

Professional indemnity insurances covers an organisation or individual for legal liability for an act, error or omission, breach of confidentiality, dishonesty of employees, breach of copyright or intellectual property that results in a financial loss and disruption suffered by a customer or third party. It also covers the legal costs associated with defending such a claim.

A funded organisation should only need Professional Indemnity insurance if there is potential for the Territory or another party to incur a financial loss by acting on Professional Advice or Service given by that

organisation. The actual dollar amounts for Professional Indemnity insurance should be determined after a risk assessment has been completed.

The ACT Insurance Authority has devised a flowchart to assist in determining whether organisations are required to have Professional Indemnity Insurance. The flowchart can be accessed at [http://www.treasury.act.gov.au/actia/PI\\_Flowchart.pdf](http://www.treasury.act.gov.au/actia/PI_Flowchart.pdf).

### **Other Insurances**

Workers Compensation insurance is mandatory for funded organisations under Territory legislation and must be specified in the Agreement.

Other types of insurance that may apply include:

- Product Liability Insurance (covering the liability arising from a defective product that causes personal injury, property damage or other losses);
- Motor Vehicle insurance;
- Asset Insurance and Consequential Loss (often called Industrial and Special Risk); and
- Medical indemnity insurance, if the Agreement involves the giving of medical advice or the use of medical or surgical procedures.

In the body of the standard Service Funding Agreement, clause 5.3 (Insurances and indemnities) there is a stipulation that the organisation, from the commencement of the Agreement period, is required to have all insurances required by law (such as Workers Compensation). It also requires appropriate and adequate insurance over assets (including where appropriate motor vehicle insurance) and adequate insurance over the organisation's volunteers, as well as the insurances as required in Schedule 6, as discussed above.

### **For further information:**

- The Treasury Directorate offers advice on public liability insurance and risk management for small business and community groups ([www.insuranceriskadvice.act.gov.au](http://www.insuranceriskadvice.act.gov.au))
- The ACT Insurance Authority (ACTIA) provides insurance coverage and risk management advice for the ACT Government ([www.treasury.act.gov.au/actia](http://www.treasury.act.gov.au/actia)).
- *Procurement Circular 2007/14: Managing financial risks through the use of Insurances, Indemnities and Performance Guarantees.*  
([http://www.procurement.act.gov.au/\\_data/assets/pdf\\_file/0004/20101/2007\\_14\\_Managing\\_financial\\_risks\\_Replacement\\_080208.pdf](http://www.procurement.act.gov.au/_data/assets/pdf_file/0004/20101/2007_14_Managing_financial_risks_Replacement_080208.pdf))
- *Public Liability Insurance – Financial Management (Public Liability Insurance) Guidelines 2011*  
(<http://www.legislation.act.gov.au/di/2011-166/current/pdf/2011-166.pdf>)

## Part 5 – Agreement management

### 5.1 The role of the Agreement Manager

[Part 4](#) of this Guide described the need to define clear Agreement outcomes, performance measures and reporting arrangements. Once these are put in place it is then necessary for ongoing performance monitoring, assessment and feedback to take place, in order to ensure that objectives are achieved.

#### **Government Agreement Managers**

ACT Government Agreement Managers are responsible for:

- establishing and maintaining a constructive working relationship;
- ensuring that both parties understand the terms of the Agreement and the services to be delivered;
- drafting, negotiating and implementing Agreements;
- analysing reports submitted by funded organisations and ensuring the reports meet agreed timelines and indicate satisfactory performance;
- maintaining clear lines of communication with funded organisations;
- providing clear, unambiguous and timely feedback to funded organisations; and
- responding to issues and correspondence in a timely manner.

Funding Agreement Managers should use the relevant program guidelines and the Funding Agreement to analyse service provider reports. As a guide, when analysing reports, they should be satisfied that:

- the funds have been used in accordance with the terms of the Agreement and expenditure was within +/-10% of the funding amount (or an adequate explanation provided if it wasn't);
- the performance requirements (outcomes, outputs, targets and standards) have been met, or an adequate explanation provided if they have not been met; and
- other conditions of funding have been met.

#### **Community sector Agreement Managers**

Community sector Agreement Managers are responsible for:

- establishing and maintaining a constructive working relationship;
- ensuring that they understand the terms of Agreements and the services to be delivered;
- negotiating and implementing Agreements;
- drafting and submitting reports in accordance with the requirements of their Agreement (particularly Schedules 2 and 3);
- maintaining clear lines of communication with the funding body;
- providing clear, unambiguous and timely feedback to the funding body; and
- responding to issues and correspondence in a timely manner.

Chapter 2.8.2 of the ACT Government Chief Executive Financial Instructions provides better practice guidelines on contract management. This is available from the Treasury Directorate website:

<http://www.treasury.act.gov.au/accounting/html/guidelines.htm>.

Source: adapted from Australian National Audit Office (ANAO) (2007), *Better Practice Guide on Developing and Managing Contracts* ([http://www.anao.gov.au/uploads/documents/Developing\\_and\\_Managing\\_Contracts.pdf](http://www.anao.gov.au/uploads/documents/Developing_and_Managing_Contracts.pdf)).

## 5.2 Agreement management plans

Depending on the size, nature and duration of the Agreement, an Agreement management plan may be required to assist in managing and administering the Agreement. Sometimes known as contract management plans or Funding Agreement Management Plans, these contain all the key information about how the Agreement should be managed.

An Agreement management plan should change over time and may cover:

- who will undertake performance monitoring, including responsibility for collecting and analysing data;
- how frequently monitoring will take place;
- due dates and expected contents of performance reports and financial acquittals;
- frequency of service visits and service review meetings; and
- a list of issues to monitor over the course of the funding Agreement.

Funded organisations should also have an opportunity to have input into these processes through regular communication, Agreement negotiations, service visits and annual reviews. An Agreement Management Plan template is available at [Appendix 2](#) of this Guide.

## 5.3 Managing relationships

The ACT Government must manage its relationships with funded organisations to ensure effective and efficient management of current and future funding Agreements. The extent of contact will depend on the risk profile of the organisation and the amount of monitoring activity required. Both parties are responsible for establishing and maintaining a healthy and productive relationship.

Good relationship management requires Agreement Managers to:

- make regular, focused contact with the other party to facilitate the flow of information;
- document communication to ensure there is a record of what has been discussed;
- set and manage expectations;
- clarify funding program requirements and priorities; and
- ensure a 'no surprises' approach to the monitoring of the funding Agreement lifecycle.

Consistent with the undertakings made in the Social Compact, ACT Government officers should also ensure that community organisations are consulted to inform policy directions, provide an understanding of client need and to improve service planning. The community sector also undertook in the Compact to actively engage in these processes.

## 5.4 Managing performance

If service providers are to respond to Government requirements it is important that performance management processes are formalised, clear, unambiguous and timely. If there are concerns regarding the performance of a community service provider these need to be clearly communicated to the service provider and agreement needs to be reached on an improvement plan. Similarly, if performance is considered satisfactory or better, this should also be communicated in order that funded organisations are aware of the particular outcomes valued by the funder.

Wherever possible, performance feedback should be made in writing to ensure that it is clearly stated and can be kept on record by both parties for future reference. A 'better practice' example of a performance feedback

letter is provided at [Appendix 4](#) of this Guide. In some cases feedback will be provided at meetings and documented in the form of meeting minutes.

Issues of concern should be discussed with the service provider and agreement reached on an improvement plan. The funder should then monitor the service provider's progress in achieving the milestones in the improvement plan. Mechanisms for doing this may include:

- reassessing service provider risk;
- adjusting the frequency or content of site visits; and/or
- other modified or increased monitoring activity.

When using Service Agreements a portion of funding can also be made contingent on the completion and submission of particular pieces of work. Payments should be made in a timely fashion when that work is submitted to a satisfactory standard.

Government Directorates should also ensure that there are mechanisms to receive feedback from funded organisations regarding their own performance. The terms of the standard Service Funding Agreement allows both parties to raise issues and to seek remediation. In order to maintain effective relationships and avoid the need for formal grievances from funded organisations, Government Directorates should ensure that they communicate clearly and in a timely manner, and that they meet their own obligations under Agreements. Where concerns have been raised by funded organisations, Government Directorates should ensure that they investigate and undertake corrective action where necessary.

Ultimately both the Government and funded organisations share objectives to support service users and the broader community. This will be most effectively achieved if a measured approach and open communication is used by both parties.

### **Over and Under expenditure**

Prior to procuring services Government should undertake a costing exercise to determine the approximate cost of running a service or project. There are, however, a range of environmental factors that can impact on the cost of a service in practice. Once services are operational, unforeseen circumstances, such as recruitment delays or higher than expected administration costs, may result in expenditure varying from that budgeted.

Where service providers have significantly over or under spent it is important that Government ensure that value for money is still achieved, as required by the *Government Procurement Act 2001*. In order to achieve this, officers should monitor expenditure of funded organisations and take remedial action where expenditure varies from the funding amount.

Funded organisations should ensure that expenditure remains within 10% (over or under) the funded amount. Where expenditure is outside of this window an explanation should be provided in the regular financial reporting provided by the organisation.

In circumstances where there is significant under-expenditure, Government may:

- allow the organisation to retain the surplus to build its infrastructure and ensure sustainability of the service into the future;
- request the organisation return the full or a smaller amount of the surplus (e.g. surplus amounts greater than 10% be returned);
- agree with the organisation on additional outputs (or a specific higher numerical benchmark) to be achieved with the surplus funds.

This should be undertaken in a flexible and collaborative fashion, seeking agreement from the funded organisation. Considerations should also include accountability, and the fact that it is beneficial to ACT Government programs when organisations have a range of funding sources, such as fund-raising and the

Commonwealth Government. Wherever possible, Directorates should also have a consistent approach to surplus funds and should clearly articulate this approach to the organisations funded.

## 5.5 Dealing with underperformance

Many contract performance problems can be avoided by managing the relationship well. Underperformance can be minimised by having a performance regime that allows prompt and ongoing feedback, particularly in relation to critical timeframes or deliverables (ANAO 2007).

Being alert to signs of potential under-performance enables Agreement Managers to address these before they become serious. At the early stages of under-performance, informal remedial action is often the best approach. Such action could include more regular communication, increased reporting requirements or modifying processes or clarifying the funding requirements.

For more serious under-performance, formal action may be required, such as:

- involving senior management from both parties in formal discussions or written communications;
- developing strategies to address the problem and formally documenting them, and tracking whether they are working;
- withholding payments until performance returns to an acceptable level; and/or
- terminating the contract (as a last resort).

Under the terms of the standard Service Funding Agreement there are specific processes that must be followed for formally raising more serious concerns. Important processes to be aware of include that:

- a written notice needs to be delivered by the party with concerns to the other party;
- the notice must be served by personal delivery, mail or fax (notices cannot be served by email);
- both parties will endeavour to promptly resolve the issue in good faith;
- issues will be escalated to senior management if not resolved within 10 business days;
- if not resolved within 20 business days, the parties should undertake mediation prior to resorting to litigation.

A summary of these provisions is included at [Appendix 1.1](#).

Source: adapted from Australian National Audit Office (ANAO) (2007), *Better Practice Guide on Developing and Managing Contracts* ([http://www.anao.gov.au/uploads/documents/Developing\\_and\\_Managing\\_Contracts.pdf](http://www.anao.gov.au/uploads/documents/Developing_and_Managing_Contracts.pdf)).

## 5.6 Breaches, suspension and termination

The Territory may suspend payments or terminate a Service Funding Agreement (SFA) if there are significant concerns regarding an organisation or service. The Territory may suspend payment to the organisation if it has failed to provide reports or information reasonably required under the Agreement.

The Territory may terminate the SFA in writing under these circumstances:

- immediate termination of the Agreement in whole or part if there has been a breach of the Agreement that has not been resolved within 40 days of a notice being served;
- immediate termination of the Agreement if there is a Compelling Reason (defined as “a situation of urgency, such as substantial non-delivery of services or a situation concerning the safety or health of, or harm to, any person”);
- both parties may agree in writing to terminate the Agreement.

Terminating an Agreement is usually a last resort. Both parties should first endeavour to resolve the issue by other means and in good faith.

An Agreement breach occurs when one party does not perform well, performs differently from the Agreement, does not perform at all, or indicates in advance that they will not be performing as agreed (anticipatory breach).<sup>2</sup>

A summary of the suspension and termination provisions of the SFA is included at [Appendix 1.1](#).

## 5.7 Managing risks in Agreement management

As mentioned in [Part 4](#), ACT Government must identify, analyse and evaluate any likely risks and implement sound risk management strategies to mitigate them. Refer to Part 4 for more information on these processes.

The Australian National Audit Office has identified a range of risks that may be encountered in contract management. These include:

Sources of risk	Means of addressing risk
Systems, procedures and guidance	<ul style="list-style-type: none"> <li>• Ensure systems are integrated and do not require multiple entry of same data</li> <li>• Ensure systems are supported by appropriate procedures and/or guidance material</li> </ul>
Procurement knowledge and capability	<ul style="list-style-type: none"> <li>• Ensure that Agreement Managers have an understanding of government procurement policies and reporting requirements</li> <li>• Ensure staff are provided with targeted training in procurement processes</li> </ul>
Agreement management capability	<ul style="list-style-type: none"> <li>• Ensure staff have adequate experience in managing Agreements</li> <li>• Ensure staff are provided with targeted training in funding Agreement management</li> <li>• Ensure recognition of the importance of Agreement management</li> <li>• Ensure that under-performance is acted upon in a timely manner</li> </ul>
Service performance	<ul style="list-style-type: none"> <li>• Ensure that Agreement deliverables are provided on time and to agreed quality standards</li> <li>• Ensure that the agreed budget is adhered to</li> <li>• Ensure that all Agreement provisions are adhered to (e.g. privacy, record keeping)</li> <li>• Protect against fraud and/or unethical conduct by the funded organisation</li> </ul>
Changes in circumstances and/or requirements	<ul style="list-style-type: none"> <li>• Ensure that Agreement changes are dealt with through a Deed of Variation</li> <li>• Be prepared for the possibility that a funded organisation is not be prepared to agree to Agreement variations</li> <li>• Ensure that changes in circumstances are managed in a timely manner</li> </ul>
Stakeholder relationships	<ul style="list-style-type: none"> <li>• Ensure that stakeholders are consulted and/or kept informed about contract performance</li> <li>• Take steps to identify and address differing and/or conflicting stakeholder expectations</li> </ul>
Ending the Agreement	<ul style="list-style-type: none"> <li>• Take steps to agree final payment details upfront</li> <li>• Ensure verification that all Agreement obligations have been met</li> <li>• Ensure the to return all required materials, information and records within agreed timeframes and/or in the required format</li> </ul>
Transition arrangements to new or replacement services	<ul style="list-style-type: none"> <li>• Ensure the appropriate management of the transition out by the organisation</li> <li>• Ensure that new procurement processes are undertaken early enough to have the replacement service up and running prior to the previous service ceasing</li> <li>• Ensure that the re-tendering process is conducted in line with probity requirements, particularly where the existing contractor is re-tendering</li> <li>• Guard against disruption to the provision of services</li> <li>• Ensure that performance problems are addressed is an existing contractor is re-engaged</li> <li>• Review value for money when Agreements are extended</li> </ul>

Source: adapted from Australian National Audit Office (ANAO) (2007), *Better Practice Guide on Developing and Managing Contracts* ([http://www.anao.gov.au/uploads/documents/Developing\\_and\\_Managing\\_Contracts.pdf](http://www.anao.gov.au/uploads/documents/Developing_and_Managing_Contracts.pdf)).

<sup>2</sup> Source: [http://wps.pearsoned.co.uk/ema\\_uk\\_he\\_elliott\\_conlaw\\_6/67/17357/4443528.cw/-/4443758/index.html](http://wps.pearsoned.co.uk/ema_uk_he_elliott_conlaw_6/67/17357/4443528.cw/-/4443758/index.html)



## 5.8 Ending an Agreement

In order to minimise the impacts on clients and community organisations, it is important that Agreement Managers treat the cessation of Agreements with sensitivity and professionalism. Nevertheless, government has an obligation to ensure that it is accountable for the use of public funds. If a program is not achieving its objectives, objectives change over time, or a service provider does not perform to the standard expected, it is important that government has mechanisms to address these scenarios.

An Agreement can be discharged in a number of ways. It can end because all obligations under the Agreement have been fulfilled, by agreement between the parties, or when one party believes that the other party has failed to remedy a serious breach. On expiry of an existing Agreement, the Government may also elect not to renew the Agreement where policy priorities have changed or the service is to be re-tendered to determine if there is a more suitable service available.

There can be legal subtleties in some forms of termination. Agreement Managers are encouraged to obtain appropriate professional advice from the ACT Government Solicitors Office (ACTGS), particularly when unusual or complex situations arise.

It is also important that the ending of an Agreement is fully documented. The agreement to terminate will normally be given effect by provisions of the Agreement, by a deed of termination or by a written settlement that sets out the basis for termination, including payments owing and settlement of any outstanding claims or actions.

### **Transition arrangements**

Transition refers to the changeover from one organisation to another or from one arrangement to another. The transition phase will generally involve:

- undertaking a new tender process;
- re-negotiating the Agreement with the current organisation, or
- taking up options in the current Agreement to extend its life, based on value for money.

The foundations for managing transition to new Agreement arrangements should have been addressed when initiating the Agreement. The Agreement or plan should cover transfer of records, information or equipment.

Transition arrangements can extend over a significant period of time, so it is important that adequate time is allowed when undertaking procurement processes for replacement services. This will ensure that all the necessary processes are completed prior to the original Agreement ending.

Tender processes will often need to be conducted for a new service provider in parallel with the continued provision of services by the existing organisation. The existing organisation must be treated in the same way as any other tenderer to the extent possible, and bias (and perceptions of bias) in the treatment of tenderers should be avoided.

### **Handover arrangements**

The handover from the outgoing organisation to a new organisation can be a high risk period. If not managed well, this period can result in strained relationships with service providers and negative impacts on service delivery.

There is also a risk that one or both organisations could incur additional unforeseen costs and seek to claim reimbursement from the funding body. It is therefore in the acquiring organisation's interests to

plan the handover arrangements carefully. A ‘transition plan’ may assist, addressing key matters and actions that need to be completed or considered in the transition process.

In order to achieve a seamless transition, it is also recommended to build in a period of overlap, where the new organisation works alongside the outgoing organisation. This time can be used to transfer materials and assets to the new organisation and for the new organisation to acquire information and knowledge about their new responsibilities.

Where an overlap period is not possible, Government should take steps to maximise the transfer of information and knowledge to the new organisation, such as:

- arranging discussions between the parties;
- arranging for the new organisation to access procedural documents created and used by the outgoing organisation;
- facilitating the transfer of custody and/or ownership of assets and materials to the new organisation; and
- arranging discussions between the new organisation, service users and other stakeholders.

Source: adapted from Australian National Audit Office (ANAO) (2007), *Better Practice Guide on Developing and Managing Contracts* ([http://www.anao.gov.au/uploads/documents/Developing\\_and\\_Managing\\_Contracts.pdf](http://www.anao.gov.au/uploads/documents/Developing_and_Managing_Contracts.pdf)).

### **Administering the end of an Agreement**

At the end of an Agreement, it is important to verify that all contractual obligations have been successfully met. This can include the need to:

- obtain all final reports from the funded organisation;
- review the statement of Agreement deliverables to ensure that goods or services have met Agreement requirements;
- arrange for the return of all required documents, material, information and records used or generated during the Agreement that are the property of the acquiring entity;
- arrange the return of all assets, equipment or other goods provided to the organisation and check that they are in a satisfactory condition;
- ensure to the extent possible, that any issues that may result in a claim against the funding body are resolved;
- make all final payments payable under the Agreement;
- terminate all access arrangements to premises and systems; and
- undertake post Agreement analysis, evaluation and reporting.

It is also of utmost importance that the interests and welfare of service users are protected. Arrangements should be agreed between Government and funded organisation for the seamless transition of any existing clients to new support arrangements.

Other areas that may need to be considered because they are legal rights and obligations that may survive after the contract has been discharged include: rights to recover money, indemnities, intellectual property rights and handling information. These may be covered by survivorship clauses in the Agreement, such as Section 19 of the standard Service Funding Agreement.

## 5.9 Records Management and Privacy

There are several pieces of legislation that obligate ACT Government and funded organisations to properly manage their records and the private information of clients. This includes the *Territory Records Act 2002*, the *Privacy Act 1988 (Commonwealth)*, the *Health Records (Privacy & Access) Act 1997* and the *Human Rights Act 2004*. Organisations dealing with children and young people may also have obligations regarding the handling of information under the *Children and Young People's Act 2008*. These obligations are briefly outlined below.

Agreement Managers should also be aware of the relevant sections of the standard Service Funding Agreement (SFA) template. Clause 8 of the SFA relates to privacy requirements and Item 5, Schedule 6 provides for records management.

### **Territory Records Act 2002**

The *Territory Records (Standard for Records Management Number 5: Recordkeeping and Outsourced Government Business) Approval 2009* provides guidance on implementing the *Territory Records Act 2002* when contracting out government services. The Standard states that:

outsourced activity records must be managed as if the Agency were undertaking the activity itself. Agencies must make provision in their contracts to ensure that they gain legal and beneficial ownership and custody of records from service providers.

The Standard goes on to say that:

- Agencies must be careful to ensure recordkeeping responsibilities are specified in outsourcing contracts;
- Agencies can meet their record keeping obligations by either
  - delegating the recordkeeping responsibility to the service provider and ensuring that appropriate records are transferred according to an agreed schedule; or
  - ensuring the Government Agency creates its own records of the work performed by the service provider;
- all records must be transferred to the custody of the Government Agency at the completion of the contract.

An example of where ACT Government records are held by funded organisations is in the area of child protection and foster care services. The Office of Children, Youth and Family Support (within CSD) funds a number of community organisations to provide support to children and foster carers, and provides those organisations with registered files on which all records must be kept. Should a service cease or client move on, these files can then be transferred back to CDS.

### **Privacy Act 1988**

The Privacy Act 1988 (Commonwealth) contains 11 Information Privacy Principles (IPPs) that regulate how government and non-government organisations manage personal information. They cover how and when personal information can be collected, how it should be used and disclosed, and storage and security. They also allow individuals to access that information and have it corrected if it is wrong.

The Information Privacy Principles are summarised here:

- **IPP 1: manner and purpose of collection** - The information must be necessary for the organisation's work, and collected fairly and lawfully.
- **IPP 2: collecting information directly from individuals** - An organisation must take steps to tell individuals why they are collecting personal information, what laws give them authority to collect it, and to whom they usually disclose it.

- **IPP 3: collecting information generally** - An organisation must take steps to ensure the personal information it collects is relevant, up-to-date and complete and not collected in an unreasonably intrusive way.
- **IPP 4: storage and security** - Personal information must be stored securely to prevent its loss or misuse.
- **IPPs 5 - 7: access and amendment** - These principles require organisations to take steps to record the type of personal information that they hold and to give individuals access to personal information about them. Personal information can be amended or corrected if it is wrong.
- **IPPs 8 - 10: information use** - These principles outline the rules about keeping accurate, complete and up-to-date personal information; using information for a relevant purpose; and only using the information for another purpose in special circumstances, such as with the individual's consent or for some health and safety or law enforcement reasons.
- **IPP 11: disclosure** - This principle sets out when an organisation may disclose personal information to someone else, for example another organisation. This can only be done in special circumstances, such as with the individual's consent or for some health and safety or law enforcement reasons.

Source: <http://www.privacy.gov.au/law/act/ipp>.

An example of one of these principles in practice is the use of consent forms. Many organisations use a *Consent to Exchange and Release Information* form. This form provides for a number of parties to be specified with whom the client's private information can be exchanged, informs the client how the information may be used and advises them that they can revoke consent at any time. Once completed the client signs the form. Consent may be received verbally and documented by staff, though written consent is preferable.

### **Health Records (Privacy & Access) Act 1997**

Due to the broad definition of a 'health service' in the *Health Records (Privacy & Access) Act 1997* (the Act), some community organisations in the ACT will be defined as 'health service providers' and will therefore be obligated to comply with the Act. The definition of health service covers any activity to assess, record, improve or maintain the physical, mental or emotional health of a consumer, and includes a disability, palliative care or aged care service.

The Act provides 12 privacy principles and specifies how health records should be managed. It also gives consumers of a health service a right to access information on their health records, subject to a number of conditions and procedures.

Schedule 6, Item 5, of the standard Service Funding Agreement provides for requirements to be specified relating to this legislation.

An example of the application of this may relate to records held by an organisation funded to provide disability support. Under the Act, clients have the right to access their 'health records'. If a client requested access to their records, the support service would be required to provide those records (in a format compliant with the Act).

Health Directorate provides a guide titled *Health Records (Privacy & Access) Act 1997 - Information for record keepers*, which can be accessed from

<http://www.health.act.gov.au/c/health?a=sendfile&ft=p&fid=1285829449&sid>

### **Human Rights Act 2004**

*The Human Rights Act 2004* (HRA) is a bill of rights that provides protections to individuals in a range of areas. Compliance with the HRA is mandatory for public authorities in the ACT, which includes all government Directorates and a limited number of community organisations that are considered to be "functional public authorities" due to their being government funded and having functions that are uniquely public in nature.

Section 12 (privacy and reputation) of the HRA states that “everyone has the right—

- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- (b) not to have his or her reputation unlawfully attacked”.

**Children and Young People Act 2008.**

The *Children and Young People Act 2008* allows for persons delegated by the CSD Director-General under the Act to share ‘safety and wellbeing information’ (with or without consent) with public employees and community based services, where this information is relevant to the health, safety or wellbeing of a child or young person. This information may also include information about the children or young persons’ family or another person and may be ‘protected’ or ‘sensitive’ information. Safety and wellbeing information relating to a child or young person may also be sought by public employees and community based services from Care and Protection Services or Youth Justice.

If you receive information from Care and Protection Services or Youth Justice, it is protected information and you will become an information holder. It is an offence for an information holder to divulge or record protected information unless permitted under the Act or other law in force in the Territory.

Schedule 6, Items 5 and 7, of the standard Service Funding Agreement provides for requirements to be specified relating to this legislation.

One example of the *Children and Young People Act 2008* in practice is the making of voluntary (or mandated) reports of possible child abuse or neglect to Care and Protection Services. The sharing of a child’s personal information is permitted under the Act in these circumstances.

Government employees should ensure that they comply with the requirements of the *Children and Young People Act 2008* (<http://www.legislation.act.gov.au/a/2008-19/current/pdf/2008-19.pdf>).

## Part 6 – Administering grants

### 6.1 What is a grant?

The *Policy – Administration of Government Grants in the ACT* defines a grant as “a sum of money given by the Territory to a recipient as a gift for a specified purpose to enable the recipient to achieve goals and objectives that are consistent with Territory policy”. Grants typically have significantly lower reporting requirements than other forms of Agreement, though an acquittal is usually required to demonstrate that grant recipients have used the funds for the purpose for which it was intended.

Other features of grants are:

- grants may be made to individuals or organisations;
- grants recipients are generally selected on merit against a set of criteria;
- grant givers may unilaterally impose conditions on grants;
- grants are one-off amounts and are not used to fund ongoing goods or services; and
- grant funds may be paid to third party auspicing organisations to manage and to make decisions regarding specific allocations of funding to the grant recipient.<sup>3</sup>

Grants are **not**:

- the procurement (or acquiring) of goods or services by the Territory;
- subject to the *Government Procurement Act 2001*;
- a means of service funding to community organisations for the provision of recurrent human services to the community;
- the same as Sponsorship arrangements in which the Territory provides money to an organisation or individual to enable the organisation or individual to carry out a particular event or activity for which the Territory receives sponsorship (e.g. marketing) rights.
- compensation payments under legislation.<sup>4</sup>

If you are unsure as to whether an anticipated arrangement is a grant arrangement, please contact the ACT Government Solicitor for assistance.

### 6.2 Legislative and policy framework

The *Policy – Administration of Government Grants in the ACT* outlines an ACT Government Legislative and Policy Framework. The key documents making up this framework include:

- *Financial Management Act 1996*;
- *Public Sector Management Act 1994*;
- *Freedom of Information Act 1989*;
- *Chief Executive Financial Instructions (CEFIs)*;
- ACT Government Solicitor’s Deed of Grant template; and
- other ACT Government policy, including, but not limited to:

<sup>3</sup> Source: adapted from Australian National Audit Office (ANAO) (2002) Administration of Grants Better Practice Guide ([http://www.anao.gov.au/uploads/documents/Administration\\_of\\_Grants.pdf](http://www.anao.gov.au/uploads/documents/Administration_of_Grants.pdf))

<sup>4</sup> Source: Chief Minister and Cabinet Directorate 2010, *Policy – Administration of Government Grants in the ACT*.

- Agency risk management policy and processes;
- insurance determinations; and
- any universal criterion that may be developed.

ACT Government grants should be administered with reference to advice published by the Australian Tax Office.

### **Financial Management Act 1996**

Under section 31 of the *Financial Management Act 1996* (FMA), the Director-General of a Directorate is accountable for the efficient and effective financial management of the Directorate. This includes responsibility for the efficient and effective management of grants. The Treasury Directorate provides FMA Guidance Papers, which are available at <http://www.treasury.act.gov.au/accounting/html/fma.htm>.

### **Chief Executive Financial Instructions**

*Chief Executive Financial Instructions* (CEFIs) are put in place to assist Directors-General and their delegates in implementing their responsibilities under the FMA. Directorate officers should use the CEFIs to guide their practice, to ensure appropriate decisions are made and that they adequately discharge their financial and general management responsibilities in relation to grant arrangements.<sup>5</sup>

### **Public Sector Management Act 1994**

Under section 6 of the *Public Sector Management Act 1994* (PSMA), government Directorates shall have an objective implementation of the following values and principles:

- (a) service to the public;
- (b) responsiveness to—
  - (i) the requirements of the government; and
  - (ii) the needs of the public;
- (c) accountability to the government for the ways in which functions are performed;
- (d) fairness and integrity;
- (e) efficiency and effectiveness.

### **Deed of Grant template**

ACT Government grant arrangement must be documented using the ACT Government Solicitor’s Deed of Grant template. This template is available from the Shared Services intranet site, at <http://sharedservices/actgovt/default.htm?tab=7#servcfunding>.

As the Deed of Grant template provides important clauses that protect the interests of the ACT Government, any decision not to use the template should be justified, documented and approved by the relevant delegate. If alternative documentation is considered (such as a Letter of Offer), it is recommended Directorates consult with the ACT Government Solicitor.

### **Policy – Administration of Government Grants in the ACT**

In addition to the general legislative and policy requirements outlined above, the *Policy – Administration of Government Grants in the ACT* (the Policy) stipulates additional requirements for grant programs that fit into particular streams. Grants that fit into the *Health and Community Wellbeing* or the *City and Territory Services* streams (or other grant programs notified from time to time) should:

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<sup>5</sup> Source: Chief Minister and Cabinet Directorate 2010, *Policy – Administration of Government Grants in the ACT*.

- be administered taking into account the key principles of grant administration outlined in Section III of the Policy;
- be made publicly available through the Grants Portal (noting any legal or policy restrictions on the publication of that information) (<http://www.grants.act.gov.au>); and
- comply with the ACT Government Website Policy.

### 6.3 Key principles of Grant Administration

Part III of the *Policy – Administration of Government Grants in the ACT* outlines Key Principles for Grant Administration for Territory Officers:

#### 1. Robust planning and design

- High quality planning of each step of a grant process underpins efficient, effective and ethical grants administration.

#### 2. An outcomes orientation

- Grants administration should focus on the delivery of outcomes that implement government policy.

#### 3. Proportionality

- The framework for a granting activity should be commensurate with the scale, nature, complexity and risks involved in the granting activity.

#### 4. Collaboration

- A collaborative and cooperative relationship between the agency administering the grant, the grant recipient and other relevant stakeholders will assist efficient and effective grant administration.

#### 5. Governance and accountability

- Granting activities should be underpinned by solid governance structures and clear lines of accountability in relation to outcomes and the process of administration.

#### 6. Probity and transparency

- Probity relates to uprightness, honesty, incorruptibility, impartiality, proper and ethical behaviour and accountability, and is often used to mean "good process". Grants administrators must maintain probity when planning and executing granting activities.
- Transparency refers to opening a granting activity, its planning and processes, to scrutiny and providing assurance that grants administration processes are appropriate and any legislative obligations are being met.

#### 7. Efficient and effective use of public money

- Ensuring public money used in granting activities is applied efficiently and effectively involves the comparison of costs, benefits, options and outcomes of the granting activity.



## 6.4 Planning for an ACT Government Grant Program

Part III of the *Policy – Administration of Government Grants in the ACT* outlines best practice for planning an ACT Government Grant Program. Planning sets out the steps and processes to ensure that grants administration identifies what resources are needed and how they will be used.

The key considerations in the Planning Process are shown in the below diagram. A summary of each item is provided below.



### Key considerations in the grant planning process

#### Planning and design

##### Establish the Need for the Program

- Territory Officers should ensure that the granting activity has a performance framework linking Directorates directions and the grant's operational objectives to government outcomes.
- Directorates should determine to what extent the operation of a granting activity may interact with other programs, including those administered by other bodies. These can include Commonwealth, State, Territory or local government bodies, private trusts and foundations or national or state coordinating organisations. Consultation and cooperation with other bodies can help avoid duplication of effort and improve outcomes for potential recipients and government.

##### Define Operational Program Objectives

- Operational objectives should be a concise, unambiguous, realistic, outcome oriented statement of what the granting is intended to achieve. The more specific the operational objectives the easier it is to develop supporting documentation (such as selection criteria), limit wasted applications and develop an appropriate performance information framework.

##### Undertake Risk Management

- Risk management involves the systematic identification, analysis, treatment and allocation of risks. The extent of risk management required in grants administration will vary, because a variety of risks may arise during each stage of grants administration. Risk management should be developed with reference to the key principles for grants administration, particularly (3) Proportionality. A useful guide to risk management is available at <http://www.treasury.act.gov.au/actia/Guide.doc>

##### Design Program for Value for Money

- Relevant considerations include the purpose, value and duration of a grant, the deliverables to be supplied, grant conditions, enforceability considerations, and the nature and level of the risks involved. In certain circumstances government may have an affirmative action dimension on value for money considerations.

### **Design Program Accountability**

- Accountability arrangements in grants administration should relate to both the process of administration and the achievement of government outcomes.

### **Establish Performance Measures**

- Performance information should make clear the extent to which the granting activity is contributing to government outcomes. In addition, it should reflect the extent to which government outcomes and Directorate strategic directions remain appropriate in light of changing circumstances that may result from the impact of the granting activity itself.

### **Select Funding Strategy**

- While no form of funding Agreement is right for all circumstances, an enforceable Agreement should be established wherever possible. Advice on the forms of enforceable Agreements must be sought from the ACT Government Solicitor's Office. Advice on funding strategies should be obtained from Treasury Directorate.

### **Produce Program Guidelines**

- Grant program guidelines should be fit for purpose and should include information on the outcomes and objectives of the grant program, governance arrangements, funding and selection processes, performance monitoring and reporting, evaluation, operational issues and complaint handling mechanisms.

Government Directorates should establish processes, and communicate them to staff, around:

#### **Handling Applications**

- Under the financial management framework, there is an overarching requirement to manage Directorate's affairs efficiently, effectively and ethically. Where a selection process is undertaken, those involved should be adequately trained and procedure instructions should be available before processing the first application.

#### **Appraising Applications**

- In the case of grant programs, unless specifically agreed otherwise, competitive, merit-based selection processes should be used, based upon clearly defined selection criteria.

#### **Establishing appropriate internal control mechanisms for granting activity.**

- The separation of duties is a fundamental internal control. No single officer should appraise an application for funding assistance, give financial approval for the expenditure and make the offer to the applicant.
- It is important that appraisal and selection processes be transparent and free from the risk of political or other bias. It is better practice for all like applications to be assessed using a common appraisal process, and where there is a departure from the common approved process, the reasons should be documented.
- Grant assessors should document when referring to, or relying on, knowledge or documentation other than the application form.

#### **Grant Announcements**

- Directorates must publish, on the ACT Government Grants Portal, information on its individual grants or where appropriate a bundle of grants. The default position is that all Directorates must report all grants awarded on their website.
- There may be circumstances where a Directorate determines that public reporting of grants in accordance with this Policy is contrary to the Privacy Act 1988 (Privacy Act), other statutory requirements, or the specific terms of a Deed of Grant. In these circumstances:
  - A Directorate must endeavour to publish as much information as legally possible;
  - the reasons for not reporting fully must be documented by the Directorate; and
  - Directorates should take all possible steps to ensure that Deeds of Grant contain provisions that do not prevent the disclosure of information in accordance with this policy.

#### **Establish Deeds of Grant**

- After selecting a funding strategy the form of the funding Agreement should protect the

**Selection and decision-making**

**Making and documentation of**

<b>a grant</b>	Territory’s interests in ensuring that public money is used for the intended purpose, defining project deliverables, scheduling payments (according to progress), and specifying progress reporting requirements and acquittal procedures.
<b>Management of Deeds of Grant</b>	<p><b>Establish Monitoring Arrangements</b></p> <ul style="list-style-type: none"> <li>• Conditions should be expressed with sufficient precision so that it can be determined whether the recipient is complying with those conditions.</li> </ul> <p><b>Monitor Progress and Payments</b></p> <ul style="list-style-type: none"> <li>• Monitoring of payments and progress are an integral part of good governance and risk management and provide a measure of assurance that public funds allocated to grant recipients have been spent for their intended purposes.</li> </ul> <p><b>Acquit Funds</b></p> <ul style="list-style-type: none"> <li>• Reliable, timely and adequate evidence is required to demonstrate that grant funds have been expended in accordance with the terms and conditions of the Deed of Grant. The stringency of acquittal procedures should be balanced against the level of risk and take into account the cost of compliance. Where acquittal is not possible, the decision to recover or write-off outstanding funds should be documented.</li> </ul>
<b>Reporting</b>	<p><b>Payment of Grants and Grant Management</b></p> <ul style="list-style-type: none"> <li>• Payment of grants and grant management is detailed in Part II (Legal and Policy Environment) of the grant administration policy.</li> </ul> <p><b>Grant Agreement</b></p> <ul style="list-style-type: none"> <li>• It may also be appropriate for proportionality principles to inform consideration of reporting requirements for recipients. It should not be assumed that the same approach will suit all circumstances, regardless of the scale or purposes of the grant in question or the performance record of the grant recipient.</li> </ul>
<b>Review and evaluation</b>	Granting activity should be ‘fit for purpose’. That is, key design features and related processes should be commensurate with the scale, nature, complexity and risks involved in the granting activity.

## 6.5 Resources

For further reading:

- ACT Government Grants Portal <http://www.grants.act.gov.au/>
- FMA Guidance Papers: <http://www.treasury.act.gov.au/accounting/html/fma.htm>
- Chief Executive Financial Instructions template: <http://www.treasury.act.gov.au/accounting/html/guidelines.htm>
- GST advice published by the Australian Taxation Office is currently available at <http://www.ato.gov.au/businesses/content.asp?doc=/content/00171997.htm>
- The Risk Management - Principles and guidelines (AS/NZS ISO 31000:2009) supersedes AS/NZS 4360:2004 Risk Management and is available for purchase online or in hard copy at <http://infostore.saiglobal.com/store/Details.aspx?productID=1378670>.

## Glossary

<b>Term</b>	<b>Definition</b>
<b>Agency</b>	A term used to refer to a government entity, such as a Directorate.
<b>Agreement</b>	The term Agreement is used in this document to refer to a legally binding contract between two parties.
<b>Agreement Manager</b>	The officers within the funding Directorate and the community service provider responsible for managing a particular Agreement.
<b>Agreement management</b>	The process of managing Agreements between a funding body and funded organisation. This typically involves a number of tasks, including the development and negotiation of Agreements, maintaining an effective relationship, and monitoring and addressing performance.
<b>Assignment</b>	Assignment is the act by which one party to an Agreement transfers their rights or interests (not obligations) to another person. Assignment Agreements must be in writing. An example of assignment might be transferring a construction warranty to a person buying a building from the original purchaser. <sup>6</sup>
<b>Breach of Agreement</b>	A breach occurs when one party does not perform well, performs differently from the Agreement, does not perform at all, or indicates in advance that they will not be performing as agreed (anticipatory breach). <sup>7</sup>
<b>Contract</b>	A legally binding agreement setting out the terms and conditions agreed by the parties to the agreement.
<b>Direct sourcing</b>	Direct sourcing (also known as single select tendering) is a procurement process whereby a Territory entity seeks a quotation from a single supplier. This method is used for procurements with an estimated total value of less than \$25,000 or when the Director-General (or delegate) has approved an exemption from Quotation and Tender Thresholds for purchases over \$25,000.
<b>Funding Agreement</b>	See <b>Agreement</b> .
<b>Funding Manager</b>	See <b>Agreement Manager</b> .
<b>Grant</b>	A sum of money given by the Territory to a recipient as a gift for a specified purpose to enable the recipient to achieve goals and objectives that are consistent with Territory policy.
<b>Novation</b>	Novation is the making of a new Agreement in substitution for an earlier one. Under a novation, a third party will take over the rights and obligations of an original party whose rights and obligations are being novated. Novation Agreements must be in writing. Examples of novation might be when the seller of a business transfers the contracts with their customers to the buyer, or when an organisation changes its legal name and Agreements need to be re-issued in that new name. <sup>8</sup>
<b>Open tender</b>	An open tender (also known as public tender) is a procurement process whereby a

<sup>6</sup> Source: [http://www.treasury.act.gov.au/accounting/download/bp2\\_17.doc](http://www.treasury.act.gov.au/accounting/download/bp2_17.doc)

<sup>7</sup> Source: [http://wps.pearsoned.co.uk/ema\\_uk\\_he\\_elliott\\_conlaw\\_6/67/17357/4443528.cw/-/4443758/index.html](http://wps.pearsoned.co.uk/ema_uk_he_elliott_conlaw_6/67/17357/4443528.cw/-/4443758/index.html)

<sup>8</sup> Source: [http://www.treasury.act.gov.au/accounting/download/bp2\\_17.doc](http://www.treasury.act.gov.au/accounting/download/bp2_17.doc)

<b>process</b>	Territory entity publicly advertises a procurement opportunity for all interested organisations. This method may be used for all procurements, and is required to be used for procurements with an estimated value of \$200,000 or more unless the Director-General (or delegate) has approved an exemption from the Quotation and Tender Thresholds.
<b>Organisation</b>	The term used within ACT Government Agreements to refer to a funded organisation. Each organisation may deliver a number of services.
<b>Procurement</b>	The process of acquiring goods, services, works or property by purchase, lease, rental or exchange, and the process of disposing of goods, works or property including by sale. Within government, procurement involves formalised processes and documentation relating to purchasing decisions, approvals and Agreement management.
<b>Quotation and Tender Thresholds</b>	The value above which a procurement, unless exempt, is subject to particular procurement procedures. The quotation and tender thresholds are set out in the <i>Government Procurement Regulation 2007</i> .
<b>Select sourcing/ select Tender</b>	A procurement process whereby a Territory entity seeks a quotation from a selection of suppliers, generally three. This may be used for procurements with an estimated value of less than \$200,000, and is required for all procurements between \$25,000 and \$200,000 unless the Director-General (or delegate) has approved an exemption from the Quotation and Tender Thresholds.
<b>Single select tender</b>	See <b>Direct sourcing</b> .
<b>Service</b>	The term used within ACT Government Agreements to refer to the particular set of activities that ACT Government has funded an organisation to undertake in order to achieve specific objectives. One organisation may deliver several services.
<b>Service Funding Agreement</b>	A contract legally binding a funding Directorate and service provider. Service Funding Agreements (SFAs) contain conditions specifically customised to the funding of community services.
<b>Sub-sector funding plan</b>	Multi-year procurement plans for services required by the ACT Government, where like services are bundled together.
<b>Tender</b>	Tender has two meanings: <ul style="list-style-type: none"> <li>▪ the process of responding to a Request for Offer and bidding for government work; and</li> <li>▪ the actual response, or bid, which is submitted to the ACT Government in response to a Request for Offer.</li> </ul>
<b>The Territory</b>	For the purpose of this Guide, ‘the Territory’ refers to the ACT Government and the Territory entities representing the Government.
<b>Territory entities</b>	Include all ACT Government Directorates, Agencies and authorities. It does not refer to the University of Canberra or Territory-owned corporations.
<b>Value for money</b>	The best available procurement outcome as defined in <i>Section 22A of the Government Procurement Act</i> : “a Territory entity must pursue value for money in undertaking any procurement activity”. In determining assessing what is value for money, government Directorates should consider whole of life costs, such as ongoing maintenance and operating costs. Value for money <u>may not be</u> the lowest priced option.
<b>Works</b>	Capital works include the design, construction, maintenance and upgrade of roads, buildings and infrastructure. Capital works procurements are primarily targeted towards the design and construction industries.

## Appendix 1 – Guidance on the standard Service Funding Agreement

Service Funding Agreements (SFAs) are the standard contract format used by the ACT Government in the funding of human services. They are legally binding agreements between the funding Directorate and the service provider and contain conditions specifically customised to the funding of human services.

The ‘front-end’ (body) of the SFA **should not be edited**, as it contains important content that needs to be included in all SFAs, such as definitions, dispute resolution and termination. The actual specifications for the Agreement are included in Schedules attached at the back. It is in the Schedules that the particular outcomes, outputs and conditions of the Agreement are specified, in addition to administrative processes including reporting and payment processes.

Below is a summary of some of the important elements of the body and Schedules of the standard Service Funding Agreement. The below list is not comprehensive, and provides a summary of only some sections of the Agreement. Refer to the Service Funding Agreement for the full terms of the Agreement.

Prompts are included in red text in each of the Schedules to guide Agreement Managers in populating the SFA template. The red text should be replaced with the content applicable to the Agreement being drafted. Brief guidance on the Schedules is provided below to complement that already in the template.

### **Further information:**

The ACT Council of Social Service (ACTCOSS) provides an online Organisation Information Kit that provides guidance about governing and managing community organisations in the ACT. The kit includes a section titled Obtaining and Managing Funding, which includes guidance on the standard Service Funding Agreement targeted to the needs of the community sector. This is available from: <http://www.actcoss.org.au/oik/sections/funding.html>.

### Appendix 1.1 – Body of the Agreement

The body of the Agreement contains definitions and conditions common to all SFAs. Important provisions in the body include how concerns are addressed and the circumstances under which an Agreement may be terminated.

Significant provisions contained in the body of the SFA include:

#### *Access to premises*

- There is a requirement that organisations allow Territory officers to enter their premises on two (2) weeks written notice (clause 5.1).
- Organisations may require that Territory not to permit staff of a nominated gender to enter the premises (clause 5.2).

#### *Insurances and indemnities*

- Organisations indemnify the Territory against liability for all claims, costs and expenses for loss, damage, injury or death to persons or property caused by the organisation, its employees or agents, except to the extent that the Territory caused the relevant loss, damage or injury (clause 5.4(1)) [i.e. the organisation will cover any such costs].

#### *Provision of information*

- Organisations will provide information requested in writing by the Territory within the timeframe stipulated (clauses 5.7 and 6.4).

- Organisations will provide immediate notice if they will wind up, liquidate or appoint a receiver (clause 5.9).

#### *Territory's Obligations:*

- To act promptly and in good faith in resolution of any questions, issues or disputes (clause 6.1(3)).
- As soon as practical, provide a reasonable level of feedback regarding reports submitted by organisations (clause 6.3).
- Commence communications at least three (3) months prior to the expiration of Agreements concerning the Territory's intentions in relation to the continuation or otherwise of funding of the services (clause 6.5).

#### *Treatment of Personal and Agreement Information:*

- Organisations will comply with the *Commonwealth Privacy Act 1988* (clause 8.2(3)).

#### *Intellectual Property*

- Title to and ownership of intellectual property rights (including copyright) belong to the party that creates the material (clauses 9.1 and 9.3).
- Territory materials must be used in accordance with the Agreement and the organisation grants free licence to the Territory (consent required if for commercial purposes) (clauses 9.2, 9.4 and 9.5).

#### *Resolution of issues:*

- When an issue arises, one party may issue a written notice to the other party and both parties will endeavour to promptly resolve the issue in good faith (clause 10.1).
- Issues will be escalated to senior management if not resolved within 10 business days (clause 10.2).
- If not resolved within 20 business days the parties will undertake mediation prior to resorting to litigation (clause 10.3).
- No unresolved issue will entitle the organisation to suspend services unless this is agreed in writing (clause 10.5).

#### *Suspension and termination:*

- The Territory may suspend payment to the organisation if it has failed to provide reports or information reasonably required under the Agreement (clause 11.1).
- The Territory may in writing immediately terminate the Agreement in whole or part if there has been a breach of the Agreement that has not been resolved within 40 days of a notice being served (clause 11.2).
- The Territory may in writing immediately terminate the Agreement if there is a Compelling Reason (defined as 'a situation of urgency, such as substantial non-delivery of services or a situation concerning the safety or health of, or harm to, any person) (clause 11.5).
- Both parties may agree in writing to terminate the Agreement (clause 11.6).
- If the Agreement is terminated it may be agreed that assets held by the organisation are transferred to another organisation funded under the program (clause 11.9).

#### *Notices*

- Formal notices served by one party to the other must be served by delivering the notice, posting it or faxing it (clause 15.1). [Note that, as at October 2010, email is not listed as a method of serving a notice].

#### *Continuation of obligations*

- Some of the organisation's obligations under the contract continue after the expiration or termination of the Agreement (including indemnity, confidentiality, etc) (clause 19).

## Appendix 1.2 – Schedule 1 – Agreement details and further definitions

Schedule 1 provides a summary of the service(s) to be provided and additional definitions specific to the service(s). It is important that the Funding Amount and Agreement Period are accurately completed. Where prompted for “organisation’s Agreement Manager” and “Territory’s Agreement Manager” it may be preferable to insert generic position titles rather than the names of individuals to allow for changes over time.

## Appendix 1.3 – Schedule 2 – The Services

Schedule 2 is the core part of the SFA in terms of specifying the purpose, outcomes and performance requirements of the service.

**Item 1 (The Services)** - it is important to have meaningful and specific information about the broad policy goals that the service will contribute towards. It may be useful to specify ACT Government targets or program objectives here to link the role of this service to the Government’s broader agenda. Item 1 should also provide a detailed outline of the services to be provided under the Agreement.

**Item 2 (Outcomes)** – it is increasingly important that funded services are directed at achieving community and Government objectives. This section should include the changes, results and impacts that will be achieved for service users, the program, or institutional change.

**Item 3 (Outputs)** – these are measurable activities that contribute towards the achievement of the outcomes, the goals of the program or the broader policy goals set out in Item 1. Outputs may be the categories of activity (expanded upon with Performance Indicators) or may include the quantity of goods and/or services provided or delivered by the organisation.

**Item 4 (Performance indicators)** – relate to outputs and specify the effectiveness of the outputs to be measured. This section is often divided into Quantitative Indicators and Qualitative Indicators.

**Quantitative Indicators** - it is good practice to include numerical minimum benchmarks that should be met in a range of areas in order that the number achieved can be compared against that required by the Agreement. Example indicators might be:

- A minimum of 40 clients provided with outreach support each reporting period;
- A minimum 95% of urgent property repairs completed within 24 hours; or
- A minimum client satisfaction rating of 90% in client surveys.

It may not be possible to set some numerical benchmarks when establishing new services as the level of demand for the service may not be determined until it has operated for a period of time.

**Qualitative Indicators** – these are indicators that impact on the quality of the outcome for service users, but which cannot be measured numerically. Examples indicators might be:

- Qualitative evidence that Service User’s needs are being met in each of the specified Output areas. Evidence may include case studies, Service User surveys, action research, independent evaluation and/or other relevant means adopted by the organisation;
- Evidence that mechanisms are in place to receive Service User feedback and that service planning and delivery is improved as a result of this feedback;
- A formal complaints mechanism is made available to Service Users;
- Service Users will be supported to develop skills and resilience, encouraged to move toward independence of the service and successfully exited from the service as appropriate.

**Item 5 (Performance Requirements)** – this section specifies details about *how* the service is to operate. Examples that might be included under this section include:



- The required opening hours (e.g. 24 hours per day 365 days per year; or 9am-5pm weekdays for 48 weeks of the year);
- Expectations of sector participation and collaboration with the Territory and other organisations, operationally and/or in policy development;
- Whether fees may be charged (e.g. “Access to the Services should not be contingent upon the Service Users financial ability to pay – however, any fees received will be reinvested in the Services”);
- Expectations that the service contribute data to particular ACT or national data collections or surveys;
- An ‘early warning’ clause whereby the organisation must notify the Territory as soon as possible after any significant event or critical incident, or where performance will be significantly below that expected;
- Requirements regarding any properties made available by the ACT Government (e.g. standards of cleanliness and repair, details of rental arrangements, how often the organisation is to inspect properties);
- A clause such as “The organisation must implement strategies to ensure access by Aboriginal and Torres Strait Islanders and people from culturally and linguistically diverse backgrounds”;
- A clause requiring that all employees of a particular service are to have undergone particular training;
- A requirement that the service comply with other guidelines (e.g. The “National Program Guidelines for the Home and Community Care Program 2007” provides the principles under which the HACC Program is to be delivered and identifies specific strategies to be used by a service provider in the allocation of its services. These include access for special needs groups, the basis for assessment, the provision of integrated services and prioritisation of resources.)

**Item 6 (Quality Standards)** – this section should contain details of any ACT or national standards that the service must comply with, as well as quality assurance tasks more specifically required of the service. Examples might be:

- The organisation is to provide evidence that it is actively working towards quality improvement and is reviewing its practices against a set of recognised quality indicators including but not limited to the National Standards for Mental Health Services, or the ACT generic standards for community services – *Raising the Standard*;
- Consumers and carers are involved in the planning, implementation and evaluation of the organisation’s service provision;
- The organisation is expected to work within the Disability ACT Quality Improvement Framework, including establishing a Quality Plan and undertaking an annual review of its practice against the National Disability Service Standards (or equivalent).

**Item 7 (Territory Material – Intellectual Property Rights)** – it must specified here if there is any material created under the Agreement that the Territory wishes to retain ownership rights over.

**Item 8 (Form of Acknowledgement)** – this is where the Territory specifies how the organisation should acknowledge the Territory (and the Commonwealth where appropriate) in any published or presented information.

## Appendix 1.4 – Schedule 3 – Reports and reviews

Schedule 3 is the appropriate place to include reporting requirements, including the nature of reports and when they should be submitted.

**Item 1 (Reports and documentation)** – this item includes reference to any annual reports required and allows for inclusion of additional reports above that normally required (e.g. Action plans, Reporting in targeted areas of concern, etc). Note that organisations may produce annual reports at different times of year, depending on whether they are registered as incorporated associations (under the ACT *Associations Incorporation Act 1991*) or as companies (under the Commonwealth *Corporations Act 2001*).

**Item 2 (Financial Reports)** – two types of financial report are typically required – a regular (usually 6 monthly) report and an annual audited financial statement. Audited financial statements must include the auditors opinion as to whether the Funding Amount has been expended in the manner required by the Agreement.

**Item 3 (Performance Reports)** – this section specifies what performance reporting is required and how often. In order to minimise administrative burden to funded organisations, performance reports are generally only required once every six months, though the timing may be shorter or longer to meet the requirements of each program.

**Item 4 (Annual Review)** – it is generally a requirement that the Territory meet with the organisation at least once per year to review the Agreement and the performance of the service. In the final year the review will be conducted at least three months prior to the Agreement ending.

## Appendix 1.5 – Schedule 4 – Funding amount and payment

This schedule specifies the amounts to be paid for each service and when and how these payments will be made. Prompts in the template provide further guidance.

## Appendix 1.6 – Schedule 5 – Assets

Schedule 5 provides for conditions to be included in the SFA regarding assets. Schedule 5 allows for the inclusion of lists of assets that remain the property of the Territory and the organisation, and states the obligations that each party has in regards to those assets.

Assets that should *not* be purchased with the funding can also be specified and there is an obligation that the organisation maintains an assets register that will be provided to the Territory on request.

In the SFA definitions, “Assets” are defined as all items of equipment, furniture, vehicles, buildings, real property and leasehold improvements, which

- are specified in Item 1 Schedule 5; or
- have a value of \$3000.00 or more and are purchased, leased or hired, wholly or partly with the Funding Amount.

### **Disposal of assets**

There will be times, such as at the expiration or Termination of an Agreement, when assets held by the organisation will need to be ‘disposed’ of. There are contractual, policy or legislative obligations that may restrict the way in which this is done.

Section 11.9 of the SFA allows the Territory to direct the organisation on how it transfers assets on Termination of the Agreement. The organisation may request that such assets be transferred to another organisation funded under the same program, in order that Service Users still benefit from those assets.

Item 1, Schedule 5, of the SFA, allows the Territory to specify that listed assets be returned to the Territory (or a third party) on expiry or termination of the Agreement. If this item is left blank the Territory may risk waiving its rights to these assets, so it is important that a list of assets be inserted if the Territory wishes to retain ownership over them.

*Procurement Circular PC 06 Disposal of Assets* provides further guidance, processes and obligations related to the disposal of assets. The Circular states that “the objective of any disposal action should be to achieve value for money for the Territory”, where “Value for Money means maximising the overall benefit to the Territory from the disposal of an asset. Value for Money does not necessarily mean ‘highest dollar return’”.

*Procurement Circular PC 06* states that Directorates should also:

- identify the assets and dispose of them in accordance with legislation and policy;
- ensure the Territory’s social, economic and environmental interests are protected;
- consider future remediation costs that may be borne by the Territory;
- minimise or eliminate any potential for abuse or risk from hazardous, pollutant and dangerous materials when assets are being disposed of;
- consider recycling/reuse options before undertaking any dumping or destruction action; and
- provide the highest level of cost effectiveness and procedural flexibility consistent with regulation, probity and ethical practice.

## Appendix 1.7 – Schedule 6 – Special conditions

Schedule 6 provides for the inclusion of special conditions not covered in the other schedules. While a number of special conditions are common to most SFAs (such as Insurance and Police Checks), the Territory may also add clauses to Schedule 6 that are specific to the service or funding program. Some guidance on the existing provisions is included here:

**Item 1 (Insurances)** – There is a range of insurance types, some of which are compulsory for funded Organisations to have (notably public liability and workers compensation insurances), and others that will be conditional on the nature of the organisation and the goods or services being supplied.

The level of public liability insurance required by non-profit organisations is summarised at [Part 4.3](#) of this Guide.

A funded organisation should only need Professional Indemnity insurance if there is potential for the Territory or another party to incur a financial loss by acting on Professional Advice or Service given by that organisation. The ACT Insurance Authority (ACTIA) has developed a flowchart to assist in determining whether an organisation should have this insurance (available from [http://www.treasury.act.gov.au/actia/PI\\_Flowchart.pdf](http://www.treasury.act.gov.au/actia/PI_Flowchart.pdf)).

**Item 2 (AFP Checks – Recruitment of employees and volunteers)** – This item provides protection for children and vulnerable adults by placing requirements on funded organisations to have processes in place to ensure that their employees are ‘fit and proper’ persons for working with such groups. This includes a requirement that referee reports be checked and clearances be obtained from the Australian Federal Police (AFP).

Note that the ACT Government is currently developing a scheme whereby Working with Vulnerable People Checks will replace the current police checks.

**Item 3 (Generic Requirements of funding program)** – This item allows for the inclusion of requirements specific to the funding program, such as service standards.

**Item 4 (Confidentiality of Agreement)** – Replace the text under this item with the phrase “Not Applicable” unless the organisation requires that part of the Agreement not be publicly disclosed. If some of the Agreement is not to be publicly disclosed, the reasons for this must be listed at Item 4 (4), in accordance with the *Government Procurement Act 2001*.

An example where this item might be used could be where a women’s refuge does not want its physical address known in order to protect its clients’ safety. In this scenario the address could be included in the SFA but declared as confidential text under Item 4, thereby ensuring that the address is deleted when the SFA is published on the public contracts register.

**Item 5 (Records on Behalf of Territory)** – This item only needs to be included in those Agreements when the services being funded are exercising a function under a Territory law. The item contains important provisions to assist Government Directorates in meeting their obligations under the *Territory Records Act 2002*. Organisations are also required to comply with other relevant legislation, including the *Privacy Act 1988 (Commonwealth)* and the *Health Records (Privacy & Access) Act 1997*.

The *Territory Records (Standard for Records Management Number 5: Recordkeeping and Outsourced Government Business) Approval 2009* provides guidance on implementing the *Territory Records Act 2002* when outsourcing government services. The Standard states that “outsourced activity records must be managed as if the Agency were undertaking the activity itself. Agencies must make provision in their contracts to ensure that they gain legal and beneficial ownership and custody of records from service providers”.

The Standard goes on to say that:

- Agencies must be careful to ensure recordkeeping responsibilities are specified in outsourcing contracts;
- Agencies can meet their record keeping obligations by either
  - delegating the recordkeeping responsibility to the service provider and ensuring that appropriate records are transferred according to an agreed schedule; or
  - ensuring the Government Agency creates its own records of the work performed by the service provider;
- all records must be transferred to the custody of the Government Agency at the completion of the contract.

Source: *Territory Records (Standard for Records Management Number 5: Recordkeeping and Outsourced Government Business) Approval 2009 (No 1)* (<http://www.legislation.act.gov.au/ni/2009-15/default.asp>)

**Item 6 (Survival of Provision of Information Requirement in Clause 6.4)** - Replace the text under this item with the phrase “Not Applicable” unless the proposed arrangement is high risk, a pilot program or short term (less than 3 years).

**Item 7 (Child Protection – Reporting & Training)** – This item must be included if the organisation will be involved in any way with children or young persons in providing the services (otherwise “Not applicable” may be inserted). The item requires relevant organisations to have a child protection policy in the specified format.

**Item 8 (Policy Submissions and Advocacy Documents)** – Insert this item for peak bodies and advocacy groups, otherwise the phrase “Not Applicable” may be inserted.

**Item 9** – Provides for the insertion of other special conditions as required (insert “Not Applicable” if unused).

## Appendix 1.8 – Attachments to the Service Funding Agreement

**Attachment A (Financial Report)** – Attachment A allows for the Territory to provide the format in which financial reports are required. This will generally include the funded amount for the period, the actual expenditure, and the variation between them. Explanations are generally sought from funded organisations when actual expenditure is 10% (or more) above or below the funded amount.

**Attachment B (Performance Report)** – Attachment B allows for the inclusion of a performance report template that organisations should use for their regular reporting. The template will typically list the performance benchmarks set out in Item 3 (Outputs) and Item 4 (Performance indicators) of Schedule 2. Organisations then insert the actual numbers achieved. The templates may also require reporting against other aspects of the organisation’s performance, including the other items in Schedule 2 (e.g. Performance Requirements; Quality Standards).

**Other attachments** – Other attachments may be included, depending on the needs of particular funding programs.

## Appendix 2 – Agreement Management Plan template

### ACT Government Agreement Management Plan

[Insert Organisation name]

[List services]

<b>Purpose</b>	<p><i>The Agreement Management Plan (AMP) is an important tool to assist ACT Government Agreement Managers in effectively managing human services that are delivered by community organisations.</i></p> <p><i>The AMP outlines the key objectives and outcomes of the Service Funding Agreement, and addresses key tasks necessary to minimise risk and ensure the success of the service.</i></p> <p><i>The Agreement Management Plan also enables the Agreement Manager to develop a strong understanding of the Agreement and the responsibilities of the parties involved. It also establishes a system against which the performance of both parties can be monitored, in order to identify and address problems early.</i></p>															
<b>Instruction</b>	<i>This template provides prompts for each section. Replace the prompts with brief details addressing each item.</i>															
<b>Background</b>	<i>Insert a brief description of the policy context, the services being provided and how the Agreement was established.</i>															
<b>Key deliverables</b>	<i>What are they key objectives, outcomes and outputs expected from a successful Agreement.</i>															
<b>Contacts</b>	<p><i>List the key personnel associated with the Agreement and provide contact details and their role in the Agreement:</i></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 33%;">Name</th> <th style="width: 33%;">Role (e.g. CEO, Organisation’s Agreement Manager)</th> <th style="width: 33%;">Contact Details (phone, email, fax)</th> </tr> </thead> <tbody> <tr> <td>e.g. Bill Smith</td> <td>Chief Executive Officer, It Matters Inc</td> <td><a href="mailto:B.Smith@itmatters.org.au">B.Smith@itmatters.org.au</a> Phone 62123456 Fax 62123456</td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Name	Role (e.g. CEO, Organisation’s Agreement Manager)	Contact Details (phone, email, fax)	e.g. Bill Smith	Chief Executive Officer, It Matters Inc	<a href="mailto:B.Smith@itmatters.org.au">B.Smith@itmatters.org.au</a> Phone 62123456 Fax 62123456									
Name	Role (e.g. CEO, Organisation’s Agreement Manager)	Contact Details (phone, email, fax)														
e.g. Bill Smith	Chief Executive Officer, It Matters Inc	<a href="mailto:B.Smith@itmatters.org.au">B.Smith@itmatters.org.au</a> Phone 62123456 Fax 62123456														
<b>Risk Management</b>	<i>What risks are involved with the management and delivery of this service, and what strategies are being put in place to manage these risks?</i>															

	<table border="1"> <thead> <tr> <th data-bbox="424 185 699 304">Risk</th> <th data-bbox="699 185 973 304">Risk rating (Low, Medium, High or Very High)</th> <th data-bbox="973 185 1248 304">Strategy to address risk</th> </tr> </thead> <tbody> <tr> <td data-bbox="424 304 699 353"></td> <td data-bbox="699 304 973 353"></td> <td data-bbox="973 304 1248 353"></td> </tr> <tr> <td data-bbox="424 353 699 405"></td> <td data-bbox="699 353 973 405"></td> <td data-bbox="973 353 1248 405"></td> </tr> <tr> <td data-bbox="424 405 699 456"></td> <td data-bbox="699 405 973 456"></td> <td data-bbox="973 405 1248 456"></td> </tr> </tbody> </table>	Risk	Risk rating (Low, Medium, High or Very High)	Strategy to address risk									
Risk	Risk rating (Low, Medium, High or Very High)	Strategy to address risk											
<i>Transitional arrangements</i>	<p><i>If it is a new service provider, how will clients and other stakeholders be impacted? How will transition be managed (is there a transition plan)? What transitional tasks need to be addressed (eg notification to stakeholders/users, transfer of relevant service information from previous service provider)?</i></p>												
<i>Communication strategies</i>	<p><i>How regularly will service visits and review meetings be held between the Organisation and the Agreement Manager?</i></p> <p><i>What are the other methods for communication to be used and when will they be used?</i></p> <p><i>If there are concerns regarding the service, how and when will these be communicated to the organisation?</i></p>												
<i>Reporting requirements</i>	<p><i>What are the reporting requirements under the Agreement? What will be the method of reporting (eg paper reports, electronic, etc)?</i></p> <p>Example:</p> <p>Service-specific performance and financial reports are required to be submitted once every six months (within 30 days of 30 June and 31 December each year). These can be in paper or electronic form. Expenditure should be within 10% of the budget for the service, or an adequate reason provided as to why expenditure has varied by more than 10%.</p> <p>An audited financial statement for the organisation is required by 30 November each year and an annual report is required within one month of the latest date the organisation is legally required to lodge the report with the relevant regulatory authority.</p>												
<i>Evaluation of performance and financial management</i>	<p><i>What are the measures against which the organisation’s performance will be assessed? How will the information be collected? How often will the evaluation occur?</i></p> <p>Example: The Directorate will assess performance and financial reports on a six monthly basis and send a performance feedback letter to the service within four weeks of the report being received.</p> <p><i>If this is an existing service – how has the organisation performed in the recent past and what actions will be put in place to address any concerns regarding performance?</i></p> <p>Example: Concerns have arisen that an insufficient proportion of this service’s clients have been supported to enter safe and secure long term accommodation. An improvement plan will be developed with the service provider in the coming weeks, with proposed milestones for improvement listed in the <i>Agreement Milestones</i> section below.</p>												

<p><i>Agreement milestones</i></p>	<p>List all milestones in relation to delivery of services under the Agreement.</p> <p>Where there are concerns regarding an organisation's performance, milestones can be agreed with the organisation detailing how it can bring its performance back to the level required.</p> <table border="1" data-bbox="456 353 1281 562"> <thead> <tr> <th data-bbox="456 353 839 405">Key tasks with milestones</th> <th data-bbox="839 353 1083 405">Responsibility</th> <th data-bbox="1083 353 1281 405">Due date</th> </tr> </thead> <tbody> <tr> <td data-bbox="456 405 839 456"></td> <td data-bbox="839 405 1083 456"></td> <td data-bbox="1083 405 1281 456"></td> </tr> <tr> <td data-bbox="456 456 839 508"></td> <td data-bbox="839 456 1083 508"></td> <td data-bbox="1083 456 1281 508"></td> </tr> <tr> <td data-bbox="456 508 839 562"></td> <td data-bbox="839 508 1083 562"></td> <td data-bbox="1083 508 1281 562"></td> </tr> </tbody> </table>	Key tasks with milestones	Responsibility	Due date									
Key tasks with milestones	Responsibility	Due date											
<p><i>Other Requirements</i></p>	<ul style="list-style-type: none"> <li>• Insurance requirements</li> <li>• Police Checks</li> <li>• Risk Profile</li> <li>• Risk Management Plan</li> </ul>												
<p><i>Agreement operation</i></p>	<p>How are conflict and disputes to be resolved under the Agreement?</p> <p>How will Agreement variations be handled?</p> <p>What conditions apply to payments, and when will payment be made?</p>												
<p><i>Agreement review</i></p>	<p>How soon before the Agreement expiry date will the review occur? How will the review be undertaken? How will success be measured (should be in terms of the identified outcomes and outputs)? Will the Agreement management process itself be reviewed?</p>												
<p><i>Future Agreement options</i></p>	<p>What will occur at the end of the Agreement? If it is a continuing requirement, is there an option to extend?</p>												

Chapter 2.8.2 of the ACT Government Chief Executive Financial Instructions provides better practice guidelines on contract management. This is available from the Treasury Directorate website: [http://www.treasury.act.gov.au/accounting/download/bp2\\_17.doc](http://www.treasury.act.gov.au/accounting/download/bp2_17.doc).

Source: adapted from the Tasmanian Government *Contract Management Plan Pro-forma*.

## Appendix 3 – SFA Reporting Checklist

Schedule and item	Reporting Requirements	Date Due	Date Received	Action required?	Feedback provided?
Every six months					
Sch 3, Item 2	Financial Reports "Attachment A"	30 July 30 January			
Sch 3, Item 3	Performance Reports "Attachment B" Sch 2, Items 3 and 4	31 July 31 January			
Every 12 months					
	Deed of Variation <i>(Date signed, significant changes)</i>				
Sch 2, Item 6	Quality Improvement <i>(insert name of Quality Standards)</i>	Once every 12 months			
Sch 3, Item 1	Annual Report	Within one month of adoption by org.			
Sch 3, Item 2	Audited Financial Statements	30 November			
Sch 3, Item 3	Performance Reports "Attachment B" Sch 2, Items 5 and 6, Sch 6	Once every 12 months			
Sch 3, Item 3	Optional report on unmet need	Once every 12 months			
Sch 3, Item 4	Annual review meeting				
Prior to signing SFA					
Sch 6, Item 1	Insurances <i>(type of insurance, amount and date of expiry)</i>				
Sch 6, Item 2	Police Checks <i>(evidence of compliance)</i>				
Sch 6, Item 7	Child Protection Policy <i>Copy provided to Directorate?</i>				
Regulations	ACTIA Risk Assessment <i>(copy of Public Liability Assessment received)</i>				
Shared Services Procurement	Ethical Suppliers declaration <i>Date signed</i>				

Year 2011-12	SFA Reporting Checklist
Insert name of organisation and service	Insert name and title of key contact



## Appendix 4 – Better practice example performance feedback letter

Instruction: Send to service provider within four (4) weeks of report being received. Edit or remove text in red and copy onto your Directorate's letterhead. Change all text to black prior to sending.

[Name of organisation's Agreement Manager]

[Position]

[Organisation name]

[Address]

[SUBURB] [ACT] [POSTCODE]

Dear [Title] [surname of Organisation's Agreement Manager]

Thank you for the [organisation name] six monthly performance and financial reports for [services] for the period [July to December YEAR OR January to June YEAR], received by the Directorate on [date received]. This letter provides formal feedback from [funding Directorate] in relation to these services.

### Report assessment

Overall [Directorate] considers that the performance and financial reports satisfy your organisation's contractual obligations for the period, the outputs of the Service Funding Agreement (SFA) have been met and the funding has been expended appropriately [delete parts of this paragraph if not accurate].

[Directorate] recognises that [insert text recognising good performance, achieved output levels and/or innovations in service delivery].

[Directorate] does, however, note that there appear to be items within your reporting that have not met the requirements of the Service Funding Agreement. Specifically, [include brief reference to these items using restrained language]. In order to clarify whether this indicates that the required outputs have not been achieved or is simply a matter of the report format, it is necessary to arrange a service visit to discuss the report. An officer of [Directorate] will be in contact with you shortly to arrange this visit. [Delete this paragraph if not accurate or appropriate].

### Financial outcome

The organisation has reported a [deficit/surplus] of [x% above/below the funding level] during this reporting period. We note that this is due to [extra hours expended, or other reason provided] and note that reimbursement is not being sought [OR] We note that this variation is greater than 10%, but that no explanation has been provided for the variation. Please provide an explanation for this variation in writing by [date in two weeks].

### Annual reports

Thank you for providing [Directorate] with the [organisation] [year] annual report in a timely manner. In providing [Directorate] with a copy of your report it increases our understanding of the activities and priorities of [organisation].

### Insurance

Our records show that your current insurance policy expired on [date]. It would be appreciated if you could send [Directorate] a copy of your renewal at your earliest convenience.

### Service visits and review

In order to maintain a strong relationship with your organisation and to ensure that effective outcomes are achieved for service users, we would like to arrange a service visit to your organisation. An officer of [directorate] will be in contact with you shortly to arrange this visit.

[Directorate] is appreciative of the efforts of [organisation] under this Service Funding Agreement and looks forward to continuing to work productively together. If you wish to discuss these matters or other issues relating to your Service Funding Agreement, please contact [Agreement Manager's name] on [phone] or [email].

Yours sincerely

[Position]

[Business area]

[Day] [Month] [Year]

## Appendix 5 – Better practice example late report letter

Instruction: Send this letter if report(s) have not been received within seven (7) days of the due date (to allow for postage and other minor delays). Edit or remove text in red and copy onto your Directorate's letterhead. Change all text to black prior to sending.

[Name of Organisation's Agreement Manager]  
[Position]  
[Organisation name]  
[Address]  
[SUBURB] [ACT] [POSTCODE]

Dear [Title] [surname of Organisation's Agreement Manager]

I am writing in relation to the performance and financial reporting that [organisation] is required to submit under its Service Funding Agreement (SFA) for [list services].

As you are aware, under the terms of the SFA, six-monthly performance and financial reports need to be submitted within 30 days of each six month period. It appears that the directorate has not received the [performance and/or financial report(s)] that were recently due for [list services].

This/these report(s) is/are now overdue and should be submitted by [date in one week]. Your prompt attention to this matter would be appreciated. If you have already submitted your report(s) or they are currently in the mail, please ignore this letter.

Performance and financial reports can be submitted via email to [CSD only: [DHCSContractsandGrants@act.gov.au](mailto:DHCSContractsandGrants@act.gov.au) OR other Directorates insert appropriate email address] or by mail to:

[CSD only: Contracts and Grants Unit  
Community Services Directorate  
PO Box 158  
Canberra ACT 2601

OR

Other Directorates insert appropriate address here].

If you wish to discuss these matters or other issues relating to your Service Funding Agreement, please contact [Agreement Manager's name] on [phone] or [email].

Yours sincerely

[Position]  
[Business area]  
[Day] [Month] [Year]

## **Acknowledgements**

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