

NEGOTIATING **GUIDELINES**
FOR STATE-LOCAL GOVERNMENT FUNDING AGREEMENTS



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1. INTRODUCTION

These guidelines have been developed to assist departments involved in negotiations with local government to draft, renew or vary funding agreements. They provide guidance on ‘best practice’ in developing and agreeing on arrangements in the spirit of the Victorian State–Local Government Agreement (VSLGA) that meet the objectives of the program.

The task of negotiating agreements for the provision of government services can be complex. It is desirable that officers involved in developing funding agreements have a full understanding of the context in which such agreements are negotiated, including the impact of funding agreements on overall state and local government finances and the relative merits of any agreement.

The aim of these negotiating guidelines is to set out a process that will maximise information flows and facilitate cooperation between state government departments and local government to ensure that the best outcomes are achieved.

2. VICTORIAN STATE–LOCAL GOVERNMENT AGREEMENT

The VSLGA is both a stand-alone agreement, and an agreement that gives effect to the national *Inter-Governmental Agreement Establishing Principles Guiding Inter-Governmental Relations on Local Government Matters* (IGA). The objective of the VSLGA is to progress social, economic and environmental outcomes for Victoria’s communities. It aims to strengthen state–local government relations, improve coordination of government services, strengthen the capacity of local government, improve consultation, and promote greater transparency and accountability between the two spheres of government.

The VSLGA does not limit the Victorian Government acting on its own accord in relation to local government. The state government is not obliged to see local government as the only provider for services on behalf of, or jointly with, the state government. The state government retains the right to amend or introduce legislation that affects local government. However, subject to exceptional circumstances, it should consult with the MAV and/or relevant local government bodies and ensure impacts (including financial impacts) are taken into account.

The VSLGA is available on the Local Government Victoria website:
www.localgovernment.vic.gov.au

3. NATIONAL AGREEMENT

The national *Inter-Governmental Agreement Establishing Principles Guiding Inter-Governmental Relations on Local Government Matters* (IGA) was signed by the federal Minister for Local Government, state and territory ministers for local government and the President of the Australian Local Government Association on behalf of all state and territory local government associations in April 2006.

The IGA establishes a framework under which future agreements can be struck between the three spheres of government. It lays the foundations and spirit in which state, territory and federal governments will work with local government – promoting respect, encouraging dialogue and transparency.

The purpose of the IGA is to:

- encourage the conduct of positive and productive relations between the Commonwealth, state and local governments in a spirit of respect and with an emphasis on partnership and cooperation; and
- provide an overarching framework from which further agreements covering specific services and functions should be developed.

The IGA is available on the Local Government Victoria website:

www.localgovernment.vic.gov.au

4. PRINCIPLES OF STATE–LOCAL GOVERNMENT FUNDING AGREEMENTS

The following principles should form the basis for agreement arrangements. Operational arrangements are discussed in the next section.

The following principles should apply:

- Agreements should be constructed to maximise the coverage of related policy areas rather than establishing multiple separate agreements.
- Administrative and accountability arrangements should be simplified and standardised wherever possible.
- Agreement details, such as funding levels, schedules and timetables for renegotiation of agreements, should be known well in advance.
- Where responsibilities are shared, agreements should reflect a spirit of cooperation between governments, defining broad principles, objectives and performance measures.
- Where local government is accountable for results, these should be defined in terms of achieving broad outcomes or delivering outputs.
- Criteria for the allocation of resources should be clearly defined within each agreement.
- Agreements should be avoided where there is potential to increase unnecessary and costly duplication of functions between different levels of government.
- Agreements should be written in plain English rather than as legally binding documents – including any provision for sanctions that may be included.

5. OPERATIONAL GUIDELINES FOR STATE–LOCAL GOVERNMENT FUNDING AGREEMENTS

The following guidelines put into operation the principles set out above.

Outcome or output focus

Agreements should state the overall policy purpose of the program and clearly define the broad program outcomes or outputs to be achieved.

All reporting should be based on achievable outputs and outcomes. Agreed benchmarks should provide clarity and direction without being unduly prescriptive.

Clear responsibilities

Agreements should clearly define the responsibilities of state and local government. For example:

- Agreements should specify whether the state government is contributing to a local government program, whether local government is running the program as a shared responsibility with the state government or whether local government is acting as an agent contracted to run the program on behalf of the state government in an area of state government policy responsibility.
- Agreements should recognise that local government may already commit resources to a similar program. Such recognition can avoid duplication of administrative effort and unduly complex reporting mechanisms.
- Agreements should specify policy setting and operational responsibilities.
- Duplication should be avoided wherever possible.
- Administrative costs associated with management, monitoring and reporting should be minimised and be commensurate with the funding involved.
- Arrangements for recognising all parties in publicity and media releases should be specified.

Demonstrated commitment

Agreements should allow state and local government to demonstrate their commitment to the program.

Priority should be on demonstrating commitment through the achievement of agreed broad outcomes or outputs.

Clear funding mechanisms

Funding agreements should provide predictability and stability, to enable forward planning to be undertaken by state and local government.

Agreements should clearly specify the main components and timing of funding.

Where relevant, appropriate formulas should cover unavoidable increases in expenses resulting from growth in service demand for the period of the VSLGA.

Incentives and sanctions

One way to ensure good programs and the fulfilment of all obligations is through the use of incentives.

Agreements can also include sanctions, including withholding funds or imposing financial penalties for non-performance.

Agreements should be cooperative arrangements between the state and local government.

Where appropriate (in light of respective roles and responsibilities), agreements should establish a process by which the state government will cooperatively identify with local government any impediments to achieving targets, agree on actions to address impediments and to provide for resetting targets in the event they are found to be unrealistic.

Where sanctions are considered necessary, they should:

- apply only to factors within the control of local government;
- apply only if performance is clearly not within an agreed performance range (e.g. a percentage variation from target output); and
- only be used following consultation between the state government and local government to resolve disagreement through a previously specified dispute resolution mechanism.

The wording of incentive and sanction provisions in agreements should reflect their functional status as part of an intergovernmental agreement rather than as a legally binding contract.

Varying agreements

Arrangements should be based on shared objectives and mutual understanding of the requirements of agreements. Nevertheless, problems or new issues may arise during implementation despite the best intentions of all parties. In such cases, all parties to an agreement are entitled to fair consideration.

Any jurisdiction that proposes a change to an agreement or a related document should provide sufficient time for comment.

Changes should be by mutual agreement and in writing.

Resolving disputes

Agreements should include appropriate consultation procedures for resolving disputes:

- Agreement managers should attempt to resolve any dispute, in the first instance.
- If this fails, appropriately senior state and local government officials should discuss and attempt to resolve the issue.
- Failing this the appropriate minister and the Minister for Local Government should be notified.

Renewal of agreements

Each agreement should be framed with a view to whether it is likely to be renegotiated or renewed.

Where renegotiation or renewal is likely, specifying such expectations can provide some funding and operational certainty.

A renegotiation or renewal clause does not remove the need for all parties to reach agreement on any renewal.

Where it is likely that an agreement will not be renewed, the parties should consider a phase-down of funding arrangements (rather than a sudden unanticipated termination of funding).

6. NEGOTIATION

In view of the time that may be required to negotiate a satisfactory form of agreement, state government departments and local government need to initiate negotiations well in advance of the expiration of present agreements to avoid undue pressure from deadlines or having to carry program expenditure solely from one resource (state or local government) while agreements are renegotiated.

Liaison between state and local government

Departmental officers should ascertain who they should negotiate agreements with from the local government sector, whether it be the peak representative bodies or individual councils. Officers should use the *Communication and Consultation Guidelines on State–Local Government Engagement* as a guide. Further advice can be sought from Local Government Victoria within the Department of Planning and Community Development.

Duration and termination

Departments need to give consideration to pressure for an ongoing local government commitment should the state government reduce or withdraw funding and the financial implications that this may have for local government.

Draft agreement

A template agreement has been developed by Local Government Victoria which summarises the principles and features of good agreements and recognises the policy and financial interests of state and local government.

7. MONITORING

Local government should be aware of its commitment to agreements and ensure that agreed outcomes and reporting requirements are met. It should also ensure that the state government is meeting its commitments under the VSLGA.

8. CONTACT INFORMATION

For further information on these guidelines, the VSLGA and IGA, contact Local Government Victoria, Department of Planning and Community Development on **03 9208 3430**.

9. FUNDING AGREEMENT SAMPLE TEMPLATE

The following template can be used as a general checklist of desirable features to be included in agreements. Administrative and accountability arrangements should be simplified and standardised wherever possible. Ideally, agreements should be built upon standard type agreements, modified as necessary to reflect individual circumstances.

The template is at a broad level to take into account the varied nature of agreements, which range from programs where the major responsibility is largely at one level of government to more complex programs where responsibility is more evenly shared.

The text in italics can be used as a guide to complete each section.

■ PARTIES TO THE AGREEMENT

This Agreement is between the following Parties:

- the State of Victoria (the State)/Department of ... ; and
 - The Shire/City of ...
 - *Depending on the exact signatories*
-

■ REPRESENTATION/CONTACTS

The State shall be represented for the purposes of this Agreement by ...
(specify Minister and/or Department)

Local government shall be represented for the purpose of this Agreement by ...
(specify organisation and/or council)

- *This is necessary for addressing communications and notices.*
-

■ PREAMBLE

This Agreement supersedes ...

- *Previous arrangements may occasionally be regarded as being in force unless they are explicitly mentioned.*

In entering into this Agreement, the Parties recognise that ...

- *e.g. The Parties have a mutual interest to improve outcomes in this area and must work together; or, this Agreement focuses on those issues that require a joint approach.*

This Agreement is closely linked to ...

- *Describe any linkages and interrelationships with other programs or agreements.*
 - *A process should also be established for dealing with any boundary issues that may arise between related programs and agreements.*
-

■ INTERPRETATION

In this Agreement, unless the contrary intention appears, ...

- *Definition of any terms that require explanation may be included as a schedule to the Agreement.*
-

■ TERM OF THE AGREEMENT

This Agreement will commence on ... and expire on ... *(specify details)*

■ RENEWAL OF THE AGREEMENT

An agreement to replace this Agreement shall be negotiated and agreed prior to ...

(specify date: e.g. prior to the expiry of the current Agreement)

- *This is necessary for programs that are envisaged to be ongoing.*

■ PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to ...

(specify: e.g. assist those whose needs cannot be met by the private market; or, this Agreement provides a framework agreed by state and local government to underpin the provision of ... assistance/services)

- *Agreements should contain a statement of purpose, which generally should remain unchanged during the development of the program. The purpose should be stated in terms that are unambiguous, realistic and emphasise outcomes rather than inputs and processes.*
- *The overall policy purpose of the program should be agreed by the Parties at the initial stage and should specify goals that are based on meeting clearly defined needs.*

■ GUIDING PRINCIPLES

The principles guiding state and local government in the development and implementation of this Agreement are:

(specify: e.g.

- *provide priority assistance to those with the highest needs;*
- *provide assistance on a non-discriminatory basis;*
- *give reasonable choice, and meet community standards on consumer rights and responsibilities;*
- *program arrangements should be sufficiently flexible to reflect the diversity of situations that currently exist in local government;*
- *funding arrangements should promote efficiency and cost effective management.)*

The Parties agree to use their best endeavours to operate within these principles.

- *Where principles will be used to guide program management, delivery and assessment, they should be agreed and stated. Principles act both to guide and limit the discretion of program designers, managers and reviewers, and so need to be agreed and made explicit.*
-

■ ROLE OF PARTIES

All Parties will work in partnership to realise the goals and commitments made in this Agreement.

The Parties will work together to:

(specify: e.g.

- *operate within the principles specified above;*
- *undertake appropriate joint planning and policy setting for the program.)*

The State of Victoria/Department of ... will have responsibility to:

(specify: e.g.

- *ensure that implementation of this Agreement is part of a state-wide strategy;*
- *make available financial assistance to the council as specified in ... for the purpose of meeting the agreed outcomes specified in ...)*

The responsibilities of the Shire/City of ... are to:

(specify: e.g.

- *establish priorities and strategies for their own jurisdictions, consistent with the overall State-wide policy approach;*
- *develop, implement and manage services and/or programs to achieve the agreed outcomes specified in ...)*
- *Agreements should clearly define the roles and responsibilities of each Party.*

■ AGREED OUTCOMES OR OUTPUTS AND PERFORMANCE INDICATORS

The Shire/City of ... agrees to meet the following target outcomes and/or outputs:

(specify)

- *Provide a broad description of the target outcomes or outputs to result from the program. Local government should be held accountable for results, defined in terms of the achievement of outcomes or delivering outputs, rather than for their own expenditure or inputs.*
- *Target outcomes or outputs would usually be defined in terms of meeting client needs and should be described in terms of desired progressive improvements in critical areas of performance. Target outcomes or outputs may be modified over time by review.*

■ AGREED OUTCOMES OR OUTPUTS AND PERFORMANCE INDICATORS cont'd

Achievement of these outcomes or outputs will be assessed by reference to the following performance indicators:

(specify)

- *The performance indicators should provide a basis for objective judgements to be made as to whether the target outcomes are achieved cost-effectively. As examples, measures may refer to benchmarks, standards or to target outputs for key result areas, depending on the stage of development of the program.*
- *In recognition of the diversity of areas in which the program will operate, provision should be made for variations in target outcomes or outputs and performance indicators to suit local conditions.*
- *Detailed program outcomes or outputs, together with strategic-level plans, could form a schedule to an agreement, where considered necessary. Strategic-level plans should be developed jointly by the Parties.*

■ FINANCIAL ARRANGEMENTS

FUNDING COMPONENTS

The State will provide the following funding:

(specify amount, components if appropriate and period of funding commitment)

- *Where the program is an agreed cost sharing arrangement, specify the relevant funding formula.*

INDEXATION

State funds will be indexed each year as follows:

(specify index(es) to be used, which component(s) this will be applied to and when the index will be applied. For example: 'State funds will be indexed subject to annual determinations and appropriations by the State Parliament for this purpose'.)

REPORTING REQUIREMENTS

The Shire/City of ... will provide a performance report against agreed performance indicators to the State by no later than ...

(specify timing: e.g. annual or at completion of the program)

- *All performance reporting should be based on achievable outcomes and outputs as set out above.*
 - *Where a capacity to produce the required data is not already in place, a time frame and funding arrangement(s) may be negotiated to facilitate production of the data.*
-

■ INCENTIVES AND NON-PERFORMANCE

If the Shire/City of ... meets (or exceeds) the agreed outcomes or outputs and performance indicators, the following incentives will apply:

(specify if relevant)

- *Positive incentives could be built into agreements to encourage program performance against objectives.*

If the Shire/City of ... does not meet the agreed outcomes or outputs and performance indicators, the following process will apply:

(specify if relevant)

- *Include adequate consultation process between the Parties, opportunity for corrective action and any sanctions if appropriate.*
- *Where sanctions are considered necessary, they should:*
 - *apply only to factors within the control of the council;*
 - *apply only if performance is clearly not within an agreed performance range (e.g. per cent variation from target output); and*
 - *only be imposed after consultation between the Parties to resolve disagreement through a joint process of identifying impediments, developing solutions, implementation and monitoring.*

■ MANAGEMENT/ADMINISTRATION ARRANGEMENTS

This Agreement will be administered as follows:

(specify)

- *Outline any strategic and policy oversight arrangements and details for responsibilities for operational matters.*
- *Detail any administrative arrangements to be established (e.g. committees, designated managers).*

■ DISPUTE RESOLUTION

Any Party may give notice to other Parties of a dispute under this Agreement. Dispute resolution procedures should include appropriate consultation mechanisms:

- *Agreement managers should attempt to resolve any dispute, in the first instance.*
- *If this fails, appropriately senior state and local government officials should discuss and attempt to resolve.*
- *Failing this the appropriate minister and the Minister for Local Government should be notified.*

■ REVIEW OF THE AGREEMENT

A review of the Agreement will be undertaken by ...

(specify timing e.g. after three years, as part of the preparations for a new agreement to take effect following the fourth year)

The review will be undertaken jointly by the Parties and examine:

(specify issues to be covered and implications e.g. appropriateness, effectiveness, efficiency, administration)

- *Set out arrangements for reviewing performance against agreed measures, and evaluating the overall progress in achieving desired outcomes. Detail the process for review, including the involvement of all Parties to the Agreement.*
-

■ VARIATION OF THE AGREEMENT

This Agreement may be varied by agreement in writing between the Parties.

Variations may include, but are not limited to, financial assistance and performance requirements.

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