

Compendium of Legislation, Regulations, Policies and Guidelines relevant to the ACT Government resourcing relationship with NGOs delivering human services

A resource for ACT Government and Non-Government stakeholders to provide consistent and transparent information

FOUNDATIONS OF THE ACT GOVERNMENT RESOURCING RELATIONSHIP WITH NGOs DELIVERING HUMAN SERVICES		
PRINCIPLES	PROCUREMENT LEGISLATION, REGULATIONS AND POLICY RELEVANT TO HUMAN SERVICES	COMMISSIONING POLICY
<p>Procurement Principles: Consistency, transparency, and accountability Consideration of an appropriately competitive process Fairness and impartiality Appropriate security and confidentiality arrangements Identification and management of conflicts of interest</p> <p>Grant Administration Principles: Robust planning and design Collaboration and partnership Governance and accountability Proportionality An outcomes orientation Achieving value with relevant money Probity and transparency</p>	<p>Definition of Procurement - Procurement is defined in the Government Procurement Act 2001 as the process by which a Territory entity: (i) acquires goods or services by any contractual means</p> <p>Distinguishing Procurements from Grants - A grant is an arrangement where money is provided to a recipient as financial assistance by the Territory for a specified purpose that enables the recipient to achieve goals and objectives that are consistent with Territory policy.</p> <p>Government Procurement (Charter of Procurement Values) Direction 2020 PDF (act.gov.au)</p> <p>The Procurement Framework</p> <p>Probity in procurement guide</p> <p>Government Procurement (Ethical Treatment of Workers Evaluation) Direction 2023 (No 2) Notifiable instruments (act.gov.au)</p> <p>Aboriginal and Torres Strait Islander Procurement Policy - Procurement ACT</p> <p>Canberra Region Local Industry Participation Policy</p> <p>Addressable Spend under the Aboriginal and Torres Strait Islander Procurement Policy</p> <p>Australian New Zealand Government Procurement Agreement (ANZGPA)</p> <p>Definition of a Territory Entity</p> <p>Disposal of Goods</p> <p>Free Trade Agreements</p> <p>Circular Economy Act 2023</p> <p>Procurement during the Caretaker Period</p> <p>Procurement with Aboriginal and Torres Strait Islander Enterprises</p> <p>Procurement Record Keeping</p> <p>Risk Management</p> <p>Administration-of-Government-Grants-in-the-ACT.pdf</p>	<p>ACT Social Compact 2011</p> <p>ACT wellbeing-framework/domains-and-indicators [the alignment of wellbeing domains and factors relevant to human service design and delivery were mapped by SSP Project and are presented in Attachment A]</p> <p>Commissioning Roadmap 2024 Practice Guide</p> <p>Sector Sustainability commitments [p. 5 ACT Government Response to the Counting the Costs report]:</p> <p>"A sustainable, vibrant and diverse sector is one that:</p> <ul style="list-style-type: none"> attracts funding (through all sources) that covers the full cost of service delivery, has a skilled, stable and supported workforce, has strong data and research literacy, focuses more on value and less on cost, meets the needs of a diversity of service users, empowers service users to exercise choice and control in their own lives, and contains an evolving mix of small and large; new and established; local, regional and national; specialist and generalist organisations." <p>Definition of Human Services [source: p. 10 ACT Government Response to the Counting the Costs report]</p> <p>"The Government defines human services broadly. Human services investment encompasses support for a safe, healthy, inclusive community and in maintaining and promoting its quality of life. That support spans NGOs funded to deliver services across many sectors including safety, emergency and material aid, physical and mental health, housing, child and family, legal, employment, transit, education, recreation and culture. Human services contribute to daily living, to enable individuals, families and other groups in the community to develop, cope, function and contribute."</p> <p>Key Terms in human services administration [source: Human Service System Transition Policy (act.gov.au)]</p> <p>A system - is a set of interconnected activities that act from common principles for a common purpose. In the ACT, the human services system is a set of diverse interconnected programs supporting services that meet the wellbeing and health needs of the Canberra community.</p> <p>Programs - are formally designed clusters of activities for a target population or a target issue where service providers and government share a common goal. Many programs interconnect to deliver part of the system.</p> <p>A service - is a targeted set of actions that delivers a benefit to an individual, family, or community.</p>

ACTIVITY/ROLE	STAGE IN PROCUREMENT/GRANTMAKING CYCLE	OTHER RELEVANT LEGISLATION, REGULATION AND POLICY	COMMISSIONING CYCLE TOOLS & OTHER DIRECTORATE TOOLS/RESOURCES	TOOLS AND RESOURCES DEVELOPED DURING SSP OR AVAILABLE FROM OTHER SOURCES
Decide what process to use to allocate ACT Government Program funding to an NGO provider of human services, and what will be required from the service provider	PLAN = IDENTIFY NEED, ANALYSE AND PLAN Procurement Framework Thresholds FACTSHEET-Distinguishing-procurements-from-grants.pdf Approach to Market and Request Types Calculating Whole of Life Costs Early Market Engagement Procurement Record Keeping Procurement with Aboriginal and Torres Strait Islander Enterprises Canberra Region Local Industry Participation Policy Wellbeing Impact Assessment template	Human Rights Act 2004 Acts Financial Management Act 1996 Acts Public Sector Management Act 1994 Acts Freedom of Information (FOI) - ACT Government DG Directions - key compliance obligations with respect to resource management July 2022 Record Keeping	DISCOVER = Identify and document what we already know and what could be possible to explore through the commissioning cycle. Plan commission phases, including appropriate investment approach Tool - Commissioner checklist Template-Commissioning-Intentions Commissioning priorities <i>Current services map</i> <i>Conduct Needs Assessment</i> <i>Review existing needs assessments</i> Explore wellbeing of specific groups - ACT Wellbeing Framework Policy-Community-Participation-Payment-Policy-and-Claim Tool-Lived-Experience-Checklist STRATEGISE = Examine what will meet the needs of the ACT population and deliver on reform agendas Template-Discovery-discussion-paper Guide-Managing,-analysing-and-evidencing-input Template-Listening-Report This stage of the cycle should include consideration of Transition issues for Systems, Programs and Services. Transition guidance, tools and resources for each of these levels are provided here: Managing Transitions Policy - Commissioning	  

These are steps listed in the Discovery phase for ACT Government Commissioning for Outcomes

ACTIVITY/ROLE	PROCUREMENT AND GRANTMAKING TOOLS/RESOURCES	OTHER RELEVANT LEGISLATION, REGULATION AND POLICY	COMMISSIONING TOOLS/RESOURCES DIRECTORATE TOOLS/RESOURCES	TOOLS AND RESOURCES DEVELOPED DURING SSP OR DIRECTORATE RELATIONSHIP MANAGEMENT PROJECTS
<p>Allocate funding from ACT Government Program to an NGO provider of human services</p> <p>Procurement cycle stage:</p> <p>SOURCE</p> <p>Commissioning cycle stages:</p> <p>DESIGN AND INVEST</p>	<p>APPROACH MARKET, EVALUATE PROPOSALS, NEGOTIATE FUNDING ARRANGEMENTS</p> <p>Administration-of-Government-Grants-in-the-ACT.pdf</p> <p>Industry Briefings and Site Inspections</p> <p>Supplier Debriefing</p> <p>Value for Money Considerations</p> <p>Managing financial risks through the use of insurances, indemnities and performance quarantees</p>	<p>Outsourced-services-contract-requirements-FINAL-v1.0.pdf</p> <p>The negotiation phase should include consideration of transition issues – at System, Program and/or Service levels:</p>	<p>DESIGN = Define and design the service requirements and service outcomes.</p> <p>Service Specifications and Outcomes Framework</p> <p>Commissioning Roadmap Practice Guide</p> <p>What we mean by collaborative design - Commissioning (act.gov.au)</p> <p>ACT Government Probity Briefing - Proximity on Vimeo</p> <p>Template-GOVERNMENT-Transition-Planning</p> <p>Template-SECTOR-Service-Transition-Planning</p> <p>Insurance requirements (see Attachment B)</p> <p>INVEST = Purchase the right services from the right provider at the right price, through a fair and transparent process.</p> <p>Understand the investment pathways - Commissioning (act.gov.au)</p> <p>Template-Strategic-Investment-Plan</p> <p>Guidelines for use of electronic signatures in ACT Government Agreements with external parties: Electronic-Signatures-Factsheet-April-2020.docx (sharepoint.com)</p> <p>ACT Health Pricing Schedule template (A43938194) (1).xlsx</p>	<p>Could include docs from NGOs here that they would consider good practice at this stage of the cycle</p> <p>See links at:</p> <p>www.actcoss.org.au/sector-sustainability-project-knowledge-hub/</p>
<p>Manage funding relationships, monitor compliance with funding requirements and evaluate impact of funding on achievement of ACT Government Program objectives</p> <p>Procurement cycle stage:</p> <p>MANAGE</p> <p>Commissioning cycle stages:</p> <p>DELIVER</p>	<p>MANAGE = AWARD CONTRACT</p> <p>Service Funding Agreement templates are available to ACT Government staff from the Shared Services intranet site: SFA Templates</p> <p>Administration-of-Government-Grants-in-the-ACT.pdf</p> <p>Contract variations</p> <p>Notifying contracts and invoices</p> <p>Descriptions for Notifiable Contracts and Notifiable Invoices</p> <p>Standard Supplier Payment Terms and Payment Method Policy</p> <p>MONITOR, REVIEW</p>	<p>Territory Privacy Principles Quick Reference - HRC</p> <p>Children and Young People Act 2008 HTML view</p> <p>Health records - ACT Government</p> <p>ACT-Performance-and-Accountability-Framework-FEB-2020.pdf</p> <p>ACT Government Evaluation Policy and Guidelines</p>	<p>DELIVER = Maintain collaboration between sector partners and commissioner to deliver the desired outcomes</p> <p>Human Services Reform Outcomes</p> <p>Domains and indicators - ACT Wellbeing Framework</p> <p>ACT Government Strategies and Plans linked to WB Priority Groups</p> <p>https://www.act.gov.au/_data/assets/pdf_file/0007/2388103/ACT-Womens-Plan-2016-2026-Third-Action-Plan.pdf</p> <p>https://www.act.gov.au/_data/assets/pdf_file/0008/2381138/ACT-Aboriginal-and-Torres-Strait-Islander-Agreement-2019-2028.pdf</p> <p>https://www.act.gov.au/_data/assets/pdf_file/0008/2380643/ACT-Carers-Strategy-2018-2028.pdf</p> <p>https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0005/1378184/Capital-of-Equality-An-ACT-Government-strategy.pdf</p> <p>https://www.act.gov.au/_data/assets/pdf_file/0004/2386156/Age-Friendly-City-Plan.pdf</p> <p>https://www.act.gov.au/_data/assets/pdf_file/0010/2380798/ACT-Disability-Justice-Strategy.pdf</p> <p>Transition Planning templates</p> <p>Government:https://www.communityservices.act.gov.au/_data/assets/word_doc/0011/2428058/Template-GOVERNMENT-Transition-Planning-.docx</p> <p>NGO:https://www.communityservices.act.gov.au/_data/assets/word_doc/0005/2428061/Template-SECTOR-Service-Transition-Planning-new.docx</p>	<p>Relationship Management Procedures:</p> <p>CSD DRAFT 2022 Fact Sheet Relationship Management FM comments.docx</p> <p>CSD DRAFT 2022 Standard Operating Procedure for Relationship Managers.docx</p> <p>Efficiencies in funding administration – the short list of funding efficiencies listed in Listening-Report 3 July 2024 were agreed by the ACT Government Commissioning Senior Officials Group in March 2024.</p>

ATTACHMENT A

MAPPING WELLBEING CAPITALS TO EXPERIENCE OF ADVERSITY AND NEEDS WHEN ACCESSING HUMAN SERVICES

Green = the indicators of wellbeing mapped to each of the wellbeing capitals, these capacities/capabilities protect people from adversity and enable people to bounce back more easily from adversity

Amber = people and communities who experience discrimination and stigma, face barriers to building the capitals that are the foundation for wellbeing and for whom private and public resources to address adversity can be inaccessible, inappropriate and/or ineffective

Red = indicators of deprivation and/or exclusion across one and/or multiple wellbeing domains – people in these circumstances face an increased risk of negative impact from adverse events and adverse circumstances; have limited access to resources to cope with adversity; and public resources can be inaccessible, inappropriate and/or ineffective

The general population				
Human services supplement informal support in response to adverse circumstances and events	<i>Indicators of wellbeing that reduce the risk of adversity and enable effective response/recovery after adversity - People and communities with access to these capitals have better capacity/capability to achieve wellbeing and bounce back more easily from adverse circumstances and events.</i>			
	SOCIAL CAPITAL =Capacity/Capability	ECONOMIC CAPITAL =Capacity/Capability	ENVIRONMENTAL CAPITAL =Capacity/Capability	HUMAN CAPITAL =Capacity/Capability
	Experience Belonging	Secure and Adequate Income	Adequate/Affordable insurance	Good health
	Informal support networks (friends, family, neighbours) strong and reliable	Asset Base to draw on as circumstances change	Reliable access to infrastructure and environments	Healthy Lifestyle
	Feel safe at home		Secure tenure in housing	Education is accessible and suitable to needs
	Feel safe in community – physically and culturally			Have met education attainment milestones
	Feel safe to express your identity	Secure tenure		Positive early childhood experiences
	Volunteer	Digital access (devices and data)		Digital Literacy
	Work:Life Balance			Access to services
	Needs are known and met in mainstream service system	Own Private transport that is registered and insured		Drivers licence

The groups who are at risk of low levels of wellbeing capitals				
Human services increase access to support, advocate for needs to be met by system and build future personal capacity/capability to reduce future risk	<i>Priority Population Groups - Includes people and communities who experience discrimination and stigma, face barriers to building the capitals that are the foundation for wellbeing and private and public resources to address adversity can be inaccessible, inappropriate and/or ineffective</i>			
	SOCIAL and ECONOMIC CAPITAL <i>Social and Economic Deprivation and Exclusion</i>		ENVIRONMENTAL and HUMAN CAPITAL <i>Social and Environmental Infrastructure is inaccessible/inappropriate/ineffective</i>	
	Time Poor	Unable to access \$2000 in an emergency from family/friend	Disability unsuitable/inaccessible infrastructure and environments	Public transport inaccessible
	Unable to access informal support networks	Could not pay registration or insurance on time Went without meal		No drivers licence No private transport
	Social Isolation	Sought assistance from welfare/community organisations		Skills/Education not recognised
	Caring responsibilities	Pawned or sold something Sought financial help from friends or family		Low digital literacy
	Advocacy required to have needs known and met	Could not pay gas, electricity or telephone bill on time, Unable to heat home		Low literacy in English
	Needs are not met in mainstream service system	Spend more money than received		Low numeracy

	The people in our community who experience the cumulative impacts of low levels of wellbeing capitals; discrimination, disadvantage and vulnerability; deprivation and exclusion. These cumulative factors impact on the level, breadth, depth and complexity of need when accessing human services			
Human services are critical to addressing personal risk factors, reducing exclusion and deprivation, redesigning system to meet needs and building future capability/ capacity of individuals, families and service system to reduce future risk	<i>People who experience deprivation and/or exclusion across one and/or multiple wellbeing domains - Face an increased risk of negative impact from adverse events and adverse circumstances; have limited access to personal resources to cope with adversity; and public resources can be inaccessible, inappropriate and/or ineffective</i>			
	SOCIAL CAPITAL Harm in family and/or community Burden of Responsibilities	ECONOMIC CAPITAL Inequality and/or Exclusion from market	ENVIRONMENTAL CAPITAL Increased costs of living and/or risks from climate change & Exclusion from green space and nature	HUMAN CAPITAL Personal risk factors
	Victim of crime	None/Inadequate insurance	Housing not able to withstand extreme weather event	Chronic illness
	Domestic/Family Violence	Unaffordable housing	Insecure tenure in housing	Illness/Disability not recognised in service system
	Childhood neglect/abuse	Homeless	Climate Change Mitigation measures not accessible/appropriate/effective in circumstances	Service system not resourced to meet depth, length and complexity of needs
	Sexual assault and harassment	Low/No savings		Barriers to access to health care
	Feel unsafe in neighbourhood	Only source of credit is credit card or non-bank loan		Barriers to access to education
	Advocacy for needs is unheard/misunderstood	Insecure/Inadequate income		History of trauma
	Don't feel culturally safe	Insecure work		Barriers to digital services
	Experience harm from mainstream service system	Unemployment		Unable to engage online

ATTACHMENT B

Details of any insurance certificates, bank guarantees, indemnities or Statements of Tax Record required from the funded organisation, any expiry or renewal dates and storage location details should be specified in the request for proposal/tender.

[Insurance and guarantees information included in the ACT Government Funding Managers Guidelines]

Advice can be obtained from the following sites:

- The ACT Insurance Authority provides insurance coverage and risk management advice for the ACT Government. The Authority's website can be accessed at [ACT Insurance Authority \(www.treasury.act.gov.au/actia\)](http://www.treasury.act.gov.au/actia)
- The Department of Treasury offers advice on public liability insurance and risk management for small business and community groups. This advice can be accessed at [Insurance and Risk Advice \(www.insuranceriskadvice.act.gov.au\)](http://www.insuranceriskadvice.act.gov.au)
- A guide to risk management for volunteer groups and non-government organisations. This can be accessed at [Risk guide for non-government organisations \(www.treasury.act.gov.au/risktrain/Txt01IntroSteps.html\)](http://www.treasury.act.gov.au/risktrain/Txt01IntroSteps.html)

Legislation and Policies to be considered

- Procurement Circular: *2007/14 Managing financial risks through the use of Insurances, Indemnities and Performance Guarantees*

This circular provides information on managing the risks when entering into contracts for all procurement activities.

- *Public Liability Insurance –Financial Management (Public Liability Insurance) Determination 2007* or the *Financial Management (Public Liability – Non Profit Entities) Determination 2007*

Insurance Requirements

Appropriate insurance is an important consideration in determining how to manage the financial risks for the ACT government and for the funded community organisation and is a condition of entering into a Service Funding Agreement (SFA). It is imperative that adequate insurances are identified and mitigations 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.

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 (Public Liability Insurance) Determination 2007* stipulates procedures to be undertaken to determine appropriate levels of public liability insurance in relation to a funded activity.

This determination requires that a community organisation answers a number of questions about its activities and the organisation in general, and provides a risk level for that program, which in turn determines the level of Public Liability Insurance required by that organisation.

Undertaking the procedures set out in the *Financial Management (Public Liability Insurance) Determination 2007* or the *Financial Management (Public Liability – Non Profit Entities) Determination 2007* will give the appropriate level of insurance to be reflected in the agreement. This procedure is to be completed prior to finalising the agreement.

When a new funding agreement is being negotiated, it is an obligation of the recipient of funding to complete a risk assessment to determine their level of risk. If the organisation has a higher level of insurance for other reasons, then that would be considered cover for the new service. (Should an attachment, with flow chart and links, be included of how to arrive at PL insurance determination ?) To be discussed by Working Group members.

If an organisation, during the funded period, undertake 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.

Professional Indemnity Insurance covers breach of professional duty - arising out of any negligent act, error or omission committed or alleged to have been committed by the Insured in the conduct of the Insured's professional activities (their profession or "business"). The minimum level of professional indemnity accepted by the ACT Government is normally \$5 million ranging up to \$20 million where significant exposures are identified. The ACT Insurance Authority will assist agencies to arrive at a suitable level of cover required following a risk assessment. In some instances sums insured of less than \$5 million may be acceptable.

This insurance is particularly relevant in the case of service delivery such as health care services but is also relevant in terms of advisory services.

There is a growing trend in Australia for legal action to be taken against professional advisers for losses incurred as a result of following their advice. This type of insurance was once limited to professional activities such as stock brokers, accountants, engineers but now is arranged for many different types of organisations, consultants or advisers.

The main measure is whether an individual or organisation gives advice upon which another individual or organisation may act and subsequently suffer some form of financial loss as a result of following that advice.

An agency should determine whether an exposure exists under a service agreement for breach of professional duty and what the worst possible financial loss might be, should the contractor or provider breach their professional duty. Some organisations would clearly have no exposure to such a professional indemnity risk.

Other Insurances

The front end of the SFA, Section 5, *Organisations Obligations, 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.

Workers Compensation insurance is mandatory for providers 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.