

The Grant and Service Contracts

Basic Info on Terms & Conditions and decisions to be made

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Which of 5 Contracts?

- Grant v Procurement
- Grants under \$10,000 – Simple letter template
- Grants over \$10,000 – Standard Agreement
- Procurement under \$23,000 – Simple Invoice
- Procurement over \$23,000 – Standard Contract
- Standard Goods and Services Contract

<https://treasury.sa.gov.au/Our-services/not-for-profit-sector-funding-and-contracting>



What have we been trying to achieve?

- **Uniformity**
- **Red Tape Reduction**
- **Clarity**
- **Partnership – removing one-sided clauses**
- **Removing oppressive/bizarre clauses**

Contexts and Caveats

- **Negotiated outcome – not everything we wanted**
- **Templates only deal with Terms & Conditions, not service descriptions or costs/prices paid**
- **Contracts can't fix everything in the funding process**
 - **Don't deal with application process**
 - **Can't enforce themselves**
- **Contracts provide some framework and limitations on monopsony power**

Legal Importance of Contracts

Departments bound by these templates

- **Can't make up new clauses or impose extra stuff**
- **If they do, they are acting illegally**
- **They do not have the power to issue unapproved contracts**

If Departments breaking the law -> maladministration

- **You are legally-bound to report them to ICAC**
- **You have no choice, and that should focus both your and the Department's mind!**

Structure of documents

- **Grants have cover-letter, Service Agreement has contract agreement**
- **Attachment 1: “Moving Parts” (the things that will change in each contract)**
- **Attachment 2: Standard Terms and Conditions which can’t be changed**
- **Attachment 3: Special Conditions if particular circumstances apply**
 - **Can only be drawn from Standard Clause Bank**

Structure of documents

- **Grants:**
 - **Attachment 4: Acquittal Form**
- **Service Agreement**
 - **Attachment 4: Description of Funded Services**
 - **Attachment 5: Block Funding & Payment Details**
 - **Attachment 6: Acquittal Form**

Key Issues

Entire Agreement (SA 31, G22)

- No other documents, policies or reports can be incorporated
- No verbal promises

Variation of Contract (SA 5) (SA 33, G24)

- “good faith negotiation”
- You can ask for more money if more impositions
- Variation must be agreed in writing

Key Issues

Doing the Work (SA 4, 6)

- **Clauses generally refer to Attach 4 descriptions**
- **You have to deliver them to standards, on time, etc**
- **Clause SA 4.4d and G20 are crucial**
 - **Abide by govt policies notified in writing *at time of commencement***
 - **Govt can't add compliance policies later**
 - **If govt wants to add policy compliance later – they need to vary contract, and you get to negotiate costs/terms**

Key Issues

Indexation (SA 8.5, G4.4)

- Rate set externally, must be paid
- Increase applies on each anniversary of commencement – including extensions

Invoicing (SA 8, G4)

- Choice of RCTI or issuing own invoices
- RCTI impacts on payment time and some late payment entitlement – *don't do it!*
- This contract super-cedes previous RCTI agreements (SA 31, G22)

Key Issues

Unexpended Funds (SA 10, G6)

- **SA – report unexpended funds yearly & at termination, and potentially hand back \$**
 - **Can apply to keep/rollover**
 - **Attach 1 (Item SA13, G14) can change report date, so try to extend to 3 years!**
- **Grants – only report and potential pay back at end of grant (or apply to keep)**
- **Both cases, govt must consider your request (i.e. not have blanket policy)**

Key Issues

Insurance (SA 17, G17)

- **Public Liability required**
- **Professional Indemnity maybe (tick box)**
- **No other insurance policy is required in these contracts – big change from current shopping list**

Intellectual Property (SA 14, G10)

- **In SA, NFP owns IP and licences govt use**
- **In Grants, it is tick box as to who owns – default is probably NFP**

Key Issues

Reporting (SA 11-12, G7-8)

- **Attach 1 sets out what reports are required**
- **Beyond that, govt should pay for (SA 11.2)**
 - **but not for Grants (but power limited to only where suspect \$ not used for purpose)**
- **Financial acquittal format set out in Attach SA6, G4**
 - **3 mths after EOFY – unless varied by Attach 1**
 - **Note EOFY-straddling problem**
- **Full accounts audited/unaudited need to be provided 6 mths EOFY**

Key Issues

Rights of Invasion (SA 13, G9)

- Govt has wide powers of inspection, but more constrained than current contracts

“Reasonably” is used a lot to limit action

- No set definition, depends on the circumstances
- But does give theoretical right of legal challenge if govt behaving unreasonably

Key Issues

Screening

- It is a mess – see flow chart

Sorry