

## STRENGTHENING ORGANISATIONAL GOVERNANCE - EXEMPTIONS POLICY AND APPLICATION FORM

This document sets out the Department of the Prime Minister and Cabinet’s approach to the granting of exemptions from the “Strengthening Organisational Governance” incorporation requirements applied under the Department’s standard Indigenous Advancement Strategy funding agreements (the *Head Agreement for Indigenous Grants* and related Project Agreements).

### Policy

All organisations receiving grant funding of $500,000 (GST exclusive) or more in any single financial year from funding administered by the Indigenous Affairs Group within the Department of the Prime Minister and Cabinet are required to:

* incorporate under Commonwealth legislation – Indigenous organisations will be required to incorporate under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; with other organisations incorporating under the *Corporations Act 2001*; and
* maintain these arrangements while they continue to receive any level of such funding.

This requirement applies to all grant funding under agreements or contract variations executed on or after 1 July 2014.

Statutory bodies, government bodies, and organisations operating under a specific piece of legislation are excluded from the requirements and do not have to apply for an exemption.

Indigenous organisations already incorporated under the *Corporations Act 2001* are excluded from the requirements and do not have to change their incorporation status.

All new Indigenous organisations (those not previously incorporated) must be incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* so they can access the assistance and support available to meet the needs of Indigenous Australians under the Act*.*

The Minister may review these exclusions at any time, including considering requirements for individual organisations. Affected organisations will be notified of any changes.

The requirements apply to grant funding. A grant is an arrangement for the provision of financial assistance by the Commonwealth:

1. under which public money is to be paid to a recipient other than the Commonwealth
2. which is intended to assist the recipient achieve its goals
3. which is intended to help address one or more of the Australian Government’s policy objectives
4. under which the recipient may be required to act in accordance with specified terms or conditions

Funding provided for capital works or funding as procurement is not included. Procurement encompasses the whole process of procuring goods and services. In addition to the acquisition of goods and services by an agency for its own use, procurement includes the acquisition of goods and services on behalf of another agency or a third party.

Organisations will need to comply with this requirement as part of their funding agreement. Non-compliance will constitute a breach and may result in the termination of the funding agreement.

### Exemptions

Exemptions will be considered where an organisation can demonstrate at least one of the following:

1. That grant funding received from the Indigenous Affairs Group within the Department of the Prime Minister and Cabinet is a small portion of its total revenue, and as such changing incorporation status may unfairly impose additional requirements on its operations and business model.
2. It is required to incorporate under specific non-Commonwealth legislation as part of its licensing arrangements or funding received through other sources.

### Responsibility of Organisations

Organisations applying for an exemption are responsible for providing sufficient information to support their application.

### Lodgment of applications

Organisations will have six (6) months to comply with the requirements from the execution of the funding agreement.

Applications for exemption from the requirements should be lodged through your funding agreement manager in your Regional Department of the Prime Minister and Cabinet Office.

Applications should be lodged within the transition period, as soon as practical once an offer of funding has been made. Organisations will be expected to comply with the requirements within the transition period should an exemption not be granted.

### Authority to Issue Exemptions

The authority to issue exemptions lies with the Minister for Indigenous Affairs with advice provided by the Department. The Minister may choose to delegate this authority.

### Acknowledgement of receipt

Acknowledgement of the receipt of the application will be provided within one week of receipt.

### Notification of exemption status

Organisations will be provided with the outcome of their application for an exemption within one week of a decision being made.

### Assessment Rules

Applications will be considered on a case-by-case basis, and will take into consideration information demonstrating that the organisation is well-governed, high-performing and low risk. Performance and risk information held by the Department will also be assessed in considering an application for exemption.

Assessment of all exemptions will be in accordance with principles identified under the *Commonwealth Grants Rules and Guidelines (2014)* including consideration of:

1. Proportionality by striking an appropriate balance between the complexity of a granting activity, including the ongoing requirements for grant recipients, and managing the risks for beneficiaries and the Commonwealth
2. Governance and Accountability, ensuring that individuals and organisations are answerable for their plans, decisions, actions, results, and the achievement of Government objectives.

### Assessment Framework

| **Assessment term** | **Definition and information requirements** |
| --- | --- |
| Well-governed  | In accordance with the Commonwealth Grant Rules and Guidelines Governance and Accountability principle, granting activities should be underpinned by solid governance structures and clear accountability for all parties involved in grants administration. In demonstrating that they are well governed, organisations should demonstrate that they are answerable for their plans, decision, actions and results. This should include demonstration that the organisation has policies and procedures in place that support the grant agreement and ensure the effective and efficient governance and accountability for the grant. Evidence should be provided to support the claims made in the application.  |
| High-performing | This is assessed based on past performance. Information may also be provided that demonstrates current and past performance of other funding or services arrangements that the organisation is responsible for. Evidence should be provided to support the claims made in the application. The Department will also consider current and past performance information available on the delivery of Australian Government programmes and services. |
| Proportionality of requirements | In accordance with the Commonwealth Grant Rules and Guidelines, consideration will be given to striking an appropriate balance between the complexity of the granting activity (including ongoing requirements for the grant recipients), and managing the risks for beneficiaries and the Commonwealth. Organisations rated as high or extreme risk as part of the Department’s grants administration processes will not be recommended for an exemption.  |
| Small proportion of funding | If applying under this category, an organisation should demonstrate that the funding they receive from the Department’s Indigenous Affairs Group is a small proportion of their overall revenue as is relevant to their organisation, and as such changing their incorporation status may unfairly impose additional requirements on their operations and business model.Evidence should be provided to support the claims made in the application. |
| Unfairly imposing additional requirements on an organisation’s business model.  | The implementation of the Strengthening Organisational Governance incorporation requirements may have a different impact on individual organisations. It is the responsibility of each organisation applying for an exemption to identify and demonstrate what these additional requirements are and how they will unfairly impose additional requirements on their specific business model. This may include detailing what impact the requirements will have, and how this impact will be above and beyond their current regulatory and grant management requirements. This will provide a base for considering the requirements, and their proportionality to risk of the beneficiaries and the Commonwealth. Evidence should be provided to support the claims made in the application.  |

STRENGTHENING ORGANISATIONAL GOVERNANCE

### Application for Exemption

#### Organisation Name

Click here to enter text.

**Australian Business Number (ABN)**

Click here to enter text.

#### Organisation Address

Enter the contact person’s address if your organisation does not have its own registered address etc.

**Physical address (not a PO box)**

Click here to enter text.

**State** Click here to enter text.

**Postcode** Click here to enter text.

#### Contact officer

**Name** Click here to enter text.

**Position** Click here to enter text.

**Contact Number** Click here to enter text.

**Email Address** Click here to enter text.

#### Organisation Entity Type

Please select all applicable boxes**:**

[ ] Incorporated association incorporated under Australian State or Territory legislation

[ ] Incorporated cooperative incorporated under Australian State or Territory legislation

[ ] Organisation established through specific Commonwealth or State/Territory legislation

[ ] Partnership

[ ] Sole trader

#### Other legislation and regulation

Please identify any other legislation that your organisation specifically operates under, in addition to your incorporation legislation – for example, legislation which your organisation may be required to comply with to maintain licensing arrangements.

Click here to enter text.

If you operate under other legislation, who is the regulator ensuring compliance with this legislation?

Click here to enter text.

#### IndigenEIty

Organisations are deemed to be Indigenous organisations if they meet the Indigeneity requirements identified under *Section 29-5* and the director requirements under *Section 246-5(1)* of the of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

Please select the applicable box. Does your organisation:

[ ]  Have five or more members, with more than 51 per cent of these members being Aboriginal and/or Torres Strait Islander

[ ]  Have fewer than five members, but more than one member with all of the members, or all but one of the members, being Aboriginal and/or Torres Strait Islander people

[ ]  Has only one member, and that member is an Aboriginal and/or Torres Strait Islander person

If you have ticked any of the above, does your organisation have Aboriginal and/or Torres Strait Islander people as the majority of directors on your organisation’s Board?

Choose an item.

#### Exemption Criteria

Exemptions will be considered where an organisation can demonstrate at least one of the following:

1. That grant funding received from the Indigenous Affairs Group within the Department of the Prime Minister and Cabinet is a small portion of its total revenue, and as such changing incorporation status may unfairly impose additional requirements on its operations and business model.
2. It is required to incorporate under specific non-Commonwealth legislation as part of its licensing arrangements or funding received through other sources.

The assessment process will take into account information that validates the organisation applying for an exemption is well-governed, high-performing and low risk. Performance and risk information held by the Department will also be assessed in considering an application for exemption.

Please complete or provide additional pages detailing the claims against the relevant exemption criteria.

Click here to enter text.

#### Supporting documentation

Applications should include documentation supporting the claims made against the exemption criteria. This may include (Please select the applicable box(s)):

[ ]  Certificates of incorporation

[ ]  Compliance reports

[ ]  Audited financial statements

[ ]  Financial reports demonstrating funding/income generated from specific sources

[ ]  Documents demonstrating that funding received through in-scope programmes is a small proportion (for example less than half) of total revenue

[ ]  Funding agreements from other Governments and/or programmes

[ ]  Advice from technical experts on technical matters

[ ]  Public records

[ ]  Statutory declarations

Other (please detail below)

Click here to enter text.

Supporting documentation will be considered along with all claims against the criteria. Organisations applying for an exemption are responsible for providing sufficient information to support their application. Performance, risk and any other information held by the Department will be considered in assessing an application for exemption.

Applications will be considered on a case-by-case basis, and will take into consideration information demonstrating that the organisation is well-governed, high-performing and low risk. Providing supporting documentation does not guarantee the approval of an exemption.

#### Lodgement

Applications should be lodged with your funding agreement manager at your local Department of the Prime Minister and Cabinet Regional Office.

Please contact the Department at sog@pmc.gov.au for any additional information required in completing this application.

#### Declaration

**Please complete the declaration**

**NOTE**:
Applications being submitted by post **MUST** be signed.

I declare that:

* the information, including documentation provided and contained in this form is true and accurate;
* I have read the relevant **programme** **guidelines** for the programme which I have applied for;
* I have read, understood and accept the terms and conditions, including incorporation requirements, of funding and my organisation will be able to fully comply with those conditions;
* I understand that incomplete applications may **not** be considered;
* if and where any personal details of a third party are included, the third party has been made aware of, and given their permission for, those details to appear in this application;
* I am not aware of any perceived or actual conflict of interest that will arise by submitting this application.

**Signature**

**Name (please PRINT)**

**Date**

**Position in organisation**