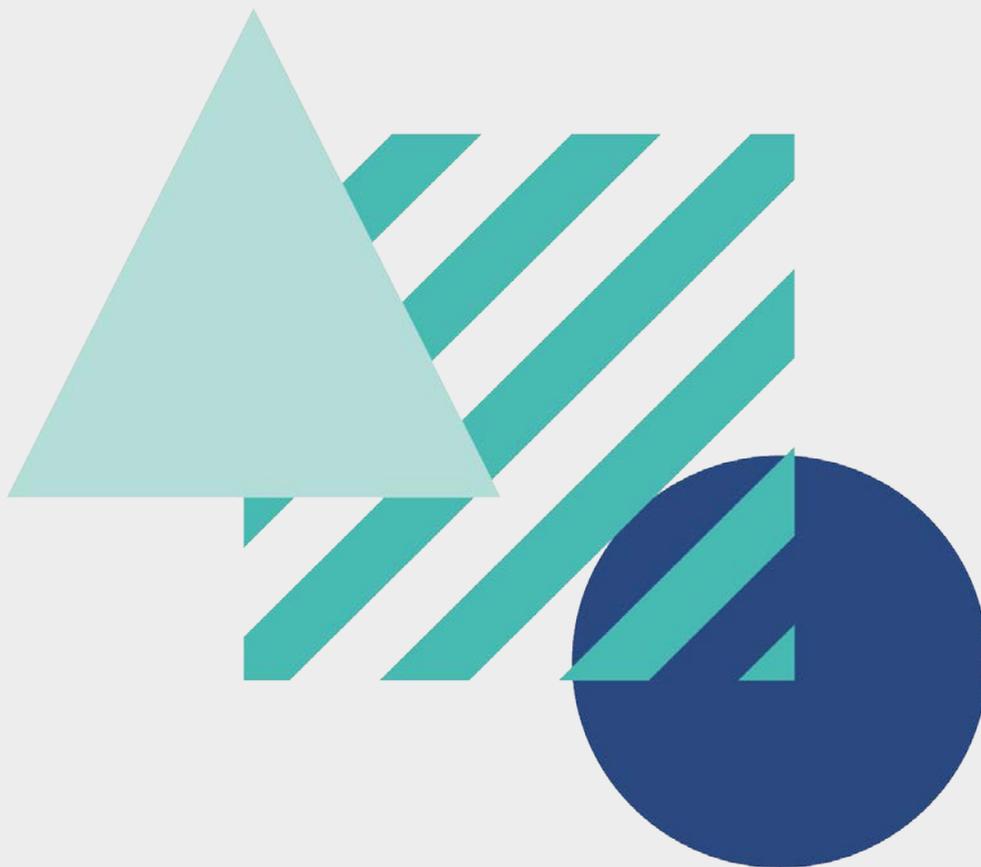




Australian Government  
National Office for Child Safety

# Frequently asked questions

Extending child safety obligations to Commonwealth funded third parties



## What is the Commonwealth Child Safe Framework?

The Commonwealth Child Safe Framework (CCSF) is a whole-of-government policy that sets minimum standards for child safe practices within Commonwealth entities.

Under the CCSF, Commonwealth entities must

- ▶ Undertake risk assessments annually in relation to activities of each entity, to identify the level of responsibility for, and contact with, children and young people, evaluate the risk of harm or abuse, and put in place appropriate strategies to manage identified risks.
- ▶ Establish and maintain a system of training and compliance to make their staff aware of, and compliant with, the CCSF and relevant legislation including working with children checks and mandatory reporting requirements.
- ▶ Adopt and implement the National Principles for Child Safe Organisations within 12 months of endorsement by the Council of Australian Government (COAG). COAG endorsed the National Principles on 2 February 2019.

The CCSF also recommends that entities impose child safety requirements, consistent with the CCSF, on individuals or organisations they fund in relation to activities that involve contact with children that is a usual part of, and more than incidental to, the funded activity.

## How does the CCSF apply to third parties?

The CCSF itself applies to Commonwealth entities and staff. However, the Commonwealth has committed, as part of its response to the Royal Commission into Institutional Responses to Child Abuse (Royal Commission), to require any institution it funds to undertake child related work to adopt the National Principles for Child Safe Organisations.

To implement this commitment, entities need to consider, when entering into a funding agreement, whether child safety is relevant to the activity being funded. Making the decision about whether to impose child safety obligations on a third party is not always easy, but it is an important step in improving safety outcomes for children.

The child safety obligations of the CCSF do not apply to funded third parties automatically. The requirements of the CCSF will only apply to a funded third party if they are included in the respective written funding agreement. To assist, the National Office for Child Safety and the Department of Finance have developed child safety clauses for use in [grant agreements](#) and [contracts](#).

## When should I consider child safety issues?

Each Commonwealth entity knows its business, risks and opportunities better than anyone else. For this reason, the decision about how and when to consider child safety issues in a funding arrangement is at the discretion of the individual entity.

It is recommended that child safety obligations are included in a funding arrangement where the funding is for:



- ▶ services directly to children.

*For example, providing early childhood learning services to children, providing telephone counselling services to primary school aged children or teaching children to abseil at an outdoor mentoring program, or*

- ▶ activities that involve contact with children that is a usual part of, and more than incidental to, the funded activity.

*For example a service to train vulnerable parents may involve significant contact with the vulnerable parent's child even if the service is directed at the parent.*

It is also recommended that you consider imposing child safety obligations if the funded activity involves children more broadly, even if it does not meet the description above, but this will be entirely dependent upon the nature of the funded activity and the risk of harm to children. For example, a funded activity may be located on a school premises, this is likely to result in personnel having increased interaction with children, even if it is not a service to a child.

Given the importance of taking action to protect children, it is vital to engage with the risks inherent in your funded activity to decide what child safety measures may be appropriate. To assist you to make this decision, please consider the below questions in relation to your funded activity or service.

Ask yourself these questions about the funded activity, the funded third party and the agreement

What is the nature of the activity or service?

The way the service is delivered may impact upon the risk to children. Does the service involve direct interaction with a child online or by telephone? Does the service involve a degree of physical contact with a child (e.g. demonstrating a skill to a child or providing a personal service such as washing, dressing and toileting)?

What is the degree of isolation? Will the funded third party personnel be with children in remote or isolated sites?

Will the funded third party personnel be alone with children? What is the degree of supervision?

What is the venue for the service? Is it conducted in a public or private forum?

What is the scope of the services?

Does it involve developing close, personal, long term relationships with children?

Does the child receiving the service have other needs that makes them more vulnerable? E.g. does the child have complex health needs or do they have a disability?

What level of control does the funded third party have over the person delivering the service? (i.e. is the person delivering the service an employee or volunteer who the funded third party can impose clear obligations around how the service is undertaken or is the person delivering the service a sub-contractor or consultant that the funded third party has little visibility over?)

Do you know if the funded third party has a mature child safe environment?



Ask yourself these questions about the funded activity, the funded third party and the agreement

Do you know if the funded third party has a strong framework of policies, procedures, guidelines and training in place related to child safety?

Are you aware of the funded third party having any previous child safety issues?

What is the culture of the funded third party to child safety issues?  
You may wish to discuss the proposed child safety clause with the prospective funded third party and receive their views on the clause, they may be able to easily comply with the clause and are happy to include it in the written agreement.

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## Remember to consider child safety through the whole lifecycle of your funding arrangement – from design to completion

Where appropriate, child safety issues should be considered during the entire life cycle of the funding activity. The initial consideration of child safety issues should be made early in the funding process. Entities may wish to have a policy on when to impose child safety obligations in their funding arrangements.

Child safety issues should initially be considered during the design/planning phase of the funding arrangement. Designing funding opportunities with reference to child safety issues will assist entities to:

- ▶ assess if requiring organisations to comply with child safety obligations will assist the Commonwealth to achieve its policy outcomes and mitigate risks to children;
- ▶ provide early advice to prospective funding recipients about what their child safety obligations will be should they be successful; and
- ▶ reduce the likelihood of funding unsuitable organisations.

There are other areas of your funding process that you may wish to consider child safety obligations including:

- ▶ an approval to commit money may include a section where child safety issues are considered so that it forms part of the delegate's decision making;
- ▶ approach to market documents may need to put the potential supplier on notice of their child safety expectations and ask them to comment on how they are child safe;
- ▶ selection/evaluation documents could assess the third parties response to child safety requirements to ensure that a third party's child safety regime is part of deciding if the applicant is successful; and
- ▶ management plans for written agreements could include an aspect on how to manage the child safety obligations in the written agreement.



Ask yourself these questions about the design and opportunity development process

What is the nature of the Government's policy? What type of funding approach will you use? How will the funding opportunity work?

For a grant, the way the policy is designed, through development of the grant opportunity guidelines may impact upon the risk to children.

What is the scope of the services?

Does it involve developing close, personal, long term relationships with children?

Should the approach to market require prospective funding recipients to answer specific selection criteria questions to demonstrate their capability and capacity to deliver activities in a child safe environment?

For example:

Can organisations provide evidence of a mature child safe environment?

Can organisations provide evidence of their child safe framework policies, procedures, guidelines and training in place related to child safety?

Should the approach to market require prospective funding recipients to answer specific eligibility criteria questions to demonstrate their capability and capacity to deliver activities in a child safe environment?

For example:

Please advise of any child safe investigations/ reportable issues that have occurred in your organisation?

## How do I impose child safety obligations?

The mechanism Commonwealth entities will largely use to impose child safety obligations upon funded third parties is through the written agreement for the funding. In many cases this will be the grant agreement, contract or deed.

Child safety clauses have been drafted for use in the Commonwealth Simple and Standard Grant Agreement [templates](#), through optional Supplementary Conditions. Clauses are also available for use in the Commonwealth [ClauseBank](#) for procurement.

There are a wide variety of written agreements in use by Commonwealth entities, you may need to seek legal advice on your specific written agreement.

## What are the obligations in the child safety clauses?

### Grants

The child safety [clause](#) for the Commonwealth Standard Grant Agreement is for use where the grant is for services directly to children and for activities that involve contact with children that is a usual part of, and more than incidental to, the funded activity. The Standard Grant Agreement clause requires the Grantee to:



- ▶ comply with all Australian law relating to employing or engaging people who work or volunteer with children. This includes working with children checks and mandatory reporting;
- ▶ implement the National Principles for Child Safe Organisations;
- ▶ complete and keep updated a child-related risk assessment including implementation of management strategies;
- ▶ provide training and implement a compliance regime to ensure that all relevant persons are aware of the National Principles for Child Safe Organisations, risk management strategies and relevant legislation;
- ▶ provide the Commonwealth with an annual statement of compliance with the obligations in the grant agreement.

The child safety [clause](#) for the Commonwealth Simple Grant Agreement is for use where it is possible or likely that personnel will interact with children but not to the extent requiring the full Child Safety clause in the Standard Grant Agreement. The Simple Grant Agreement clause requires the Grantee to:

- ▶ comply with all Australian law relating to employing or engaging people who work or volunteer with children. This includes working with children checks and mandatory reporting; and
- ▶ request an annual statement of compliance with this requirement.

## Procurement

The [ClauseBank](#) for procurement contains two options for child safety clauses to use in contracts.

Option 1 should only be used in contracts where you are not sure whether Supplier personnel will or may interact with children during any part of the Contract term.

Option 1 requires the Supplier to:

- ▶ comply with relevant legislation relating to working or volunteering with children when performing the Services;
- ▶ provide an annual statement of compliance with the child safety clause; and.
- ▶ impose the same child safety obligations on subcontractors

Option 2 should be used in contracts where Services will be provided directly to children or where some contact with children will be likely. This clause should also be used in contracts for Services that involve contact with children that is a usual part of, and more than incidental to, the Services.

Option 2 requires the Supplier to:

- ▶ comply with relevant legislation relating to working or volunteering with children when performing the Services;
- ▶ ensure working with children checks are obtained where required and remain current for the duration of the Services;
- ▶ implement the National Principles for Child Safe Organisations;



- ▶ identify and manage the risk of harm or abuse to children in undertaking the services;
- ▶ provide training and implement a compliance regime for persons undertaking child-related work;
- ▶ provide an annual statement of compliance with the child safety clause;
- ▶ notify the Commonwealth of any failure to comply with the child safety clause; and
- ▶ impose the same child safety obligations on subcontractors.

## What if the third party does not want to include the clause?

While some third parties may attempt to oppose inclusion of a child safety clause in their written agreement the need for improved child safety was clearly documented by the Royal Commission.

The Commonwealth has committed, as part of its response to the Royal Commission, to require any institution it funds to undertake child related work to adopt the National Principles for Child Safe Organisations. This will be done through imposing the obligation into written agreements. For this reason it is important the entities resist any opposition to the child safety clause.

Ideally, you should be clear when approaching the market that the successful funding recipient will be required to comply with a child safety clause in their written agreement and provide a copy of the draft agreement terms and conditions if possible. Early notice of this requirement will assist potential recipients in their application for funding.

The child safety clauses for use in grant agreements and procurement contracts have been drafted for application to third parties that are providing services directly to children or where contact with children is a usual part of and more than incidental to the services that are being funded by the Commonwealth.

The child safety clause does not impose unreasonable obligations upon funded third parties that should already have robust child safety practices in place that comply with state and territory legislative obligations. The obligations in the clause are largely aimed at ensuring that all persons who may be working with children are appropriately screened for that purpose.

If the funded third party cannot meet their child safety obligations under state and territory legislation then you should not provide them with funding to provide services to children.

## What about subcontractors?

In general, only parties to a written agreement can enforce or be bound by the terms of the agreement. The funded third party is generally responsible for any subcontractor it engages to perform the activity or services in the written agreement. In practice, this means that if an issue arises under the written agreement relating to a subcontractor, the Commonwealth would raise this issue with the funded third party and the funded third party would need to address this with their subcontractor.



The funded third party is responsible for ensuring that all relevant aspects of the written agreement are complied with, even when subcontractors are involved. If subcontractors are performing work for the funded third party that involves working with children, the funded third party should seek assurance from their subcontractors that the subcontractor complies with relevant state and territory legislation for working with children checks and mandatory reporting. For these reasons, you are not required to engage directly with subcontractors of the funded third party

Managing the supply chain is very important in preventing child abuse and promoting child safety. It is important that the funded third party is not able to avoid child safety obligations by sub-contracting its responsibilities. We recommend you seek to make sure that subcontractors have the same child safety obligations that the funded third party has under their written agreement with the Commonwealth.

The manner in which you do this will depend upon the terms of your written agreement. For example, the clause in the Commonwealth [ClauseBank](#) for procurements contains a provision that requires the Supplier to impose on the Subcontractor the same obligations regarding Child Safety that the Supplier has under the Contract. Whereas, the [Commonwealth Standard Grant Agreement template](#), contains optional general conditions that provide that the grant recipient must have the Commonwealth's written permission to subcontract any part of the funded activity. It also provides that the Commonwealth may impose conditions when giving consent, this may be an appropriate time to impose these additional child safety obligations. You will need to consider the terms of your particular written agreement.

## What if my funding arrangement is not a grant or procurement?

The types of funding arrangements across the Commonwealth are many and varied. There are funding arrangements in the Commonwealth that are based upon legislative instruments, principles and guidance material rather than a written agreement, for example the Aged Care Funding Instrument (some children with high needs are housed in aged care facilities).

If you have funding arrangements like this in place that provide services directly to children or activities that involve contact with children that is a usual part of, and more than incidental to, the funded activity, it may still be appropriate to include child safety obligations.

The manner of requiring these child safety obligations will need to be tailored to each type of arrangement. Rather than requiring child safety obligations in written agreements it may be appropriate to include the obligations in legislative instruments (when the next amendment is due to take place), conditions for receiving funding, guidance material for funded third parties or reporting requirements.



## What if the activity we fund is taking place overseas?

It is important to ensure that Commonwealth funding is provided to organisations with appropriate child safe practices. This includes children located in Australia or overseas.

If your entity is providing funding to organisations that are not required to comply with Australian laws, then the existing child safety clauses may not provide adequate safeguards for children's safety. In these circumstances you may wish to seek legal advice on appropriate variations or alternatives to the child safety clause.

The [Department of Foreign Affairs and Trade](#) has a well-established child protection policy for funded third parties working overseas, you may wish to consider their approach in the first instance.

## What if the funded third party has employees under 18?

The CCSF is not intended to apply merely because the Commonwealth funded third party employs persons under the age of 18.

Most state and territory legislation has conditions and restrictions about the age that young people can be employed, the type of work they can do and the hours they can work. As funded third parties will have state and territory legislative obligations for employing young people, the Commonwealth does not seek to duplicate state and territory government obligations in this space.

However, there may be unique circumstances where you believe application of the CCSF is applicable, we recommend you seek legal advice on any such specific written agreements.

Further information is available. The Commonwealth Ombudsman publishes a [Best Practice Guide: An employer's guide to employing young workers](#) which provides best practice guidance when it comes to employing young workers.

## Tips for managing your written agreement

### Third parties can access assistance to implement the national principles

The Australian Government has commissioned the Australian Human Rights Commission to develop a series of tools and resources to assist organisations to implement the [National Principles](#).

You can refer third parties that need to implement the National Principles as part of their written agreement with the Commonwealth to the tools and resources available on the website of the [Australian Human Rights Commission](#).



## What needs to be included in the annual statement of compliance

The child safety clauses that have been drafted for the Commonwealth Simple and Standard Grant Agreement template, through optional Supplementary Conditions and the Commonwealth ClauseBank for procurement include a requirement or option to obtain an annual statement of compliance from the funded third party that they are meeting their relevant child safety obligations as specified in their written agreement.

The form of this statement of compliance is not specified in the clause. This leaves flexibility and discretion to each Commonwealth entity to decide the form of the statement of compliance and how it will be implemented.

If you receive information in your annual statement of compliance that suggests that the funded third party does not comply with:

- ▶ their child safety obligations under the clause; or
- ▶ state and territory legislation for working with children checks and mandatory reporting,

we recommend you manage the written agreement to rectify the problem. Please refer below to the FAQ 'What if the funded third party does not comply with their child safety obligations? Managing your written agreement'.

## What if the funded third party does not comply with their child safety obligations?

Given the importance of child safety obligations in your written agreements and the potential risks to children of non-compliance, if the funded third party does not comply with their obligations under the relevant written agreement, you should take immediate action to address the non-compliance.

Depending upon the nature of the non-compliance you may need to report it to authorities. If the funded third party has reported non-compliance with their legislative obligations for working with children checks or mandatory reporting. It may be an offence in the relevant state or territory to fail to comply with these legislative requirements. If this occurs, you are encouraged to seek advice from your legal advisors on your obligations.

In other circumstances, the relationship between your entity and the funded third party is governed by the terms and conditions of the written agreement. The terms and conditions for each written agreement may be different.

In the first instance it may be appropriate to request the funded third party to urgently provide:

1. further information about the non-compliance;
2. details about how they will rectify their non-compliance (please make sure that this is done within an appropriate timeframe); and
3. notice of when they have achieved compliance with the child safety clause.

If you do not receive an adequate response from the funded third party, you may wish to seek legal advice about the remedies that may be available under the written agreement. These remedies could include such things as step in rights, withholding payment of the fees



until the funded third party complies with their obligations under the written agreement or termination of the written agreement.

You are encouraged to seek advice from your legal advisors on your specific written agreement in the event a funded third party does not comply with their child safety obligations.

## Need further information?

For further information please contact the National Office for Child Safety  
[CommonwealthChildSafe@pmc.gov.au](mailto:CommonwealthChildSafe@pmc.gov.au)

