



An Australian Government Initiative



**COMMERCIALISATION  
AUSTRALIA**

GUIDE TO MANAGING YOUR GRANT

# Guide To Managing Your Grant

**21 December 2011**

**Website:** [www.commercialisationaustralia.gov.au](http://www.commercialisationaustralia.gov.au)  
**Commercialisation Australia hotline: 13 22 56**

## About this *Guide to Managing Your Grant*

This *Guide to Managing Your Grant* aims to assist those participants who have been approved *Commercialisation Australia* support to understand the requirements and obligations of the funding agreement. In particular, the participants should have a better understanding of:

- the terms and conditions of the funding agreement;
- the reporting responsibilities and obligations;
- grant payments;
- compliance visits;
- applying to vary an agreed project;
- the requirement to advise changes to the agreed project and/or company status;
- fast failure (exiting the program); and
- the relationship between the participant and the Case Manager and Volunteer Business Mentor.

# Table of Contents

<b>1</b>	<b>About <i>Commercialisation Australia</i>.....</b>	<b>5</b>
<b>2</b>	<b>The <i>Commercialisation Australia</i> funding agreement .....</b>	<b>5</b>
	2.1 Introduction.....	5
	2.2 Terms and conditions of the <i>Commercialisation Australia</i> funding agreement.....	6
<b>3</b>	<b>Reporting responsibilities and obligations .....</b>	<b>7</b>
	3.1 <i>Commercialisation Australia</i> baseline data collection form .....	7
	3.2 <i>Commercialisation Australia</i> quarterly progress report .....	8
	3.3 <i>Commercialisation Australia</i> end of project and audited financial report .....	8
	3.4 <i>Commercialisation Australia</i> periodical and annual post project reports .....	9
	3.5 Additional reporting requirements for Early Stage <i>Commercialisation Grants</i> .....	9
	3.6 Evaluation Surveys .....	10
<b>4</b>	<b><i>Commercialisation Australia</i> grant payments.....</b>	<b>10</b>
	4.1 Initial payment .....	11
	4.2 Progress payments .....	11
	4.3 Final payment .....	12
	4.4 Repayment of Early Stage <i>Commercialisation Grant</i> .....	12
	4.5 Inaccurate claims .....	13
	4.6 Taxation obligations of receiving assistance .....	13
<b>5</b>	<b><i>Commercialisation Australia</i> compliance visits .....</b>	<b>13</b>
<b>6</b>	<b>Applying to vary an agreed project .....</b>	<b>13</b>
	6.1 When it is appropriate to apply for a variation .....	14
	6.2 Variation to extend the project period .....	14
	6.3 Variation to increase the grant amount and/or any ‘annual capped grant amounts’ .....	14
	6.4 Variation to commercialise the project other than in accordance with the original application .....	15
	6.5 Other variations .....	15
	6.6 How to apply to vary an agreed project.....	16
	6.7 Consequences of not lodging a variation application .....	16
<b>7</b>	<b>Keeping AusIndustry informed .....</b>	<b>16</b>
	7.1 Warranties under the funding agreement.....	16
	7.2 Dealing with project intellectual property .....	16
	7.3 Change in participant details.....	17
	7.4 Subcontractor disputes.....	17
	7.5 Proportion of overseas expenditure on agreed proof-of-concept or early stage commercialisation project.....	18
	7.6 Proportion of technology acquisition expenditure on agreed proof-of-concept or early stage commercialisation project .....	18
<b>8</b>	<b>Program Exit.....</b>	<b>18</b>
<b>9</b>	<b><i>Commercialisation Australia</i> program feedback.....</b>	<b>19</b>
<b>10</b>	<b>How your Case Manager and Volunteer Business Mentors will assist you.....</b>	<b>20</b>

# 1 About *Commercialisation Australia*

*Commercialisation Australia* was announced as part of the 2009-10 Federal Budget and is an important component of the Australian Government's 10 year vision - *Powering Ideas: an innovation agenda for the 21<sup>st</sup> century*. *Commercialisation Australia* aims to build the capacity of, and opportunities for, Australia's talented researchers, entrepreneurs and innovative firms to convert intellectual property into commercial ventures, creating high skill jobs and increasing our global competitiveness. It achieves this by offering a range of tailored assistance.

*Commercialisation Australia* has a Chief Executive Officer (CEO) who is responsible for the overall design and functioning of the program. The CEO is also ultimately responsible for determining the eligibility of applications and expenditure. The Program Delegate is responsible for approving applications, funding amounts and payments to *Commercialisation Australia* participants. The *Commercialisation Australia* Board provides advice to the CEO on strategic matters in regards to the program and the commercialisation of innovation in general. The Board also provides advice to the Program Delegate in relation to technical assessments, and in particular the merit ranking of applications for funding and support under the program. The CEO holds an ex-officio position on the Board.

*Commercialisation Australia* is delivered by AusIndustry, a specialist program delivery division within the Department of Innovation, Industry, Science and Research (DIISR).

## 2 The *Commercialisation Australia* funding agreement

### 2.1 Introduction

If a *Commercialisation Australia* application is successful, a letter of offer for grant support will be sent to the applicant. If the applicant accepts this offer, it is required to sign a *Commercialisation Australia* funding agreement. The funding agreement is a formal contract between the participant and the Commonwealth, and sets out the terms and conditions of grant support and obligations of both parties under the *Commercialisation Australia* program.

The funding agreement also sets out the project milestones and the participant's compliance and reporting obligations. The schedules to the funding agreement reflects other information included in the application.

During finalisation of the agreement, a 'cost check' of budgeted project eligible expenditure may be conducted. During this 'cost check', an examination of the participant's documentary evidence of the project's projected eligible expenditure items may be undertaken - for example, payment summaries, contracts, quotes etc.

In confirming certain information contained in the *Commercialisation Australia* application, additional detail in relation to confidential information, and the participant's willingness to take part in *Commercialisation Australia* marketing events and publications may be sought.

An offer of *Commercialisation Australia* funding may be subject to special conditions and may be withdrawn in certain circumstances. The participant will have **30 calendar days** from the date of the offer to execute a funding agreement with the Commonwealth. The offer may be withdrawn if the funding agreement is not executed within this time.

## Researchers and individuals

Where a researcher applies through a commercialisation office or an individual applies through an eligible partner entity, they will be identified in the funding agreement as 'key personnel'. If changes are required to the key personnel, prior approval will need to be sought.

## 2.2 Terms and conditions of the Commercialisation Australia funding agreement

The funding agreement comprises the general conditions and the schedules. If the participant does not comply with these conditions it may be in breach of the funding agreement. Depending on the nature of the breach, AusIndustry may withhold all future grant payments until compliance is achieved, require repayment of some or the entire *Commercialisation Australia* grant with interest, and/or may terminate the funding agreement. Further details on the consequences of certain breaches of the funding agreement are contained in the general conditions of the funding agreement.

### 2.2.1 General conditions

The general conditions of the funding agreement contain terms that deal with matters including the following:

- grant payments;
- conduct of the project;
- project outcomes;
- evaluation;
- acquittal of the grant;
- termination rights;
- dealing with rights (including intellectual property); and
- role of Case Manager and Volunteer Business Mentor.

### Subcontractors

The general conditions of the funding agreement require the participant to ensure that any subcontractor engaged to work on the project must keep the same type of records as the participant is obliged to keep. This applies where the participant engages a third party to perform project activities but does not apply, for example, where the participant engages a third party to provide it with equipment or supplies for project use.

Specifically, the subcontractor must maintain complete records of its expenditure and work on the project, and allow the Commonwealth access to its records and premises. Refer to clauses relating specifically to subcontracting in the general conditions of the funding agreement.

### 2.2.2 Funding Agreement Schedules

The schedules to the funding agreement contain the particular details of the grant and project, specific to the *Commercialisation Australia* funding component(s). The following is a summary of the schedules to the funding agreement:

<b>Schedule 1</b> All participants	1.	Grant Name
	2.	Project Title
	3.	Project Reference Number
	4.	Project Duration
	5.	Project Description and Planned Project Outcomes
	6.	Notices

	7. 8. 9. 10. 11. 12. 13.	Initial Progress Payment Retention Amount Annual Capped Amounts Reports Grantee Confidential Information (unless otherwise amended) Special Conditions Key Personnel
<b>Schedule 2</b> Part A. Skills and Knowledge Part B. Experienced Executives Part C. Proof of Concept Part D. Early Stage Commercialisation	1. 2. 3. 4. 5. 6. 6A. 7. or 7.	Component Description and Planned Project Outcomes Component Duration Grant Amount Grant Percentage Budget (Planned Eligible Expenditure by Financial Year) Performance Milestones and Planned Achievement Dates Duration of Case Manager Support* Acquisition of Goods and Services from a Service Provider (Skills and Knowledge grants only) Repayment Obligations (Early Stage Commercialisation grants only, unless otherwise amended)
<b>Schedule 3</b> Deed Poll All participants		The Deed Poll must be signed by all participants to ensure that there is an agreed understanding of the role of the Volunteer Business Mentors

Please check your particular funding agreement for the full terms and conditions, as not all agreements contain all Schedule clauses.

### 3 Reporting responsibilities and obligations

Under the terms of funding agreement the participant must provide regular reports to AusIndustry. These reports are used to identify the progress of the project and eligible project expenditure for a given reporting period.

If for any reason the participant cannot meet its reporting obligations, it must contact its Customer Service Manager as soon as possible. If the participant does not provide AusIndustry with a report when it falls due it will be in breach of the funding agreement.

AusIndustry understands that in meeting reporting obligations under the funding agreement the participant may, from time to time, provide sensitive information. Protecting sensitive information is important to AusIndustry. For this purpose, it is recommended that the participant clearly identifies any confidential information contained in reports. AusIndustry must protect confidential information and may only disclose it in the limited circumstances described in the funding agreement. The confidentiality of information may also be protected by Commonwealth legislation, as well as common law.

*Commercialisation Australia* reports must be signed by a duly authorised employee or officer of the participant, having operational responsibility for, and a detailed working knowledge of, the contents of each report.

The participant's Customer Service Manager will provide the participant with the reporting templates.

#### 3.1 Commercialisation Australia baseline data collection form

A baseline data collection form is required to be completed within 28 days of receiving a request to complete the report, which is generally at the time of execution of the funding agreement. The report collects baseline data for evaluating program outcomes.

The participant's Case Manager will provide the participant with the baseline data collection form, and will assist in completion of the form.

### 3.2 Commercialisation Australia quarterly progress report

A quarterly progress report is due every calendar quarter to review the progress on the agreed project component. To provide this information, and to provide similar information in the end of project report, the *Commercialisation Australia* project budget calculator should be used. The quarters (reporting periods) are based on calendar quarters as follows:

- March quarter: 1 January to 31 March
- June quarter: 1 April to 30 June
- September quarter: 1 July to 30 September
- December quarter: 1 October to 31 December

The quarterly progress report is also used by the participant to claim a grant progress payment. The report is designed to show the actual eligible expenditure (by heads of expenditure) for the 'current review period' (that is, the quarter immediately prior to the quarter in which you lodge your report and payment claim) and budgeted eligible expenditure (by heads of expenditure) for the 'next review period' (that is, that quarter in which you lodge your report and payment claim).

A quarterly progress report is due within 30 days of the end of each quarter - for example, the March quarter report is due by 30 April. If a report is missing any information, or if there is uncertainty over the information provided, the participant will be contacted by a Customer Service Manager and may be asked for further information. The participant must provide any missing or clarifying information within 30 days of AusIndustry's request. AusIndustry will not make a grant progress payment until all issues arising from a progress report are resolved.

The due date for each progress report, end of project report and independent audit report is set out in Schedule 1 of the funding agreement.

An AusIndustry Customer Service Manager will provide the participant with the reporting template.

### 3.3 Commercialisation Australia end of project and audited financial report

The end of project report is due 90 days after the project completion date (that is completion of all components of the project). AusIndustry uses this report to acquit final payments and review the success of the project.

Your AusIndustry Customer Service Manager may also require the completion of an end of component audit report where you are receiving grants for more than one component concurrently. Refer Schedule 1 of your funding agreement.

Preparation of the audit report will involve an independent audit of the eligibility of claimed project expenditure during the relevant audit period, and confirms whether this expenditure has been paid within 3 months of the end of the relevant period.

If the end of project report and the final financial report (including independent audit report) are satisfactory, AusIndustry will assess any final payment due within 30 days of receiving the relevant reports.

For the purposes of this Guide, an independent auditor is a member of the Institute of Chartered Accountants, a member of CPA Australia or a Public Practice Certified Member of the National Institute of Accountants, not being an employee, shareholder, director or other officeholder, related entity or associate of the participant. Further, the independent auditor must not be any person having had an involvement in the preparation of the application or any other report required in this Guide.

Note: the end of project report replaces the final quarterly report due for the project.

An AusIndustry Customer Service Manager will provide the participant with the reporting template.

### 3.4 Commercialisation Australia periodical and annual post project reports

If a project will take 2 years or more to complete, participants will be required to complete a mid-project data collection form after 1 year from the project start date. An end of project data collection form is also required to be completed at the end of the project.

Post project reports are required annually, for five years after the completion of the project. These reports are designed to track how project outcomes and the company have generally progressed since the completion of the project.

*Commercialisation Australia* will provide the participant with the relevant reporting templates at the appropriate times.

### 3.5 Additional reporting requirements for Early Stage Commercialisation Grants

#### **3.5.1 Annual independent audit of eligible expenditure**

If the participant has received an Early Stage Commercialisation grant, at the end of each financial year (during the project period), as well as on completion of the project, the participant must provide an independent audit report of eligible expenditure (see also section 3.3).

Refer section 3.3 above for who qualifies as an independent auditor for the purposes of this Guide.

Preparation of the audit report will involve an independent audit of the eligibility of claimed project expenditure during the relevant audit period, and confirms whether this expenditure has been paid within 90 days of the end of the relevant period. The due date for annual independent audit reports for Early Stage Commercialisation grants will be set out in Schedule 1 of the funding agreement.

AusIndustry may adjust reported eligible expenditure and future progress payments to take account of any differences between reported and actual eligible expenditure identified in the independent audit report. AusIndustry may recover any identified overpayments of the grant.

An AusIndustry Customer Service Manager will provide the participant with the reporting templates.

### 3.5.2 Records and reports relating to Gross Sales Revenue

If your funding agreement does not contain any repayment obligations for Early Stage Commercialisation grants, go to Section 3.6.

The requirement to repay Early State Commercialisation grants was removed with effect from 6 October 2011.

For participants that have entered into a funding agreement with the Commonwealth with repayment obligations included in the agreement, the repayment obligations no longer apply to participants. Participants will be asked to enter into an amending deed to reflect this.

For participants receiving Early Stage Commercialisation grants that had entered into a funding agreement prior to 30 June 2010, under Schedule 2, Part D, Item 7 of the *Commercialisation Australia* funding agreement, the participant had to submit certificates of Gross Sales Revenue for the period 1 July 2010 (or the start date of the project if earlier) to 30 June 2011. These participants also had to provide an annual audit certificate by 30 October 2011.

Certificate/report	Due date
Half-year <i>Gross Sales Revenue</i> certificate - for the period 1 July 2010 (or project start date) to 30 December 2010 and for the period 1 January 2011 to 30 June 2011	30 July 2011
An independent audit of the <i>Gross Sales Revenue</i> certificates for the period 1 July 2010 (or project start date) to 30 June 2011	30 October 2011

If applicable, an AusIndustry Customer Service Manager will provide the participant with the reporting templates, including further audit guidance for the participant and their auditor.

## 3.6 Evaluation Surveys

From time to time, *Commercialisation Australia* will evaluate whether the program is achieving its objectives. *Commercialisation Australia* may contact the participant up to five years after the completion of the project and ask it to complete a survey, or provide other relevant information to assist with an evaluation. The general conditions of the funding agreement require the participant to provide relevant information within 28 days of such a request.

Please direct any questions about reporting requirements under the *Commercialisation Australia* program to the participant's Customer Service Manager.

## 4 *Commercialisation Australia* grant payments

AusIndustry will pay *Commercialisation Australia* grant payments by direct credit into a nominated bank account. The general conditions of the funding agreement set out the specific requirements for this account. *Commercialisation Australia* grants attract Goods and Services Tax (GST) and grant payments shall take account of GST (refer to section 4.6 below).

All participants in *Commercialisation Australia* are required to financially contribute to the costs of their commercialisation project. The ability to financially contribute is part of the eligibility criteria and applicants need to show they have access to the necessary funds. A participant does not need to have all the grantee's contribution at the time of application. However, the participant must demonstrate it can fund its share of project costs at the rate it will incur eligible expenditure on the project. It cannot use in-kind (non-financial) contributions or other government grant funding. The *Early Stage Commercialisation* components require repayment of grant monies received on success of the project.

#### 4.1 Initial payment

AusIndustry will make an initial payment following execution of the funding agreement. This payment will be based on budgeted eligible expenditure for the first period of the project. A participant is not entitled to claim any expenditure incurred prior to the project commencement date specified in the funding agreement.

#### 4.2 Progress payments

Claims for a grant payment are made by completing the quarterly progress report (or the end of project report for the last quarter of the project).

Progress payments will be paid quarterly, subject to: satisfactory progress on the project; the participant meeting all other obligations under the funding agreement (including the submission of relevant reports); and AusIndustry being satisfied that the various matters described in the general conditions of the funding agreement have been met.

Progress payments may be made in advance based on the participant's estimate of its eligible expenditure for the 'next review period'.

Generally, the amount of each grant payment will be calculated based on actual eligible expenditure incurred to the end of the 'current review period', and the participant's estimate of eligible expenditure for the 'next review period'. For example, a progress payment is calculated as follows:

Total actual eligible expenditure incurred up to end of 'current review period'

*plus* estimated eligible expenditure for 'next review period'

*multiply by* grant percentage

*subtract* grant payments made so far

= grant payment due

where:

**'current review period'** is the quarter immediately prior to the quarter in which the participant lodges the quarterly progress report (or end of project report as applicable); and

**'next review period'** is the quarter in which the grantee submits the relevant report and payment claim.

However, in some instances the participant may be paid an amount other than one calculated as above, or the participant may be paid no amount at all. These circumstances include where:

- the independent audit report on an annual financial report disputes any of the participant's previous claims of project eligible expenditure;
- in any financial year, the participant would receive more than the 'annual capped grant amount' for that year set out in Schedule 1 of the funding agreement;
- if applicable, the participant did not demonstrate at a review milestone that the project was proceeding satisfactorily;
- the proportion of overseas expenditure on the project exceeds 10 per cent of total eligible expenditure (or any higher approved maximum percentage)\*;
- the proportion of new and leading-edge technology acquisition expenditure on the project exceeds 10 per cent of total eligible expenditure (or any higher approved maximum percentage)\*;
- the participant would receive more than the total agreed grant amount;
- the participant is in dispute with any subcontractor engaged to perform work on the project; and
- the payment includes or comprises the 'retention amount'.

**\*Note:** Expenditure exceeding the relevant limit without AusIndustry approval will not qualify as 'eligible expenditure'. Refer also sections 7.5 and 7.6.

Where grant payments are being received for more than one component at the same time, progress reports are required for each component.

### 4.3 Final payment

At the conclusion of the project a final payment based on total eligible expenditure incurred on the project will be made. The final payment is subject to the same conditions discussed above in section 4.2 in relation to progress payments generally. Reporting obligations on project completion include provision of a final financial report and independent audit report, and an end of project report.

The general conditions of the funding agreement specifically provide that the participant is not entitled to payment of the 'retention amount' (generally 5 per cent) for a component until it has completed the component and submitted all relevant reports due under the funding agreement. A participant may receive the retention amount for a completed component, but will not receive the retention amount for another component until that component has been completed.

**Note:** any expenditure incurred on the project will not qualify as eligible expenditure under the funding agreement unless paid within 3 months after the end of the relevant financial year or project completion date (whichever is earlier).

### 4.4 Repayment of Early Stage Commercialisation Grant

The requirement to repay Early State Commercialisation grants was removed by the Commonwealth with effect from 6 October 2011.

## 4.5 Inaccurate claims

Notwithstanding the making of any progress payment, AusIndustry reserves the right to re-examine expenditure claims, to seek further information and to audit claims and payments as detailed under the terms of the funding agreement.

In the event of an overpayment, AusIndustry may seek to recover the amounts and take any other action provided for under the funding agreement or under the common law. To minimise potential repayment of any grant amount, the participant should ensure at all times that payment claims are accurate and appropriate. AusIndustry also recommends that the participant promptly notifies their Customer Service Manager in the event that the participant becomes aware of any discrepancies in previous eligible expenditure claims.

## 4.6 Taxation obligations of receiving assistance

*Commercialisation Australia* grant payments are subject to Goods and Services Tax (GST). A component to take account of GST will be added to the grant payment amount. Eligible expenditure is calculated net of GST input tax credit entitlements. Please refer to the general conditions of the funding agreement for further details regarding GST and *Commercialisation Australia* payments.

While *Commercialisation Australia* grants typically are assessable income, how they are treated will depend on the recipient's particular circumstances. It is therefore recommended that independent professional advice is sought as to the income tax implications in your particular circumstance, particularly in relation to the Early Stage Commercialisation grants.

Assistance under the *Commercialisation Australia* program will affect the ability to claim expenditure on R&D under the *R&D Tax Concession*. Section 73C of the *Income Tax Assessment Act 1936* operates to claw back or offset the benefits of the *R&D Tax Concession* if the company has received grants for the same activities. The subsequent repayment of a grant in a later year does not affect the application of the claw back provisions.

For participants receiving ESC grants, repayments of the ESC grant are subject to GST.

## 5 *Commercialisation Australia* compliance visits

Compliance visits by the participant's AusIndustry Customer Service Manager (or any person authorised by AusIndustry) may take place periodically throughout the project period, and for up to five years, after project completion. The Customer Service Manager (or another authorised representative) may inspect any participant records required to be kept under the funding agreement, and may examine project progress, for the purposes of reviewing compliance with the funding agreement. The participant's Customer Service Manager will provide reasonable notice of any intended compliance visits.

## 6 Applying to vary an agreed project

## 6.1 When it is appropriate to apply for a variation

Circumstances may arise which impact on the objectives, completion and/or outcomes of the agreed project. Under the funding agreement the participant will need to notify AusIndustry of these changes. The funding agreement requires the participant to notify AusIndustry of the matters discussed in section 7 of this guide.

If any other unanticipated circumstances arise that impact on the objectives, completion and/or outcomes of the project, the participant may apply for a formal variation to the funding agreement - if it does not, the participant may be at risk of breaching the funding agreement.

If the participant wishes to make any of the changes to the agreed project set out in 6.2-6.5 below, it must apply for and submit a formal variation to the funding agreement.

## 6.2 Variation to extend the project period

An application to extend the grant period must, as a minimum, demonstrate that:

- the extension, if approved, will significantly improve the outcomes of the project; or
- the participant has experienced delays in completing or progressing the project due to circumstances that were unforeseen and/or beyond its control.

Depending on the *Commercialisation Australia* funding component, the grant period cannot extend beyond certain periods of time, as outlined in the Customer Information Guide applicable to your funding agreement.

Participants with a current agreement who successfully apply for additional assistance under *Commercialisation Australia* will have the period of support extended in line with the above. Applications which would extend a project beyond these limits will not be considered. Applications to extend the grant period must be received before the project completion date or relevant component completion date, those received after the project end date may not be accepted.

In addition to the project periods, *Commercialisation Australia* participants are entitled to the support of a Case Manager for a particular period, starting from the date of the funding agreement. Refer to Schedule 2 of your funding agreement as well as to section 5.1 of the Customer Information Guide.

## 6.3 Variation to increase the grant amount and/or any 'annual capped grant amounts'

An application to increase the *Commercialisation Australia* grant amount must, as a minimum, demonstrate that:

- the increase, if approved, will significantly improve the outcomes of the project; or
- project costs have increased as a result of circumstances (such as supplier price increases) that were unforeseen and/or beyond its control.

An application to increase the *Commercialisation Australia* grant amount, or any of the ‘annual capped grant amounts’, must also be accompanied by a revised budget of eligible expenditure (using the project budget calculator) for the remainder of the project.

A variation application cannot increase the agreed grant amount to above the maximum allowable for each *Commercialisation Australia* funding component, as set out in the *Customer Information Guide*. Additional funding for the project beyond this limit must be sought through a new grant application.

AusIndustry must receive an application to increase the grant amount before the project end date, those received after the project end date shall not be accepted.

## 6.4 Variation to commercialise the project other than in accordance with the original application

If the grantee wishes to commercialise the project (or its outcomes) other than in accordance with the original application, including changes to the project milestones, a variation application will be required. As a minimum, the application must demonstrate that the change is consistent with the planned outcomes of the project and should also involve the project (or its outcomes) continuing to be exploited on normal commercial terms and in a manner that will provide the national benefits claimed in the original *Commercialisation Australia* application.

A change in commercialisation strategy might involve a change in any one or more of the following:

- the objectives and/or outcomes of the agreed project; or
- intellectual property ownership and/or exploitation arrangements.

In assessing an application, AusIndustry will revisit the national benefits claims in the original grant application and assess if those national benefits claims will still be delivered by the project if the change in commercialisation strategy is approved.

## 6.5 Other variations

A formal variation is also required if the participant wishes to claim as eligible expenditure more than the approved overseas expenditure and/or technology acquisition eligible expenditure limit.

Where key personnel are listed in Schedule 1 of the funding agreement, changes to these key personnel must be put before the Commonwealth for approval.

Requests for a change to the Experienced Executive must be made within 3 months of the departure of the previous Experienced Executive and be prior to the completion date of the Experienced Executive grant component.

Other, less significant, changes in circumstances may not require a formal variation to the funding agreement. A minor change may involve:

- a change in supply or distribution partner to a similar but more competitive partner company;  
or
- a change in support staff where the original skill set is retained.

Please discuss the impact of changed circumstances on the participant's project and funding agreement with the participant's Customer Service Manager before submitting any formal request to vary the funding agreement.

## 6.6 How to apply to vary an agreed project

A *Commercialisation Australia* variation application form, available from the participant's Customer Service Manager, should be used to apply to vary the agreed project. Discuss lodging an application to vary the funding agreement with the Customer Service Manager as soon as possible after a relevant change in circumstances.

A variation application will be decided by the Program Delegate, who may seek the advice of the *Commercialisation Australia* Board. In assessing a variation request, the following matters may be taken into account: the need for funding, the potential for the project to be commercially successful, with or without the variation; the availability of program funds; and the participant's ongoing ability to fund its share of project costs.

**Note: A funding agreement must not be treated as varied until the participant receives written notice from AusIndustry of approval of the variation request. Otherwise, the participant may be in breach of the funding agreement.**

## 6.7 Consequences of not lodging a variation application

If the participant departs from the agreed project described in the general conditions of the funding agreement without applying for (and having approved) a formal variation to the funding agreement, the participant may be in breach of the funding agreement. This may, in turn, lead to the termination of the funding agreement and/or repayment of all or some of the *Commercialisation Australia* grant with interest. Contact the participant's Customer Service Manager if in doubt.

Whether or not a project is progressing successfully will be determined by the Program Delegate, who will take into account whether project targets were achieved and the views of the Case Manager. Further information on termination of a project and exiting the program is at section 8.

# 7 Keeping AusIndustry informed

## 7.1 Warranties under the funding agreement

If the participant becomes aware of a breach of warranty under section 4 of the funding agreement, it must immediately notify the Commonwealth (through AusIndustry) of that breach. Please refer to section 4 of the funding agreement for a complete list of warranties.

## 7.2 Dealing with project intellectual property

The funding agreement states that the participant must submit a request to, and receive the written consent of, the Commonwealth (through AusIndustry) before dealing with project intellectual property. This particularly includes the transfer of project intellectual property to another entity and/or a change in company control event. In assessing such a request, AusIndustry will take into account any changes to the agreed national benefits arising from the project.

If the participant deals with project intellectual property during the project period without prior consent, the Commonwealth may terminate the funding agreement and it may also seek repayment of up to 100 per cent of the grant.

**Note:** For the purposes of the *Commercialisation Australia* program, ‘control’ of a company is defined by the *Commonwealth Corporations Act 2001*. In practical terms, a change in company control can include:

- sale of the participant company to another firm;
- establishment by the participant of a new parent or holding company;
- initial listing on the stock exchange or raising capital through further public share offerings;
- sale of a significant bundle of shares on the stock exchange; and
- sale of the parent company.

For participants with *Commercialisation Australia* financial assistance of \$500,000 or less, this obligation applies until the project end date. For all other participants, this obligation applies until five years after the project end date (that is, the completion date of the final component of the project).

However, if a participant with an early stage commercialisation grant proposes to deal with project intellectual property and the proposed transaction involves an Associate of the participant, then this obligation applies until the participant has repaid the early stage commercialisation grant, the obligation to repay the grant has ceased or the fifth anniversary of the project end date. This requirement on participants with ESC grants applies regardless of the value of the total grant received by the participant under *Commercialisation Australia*.

### 7.3 Change in participant details

The participant should promptly notify its AusIndustry Customer Service Manager in writing of any change in:

- company name;
- company registered office address;
- nominated contact details - for example, name, telephone number, email address; and
- details of the bank account into which the grant is paid.

### 7.4 Subcontractor disputes

If the participant engages a third party to perform project work, it must notify AusIndustry of any disputes arising with that third party which may result in the company breaching the funding agreement (including ability to meet all performance milestones by their due date), or which involves the participant withholding payment to that third party.

On receiving notice of a subcontractor dispute, AusIndustry may withhold payment of any future grant progress payments until the dispute is satisfactorily resolved.

AusIndustry may also withhold any further progress payments if the participant fails to provide notice of any relevant subcontractor disputes.

## 7.5 Proportion of overseas expenditure on agreed proof-of-concept or early stage commercialisation project

Eligible overseas expenditure is eligible expenditure on project activities that are not undertaken in Australia by the participant's staff, contractors or subcontractors. For participants with funding agreements where the January 2010 or July 2010 Customer Information Guide applies, eligible overseas expenditure excludes eligible intellectual property protection costs incurred overseas, overseas travel costs, and acquisition of new and leading edge technology (refer 7.6).

Overseas expenditure within total project eligible expenditure is generally limited to 10 per cent. If the participant wishes to spend more than this amount, it must seek AusIndustry's prior consent. This approval may be sought when applying, or it may be sought at any time during the project period. In some circumstances the participant may also need to apply for a formal variation to the funding agreement - if in doubt contact the participant's Customer Service Manager.

Any 'unapproved' overseas expenditure in excess of the 10 per cent (or otherwise approved) expenditure limit will not qualify as 'eligible expenditure'.

Refer to the *Commercialisation Australia Customer Information Guide* applicable under the participant's funding agreement for more information on the eligible expenditure guidelines.

## 7.6 Proportion of technology acquisition expenditure on agreed proof-of-concept or early stage commercialisation project

For participants with funding agreements where the January 2010 or July 2010 Customer Information Guide applies, eligible expenditure on technology acquisition is generally limited to 10 per cent of total project eligible expenditure. If the participant wishes to claim more than 10 per cent of project eligible expenditure on technology acquisition, it must seek AusIndustry's prior consent. This approval can be sought when applying, or it may be sought at any time during the project period. In some circumstances the participant may also need to apply for a formal variation to the funding agreement - if in doubt contact the participant's AusIndustry Customer Service Manager.

Any 'unapproved' technology acquisition expenditure in excess of the 10 per cent (or otherwise approved) expenditure threshold will not qualify as 'eligible expenditure'. Technology bought overseas is not considered overseas expenditure (refer 7.5).

Independent valuations of technology, including intellectual property, will be required with the original application and with any variation application to substantiate costs.

Refer to the *Commercialisation Australia Customer Information Guide* applicable under the participant's funding agreement for more information on the eligible expenditure guidelines.

## 8 Program Exit

Participants are monitored closely and on-going *Commercialisation Australia* support depends on the successful achievement of the agreed project milestones. *Commercialisation Australia* acknowledges the high risk nature of project supported by the program and recognises that some projects will fail.

Participants will have to prove their project's ongoing progress against performance measures as set out in the funding agreement. Participants may be required to end the project early where their project fails to meet agreed milestones or moves beyond the scope of the *Commercialisation Australia* program, and the *Commercialisation Australia* Board has not approved an appropriate variation request.

The Program Delegate will determine whether or not a project is progressing successfully by taking into account whether project targets have been achieved, the views of the Case Manager and may also seek the advice of the *Commercialisation Australia* Board.

Alternatively, participants may voluntarily terminate their project if the project fails to produce an expected outcome or the commercial prospects for the project outcome have substantially changed such that persevering with the project no longer makes commercial sense.

Voluntary terminations are encouraged and will be viewed as a positive indicator of the management team's capability in any future applications for funding under the program.

Participants should discuss the possibility of an early termination with the participant's Customer Service Manager.

## 9 *Commercialisation Australia* program feedback

*Commercialisation Australia* values your feedback and from time to time conducts client satisfaction and stakeholder satisfaction surveys on policy development and service delivery (see also Sections 3.4 and 3.6). If you are pleased with our service or otherwise, let us know. To provide us with feedback, you can contact the Customer Service Manager or Case Manager with whom you have been dealing.

Complaints can be directed to the Program Delegate, via the *Commercialisation Australia* hotline, in the first instance. Contact the *Commercialisation Australia* hotline on **13 22 56** or by email at [hotline@ausindustry.gov.au](mailto:hotline@ausindustry.gov.au).

If an applicant or participant is not satisfied with the complaint resolution procedure, they may escalate the complaint to the Chief Executive Officer (CEO) of *Commercialisation Australia*. The CEO can be contacted by email to [CEOofCA@innovation.gov.au](mailto:CEOofCA@innovation.gov.au).

Another option for complaints is to contact the Commonwealth Ombudsman. There is no fee for making a complaint, and the Ombudsman may conduct an independent investigation of concerns.

Note that the Ombudsman usually prefers complainants to first work through relevant internal processes before complaining about a decision.

The Ombudsman has offices in all states and territories. Contact the Ombudsman by telephoning **1300 362 072** or by writing to the relevant contact address specified on the Ombudsman's website at [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

## 10 How your Case Manager and Volunteer Business Mentors will assist you

*Commercialisation Australia* participants will work with a Case Manager and have access to Volunteer Business Mentors throughout the term of their project.

### **What is a Case Manager?**

Case Managers are private sector consultants contracted by the Commonwealth to assist in the delivery of the *Commercialisation Australia* program. Case Managers have extensive experience in commercialisation, many having taken their own products and services to market, and have good networks within industry. They will assist participants through the commercialisation process by:

- assisting them identify the skills and knowledge they need;
- helping them access specialist advice and services;
- providing strategic and operational advice;
- monitoring their progress; and
- linking them to volunteer mentors.

The level of assistance provided by Case Managers depends on the needs of each participant. For example, it is likely that participants in the *Early Stage Commercialisation* component will require less assistance than other *Commercialisation Australia* participants.

The advice and guidance provided by a Case Manager is provided as part of the participant's participation under the *Commercialisation Australia* program.

### **How will my Case Manager help me?**

Case Managers are based in the states and territories across Australia to offer hands-on advice and assistance to successful applicants. Once an application has been approved, a Case Manager will be assigned to assist participants for the duration of their involvement with *Commercialisation Australia*. Case Manager support is available for the period starting from the date of the funding agreement to the end of the applicable time limitations mentioned at Section 6.2

A Case Manager may identify suitable business mentors who will be able to provide a broader range of knowledge, skills and insights to participants, specific to their business needs.

Case Managers will also assist participants in terms of offering business and strategic advice, support them in developing their own professional networks as well as assisting with the administration of the funding agreement.

While the amount of time a Case Manager will spend with each participant may vary, the Case Manager will make their best efforts to meet every *Commercialisation Australia* participant's needs.

A Case Manager's advice alone cannot ensure the commercialisation success in a highly competitive global marketplace. However, their business expertise provides an added edge to help participants reach their commercialisation goals.

### **What are my obligations?**

The participant's obligations under the program are set out in the *Commercialisation Australia* funding agreement. These include advising AusIndustry about changes to the project, management team, company structure, intellectual property control, and maintaining a detailed account of project expenditure.

As part of your obligations, participants will be expected to:

- take responsibility for their application for *Commercialisation Australia* assistance, including ensuring that they:
  - have read and understood the program documentation, in particular, the *Commercialisation Australia* funding agreement, Guide to Managing Your Grant, and Customer Information Guide;
- if successful, comply with the obligations under the *Commercialisation Australia* funding agreement, including keeping the Case Manager and Customer Service Manager involved in all important decisions related to your project; and
- comply with *Commercialisation Australia* reporting requirements including providing regular project progress reports as set out in the *Commercialisation Australia* Guide to Managing Your Grant and the funding agreement.

### **What if I'm not happy with my Case Manager?**

If a participant is not satisfied with the services provided by their *Commercialisation Australia* Case Manager at any time, they should first discuss the situation directly with them. If a resolution is not achieved, complaints can then be directed to the *Commercialisation Australia* CEO, in the first instance, by email to [CEOofCA@innovation.gov.au](mailto:CEOofCA@innovation.gov.au) or contacting the *Commercialisation Australia* hotline on **13 22 56**.

Refer to section 9 for further information about program feedback.

### **What are Volunteer Business Mentors?**

Volunteer Business Mentors will assist participants by offering the knowledge, skills and insights needed to turn their idea into a commercial reality. Volunteer Business Mentors build on the support provided by Case Managers, giving participants a sounding board to bounce ideas off and suggest options. Some Mentors may have specialist knowledge in specific areas of business and commercialisation, for example, regarding particular markets, industries and processes. Case Managers will organise mentoring sessions with Volunteer Business Mentors that have the expertise and skill set to match the participant's needs. As these needs change, individual mentors can be changed, ensuring the mix of knowledge and skills available is always tailored to the current needs of the participant.

Participants are reminded that Volunteer Business Mentors assist on a voluntary basis and it is the participant's decision as to whether or how to use information provided by the Mentors. When signing the funding agreement, the participant will also sign a deed poll that releases the Commonwealth and the Volunteer Business Mentor from liability and loss arising or connected with the assistance provided by the Volunteer Business Mentor.

### **What about privacy and confidentiality aspects in relation to my project?**

The use and disclosure of information provided to AusIndustry, Case Managers, Volunteer Business Mentors and the *Commercialisation Australia* Board, by participants of the *Commercialisation Australia* program is regulated by the relevant provisions and penalties of the *Industry Research and Development Act 1986* (IR&D Act), the *Public Service Act 1999*, the Public Service Regulations, the *Privacy Act 1988*, the *Crimes Act 1914*, the Criminal Code and general law.

AusIndustry, Case Managers, Volunteer Business Mentors and the *Commercialisation Australia* Board will use the information provided in your application and during the course of the project for the purposes of discharging their respective functions under the program and for related uses and may also be used in any other legitimate Departmental or *Commercialisation Australia* Board business.

While the Department will seek to protect sensitive information from disclosure to external parties, disclosure of some confidential information may occur as specified in the *Commercialisation Australia* program guidelines or as mentioned in the application form. The *Commercialisation Australia* Board may also disclose information it receives in accordance with *section 47 of the IR&D Act*.

Detailed confidential information contained in applications and reports provided during the project may be disclosed for audit purposes to contractors engaged by AusIndustry and to other Commonwealth agencies for audit, reporting and law enforcement purposes. Further, AusIndustry, *Commercialisation Australia* or the *Commercialisation Australia* Board may release confidential information if it obtains the participants consent or is required or permitted by law to do so. This could happen, for example, if AusIndustry or *Commercialisation Australia* is required to respond to a resolution of the Parliament, or the order of a court.

Following approval of an application, the broad details of an application (for example, the identity of the successful participant, the amount of payment and a brief description of the project) may be disclosed by the Department for purposes such as promoting the program, reporting on its operation and policy development. This information may also be used in answering questions from the Parliament and its committees.