



The Not-for-Profit Funding Agreement Co-Design Team: Report on the Effectiveness of the Not-for-Profit Funding Policy

1. Background

1.1 SA NFP Funding Policy

The State Government provides funding to a large number of not-for-profits (NFPs) through grants, to support their operations or specific one-off initiatives, or service agreements. Consultation with the NFP sector through the Human Services Partnership Forum identified a number of areas for improvement. As a result, on 1 July 2017, the SA Government implemented Premier and Cabinet Circular 044 - *South Australian Funding Policy for the Not For Profit Sector (PC 044)*.

PC 044 aims to support and strengthen collaborative partnerships between government and the NFP sector through a number of in-principle commitments to be followed by public authorities when contracting with this sector.

In addition to the release of PC 044, a commitment to the application of mandatory indexation to all multi-year funding agreements between South Australian Government agencies and NFP organisations, with some exceptions, was introduced on 1 July 2017.

Following the implementation of these policies, in order to provide greater clarity regarding the distinction between grants and procurement, the *State Procurement Regulations 2004* were amended on 1 January 2019. These regulations now exclude a grant, as defined in Treasurer's Instructions, from being within the scope of the regulations' requirements.

The requirements to use Standard Funding Agreements when contracting with NFP entities, by virtue of Treasurer's Instruction 11 – *Payment of Creditors' Accounts* for funded services and Treasurer's Instruction 15 *Grant Funding* for grants, became operational on 1 January 2019.

1.2 South Australian Productivity Commission

On 17 May 2019, the SA Productivity Commission (SAPC) released its *Final Report – Inquiry into Government Procurement Stage 1* (the report). This inquiry considered procurement of services from NFP entities separately to procurement from business due to unique features of the sector such as the types of services they deliver, the ways in which those services are funded and administered by government agencies, and the ways in which NFP entities operate and deliver services.

SAPC recommended that an evaluation of the implementation of the NFP Funding Policy, which SAPC defines as PC 044, and associated operational procurement reforms be conducted as follows:

Recommendation 4.1:

Noting the role of the NFP Funding Policy in the procurement and grants process and its recent introduction, the government independently evaluate in the second half of 2019 the implementation of the NFP Funding Policy and associated operational procurement reforms to identify any impediments to, and opportunities to strengthen, implementation, with the evaluation process to consider the views of public authorities and the NFP sector.

Further, SAPC identified that several submissions to its inquiry argued that the time available for NFP entities to respond to a tender is too short, particularly when complex solutions are sought. SAPC concluded that these issues warrant changes in practice by public authorities seeking tenders for NFP-delivered services. SAPC recommended that this be explored as part of the evaluation under Recommendation 4.1 as follows:

Recommendation 4.3:

In recognition of the complexity of the social issues being targeted by NFP-delivered services, the adequacy of current tendering timeframes in procurements involving NFPs be considered as part of the review of the NFP Funding Policy and related matters as proposed in Recommendation 4.1.

In its response¹ released on 9 August 2019, the SA Government supported further reforms aimed at simplifying public sector procurement for the not-for-profit (NFP) sector, requiring the Department of Treasury and Finance to review the effectiveness of the NFP Funding Policy.

Further, the Government also supported the need to allow appropriate time for NFP organisations to respond to tenders and that the adequacy of current tendering timeframes for procurements involving the NFP sector should be considered as part of the PC 044 effectiveness review.

2. Method of review of effectiveness

The review of effectiveness of the NFP Funding Policy focuses on:

- PC 044;
- Treasurer's Instruction 11 – Payment of Creditors' Accounts
- Treasurer's Instruction 15 – Grant Funding
- Mandated standard indexation on multiyear contracts²; and
- Standard Funding Agreements:
 - Not-for-profit Funded Services Agreement – for public authorities that are procuring services from a not-for-profit organisation that requires some amount of up-front payment.
 - Not-for-Profit Grant Agreement – a standardised grant agreement for all low to medium risk grants to the NFP sector valued at greater than \$10,000 (GST exclusive).

¹ South Australian Government's response to the South Australian Productivity Commission Inquiry into Government Procurement

² Excluding:

- services transitioning to the National Disability Insurance Scheme (NDIS);
- services transitioning to the Commonwealth Government under aged care reform arrangements;
- indexation arrangements negotiated as part of a competitive tender arrangement.

- Not-for-profit Low Value Grant – a simple letter agreement for low value grants of up to \$10,000 (GST exclusive).
- Low Value Non-Recourse Grant – a simple letter agreement for low value non-recourse grants (up to \$10,000 GST exclusive).

In considering the SAPC's recommendations, the Department of Treasury and Finance in consultation with representatives of the NFP sector (meeting as NFACT: the Not-for-Profit Funding Agreements Co-design Team), agreed a methodology to conduct the effectiveness review, largely based on the experiences of individuals in the SA Government and NFP sectors with application of the policy.

The views and experience of individuals in applying the NFP funding policy, either through grant funding or as a result of the provision of services, has been collected through survey conducted by the Department of Treasury and Finance. A separate but related survey was also conducted by SACOSS and Volunteering SA&NT among NFPs who receive or apply for such funding.

A voluntary survey was sent by the Department of Treasury and Finance to employees within 26 public authorities of the SA Government. 27 individual responses received from public authority employees have been reflected in the results presented below³.

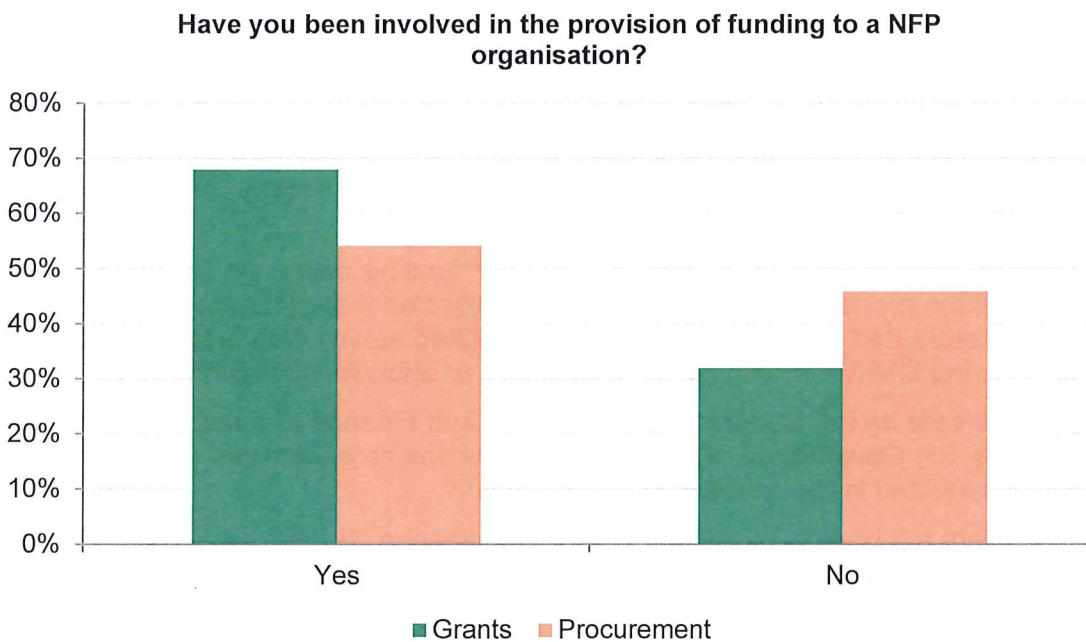
The NFP survey was sent out broadly by SACOSS and Volunteering SA&NT, and also distributed by other peak organisations within the health and community services sector and in sport, environment and the arts. There were 63 responses to the NFP survey,⁴ and these results were considered and supplemented by discussion with the SACOSS' Policy Council and the Peaks Alliance.

Chart 2.1 below shows that of the 27 SA Government respondents, 68% had been involved in contracting with an NFP organisation in the provision of a grant and 54% had been involved in contracting with an NFP organisation in relation to the provision of a service.

³ The survey resulted in 36 responses, however, nine have been excluded from the results due to insufficient data.

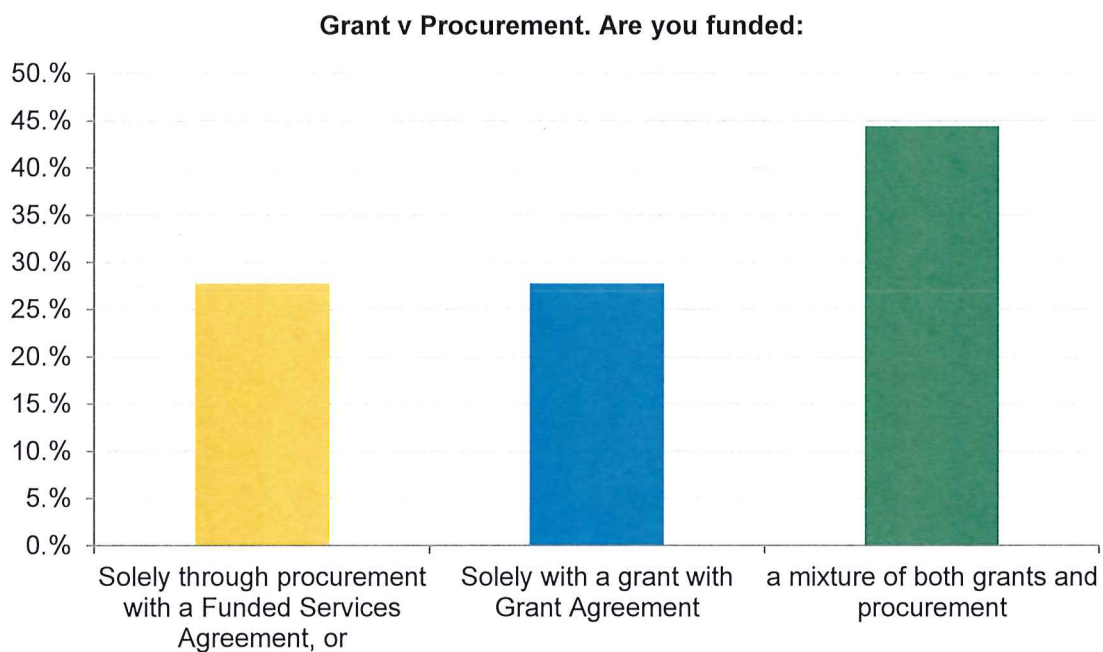
⁴ Some questions in the NFP survey were not applicable to or were skipped by some respondents. This meant some questions had had around 30 responses and caution has been used in interpreting those results in this report.

Government Chart 2.1



The NFP respondents to the survey received a mix of funding, with a fairly even split between grants and procurement.

NFP Chart 2.2



3. Assessment – review of effectiveness

3.1 Framework

This section of the report will assess the key parts of the framework including the principles in PC 044 and the scope of the policy. It should be noted that the following results will focus on the framework rather than the application of the principles.

The NFP Funding Policy is underpinned by a framework that is established by:

- Premier and Cabinet Circular 044 – *South Australian funding for the not-for-profit sector (PC 044)*;
- *State Procurement Regulations 2005* (established through the *State Procurement Act 2004*); and
- Treasurer's Instructions made in accordance with the *Public Finance and Audit Act 1987*.

Principles

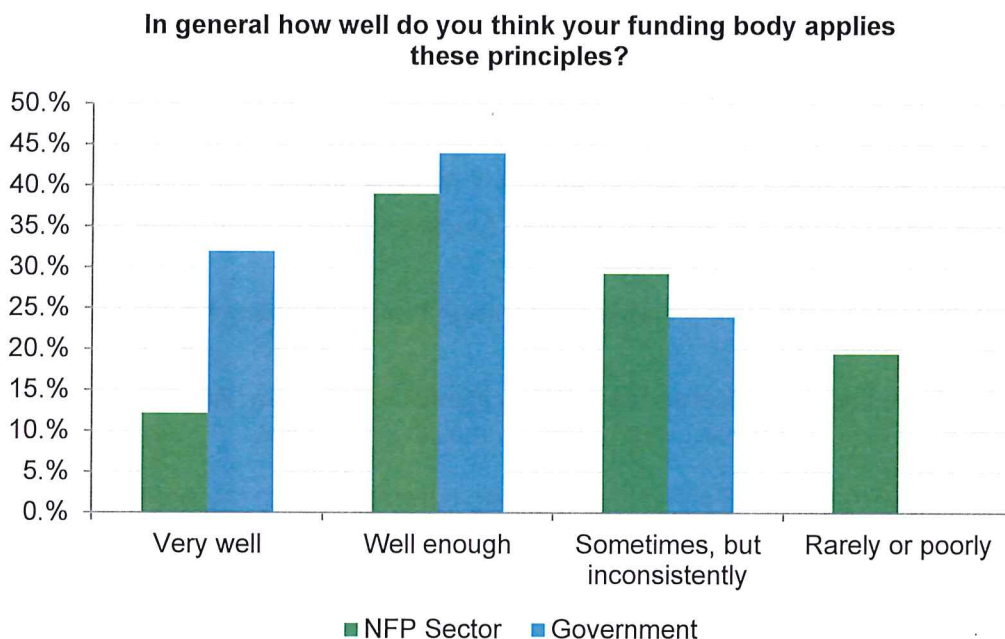
The principles that the SA Government has committed to when contracting with the not-for-profit sector include:

- Robust planning and design;
- Collaboration and partnership;
- Proportionality;
- An outcomes orientation;
- Governance and accountability;
- Achieving value with relevant money;
- Probity and transparency; and
- Community development.

Based on the survey results and the feedback received since the commencement of the NFP Funding Policy, the principles contained in PC 044 remain relevant and appropriate for the SA Government to follow when contracting with NFP organisations. However, as will be discussed in the sections below, some SA Government respondents found they lack the knowledge and guidance on how to practically apply some of the principles when contracting with an NFP organisation, while NFP knowledge of the principles is generally low and there are concerns around the extent and aspects of implementation.

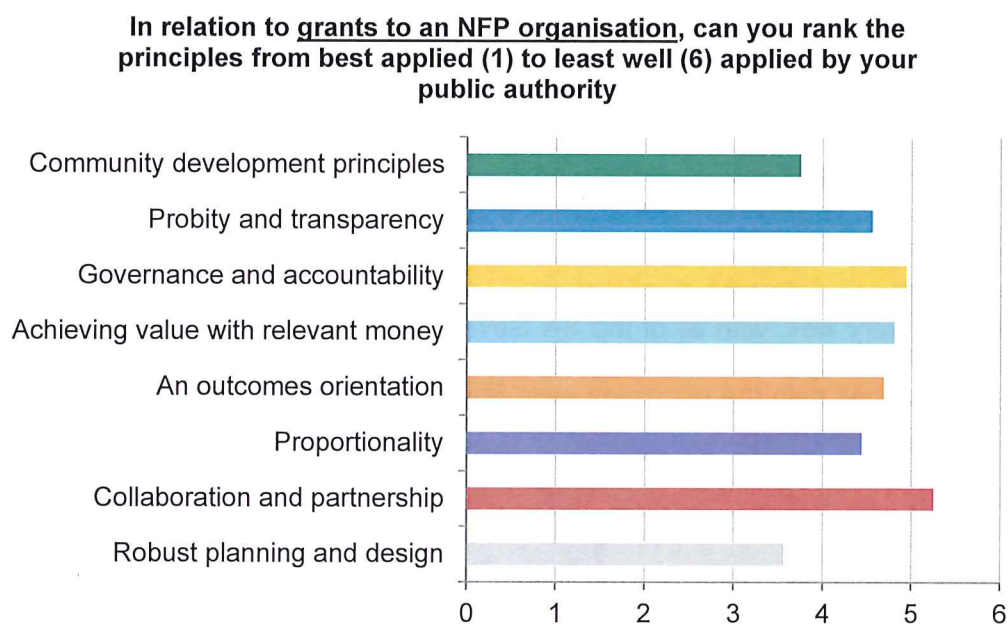
Chart 3.1 below shows that 76 percent of SA Government respondents believed they applied all of the principles well enough or very well, with all of the SA Government respondents trying to apply the principles at some point during the contracting phase. The NFP respondents were more pessimistic in that only around half said the principles were implemented well or well enough, with 20% saying they were implemented poorly.

Combined Chart 3.1



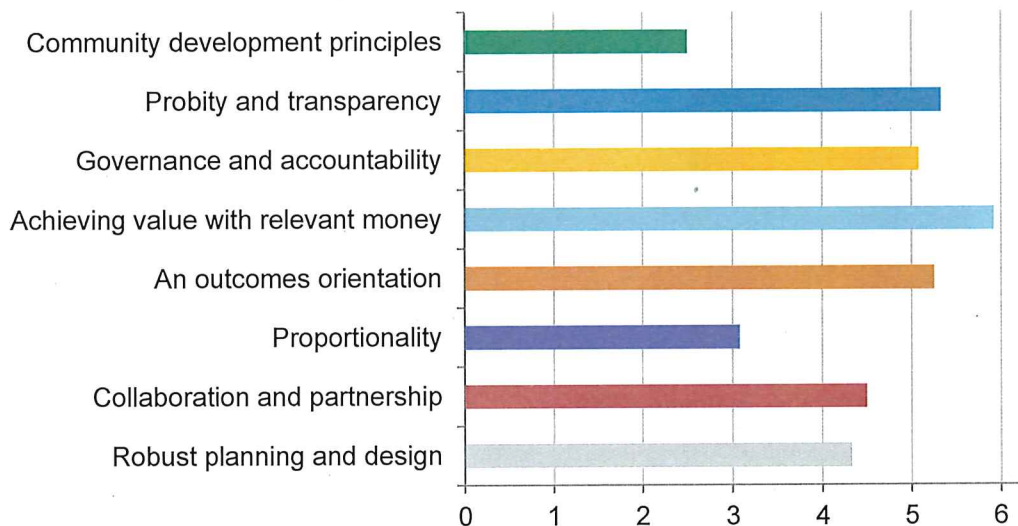
The survey asked SA Government respondents to rank the principles in order of best applied to least well applied. Charts 3.2 summaries the results for grants to NFP organisations and 3.3 summaries the results for the procurement of services from NFP organisations. Individually SA Government respondents consider they are better at applying some principles over other principles. This is not unexpected as there are pockets of expertise across the government.

Government Chart 3.2



Government Chart 3.3

In relation to procurement of services from a NFP organisation, can you rank the principles from best applied (1) to least well (6) applied by your public authority.

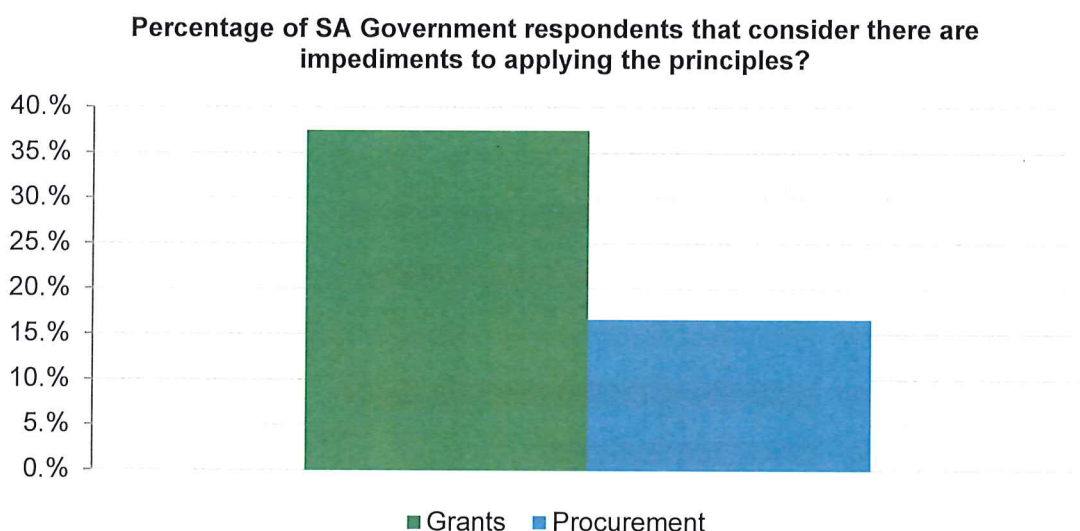


The NFP survey did not ask an equivalent question but did ask specific questions around planning and community development principles which are discussed further below. However, it is worth noting that **57% of NFP respondents said that they had seen no significant change in funding arrangements in the last 2 years**. This may be in part because many earlier funding practices already reflected key PC 044 principles but may also point to some lack of implementation in other areas.

SA Government respondents were asked where anything impeded them in applying the PC 044 principles. Chart 3.4 shows that around 38 percent of SA Government respondents considered they are impeded in applying the principles in relation to grants because of a lack of clarity on the practical application of the principles, being unsure of best practice in applying the principles and a lack of training.

SA Government respondents reported less impediments in applying the principles when contracting for services with an NFP organisation (see Chart 3.4).

Government Chart 3.4



One respondent considered that there was a need for the grant funding to be more centrally regulated akin to general goods and services procurement., which is currently regulated through the *State Procurement Act 2004*, with oversight from the State Procurement Board ('the Board').

It is noted that the recent response to the SAPC report on Procurement – Stage 2, indicated the Government's commitment to abolishing the *State Procurement Act 2004* and establishing an alternative regulatory framework with oversight from the recently created DTF Procurement Services Branch. The DTF Procurement Services Branch will be responsible for a range of functions including, setting the strategic direction for procurement across government and developing and maintaining a framework for the procurement operations of agencies, including policies and guidelines.

It is intended that the new, streamlined framework will provide a consistent, fit-for-purpose approach to the procurement of goods, services and construction projects for SA public authorities. It will also deliver a robust governance structure with an outcomes-based focus, supported by enhanced performance reporting and data analytics.

Recommendation 1

DTF Procurement Services Branch provide oversight of funding to the NFP sector for both grants and procurement and become the central contact point for funding to the NFP sector.

Recommendation 2

DTF Procurement Services Branch facilitate the establishment of a community of practice made up of SA public sector employees across a range of public authorities and the NFP sector, to review PC 044, develop clearly definitions of the PC 044 principles, and develop greater guidance to support improved implementation of PC 044.

Recommendation 3

DTF and the NFP sector continue the NFACT group until another governance structure is established.

Recommendation 4

DTF Procurement Services Branch, in conjunction with the NFP sector, investigate a governance structure to monitor compliance of PC 044 across agencies.

Scope

The scope of the NFP Funding Policy defines:

- Which Government entities are required to adopt the NFP Funding Policy; and
- Which NFP organisations the policy applies to.

PC 044 applies to all public authorities, however, the term public authorities is not defined in the policy. Under the *Public Finance and Audit Act 1986*:

public authority means—

(a) a government department;

(b) a Minister;

(c) a statutory authority—

(i) that is an instrumentality of the Crown; or

(ii) the accounts of which the Auditor-General is required by law to audit;

(d) such other body or person as is prescribed, but, subject to any other provision of this Act, does not include a statutory authority if the Act by or under which the authority is appointed or established provides for the auditing of the accounts of the authority by a person other than the Auditor-General

In addition to this definition, the scope has been limited for grant funding in its practical application by the introduction of the standard funding agreements mandated through Treasurer's Instruction 15. The limitation arises because Treasurer's Instruction 15 applies only to administrative units (i.e. Government Departments). While it is understood that many public authorities that are not administrative units have been using the standard grant agreements, it is not mandated.

Recommendation 5

DTF Procurement Services Branch investigate the implications of expanding the mandate to use the standard grant agreements with NFP organisations to all public authorities, including current prescribed authorities.

For the purpose of clause 15.16 of Treasurer's Instructions 11 and 15, the definition of not-for-profit organisation refers to the meaning in (PC 044).

The meaning from PC 044, is made up of two parts as follows:

Part 1

A not-for-profit is an organisation that does not operate for the profit, personal gain or other benefit of particular people. Not-for-profit organisations consist of two broad categories:

- Charities, which will usually be registered with the Australian Charities and Not-for-profits Commission (charities can be further broken down into the following types: public benevolent institutions, health promotion charities and other charities)
- other types of not-for-profit organisations such as community service organisations, professional and business associations, sporting and recreational clubs and cultural and social societies.

This definition was based on information provided by the Australian Taxation Office.

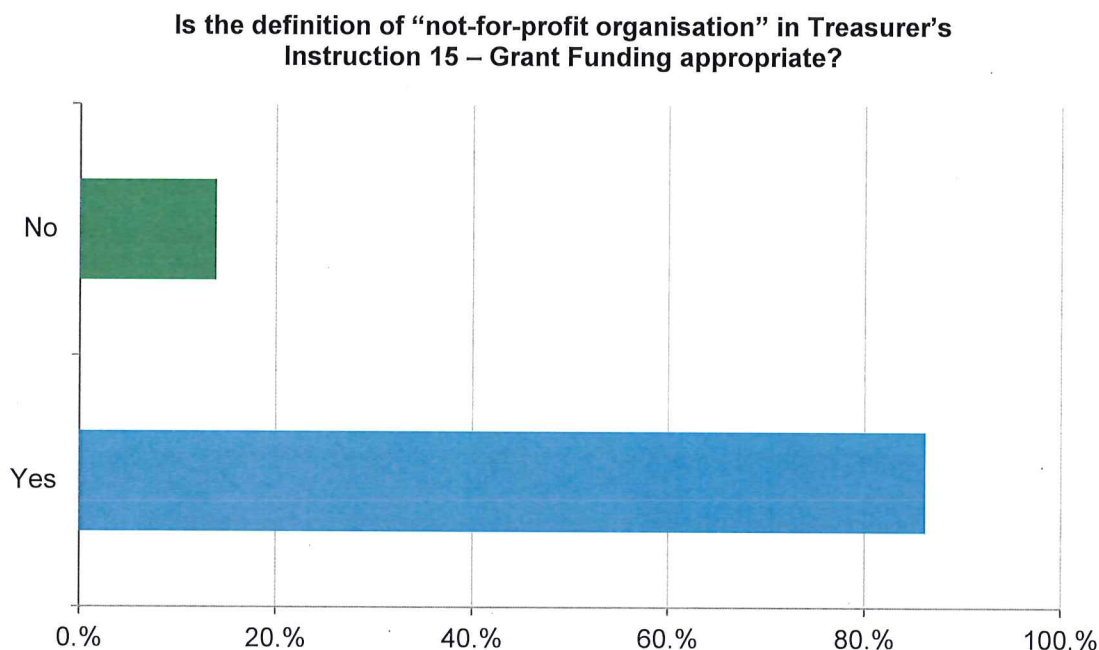
Part 2

While not explicit in the definition, the application of the policy contained in PC 044 specifically excludes funding arrangements with:

- Schools,
- Universities; and
- Churches

Chart 3.5 below suggests that 86 percent of SA Government respondents consider the definition with respect to grants is appropriate. One respondent considered that for-profit social enterprises that are connected to the NFP sector should also be included in the scope.

Government Chart 3.5



In the lead up to the adoption of a clear definition of grants and procurements in the Treasurer’s Instructions it was expected that the new clearer definitions would see the number of programs and organisations change from procurements to grants (or vice-versa). However, the NFP survey suggested that only 5 organisations had seen this happen. While in some instances, such as the DHS Sector Support and Advocacy program, there is a recognition that such a change should

happen, but is yet to be transitioned, the overall results suggest the definitional change and clarity has not caused major changes in funding arrangements.

The Department of Treasury and Finance also notes that variations from the use of the standard funding agreements have been requested by government departments that have grant programs for-profit entities. These departments have noted that it becomes difficult to use the standard NFP agreements where there is a mix of for-profit and NFP entities. In such cases, there is the need for specific contract clauses relating to the particulars of the funded project that looks more like a commercial project rather than a social service. In addition, the inconsistent contracts between numerous parties undertaking the same project is difficult to manage. It is noted that the government department can elect to use the simpler mandated NFP grant agreements for both for-profit and NFP entities.

Recommendation 6

As part of Recommendation 5, DTF Procurement Services Branch consider the possibility of excluding NFP arrangements established to support commercial enterprises and grant programs predominantly aimed to assist commercial initiatives (such as industry attraction grants), from the mandate to use the standard grant agreements.

Implementation

Information relating to the NFP Funding Policy is available on the Department of Treasury and Finance's external website, with further information available to SA Government employees through DTF Extra.

In implementing the NFP Funding Policy, the Department of Treasury and Finance and representative from the NFP sector provided training to interested parties.

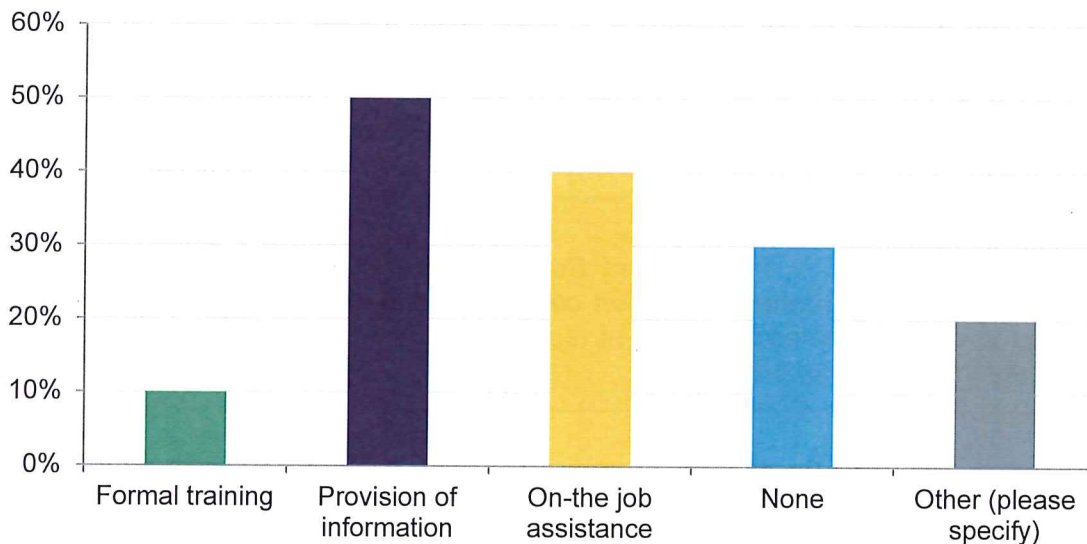
Similarly, in February 2019, SACOSS and VSA&NT held a series of 4 training sessions open to all NFPs, plus a webinar, and made the support materials publicly available online. Over 150 people registered for those sessions, but only 39 percent of those responding to the survey had actually attended a session – suggesting that further training may be required.

The Department of Treasury and Finance held an information session in February 2019, which was open to all public sector employees. The survey indicates that only 25 percent of SA Government respondents attended this information session. Subsequently, the Department of Treasury and Finance made the information session available as a webinar to all SA Government employees on DTF Extra.

Chart 3.6 shows the additional support that employees have received from their agencies regarding the implementation of the NFP Funding Policy.

Government Chart 3.6

What kind of additional support has your public authority provided/offered you with regard to implementing the NFP Funding Policy?



20 percent of the SA Government respondents indicated an inconsistent approach to the application of the principles, specifically responses included:

- More guidance is required on the practical application of the principles. Many of the principles are subjective, and open to interpretation, leading to inconsistencies in how they are applied. NFP organisations are receiving different treatment from different agencies.
- Need to know what best practice is.
- Should be more regulated like procurement – through a central public authority?

As mentioned above, 30 percent of SA Government respondents consider that they are impeded in applying the principles because of:

- Lack of clarity on the practical application
- Lack of training on the practical application
- Lack of time
- How to apply if principles if other Government objectives need to be met?

Recommendation 7

DTF Procurement Services Branch, in collaboration with the NFP sector, develop enhanced training programs and deliver information sessions to increase awareness of the PC 044 principles across the SA Government and NFP sector. This will help to build the capability of public authority staff in the practical application of the principles and grow knowledge of the principles across the NFP sector.

3.2 Planning

Grant or Procurement

On 1 July 2017, the *State Procurement Regulations 2005* were amended to remove the exclusion of community welfare funding arrangements with NFP organisations from the definition of 'procurement operations' under the Act. In effect the NFP sector is now able to take advantage of the more standardised governance framework used across the SA Government in relation to the provision of goods and services.

However, this policy change highlighted that a broad interpretation of 'procurement operations' under the Act has resulted in some agreements that most people would ordinarily consider to be grants to be treated as procurements under the Act, which can add a level of complexity.

On 1 January 2019, the State Procurement Regulations were amended to change the definition of 'procurement operations' to exclude arrangements that are ordinarily considered a grant as defined in the Treasurer's Instructions. To coincide with the change, the definition of a grant in Treasurer's Instruction 15 was amended to:

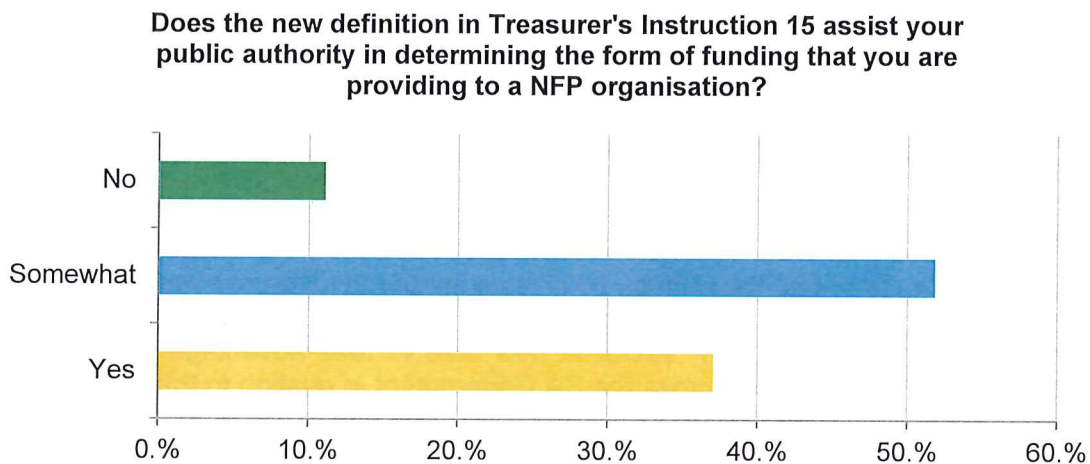
TI 15.7.8 Funding falls within the ambit of this clause if—

- (a) it constitutes expenditure by a public authority to assist or support a third party in the conduct of its undertaking; and
- (b) the benefits on account of that expenditure do not flow, or do not predominantly flow, to the public authority.

A new definition was introduced in Treasurer's Instruction 15 subsequent to the commencement of the NFP Funding Policy and therefore, it was considered important to review this definition in practice.

As can be seen from Chart 3.7 below, around 89 percent of SA Government respondents consider that the new definition of grant in Treasurer's Instruction 15 provides assistance in determining if their public authority is providing funding by way of a grant or a procurement.

Government Chart 3.7



However, NFACT recognises and the survey has indicated that there may still be some grey areas in the definition of a grant. For example, where a public authority provides funding to a volunteer organisation to undertake work that is a legislative function of that public authority, it could be argued that the funding is not a grant but rather a procurement of services. In this case, it appears that the definition does not work for this kind of funding, as this case would ordinarily be considered by most people to be a grant.

Recommendation 8

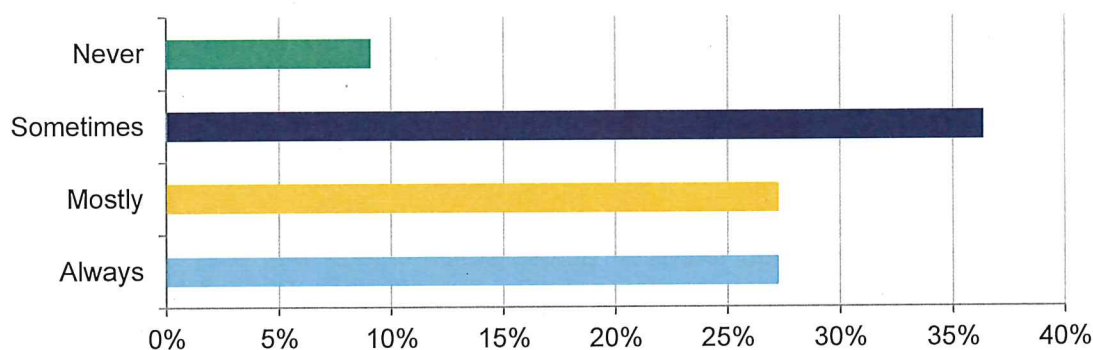
DTF Procurement Services Branch work with the NFP sector and Community of Practice to provide greater guidance and clarity for SA public authorities around the definition of a “grant”.

Collaboration and Co-design

One of the other areas important when planning the funding of a program or funded services, is the ability for a public authority and NFP organisation to be willing to collaborate with each other with a view to co-designing the program where possible. Chart 3.8 shows that more than 50 percent of Government respondents consider that their public authority interacts with the NFP sector prior to developing a government funded program most of the time or always.

Government Chart 3.8

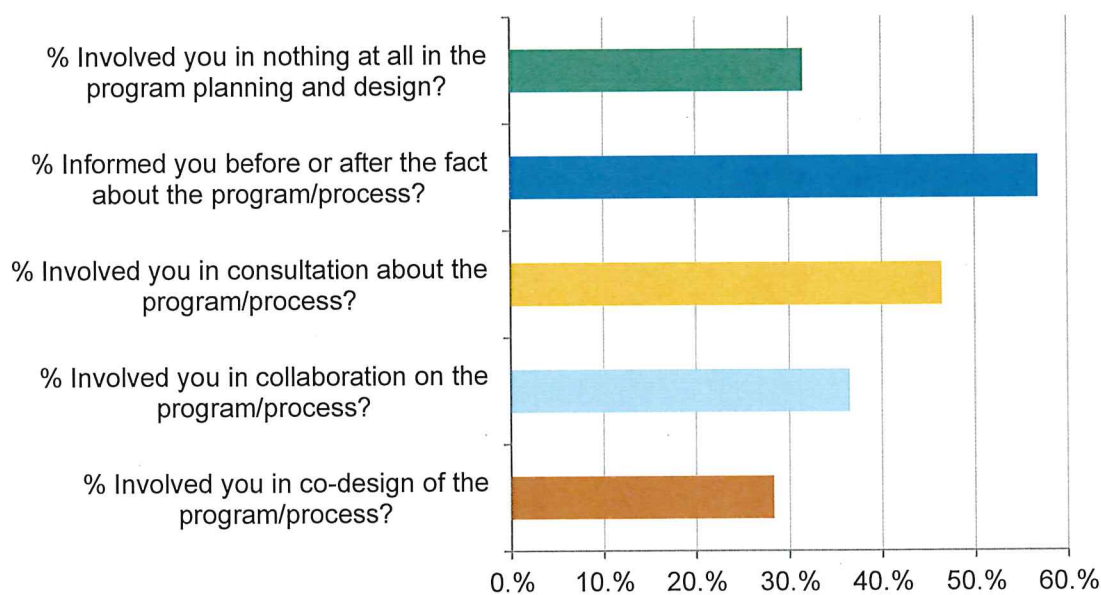
In general, does your public authority collaborate and co-design with NFP organisations prior to developing a government funded program?



These results, with over 50 percent of agencies always and mostly engaging in collaboration and co-design, are not necessarily reflected in the experience of NFPs in the process, with only around 30 percent stating they had been involved in co-design. Again, the survey numbers are low in both surveys, but it is noteworthy that only 8 respondents said they had been involved in the co-design of funding.

NFP Chart 3.9

In the last two years have you been involved in any of the following

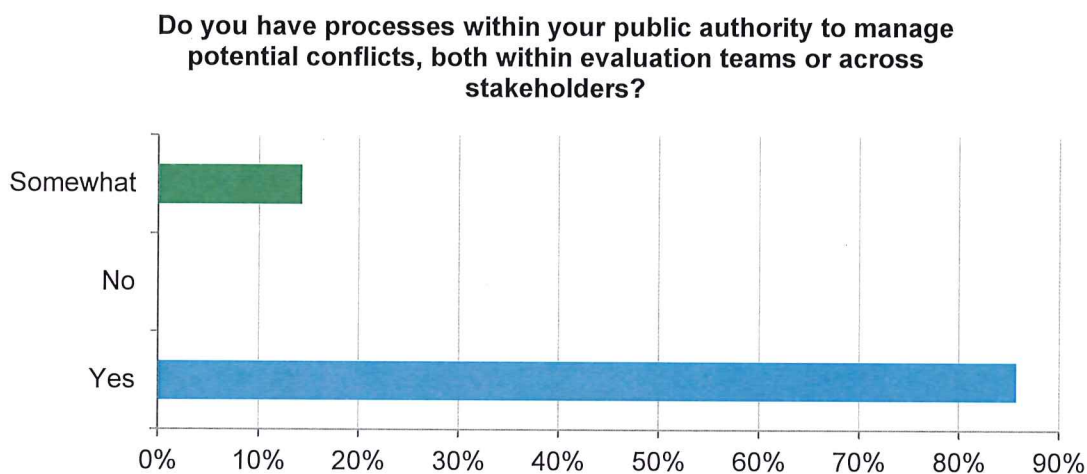


The differences in responses may stem from different understandings of what collaboration and co-design means – as 57 percent of NFP respondents said that they had been informed about the funding processes. “Informing” is at the lower end of possible engagement and falls short of collaboration and co-design as defined in the IAP Quality Assurance Framework for Community and Stakeholder Engagement. This suggests that there is more work to do in developing and implementing mutually agreed definitions and practices of collaboration and co-design.

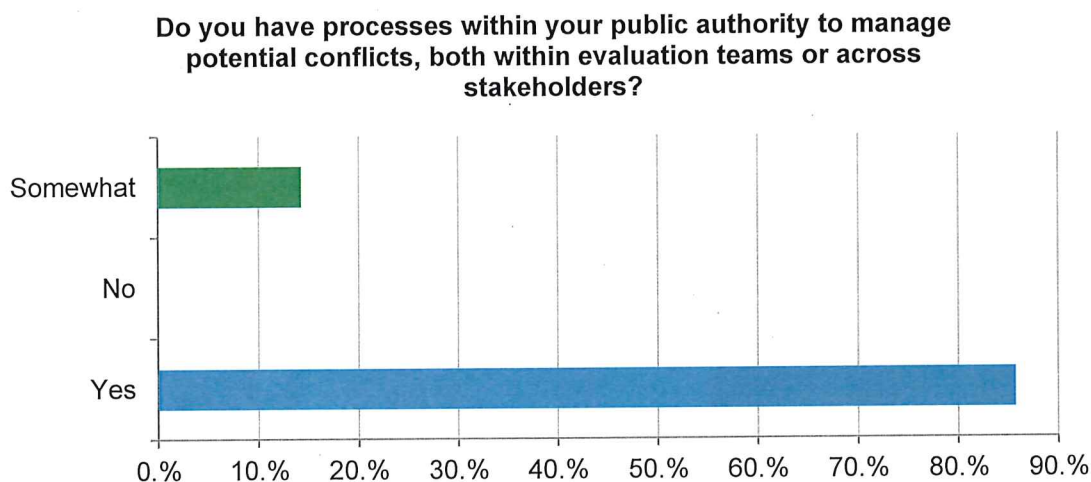
Probity

Chart 3.10 shows that most SA Government respondents have some form of process available to manage potential conflicts within evaluation teams or across stakeholders, with over 80 percent consider that their public authority has adequate processes in place. Further, Chart 3.11 provides some evidence that majority of agencies’ processes in procurement and contract management with NFP organisations are transparent.

Government Chart 3.10

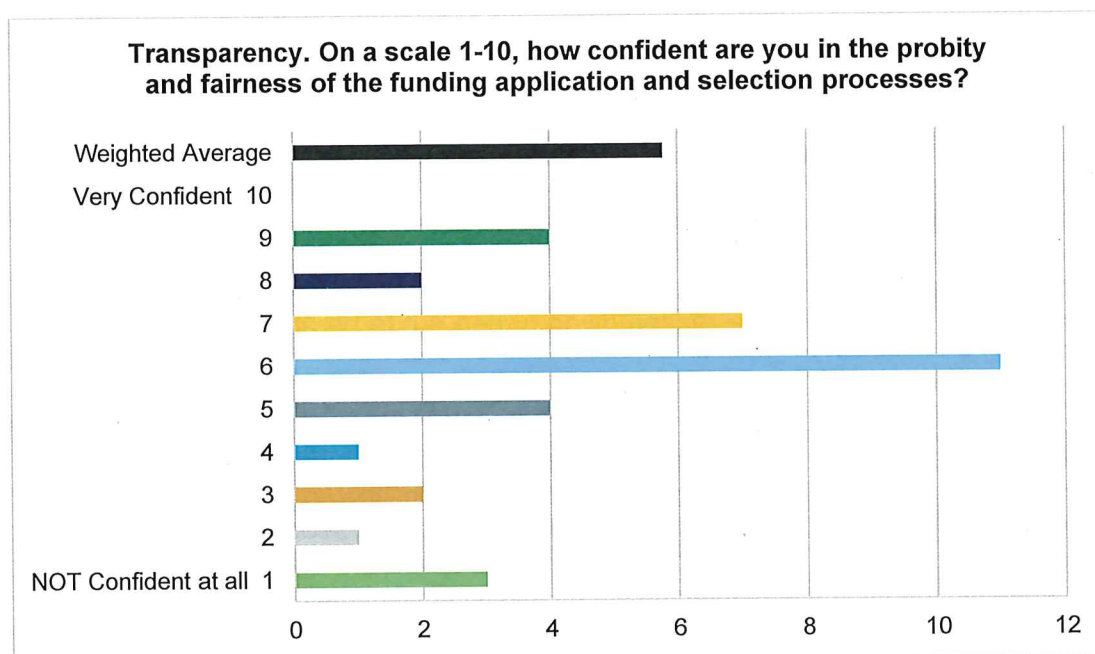


Government Chart 3.11



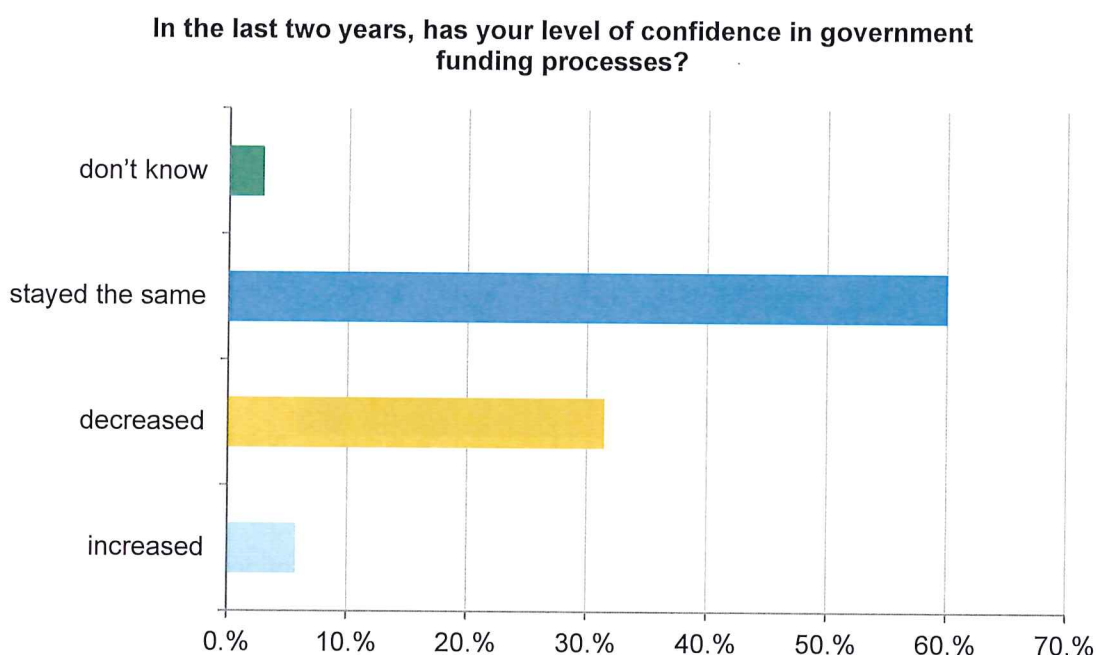
These results indicate that NFP organisations should have a high level of confidence in the funding process, but that was not reflected in the NFP survey. Survey respondents were asked to rate their confidence in the probity and fairness of funding processes. The median score was 6/10, no one gave it 10/10 and but 21 percent of respondents rated it below 5/10, with qualitative responses referring to lack of transparency, especially internal (only) processes.

NFP Chart 3.12



Further, 31 percent said their confidence had decreased in last two years, with about 60 percent saying it remained at same level. Only 2 respondents said their confidence had increased.

NFP Chart 3.13



Some caution is required in assessing these results due to low response rate (35) and the possibility that NFP and government respondents interpreted issues under this heading differently or had different focuses. The government questions and responses focused on having processes in place to ensure probity, while NFP responses focused on outcomes – which in many cases may boil down to missing out on funding and being unable to find out or understand why.

The NFACT sector representatives do not believe that the NFP survey results suggest any allegation of conflicts of interest, corruption or misuse of funds (and note that the concerns expressed in relation to this question are at odds with the otherwise generally positive ratings of NFP relationship to funding bodies). NFACT believes that the NFP responses here point to potentially either problems in communicating reasons for non-funding in some cases, or occasional genuine mistakes in the funding system. For example, SACOSS notes its own experience (from a few years ago) where on one application funding was denied and the reason given turned out to be an incorrect reading of the application.

Recommendation 9

DTF Procurement Services Branch, in collaboration with public authorities and NFP sector representatives, co-design greater guidance for public authorities on how to maintain probity and transparency during procurement and grant processes. This may include guidance on best practice principles in the areas of co-design, NFP representation on evaluation panels and debriefing unsuccessful applicants.

Recommendation 10

During the establishment of the Procurement Review Committee ('PRC'), DTF Procurement Services Branch consider whether it is appropriate for this committee to undertake independent reviews of funding and grant processes.

Community Development

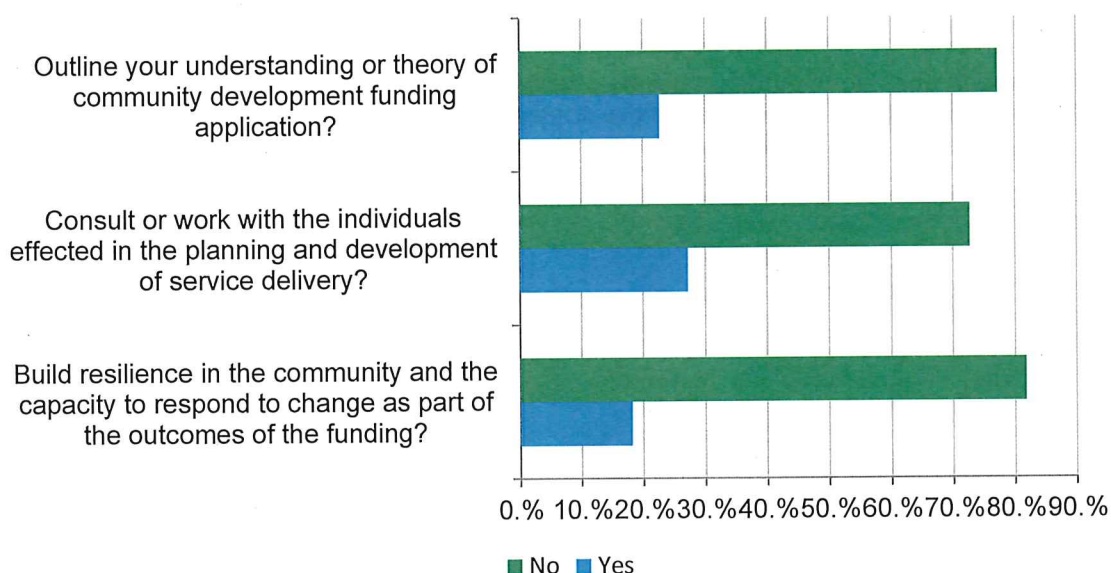
The NFP survey asked a series of questions around the application of community development principles in the planning and delivery of services. The notes on community development in PC 044 state that:

Where possible, and particularly in relation to health and community services, funding should reflect a community development approach which builds resilience in the community and the capacity to respond to change and crisis and empowers individuals in the process of development and service delivery.

For the NFP sector, this empowerment of individuals and the community is crucial to the community development process, and the survey asked three questions about whether specific parts of a community development approach were incorporated into and required of funded programs. While the number of responses was low (the question was not asked of all respondents), over 70 percent answered negatively.

NFP Chart 3.14

NFP responses re whether their contracts had these community development requirements



In summary, only:

- 4 respondents indicated their funding required them build resilience and community capacity;
- 6 respondents stated they were required to consult or work with individuals impacted ("clients") in service delivery and planning; and
- 5 respondents stated they were required to outline the theory of community development underpinning the service delivery.

These results demonstrate that there is still some way to go in implementing community development principles, with NFACT representatives suggesting that could be either because the funding programs themselves are too focused on tertiary/crisis interventions and/or are focused on top-down service delivery rather than on longer term empowerment and capacity building.

Recommendation 11

DTF Procurement Services Branch, in collaboration with the NFP sector, review the current procurement and grant framework to ensure government agencies engage with communities and key stakeholders during the planning stage of procurement and grant processes. Early engagement includes identification of need, co-design of the specification, and designing key outcomes

Recommendation 12

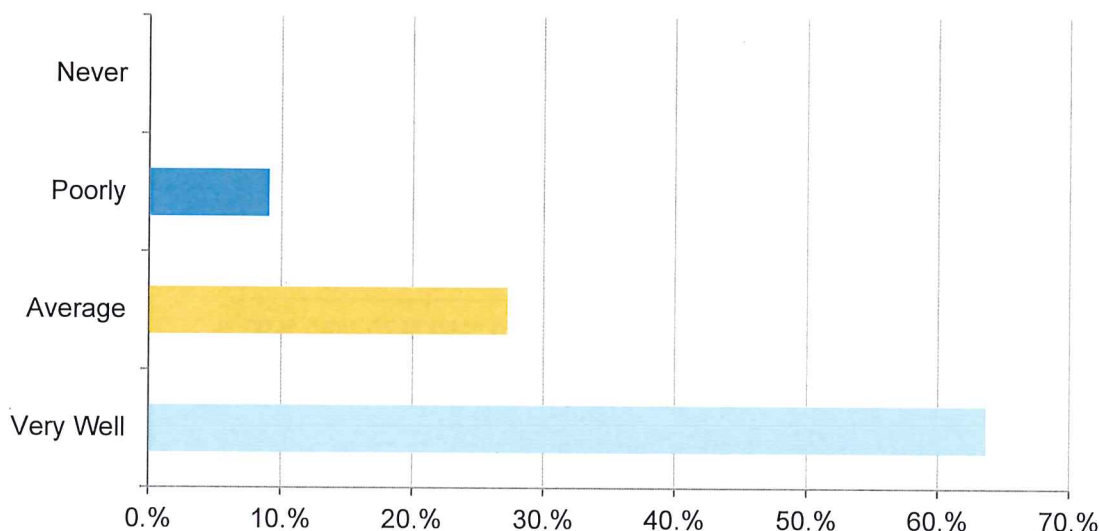
The new NFP Community of Practice consider the best way to encourage government agencies to use community development to inform government procurement and grant processes.

3.3 Contracting

This section seeks to assess how well the PC 044 principles are applied by a SA Government respondent when contracting with an NFP organisation.

Government Chart 3.15

In general, how well does your public authority collaborate with a NFP organisation prior to the finalisation of the contract with that organisation?



Most agencies consider that they collaborate well with a NFP organisation prior to the finalisation of the contract. The two SA Government respondents that rated their collaboration at this stage of contracting as poor stated:

- Worried about probity; and
- Lack of time to collaborate due to a large number of low value-grant offerings.

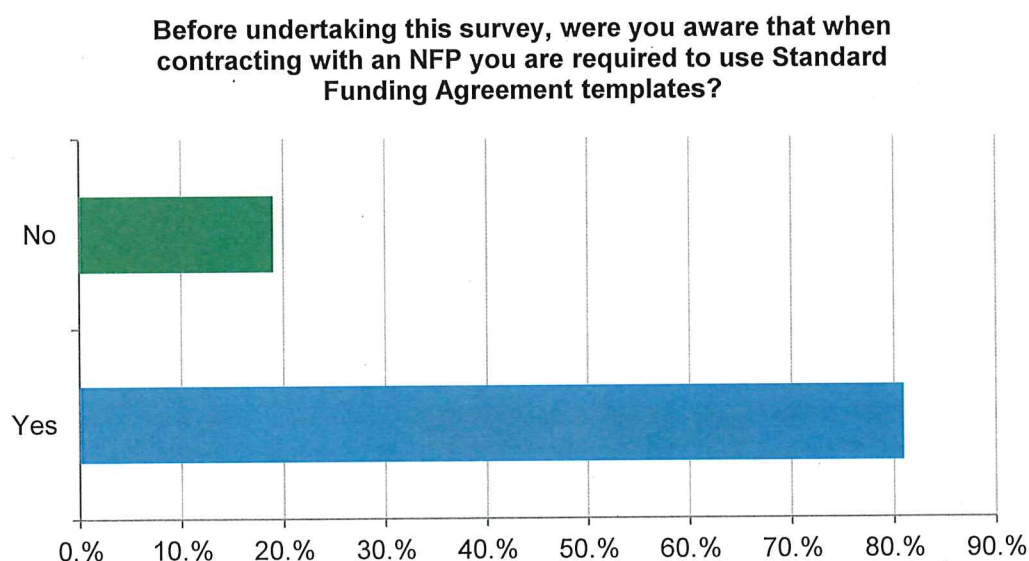
The comments and recommendations above in relation to collaboration and co-design in planning are relevant here, but specifically in relation to collaboration prior to the finalisation of the contract NFPs have often felt they had little power and were unable to negotiate contract and service conditions. The negotiation of standard contracts with set general terms and conditions was designed to address some of those issues, but there remains a requirement for negotiation on the service descriptions. However, in the NFP survey responses, two NFPs identified that in recent contracts they had felt pressured to accept inappropriate clauses and service descriptions which in effect undermined the standard terms and conditions.

Standard Contracts

The NFP Funding Policy and standard indexation policy applies to all public authorities. Treasurer's Instruction 15 – Grant funding and the requirement to use the Standard Grant Agreements only applies to administrative units, however other public authorities are not precluded from adopting the standard agreements.

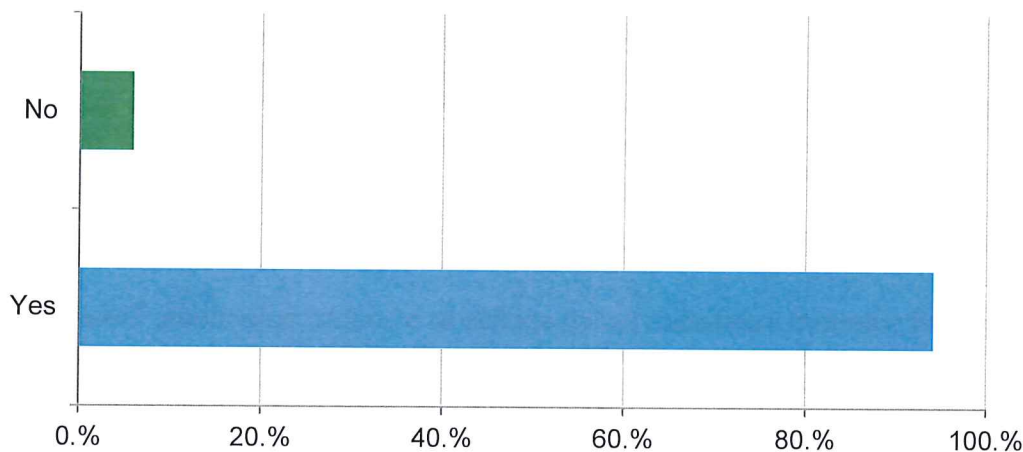
Charts 3.16 and 3.17 below shows that most SA Government respondents were aware of the requirement to use Standard Funding Agreements when contracting with NFP organisations and in fact, have used the templates.

Government Chart 3.16



Government Chart 3.17

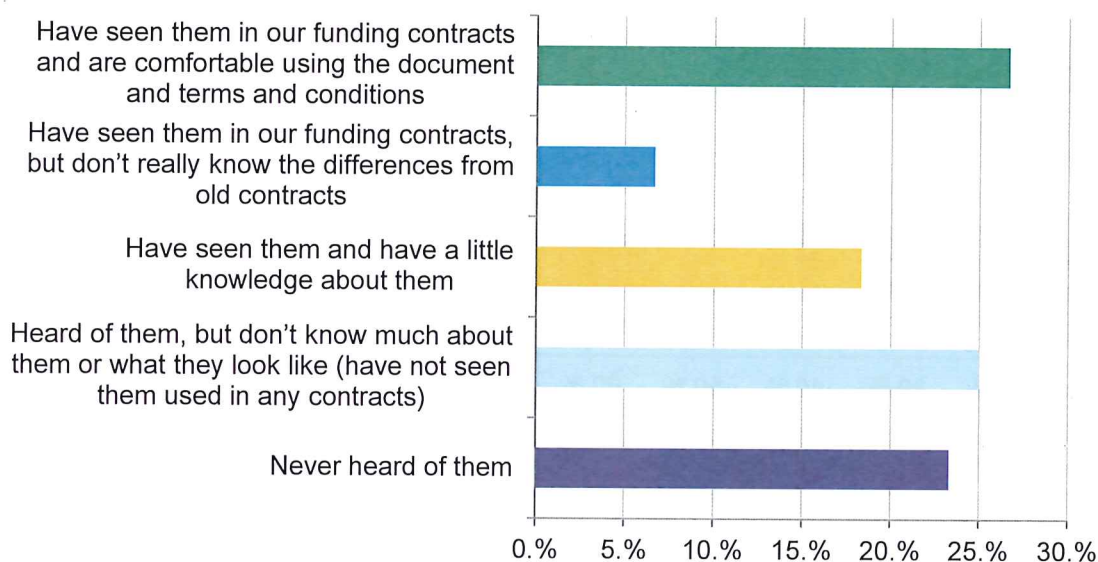
Have you used the Standard Funding Agreement templates?



The knowledge and use of the standard contracts in the NFP community was much lower. About 50 percent of respondents said that they had seen the new contracts (including in training) and only half of those respondents said that they were currently using the contracts and were comfortable with them.

NFP Chart 3.18

Before starting this survey, how much did you know about the new standard funding contracts?



In part these low usage figures are driven by funding cycles. Only 15 NFP respondents said that they had received *new* funding in the last 12 months. Much more common was agencies extending or rolling-over existing contracts meaning that the implementation is far from complete. At present

(and for some years yet) NFPs still have multiple different types of funding contracts and the benefits of standardisation have not been fully realised.

Of those 15 respondents who said they had received new funding in the last 12 months, 5 reported that the new standard contracts were not used. However, further investigation is needed as to whether this was because government agencies were still using non-compliant contracts, or whether that funding was out-of-scope or it may have been low value purchase orders or grant letters which were not identified by the NFPs as part of the suite of standard contracts.

Recommendation 13

The new NFP Community of Practice identify a date by which all funding agreements with NFPs must to be moved to the DTF standard agreement templates (except those arrangements referred to in Recommendation 6).

Recommendation 14

The DTF Procurement Services Branch investigate an approval mechanism for public authorities to request exemption from using the standard NFP agreement templates.

Issues with Contracts

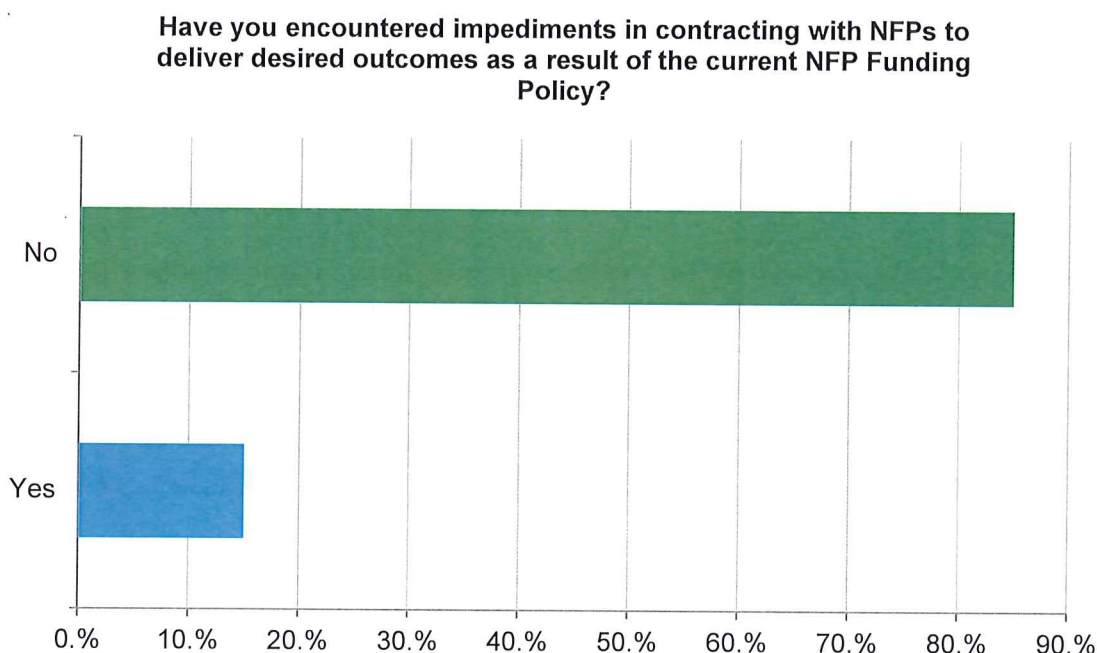
Only three NFP respondents said there were clauses or problems with the new contracts. These were listed as:

- the liability limit, variation, and end of contract
- a handover clause wrongfully used to set a new price for services
- child protection requirements for peak body activity.

Only the first dot point relates to the actual terms of the contract. While no details were given of the perceived problems, NFACT is of the view that these concerns are more likely than not to arise from a misreading of previous contracts, as the terms of the new contract are much clearer and more favourable to NFPs than the equivalent terms in existing contracts.

As depicted in Chart 3.19, two SA Government respondents indicated that the process to seek variations to the standard agreements was an impediment to the desired outcome of the NFP Funding Policy. It is acknowledged that needed to seek a variation may add an additional process for cases where there is a genuine need for an alternative funding agreement and supports the principles of standard contracting in line with the NFP Funding Policy.

Government Chart 3.19



During the first year of implementation of the standard funding agreements, the following two issues have been identified that require the Standard Funding Agreements to be amended as follows:

- Suitability of Persons; and
- Payment details within the Low Value Grant Letter Template (including the Non-Recourse).

The new child protection legislation provides a more comprehensive and robust scheme for ensuring child safety. The relevant history screening in the *Children's Protection Act 1993* has been replaced by the working with children check (WWCC) in the *Child Safety (Prohibited Persons) Act 2017* (Prohibited Persons Act). The child safe environment regime in the *Children's Protection Act 1993* is largely continued in Chapter 8 of in the *Children and Young People (Safety) Act 2017* (Child Safety Act). Under the Prohibited Persons Act an employee in a 'prescribed position' must submit to a WWCC. A person in a prescribed position is a person who works with children within the meaning of the Prohibited Persons Act.

The current Suitability of Persons clauses in the Special Clause Banks of the Standard NFP Funding Agreements are no longer relevant and needs to be updated.

Many discussion have been had between key Government agencies, NFP sector representatives, the CSO and Treasury and Finance regarding the necessity of such a clause given the introduction of the new legislative child protection provisions and the effectiveness of a contract clause at either deterring this undesirable behaviour as contractual clauses can only be enforced against employers of prohibited persons not the prohibited persons themselves.

The Department of Treasury and Finance has identified the need to amend the Standard NFP Funding Arrangement Low Value Grant Letter template and Low Value Non-Recourse Grant templates to allow an public authority the flexibility include payment details relating to the grant. For example, a request for EFT details.

Recommendation 15

The current "Suitability of Persons" clause be removed from the NFP Sector Funded Services Special Conditions Bank and replaced with a "Child Safety" special conditions clause, similar to the Board's Standard Goods and Services Agreement Special Conditions Clause Bank, subject to advice from the Crown Solicitor's Office.

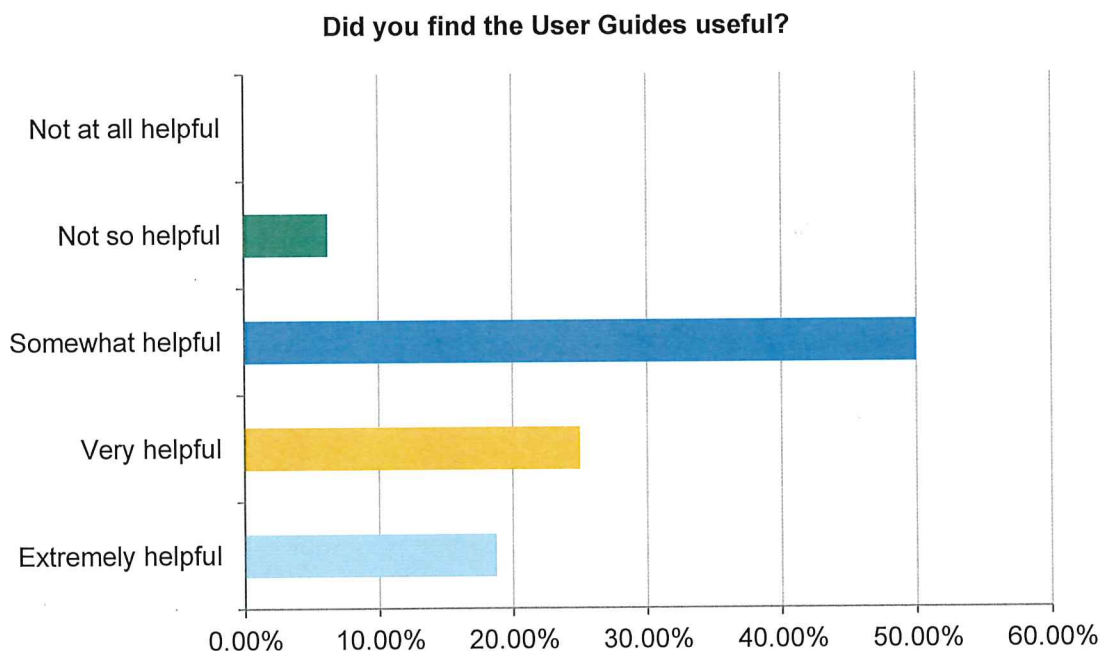
Recommendation 16

The current the Standard NFP Funding Arrangement, Low Value Grant Letter template and Low Value Non-Recourse Grant templates be amended to allow flexibility to include payment details.

User Guides

It is important that the correct information and guidance is available to assist a person planning a funding arrangement. The Department of Treasury and Finance, the Board and the Crown Solicitors Office have put together various forms of guidance to assist a person throughout the process of funding a NFP organisation. The User guides have been developed in consultation with the CSO to assist in the completion of the contract details. Chart 3.20 shows that majority of the SA Government respondents consider the User Guides helped them in some way in finalising a funding agreement.

Government Chart 3.20



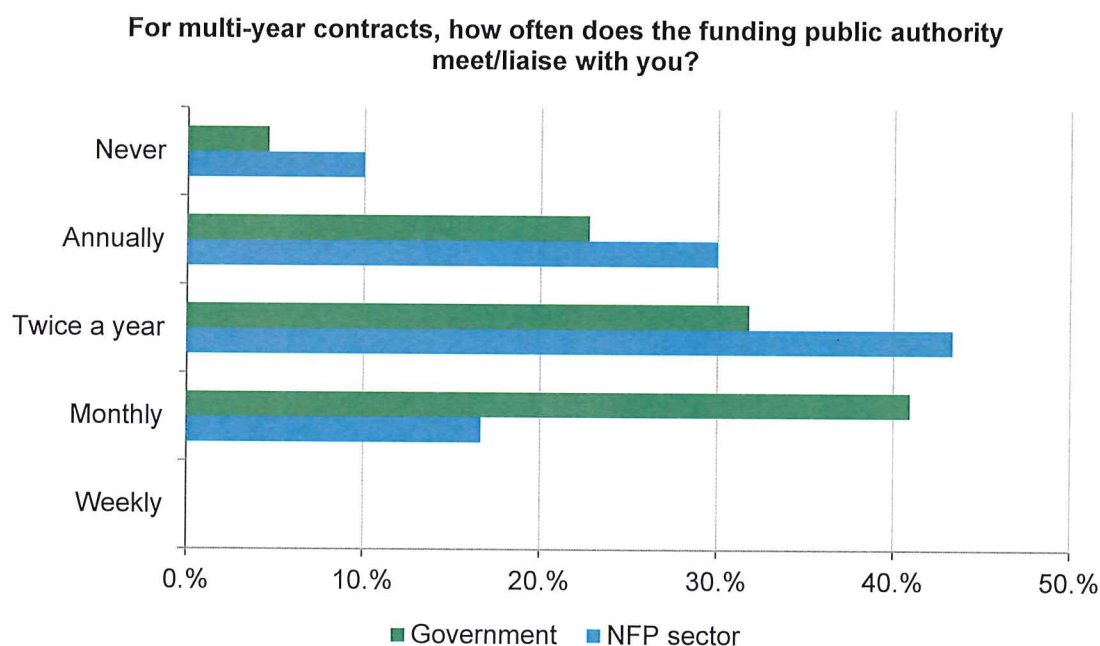
Recommendation 17

DTF Procurement Branch review and update the User Guides in line with any changes made to the Standard Funding Agreements.

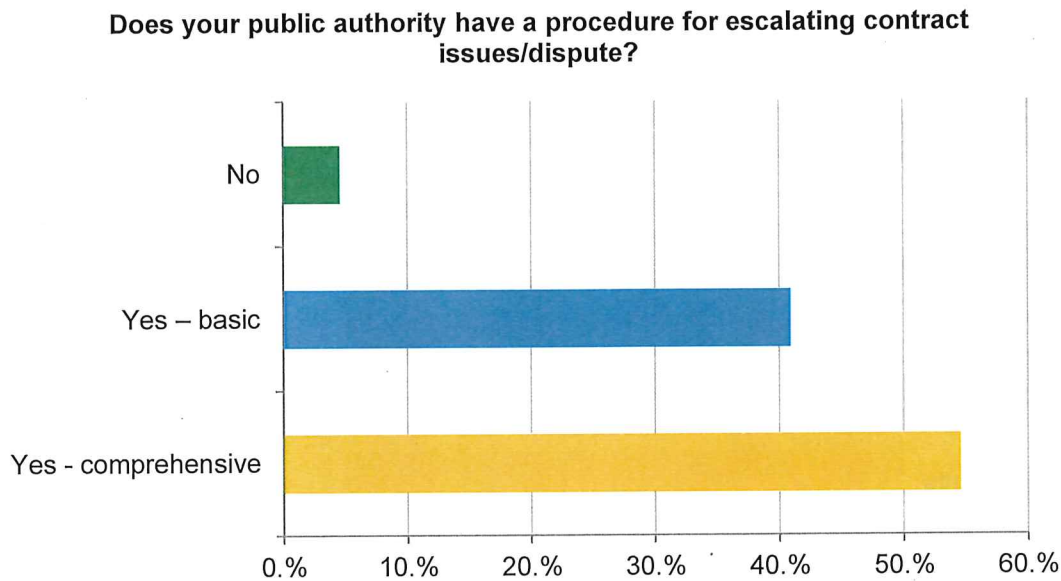
3.4 Contract Management

The following charts help to assess the quality of the relationship between a public authority and an NFP organisation in relation to contract management. Chart 3.21 shows that almost all SA Government respondents meet with a multi-year contracted NFP organisation at least twice per year. Further, most SA Government respondents indicated their agencies have a process for escalating contract disputes, with over half of those respondents indicating that their public authority has a comprehensive dispute resolution process (see chart 3.22).

Combined Chart 3.21



Government Chart 3.22

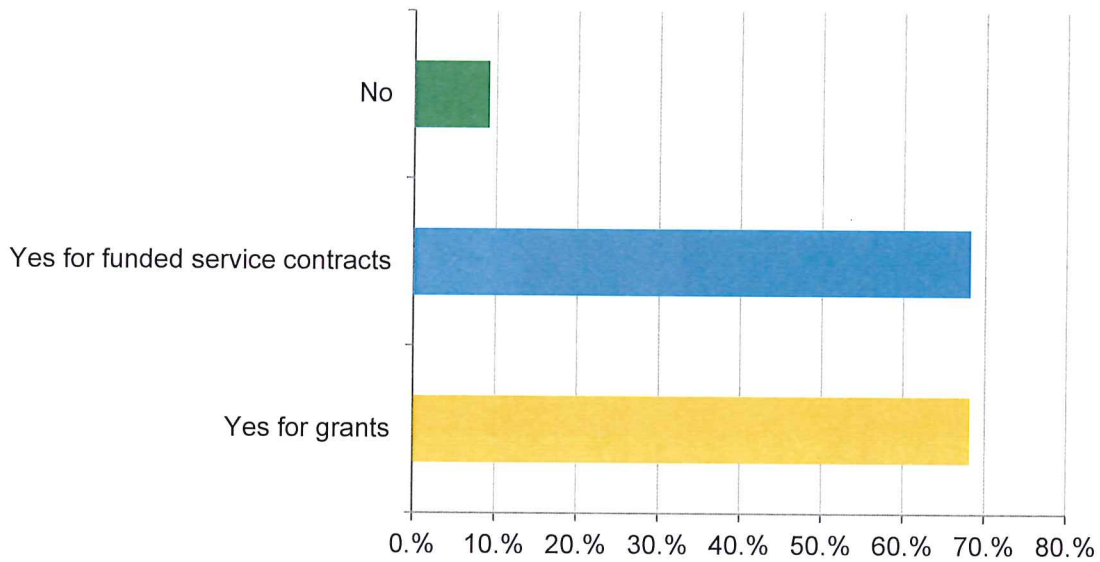


The standard funding agreements designed to accommodate proportionality in the reporting required and around three-quarters of NFP survey respondents thought reporting requirements were proportionate or mostly proportionate.

Chart 3.23 indicates that around 65 percent of SA Government respondents indicated that their public authority used standard reporting for both grants and funded service agreements with the NFP sector. The main uses of these reports are to measure efficiency of funding and for acquittal purposes (Government Chart 3.24). It should be noted that the survey asked whether standard reporting was used for grants and whether standard reports were used in procurements, it did not ask whether these were the same standard reports across different funding types. Therefore, no conclusion around the appropriateness of one single form of reporting can be made from the survey results.

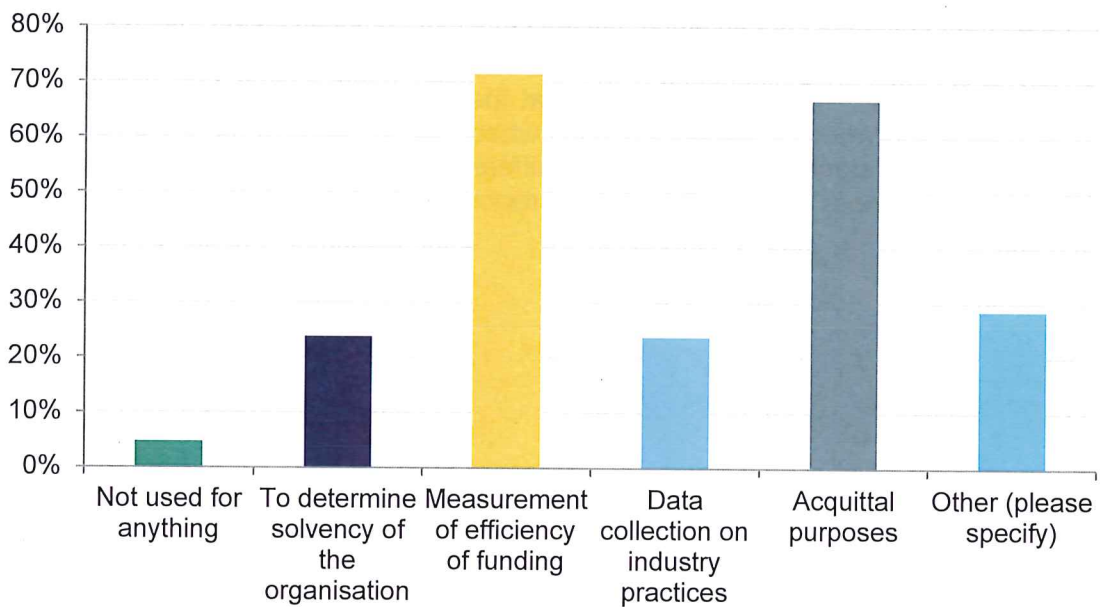
Government Chart 3.23

Does your public authority have standard contract reporting requirements?



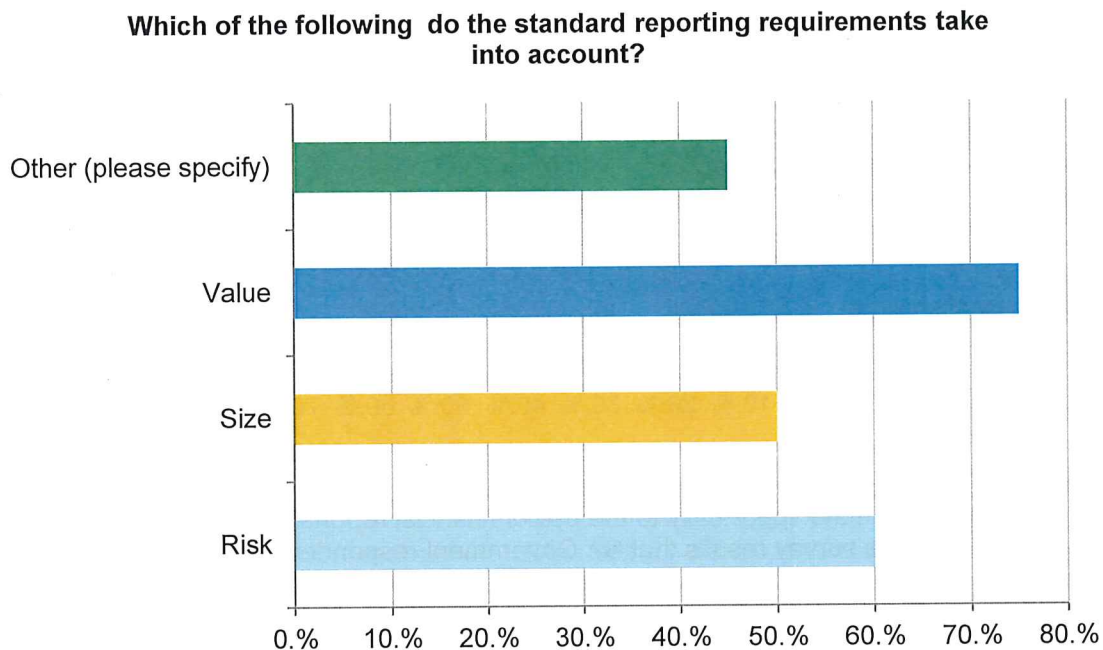
Government Chart 3.24

In general, what are the standard reports used for?



Each public authority appears to develop its standard reporting using similar parameters; value, size, risk and other. This evidences that the standard reporting across agencies is considering some aspect of proportionality in its reporting. What the results do not elaborate on is how the different basis for standard reporting differs by the type of contract.

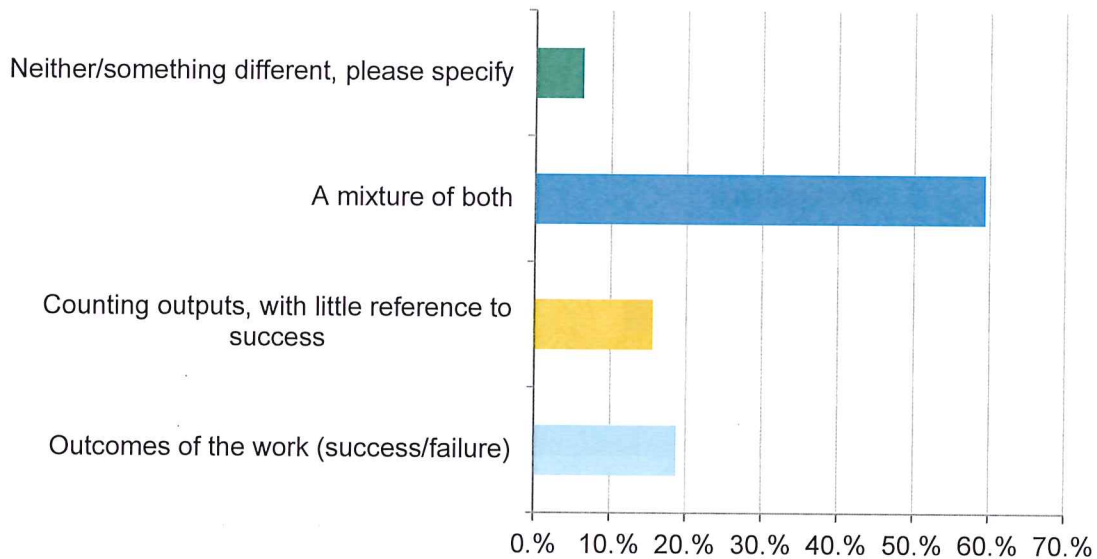
Government Chart 3.25



PC0 44 requires an outcomes orientation in funding with clearly defined quantitative, qualitative milestone information geared toward what the funding is intended to achieve. This was a deliberate attempt to move away from narrow output reporting (with the risk that such outputs may not actually achieve much overall). That said, in human services, outcomes (particularly at the community level) are often hard to define and may require action and meta-changes far beyond the reach of a particular funding program or service. Accordingly, it was not surprising that only 20 percent of NFP survey respondents said their reporting was “outcome-based”. However, 60 percent said reporting was a mixture of outcomes and outputs – which suggests a high level of implementation (at least in part) of outcomes reporting.

NFP Chart 3.26

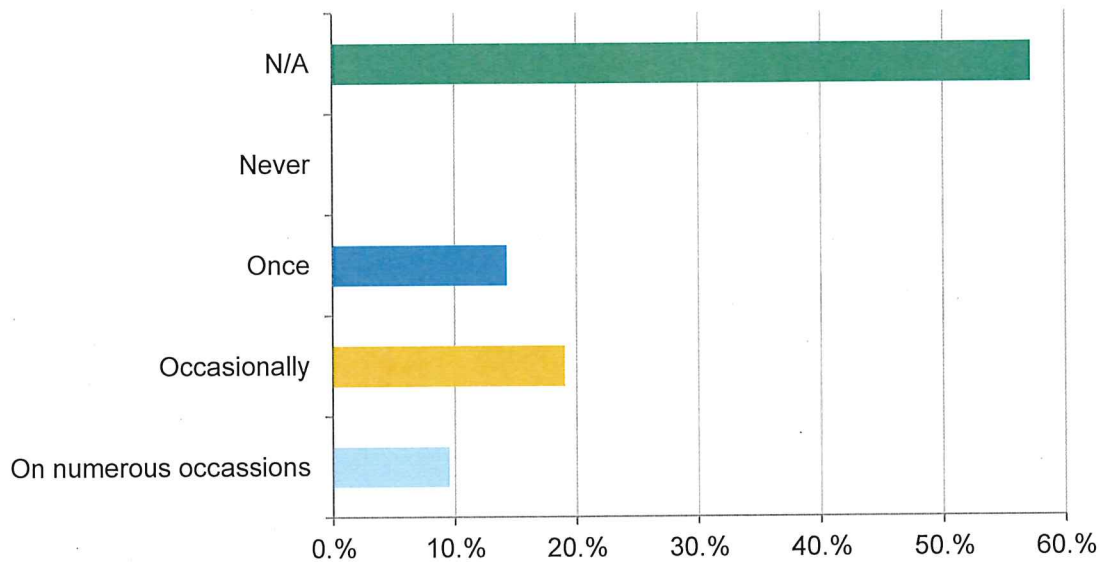
Thinking about the reporting on what you did with the government funding, is your reporting based on:



The following Charts 3.27 and 3.28 relate specifically to the use of financial reports that are collected by a public authority. It appears from the survey results that SA Government respondents look more closely at the financial reports of a NFP organisation that has been funded through grant rather than a procurement. It is therefore not surprising that there is a large number of "N/A" in relation to procurement because in general the payments for a procurement are linked to the delivery of the good or service.

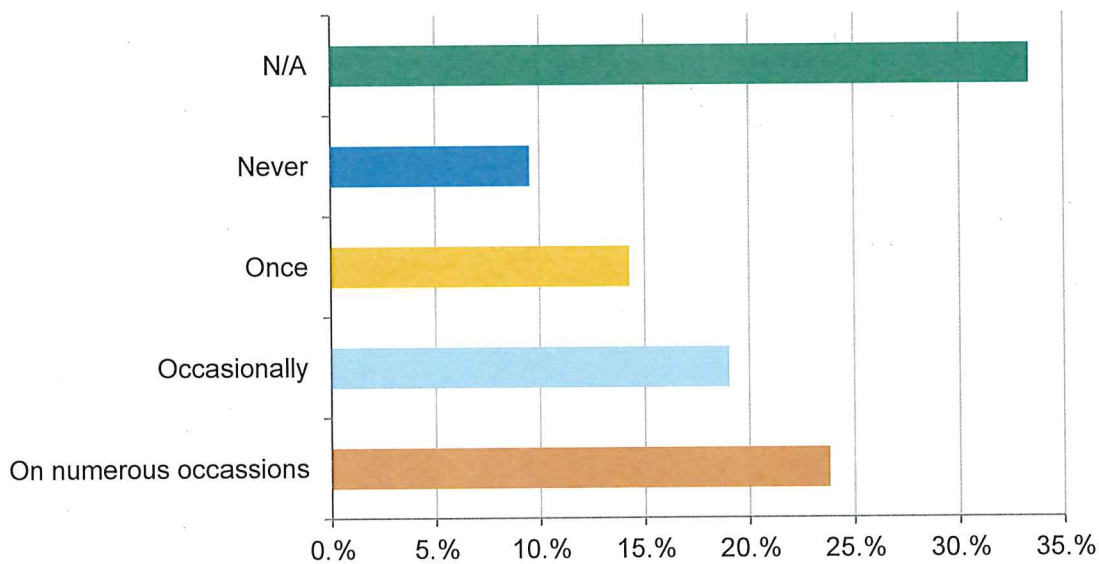
Government Chart 3.27

In relation to a procurement, how often do you look at the financial reports of a NFP organisation as required by the contract?



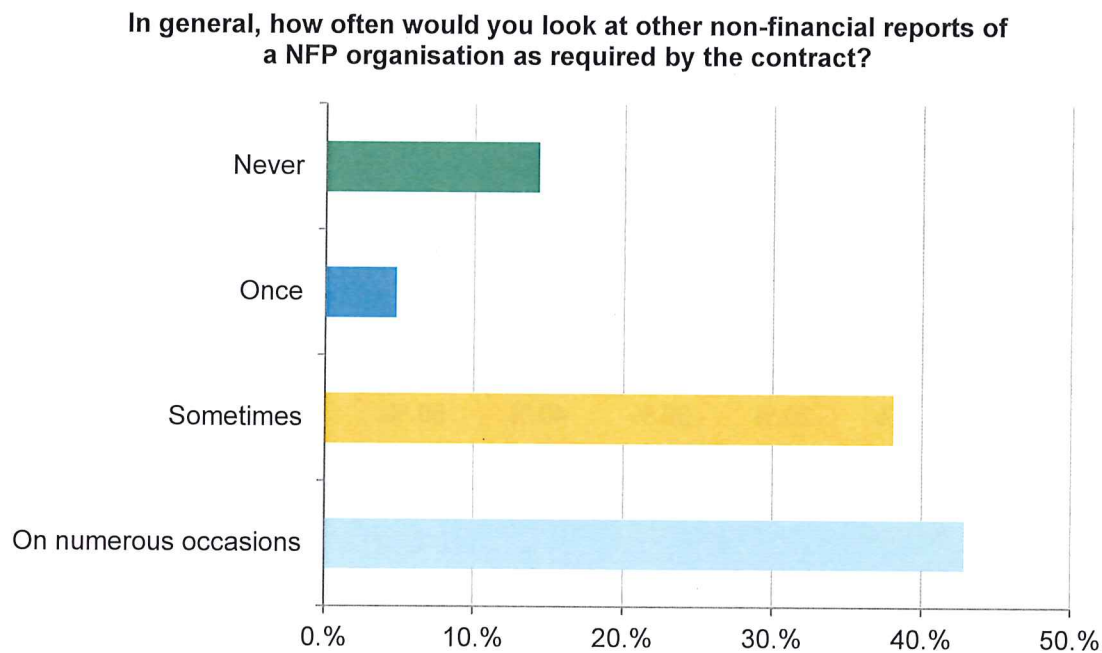
Government Chart 3.28

In relation to grant funding, how often do you look at the financial reports of a NFP organisation as required by the contract?

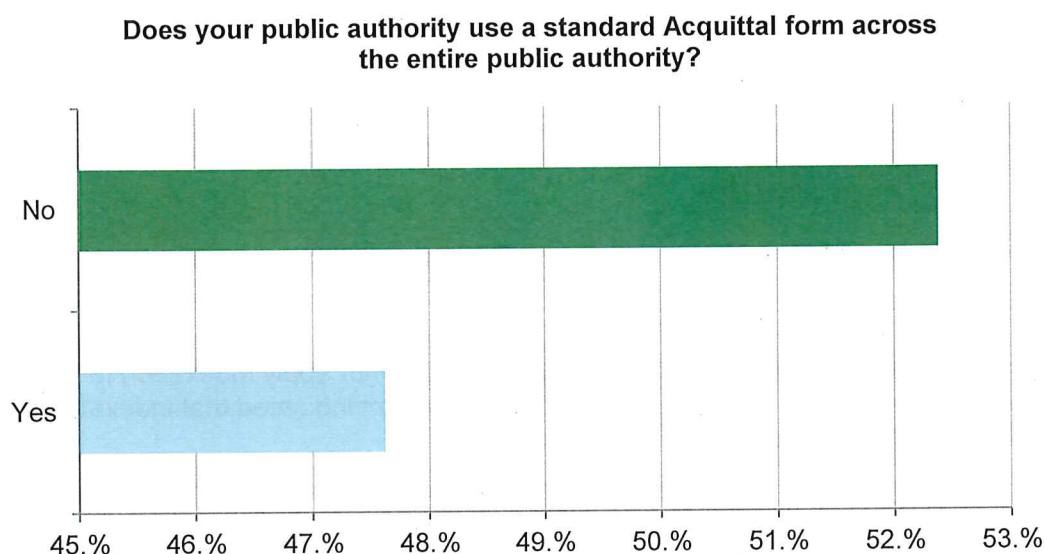


The standard contracts allow for the requirement of other non-financial reports. Chart 3.28 shows that majority of the SA Government respondents indicated that they at least sometimes look at these reports, with only 42 percent referring to them on numerous occasions.

Government Chart 3.29



Government Chart 3.30



When developing standard funding agreements, standard acquittal forms were not considered appropriate due to the differing requirements a public authority has in respect of acquittal. Chart 3.29 supports this practice, with over 50 percent of SA Government respondents indicating their public authority does not use a standard acquittal form.

Recommendation 18

The community of practice consider the need, feasibility and form of a standard acquittal for grant funding and/or NFP sector procurements.

Indexation

Since 1 July 2017, mandatory indexation applies to all multi-year funding agreements between SA Government agencies and not-for profit organisations, with the following exceptions:

- services transitioning to the National Disability Insurance Scheme (NDIS)
- services transitioning to the Commonwealth Government under aged care reform arrangements
- indexation arrangements negotiated as part of a competitive tender arrangement.

Indexation rates have been set for the following financial years:

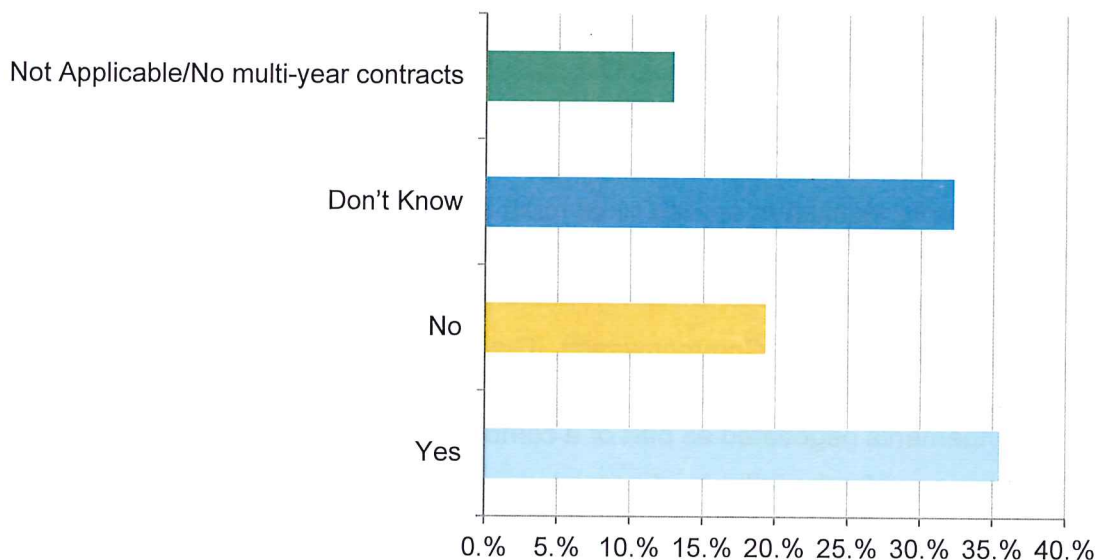
2017-2018	2%
2018-2019	2%
2019-2020	2.5%
2020-2021	2.5%

Two SA Government respondents indicated that their public authority did not apply indexation to the NFP contracts they have been involved in. One SA Government respondent indicated that indexation was not applied due to the short-term nature of the contracts.

The results from the NFP survey were a bit unclear with only 31 responses (many respondents without multiyear funding skipped the question), and around a third of these not knowing if they were receiving the standard indexation rate. 6 NFP respondents said that they were not receiving the standard indexation. It is not clear from the survey whether any of these were excluded contracts, but from their own consultation, the NFP NCAT representatives believe that there is still some work to do on the full implementation of the standardised rate.

NFP Chart 3.31

Do all your multi-year agreements get indexed at the standard rate (2.5% for 2019-20)?



Further, a particular concern for NFPs is around the inapplicability of indexation where there is a series of one-year contracts. Of the 31 respondents, 16 said they had received single year (or less) funding for programs that could reasonably be expected to run for multiple years. Unfortunately,

most of the responses are not specific enough to identify which programs, but various departments are cited.

These results raise the question as to whether departments are avoiding the standard indexation requirement by only offering single year contracts – either deliberately or because of funding pressures and uncertainty. The survey data is insufficient to decide either way and is certainly not enough to suggest systemic issues, but the intention of policy is that all multi-year funding is indexed according to the policy.

As indexation has only been set until 2020-21, the NFACT group consider it important to continue to maintain four-years of published indexation rates to provide certainty to NFPs when considering multiyear contracts.

Recommendation 19

DTF to continue publishing NFP indexation rates four years in advance.

Recommendation 20

DTF Procurement Services Branch to identify mandated reporting metrics from public authorities for all NFP agreements.

4. Conclusion

It is acknowledged that government and the NFP sector work closely to deliver significant benefit and outcomes to South Australian clients and communities. Since the establishment of PC 044 there has been substantial progress to strengthen the collaborative partnerships between government and the NFP sector, but more work is needed to ensure the very best outcomes are achieved through the various funding mechanisms.

The Department of Treasury and Finance will continue to lead a collaborative advisory group with NFP representatives, and a Community of Practice will bring together procurement and contract managers responsible for NFP funding within government and key representatives from the NFP sector, to provide guidance and training on the PC 044 principles.

There are clear differences between the view of some agencies about how to implement the Circular's principles and the expectations from the sector. The Department of Treasury and Finance and the NFP sector representatives will work closely to provide clear guidance and increase capability of agencies and provide further transparency and clarity to the sector.

The implementation of these recommendations will be ongoing over the next two years as the government works closely with the sector to improve the application of the PC 044 principles. During this time the Department of Treasury and Finance will undertake a similar review of the funding policy to guide future improvement plans.