

Frequently Asked Questions – Multi Program Agreement (MPA)

Second Instalment 15 July 2005

Q1. Can the statement, “one of the divisions in the Divisions network” in Recital C of the MPA be amended for State Based Organisations?

A hand written change with an initial to note “one of the State Based Organisations in the Divisions network” is sufficient in this case.

Q2. Who is the Project Manager for the MPA?

The Project Manager is defined in the Funding Agreement in Clause 1.1. Project Manager means the Assistant Secretary responsible for the Divisions of General Practice Program for the purposes of this Agreement and for the purpose of notices under Clause 21. Clause 1.1 also gives the definition for Liaison Officer, and this is the persons or position holders specified in the Schedule for that Program. The Liaison Officer is listed on each Program Schedule.

Q3. Sub-sections (a) and (b) of Clause 1.3 appear to be the same. Will this change?

Clause 1.3 will not be changed. The wording of Clause 1.3 (a) and (b) is not the same, as Schedules are not regarded as attachments. Clause 1.3(a) refers to a conflict between the terms and conditions of the Agreement and any parts of the Schedules. Clause 1.3(b) refers to any conflict between the terms and conditions of the Agreement and any parts of the attachments. In both cases, the terms and conditions of the Agreement clauses will prevail to the extent of the inconsistency.

Q4. Does the advice in the Explanatory Document, regarding interest apportioned across Programs, conflict with Clause 2.5?

The wording is not contradictory; the apportionment of interest should correlate with the apportionment of Program Funds, eg. if a Schedule is 12% of the total funds received, then apportionment of interest should be 12% of interest.

Q5. What are the restrictions on finance leases for vehicles or equipment?

To clarify Question 3 in the first instalment of FAQs, through Clause 2.6(d), the Commonwealth prohibits all Finance Leases without consent by the Project Manager. This means that finance leasing of cars/equipment is prohibited (without consent), though operating leases are not prohibited. This is because the terms of a Finance Lease may have a similar impact to the acquisition of a capital asset. A Finance Lease may impact on either the ongoing availability of funds to perform program services or the recoverability of funds in some circumstances. This requires a higher level of accountability for the use of these Commonwealth funds.

Finance Lease is defined in Clause 1.1. Finance Leases occur where the lessor effectively transfers to the lessee substantially all the risks and benefits incidental to ownership of the leased asset and where legal ownership may or may not eventually be transferred. A Finance Lease has some similar effects to purchasing a significant asset with borrowed money, although legal title may not transfer to the lessee at the

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end of the lease. A Finance Lease carries with it some risks which are similar to purchasing a capital asset.

By contrast, the Department considers that operating leases occur where the lessor retains substantially all such risks and benefits. The Clause 2.6(d) does not prohibit operating leases.

Q6. Clause 2.7 – Are there periods of expenditure where funds have not been allocated eg. one at the beginning with the payment being made on July 15 and at the end where the reporting period is three months after the contract has finished?

The Transitional Funding Agreement (TFA) is due to finish on 30 June 2007, not on 30 June 2005. If a Division decides to sign the MPA, there is no two-week delay in payments at the commencement of the MPA when transferring from the TFA.

It is standard practice in the Department to have the final report due past the end of a funding agreement period.

Q7. What is the impact of Clauses 2.9 and 19.3 where a Division has related parties who receive payments and/or funding from the Division, as the main contract is with that Division?

The clauses 2.9 and 19.3 are about transferring Funds (under Schedules to the MPA) to Related Parties. There is a definition of Related Parties in Clause 1.1. Clauses 2.9 and 19.3 do not apply where the money does not fall within the definition of Funds in Clause 1.1 of the MPA. However, where the Division transfers Funds received under Schedules to the MPA, to these Related Parties for any reason, the Division must obtain written consent from the Department prior to the payment to the Related Party (as per Clause 19.3).

Q8. When should Divisions report Other Contributions - at all times, or only if the Other Contributions relate to the purposes of the Agreement?

From the definition in Clause 1.1, "Other Contributions" are financial resources from third parties or the Participant for the purposes of this Agreement, other than the Funds. The purposes of the Agreement are reflected in the recitals and the accompanying Schedules.

Under Clause 2.10, Divisions are therefore only required to report to the Department (within 14 days) anything received over \$10,000 if those Other Contributions relate to the purposes of the Agreement, including schedules. In addition, Divisions must record all Other Contributions (of any value) in the Annual Reports. Clause 2.10 ensures that there is consistency of purpose between activities funded under the Agreement and those which are funded through Other Contributions. Where an Other Contribution has been identified and the timing coincides with the Annual Budget, notification in the Annual Budget is sufficient for the purposes of Clause 2.10.

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All Department of Health and Ageing (DoHA) funding not part of the main agreement, (ie in a separate agreement), or non DoHA funded programs need to be reported in the Other Activities section of the Financial Template. The Financial Template asks for Other Activities at Budget, Six Month and Twelve Month Report stage. The rationale is to enable the Department to reconcile the end of year financial reports - audited and profit and loss documents.

Q9. Does Clause 2.11 allow DoHA to cease payments on any grounds and at short notice at the risk of making Divisions insolvent?

The Department cannot arbitrarily cease payments on any grounds at short notice. Payments are subject to the Participant having complied with terms and conditions of the Funding Agreement. If the Participant complies with all obligations under the Funding Agreement, then there is no reason to invoke the clause.

As outlined in the Explanatory Document sent with the MPA, the Department will make all reasonable efforts to advise the Participant prior to the date on which a payment is due if the Department will not be making the full payment, the basis for not doing so, together with advice on the action required to facilitate a payment.

Q10. How is Clause 2.15 to be achieved?

The Department will need the date of the Board meeting and a copy of the resolution. A letter signed by the Chair of the Board meeting, or even the company secretary, quoting the relevant resolution would meet Commonwealth requirements. A letter signed by the person authorised to sign the MPA stating "At the Board meeting dated [date] the Board resolved as follows: text of resolution." will also suffice.

Q11. As a Division can only undertake approved activity and expenditure under the Funding Agreement, would reviews, audits etc under Clause 3.6 be unapproved?

This clause specifies that the Department is only liable to pay for costs incurred by the Division. Should the Division be required to participate in a review, audit etc under the terms of this clause, the Department will consider approval of reasonable expenditure of funds for this purpose.

Q12. Does Clause 5 include consultants that do ad hoc work for a Division during the year such as accountants where the amount of expense is unspecified under contract and may by year end exceed \$10,000? Also, does Clause 5 apply to GP employees that work as a contractors with an ABN, running a particular program, that do ad hoc work that may exceed \$10,000?

Clauses 5.1 and 5.2 only apply where the performance of a 'whole program' is being subcontracted to a third party. Clauses 5.1 and 5.2 would therefore not apply to consultants eg. accountants who do ad hoc work or GPs who do some work as independent contractors/consultants for the Division. In other words, the Department's consent to such subcontracting would not be required even if the amounts paid exceeded \$10,000, unless the subcontractor is a 'related party' (in which

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case Clauses 2.9 and 19.3 would apply). However, Clauses 5.3 - 5.6 do apply to all subcontracts/consultancies.

Q13. Please explain Clause 6.5.

The intent of this clause is to indicate that together with the required financial and performance reporting in respect of the Funds, there is a requirement under the MPA that a Board Member must certify at the end of each financial year that [1] the keeping of records and presentation of financial statements and [2] the obligations in respect of the funds have been met.

Divisions are not required to keep accounts in accordance with Australian Auditing Standards - it is the auditor who must comply with those standards when conducting the audit. Divisions are required to keep accounts and present financial statements in accordance with Australian Accounting Standards. The intent of Clause 6.5 (a) is that in respect of the Funds as defined in the Agreement, (Clause 1.1), Divisions have kept accounts and records and presented financial statements in accordance with Australian Accounting Standards and have ensured that a Qualified Auditor has complied with Auditing Standards. The requirements in Clause 1.1 in relation to the Qualified Auditor means that if the Auditor meets the requirement they will in fact meet the required Auditing Standards. The reason for having this provision in the MPA in addition to ASIC requirements is that some of the Divisions are not companies. Financial statements and audit reports can be misinterpreted or not provide all relevant information for funding decisions if they are not prepared in line with the Australian Accounting Standards and Auditing Standards respectively.

In relation to the management of the funds, it is the intent of Clause 6.5(b) that Divisions have complied with all its obligations, including management of the funds, in accordance with their obligations under the MPA.

Q14. Why must a Division be able to provide a response seven years after the expiry date of the Funding Agreement?

The Commonwealth may need to be able to conduct inquiries on records, final reports and other information related to the MPA after the funding period, to meet its accountability obligations in respect of the expenditure of public moneys. Seven years is standard commercial practice to retain information.

Q15. The wording in Clause 9.9 referring to “...royalty-free, fee, non-exclusive licence-fee free to use...” is difficult to understand.

If in the event where the Department provides Commonwealth Material, this clause will be clarified at the time, or amended in future variations. If the Divisions are not given Commonwealth Material, the clause is not applicable.

Q16. Can you please explain to what extent Clause 10.1 applies, eg. does the speaker have to acknowledge DoHA as the funders at school community education presentations?

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If there are any presentations/promotions regarding activities funded by DoHA, the Department must be acknowledged as the funder of these activities. This also includes any advertisements, articles and anything else within the public eye.

Q17. Is it true that regardless of which Funding Agreement the Divisions choose to go on they will no longer be able to allow for redundancy provisions?

No. Clause 12.1(j)(iii) of the TFA and Clause 13A.2 of the MPA states the Commonwealth's position on the provision of redundancy costs.

Under the MPA, if the Agreement is terminated or Funds for a Program are discontinued in accordance with Clause 13A.1(a) or Clause 13A.1 (j), the Commonwealth will only be liable for any reasonable costs (excluding, without limitation, loss of prospective income or profits) unavoidably incurred by the Division, which are directly attributable to the termination.

This will include all reasonable damages, costs and expenses incurred in connection with the termination or redundancy of the Participant's personnel or the termination of the Participant's subcontracts. Any Funds that are held by the Participant at the time of termination which are Unspent and Uncommitted in the manner described in Clause 14 must be repaid to the Department in accordance with that clause.

The redundancy provisions under the MPA apply only to staff employed under this Agreement. Redundancy provisions do not outlive the life of the Funding Agreement.

Q18. What are the rights of a Division to terminate the Agreement?

Clause 13A.1(h) refers to the terms and conditions where a Participant withdraws from the Agreement or from performing a particular Program. The Division would clearly have a common law right to terminate the agreement if the Commonwealth breached a contract condition.

Q19. Does a Division need to provide copies of insurance policies to the Department?

Pursuant to Clause 16, Divisions only have to provide actual policies if requested to do so (Clause 16.2). However, they must provide certificates of currency with each Annual Plan (Clause 16.3).

Q20. Australian Stock Exchange (ASX) Governance Standards are referred to in Clauses 19.2 and 19.9. ASX Governance Standards apply to only listed public companies, not unlisted public companies and associations. Are there specific elements of the ASX Governance Standards that the Department seeks to use for all Divisions?

If a conflict of interest arises then the Board must manage that conflict in a manner that is consistent with the ASX standards. The Department expects the same level of compliance with conflict of interest matters as for a listed company. The standard is

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the whole of that applicable to a listed company, as defined by the ASX listing rules, and as varied from time to time. Those standards provide a procedure that the Department expects to be followed.

Q21. Does Clause 19.3 extend to work done by a Board Member, when that work is program related and paid as such?

If a Board member is being paid for work which is not a normal Board payment; ie. not part of reasonable remuneration, reimbursement or allowance to the Board member **in their capacity as a Board member**; then Clause 19.3 does apply and departmental approval will be required.

Q22. It is not clear what 'other commercial entity' refers to in Clause 19.5?

The Department wishes to be informed of any commercial arrangement including partnerships, joint ventures, trusts or separate legal entities established by the Division. Where the Division is a company this would include any subsidiary it forms for a commercial purpose.

The clause does not cover a Division setting up 'internal' divisions within the Division to manage/administer parts of its activities. The books and accounts of the Division should cover any such internal organisational arrangements.

Q23. In Clause 23.1, email is no longer able to be used for formal notices. What is the rationale behind this?

Clause 23.1 has not changed from the Exposure Draft. There was agreement at the FAWG meeting of 19 April 2005 that email is not included as a formal notice in writing. The deletion of email as a method of giving formal notices under all DoHA funding agreements is because of the difficulties involved in 'signing' emails and confirming that they have been sent by the persons authorised to give notices. Previous agreements did include email provisions on the basis that Public Key Infrastructure (PKI) arrangements would sort out electronic signatures and security issues, but this has not been adequately implemented to date.

Q24. In Schedule 2 Item D, the 2005-06 Annual Budget and Plan is to be submitted by 1 July 2005. As these were required and submitted by 29 April 2005, do these now need to be resubmitted? Lifestyle Prescriptions and Aged Care GP Panels Initiative (ACGPPI) Schedules state 31 August 2005 as the due date to amendments. The Transition Strategy on page 5 states that these are due within 4 weeks of the signing of the Multi Program Agreement. Which is it?

Annual Plans and Annual Budgets for 2005-06 were due with State and Territory Offices on 29 April 2005. The new MPA only states these are due 1 July 2005 because the MPA starts from 1 July 2005, and not earlier. Divisions do not need to re-submit their Plans & Budgets if they have already submitted them. But they may need to submit amendments. On the issue of amendments, the Transition Strategy is a general guide only. The MPA should be followed as a first priority. If the schedules allow a later date than 4 weeks after signing, follow the schedules.

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The Financial Template uses a Budget variation process when variations of line items are more than \$10, 000 or 10%. If submitting a Budget variation, the indexed amount of funds and any agreed underspend should be added to the Budget, since many Budgets did not include this information as it was not known or approved at the time of Budgets.

Q25. What is a succinct Division context covering a, b, c, d? Is this an executive summary or is it required for each Priority Area? Is there a specific area in the new Planning and Reporting Proforma for this?

Division context is outlined in the Planning and Reporting Proforma (after Division Contact Information). Divisions are required to report on progress in these areas and specified areas covered in a, b, c & d in Schedule 2 Item E, at six and twelve month reporting stage.

Q26. Why has the requirement to provide an "AGM and Forum Report" been included for SBOs in Schedule 2 Item E of the MPA?

SBOs are required to provide an AGM and Forum Report as the Department requires this deliverable to be linked to the 15 October payment. ACT Division is required to submit an AGM Report only.

If an SBO plans to hold its AGM after the 30 September, the due date for the AGM and Forum Report, it may provide the Department with its previous AGM report for the 15 October payment. In this case, the SBO would still be required to submit their next AGM report to the Department as soon as possible after the meeting. This would then become the deliverable for the 15 October 2006 payment.

Q27. There is no reference to the 2004-05 indexation either in terms of a rate or payment in Schedule 3 Item F of the MPA.

Indexation for 2004-05 has already been included in the 2005-06 funding amounts and it is not a standard Government practice to advise the rate.

It should be noted that Item F of Schedule 3 advises that funding for 2006-07 will be indexed in due course. The indexation rate for 2006-07 will not be known until late 2005-06 after the Federal Budget has been delivered. This is usual Government practice. It should be noted that indexation rates can vary from year to year and previously Divisions have not been advised in advance of final funding amounts.

Q28. Will there be future indexation for the ACGPPI, More Allied Health Services (MAHS) program and Workforce Support for Rural GPs (WSRGP) program?

Future funding is expressed in 2005-06 terms for core funding as well as ACGPPI, MAHS and WSRGP, and future indexation would be offered through contract variations for these programs.

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Q29. What is the other part of the indexation being used for? And are Divisions only going to get partial indexation for the full term of the MPA?

As per the Government Response, funding derived from partially redirecting indexation will be used to fund the Performance and Development Funding Pool. Full annual indexation for Divisions will start again in 2007-08.

Q30. What is the process for Divisions if after the Funding Formula Review allocations decrease, in relation to reviewing activity and therefore amending Agreement and Annual Plans?

Annual Plans and Budgets will need to be updated to reflect any changes to funding amounts when the new funding formula is introduced. The introduction of the new core funding formula should mean no changes to the processes in place for revisions to Annual Plan and Budgets. Revisions to the Annual Plan and Budgets must be submitted to the Department for approval in writing prior to undertaking that activity or altering expenditure.

In relation to the MPA, once the Funding Formula Review (FFR) has been finalised the MPA will be varied as necessary to include the new funding figures. Annual Budgets will also need to be revised and re-submitted to State and Territory Offices at that time.

As with previous advice sent to Divisions by the Department, the Divisions Network as a whole will be funded at least at the core funding levels currently identified in the MPA for 2006-07 in the 2007-08 financial year.

Core funding allocations for individual Divisions may vary as a result of changes to the core funding formula. However, a commitment has been given that in the 2007-08 financial year any Division on the MPA will not receive less than 90% of the 2006-07 core funding levels identified for that Division in the MPA.

Q31. Why are the signature blocks for the MPA different to the Transitional Funding Agreement?

The MPA is a customised agreement, for the purposes of the Divisions of General Practice Program and therefore is quite different to the Department's Standard Funding Agreement in a number of ways. As the MPA is not a deed there is no necessity for a witness in the Commonwealth signature block. Schedules attached to the MPA at the date they are signed will form part of the Agreement - they do not need to be separately signed. Schedules added after the date of the agreement will need to be signed by both parties as written evidence of agreement for them to be added (Clause 1.7). New schedules added to the MPA after execution should be signed in accordance with Clause 2.15.

Q32. Should Divisions obtain independent legal advice about the MPA, and if so how can they pay for it?

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Whether or not a Division obtains its own legal advice is a decision for the Division, and not the Department.

The Department is making an offer to Divisions and State Based Organisations based on the MPA. It has developed the Agreement based on comments from the Divisions Network through an Exposure Draft Release of the Agreement, and taking into account comments from a Funding Agreement Working Group which included members of the Divisions Network.

If a Division does wish to seek its own legal advice, it could use its core funding for this purpose as this relates to the ongoing operation of the organisation. Before it does so, it may wish to contact the State Based Organisation in its State/Territory to see if any other general advice is available to the Network.

Q33. Do Divisions that are still operating under the TFA have to send Annual Plans to PHC RIS after approval by the State/Territory Office?

With the introduction of the new Planning and Reporting Proforma, Agreement and Annual Plans do not need to be sent to PHC RIS. Only Twelve Month Reports on the new reporting framework need to be forwarded to PHC RIS.

All Divisions are using the new Planning and Reporting Proforma whether they are operating under the TFA or MPA.

Q34. If a Division opts to remain on the TFA for the first quarterly period of 2005-06, will they need to sign a contract variation to the TFA?

The Division can remain on the TFA, and sign up to the MPA at 30 September 2005. This will mean that they will not receive any indexation at 15 July 2005 payment. However, pending the approval of their linked deliverables and submission of a correct tax invoice on time, they will receive two quarter's worth of indexation at the 15 October payment, if they sign the MPA on/by 30 September 2005.

Q35. When will the Department issue the Variation to the TFA?

The Department will issue an offer to vary the TFA in August 2005. For those Divisions who wish to take up the variation to the TFA, their varied Transitional Funding Agreement will consist of:

1. the Transitional Funding Agreement, which Divisions have already;
2. the new schedules, which were circulated with the new Multi-Program Agreement. The schedules for the TFA variation will be exactly the same as the MPA schedules, and funding will be indexed to 2005-06 and expressed in 2005-06 terms for all Programs; and
3. a cover variation so that the new schedules fit with the Transitional Funding Agreement - for example, this will include changes to some definitions.

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Q36. Do the conditions in the Explanatory Document that accompanied the MPA apply only to the MPA? For example, if a Division remains on the TFA, will the Department keep to the timeframes set out in the Explanatory Document?

The Explanatory Document is designed for the MPA. It relates to the clauses in the MPA, including commitments by the Department to meet certain timeframes. Arrangements under the TFA will remain as they are.

Q37. Will the first year of the MPA be a pilot year?

The MPA is the new Funding Agreement that has been offered to Divisions of General Practice and State Based Organisations. It is a three year agreement. It was developed after the release of an Exposure Draft Agreement to the Network, and consideration of comments from the Funding Agreement Working Group with representatives from the Divisions Network.

The first year of the MPA is not a pilot year. However, Divisions and SBOs that enter into the MPA will have the opportunity to provide feedback, when the Agreement is reviewed in 2006. This may lead to some minor amendments being made to the MPA.

Q38. Why is the program period for the GPII Schedule under the MPA only one year, when under the current TFA, the program period is from 1 July 2004 until 30 June 2007?

It is anticipated that a new schedule will be offered towards the end of 2005-06 for the 2006-07 financial year under the MPA. There is ongoing funding for the GPII Scheme.