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Re: Government Procurement Inquiry – Further Information on SACOSS Submission

We are writing further to the SACOSS Submission to the Government Procurement Inquiry to provide new information in relation to one matter raised in our submission.

At pages 7-8 of our submission we noted the problem of late payments to our sector, and in particular that we believed that the changes to the *Late Payment of Government Debts (Interest) Act 2013* last year meant that not-for-profit organisations (NFPs) incorporated under state law appeared to now be excluded from the Act (as the payment of interest on late payments only applies to entities registered under the *Commonwealth Corporations Act*). We can now confirm this is the case.

Shared Services SA advises us that although small not-for-profits were previously entitled to interest on late payments, none applied in the five years preceding the changes to the Act. We believe that this was probably due to either not knowing they had the entitlement, or to barriers in the application process (including being seen to be “troublesome”), and the fact that in many instances the trigger for payment in the Act was circumvented by the arrangement whereby the department issues its own invoices (under the Recipient Created Tax Invoice agreement). The changes last year were designed to remove the knowledge and application barriers by making payment automatic, but many NFPs will now miss out altogether.

We now have a situation where state registered NFPs will be treated differently (and disadvantageously) to federally registered NFPs and for-profit businesses. As we noted in our original submission, this is clearly unacceptable.

We have also now been advised that rectifying this situation is best done by legislative amendment, for instance by including NFPs registered under the *SA Associations Incorporation Act* alongside those registered under the *Commonwealth Corporations Act* as entities entitled to automatic interest on late payments.

Accordingly, we can now be more specific in relation to Recommendation 3 of our original submission and we ask that the Productivity Commission recommend that the *Late Payment of Government Debts (Interest) Act 2013* be amended to ensure that interest on late payments is automatically payable to all NFPs regardless of their incorporation status or invoicing system.

Thank you for your attention to this matter. If you require any further information, please contact me at greg@sacoss.org.au or by phone on 8305 4229.

Yours

A handwritten signature in black ink that reads "G. Ogle". The signature is written in a cursive, slightly slanted style.

Dr Greg Ogle
Senior Policy Officer

9 January 2019



SACOSS

*South Australian Council
of Social Service*

**Submission in response to
the South Australian Productivity Commission
Government Procurement Inquiry
Issues Paper, November 2018**

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SACOSS Submission in response to the SA Productivity Commission Government Procurement Inquiry
Issues Paper, November 2018

Submitted 18 December 2018

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Summary of Recommendations

1. That the Productivity Commission note and endorse the advances made in the SANFRAG process and the new service contracts.
2. That the Productivity Commission note the distinction between grants and procurement and that a procurement framework may not always be the most appropriate approach to NFP funding.
3. That the Productivity Commission confirm the applicability or otherwise of the Late Payment of Government Debts Act to NFPs, and if it is the case that NFPs are excluded from the automatic payment of interest for late payment this be rectified so that interest is payable to all NFPs regardless of their incorporation status or invoicing system.
4. That the Productivity Commission endorse an outcomes focus in procurement and make recommendations around training of procurement staff to ensure that micro-management and invasive requirements are kept out of NFP funding.
5. That the Productivity Commission recommend that NFPs should not be required to repay unexpended funds, except where there is a failure to deliver contracted services and money is not being spent on contracted services, and that the standard NFP contracts be altered accordingly.
Or, in the alternative, if that is not agreed:
That the Productivity Commission recommend that accounting for and potential repayment of unexpended funds only be done at the completion of a contract term (ie. not annually), and that the standard NFP contracts be altered accordingly.
6. That the Productivity Commission examine the questions asked in a sample of human services procurements and cross-reference these to the quality assurance/service excellence standards with a view to reducing any duplication.
7. That the Productivity Commission recommend that, as per SACOSS' 20-point plan, SPB procurement policies should include (best practice, if not mandatory) timeframes around each stage of procurement ensuring that NFPs have time to consider tenders, build community support and alliances where needed, and for due diligence consideration of contracts.
8. That the Productivity Commission recommend that procurement thresholds be reviewed in collaboration with representatives of funding recipients, and that thresholds be based on annual expenditure rather than contract totals.
9. That the Productivity Commission note the importance of co-design at the earliest stages and recommend that when dealing with significant human services procurements and/or complex long term social issues, government and the NFP sector develop collaborative service investment planning to identify community

need and how to best tackle the issues (prior to dealing with acquisition questions of how to procure services).

10. That the SA Productivity Commission recommend that a co-designed process be entered into around the scope, role and structure of an NFP advocate.

Introduction

As the peak body for the not-for-profit (NFP) health and community services sector in our state, the South Australian Council of Social Service (SACOSS) welcomes the Productivity Commission Inquiry into government procurement. Our sector is a major provider of services to vulnerable and disadvantaged people, both self-funded and funded by government through both grants and procurement. Accordingly, the rules and processes that govern procurement have a major impact on our sector – both enabling our sector to work at a scale we would not achieve on our own, but also taking up the resources of the sector in funding applications, reporting and compliance.

Before directly addressing the questions and matters in the Productivity Commission's Issues Paper, two introductory issues need to be canvassed because they provide crucial background both to this submission and to any recommendations to improve procurement in relation to the NFP sector. The first is the recent history of reform which, we believe, has or will address a range of problems with procurement in our sector. The second is the issue of where and whether procurement is the appropriate process for funding the things our sector does, and where and whether grants or other funding mechanisms may be more appropriate.

SANFRAG and the NFP Reform Agenda

In 2013 SACOSS conducted broad consultation with our sector about their experience of state government funding and developed a [20-point plan for Better Contracting and Red Tape Reduction](#). SACOSS took the issues from the 20-point plan and worked with government and other peak bodies in the reform process that became known as the South Australian Not-for-Profit Funding Rules and Guidelines (SANFRAG).

While the original intention of the SANFRAG was a comprehensive overhaul of all NFP funding, the process has taken a long time and changed directions a number of times. However, there have been some concrete outcomes which have been welcomed by the sector:

- The development of [principles for funding of not-for-profits \(PC 044\)](#)
- Additions to [State Procurement Board Guidelines](#) of particular processes and considerations when dealing with not-for-profit (NFP) funding
- The [indexation policy](#) applying the standard state government indexation rate in full to all multi-year NFP funding contracts
- The development of a standard contract template with fixed terms and conditions and a limited "special conditions" clause bank to provide standardisation of contracts across all departments and funding streams. (At the time of writing, these contracts were awaiting final approval so we can't provide a copy to the Productivity Commission, but they should soon be available from the Department of Treasury and Finance and will eventually replace the current suite of Service Agreement contracts and Master Agreements).

Broadly speaking, SACOSS believes that the first and second points above are fine as far as they go, but have often made little difference to procurement practices. The application of standardised indexation has been a really important reform in ensuring that the value of

service funding is not eroded over time. However, as will be discussed later in this submission, there are examples of departments still not passing on this indexation and so for all three of these there are questions over implementation and government compliance.

The standardised contracts will, when implemented, be a significant improvement and red tape reduction for the NFP sector. The templates will be easier to use than many existing contracts and will remove the current two-step process in many contracting arrangements where basic terms and conditions are in a Master Agreement while specific services are funded through separate service agreements. The standardisation in the new contracts will reduce the need to have legal checks and arguments over basic terms in each contract and will remove the current problem of having different requirements in different contracts on the same issue (e.g. different departments using different child safety screening clauses). The new contract terms themselves also provide for much simpler and less one-sided funding conditions:

- many of the intrusive clauses from the existing Master Agreement have been removed (for instance, around rights of entry and investigation [clauses 14.5.3 and 39 of the Master Agreement],
- the shopping list of insurance requirements [clause 17 of the Master Agreement]) has been removed so NFP Boards can make their own decisions about their organisation,
- clauses with unclear meanings or open-ended requirements have generally been clarified or reviewed (e.g. the previous failure to stipulate index rates, and requirements to abide by government policies which could be unilaterally changed [e.g. clauses 6.1.3 and 15.7 of the Master Agreement] – meant that NFPs could not know what they were contracting to deliver or for how much).

SACOSS hopes that many procurement problems that relate to contracts, including some of those identified in the Issues Paper (e.g. the second, fourth, fifth and sixth dot points under the Cost of the Tender Process on page 9) will be addressed by the adoption of the standard whole-of-government contracts. For this reason SACOSS is keen to see those contracts implemented as soon as possible, and we take procurement with these contracts as the starting point of this submission.

In using this starting point we assume the Productivity Commission's inquiry will not undermine any of the progress made through the SANFRAG process, but it is also the case that those contract terms are not perfect. There remain some issues of contention, particularly in relation to unexpended funds, late payments, thresholds and with specific clauses (e.g. the Suitable Persons clauses). There are also a range of issues, particularly around timing and the onerous requirements for provision of information in tender processes, which are outside the terms of the contracts and could be improved in the procurement process.

Recommendation 1:

That the Productivity Commission note and endorse the advances made in the SANFRAG process and the new service contracts.

Grants vs Procurements

One of the key issues that arose through the course of the SANFRAG has been the distinction between grants and procurements. The distinction is crucial – not least because of the different legislative environment with only procurements coming under the *State Procurement Act*. While the SANFRAG templates and processes have tried to more closely align the requirements of both grants and procurements so there is less difference for both sector organisations and government administrators, there is a distinction in the logic of the two. In SACOSS' view, grants recognise the good work that our sector organisations do and provide funding for NFP organisations to exist (core funding) and/or do more of that work, while procurement is funding to provide services on behalf of government.

Broadly speaking over the last 20 years our sector has seen a move from grant funding to procurement. This has reflected or resulted in a greater sense of government “ownership” and control of service provision and often a failure to recognise the role, independence and expertise of the sector. This has been compounded by somewhat vague definitions in the *State Procurement Act* which have potentially pulled into the procurement area some funding which would normally be regarded as a grant.

SACOSS understands that the Department of Treasury and Finance has provided advice to government about amendments to the definitions in the Treasurer's Instruction and the *State Procurement Act* to help clarify funding arrangements and that the result may be a (re)broadening of the applicability of grants. While there will inevitably be grey areas in any definition, SACOSS welcomes these moves and wants to see this finalised to ensure the ongoing possibilities of grant funding.

We understand from the Issues Paper that this inquiry is dealing only with procurement (not grant-funding), but it is important to say at the outset (and in reference to the 3rd term of reference about the appropriateness of procurement arrangements) that SACOSS considers that much funding of our sector would be better done through a grants logic and framework (including the provision of core funding) and we would like to see a return to more grants-based funding. However, even where procurement is the best approach, as set out below, we believe that there can be improvements made to processes to reduce red-tape and compliance costs for our sector.

Recommendation 2:

That the Productivity Commission note the distinction between grants and procurement and that a procurement framework may not always be the most appropriate approach to NFP funding.

2. Business Views and Issues

In relation to the feedback sought in section 2 of the Issues Paper, SACOSS shares many of the concerns raised and will make particular comment in relation to Question 2.1 on the cost of the tender process and the issue of delayed payment. In response to Question 2.2 we will also raise two additional issues not discussed in the Issues Paper: the invasiveness of contract conditions, and the reclaiming of unexpended funding (an issue which is specific to funding NFPs).

Feedback Request 2.1

Cost of the Tender Process - Proportionality

Tender processes can take enormous time and resources for not-for-profit organisations, often out of proportion to the amount of money involved. Clearly given that payment is being made in advance of service provision and services are being provided to vulnerable people, there needs to be some level of scrutiny and government risk management, but it should be proportional to the risks and the sums involved. Sadly, it is often not proportional and leads to considerable administrative burden on NFPs.

In 2014 in response to a cancelled tender process for the Family and Community Development Program funding from the [then] Department of Communities and Social Inclusion (DCSI), SACOSS asked a number of sector organisations involved for estimates of staff time and costs put into the F&CD process. The estimates ranged from about \$3,000 to \$15,000, with one agency with multiple tenders across several regions calculating their costs to be over \$30,000. We understand that 79 organisations submitted tenders in that process, so based on a conservative estimate of an average cost per organisation of \$5,000, we estimate that the total cost to the sector in tendering for the F&CD program to be nearly \$400,000. The overall amount of funding for the program at tender was just over \$8m, and mostly in small, regionalised programs. (The cost of the tender actually ended up greater than these estimates in that later that year the Minister reinstated the tender outcomes and the successful NFPs had to recalculate their costs for an expression of interest if they still wanted the funding).

Further examples of disproportionality are outlined in the section below on thresholds.

Proportionality is one of the key principles on the funding principles in PC044, but our sector has seen little change since this policy was mandated.

Delayed Payment

Unlike the business sector where payment is made after the provision of goods and services, most procurement from NFPs is done via funding in advance (hence the need for special NFP contracts rather than using the government's Standard Goods and Services Contract). However, late payment remains an issue for NFPs who are forced to find money from elsewhere to fund services until payment is made. For many NFPs whose major funding sources do not allow for accumulation of funds, this has long been identified as a problem. It was referred to in our 20-point plan in 2014 and in our [2016-17 State Budget Submission](#) which noted that:

this year SACOSS had one member organisation only days from insolvency because of delays to their contract payment, while in the recent past disability service providers waited more than six months to receive funding for services they were providing.

The issue has not gone away. Our [2018 State Election Platform](#) (published in January this year) noted that in the last two months SACOSS had been notified of 3 organisations who were owed in each case over \$100,000 in payments from different government departments – again creating significant financial difficulties for those organisations.

Part of the problem is that there is currently no incentive for government departments to pay on time. The government recognised the problems late payments caused for those with limited reserves when it passed the *Late Payment of Government Debts (Interest) Act 2013*. This provided for penalty interest to be paid for late payment, thus creating an incentive for timely payment and a relief to service providers who may have needed to borrow money to address their cash flow problems. That Act was limited in that it only applied to small businesses, including NFPs. SACOSS is not aware of any NFP actually applying for the interest, and in many cases the arrangement whereby the department issues its own invoices (under the Recipient Created Tax Invoice agreement) means that the trigger would not be available as the penalty provision was triggered by the date of issue of the invoice.

SACOSS' [2018 Election Platform](#) sought to have the provision of penalty interest for late payments extended to all NFPs. However, instead we understand that the Act was amended this year to extend to all businesses, but the changes in legislation appear to exclude most NFPs. The Act now only provides for interest for late payments to entities registered under the Commonwealth *Corporations Act* – which is problematic given that many NFPs are incorporated under the state *Associations Incorporation Act*. Under the old Act NFPs were included if they were small, but those NFPs appear to have lost the right to interest on late payments while large NFPs (who are not federally incorporated) miss out on the rights afforded to similar size for-profit businesses. SACOSS is still trying to confirm with Treasury whether our understanding is correct, but if we are correct, this is clearly unacceptable.

Recommendation 3:

That the Productivity Commission confirm the applicability or otherwise of the Late Payment of Government Debts Act to NFPs, and if it is the case that NFPs are excluded from the automatic payment of interest for late payment this be rectified so that interest is payable to all NFPs regardless of their incorporation status or invoicing system.

Feedback Request 2.2

Invasiveness of Contract Terms

One issue not covered in the business concerns listed in Issues Paper is the invasiveness of some contract terms. This is different from simply onerous reporting, and is an extension of overly-onerous and micro-managed contract selection criteria and contractual requirements. These can dictate not just what services are to be provided, but how and by whom. For instance, contract requirements may stipulate not just that persons performing the service be suitably qualified, but the level of staff, the amount/percent of contract allowed for administration costs, and the sorts of policies required by the organisation (beyond quality accreditation). While many of these contract requirements have thankfully been removed from the new standard contracts, there remain some examples including child screening requirements which go beyond legislation, and Health SA and Office of Recreation and Sports contracts requiring smoke-free zones (which may be problematic in dealing with some human services users, but the clauses have been included in the optional clause bank for the new contracts).

Further, in the new contracts there remains the general possibility of government departments interfering with how NFPs do their work by the requirements under the clause

4.4(d) which requires services be delivered “in accordance with any policies and government directions”. As a result of negotiation, this clause has been limited to require the policies to be notified in writing, and (we believe) only be notified at the time of the Agreement. This is a considerable improvement on the similar requirement in the current Master Agreement [clause 6.1.3] where the Minister may give such policies or directions “from time to time” (which is open ended and means NFPs may not know what they are contracting to do), but it still legitimises and retains the possibility of government interference in NFP operations.

Beyond the contracts themselves, SACOSS is concerned that these invasive clauses and requirements may re-surface in service schedules as part of the description of services or in other ways through a procurement and funding process, including through contract meetings. Concerns have already been reported to SACOSS of Department of Child Protection contract management meetings which go beyond performance against KPIs and drill down into FTE levels and individual budget line items in multi-million dollar contracts (rather than the key questions of whether the services are being delivered in budget).

Another example of invasive micro-management is from February this year when clauses relating to ICAC reporting were being imposed on sector organisations in relation to a number of services, including domestic violence anti-poverty programs, extreme weather response brokerage services and some homelessness services. The clauses were being inserted by DCSI into Performance Improvement Plans which appear to be part of contract reporting requirements. This is a problematic way of imposing extra conditions on NFPs beyond those in the agreed terms and conditions (of the current Master Agreement – or soon to be SANFRAG contracts), and in this case the requirements themselves are particularly problematic.

In a table of proposed actions in the Plans, under the heading “Actions to be taken” the following appeared:

“Add ICAC requirements to Staff Induction Package”

Next to it under the heading “Strategies and Notes”

“The Service has indicated ICAC Obligations will be incorporated into the Complaints Policy. Staff of the program are considered “Public Officers” under the ICAC legislation. Information on what this means to staff needs to be included in staff induction manual.

It is recommended that this be included in the same section as mandated notifications.

The action will be achieved when the contract manager has sighted a copy of the inclusion of ICAC obligations in relevant policies.”

Various NFPs complained about this at the time and SACOSS believes that it is a gross over-reach and an imposition on the independence of the service provider. If the Department believes that NFPs may not understand their ICAC obligations this could be dealt with in some other (non-intrusive) way – eg. a tick box in a tender document or a warranty in the contract, rather than a detailed dictation of staff management and induction. SACOSS is not sure of the final resolution of this in relation to each contract, but the drive for micro-

management evident here is inappropriate – and the requirement for the Contract Manager to sight the copy of relevant documents is petty.

SACOSS' view is that the contract should mandate that services be provided to a relevant standard (as per clause 6 of the new contract template) and the contract management should focus on whether the contract outcomes are achieved. Beyond that, as a general rule the government should let the NFP work out how best to provide those services.

Recommendation 4:

That the Productivity Commission endorse an outcomes focus in procurement and make recommendations around training of procurement staff to ensure that micro-management and invasive requirements are kept out of NFP funding.

Unexpended Funds

Most procurement contracts with NFPs provide funding in advance with a requirement that if that money is not used, or not used for that purpose, it needs to be repaid. The DCSI Master Agreement (clauses 7.6 and 9.1) requires the accounting for and usually the repayment of unexpended funds at the end of a contract, while other departments (and some Service Agreements from DCSI – including the Service Agreement with SACOSS as a peak body) require accounting and repayment on a yearly basis.

Despite the strong arguments of the sector, the new standard contract contains a requirement for yearly accounting and potential repayment of unallocated funds:

10.1 Upon each anniversary of the Commencement Date during the Agreement or other date as may be specified in Attachment 1 (“Block Funding Reconciliation Date”) and at the end of the Agreement, if the NFP has not expended all of the Block Funding, it must notify the Government Party of the unexpended amount and may submit a written request for retention or carryover of unexpended amounts specifying:

- (a) the amount to be retained or carried over; and
- (b) the purpose for which the unexpended amount will be used.

10.2 The Government Party must consider the NFP's request and notify the NFP in writing whether it:

- (a) agrees that the NFP may retain or carry over all or part of the unexpended amount; or
- (b) requires the NFP to repay all or part of that amount as notified by the Government Party, to the Government Party within 30 days of receipt of the notice from the Government Party.

While the wording offers more hope of flexibility than previous contracts, it remains problematic for a number of reasons:

- the basic idea of recouping unexpended funds goes against the logic of the tender process (that the government has agreed to pay \$X for the provision of a service),

- it treats NFPs and for-profits companies differently in that for-profit providers can bid, agree a price and take whatever money is not allocated to services as profit, while NFPs can not,
- it creates considerable red-tape and compliance costs for NFPs, particularly when done annually where it may capture funds not expended simply for timing or sound contract management reasons, and
- it is a barrier to innovation by providing a disincentive for innovation and efficiency improvements as any money saved will be required to be handed back to government, rather than invested in better services or organisational sustainability.

Further, while the new contract clause has some flexibility to apply to roll over funds, in practice the government powers under the clause and the well-founded the belief that some departments will simply demand repayment as a matter of policy means that there is a perverse incentive for NFPs to ensure that all funding is spent in a given year. This could be done through bringing forward expenditure, re-prioritising what may have been optional expenditures, or possibly by re-allocating other expenditures to ensure that there is “accounting to zero”. These options are obviously not efficient, value-for-money outcomes.

SACOSS believes that in an outcomes-based procurement process, the question of unexpended funds should only arise where services are not being delivered and/or outcomes not being achieved and where that money was not being spent on the services as per the contract. Otherwise, if the government has agreed a price for the provision of services and those services are being provided to the agreed standards, that should be the end of the matter.

Recommendation 5:

That the Productivity Commission recommend that NFPs should not be required to repay unexpended funds, except where there is a failure to deliver contracted services and money is not being spent on contracted services, and that the standard NFP contracts be altered accordingly.

Or, in the alternative, if that is not agreed:

That the Productivity Commission recommend that accounting for and potential repayment of unexpended funds only be done at the completion of a contract term (i.e. not annually), and that the standard NFP contracts be altered accordingly.

3. SA Government Procurement System

Feedback Request 3.1, 3.2

In relation to the matters in section 3 of the Issues Paper, SACOSS would like to raise two issues in relation to the procurement process and restricted acquisition approaches, and then one relating to timing matters within the SPB Simple Procurement Policy. We also raise concerns with the thresholds, though in a broader sense than that canvassed in Feedback question 3.3.

Pre-qualification and the failure to use quality accreditation

The Issues Paper notes the different approaches to acquisition planning, including pre-qualification as a basis for undertaking further open or selective procurement processes.

SACOSS believes that this could be used as a red-tape reduction mechanism within the contracting process, particularly when coupled with service quality accreditation (where it is appropriate to the size and nature of the services). While forms of pre-qualification or “preferred provider” status have been used, and while quality assurance accreditation is required for most human service contracts, these are often not taken into account in the tender processes which still require proof of quality and capacity in every application. As purpose-driven organisations, our sector exists to assist vulnerable and disadvantaged people and has been doing so in many cases long before the government entered that particular service field. More importantly though, the quality accreditation recognised by government requires a range of policies and practices to be in place, and yet tender processes often require separate evidence demonstrating these same standards. Similarly, where NFPs are charities registered by the federal ACNC, they require certain governance and reporting standards, yet tender documents ask for evidence of the same things. This is an unnecessary duplication.

The aspiration which has been spoken about nationally as a “charity passport” would see charities with accreditation reporting once and being able to use that (and the fact of their registration) as sufficient proof of various governance and financial standards. However, short of that, it would still be an improvement in state procurement if tender documents utilised existing quality accreditations and ACNC registrations to be able to skip questions in the tender process.

Recommendation 6:

That the Productivity Commission examine the questions asked in a sample of human services procurements and cross-reference these to the quality assurance/service excellence standards with a view to reducing any duplication.

Targeted procurement – Collective Impact in the SPB Policy

The Issues Paper on restricted approaches notes the possibility and a rationale for negotiated approaches and notes when it tends to occur, but does not say when it is “favoured” as it does for open market approaches. Moreover, it sits under a normatively negative heading of “Restricted Approaches” as opposed to “Open market approaches” – when it could as easily have been referred to as direct or targeted approaches. In this context, SACOSS simply wants to draw the Productivity Commission’s attention to the importance and rationale for targeted approaches and limiting the number of suppliers outlined in the NFP “Grey Box” on page 12 of the [Simple Procurement Policy](#). These were inserted arising from the SANFRAG discussions and reflect some of the nuances of delivery of human services. The collective impact approaches recognise that most social problems are multidimensional and need to be tackled in conjunction with other issues/responses – rather than as a stand-alone service, while requirement to contract specific NFPs in particular areas recognises the importance of social capital held by many NFPs and that if that relationship to the community is severed as a result of changed funding, vulnerable people may be adversely effected and/or simply drift away.

Accordingly, SACOSS endorses the SPB policy approach to allow for the use of (collective) impact and enable targeted procurement in human services.

SPB Procurement Policy and Contract Timing and Length

As noted at several points in the SACOSS 20-point plan, the timing of procurement processes and most importantly the length of contracts are of critical importance to the NFP sector and the services we provide. The State Procurement Board has taken up two of the timing issues identified by SACOSS and others and its [Simple Procurement Policy](#) provides that:

public authorities must establish contractual agreements of three years plus three years plus three years (3+3+3) for all NFP procurements longer than two years where appropriate (p.7)

and that

Where there is funding certainty, a minimum of six months' notice must be provided to not-for-profit organisations regarding whether long term contracts are to be renewed (p.10).

SACOSS welcomes these initiatives, although the wording is more qualified than the short quotes above and could be improved because SACOSS still receives complaints about short timeframes and notice periods. There have been several instances of failing to offer 3 year or 3+3+3 year funding as recommended by the policies. For instance, this year Grandparents for Grandchildren had to fight to get more than one-year funding from Department of Human Services (DHS), and now have a 1+2 year contract – which at best seems to be the Department using the contract term as a quality management tool rather than using the contract management and reporting processes to address any concerns.

Similarly, in funding of Specialist Homelessness Services, DHS is currently only offering 1 year contracts. In SANFRAG negotiations around the 3+3+3 framework (which is now in the SPB Policy) SACOSS used homelessness services as a definitive example of where long term contracts should apply: you are not going to solve homelessness in 1 year or 3 years, so there will be an ongoing need for services – and those services need to have the stability of long-term funding. However, even in this definitive example, the policies are not being followed and short term contracts are being offered. The reasons for such short-term contracts is usually the possibility of review, a need for flexibility, or potential budget changes – but these are always present and can be accommodated in the longer contract frameworks through contract management, variation or ultimately even termination. They are not reasons for not offering long term contracts, and if allowed would undermine the broad policy goal of longer contracts.

Part of the issue here is that the SPB policy wording retains flexibility for government agencies, but rather than using that flexibility to implement the PC044 principles, the departments may take this as wiggle room to operate as if their procurement processes were special and the policies did not apply. In these instances the policies could be improved by tighter wording to ensure the principles are complied with, although the current wording might suffice if there was an independent NFP advocate/process to hold agencies to account (proposal discussed below).

There are also other areas where timing is not mandated. SACOSS still gets complaints about:

- short turn-around times for tender applications (especially where co-operation with other NFPs or government agencies is required),
- long times to hear results of tender processes, and
- short periods for contract negotiation which do not allow NFPs with volunteer boards that meet once a month time for due diligence and a proper consideration of contracts.

SACOSS' own example of timing problems was the signing of its peak body funding contract in 2015. The previous contract expired on 30 June 2015, but despite long discussions over the previous year we were not presented with a draft of the new contract to consider and sign until 2 July. After considering some serious contract issues arising from the text (including clauses which the Department could not explain the meaning of, but which we were told could not be changed), SACOSS signed the contract and returned it to the Department on 9 October. The contract was not signed by the Minister until 3 November, and received by SACOSS on 10 November 2015 – although the funding still had not been paid at that time. As a result for at least 5 months of the first year of the contract SACOSS had to pay staff and continue services using its own resources.

This issue has not gone away and is not limited to one department. For instance, SA Health currently has funding contracts arrangements due to expire on 31 December (for example with HepatitisSA) and although notice of renewal had been given, by early December SA Health have not been supplied a draft contract to Hepatitis SA for consideration. A letter was supplied in mid-December proposing to vary the contract with a 5.5 year extension, but with a reduction of funding and no clarity on a key issue of funding for wages pursuant to the Fair Work Australia Equal Remuneration Order. This is particularly problematic as it means that the value of the contract is unclear and makes it difficult for Hepatitis SA to exercise due consideration of the contract, and makes forward planning impossible.

Recommendation 7:

That the Productivity Commission recommend that, as per SACOSS' 20-point plan, SPB procurement policies should include (best practice, if not mandatory) timeframes around each stage of procurement ensuring that NFPs have time to consider tenders, build community support and alliances where needed, and for due diligence consideration of contracts.

Feedback Request 3.3

Thresholds on multi-year contracts

Question 3.3 in the Issues Paper asks whether the thresholds for small, medium and large tenders are reasonable. This is largely after the discussion of the Industry Participation Policy and the Economic Contribution Test. However, the issue of thresholds is broader as it:

- relates to the type of contracts offered and the rules governing them (e.g. base level procurements under \$33,000, simple procurements \$33,000 and \$550,000, or more complex procedures above that), and
- it is crucial to the proportionality of risk and reporting.

However, there are two compounding issues that make the thresholds inappropriate. Firstly, the thresholds that apply to the size of the funding allocation in a particular procurement program may be very different from the size of the contracts offered to NFPs. And secondly, when the thresholds are taken over the life of a multi-year contract rather than the annual value, the thresholds quickly lose appropriateness and the requirements become disproportionate and oppressive.

An example of the first problem can be seen in the DCSI tender for the provision of Emergency Relief funding. The department opened a tender for NFPs to provide emergency relief funding to people requiring immediate crisis funding, and divided the funding into government regional areas. The funding was for a three-year period, but the yearly allocation in some areas was around \$20,000. However, as the overall procurement program was of significant value in totality, there was a full and detailed tender process. In practice, given that only around 10% of the contract funding was allowable as administration expense (the remainder being the Emergency Relief distribution) for some NFPs the application process probably cost more than the whole administration allocation for the first year (leaving little ability to actually administer the funding efficiently).

The problem of thresholds for multi-year funding is also evident in SACOSS' own peak body funding from DHS. The contract is for \$423,000 in the first year (ex-GST) with indexation and ERO supplement payable for the following two years of the 3 year contract. This funding nominally allows SACOSS to employ about 3 staff. At \$423,000 it should fit as a simple procurement, but the procurement thresholds take the 3 year value making it a contract for around \$1.3m. And there has been some suggestion from government with a 3+3+3 policy applying, the whole total should be considered – which would mean the value of the contract is probably around \$5m. This would put SACOSS above the threshold requiring a Standard Industry Participation Plan – for funding that allows for the employment of 3 staff.

Again, the issue is proportionality and risk. In this case, the funding is for 3 staff for an organisation that has been around for 70 years and has a unique position as a peak body accountable to the sector. But the issue is not unique to SACOSS and could apply to very small organisations and contracts. For instance, a contract for \$15,000 a year should be able to be dealt with using the simplest procurement as it is under the \$33,000 threshold, but if it is a 3 year contract it goes over that threshold into the much more complex procurement regime.

Most importantly though, the notion of risk associated with multi-year funding is flawed if it sees the entire multi-year funding as being at risk of being misused or lost at any one point. The contract will be reported on each year and the government can monitor performance through appropriate contract management and negotiate changes or even cancel the funding if there are serious problems identified. In reality, the risk is only ever one year (or technically less given the funding in advance is usually done quarterly and the government can cancel the contract with limited notice).

The twin and compounding issues of basing thresholds on total value of procurement programs (rather than the size of the contracts) and on the multi-year funding totals is a big driver of lack of proportionality in procurement.

Recommendation 8:

That the Productivity Commission recommend that procurement thresholds be reviewed in collaboration with representatives of funding recipients, and that thresholds be based on annual expenditure rather than contract totals.

Change Management and Enforcement

As noted above, SACOSS is looking forward to the implementation of the standardised contracts and building on the SANFRAG principles, and we hope for further improvements in procurement arising from this Productivity Commission Inquiry. However, our experience to date with the SANFRAG reforms suggests that there will need to be a strong change management process to fully realise the benefits of all these changes. Our experience is that even when policies are mandated and contracts clearly agreed, there can be resistance to change in government agencies and an inability of NFPs to assert their rights in the procurement process.

We noted above that our sector had seen little change since the PC044 principles were enacted in that short-term contracts are still being offered despite those principles and the policies of the SPB.

Similarly, we are not aware of changed recruitment procurement practices to involve NFPs in planning and selection processes, despite the community development principles of PC044 and the recommendation in the SPB [Simple Procurement Policy](#) (p.6). This SPB stakeholder engagement approach envisages co-design with NFP and government authorities working together at the very first stage of procurement to identify community needs and desired outcomes – a process which is prior to the technical acquisition planning. SACOSS has not been party to or aware of examples of where this has been done (with the possible exception of the aspirations of some collective impact projects, but these projects have largely struggled for resources and funding). In this context, SACOSS believes that large scale human services procurement, and procurement around particularly complex social issues, should begin with a jointly developed service investment plan to identify community needs and priorities and agree the best approaches to dealing with those issues. This would be a significant change which would require not just policy but also culture change in both government and our sector.

Recommendation 9:

That the Productivity Commission note the importance of co-design at the earliest stages and recommend that when dealing with significant human services procurements and/or complex long term social issues, government and the NFP sector develop collaborative service investment planning to identify community need and how to best tackle the issues (prior to dealing with acquisition questions of how to procure services).

Beyond issues of inaction in relation to SANFRAG principles and processes, there have been cases of active resistance to change. This has been most evident in the response to the Indexation Policy which should have seen all multi-year NFP funding indexed according to the standard government rate. Previous practice was that each Department/agency would

set its own rate – including in one instance, SA Health setting the NFP indexation rate at 0% (which in this case meant that NFPs had signed contracts with indexation [unspecified] only to find that in effect there was no indexation). The standard rate and policy was designed to stop these practices and to provide certainty for NFPs so they would know the value of the contract at the time of signing. However, in response to the standardisation policy, SACOSS understands that for some period at least, the Office for Recreation and Sport and some parts of Arts SA did not believe the policy applied to them, while at least a part of the Environment Department simply stopped issuing multi-year contracts (a practice in which avoids the indexation requirement but probably breaches the PC044 and the SPB policy). Our understanding is that Arts contracts are now being indexed, but Recreation and Sport contracts are not – a clear breach of cabinet policy.

While SACOSS has heard many of these concerns, it is hard for NFPs to challenge or hold the government party to account for these misbehaviours, let alone to negotiate to avoid onerous, inefficient or ineffective procurement processes or contract terms where there is not an overarching policy. This goes back to the power imbalance with the government agencies that fund NFPs. While some NFPs raise significant sums of money direct from the community (which itself requires considerable resources) many NFPs face a virtual monopsony in terms of funding sources. This creates a massive imbalance of power in the procurement process. Where NFPs are reliant on government funding and are continually in competitive tendering processes, they understandably feel the need to keep good relations with their funders and do not want to complain or be seen as troublemakers. SACOSS constantly hears complaints over funding issues from our member groups, but those members do not want to be named for fear of being penalised in the next funding round. This is one of the reasons SACOSS put so much time and effort into the negotiation of the SANFRAG standard contract terms and conditions – because with no money on the table in those negotiations, it was possible to more robustly discuss the issues of concern.

This leads to a clear recommendation that has not been addressed in the SANFRAG process, the need for an enforcement regime independent of the contracting parties. While there is a complaints process within the State Procurement Board, this still requires an NFP to make and pursue a complaint – i.e. to make trouble for its funding body. This has led to calls for a NFP advocate who could proactively assist in change processes and be empowered on behalf of NFPs to ensure that our sector is not disempowered in procurement processes. At the broadest level this may include dispute resolution, auditing departmental practices and identifying poor or non-compliant practices, as well as an overarching educational role.

In the SACOSS [20-point plan](#) we called this a Community Sector Commissioner paralleling the Small Business Commissioner, but we are not wedded to the name. Indeed, our sector has not got a final view on the scope, role and structure of such an advocacy function for the NFP sector in relation to contracting and procurement, but we note that the government has, in the context of discussion of an NFP and Volunteering Advocate, agreed to work with the volunteering sector on how best to manage key issues. (See [letter to Volunteering SA&NT](#)).

Whatever the model, the establishment of a promotion and enforcement mechanism for procurement reform has clearly been identified by the sector as a vital next step after securing the standardised contracts.

Recommendation 10:

That the SA Productivity Commission recommend that a co-designed process be entered into around the scope, role and structure of an advocacy function for the NFP sector in relation to contracting and procurement.

Conclusion

SACOSS thanks the Productivity Commission for its attention to our submission and by way of conclusion we simply re-iterate the key themes of our submission:

- the importance of government funding to the NFP sector, but also the question as to whether this is best done through procurement or grant funding
- the importance of the procurement and contract reforms negotiated with our sector under the SANFRAG banner and the need to see the standardised contracts implemented as soon as possible
- the need for further changes in procurement processes particularly in relation to:
 - proportionality of tendering and reporting
 - delayed payments, and
 - unexpended funds
- the need for a change management and enforcement strategy to ensure that changes agreed are implemented fully and appropriately.

Appendix 1: Human Services Master Agreement

The following is a template version of the Master Agreement currently in place between the Minister and a range of NFPs working in human services (as referred to in this submission).

Master Agreement

Minister for Communities and Social Inclusion
Minister for Disabilities
Minister for Multicultural Affairs
Minister for Social Housing
Minister for the Status of Women
Minister for Youth
Minister for Volunteers

(each the "Minister")

and

«ORGANISATION_NAME»

«ABN»

("Service Provider")

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ANNEXURE B - SERVICE SPECIFIC ANNEXURE (if applicable)	

MASTER AGREEMENT dated

day of

2016

BETWEEN:

MINISTER FOR COMMUNITIES AND SOCIAL INCLUSION, MINISTER FOR DISABILITIES ,
MINISTER FOR MULTICULTURAL AFFAIRS, MINISTER FOR SOCIAL HOUSING, MINISTER FOR
THE STATUS OF WOMEN, MINISTER FOR YOUTH and MINISTER FOR VOLUNTEERS each,
bodies corporate pursuant to the *Administrative Arrangements Act 1994* (each the "Minister")

AND

«ORGANISATION_NAME» (A.B.N. «ABN») an incorporated association pursuant to the *Associations
Incorporation Act 1985* of «ADDRESS_1» «ADDRESS_2» «SUBURB» «STATE» «POST_CODE»
("Service Provider")

RECITALS

- A. The Department for Communities and Social Inclusion (the "Department") reports to a number of Ministers of the Crown, being the Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth and Minister for Volunteers.
- B. Each of these Ministers, in their capacity as bodies corporate, enters into this Master Agreement as they each provide funding to the Community Services Sector through the various applicable program areas of the Department.
- C. For the purposes of the operation of this Master Agreement and the Service Agreement, the words "the Minister" throughout this Master Agreement and the Service Agreement shall mean and be read as the applicable Minister (as a body corporate) as determined by reference to clause 2.2 of this Master Agreement.
- D. The Minister through the Department provides and manages the provision of services for the community of South Australia.
- E. The Service Provider provides services for the community of South Australia.
- F. The parties wish to pre-agree the terms and conditions on which they may contract with each other for the provision of the Services by the Service Provider.
- G. It is understood by the Service Provider that the execution of this Master Agreement by the Minister does not oblige the Minister or the Department to engage the Service Provider to provide any Services.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

In this Master Agreement unless the context otherwise requires:

- 1.1 **“Allocated Funds”** means the allocated funds as specified in the Service Agreement payable by the Minister to the Service Provider for the provision of the Services by the Service Provider in accordance with this Master Agreement and the Service Agreement (together with any annual funding indexation as determined by the Minister);
- 1.2 **“Business Days”** means Monday to Friday (excluding Public Holidays pursuant to the *Holidays Act 1910*);
- 1.3 **“Capital Items”** means capital items with a net purchase price of ten thousand dollars (\$10,000) (excluding GST) or more (where the cost has been met in full or part from the Allocated Funds) which provide a direct or indirect benefit to the Services provided under the Service Agreement, and for that reason are either fully funded by the Allocated Funds, or receive a contribution from Allocated Funds in proportion to the expected benefit to the Services;
- 1.4 **“Code of Fair Information Practice”** means the Department’s Code of Fair Information Practice dated July 2004 and any amended form of it, which is based on the National Privacy Principles. The Code provides a consistent approach to the handling of personal information between the Department, the private sector and other Government jurisdictions and enables the Department to meet external Government, business and community expectations;
- 1.5 **“Confidential Information”** means information that:
 - 1.5.1 is by its nature confidential or by the nature in which it is disclosed is confidential;
 - 1.5.2 is designated by the Minister as confidential or identified in terms connoting its confidentiality; or
 - 1.5.3 the Service Provider knows or ought to know is confidential;but does not include:
 - 1.5.4 information that is or becomes public knowledge, other than by a breach of this Master Agreement or the Service Agreement; or
 - 1.5.5 information included in this Master Agreement or the Service Agreement; or
 - 1.5.6 this Master Agreement or the Service Agreement.

- 1.6 “**Contract Manager**” means the relevant Party’s Contract Manager as specified in the Service Agreement or such other person nominated as the Party’s Contract Manager by written notice to the other Party from time to time;
- 1.7 “**the Department**” means the Department for Communities and Social Inclusion including all agencies and divisions of it or such other Department as advised by the Minister from time to time which is responsible for the administration of the Minister’s rights and obligations under this Master Agreement and the Service Agreement;
- 1.8 “**Derived Income**” means any funds in addition to the Allocated Funds received by the Service Provider that are directly associated with and arise from the provision of the Services including (but not limited to) rent, fees, client recoveries and interest. For the avoidance of doubt the Parties agree that Derived Income does not include monies received as a result of donations, fund raising or bequests;
- 1.9 “**Insolvency Administration**” means the happening of any of these events:
- 1.9.1 an administrator is appointed or any action is taken to make such appointment over the Service Provider or any subsidiary (as that term is defined in the *Corporations Act*) of the Service Provider;
 - 1.9.2 an application is made to a court for an order or an order is made that the Service Provider be wound up;
 - 1.9.3 an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Service Provider or one of them is appointed, whether or not under an order;
 - 1.9.4 except to restructure or amalgamate while solvent on terms approved by the Minister, the Service Provider enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a re-organisation, moratorium or other administration involving any of them;
 - 1.9.5 the Service Provider resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to restructure or amalgamate while solvent on terms approved by the Minister or is otherwise wound up or dissolved;
 - 1.9.6 the Service Provider is or states that it is unable to pay its debts when they fall due;
 - 1.9.7 the Service Provider ceases to carry on business; or
 - 1.9.8 anything having a substantially similar effect to any of the events specified

above happens to or in respect of the Service Provider;

- 1.10 **“Intellectual Property”** means any patent, copyright, trademark, trade name, design, trade secret, know how or other form of confidential information, or any right to registration of such rights and any other form of intellectual property right;
- 1.11 **“Master Agreement”** means this Master Agreement (including, where appropriate to the context, any Schedules or Annexures attached to it);
- 1.12 **“Materials”** means all documents, data, computer programs, computer discs and other material and things prepared by the Service Provider or the Service Provider's Staff in relation to the Services arising out of or in connection with this Master Agreement or the Service Agreement;
- 1.13 **“Parties”** means the Minister and the Service Provider;
- 1.14 **“Party”** means either of the Parties;
- 1.15 **“Personal Information”** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;
- 1.16 **“Police Checks”** means checks with the South Australia Police Department or other police agencies on any person regarding their prior criminal background;
- 1.17 **“Representative”** means the relevant Party's Representative specified in the Schedule of this Master Agreement or such other person nominated as the Party's Representative by written notice to the other Party from time to time;
- 1.18 **“Service Agreement”** means the agreement (or, if more than one, each separate agreement) (if any) by which the Minister engages the Service Provider to provide the Services in the form of the proforma Service Agreement comprising Annexure A to this Master Agreement (or in such form as is otherwise agreed by the Parties);
- 1.19 **“Service Provider”** means the Service Provider as specified on the cover page of this Master Agreement and, where appropriate to the context, includes its permitted assigns (if any) and the Service Provider's Staff;
- 1.20 **“Service Provider's Staff”** means all employees, agents, contractors or subcontractors employed or engaged by the Service Provider in respect of the Services and includes any person assisting the Service Provider in respect of the Services in a voluntary capacity or as a volunteer;
- 1.21 **“Services”** means the services described in the Service Agreement to be provided by the Service Provider in accordance with the terms and conditions of this Master Agreement and the Service Agreement and, where appropriate to the context, includes any part of such Services;

- 1.22 **“Unexpended Allocated Funds”** means any Allocated Funds, plus any Derived Income as provided for under clause 7.5 of this Master Agreement, received by the Service Provider and not, at a given point in time, expended in accordance with the terms of this Master Agreement and the Service Agreement.
- The Allocated Funds are considered to have been expended if set aside to meet any accrual or provision which is consistent with prudent management and proper accounting practice, including provision for long service leave entitlements accrued by employees of the Service Provider;
- 1.23 Any reference to a clause, Schedule, Attachment or Annexure is a reference to a clause, Schedule, Attachment or Annexure to this Master Agreement or the Service Agreement (as the case may be);
- 1.24 Headings are for convenience only and shall not affect interpretation;
- 1.25 Words denoting individuals shall include corporations and vice versa;
- 1.26 Any reference to an Act, regulation or by-law is deemed to include all amendments and all statutory provisions substituted for such Act, regulation or by-law;
- 1.27 Subject to any express provision to the contrary, all words and phrases defined in this Master Agreement but not defined in the Service Agreement shall have that defined meaning in the Service Agreement;
- 1.28 The Parties acknowledge that the statements set out in the Recitals to this Master Agreement are true and correct.

2. **THE MASTER AGREEMENT AND ITS APPLICATION**

- 2.1 The Parties acknowledge and agree that in consideration of the payment by the Minister of the Allocated Funds in accordance with this Master Agreement and the Service Agreement:
- 2.1.1 this Master Agreement sets out the terms and conditions which will apply to the provision of the Services by the Service Provider under the Service Agreement(s) (if any) entered into by the Minister and the Service Provider from time to time; and
- 2.1.2 the terms and conditions of this Master Agreement are incorporated into the Service Agreement(s) (if any) entered into by the Minister and the Service Provider from time to time.
- 2.2 The Parties acknowledge and agree that each of the bodies corporate named as the Minister enters into this Master Agreement on the basis that, for the purposes of the operation of this Master Agreement and the Service Agreement, the words “the Minister” will mean and be read as the applicable Minister (in its capacity as a body

corporate) according to the distribution of the Ministerial responsibilities and functions between the relevant Ministers, having regard to the specific funding program of the Department which is applicable.

- 2.3 For example, if the specific funding program which is applicable in a particular case is Commonwealth State Territory Disability Agreement funding, then the words “the Minister” will mean and be read as the “Minister for Disabilities” throughout this Master Agreement and the Service Agreement.

3. **FORMATION OF A SERVICE AGREEMENT**

- 3.1 The Parties acknowledge and agree that this Master Agreement does not impose any obligation on the Minister or constitute any guarantee on the Minister’s part that it will engage the Service Provider to provide any Services at any time.
- 3.2 If and when the Minister requires the Services to be provided by the Service Provider the Minister must notify the Service Provider and if the Service Provider is willing and able to provide the Services the Parties must promptly enter into a Service Agreement for the provision of the Services by the Service Provider.
- 3.3 A Service Agreement is formed when each Party’s authorised delegate or Representative has signed a Service Agreement.
- 3.4 The terms and conditions of a Service Agreement between the Minister and the Service Provider are those appearing in:
- 3.4.1 the Service Agreement;
 - 3.4.2 any schedules, annexures or attachments to the Service Agreement; and
 - 3.4.3 Annexure B to this Master Agreement; and
 - 3.4.4 the body of this Master Agreement
- having priority in that order except that Annexure B to this Master Agreement will only have priority over the body of this Master Agreement to the extent of and in respect of the applicable funding program of the Department and the specific Services to which Annexure B to this Master Agreement and any relevant Service Agreement relate.
- 3.5 The Parties agree that in the event of any inconsistency between this Master Agreement, Annexure B to this Master Agreement and the Service Agreement, the Service Agreement shall prevail.

4. **TERM**

- 4.1 This Master Agreement shall commence on the date of execution of this Master Agreement and, subject to any earlier termination of this Master Agreement in accordance with its terms or by operation of law, shall operate unless and until the Minister and the Service Provider either:

- 4.1.1 enter into a new Master Agreement to replace this Master Agreement, or
- 4.1.2 this Master Agreement is otherwise terminated by mutual consent,
(whichever first occurs).
- 4.2 The Service Agreement shall commence on the Commencement Date specified in the Service Agreement and subject to any earlier termination of the Service Agreement in accordance with its terms or by operation of law, shall expire on the Expiry Date specified in the Service Agreement (unless the Service Agreement is extended in accordance with clause 4.3 of this Master Agreement).
- 4.3 The Service Agreement may be extended on the basis (if any) set out in the Service Agreement.

5. ADMINISTRATION OF MASTER AGREEMENT AND THE SERVICE AGREEMENT

The Parties acknowledge and agree as follows:

- 5.1 the person named as the Party's Representative in the Schedule to this Master Agreement shall be the Party's Representative for the purposes of the dispute resolution clause of this Master Agreement (clause 22);
- 5.2 the person named as the Party's Contract Manager in the Service Agreement shall be responsible for the day-to-day administration of this Master Agreement and the Service Agreement on behalf of the Party;
- 5.3 subject to clause 22, the Parties' Contract Manager may on behalf of the Party give, do or perform anything which the Party may or is required to give, do or perform under this Master Agreement or the Service Agreement (as the case may be); and
- 5.4 a Party may by written notice to the other Party vary its Representative or its Contract Manager at any time.

6. THE SERVICES

- 6.1 The Service Provider must provide the Services during the term of the Service Agreement at such times and in such a manner as is reasonably required by the Minister and in accordance with:
 - 6.1.1 this Master Agreement;
 - 6.1.2 the Service Agreement; and
 - 6.1.3 any policies and directions given by the Minister from time to time.
- 6.2 The Service Provider must provide the Services:
 - 6.2.1 in a proper, competent and professional manner;
 - 6.2.2 with due care, skill and diligence;
 - 6.2.3 in a timely and expeditious way;

- 6.2.4 in a way that will prevent injury or death of persons or damage to property; and
- 6.2.5 to the appropriate professional and legal standards.
- 6.3 The Service Provider must not, without the Minister's prior written consent, make or allow any significant change to the Services and must immediately notify the Minister of any change or proposed change to the authorised scope of the Services.
- 6.4 If so requested in writing, the Service Provider must provide to the Minister:
 - 6.4.1 copies of the Service Provider's current Annual Report for the year(s) specified in the Minister's written request; and
 - 6.4.2 copies of the Service Provider's current Constitution and Certificate of Incorporation, or such other document(s) as establishes its legal identity; and
 - 6.4.3 such other information relating to the Service Provider pertinent to the provision of the Services as the Minister reasonably requires from time to time (including, but not limited to, such information, management accounts, accounts, annual reports and financial statements as the Minister reasonably requires from time to time to enable the Minister to make an informed assessment of the ongoing financial position of the Service Provider and to monitor throughout the term of the Service Agreement compliance by the Service Provider with the terms of this Master Agreement and the Service Agreement and the overall effectiveness of the provision of the Allocated Funds to the Service Provider).
- 6.5 The Service Provider must notify the Minister immediately upon becoming aware of:
 - 6.5.1 any possibility that the Service Provider may not be able to provide the Services at any time; or
 - 6.5.2 any change to the legal structure, management or operations of the Service Provider which could reasonably be expected to have an adverse effect on the ability of the Service Provider to comply with this Master Agreement or the Service Agreement;
 - 6.5.3 any significant change to the nature and/or scope of the activities conducted by the Service Provider which could reasonably be expected to have an adverse effect on the ability of the Service Provider to comply with this Master Agreement or the Service Agreement; and
 - 6.5.4 any change to the address of the Service Provider's principal office and/or any location from which the Services are provided or facilitated.
- 6.6 The Parties agree that:
 - 6.6.1 the Service Agreement (including any annexures and schedules) and all information and requirements contained within them shall apply to the provision of the Services by the Service Provider; and

- 6.6.2 the Service Provider must comply with the requirements set out in the Service Agreement (including any annexures and schedules).
- 6.7 The Service Provider must meet the Outputs and the Key Performance Indicators (if any) in respect of the Services specified in the Service Agreement or such other Outputs and Key Performance Indicators (if any) as the Parties agree from time to time.
- 6.8 The Service Provider must assist the Minister as far as is reasonably required by the Minister, in developing new Key Performance Indicators from time to time to ensure the continued effectiveness of the Services.
- 6.9 The Service Provider must provide to the Minister at the times specified in the Service Agreement the Data in respect of the Services specified in the Service Agreement or such other Data as the Parties agree from time to time.
- 6.10 The Service Provider must provide to the Minister:
- 6.10.1 such reports (including regular progress reports) and information in respect of the Services as are specified in the Service Agreement at the times specified in the Service Agreement to enable the Minister to undertake appropriate monitoring and evaluation of the Services; and
- 6.10.2 such other reports or information in respect of the Services as the Minister may by written notice to the Service Provider require from time to time.
- 6.11 The Minister must undertake ongoing monitoring and evaluation of the Services, in liaison with the Service Provider, and may provide feedback to the Service Provider on the performance of the Services against the Outcomes, and the Reporting and Financial Accountability measures and the Outputs, Key Performance Indicators and Data specified in the Service Agreement.
- 6.12 The Service Provider must comply with all laws which are applicable to the provision of the Services, (including, without limitation, any specific legislation as may be set out in the relevant Service Agreement) and with the requirement of its Constitution (if any).
- 6.13 The Service Provider warrants that adequate procedures are in place to ensure the Service Provider's Staff are suitable and appropriately qualified and/or experienced to provide the Services.

7. ALLOCATED FUNDS

- 7.1 Subject to clause 9 of this Master Agreement, the Minister must pay the Allocated Funds to the Service Provider at the times and in the manner specified in the Service Agreement.
- 7.2 The Service Provider must use the Allocated Funds solely to provide and administer the Services.

- 7.3 In providing and administering the Services, the Service Provider must create accruals and provisions that are consistent with prudent management and proper accounting practice, and set monies aside from the Allocated Funds to meet such obligations.
- 7.4 The Service Provider must ensure that the Allocated Funds received under the Service Agreement can be accounted for, and distinguished from monies received from other sources.
- 7.5 The Service Provider must use all Derived Income solely to provide and administer the Services and for no other purpose.
- 7.6 Upon the occurrence of any of the following:
- 7.6.1 the expiry or earlier termination of the Service Agreement;
 - 7.6.2 the Service Provider ceasing to provide the Services at any time; or
 - 7.6.3 the Service Provider breaching the terms and conditions of this Master Agreement or the Service Agreement;
- the Service Provider must promptly provide to the Minister a report setting out the level of the Unexpended Allocated Funds and, unless specific approval is given by the Minister for the Service Provider to retain the Unexpended Allocated Funds, the Service Provider must repay the Unexpended Allocated Funds to the Minister. If the Minister gives specific approval to the Service Provider to retain the Unexpended Allocated Funds, then the Minister may direct the Service Provider to apply the Unexpended Allocated Funds as the Minister sees fit.
- 7.7 Without limiting the Minister's rights in clause 7.6 or 23 in any way, if the Service Provider breaches the terms and conditions of this Master Agreement or the Service Agreement at any time, then the Minister may require the Service Provider to repay all or part of the Allocated Funds to the Minister (whether expended or not).

8. GOODS AND SERVICES TAX

- 8.1 If a supply of Services under the Service Agreement is a Taxable Supply within the meaning of the A New Tax System (Goods and Services) Act 1999, ("ANTS GST Act") then:
- 8.1.1 the Allocated Funds will be multiplied by one hundred and ten per cent (110%);
 - 8.1.2 any invoice for payment under the Service Agreement must be a Tax Invoice within the meaning defined in the ANTS GST Act; and
 - 8.1.3 subject to subclause 8.2, the Minister is not obliged to make any payment under the Service Agreement unless the Service Provider has provided a Tax Invoice in respect of that payment.

- 8.2 The Minister may issue a Recipient Created Tax Invoice (RCTI) in respect of any Taxable Supply under the Service Agreement provided the Parties have entered into a separate agreement, if required, that permits the use of RCTIs. If a RCTI is issued or an adjustment to the RCTI is made, the Minister must provide a copy of the Tax Invoice to the Service Provider within 28 days of the making or determining the value of the Taxable Supply and the Service Provider must not issue any Tax Invoice in respect of a Taxable Supply the subject of the RCTI.
- 8.3 Each Party is responsible to keep the original or copy of the RCTI and adjustment note and such other records as required under the ANTS GST Act for the period required under law.

9. PAYMENT, RECOVERY OR WITHHOLDING OF ALLOCATED FUNDS

- 9.1 Without limiting the Service Provider's obligations set out in clause 7.6 of this Master Agreement in any way, the Minister may, following expiry or earlier termination of the Service Agreement, require any Unexpended Allocated Funds to be recovered by:
- 9.1.1 reducing one or more of any scheduled payments to the Service Provider pursuant to any Service Agreement between the Parties; or
 - 9.1.2 requiring the Service Provider to make an appropriate payment to the Minister within thirty (30) Business Days of a written request to that effect by the Minister.
- 9.2 The Minister may withhold full or part payment of the Allocated Funds at any time if:
- 9.2.1 the Service Provider does not meet the reporting or financial accountability requirements specified in this Master Agreement or the Service Agreement;
 - 9.2.2 the Service Provider fails to remedy a breach by the Service Provider of either this Master Agreement or a Service Agreement within the time specified in a written notice from the Minister to the Service Provider requiring the Service Provider to remedy the breach ; or
 - 9.2.3 the Minister is of the reasonable opinion that the Service Provider is not able to, or is incapable of, meeting or refuses to meet any or all of its obligations under this Master Agreement or the Service Agreement,
- provided the Minister so notifies the Service Provider at the earliest opportunity but in any event no less than ten (10) Business Days prior to such payment falling due, together with the reasons for withholding payment.

9.3 In the event of a dispute in relation to any aspect of this clause 9, the Parties acknowledge and agree that either Party may immediately invoke the dispute resolution mechanism set out in clause 22. Nothing in this clause 9.3 prevents either Party from invoking the dispute resolution mechanism in relation to any other dispute under this Master Agreement or the Service Agreement.

10. FINANCIAL ACCOUNTABILITY

The Service Provider must comply with such financial accountability and reporting measures in respect of the Services as are specified in the Service Agreement.

11. CONFLICTS OF INTEREST

11.1 The Service Provider warrants that before entering into this Master Agreement and the Service Agreement the Service Provider has disclosed to the Minister all past, current and foreseen interests which may reasonably be anticipated to conflict with the fair and independent performance of the Services.

11.2 The Service Provider must not during the term of the Service Agreement knowingly engage in any activity or obtain any interest likely to conflict with the fair and independent performance of the Services.

12. CRIMINAL HISTORY/POLICE CHECKS

The Service Provider must:

12.1 comply with the Department's criminal history/Police Checks policy in respect of Service Provider's Staff issued from time to time including the requirements (if any) specified in the Service Agreement; and

12.2 without limiting the Service Provider's obligation set out in clause 6.12 in any way, comply with the requirements in respect of police/criminal history checks set out in any applicable legislation (including regulations).

13. CAPITAL ITEMS

Register for Capital Items

13.1 For any Capital Item the Service Provider must maintain an assets register of such items, recording all relevant information including its description, identifying numbers, purchase price, date of purchase, and depreciation PROVIDED ALWAYS that Capital Items can be deleted from the asset register once they have a written down value of below ten thousand dollars (\$10,000.00). The Service Provider must make the asset register available for inspection by the Minister within ten (10) Business Days of a written request to that effect by the Minister.

Capital Items - General Requirements

- 13.2 For all Capital Items the Service Provider must:
- 13.2.1 maintain such Capital Items in good condition; and
 - 13.2.2 obtain the written consent of the Minister to sell or otherwise dispose of any such Capital Item unless the item has been fully depreciated, and this consent will not be unreasonably withheld.
- 13.3 If the Service Provider ceases to provide the Services, or if the Service Agreement is terminated or expires, then the Service Provider must hold any Capital Items in trust for the Minister and must either return them to the Minister if requested, or sell them as directed by the Minister.
- 13.4 The proceeds from any sale of Capital Items will be divided between the Minister and the Service Provider in the same proportion as the funds provided by the two Parties respectively for the purchase of the Capital Items.

14. REVIEWS/AUDITS

- 14.1 The Minister may through the Department or through the engagement of an independent auditor conduct reviews (including audits) from time to time of the Services (whether whole or in part) provided by the Service Provider.
- 14.2 The Service Provider may request the Minister to initiate a review of the Service Agreement to improve the provision and/or delivery of the Services or other matters to be agreed between the Parties in writing, but not more than once a year.
- 14.3 The Service Provider must co-operate fully, provide all necessary assistance and information (including, but not limited to, access to and copies of the Service Provider's records and financial records and accounts in respect of the Services) to assist the Minister in relation to any review or audit conducted under this clause 14 (whether initiated by the Minister or the Service Provider).
- 14.4 Where a review or audit of the Services provides for recommendations or remedial action to improve the provision and/or delivery of the Services, the Minister and the Service Provider must meet as soon as practicable to discuss the review and the recommendations and remedial action and agree on a process to implement the recommendations or remedial action. If no agreement is reached, then either Party may use clause 22 to resolve the dispute.
- 14.5 The Service Provider must upon reasonable notice by the Minister and during normal business hours or such other agreed times permit the Minister (or the Minister's officers and employees or such other persons authorised by the Minister) to:
- 14.5.1 enter the premises and other places of business of the Service Provider;

14.5.2 have access to, and if required, make copies of any records, assets, equipment, documents (including all external auditors' reviews of the Services and any electronic data) in the Service Provider's possession or control; and/or

14.5.3 interview Service Provider's Staff;

in relation to any complaint received in respect of the Services or in relation to any review conducted under this Master Agreement or in relation to the Service Provider's operations.

14.6 The Minister may exercise any of its rights under this clause 14 notwithstanding the termination or expiry of this Master Agreement or the Service Agreement (as the case may be).

14.7 This clause 14 must be read subject to the provisions of clause 15.

15. CONFIDENTIAL INFORMATION, PROVISION OF INFORMATION AND DISCLOSURE OF THIS MASTER AGREEMENT AND THE SERVICE AGREEMENT

15.1 Subject to this clause 15 and clause 45, neither Party may disclose any Confidential Information of the other Party to any person (except to their own employee or agent on a "need to know" basis) without the other Party's prior written consent.

15.2 Each Party must ensure that all its staff are aware of and comply with the provisions of this clause.

15.3 Clause 14 and this clause must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of Confidential Information.

15.4 The obligations in respect of Confidential Information will not be taken to have been breached where the Confidential Information is disclosed:

15.4.1 pursuant to a legal or constitutional duty or responsibility;

15.4.2 in accordance with any lawful direction of the Minister; or

15.4.3 by an act or omission which is lawful and which does not constitute a breach of this Master Agreement or the Service Agreement and the information so disclosed becomes part of the public domain; or

15.4.4 is independently developed by the Party without breach of this Master Agreement or the Service Agreement.

15.5 The Service Provider acknowledges that the Minister may take legal proceedings against the Service Provider or third parties if there is any actual, threatened or suspected breach of this clause, including proceedings for an injunction to restrain such breach.

Provision of Information

15.6 Without limiting any of the Service Provider's obligations set out in this Master Agreement or the Service Agreement, the Service Provider must, from time to time, on request by the Minister provide such information regarding the Service Provider's Staff, the Services, the clients receiving the benefit of the Services, this Master Agreement and the Service Agreement as the Minister may require in order to enable:

15.6.1 the Minister to comply with obligations under the *Freedom of Information Act 1991*;

15.6.2 the South Australian Auditor-General to audit the Minister; or

15.6.3 the Minister to provide any information to or respond to any requirements of government.

Code of Fair Information Practice

15.7 The Service Provider must:

15.7.1 comply with the Department's Code of Fair Information Practice;

15.7.2 implement as far as practicable the Code of Fair Information Practice, related policies, principles and guidelines or such directions at the request of the Minister; and

15.7.3 use such reasonable measures to prevent a breach of the Code of Fair Information Practice to the satisfaction of the Minister,

as it relates to any Personal Information held or acquired under this Master Agreement or the Service Agreement.

Disclosure of this Master Agreement and the Service Agreement

15.8 Subject to this clause 15, the Service Provider agrees to the disclosure of this Master Agreement and the Service Agreement in accordance with Department of the Premier and Cabinet Circular 27 - Disclosure of Government Contracts (as amended from time to time) (as published on the internet at www.premcab.sa.gov.au) in either printed or electronic form and either generally to the public, or to a particular person as a result of a specific request.

15.9 Nothing in clause 15.8 derogates from:

15.9.1 the Service Provider's obligations under any other provision of this Master Agreement or the Service Agreement; or

15.9.2 the provisions of the *Freedom of Information Act 1991*.

16. INDEMNITY

16.1 Each Party must indemnify and keep indemnified the other against any claim, action, suit, damage, cost, loss, expense, liability or legal cost suffered in respect of any loss of life, personal injury or disability, loss of or damage to property, or other loss arising as a result of:

16.1.1 any breach of this Master Agreement or the Service Agreement; or

16.1.2 any breach of the punctual, strict and literal performance of any obligations, whether present, future or contingent, under this Master Agreement or the Service Agreement; or

16.1.3 any act or omission in connection with or incidental to this Master Agreement or the Service Agreement, including but not limited to any negligent or wrongful act or omission;

by the indemnifying Party or its employees, volunteers, agents or contractors. However the indemnity shall be reduced proportionately to the extent that any negligent or other tortious act or omission of the other Party has through its employees, volunteers, agents or contractors contributed to such loss, cost, expense or liability.

16.2 The terms of this clause 16 shall survive the expiry or termination of this Master Agreement or the Service Agreement (as the case may be).

17. INSURANCE

17.1 The Service Provider must unless otherwise agreed in writing by the Minister:

17.1.1 maintain in force during the term of this Master Agreement and the Service Agreement for itself and the Service Provider's Staff, appropriate public liability insurance for an amount not less than the amount specified in the Schedule to this Master Agreement or for such other amount as the Minister requires from time to time;

17.1.2 if required by the provisions of the Service Agreement, maintain in force during the term of the Service Agreement, appropriate professional indemnity insurance for the amount specified in the Service Agreement or for such other amount as the Minister requires from time to time;

17.1.3 ensure it has adequate insurance cover in place to protect physical assets against loss and/or damage during the term of this Master Agreement and the Service Agreement and to indemnify the Service Provider against legal liability for personal injury and/or property claims made by third parties;

- 17.1.4 maintain workers compensation insurance during the term of this Master Agreement and the Service Agreement in respect of all of the Service Provider's Staff who are workers for the purpose of any applicable legislation except to the extent that the Service Provider is an exempt employer, in which case the Service Provider must comply with the requirements of an exempt employer under the applicable legislation;
- 17.1.5 if the Service Provider is an incorporated association under the *Associations Incorporation Act, 1985*, ensure that it maintains in force during the term of this Master Agreement and the Service Agreement, director's and officer's insurance, and volunteers insurance; and
- 17.1.6 If any of the Service Provider's Staff engaged by the Service Provider for the provision of Services are not workers within the meaning of the *Workers Rehabilitation and Compensation Act 1986*, ensure that either the Service Provider or those persons arrange and maintain a personal accident/disability insurance policy during the term of this Master Agreement and the Service Agreement which provides cover for those persons to at least the levels of capital benefits and income levels that the persons would have been entitled to had they been deemed workers under that Act. The minimum benefit levels under such policy are to be for not less than one hundred and four (104) weeks.

General Requirements and Certificates of Currency

- 17.2 All insurances effected by the Service Provider in accordance with clause 17.1 shall be with insurers satisfactory to the Minister.
- 17.3 The Service Provider must, if requested by the Minister, provide:
- 17.3.1 copies of all policies and certificates of currency for all insurance effected by the Service Provider pursuant to this Master Agreement and the Service Agreement,
or
- 17.3.2 evidence that the Service Provider has complied with relevant legislation,
(as the case may be).

Specific Acknowledgement

- 17.4 The Service Provider acknowledges and agrees that it is the Service Provider's responsibility to assess and consider the risks inherent in providing the Services and the scope of any insurances desirable or necessary to manage that risk. The Minister in specifying levels of insurance in this Master Agreement or the Service Agreement accepts no responsibility for the completeness of their listing, the adequacy of the sum insured, limit of liability, scope of coverage, conditions or exclusions of those insurances in respect to how they may or may not respond to any loss, damage or liability.

18. THE SERVICE PROVIDER'S STAFF

The Service Provider acknowledges and agrees that:

- 18.1 there is no contract of any nature in existence under this Master Agreement or the Service Agreement or otherwise between the Minister and the Service Provider's Staff;
- 18.2 the Service Provider is liable for all remuneration, claims and other entitlements payable to the Service Provider's Staff; and
- 18.3 the Service Provider must comply with the provisions of any relevant legislation, including the:
 - 18.3.1 Equal Opportunity Act, 1984, (SA);
 - 18.3.2 Occupational Health, Safety and Welfare Act, 1986 (SA);
 - 18.3.3 Workers Rehabilitation and Compensation Act, 1986 (SA);
 - 18.3.4 Superannuation Guarantee (Administration) Act, 1992 (Cth);
 - 18.3.5 Payroll Tax Act, 1971 (SA); and
 - 18.3.6 Income Tax Assessment Act, 1936 (Cth);insofar as all legislation relates to the Service Provider's Staff arising out of or in connection with this Master Agreement and the Service Agreement.

19. SUB CONTRACTING

- 19.1 Subject to this clause 19, the Service Provider may sub-contract the performance of the Services or any part of them. If so required by the Minister from time to time the Service Provider must provide details of any such sub-contracting to the Minister.
- 19.2 The Service Provider agrees to be fully responsible for the performance of the Services and is not relieved from any of its obligations under this Master Agreement or the Service Agreement notwithstanding that the Service Provider may sub-contract the performance of any part of those Services in accordance with this clause 19.
- 19.3 If the Service Provider engages sub-contractors in the provision of the Services, the Service Provider must ensure:
 - 19.3.1 the suitability of the sub-contractor for the performance of the Services to be carried out;
 - 19.3.2 that the Services performed by the sub-contractor meet the requirements of this Master Agreement and the Service Agreement; and
 - 19.3.3 that any policy or requirement of the Minister will apply to the sub-contractor.

20. **PUBLICITY**

- 20.1 The Service Provider will acknowledge the funding by the Minister in any advertising, publicity or promotional material relating to the Services with a written endorsement as follows: "The Department for Communities and Social Inclusion has contributed funds towards this Program".
- 20.2 The Service Provider will participate in all promotional or publicity activity in relation to this Master Agreement and the Service Agreement as is reasonably required by the Minister.
- 20.3 The Service Provider must not make or permit to be made a public announcement or media release about any aspect of this Master Agreement or the Service Agreement without first giving reasonable notice in writing together with a summary of the proposed public announcement or copy of the media release to the Minister.
- 20.4 Notwithstanding clause 20.3, if in the reasonable opinion of the Service Provider it is impossible to provide prior notice of an announcement or media release to the Minister due to the urgency of the circumstances, or due to the nature and timing of the request being made by a relevant media body, then the Service Provider must notify the Minister of the making of the announcement or media release and provide a summary of the announcement or a copy of the media release as soon as possible after making the announcement or media release.
- 20.5 The Service Provider must not use the Minister's name or that of the Crown or any instrumentality or agency of the Crown in its marketing or otherwise without the Minister's prior written consent.

21. **RETURN OF MATERIALS**

Upon request by the Minister either upon expiry or termination of this Master Agreement or the Service Agreement (as the case may be), or at any other time upon reasonable notice, the Service Provider must deliver to the Minister at no cost the Materials (excluding the Service Provider's working papers).

22. **DISPUTE RESOLUTION**

- 22.1 If either Party is dissatisfied with the performance of the other Party under this Master Agreement or the Service Agreement or both, then the dissatisfied Party may give written notice to the other party setting out the nature of its complaint ("**Dispute Notice**").
- 22.2 Within ten (10) Business Days of service of a Dispute Notice, or earlier if the circumstances require, the Parties' Representatives must meet and use their best endeavours to resolve the dispute.

- 22.3 If the dispute is not resolved within a further ten (10) Business Days (or earlier if the circumstances require) either Party may commence litigation or by mutual agreement refer the dispute to an external dispute resolution mechanism (including to an independent mediator). Unless the Parties otherwise agree, each Party must pay half of the costs of any such external dispute resolution mechanism.
- 22.4 This clause does not prevent either Party from commencing legal proceedings to seek an urgent injunction.

23. TERMINATION BY THE MINISTER

- 23.1 The Minister may terminate either this Master Agreement or the Service Agreement or both at any time either immediately or on a later nominated date by written notice to the Service Provider if any of the following occur:
- 23.1.1 the Service Provider is subject to or is in jeopardy of becoming subject to any form of Insolvency Administration;
- 23.1.2 a director, secretary, officer or senior employee of the Service Provider is convicted of a criminal offence and in the reasonable opinion of the Minister the type of criminal offence materially impacts on the Services and the Service Provider, where it is able to do so, fails to remove such person from his or her office or from the provision of the Services immediately after a conviction is made, delivered or recorded;
- 23.1.3 the Service Provider fails to remedy a breach by the Service Provider of either this Master Agreement or the Service Agreement or within the reasonable time (having regard to the nature and extent of the breach) specified in a written notice from the Minister to the Service Provider requiring the Service Provider to remedy the breach;
- 23.1.4 there is a change in the management, structure or operations of the Service Provider that has or could reasonably be expected to have an adverse effect on the ability of the Service Provider to comply with this Master Agreement or the Service Agreement or both; or
- 23.1.5 any statements or information provided by the Service Provider is false or misleading.
- 23.2 If the Minister terminates either this Master Agreement or the Service Agreement or both pursuant to clause 23.1, the Minister may:
- 23.2.1 require the Service Provider to repay either the whole or a portion of the Allocated Funds;

23.2.2 withhold future funds from the Service Provider; and/or

23.2.3 pursue any legal rights or remedies which may be available to him.

23.3 Notwithstanding any other provision of this Master Agreement or the Service Agreement, the Minister may terminate this Master Agreement without cause at any time by giving three (3) months' written notice to the Service Provider and the Service Provider will have no claim against the Minister in respect of such termination other than in respect of the following:

23.3.1 payments of any Allocated Funds (if any) due to the Service Provider in respect of the provision of the Services under the Service Agreement; and

23.3.2 any antecedent breaches of this Master Agreement by the Minister.

24. TERMINATION BY THE SERVICE PROVIDER

24.1 The Service Provider may terminate this Master Agreement or the Service Agreement or both at any time either immediately or on a later nominated date by written notice to the Minister if the Minister fails to remedy a breach by the Minister of either this Master Agreement or the Service Agreement or both within the reasonable time (having regard to the nature and extent of the breach) specified in a written notice from the Service Provider to the Minister requiring the Minister to remedy the breach.

24.2 Notwithstanding any other provision of this Master Agreement or the Service Agreement, the Service Provider may terminate the Service Agreement by three (3) months' written notice to the Minister if the Service Provider is unable to provide the Services at any time for any reason.

24.3 The Service Provider will have no claim against the Minister in respect of such termination by the Service Provider other than in respect of payments of any Allocated Funds (if any) due to the Service Provider in respect of the provision of the Services before the effective date of termination.

25. EFFECT OF TERMINATION

The Parties acknowledge and agree as follows:

25.1 notwithstanding the termination (if any) of this Master Agreement, and subject to the Parties' rights to terminate the Service Agreement:

25.1.1 the Service Agreement entered into under this Master Agreement will continue to operate for the term specified in the Service Agreement; and

25.1.2 the terms and conditions of this Master Agreement will continue to be incorporated into the Service Agreement and will continue to apply to the Service Agreement for the balance of the term of the Service Agreement;

- 25.2 any termination of this Master Agreement or the Service Agreement or both, will be without prejudice to all rights, remedies and actions which either Party may have against the other Party in respect of any antecedent breaches by the Party of this Master Agreement or the Service Agreement (as the case may be); and
- 25.3 termination of this Master Agreement or the Service Agreement or both by either Party will not relieve the other Party of any outstanding obligation remaining to be performed by it or capable of having effect after such termination.

26. TRANSITION

- 26.1 Upon the commencement of the Service Agreement and as and when otherwise required, the Service Provider must, if applicable, co-operate with the Minister and the previous service provider providing the Services and do all things necessary for the effective, smooth and efficient handover of the Services to the Service Provider to ensure that the standard and delivery of the Services do not suffer.
- 26.2 Upon the expiry or earlier termination of the Service Agreement if required by the Minister, the Service Provider must co-operate with the Minister and do all things necessary, and provide all relevant information and records, for the effective, smooth and efficient handover of the Services to the Minister or any incoming service provider to ensure that the standard and delivery of the Services do not suffer.
- 26.3 Without limiting this clause 26, the Service Provider must comply with the additional transition requirements (if any) set out in the Service Agreement.

27. ASSIGNMENT

The Service Provider must not:

- 27.1 consult with any other person or body for the purposes of entering into an arrangement that will require assignment of any benefits, rights or obligations under this Master Agreement or the Service Agreement without first consulting in writing the Minister; or
- 27.2 assign or otherwise transfer, in whole or in part, its benefits, rights or obligations under this Master Agreement or the Service Agreement without the Minister's prior written consent.

28. RELATIONSHIP BETWEEN THE PARTIES

- 28.1 The Parties agree that nothing in this Master Agreement or the Service Agreement constitutes any relationship of employer and employee, principal and agent, or partnership, between the Parties.
- 28.2 No Party shall have any authority to bind the other Party in any manner, except with the written approval of the other Party.

28.3 The Minister is not liable for any debt incurred by the Service Provider in providing the Services under this Master Agreement or the Service Agreement.

29. COSTS AND STAMP DUTY

29.1 Each Party shall bear its own costs incurred in respect of the negotiation, preparation and execution of this Master Agreement and the Service Agreement.

29.2 The Service Provider shall be responsible for and pay the stamp duty (if any) assessed or charged in respect of this Master Agreement and the Service Agreement.

30. SEVERABILITY

If any clause or part of it in this Master Agreement or the Service Agreement is held by a court to be invalid or unenforceable, such clause or part of it is to be regarded as having been deleted from this Master Agreement or the Service Agreement (as the case may be) and this Master Agreement and the Service Agreement (as the case may be) otherwise remain in effect.

31. GOVERNING LAW

This Master Agreement and the Service Agreement are to be governed by and construed in accordance with the laws for the time being in force in the State of South Australia and the Parties agree to submit to the jurisdiction of the courts of that State.

32. AUDITOR-GENERAL

Nothing in this Master Agreement or the Service Agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987*.

33. WAIVER

33.1 A waiver of any provision of this Master Agreement or the Service Agreement must be in writing.

33.2 No waiver by one Party of a breach of a term or condition of this Master Agreement or the Service Agreement shall constitute a waiver of another breach of the same or any other term or condition of this Master Agreement or the Service Agreement.

33.3 No forbearance, delay or indulgence by either Party in enforcing the provisions of this Master Agreement or the Service Agreement shall prejudice or restrict that Party's rights.

34. NOTICES

34.1 Any communication to or by any Party will be deemed to be duly given or made to the address/facsimile number specified for a Party in the Service Agreement:

34.1.1 if delivered in person, when delivered; or

34.1.2 if delivery by post, the second Business Day after posting; or

34.1.3 if sent by facsimile, the first Business Day after the printing of a transmission report by the sender's facsimile machine that the document was satisfactorily transmitted to the recipient's machine.

34.2 Either Party may vary its address or facsimile number by written notice to the other Party at any time.

35. ENTIRE AGREEMENT AND MODIFICATIONS

35.1 This Master Agreement and the Service Agreement constitute the entire Agreement of the Parties regarding the matters dealt with in this Master Agreement and the Service Agreement and supersedes all prior agreements, understandings and negotiations in respect of those matters.

35.2 No addition to or variation of any provision of this Master Agreement or the Service Agreement shall be binding upon the Parties unless made in writing and signed by the Parties' duly authorised delegate or Representative.

36. FURTHER ACTS

Each Party must do all things necessary to give full effect to this Master Agreement and the Service Agreement and the provision of the Services.

37. SPECIAL CONDITIONS

37.1 The Service Provider must comply with the special conditions (if any) set out in the Service Agreement.

37.2 Notwithstanding any other provision of this Master Agreement, in the event of any inconsistency between this Master Agreement, the Program Specific Annexures comprising Annexure B to this Agreement (if any), and the special conditions (if any) set out in the Service Agreement, the special conditions (if any) set out in the Service Agreement shall prevail.

38. PROGRAM SPECIFIC ANNEXURES

38.1 The Service Provider must comply with the requirements which are specific to the applicable funding program for the Allocated Funds as set out in the Program Specific Annexure comprising Annexure B to this Master Agreement (if any).

38.2 Notwithstanding any other provisions of this Master Agreement, in the event of any inconsistency between the body of this Master Agreement and Annexure B of this Master Agreement, Annexure B of this Master Agreement shall prevail but only to the extent of and in respect of the applicable funding program of the Department and the specific Services to which Annexure B to this Master Agreement and any relevant Service Agreement relate.

- 38.3 The Parties acknowledge and agree that Annexure B to this Master Agreement:
- 38.3.1 will apply to the applicable funding program of the Department and the specific Services to which Annexure B to this Master Agreement and any relevant Service Agreement relates; and
 - 38.3.2 will not apply to other Services (if any) which the Service Provider may be engaged to provide pursuant to this Master Agreement and the Service Agreement in respect of other funding programs of the Department; and this Master Agreement, Annexure B to this Master Agreement and the Service Agreement will be read accordingly.
- 38.4 For example, the Program Specific Annexure entitled "Disability Services" applies only to the Department's Commonwealth/State & Territory Disability Agreement funding program, and applies only to the provision of disability Services.

39. **COOPERATING WITH INVESTIGATIONS**

- 39.1 The Service Provider acknowledges that the Chief Executive of the Department for Communities and Social Inclusion, the Special Investigations Unit of the Department for Communities and Social Inclusion and other government entities ("**Government Investigators**") have the authority to institute investigations under either legislation, at common law or by their prerogative powers.
- 39.2 The Service Provider must:
- 39.2.1 cooperate with any investigation instituted by a Government Investigator; and
 - 39.2.2 use its best endeavours to ensure the co-operation of its officers, employees; and
 - 39.2.3 seek the cooperation of its volunteers, agents and sub-contractors in relation to any such investigation related to Services for which funding is provided by the Minister under this Service Agreement.
- 39.3 Without limiting the generality of clause 39.2 the Service Provider must provide copies of all records or information requested by the Government Investigator subject to the Service Provider obtaining the consent of any relevant party where such consent is legally required to enable the information or records to be provided.

40. **BUSINESS CONTINUITY**

If requested by the Minister, the Service Provider must, through consultation with the Minister's Contract Manager, develop a business continuity plan having regard to the size, type and state of development of the Service Provider, the type of Services it provides and any additional requirements as may be specified in a Service Agreement.

41. **DISABILITY OBJECTIVES**

- 41.1 The Service Provider is required to endorse and promote the principles and practices in accordance with the objectives of the *Disability Discrimination Act 1992 (Cth)*;
- 41.2 The Service Provider is required, through consultation with the Minister's Contract Manager to develop a Disability Action Plan, which best suits the size, type and stage of development of the Service Provider and the type of Services it provides; and
- 41.3 If requested by the Minister, the Service Provider must provide written information detailing their organisation's demonstration of compliance with the *Disability Discrimination Act 1992 (Cth)*, including any progress in developing and implementing the Disability Action Plan.

42. **QUALITY**

The Service Provider is required to endorse and promote the principles and practices of quality improvement and through consultation with the Minister's Contract Manager negotiate to engage in a quality improvement program that best suits the size, type and stage of development of the Service Provider.

43. **FEEDBACK AND COMPLAINTS**

Unless otherwise specified in a Service Agreement the following provision in relation to feedback and complaints apply:

- 43.1 The Service Provider will actively promote the rights and responsibilities of the clients (the recipients of the relevant Services), carers, advocates and Service Provider's Staff ("**Interested Persons**") in relation to feedback and complaints and will establish a feedback and complaints mechanism, recognising complaints and feedback made.
- 43.2 The Service provider will ensure that Interested Persons are afforded easy access to information regarding their feedback and complaint systems, policies and procedures and if requested by the Minister, will provide written information detailing their organisation's feedback and complaints processes, as well as such further information as reasonably required.
- 43.3 The Service Provider will be aware of available external complaints avenues such as the Office for Health and Community Services Complaints Commissioner and will incorporate these into feedback and complaints processes appropriately.

44. **INTELLECTUAL PROPERTY**

- 44.1 Except as otherwise agreed by the Minister, the Service Provider agrees that title and Intellectual Property rights in all Materials will vest in the Minister.
- 44.2 The Minister grants to the Service Provider a royalty-free and licence fee-free, world-wide, non-exclusive licence to use, copy, and modify the Intellectual Property in the Materials only for the purpose of the Service Agreement for the Term of the Service Agreement.
- 44.3 In providing the Services the Service Provider must not infringe the Intellectual Property rights of any person.
- 44.4 The Service Provider must indemnify and keep indemnified the Minister against all costs, expenses and liabilities arising out of or in connection with any claim that the performance of the Services by the Service Provider infringes the Intellectual Property rights of any person.

45. **INFORMATION SHARING**

- 45.1 "**ISG**" means the Government of South Australia's *Information Sharing Guidelines for Promoting the Safety and Wellbeing of Children, Young People and their Families 2008* strategy endorsed by Cabinet October 2008 for implementation across South Australia as amended from time to time.
- 45.2 To the full extent permitted by law the Service Provider agrees to share information in accordance with the ISG.
- 45.3 The Service Provider will, in consultation with a representative from the Office of the Guardian for Children and Young People, develop an ISG appendix for the Service Provider ("**Service Provider's ISG Appendix**") as prescribed by the ISG (a copy of which is available at www.gcyp.sa.gov.au) as may be amended from time to time.
- 45.4 If requested by the Minister, the Service Provider will provide written information detailing the Service Provider's compliance with the ISG including details of the Service Provider's progress in developing and implementing the Service Provider's ISG Appendix.
- 45.5 The Parties acknowledge that this Master Agreement constitutes a 'State contract' for the purpose of the *Privacy Act 1998 (Commonwealth)*.

46. **TRANSITIONING OUT OF 'EXISTING MASTER AGREEMENT'**

46.1 If the Service Provider has previously entered into a master agreement which sets out the terms and conditions which apply to the provision of the Services by the Service Provider ("**Existing Master Agreement**") then the provisions of this clause apply.

46.2 The Parties agree that upon the date of execution of this Master Agreement ("**Commencement Date**"):

46.2.1 the Existing Master Agreement is deemed to be terminated by mutual consent;
and

46.2.2 any Service Agreements entered into by the Service Provider under the Existing Master Agreement (and still effective as at the Commencement Date) shall:

- (a) continue unaffected by the termination of the Existing Master Agreement;
and
- (b) be subject to the terms and conditions as set out in this Master Agreement on and from the Commencement Date; and
- (c) be treated as if any such Service Agreements had been made pursuant to this Master Agreement.

EXECUTED AS AN AGREEMENT

EXECUTED for and on behalf of the)
MINISTER FOR COMMUNITIES AND SOCIAL)
INCLUSION, MINISTER FOR DISABILITIES)
MINISTER FOR MULTICULTURAL AFFAIRS,)
MINISTER FOR SOCIAL HOUSING, MINISTER)
FOR THE STATUS OF WOMEN, MINISTER FOR)
YOUTH AND MINISTER FOR VOLUNTEERS)
by DIRECTOR, PROCUREMENT AND GRANTS)
DEPARTMENT FOR COMMUNITIES AND)
SOCIAL INCLUSION who is duly authorised)
in that regard, in the presence of:)

.....

Witness

Print name:

EXECUTED for and on behalf of «ORGANISATION_NAME»

Signed: Date:
(Having been duly authorised in that regard)

Name: Title:

In the presence of:

Signed: Date:

Name: Title:

THE SCHEDULE

ITEM 1	PARTIES' REPRESENTATIVE
(Clause 5.1)	Minister's Representative
	Chief Executive
	Department for Communities and Social Inclusion
	Service Provider's Representative
	NAME:
ITEM 2	INSURANCE REQUIREMENTS
(Clause 17)	Public Liability: \$10,000,000.00 in respect to any one claim

ANNEXURE A - PROFORMA SERVICE AGREEMENT

ANNEXURE B - PROGRAM SPECIFIC ANNEXURE

[if applicable]

