



# NFP Grants and Procurement Definition and Agreements Exposure Draft

The *South Australian Funding Policy for the Not for Profit Sector* (the Policy) aims to support and strengthen collaborative partnerships between the Government and the NFP sector. It provides a consistent approach to all aspects of funding, sets clear requirements for public authorities, and reduces the administrative burden on NFPs and maintains their independence.

The Policy is available from: <http://bit.ly/2yVrykC>

Key outcomes to date include:

- an updated State Procurement Board procurement framework addressing the principles of the Policy. The updated procurement framework is available from: <http://bit.ly/2iaFZa5>
- mandatory application of standardised indexation on multi-year funding agreements between the Government and NFP organisations. More information is available from: <http://bit.ly/2zFeay1>

The Department of Treasury and Finance has released the following exposure drafts -

- a Funded Services Agreement.
- a Standardised Grant Agreement.
- a definition of grant to be included in the Treasurer's Instructions.

## Funded Services Agreement

Often NFPs provide goods and services to public authorities under a traditional "block-funding agreement".

The State Procurement Board has simplified commercial contracts. This work is now being extended to establish, for NFP block-funded arrangements, a common *Funded Services Agreement* to be applied across Government to achieve consistency. The draft *Funded Services Agreement* is available from: <http://bit.ly/2zTeTyt>

The *Funded Services Agreement* does not prevent NFPs and public authorities working together towards the use of commercially oriented outcomes focussed contracts over time that have the potential to bring further red-tape reduction benefits.

*Are there examples of existing contracts where changing to the draft *Funded Services Agreement* would not be appropriate?*

*Are there opportunities to further reduce red-tape while maintaining appropriate controls on the spending of public money?*

## Key Principles

- *Robust planning and design*
- *Collaboration and partnership*
- *Proportionality*
- *An outcomes orientation*
- *Achieving value with relevant money*
- *Governance and accountability*
- *Probity and transparency*
- *Community development*



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### Standardised Grant Agreement

The Policy calls for a consistent approach across Government.

The Department of Treasury and Finance has prepared a draft *Grant Agreement* that it is proposed will be applied consistently by all Government agencies and replace existing arrangements. The draft *Grant Agreement* is available from:

<http://bit.ly/2zTeTyt>

Are there examples of existing grants where the draft *Grant Agreement* would not be appropriate?

Are there opportunities to further reduce red-tape while maintaining appropriate controls on the spending of public money?

### Grant Definition

Funding of NFPs can be via procurement or grants, which operate under different policy frameworks.

Work to implement the Policy identified that the legal interpretation of the *State Procurement Act* was likely to result in many funding arrangements with NFP organisations being brought into the procurement framework, even though traditionally they have been treated as a grant.

As part of the Government's *Simplify Day Bill*, an amendment to the definition of procurement operations in the *State Procurement Act* has been proposed. This Bill is available from:

<http://bit.ly/2huUubx>

The amendment means that the those funding arrangements defined as a grant under the *Treasurer's Instructions* (issued under the *Public Finance and Audit Act*) will not fall within the definition of procurement operations and, as a result, are not subject to the procurement framework.

The Department of Treasury and Finance has prepared a draft grant definition for discussion with the NFP sector. The definition is based around two concepts:

- **Approximate equal value** – the public authority (e.g. the government department) does not receive value equal to the amount paid. Grants are given to organisations for the general benefit

of the community, not just to the benefit of the public authority. With a procurement the value of the good or service received should be the same as the amount paid.

- **Indirect benefit** – the public authority is making a payment that does not directly benefit the public authority – but rather is focused on supporting the organisation to achieve its own goals.

The definition provided below has been prepared by a legal draftsman in the context of the proposed amendments to the *State Procurement Act* and is being released for feedback from the NFP Sector.

The provision of the following funding to a third party (grant recipient) by a public authority (e.g. government department) is classified as a grant -

*(a) a payment to a third party in connection with the provision of goods or services to members of the community (whether by the third party or by an entity related to, or supported by, the third party), where –*

*(i) the economic value received by the public authority is less than the amount of the payment; and*

*(ii) the payment is not being made in substitution (or substantially in substitution) for the provision of those goods or services by the public authority as part of a Government program;*

*(b) a payment to assist a third party (or an entity related to, or supported by, the third party) with the conduct of its undertaking, where the public authority does not receive any direct benefit from the making of the payment.*

Are there examples of existing “grants” that would not be captured by the proposed grant definition?

Are there other aspects of grants that should be reflected in the grant definition?