



Treasury

January 2019

TPP

19-02

Policy and Guidelines Paper

**Guidelines for
Community Service Obligations**

Preface

Community Service Obligations (CSOs) – as non-commercial requested activities of government businesses for identified social purposes – are a significant component of the social policies of the NSW Government. The Guidelines for Community Services Obligations provides a framework for the commissioning and delivery of CSOs.

CSOs exist as an option for Government to address a policy objective. The circumstances where CSOs can be requested range from market failure to a response to a social issue. There are also certain CSOs where the objective is to provide the community or a targeted section of the community with social benefits at an affordable price or without charge and to an agreed standard or quality.

The framework establishes the expectations on how a Public Non-Financial Corporation or Public Financial Corporation should be requested to deliver a CSO. The purpose of the framework is to improve the transparency and consistency of CSO arrangements.

This policy replaces the NSW Government's 1994 Social Program Policy for NSW Government Trading Enterprises.

Michael Pratt AM
Secretary
NSW Treasury

January 2019

Note

General inquiries concerning this document should be initially directed to your Treasury Relationship Manager or email commercialpolicy@treasury.nsw.gov.au.

This publication can be accessed from the Treasury's website www.treasury.nsw.gov.au .

Contents

Preface.....	i
Contents.....	ii
Purpose.....	1
Application	1
Responsibilities	1
Community Service Obligations	2
What is a Community Service Obligation?	2
What is not a Community Service Obligation	2
Commissioning Community Service Obligations	3
Principle 1: A CSO should have a clearly defined objective.....	3
How to plan a Community Service Obligation.....	3
Principle 2: A CSO should be funded by the Government Department responsible for the objective	4
How to fund a Community Service Obligation.....	4
Principle 3: A CSO should be formalised through a Service Level Agreement.....	4
How to formalise a Service Level Agreement	4
Reporting and monitoring.....	5
Review.....	5
Existing Community Service Obligations	6
Exceptions process	6
Practice Guide 1 – Service Level Agreements	7
Practice Guide 2 – Application to the Treasury Secretary for Exception from Guidelines	8
Appendix	9
Glossary	10

Purpose

Public Non-Financial Corporations (PNFCs) and **Public Financial Corporations** (PFCs) are expected to operate on a commercial basis. However, they may be requested to undertake activities on behalf of government that do not align with their commercial objectives. These activities do not achieve a commercial return and would not be undertaken by comparable private sector businesses.

These activities are commonly known as **Community Service Obligations** (CSO)¹. These Guidelines outline the process whereby the Government may make a request to a PNFC or PFC to undertake an activity on their behalf, to address a policy objective.

The purpose of these Guidelines is to:

- ensure the Government's policy objectives are achieved without impacting on the commercial performance of the PNFC or PFC;
- clarify what is a CSO;
- establish the process for commissioning CSOs; and
- set the expectations for funding, review and monitoring of CSOs.

Application

These Guidelines apply to all Public Non-Financial Corporations, including State Owned Corporations, and Public Financial Corporations.

All proposed CSOs should align with the Guidelines. Existing CSOs are encouraged to align with the new framework by 2020-21.

Responsibilities

Government departments are responsible for ensuring that any requests from the Minister or their Departments to a commercial PNFC or PFC align with these Guidelines.

PNFCs and PFCs are responsible for ensuring that any CSO requests from Government Departments or a Minister are aligned with these Guidelines.

PNFCs and PFCs are expected to contact their Treasury Relationship Manager when approached by a Government Department or a Portfolio Minister to deliver a CSO. Treasury will then facilitate the process to ensure these Guidelines are considered.

¹ A community service obligation arises when a government specifically requires a public enterprise to carry out activities relating to outputs or inputs which it would not elect to do on a commercial basis, and which the government does not require other businesses in the public or private sectors to generally undertake, or which it would only do commercially at higher prices (Steering Committee on National Performance Monitoring of Government Trading Enterprises (SCNPMGTE) 1994 p 8).

Community Service Obligations

What is a Community Service Obligation?

To be proposed and then commissioned as a Community Service Obligation (CSO), an activity must satisfy the following criteria:

- It would not be pursued by a Government business operating on a purely commercial basis;
- It has a specified policy objective;
- There is an explicit Government agreement, as in either a Portfolio Minister directive or Government Department agreement, with the business that the activity should be pursued; and
- There is funding from the responsible Government Department.

What is not a Community Service Obligation

The following activities are not regarded as CSOs:

- Regulatory requirements (e.g. environmental standards) as they are considered part of the commercial environment within which the industry operates.
- Any legislative requirements (e.g. objectives and functions under enabling legislation).
- Corporate social responsibility activities, which are good management practices that lead to both tangible and intangible benefits (e.g. hardship programs).
- Commercial price discrimination (e.g. pricing to attract more business).
- Demand management (e.g. encouraging use of off peak services).
- Government reporting and other “head office” type requirements (e.g. Budget and Statement of Intent requirements).

In cases where there is some ambiguity around whether an activity satisfies the criteria for a CSO, advice to clarify the status of the activity should be sought from Treasury.

Commissioning Community Service Obligations

Community Service Obligations should be commissioned using the following three principles. It is considered the responsibility of the commissioning Government Department to follow these principles, in consultation with the delivering government business (i.e. the PNFC or PFC).

Principle 1: A CSO should have a clearly defined objective

A CSO should have clearly defined objectives. Given the many competing pressures for government spending, a CSO should be linked to a State Outcome to provide specific benefits for a community or social group.

How to plan a Community Service Obligation

Before an activity is requested as a CSO, the following steps should be followed. This should be done by the Government Department in consultation with the potential delivering PNFC or PFC.

Step 1: Properly identify what is the CSO

As a first step, it is important to properly identify:

- a. the policy objective;
- b. the activity that will achieve this objective; and
- c. how the activity contributes to a State Outcome².

Step 2: Ensuring an activity is not contestable

To ensure the activity is not contestable and that only a PNFC or PFC can deliver the activity, the following questions should be considered:

- a. why a private sector business or NGO is not better placed to achieve this policy objective; and
- b. how a CSO is best placed to achieve the policy objective.

If it is determined that the activity is contestable then normal procurement processes should be followed.

Step 3: Ensuring a PNFC or PFC is best placed to deliver the activity

Once it has been identified that a non-contestable activity is best placed to fulfil a policy objective, equal consideration should be given to Government departments and agencies when deciding which entity is best placed to deliver it.

If a General Government Sector Agency (GGS Agency) is identified as being best placed to deliver the activity, then normal agency service delivery processes should be followed. The activity is not considered an CSO.

Step 4: Commissioning a Community Service Obligation

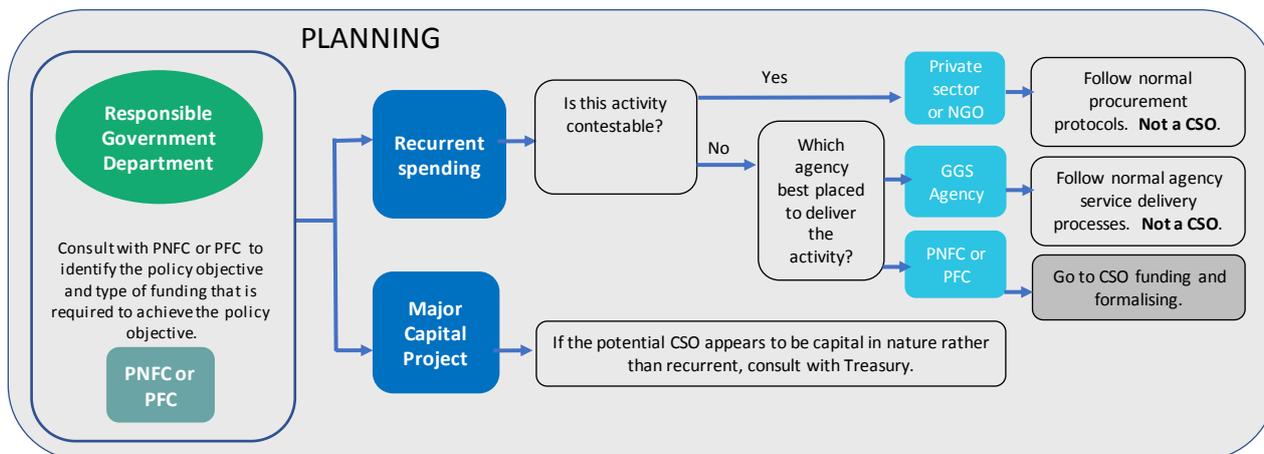
If a PNFC or PFC is best placed to deliver the activity and to achieve the policy objective, then the activity is a CSO and the following approach should be followed.

1. Identify which PNFC or PFC is best placed to deliver the CSO.
2. Consult with the identified PNFC or PFC to reach agreed terms on duration, costs, key performance indicators (KPIs), governance and expectations. **Refer to Principle 2 and Principle 3.**

² State Outcomes for each cluster are outlined in Budget Paper No. 3 and form part of the NSW Government's implementation of Outcome Budgeting. Refer to Outcome Budgeting at www.treasury.nsw.gov.au.

Figure 1: Planning process

The figure below outlines the planning process for CSOs.



Principle 2: A CSO should be funded by the Government Department responsible for the objective

A CSO should be funded by the Government Department best placed for the delivery of the State Outcome aligned with the CSO’s policy objective. This is to ensure a PNFC or PFC is not disadvantaged financially.

How to fund a Community Service Obligation

A CSO should be treated like any other government expenditure and should be funded through the Government Department’s budget with sufficient funds allocated to the PNFC or PFC to cover the cost of delivering the CSO.

During the commissioning process the CSO should be costed by the PNFC or PFC. Consultation between the responsible Government Department and the PNFC or PFC on the intended allocated funding from the Government Department should seek to ensure the CSO is effectively carried out without the need for any cross-subsidisations from the PNFC or PFC.

Principle 3: A CSO should be formalised through a Service Level Agreement

A CSO should be formalised through a Service Level Agreement (SLA) outlining the activity, the funding provided, the KPIs, agreement period and any other governance arrangements. Having a SLA will improve the transparency of CSOs and provide a governance framework for delivery. Further guidance on SLAs is available in **Practice Guide 1**.

How to formalise a Service Level Agreement

State Owned Corporation (SOC)

If a SOC is identified as best placed to deliver the CSO, a SLA between the providing SOC and the responsible Government Department should be drawn up outlining the terms (i.e. activity, funding and any other governance arrangements). A SLA is required to include KPIs that can be accurately measured and reported on. The KPIs set out in a SLA are used for reporting and monitoring purposes.

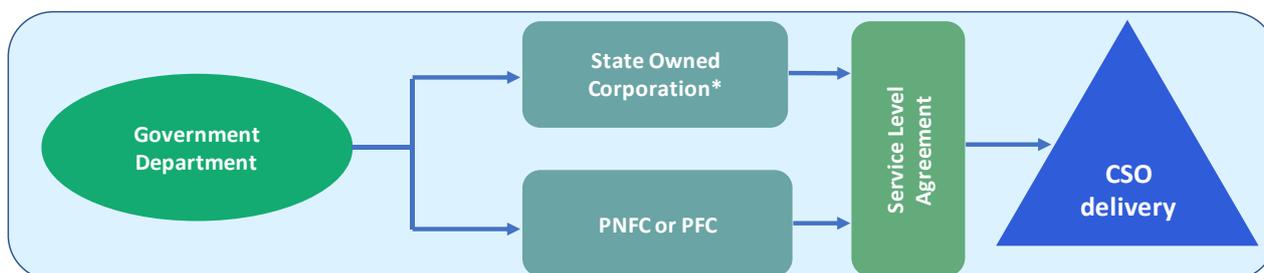
While these Guidelines provide the means to make arrangements between the parties via a SLA, there may be circumstances where the Government chooses to issue a direction, or it is considered the CSO would be better suited to be issued as a direction.

Under the *State Owned Corporations Act 1989* (SOC Act) the Portfolio Minister can issue a direction to the delivery SOC³ to perform non-commercial activities (under section 20N) or other activities in the public interest (under section 20P). Such directions need the Treasurer's approval and must be tabled in Parliament. The SOC Act makes certain requirements on how the Portfolio Minister's power to direct is to be used.

Non-SOC PNFC or PFC

If it is established that a non-SOC PNFC or PFC is best placed to deliver the CSO, then a SLA between the providing PNFC or PFC and the responsible Government Department should be drawn up outlining the terms (i.e. activity, funding and any other governance arrangements). A SLA is required to include KPIs that can be accurately measured and reported. The KPIs set out in a SLA are used for reporting and monitoring purposes.

Figure 2: Service Level Agreements



* For State Owned Corporations, consideration should be given to whether the Portfolio Minister should issue a formal direction under section 20N or 20P of the *State Owned Corporations Act 1989*.

Reporting and monitoring

A CSO is treated like any other government expenditure and should be periodically reviewed, reported and monitored to ensure objectives and KPIs are being met. These KPIs should be set out in the SLA.

The KPIs measuring the effectiveness of the CSO in achieving its intended policy outcome should be defined. These KPIs should be included in the SLA, and PNFCs and PFCs are required to report on these as part of the annual Statement of Intent and Business Plan process. KPIs should measure metrics that demonstrate the effectiveness of the CSO and how it is meeting its objective.

Government Departments should actively monitor performance against these KPIs to ensure the effective performance of the PNFC or PFC in delivering the CSO objective.

Reporting in the annual Statement of Intent and Business Plan of the PNFC and PFC will allow Treasury to accurately map and quantify the levels of funding that exists across PNFCs and PFCs in delivering CSOs on behalf of the State.

Review

Like any other government expenditure, a CSO should be reviewed at the end of its funding period. A review will allow the PNFC or PFC and Government Department to determine whether the policy objective has been met or whether the CSO needs to continue. It is the Government Department's responsibility to undertake the review.

It is expected that prior to the end of a CSO's funding period, the PNFC or PFC contact the Government Department to initiate the review. Sufficient notice should be given to the Government Department to ensure a comprehensive review can be undertaken.

³ statutory SOC

The review should assess whether the CSO is meeting or has met its objective and justify why the CSO activity should be maintained. The review is a mechanism for the Government Department to re-evaluate its priorities and to ensure resources allocated to funding the CSO remain relevant.

Existing Community Service Obligations

Existing CSOs that do not align with these Guidelines are not expected to immediately adopt the Guidelines. Instead it is expected that the PNFC or PFC that delivers the existing CSO, initiate discussions with their Treasury Relationship Manager and the Government Department responsible for the policy objective. It is envisaged that these reviews of existing CSOs will result in alignment with the Guidelines by 2020-21.

Where it is considered that the nature of an existing CSO cannot be realigned with these Guidelines, the Government Department should apply for an exception.

Exceptions process

The exceptions process is available where a CSO is unable to fully meet the expectations of the Guidelines during a reporting period.

Where this situation arises, the Government Department responsible for the policy objective may apply through their Cluster Secretary to the Secretary of Treasury for an exception from these Guidelines for the duration of that reporting period. Where the CSO has a materially financial and/or service impact⁴ on the PNFC or PNC, Treasury will seek the Treasurer's endorsement of the exception and this may involve some consultation with the Portfolio Minister.

The Cluster Department Secretary must satisfactorily demonstrate that there are:

- extenuating circumstances that are restricting the Government Department's ability to comply;
- resourcing constraints that will materially impact the Government Department's operating budget and the overall Cluster operating budget; or
- substantial structural constraints.

The head of the Government Department should ensure that a written request to the Secretary of Treasury from their Cluster Secretary is made prior to the reporting period in which it cannot fully meet the expectations of the Guidelines. The Government Department is encouraged to use the Exceptions Template in **Practice Guide 2** for the purposes of making an application for exception.

Any exception from the CSO Guidelines should be reported as part of the annual Statement of Intent and Business Plan.

⁴ There is no dollar threshold for materially impact, rather it is a matter for judgement.

Practice Guide 1 – Service Level Agreements

Where a Government Department determines that a PNFC or PFC is best suited to deliver a CSO, a Service Level Agreement (SLA) should be negotiated between the two. This process should be managed in the same way as a commercial arrangement.

The advantages of this process are that it:

- gives clarity to the delivery and funding of CSOs, and
- provides a framework to measure performance and review priorities.

A SLA should be negotiated between the Government Department and the PNFC or PFC to ensure that there is alignment in understanding of what service is needed, the costs associated and the intended objective.

Below is a suggested checklist of terms that the Government Department should consider for the SLA.

Service level agreement checklist

1. Start up

- Clarify the goals of the Service Level Agreement
- Decide on the length of the agreement

2. Identify customers

- Identify the direct and indirect customers

3. Identify needs and expectations

- Have clear definitions of the issue being targeted and the objectives that are being sought
- Agree on what services will be provided

4. Define service levels

- Clearly define the service levels and the standards of service required
- Agree on critical areas of service delivery
- Agree on priority targets for improvement

5. Establish key performance indicators

- Establish KPIs to measure service performance

6. Confirm processes to identify and manage risks and issues

- Establish indicators to give early warning of problems
- Establish dispute resolution process

7. Determine costs and terms of payment

- Agree on a basis for determining costs
- Determine an appropriate cost allocation mechanism
- Agree on the frequency of billing

8. Establish a review and evaluation process

- Establish responsibilities for reviewing and evaluating performance
- Agree on the frequency of reviews
- Agree on a program for improvements

Practice Guide 2 – Application to the Treasury Secretary for Exception from Guidelines

Exception Template [Government Department] compliance with the Guidelines for Community Service Obligations TPP19-02

CSO description:

Government Department:

PNFC/PFC:

I, [Secretary, <Insert> Cluster] understand that the following guidance set out in the Guidelines for Community Service Obligations have not been met.

Policy Principle	Reason for non-compliance with the Principle

I note that the following alternative arrangements have been implemented to achieve outcomes equivalent to the requirement(s):

Summary of alternative arrangements	How the alternative arrangements will achieve equivalent outcomes

I, [Secretary, <Insert> Cluster] am of the opinion that the practicable alternative measures implemented demonstrate that the [Government Department] has considered the impacts that may arise if the Guidelines are not followed. The alternatives seek to minimise any potential impacts to the PNFC or PFC delivering the CSO.

This exception to the Guidelines for Community Service Obligations (TPP19-02) is for the financial year(s) (20XX-20XX)⁵

Secretary, <Insert> Cluster (Sign and Date)

Government Department Contact Officer (Role and contact details)

PNFC/PFC Contact Officer (Role and contact details)

⁵ Maximum exception period is five financial years.

Appendix

These Guidelines should be used alongside the NSW Government and Treasury policies below.

Policy	Summary
NSW Government Procurement Policy Framework	This Policy will be important where a CSO may be delivered by the private sector.
NSW Government Program Evaluation Guidelines	These Guidelines are useful when planning the evaluation process for a CSO.
Reporting and Monitoring Policy for Government Businesses TPP18-02	PNFCs and PFCs should refer to this Policy to ensure they are reporting their CSOs.
Outcome Budgeting TPP18-09	This policy explains the Outcomes Budgeting Framework, including State Outcomes and outcome indicators.
Annual Budget Process Guidelines	These Guidelines should be referred to when seeking additional budget funding for a new CSO (i.e. New Policy Proposal or Capital Proposal).

Glossary

Term	Meaning
Government Department	NSW Government Department or agency responsible for the policy objective.
Portfolio Minister	The Minister responsible for the Government Department commissioning the CSO.
GGS Agency	General government sector entity in accordance with ABS classification.
Public non-financial corporation (PNFC)	Public non-financial corporation entity in accordance with ABS classification, including State Owned Corporations (SOCs).
Public Financial Corporation (PFC)	Public financial corporation entity in accordance with ABS classification.
SOC Act	<i>State Owned Corporations Act 1989</i> (NSW)
State Owned Corporation (SOC)	A government business distinguished by its corporatised status having been listed in Schedule 5 of, and subject to, SOC Act.
State Outcome	A State Outcome means the primary purpose for which Budget funding is being expended, which clearly explains to the public the goal that a sub-national is seeking to achieve for its citizens.
Statement of Intent (Sol)	An agreement under Performance Reporting and Monitoring Policy for Government Businesses (TPP18-02) between a PNFC or PFC, and the Treasurer and Portfolio Minister (or their representatives).