



2021 COVID-19 micro-business grant – Terms and Conditions

1. Application and acceptance of Terms and Conditions

1.1 The Department of Customer Service, Service NSW and NSW Treasury are delivering the 2021 COVID-19 Micro-business Grant Program ('the Program'). Under the Program, businesses (including Non-employing Businesses) and not-for-profit organisations, impacted by the *Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021* can apply for a fortnightly payment of \$1500 to help meet unavoidable business costs incurred from 26 June 2021 until the Program ends (as notified on the Service NSW website).

1.2 Payments made under the Program will be made as act of grace payments under section 5.7(1) of the GSF Act. The conditions in clause 4.1 are conditions that will be imposed by the Minister for Customer Service or his delegate under section 5.7(2) of the GSF Act on the making of the payment under section 5.7(1) of the GSF Act. If any of the conditions in clause 4.1 are contravened, the payment may be recovered from the recipient by the Crown as a debt due to the Crown pursuant to section 5.7(3) of the GSF Act.

1.3 By applying to receive a payment under the Program, businesses and not-for-profit organisations agree to be bound by these Terms and Conditions.

1.4 Certain businesses are ineligible for the Program. Ineligible businesses are listed in the Program Guidelines available on the Service NSW website.

1.5 Additional information about the type of documentation and evidence required to apply for payments under the Program is available on the Service NSW website.

2. Definitions and interpretation

2.1 In these Terms and Conditions, unless the context otherwise requires:

2021 COVID-19 Business Grants means the scheme delivered by DCS, Service NSW, the Commonwealth Government and NSW Treasury to support businesses and not-for-profit organisations with a one-off payment to help meet business costs incurred from 1 June 2021 to 17 July 2021 due to the impacts of the Public Health Order.

Aggregated Annual Turnover means aggregated turnover as defined in section 328.115 of the *Income Tax Assessment Act 1997*.

Business means an entity carrying on a business as per the *Corporations Act 2001*.

Commonwealth COVID-19 Disaster Payment means the lump sum payment to support a worker who is unable to earn income having lived in, worked from or visited a Commonwealth declared COVID-19 hotspot and is adversely affected by a state public health order, for example due to a lockdown, hotspot or period of restricted movement of more than 7 days duration.

DCS means the Crown in the right of the State of NSW acting through the Department of Customer Service.

Eligible Expenses are costs that business and not-for-profit organisations incurred in meeting unavoidable business costs from 26 June 2021. Eligible Expenses include (but are not limited to) the following:

- (a) unavoidable business operating expenses, such as salaries, wages, utilities, or rent;
- (b) the cost of perishable goods that can no longer be used;
- (c) financial, legal or other advice to support business continuity planning;
- (d) marketing and communications activities to develop the business; and
- (e) other activities to support the operation of the business.

Employing Business means a business entity with employees.

Employee Headcount means the number of persons who are employed in New South Wales and who are permanent (full time or part time), or casual staff that have been employed by the business for more than 12 months.

GSF Act means the *Government Sector Finance Act 2018 (NSW)*.

Independent Practitioner means:

- a qualified accountant as defined in the *Corporations Act 2001*;
- a registered tax agent as defined under the *Tax Agent Services Act 2009*; or
- a registered BAS agent as defined in the *Tax Services Act 2009*,

who is not:

- (a) an employee or director of the applicant;
- (b) an associated entity of the applicant; or
- (c) a director or employee of an associated entity of the applicant.

Micro-business means a business that:

- (a) holds an Australian Business Number (ABN)
- (b) has aggregated annual turnover of less than \$75,000, and
- (c) has fewer than 20 FTE employees as at 1 June 2021.

Micro-business Owner means a sole trader, partnership, private company or trust that carries on a business.

Non-employing Business means a business owner who does not have employees. This may include a range of entity types, such as non-employing sole traders or any other businesses without employees.

Not-for-profit organisation means an entity whose principal objective is not the generation of profit. A not-for-profit entity can be a single entity or a group of entities comprising the parent entity and each of the entities that it controls.

Public Health Order means the *Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021* made pursuant to section 7 of the *Public Health Act 2010* that commenced on 26 June 2021.

Program Guidelines refers to the guidelines for business owners and non-profit organisations making an application under the Program available on the Service NSW website.

Service NSW means the Crown in the right of the State of NSW acting through Service NSW.

Terms and Conditions means these Terms and Conditions for participation in the Program.

Turnover means the GST turnover as defined in s. 188.10 of the *A New Tax System (Goods and Services Act) 1999 (Cth)*.

2.2 Unless the context requires otherwise, the singular includes the plural and vice versa, reference to a gender includes all genders, reference to 'person' includes a natural person, company, body corporate or other form of legal entity, and reference to 'including' and 'includes' and 'for example' is to read as if followed by 'without limitation'.

2.3 If a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning.

3. Application to receive a payment under the Program

3.1 A business or not-for-profit organisation can apply for a payment under the Program via the MyServiceNSW Business Profile within the MyServiceNSW Account. An application may be made by:

- (a) an owner of the business or a person authorised to apply on their behalf, or
- (b) a person authorised to apply on behalf of a not-for-profit organisation.

3.2 A business or not-for-profit organisation may only submit one application for payment under the Program.

Eligibility

3.3 A business or not-for-profit organisation may be eligible for a payment under the Program if:

- (a) they have an Australian Business Number (ABN) registered in, or can demonstrate they are primarily operating in, New South Wales, as at 1 June 2021;
- (b) they had a national Aggregated Annual Turnover of more than \$30,000 and less than \$75,000 for the year ended 30 June 2020;
- (c) they experienced a decline in turnover of 30 per cent or more due to the Public Health Order over a minimum two-week period between 26 June 2021 and 30 July 2021, compared to the same period in 2019;
- (d) they have business costs for which there is no other government support available;
- (e) they have not applied for either the 2021 COVID-19 Business Grant, or the JobSaver scheme;
- (f) for Employing businesses, they maintain their Employee Headcount as at 13 July 2021 while they continue to receive payments under the Program;
- (g) for Non-employing Businesses, the business receiving payments must be the primary income source for the associated person;
- (g) they are able to provide sufficient evidence to demonstrate that it meets the eligibility criteria set out in clause 3.3(a) to (g) and, where applicable, clause 3.4.

3.4 Where an individual owns more than one Non-employing Business, an application for payment must only be made in respect of one Non-employing Business.

3.5 Non-employing Businesses are not eligible to apply if persons associated with the business, and who derive income from it, have received a Commonwealth COVID-19 Disaster Payment.

3.6 Employees can receive Commonwealth COVID-19 Disaster Payments if their employer is receiving the Grant.

3.7 Certain entities, such as those primarily earning passive income (rents, interest, or dividends) or those with an ABN registered after 1 June 2021 are not eligible for this Grant.

Evidence requirements

3.8 A business or not-for-profit organisation, applying for payment is required to:

(a) declare and submit evidence that they experienced a decline in turnover of 30 per cent or more due to the Public Health Order over a minimum two-week period between 26 June 2021 and 30 July 2021, compared to the same period in 2019. This must be in the form of a:

letter from an Independent Practitioner, or

business bank account statement (separate from any personal accounts).

(b) declare and submit evidence that they had a national Aggregated Annual Turnover of more than \$30,000 and less than \$75,000 for the year ended 30 June 2020. This can be in a form of a:

letter from an Independent Practitioner; or

Business Activity Statement (BAS); or

business bank account statement (separate from any personal accounts); or

Australian income tax return (or Notice of Assessment) (there is no requirement to disclose tax file numbers and businesses should redact their tax file number where possible).

(c) if they do not have employees, declare the business is the primary income source for the owner of the business;

(d) if they do have employees, declare their Employee Headcount and that they will maintain their Employee Headcount as at 13 July 2021 for the period for which the business is receiving payments under the Program;

(e) declare that it has Eligible Expenses for which no other government support is available;

(f) provide details of its Independent Practitioner for possible compliance checking; and

(g) lodge other supporting documents, as required, to demonstrate that they meet the eligibility criteria.

3.9 A business or not-for-profit organisation will not be ineligible for a payment solely because its Employee Headcount reduces due to an employee discontinuing their employment for reasons outside the control of the business or not-for-profit organisation, for example, if the employee voluntarily resigns or retires.

3.10 DCS and/or Service NSW may require a business or not-for-profit organisation to provide evidence that they are operating in New South Wales to meet the eligibility criteria in clause 3.3(a). This evidence may include commercial rates notices or lease agreements and any other evidence required under the Program Guidelines on Service NSW's website. Where a rates notice or lease agreement is not available, DCS and/or Service NSW may accept one or more of the following documents:

(a) utility bills,

(b) insurance papers,

- (c) supply invoices,
- (d) registration papers, or
- (e) contractor licences.

3.11 Where a business or not-for-profit organisation does not submit a BAS to the Australian Tax Office, the business or not-for-profit organisation should contact Service NSW to discuss further.

3.12 Where a business or not-for-profit organisation operates through a trust structure, it will be required to provide additional information to demonstrate a national Aggregated Annual Turnover of more than \$30,000 and less than \$75,000 is derived through the trust. The entity operating the business is eligible for the Grant, not other entities that are receiving passive income from the business.

3.13 Notwithstanding any other provision in these Terms and Conditions, DCS and/or Service NSW may require additional information or clarification from a business or not-for-profit organisation or from any other public entity or person, before determining whether the eligibility criteria in clause 3.3, and where applicable clause 3.4, have been satisfied and whether the application should be approved. The additional information may include:

- (a) accountant's letter
- (b) prior Business Activity Statements
- (c) Australian tax returns (or Notice of Assessment) (but there is no requirement to disclose tax file numbers, and these should be redacted where possible)
- (d) profit and loss statements prepared by a qualified accountant
- (e) receipts and invoices from sales
- (f) business bank account statements (separate from any personal accounts).

3.14 Notwithstanding any other provision in these Terms and Conditions, DCS, Service NSW, and/or NSW Treasury may determine that a business or not-for-profit organisation is eligible for a payment under the Program. Any such business or not-for-profit organisation that receives a payment under this Program must comply with these Terms and Conditions, except to the extent that any dispensation has expressly been given by DCS, Service NSW and/or Treasury.

3.15 Information provided by a business or not-for-profit organisation in its application or otherwise in accordance with these Terms and Conditions must be true and correct. It is a serious offence to provide false or misleading information to a public authority.

3.16 A business or not-for-profit organisation is not eligible to apply to receive payment under the Program if it has previously received a payment under this Program or under a previous program or Program, and:

- (a) Service NSW, DCS and/or NSW Treasury (or another government agency in relation to this Program or a previous program or Program) have sought to recover the whole or part of that previous payment as a debt due to the Crown pursuant to s. 5.7(3) of the GSF Act or otherwise, and
- (b) the amount sought has not been repaid.

3.17 Notwithstanding any other provision in these Terms and Conditions, DCS and/or Service NSW may refuse to progress an application for any reason, including if the business or not-for-profit organisation does not meet the eligibility criteria in clause 3.3 or clause 3.4.

3.18 By applying to receive a payment under the Program, a business or not-for-profit organisation consents to Service NSW, DCS and/or NSW Treasury disclosing information, including personal information, provided

by the business or not-for-profit organisation to each other for the purposes of administering or reporting on the Program.

3.19 Where a business or not-for-profit organisation is unable to provide any documentation in support of their application, or where Service NSW is satisfied it has other suitable methods to determine eligibility, Service NSW may accept another form of documentation.

4. Conditions for payment under the Program

4.1 All payments to a business or not-for-profit organisation under the Program are made on the condition that:

(a) the business or not-for-profit organisation meets the eligibility criteria in clause 3.3, and where applicable clause 3.4, at the time when an application for payment is made;

(b) the application for payment complies with the requirements in clauses 3.1, 3.2 and 3.5 (where applicable);

(c) the business or not-for-profit organisation uses the payments to cover Eligible Expenses incurred since 1 July 2021

(d) a business or not-for-profit organisation complies with the law at all times, including public health orders and COVID-19 restrictions;

(e) the business or not-for-profit organisation immediately notifies Service NSW if, due to any actions of the business or not-for-profit organisation, the Employee Headcount declines over the period that payments are received;

(f) the application for payment is made before 11.59pm on 18 October 2021, and

(g) if requested by DCS, Service NSW and/or NSW Treasury, the business or not-for-profit organisation provides evidence of the Eligible Expenses for which a payment is sought under the Program.

4.2 A business or not-for-profit organisation must take all reasonable steps to ensure that the conditions in clause 4.1 are or have been satisfied at all relevant times.

4.3 Upon submission of application, a business or not-for-profit organisation declares that:

(a) to the best of its knowledge, the conditions in clause 4.1 are or have been satisfied at all relevant times, and

(b) it took and will take all reasonable steps to ensure that the conditions in clause 4.1 are satisfied.

4.4 Notwithstanding any other provision in these Terms and Conditions, DCS, Service NSW and/or NSW Treasury may take civil and/or criminal action (where appropriate), including referral to NSW Police, where DCS, Service NSW and/or NSW Treasury reasonably suspect that the business or not-for-profit organisation has failed to comply with the law or these Terms and Conditions.

4.5 A business or not-for-profit organisation must notify Service NSW immediately if the business or not-for-profit organisation ceases to trade, can no longer meet the eligibility criteria in clause 3, or can no longer comply with these Terms and Conditions.

4.6 A business or not-for-profit organisation must retain for 5 years all tax invoices, official receipts, bank statements or other records that demonstrate how payments made under the Program have been applied by the business or not-for-profit organisation.

4.7 A business or not-for-profit organisation may be audited or investigated by DCS and/or Service NSW to determine whether it is complying with these Terms and Conditions. A business or not-for-profit organisation must provide any information or documentation that is reasonably required for the purpose of any such audit or investigation.

4.8 A business or not-for-profit organisation consents to being contacted by DCS, Service NSW and/or NSW Treasury for a period of 24 months after receiving a payment under the Program for the purposes of reporting on and evaluating the Program. A business or not-for-profit organisation agrees to provide any information that is reasonably required under this clause.

5. Payments

5.1 Once an application has been approved, a business or not-for-profit organisation will receive automatic fortnightly payments of \$1,500 credited to a valid bank account (as identified in its application) until the Program ends (as notified on the Service NSW website). The first payment will be backdated to 26 June 2021 and, where possible, will be made within 10 business days of an approved application.

5.2 Payments made in accordance with this clause will be made as act of grace payments under section 5.7(1) of the GSF Act.

6. Recovery of payments

6.1 If a business or not-for-profit organisation has received a payment under the Program and DCS, Service NSW and/or NSW Treasury is satisfied that the conditions in clause 4.1 were, or have been, contravened, the payment or part of the payment may be recovered from the business by the Crown as debt due to the Crown, pursuant to section 5.7(3) of the GSF Act.

7. Suspension or termination of the Program

7.1 Notwithstanding any other provision in these Terms and Conditions, NSW Treasury, DCS and/or Service NSW reserve the right to suspend or terminate the entirety or any part of the Program at any time.

7.2 Any action taken to suspend or terminate the Program will be notified on the Service NSW website.

8. Limitation of Liability

8.1 To the extent permitted by law, DCS, Service NSW and NSW Treasury (including their officers, employees and agents) will not be liable for any direct, indirect, incidental, special or consequential loss or damage or for any death, illness, personal injury, financial loss or property damage however caused (including by negligence) which may be suffered or incurred by a business, organisation or any person arising directly or indirectly out of or in any way connected with the Program, including:

- (a) any decision to make or refuse to make a payment under the Program, including on the basis that funds are unavailable,
- (b) the fraudulent application for payments made under the Program,
- (c) any breach of these Terms and Conditions, and/or
- (d) any decision to suspend or terminate the entirety or any part of the Program.

9. Indemnity

9.1 A business or not-for-profit organisation agrees to indemnify and keep indemnified DCS, Service NSW and NSW Treasury (including their officers, employees and agents) from and against any liability or loss (including reasonable legal costs and expenses), which may be suffered or incurred by any of those indemnified by reason of or in connection with the business's or not-for-profit organisation's participation in the Program.

10. Contact

10.1 Any enquiry or complaint is to be directed to Service NSW via NSW Service Centres or by calling [13 77 88](#).

11. General

11.1 Businesses and not-for-profit organisations are responsible for obtaining their own independent legal and financial advice regarding these Terms and Conditions.

12. Variation

12.1 DCS, Service NSW and NSW Treasury reserve the right to amend, vary, delete or supplement these Terms and Conditions at any time.

12.2 These Terms and Conditions, as amended, varied, deleted or supplemented from time to time, apply to any future version of, or update to, the IT system that supports the delivery of the Program.

13. Waiver

13.1 Failure by DCS, Service NSW and/or NSW Treasury to enforce any of their rights at any stage does not constitute a waiver of those rights.

14. Severability

14.1 If any term in these Terms and Conditions is prohibited, void, voidable, illegal or unenforceable for any reason whatsoever, then that part is severed from these Terms and Conditions but without affecting the continued operation of the remaining Terms and Conditions.

15. Governing Law

15.1 These Terms and Conditions shall be governed by and must be interpreted in accordance with the laws of NSW. A business, not-for-profit organisation, DCS, Service NSW and NSW Treasury submit to the exclusive jurisdiction of the Courts of NSW and any Court competent to hear appeals from those Courts.

16. Survival

16.1 Clauses 6, 8 and 9 contain continuing obligations and will survive termination of these Terms and Conditions.