



A Fairer Funding and Service Agreement





VCOSS report to the Service Agreement Working Group (SAWG) and the Human Services and Health Partnership Implementation Committee (HSHPIC)

May 2019

The Victorian Council of Social Service is the peak body of the social and community sector in Victoria.

VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups and individuals interested in social policy.

In addition to supporting the sector, VCOSS represents the interests of Victorians experiencing poverty and disadvantage, and advocates for the development of a sustainable, fair and equitable society.

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A fully accessible version is available online at vcoss.org.au/policy/



VCOSS acknowledges the traditional owners of country and pays respect to past, present and emerging Elders.

This document was prepared on the lands of the Kulin Nation.



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Executive summary

The Victorian Council of Social Service (VCOSS) welcomes the opportunity to work with the Department of Health and Human Services (DHHS) and the Department of Education and Training (DET) to negotiate a new Funding and Service Agreement for the Victorian community services industry.

The historic 10-year Community Services Industry Plan developed between the Victorian Government and the community services industry is a unique partnership between the industry and government. In order to achieve the vision of the plan “Victorians live good lives in thriving communities supported through integrated, connected and sustainable community service organisations that are recognised as the central pillars of a vibrant, inclusive Victoria” the contractual arrangements between government and organisations need to promote partnership, fairness and transparency.

VCOSS and the non-government members of the Service Agreement Working Group worked with the Government to secure some improvements to the previous service agreement in 2015. Additional changes would help make the service agreement modern and fit-for-purpose and improve the process for community service organisations.

The recommendations in this report have been formed following extensive consultation with peak bodies and community service organisations. Many of the recommendations reinforce the recommendations made by the Victorian Auditor General in its report *Contract Management Capability in DHHS: Service Agreements*.

Recommendations

Term of agreement

1. Set the term of the new service agreement as four years

Service agreement drafting/clauses

2. Include a set of principles in the preamble about the partnership between government and the community service industry
3. Consult with the Aboriginal Executive Council and Aboriginal organisations about clauses to include in the agreement to support Aboriginal self-determination
4. Introduce a consultation clause in the service agreement for when legislative or policy change impact on organisations and/or increase their compliance costs
5. Add a clause to provide additional funding for organisations when changes in legislation or policy increase their compliance costs
6. Amend the variations clause to ensure organisations have time to consider variations to their agreement and to negotiate with the Department on changed requirements under the service agreement
7. Include in the service agreement a process for funding indexation, as announced by the Premier, and redraft the triggers for exceptional circumstances funding
8. Develop a plain English service agreement, reducing legal and complex language, to assist organisations in understanding their obligations and DHHS in administering the agreement
9. Remove or redraft subjective clauses and vague standards
10. Improve the consortia and partnerships clauses to reflect contemporary practice
11. Remove selected legislative requirements such as Clause 17 (Privacy and Data Protection Act compliance) and avoid cherry picking some legislative requirements (but not all) to include in the agreement

12. Tier the service agreement to risk, as recommended by VAGO. This may take the form of a long form agreement for high risk services and a short form agreement for low risk services with less burdensome requirements
13. Do not add clauses that impinge on organisations independence; they have their own governance frameworks and legal requirements
14. Clearly define the term 'records' in the service agreement
15. Invest ownership of records in the organisation, not the Department. The Department can have access to relevant records when needed.
16. Review the clauses around confidentiality of organisations' information, especially around performance reviews, suspension, cessation and termination

Service agreement processes

17. Align performance monitoring and service agreement oversight to risk
18. Build capacity of organisations to understand the service agreement through providing plain English tip sheets and guidance. This also includes providing information to organisations on the plethora of legislative requirements
19. Make the Funded Agency Channel more user-friendly
20. Build capacity of departmental staff to administer the service agreement in accordance with partnership principles
21. Address short – term funding trends in the community services industry
22. Reduce reporting and regulatory duplication and streamline compliance

Background

The current Funding and Service Agreement (referred to as service agreement throughout this document) between the Department of Health and Human Services (DHHS), Department of Education and Training (DET) and community services organisations is due to expire in June 2019. The service agreement covers a wide-range of services and organisations across the community services industry, stipulating the terms and conditions that both parties must follow.

In 2018, the Victorian Auditor-General's Office (VAGO) reviewed the contract management capability in DHHS looking specifically at the way contracts are managed by DHHS. The report found:

DHHS does not have sufficient capability to manage its service agreements¹

VAGO recommended the agreement be more fit-for-purpose with unnecessary complexity and duplication in clauses be removed and clauses be consistently applied. DHHS has accepted all of VAGO five recommendations for it to:

- apply quality assurance when setting service agreement performance measures
- develop a system-wide framework for risk-profiling funded organisations
- clarify roles and responsibilities, and improve staff skills and capabilities
- capture corporate knowledge
- redesign the service agreement performance monitoring framework.

The Victorian Council of Social Service (VCOSS) as the peak body for community service organisations in Victoria plays a critical role in negotiating the terms of the service agreement on behalf of the industry and in partnership with other sector representatives through the service agreement Working Group (SAWG)² which is a sub-committee of the Human Services and Health Partnership Implementation Committee (HSHPIC)³.

¹ VAGO, Contract Management Capability in DHHS: Service Agreements, September 2018

<https://www.audit.vic.gov.au/sites/default/files/2018-09/20180920-Contract-Management-Capability.pdf>

² SAWG members include representatives from DET, DHHS, VCOSS, ECMS, Centre for Excellence in Child & Family Welfare, Launch Housing, VACCHO, Mackillop, Justice Connect, ECIA Vic, Berry Street, Yooralla, National Disability Services, Victorian Alcohol & Drug Association, Uniting Care

³ HSHPIC Members include representatives from DHHS, Carers Victoria, Centre for Excellence in Child & Family Welfare, Community Housing Industry Association Victoria, Council to Homeless Persons, Domestic Violence Victoria, National Disability Services, Mental Health Victoria, Victorian Aboriginal Controlled Community Health Organisation, Victorian Alcohol & Drug Association, VCOSS, Victorian Healthcare Association, and the Youth Affairs Council of Victoria

VCOSS and the non-government members of the SAWG are committed to ensuring the new service agreement is streamlined, modern and meets the needs of a growing and complex industry.

In negotiating the 2015 agreement the non-government members of the service agreement Working Group made many recommendations for improvement in the agreement, and in the management of the service agreement by government. Some of these improvements to the service agreement made in the last round of consultations and negotiations in 2015.

Improvements in the 2015-2018 Service Agreement

Longer notice periods in some circumstances, including in relation to termination and to respond to government requests to provide records.

Assets, by limiting the application of provisions dealing with the use and disposal of assets to only those assets for which funding has been specifically allocated, and limiting the requirements to obtain government consent prior to the disposal of an asset.

Dispute resolution, by allowing for mediation in the event of a dispute if both parties agree.

Cessation, by extending the notice period from immediate to three months when ceasing services either because there is a change in Victorian Government policy or because government does not receive sufficient funds.

Termination, providing three months' notice and payment of reasonable costs necessarily incurred in the event that government terminates the service agreement.

Intellectual property, with respect to the licence granted in relation to 'Background Intellectual Property' and ownership of 'Project Intellectual Property'.

Procedural fairness, including a new clause providing that consent from government will be given within a 'reasonable time'.

Acknowledgement of issues relating to the transition to the NDIS, included in the Background to the service agreement.

However, the non-government members of the Service Agreement Working Group (SAWG) remain concerned about a number of issues that were not resolved satisfactorily as part of the 2015 review.

The non-government members of Service Agreement Working Group made preliminary recommendations to DHHS in December 2018 to improve the service agreement prior to consultation with the sector.

Following these preliminary recommendations VCOSS conducted further consultations between February and April 2019, in order to make final recommendations to DHHS and DET about the changes that need to be made to the service agreement and the process that sit around the agreement. Consultation sessions were held in Bendigo, Shepparton, Traralgon and Melbourne, with a wide cross section of organisations and peak bodies across the community services industry.

Term of agreement

RECOMMENDATIONS

- Set the term of the new service agreement as four years

What we heard

Organisations need certainty and stability

Organisations would benefit from additional certainty about the length of their contracts and the conditions under which they will operate. A four-year term means organisations could pursue longer-term contracts without the need to renegotiate terms.

Service agreement drafting and clauses

Strengthen the partnership between organisations and government

RECOMMENDATIONS

- Include a set of principles in the preamble about the partnership between government and the community service industry
- Consult with the Aboriginal Executive Council and Aboriginal organisations about clauses to include in the agreement to support Aboriginal self-determination
- Introduce a consultation clause in the service agreement for when legislative or policy change impact on organisations and/or increase their compliance costs
- Add a clause to provide additional funding for organisations when changes in legislation or policy increase their compliance costs
- Amend the variations clause to ensure organisations have time to consider variations to their agreement and to negotiate with government on changed requirements under the service agreement
- Include in the service agreement a process for funding indexation, as announced by the Premier, and redraft the triggers for exceptional circumstances funding

What we heard

Strong partnerships between government and organisations are essential

Strong partnerships between DHHS and DET staff and the organisations that deliver services was identified as a crucial element to the success of programs and had a direct impact on client outcomes. Many organisations described their relationship with government as “challenging” with this greatly impacting their ability to comply with service agreement

requirements. A number of other organisations indicated that they were fearful of asking questions about their service agreement so as not to jeopardise future funding.

Those consulted disclosed that relationships between organisations and government staff could be highly differential and dependent on who was in the role at the time. Some organisations were able to develop strong partnerships that included regular meetings and high levels of support however, there were many examples where this was not the case.

It was acknowledged that it was sometimes difficult for government staff in regions who often had a good understanding of local issues but limited authority to advocate on behalf of local organisations.

A set of clear principles about the partnership would help guide relationships and build more consistency. Regional staff and organisations should be engaged in the drafting of the principles.

Aboriginal self-determination is missing from the service agreement

Organisations and peak bodies highlighted the need for the service agreement to support Aboriginal self-determination and Aboriginal community controlled organisations (ACCOs). ACCOs and the Aboriginal Executive Council should be consulted in the development of these provisions.

Staff changes impact on the partnership

It was noted that staff changes within government had a profound impact on ongoing partnerships. These changes often reduced organisations' confidence in the ongoing management of their contracts and often led to "double handling and loss of corporate knowledge".

Staff expertise in contract management and the service agreement is variable

Consultations also indicated that knowledge about contract management by Department staff was extremely variable. Some Departmental staff were described as having very limited knowledge of the service agreement and therefore unable to provide basic support about compliance with specific terms. Conversely, some organisations described the power imbalance between them and government because of the limited level of knowledge held by the organisation. Some noted that parts of DHHS were continuing to operate under old practices despite updates to Department policy. This made it difficult to navigate requirements and increased the workload by organisational staff due ad hoc requests for information by DHHS staff.

Organisations are often not consulted or confused about variations

The service agreement would be strengthened by requiring additional consultation, time for negotiation and support for organisations when variations are being considered, as a result of legislative or policy change.

The current service agreement allows Departments to make unilateral changes to the agreement without prior consent from the other party. This issue was highlighted by a number of examples where very minor changes were made to the service agreement and organisations informed by a generic email that did not contain any specific details of the nature of the change. This required the organisation to spend considerable amounts of time seeking to understand the variation.

Organisations were aware that the change would go ahead whether they understood it or not and as a result did not feel they could ask questions. Organisations recognised the need for flexibility in some areas of the service agreement (timeframes, deliverables) but in practice they believed that this was only possible on the government side of the contract. It was noted that some changes could be significant with one organisation having only a matter of days to comply with a very significant change. Changes can also increase costs for organisations, potentially leading to reductions in frontline service delivery.

DHHS and DET could also consider limiting changes to once a year, rather than having a number of small changes periodically throughout the year. There were a number of examples provided where there were errors in the targets set but these were not able to be changed despite recognition by both parties of the error.

Indexation helps make organisations sustainable

Inadequate indexation of funding had put organisations under extreme pressure to deliver on outcomes that were not possible within the allocated funds. Additionally, organisations felt pressured to make difficult decisions about service delivery, knowing that their clients would miss out on essential services if they did not provide them. Funding in general was described as being grossly inadequate.

A commitment was made by Premier in June 2018 to raise indexation to help organisations meet the increased costs of providing services. This increase must be coupled with a clear process for determining future indexation including the trigger for exceptional circumstances funding.

Organisations did not believe that indexation had taken into account the multitude other costs of investments in IT system upgrades, staff training, superannuation increases and

other on costs. The cost pressures were magnified in regional areas where the cost of transport and the great distances covered in service delivery models was not accounted for. A number of organisations stipulated that central office staff of DHHS did not display an understanding of the great distances that covered by regional services.

The cost of financial auditing, which can enter in the thousands of dollars, has also had an impact. One organisation received their indexation as one lump sum and had to calculate apportioning the funds across 120 contracts to comply with auditing requirements.

The impact of enterprise bargaining and Award increases had also added further financial pressures to organisations with one indicating that the funding received as being “barely enough to cover the EFT” of the employee rolling out the program.

Indexation also did not reflect the changes in compliance requirements, increase costs of doing business and the need for the industry to come up with new a creative ways to engage with service users in a modern world.

Improve the clarity and accessibility of the service agreement

RECOMMENDATIONS

- Develop a plain English service agreement, reducing legal and complex language, to assist organisations in understanding their obligations and DHHS in administering the agreement
- Remove or redraft subjective clauses and vague standards
- Improve the consortia and partnerships clauses to reflect contemporary practice

What we heard

The service agreement could better encourage partnerships and consortia

Consultations with organisations acknowledged that consortia could sometimes create opportunities that may not have been otherwise been possible and that government was encouraging their use. Despite this, the level of communication by Departments was often dependent on whether the organisation was the consortium lead or not. One organisation described the challenges presented when requirements of the service agreement were not being filtered down by the consortium lead.

On the other hand, a number of lead organisations were often expected to do a great deal of coordination between consortia members, creating large amounts of additional work that did not attract additional funding.

Vague terms leave organisations uncertain about how to comply

Organisations reported difficulties understanding some terms of the existing service agreement, especially where they are vague or subjective. For example, organisations are not always clear whether they have met the requirements ‘in the Department’s reasonable opinion’ or to ‘the Department’s reasonable satisfaction.’

Make sure oversight is aligned to the level of risk

RECOMMENDATIONS

- Tier the service agreement to risk, as recommended by VAGO. This may take the form of a long form agreement for high risk services and a short form agreement for low risk services with less burdensome requirements
- Do not add clauses that impinge on organisations independence; they have their own governance frameworks and legal requirements

What we heard

Regulation and compliance requirements do not always match the level of risk

During consultations, organisations described the approach to risk management by Departments as “overkill” and did not recognise the fact that many organisations had their own built in measures to protect clients from harm. This “micromanaged” approach reflected a perceived lack of trust in the organisation and in its industry specific accreditation processes. This then led to duplication of risk assessments.

It was noted that the various royal commissions as well as social attitudes and public perceptions were also having an impact on risk management, leading to a greater requirements around risk attestation and resourcing to manage these perceived risks. This approach was costing organisations many thousands of dollars and required the allocation of additional staffing resources that was not recognised in funding allocations.

The cost of accreditation and compliance was also highlighted as an issue as organisations grapple with the requirements in the service agreement as well as requirements in other industry specific accreditation processes. This issue was further compounded by limited IT infrastructure and administrative systems and when programs received funding from multiple sources.

Consultations also raised concerns about the current level of additional scrutiny on community controlled boards and the fear that this could increase as governments become more risk adverse.

Clarify arrangements around records and confidentiality

RECOMMENDATIONS

- Clearly define the term 'records' in the service agreement
- Invest ownership of records in the organisation, not the Department. The Department can have access to relevant records when needed.
- Review the clauses around confidentiality of organisations' information, especially around performance reviews, suspension, cessation and termination
- Remove selected legislative requirements such as Clause 17 (Privacy and Data Protection Act compliance) and avoid cherry picking some legislative requirements (but not all) to include in the agreement

What we heard

Existing record keeping arrangements do not work in practice

Many organisations reported concerns about the record arrangements under the existing service agreement, and a preference for organisations to own their own records. Some organisations indicated that compliance with the existing record keeping requirements of their service agreement had presented a number of challenges.

A number of organisations raised concerns about complying with recording keeping requirements in cases where a program ceases and client records are returned to government. There was also concern about who should hold relevant client records and for how long. This issue was amplified by the associated cost of records storage, both in electronic and paper form. Issues around cybersecurity requirements and the limited ability for information sharing about service users, sometimes even between consortia partners, was also highlighted.

Confidentiality of information is important to organisations' reputations

Several organisations highlighted recent examples where information about services performance, governance and compliance challenges were made public. There was support for reviewing the clauses related to confidentiality, to make sure the balance between public safety, people's right to information and organisation's privacy is met.

Informing clients their information may be shared with government may mean loss of engagement

Some organisations and peak bodies expressed concern that vulnerable clients may disengage from services if they are worried their information will be shared with others. Organisations highlighted a range of different ways they maintain engagement with vulnerable people, but noted the importance of having flexibility in how and when they discuss privacy issues with their clients.

As discussed in the section on data security, some organisations are also concerned about their capacity to meet data security requirements within existing funding.

Service agreement process

RECOMMENDATIONS

- Align performance monitoring and service agreement oversight to risk
- Build capacity of organisations to understand the service agreement through providing plain English tip sheets and guidance. This also includes providing information to organisations on the plethora of legislative requirements
- Make the Funded Agency Channel more user-friendly
- Build capacity of departmental staff to administer the service agreement in accordance with partnership principles
- Address short – term funding trends in the community services industry
- Reduce reporting and regulatory duplication and streamline compliance

What we heard

Organisations have differing levels of understanding of the service agreement

Consultations with organisations highlighted varying levels of knowledge about the terms and conditions of the service agreement. This was often impacted by a number of factors, including, organisational staff knowledge and capacity, relationships with DHHS staff; and the size of the organisation. Plain English information and guidance about the service agreement would help organisations build their knowledge about the agreement and related documents.

A number of organisations believed the service agreement was written for larger providers and that their limited capacity and knowledge had inhibited their ability to understand specific clauses. Despite being required to print out the service agreement and read the terms and conditions in their entirety, many indicated that the language used was overly complex and legalistic.

It was noted some clauses in the service agreement appeared to contradict each other, making it difficult to know what compliance should look like. Others highlighted the arduous

task of reading the many other documents that sat alongside the service agreement that provide additional detail.

Many organisations, both small and large stated that they did not have sufficient time for staff to attend training to build their capacity on contract management, leading to concerns about inadvertent non-compliance.

The Funded Agency Channel is difficult to navigate

Service agreements are uploaded to the Funded Agency Channel which also contains information about deliverables, financials, targets and other associated documents. The Funded Agency Channel was described as “frustrating” and “impossible to find anything” with many unable to find the relevant information about either their original agreement or changes made to it over the contract period. This resulted in many hours lost searching for relevant clauses and changes, often requiring follow up with Departmental contact for resolution.

It was suggested that plain language explanations of key clauses and clear navigation pathways to changes would be of great benefit. This could be of particular use when multiple changes are made in a short period of time. One person described the frustration at receiving up to ten generic emails each day alerting to changes in the organisation’s service agreements, some of which amounted to very minor adjustments in funding.

Short-term funding limits organisations’ ability to plan and be sustainable

During consultations, short-term funding was considered one of the most significant barriers to organisations’ viability, ability to innovate and forward plan. The short-term nature of funding contracts was also impacting the delivery of essential services to Victoria’s most vulnerable people.

The increased use of short-term contracts has led to issues attracting and retaining qualified staff and had “a significant detrimental impact of budget planning and staff retention”.

Those consulted provided numerous examples of staff engaged who were forced to leave roles before the expiration of their contract in order to find other work with a longer term of contracted employment.

An organisation described the “soul destroying” occurrence where an employee had to leave the organisation due to funding not being renewed only to have it finally “rolled over” after the person left.

Another organisation was going as far as to employ contractors to provide services but this had been done at a higher cost.

The issue of short-term funding was often further compounded by long delays between contract renewals. Some organisations continued to employ contracted staff despite not receiving any funding as a way of providing certainty for service users. For many small organisations this was simply not possible and employees were made redundant, leading to loss of continuity and corporate knowledge.

Many organisations were confused by terms such as “ongoing” and “recurrent” funding and the difference between them. Some organisations indicated that they were unsure of the expiration of their agreement and that Department staff were sometimes unable to clarify. Others said that it was sometimes implied that contracts would be renewed but were not given certainty for some time. They also pointed to lengthy delays between approval of a program and the receipt of the associated funds, leading to issues around cash flow and solvency.

One organisation described the irony in the family violence space needing to recruit large numbers of staff to respond to the growth in the industry but only being able to offer 12 month contracts. In some cases, by the time the recruitment process had concluded, employment contracts were only of eight to nine months in total, making it extremely difficult to attract suitably qualified staff.

[Smaller organisations need a different approach to contract management and compliance](#)

Many small organisations faced significant issues around their capacity to understand and comply with the terms and conditions of their service agreement. The impact of this was the likelihood that some organisations were inadvertently not complying with aspects of their agreement, particularly around the onerous requirements such as in the area of data security.

It was suggested that smaller organisations may need a different approach to contract management by government Departments, one which recognises the challenges they face around viability, solvency and recognition of self-determination principles.

Small organisations are often managed by volunteer boards or committees of management made up of local people who understand the unique needs of their communities. There was concern that these small, volunteer run organisations would be lost over time if they were not better supported in this critical area of contract management.



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