

Human Services Agreement: Department of Communities and Justice Supplementary Conditions

Information for organisations funded by the NSW Department of Communities and Justice using the NSW Human Services Agreement

This fact sheet covers:

- ▶ What are the DCJ Supplementary Conditions?
 - ▶ What are the differences between the DCJ Supplementary Conditions (contained in the Department of Communities and Justice Schedule) and the Human Services Agreement Standard Terms?
 - ▶ How to work out whether a DCJ Supplementary Condition or a Standard Term applies?
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This fact sheet is for organisations that provide Department of Communities and Justice (DCJ) funded services. It is part of our Guide to the Human Services Agreement (Guide). The Guide provides information on organisations' key legal obligations under the Human Services Agreement. The Guide includes a suite of resources to help organisations meet their obligations.

What are the DCJ Supplementary Conditions?

While it's intended that the terms of the Human Services Agreement will be largely consistent across NSW government agencies, each NSW government agency has the right to amend the Human Services Agreement to make sure it's fit-for-purpose (ie. that it fits the relevant government agency's specific funding needs). Generally most amendments to the Human Services Agreement will be limited to the conditions in the Agreement for Funding of Services – Schedule (the Schedule) rather than the Standard Terms.

To ensure the Human Services Agreement meets DCJ's contracting requirements, DCJ has amended the Schedule and included Supplementary Conditions. In this factsheet we refer to these as the DCJ Schedule and the DCJ Supplementary Conditions.

The DCJ Supplementary Conditions are listed towards the end of the DCJ Schedule. The DCJ Supplementary Conditions prevail over the Standard Terms to the extent of any inconsistency.

If your organisation is using the DCJ Schedule it is important to understand how the DCJ Supplementary Conditions impact the Standard Terms so that you can make sure you are complying with the correct clauses in the Agreement.



Tip

Read this factsheet with the Human Services Agreement and the Guide at hand for reference.



Caution

The information contained in this document is intended as a guide only and is not legal advice. Interpreting contract terms is complex. If your organisation has a legal problem you should talk to a lawyer before making a decision about what to do. Refer to [our webpage on legal advice](#) to see if your organisation may be eligible for free legal advice.

This fact sheet has been prepared on the basis of the Agreement for Funding of Services – Standard Terms dated 16 October 2019 (**Standard Terms**) and the DCJ Agreement for Funding of Services – Schedule dated October 2019 (**DCJ Schedule**).

If the terms on which your Standard Terms or DCJ Schedule is based have been amended, please review the information in this document carefully to make sure they are consistent where necessary.

If your organisation intends on subcontracting all or part of the Services make sure your sub-contract Agreement takes into account the impact of the DCJ Supplementary Conditions on the Standard Terms.

The differences between DCJ Supplementary Conditions and Standard Terms – working out what terms apply to your organisation

DCJ Supplementary Condition	Description of the DCJ Supplementary Condition	Relevant Standard Terms clause	What does this mean?
Clause 1 - Effect of Supplementary Conditions	Where there is any inconsistency between the DCJ Supplementary Conditions and the Standard Terms, the DCJ Supplementary Conditions prevail over the Standard Terms to the extent of the inconsistency.	Clause 2.1(c)	<p>Clause 1 of the DCJ Supplementary Conditions replaces clause 2.1(c) of the Standard Terms.</p> <p>Where there is a conflict between the DCJ Supplementary Conditions and the Standard Terms, the DCJ Supplementary Conditions apply.</p>
Clause 2 – Definition of ‘Financial Year’	Financial Year means each 12 month period commencing 1 July and ending 30 June.	None	<p>The DCJ Supplementary Conditions include a definition of ‘Financial Year’.</p> <p>This makes it clear to the parties that the relevant 12 month period is from 1 July - 30 June each year (rather than a calendar year).</p>



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Clause 2- Definitions of 'Program Specifications'	Program Specifications means the document as amended and replaced by DCJ.	None	<p>The Program Specifications is a document that is specific to the DCJ Schedule.</p> <p>The obligations placed on the Provider in relation to the Program Specifications are set out under clause 4 of the DCJ Supplementary Conditions.</p>
Clause 3(a) and 3(b) - Option to extend	<p>This gives DCJ a right to extend the Initial Term.</p> <p>DCJ will notify the Provider in writing within 30 days before the expiry of the Initial Term if it wishes to exercise the option.</p>	Clause 3.2 - Extension period	<p>Clauses 3(a) and 3(b) of the DCJ Supplementary Conditions are substantially the same as clause 3.2 in the Standard Terms.</p> <p>Clause 3(a) of the DCJ Supplementary Conditions expressly provides that DCJ's right to extend the Initial Term is an option to extend the term. This means that it is not obligatory for DCJ to extend the Initial Term.</p>
Clause 4 - Program Specifications	<p>The Provider must comply with the Program Specifications which may be amended or replaced by DCJ at any time.</p> <p>DCJ will take reasonable steps to notify the Provider of any changes to the Program Specifications that may have a material impact on the Services. However, it's the Provider's obligation to make sure it gets the current version of the Program Specifications and provides Services accordingly.</p>	None	<p>The Program Specifications are specific to the DCJ Schedule.</p> <p>It's expressly required that the Provider complies with the Program Specifications (as amended or replaced from time to time). The Program Specifications may be amended or replaced by DCJ at any time, and, if it's a material change, DCJ will notify the Provider.</p> <p>This supplementary condition is additional to the Standard Terms.</p>
Clause 5 - Accounts and records	The Provider must keep proper accounts and records of its use of the Funds separately from other accounts and records.	Clause 19.2(b)(i) - Record keeping	<p>Clause 5 of the DCJ Supplementary Conditions requires that a Provider keeps proper accounts and records.</p> <p>Clause 19.2(b)(i) of the Standard Terms, requires that an organisation keep sufficient records.</p> <p>Both the DCJ Supplementary Conditions and the Standard Terms require that accounts and records regarding use of the Funds be kept separate to the Provider's (or organisation's) other accounts and records.</p>
Clause 6 - Funds held on trust	The Provider agrees that the Funds are the property of DCJ and are held by the Provider on	None	This is an additional clause not included in the Standard Terms.



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	trust for the benefit of DCJ until the Provider delivers the Services.		The effect of this clause is that the Funds provided by DCJ to the Provider are held by the Provider on behalf of DCJ until the Provider applies the Funds for the purpose of delivering the Services.
Clause 7 - Additional funds	The Provider must give DCJ details of any additional monetary contributions it receives from another agency or authority that relate to the specific Services funded by the DCJ.	Clause 9.8 - Additional contributions	<p>The DCJ Supplementary Conditions impose additional requirements on a Provider to include details of:</p> <ul style="list-style-type: none"> • any additional funding amount • the agency providing it, and • the outputs and outcomes in connection with the funding. <p>There is a slight difference between the wording of clause 7 in the DCJ Schedule and clause 9.8 of the Standard Terms.</p> <ul style="list-style-type: none"> • The DCJ Schedule requires notification for additional funding relating to the provision of 'the specific services funded' • The Standard Terms requires notification for additional funding in relation to the 'facilitation of the Services.' <p>Organisations should seek legal advice if they are unsure whether to notify.</p> <p>Providers must still notify DCJ in writing within 10 Business Days of receiving additional funds under clause 9.8 of the Standard Terms.</p>
Clause 8 - Asset register	The Provider must give a copy of its Asset Register to DCJ within 4 months of the end of each Financial Year.	Clause 11.3 - Register of Assets	<p>This is an additional obligation imposed by DCJ. It means a Provider must regularly provide DCJ a copy of its Asset Register.</p> <p>Under the Standard Terms, an organisation only needs to record Assets in the Asset Register and provide a copy to the NSW government agency when requested or as part of any reporting requirements.</p>
Clause 9 - Termination without fault	DCJ and the Provider may terminate the Agreement at any time for any reason by giving the other party 90 days' notice.	Clause 13.2(b) - Termination without fault	<p>Under the Standard Terms, a party must give the other party 6 months' notice to terminate the Agreement without fault.</p> <p>Under the DCJ Supplementary Conditions, DCJ and the Provider</p>



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			only need to provide each other 90 days' notice.
Clause 10 - Privacy Legislation	The applicable Privacy Legislation is read down to exclude the <i>Privacy Act 1988</i> (Cth).	Clause 18.1(a) - Compliance with Privacy Legislation	<p>Under the Standard Terms, 'Privacy Legislation' is defined to include the <i>Privacy Act 1988</i> (Cth) (Act).</p> <p>Under the DCJ Supplementary Conditions, the Act is specifically excluded from having application.</p> <p>Caution</p> <p> This doesn't necessarily mean that your organisation isn't required to comply with the Act– it may have to comply for other reasons.</p>
Clause 11 - Records	<p>Where the Provider supplies out-of-home-care services, it must:</p> <ul style="list-style-type: none"> comply with section 170 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW), and maintain files of a child or young person. <p>This requirement applies for 7 years after the Provider stops being responsible for the placement of the child or young person.</p> <p>The Provider must deliver these records to DCJ either at the expiration of the 7 year period or if it stops being a designated agency within the 7 year period.</p> <p>The Provider must also deliver to DCJ all records relating to the placement in statutory or supported out-of-home-care of Aboriginal or Torres Strait Islander child or young persons within 60 days after the child or young person is no longer in the care of the Provider or in statutory or supported care.</p>	Clause 19.2 - Record keeping	Clause 11 of the DCJ Supplementary Conditions imposes compliance requirements that are specific to DCJ programs and in addition to the record keeping requirements under clause 19.2 of the Standard Terms.
Clause 12(a) - (e) - Reporting: Organisational Level	<p>The Provider must:</p> <ul style="list-style-type: none"> Where the Provider is required to prepare audited financial statements it must provide to DCJ copies of its audited financial statements accompanied by an audit certificate prepared by an independent auditor that meets the Accounting 	Clause 19.4 - Reports and information	<p>The DCJ Supplementary Conditions contain reporting requirements that are in addition to the reports and information requirements under clause 19.4 of the Standard Terms.</p> <p>The DCJ Supplementary Conditions require the Provider to give DCJ specific documents depending on whether or not it is required to prepare audited financial statements (certain types</p>



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	<p>Standards within 4 months of the end of the Financial Year,</p> <ul style="list-style-type: none"> Where a Provider is not required to prepare audited financial statements, it must provide to DCJ statements for profit and loss, financial position and changes in equity and cash flow. It must also provide notes, a Responsible Person's declaration and a compilation report. This must be done within 4 months of the end of the Financial Year. 		<p>of organisations such as public companies are required to prepare these statements).</p> <p>Note - under clause 12(d) of the DCJ Supplementary Conditions, local councils, universities and other bodies established under NSW legislation do not need to provide DCJ any of the documents listed under clauses 12(a)-(c).</p>
<p>Clause 12(f)-(g) - Reporting: Services</p>	<p>The Provider must provide an income and expenditure statement to DCJ for the Services it provides for Funds valued above \$25,000 and any additional Funds provided by DCJ within 4 months before the end of each Financial Year and at expiry or termination or on DCJ's request.</p> <p>The Provider must also give DCJ a certificate signed by two board members that certifies the Funds were spent in accordance with the Agreement. The certificates must be provided to DCJ within 4 months of the end of each Financial Year.</p>	<p>Clause 19.4 - Reports and information</p>	<p>Clause 12(f)-(g) of the DCJ Supplementary Conditions require the Provider to give DCJ specific documentation where certain conditions are met.</p> <p>These requirements operate in addition to the reports and information requirements contained in clause 19.4 of the Standard Terms.</p>
<p>Clause 13 - Data sharing</p>	<p>DCJ may share data, information and documents in relation to the Agreement under the <i>Data Sharing (Government Sector) Act 2015</i> (NSW).</p>	<p>None</p>	<p>DCJ's right to share data is in addition to its rights under the Standard Terms.</p> <p>Note - any data sharing must be in compliance with the <i>Data Sharing (Government Sector) Act 2015</i> (NSW).</p>
<p>Clause 14 - Research, evaluation and data collection</p>	<p>The Provider must give information to DCJ when requested for use in authorised surveys and research. If the Provider or a third party intends to conduct research into funded activities, it must notify DCJ and make sure the research complies with DCJ's guidelines.</p> <p>The Provider must collect and provide to DCJ information required to report on the Provider's performance under the Agreement, delivery of the Services and information in accordance with data collection</p>	<p>None</p>	<p>The Provider's obligations to collect and provide this information to DCJ operate in addition to the Standard Terms.</p>



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	requirements or for authorised surveys or research.		
Clause 15 - Reasonable access	<p>The Provider must supply the Services in a way that enables reasonable access to all persons in the Target Group (as set out under the DCJ Schedule to the Standard Terms) and take reasonable action to make sure any usual places where the Services are provided are physically accessible to the particular client.</p> <p>If there is no Target Group specified in the DCJ Schedule, the Provider must provide reasonable access to all persons.</p>	None	The Provider's obligations to ensure reasonable access and physical accessibility is provided operate in addition to the Standard Terms.
Clause 16 - Audits	<p>DCJ will endeavour to give the Provider:</p> <ul style="list-style-type: none"> 48 hours notice if it intends on accessing the Provider's premises 14 days notice if DCJ wants to attend a client or carer's home 10 Business Days notice if DCJ wants to review, audit or investigate performance, and reasonable prior notice in any other circumstances. <p>DCJ will endeavour to give the Provider details, reports and an opportunity to respond to an audit.</p> <p>If DCJ has serious concerns about the provision of Services, it has the right to attend the Provider's premises or inspect documents without giving the Provider notice.</p>	Clause 15.2 - Access to premises and records	<p>This DCJ Supplementary Condition has the effect of removing the operation of clause 15.2(b).</p> <p>This means that DCJ does not need to give the Provider 'reasonable prior notice' when it wants to access the Provider's premises, attend a client or carer's home or review the Provider's performance. Instead, the timeframes under clause 16(b) of the DCJ Supplementary Conditions apply. For all other circumstances, DCJ will endeavour to provide 'reasonable prior notice'. This term is not defined in the DCJ Supplementary Conditions or Standard Terms.</p> <p>DCJ's rights to attend a client or carer's home and attend the Provider's premises or inspect documents without notice where it has 'serious concerns about the provision of the Services' is additional to its rights under the Standard Terms.</p>
Clause 17 - Cooperation and assistance	The Provider must give DCJ access to its premises at no cost to DCJ.	Clause 15.3 - Cooperation and assistance	Clause 17 of the DCJ Supplementary Conditions operates in addition to DCJ's rights under the Standard Terms.
Clause 18 - Notice sent to the DCJ contract management portal	Notices, requests or other communications may be sent by DCJ and the Provider through the contract management portal (Correspondence).	Clause 23.1 - Notice requirements	Clause 18 of the DCJ Supplementary Conditions operates in addition to the notice requirements in the Standard Terms.



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	Correspondence must be signed by an authorised representative of the sending party.		Clause 18 of the DCJ Supplementary Condition allows for correspondence via the DCJ contract management portal.
	If using the contract management portal, Correspondence will be deemed to be delivered when the sender receives an automated message confirming delivery or 30 minutes after the time it was sent.	Clause 23.2 - Receipt of notices	

Resources

Not-for-profit Law resources

Not-for-profit Law has developed a Guide to the Human Services Agreement which includes a fact sheet, a template sub-contract agreement, and a range of checklists which should be read together. See Not-for-profit Law's page on [Government Funding Agreements](#):

- ▶ [Fact sheet - Human Services Agreement: Department of Communities and Justice Supplementary Conditions](#)
- ▶ [Fact sheet – Human Services Agreement: Important clauses](#)
- ▶ [Checklist 1 – How do we meet our notification obligations?](#)
- ▶ [Checklist 2 – How do we meet our reporting obligations?](#)
- ▶ [Checklist 3 – How do we practically comply with the Human Services Agreement?](#)
- ▶ [Checklist 4 – How do we meet our privacy obligations?](#)
- ▶ [Checklist 5 – How do we meet our intellectual property obligations?](#)
- ▶ [Checklist 6 – What are our obligations when engaging Personnel?](#)
- ▶ [Checklist 7 – What records and registers do we need to keep?](#)
- ▶ [Checklist 8 – Things to consider before entering into a sub-contract agreement](#)
- ▶ [Template Sub-contract Agreement](#)

Other related resources

- ▶ [NSW Government ProcurePoint](#)

Legislation

- ▶ [Privacy Act 1988 \(Cth\)](#)
- ▶ [Children and Young Persons \(Care and Protection\) Act 1998 \(NSW\)](#)
- ▶ [Data Sharing \(Government Sector\) Act 2015 \(NSW\)](#)