



AFP National Guideline on external agreements

1. Disclosure and compliance

This document is classified **UNCLASSIFIED** and is intended for internal AFP use.

Disclosing any content must comply with Commonwealth law and the [AFP National Guideline on the disclosure of information](#).

Compliance

This instrument is part of the AFP's professional standards framework. The [AFP Commissioner's Order on Professional Standards \(CO2\)](#) outlines the expectations for appointees to adhere to the requirements of the framework. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the [Australian Federal Police Act, 1979](#) (Cth).

2. Acronyms

| | |
|------------|---|
| ACT | Australian Capital Territory |
| AFP | Australian Federal Police |
| Cth | Commonwealth of Australia |
| GIF | Governance Instrument Framework |
| ICT | Information and communications technology |
| LOE | Letter of exchange |
| MOU | Memorandum of understanding |
| s. | Section |

3. Definitions

AFP appointee – means an AFP employee, special member, special protective service officer and includes a person:

- engaged overseas under s. 69A of the AFP Act to perform duties as an AFP employee, or
- seconded to the AFP under s. 69D of the AFP Act, or
- engaged as a consultant and contractor to perform services for the AFP and determined under s. 35(2) of the AFP Act to be an AFP appointee.

Agency – means an executive body of the Commonwealth, an Australian state or territory, another nation and, in some cases, private organisations (e.g. universities).

Annex – means a supplement to a head agreement which deals with specific, detailed procedural matters.

External agreement – means a signed document between the AFP and another agency or group of agencies which formally states matters of common understanding.

Governance Instrument Framework – means the collected governance instruments which help determine the professional standards of the AFP and other instruments authorised and published on the AFPHUB.

Head agreement – means an agreement between the AFP and another agency or group of agencies which states high-level policies and principles of common understanding.

Letter of exchange – means a letter to clarify an understanding or implement a procedure. It may be used by itself or to supplement a head agreement or other external agreement.

Memorandum of understanding – means a written and strategic agreement between agencies which is morally binding and is not intended to have legal or binding effect or create a legally binding relationship.

Secondment – means the secondment of AFP appointees to another police service or agency for a specific period under s. 40F of the [Australian Federal Police Act 1979](#) (Cth), or the arrangement for agency staff to assist the AFP by performing specific functions under s. 69D of the AFP Act.

Subordinate agreement – means an agreement subject to the terms of a head agreement and which deals with specific, detailed procedural matters, e.g. letter of exchange or an annex.

Treaty – means an agreement (usually between countries) which is legally binding and subject to international law.

4. Guideline authority

This guideline was issued by the National Manager Policy and Governance using power under s. 37 (1) of the [Australian Federal Police Act 1979](#) (Cth) as delegated by the Commissioner under s. 69C of the Act.

5. Introduction

This guideline outlines the policy, management, business processes and drafting considerations for agreements between the AFP and agencies.

This guideline does not directly concern 'fee for service' procurement and contractual arrangements with private sector entities or the provision of financial assistance by the Commonwealth to non-Commonwealth entities, i.e. grants.

6. External agreement policy

The AFP enters into external agreements to develop and maintain cooperative working relationships with its Australian and foreign clients, partners and stakeholders, and to enhance its engagement and relationships with the broader community.

External agreements are made in connection with the AFP's functions set out in s. 8 of the AFP Act and clarify the roles and responsibilities of the participants. Areas where external agreements are commonly used include:

- police cooperation
- information access, exchange, use and handling
- secondment of staff
- cooperative arrangements with tertiary institutions or community groups
- collaborative research and development
- joint activities or operations
- commercial arrangements with Commonwealth Government agencies.

7. Agreements and legal relationships

External agreements (other than treaties) are usually morally binding and do not establish a legal relationship between participants, or create an expectation that they will be adjudicated in a court.

AFP appointees should seek advice from AFP Legal for all external agreements, particularly where an external agreement potentially establishes legal obligations, such as cost recovery, indemnities and liability releases. These relationships are usually established through contracts or deeds.

8. Forms of external agreement

External agreements are divided into head agreements and subordinate agreements. They are further differentiated as:

- treaties and international agreements
- memorandum of understanding (MOU)
- fee for service MOU
- annex
- letter of exchange
- secondment agreement
- joint operation agreement.

9. Memorandums of understanding, annexes and letters of exchange

Memorandums of understanding (MOUs) are typically used for high level non-binding cooperative arrangements (see diagram below). The title of an external agreement, however, does not affect its nature or operation. Agencies may insist on their own naming convention and seek to call an agreement a 'letter of exchange', 'record of understanding', 'statement of intent', 'memorandum of arrangement', 'administrative arrangement', etc.

9.1 Annexes

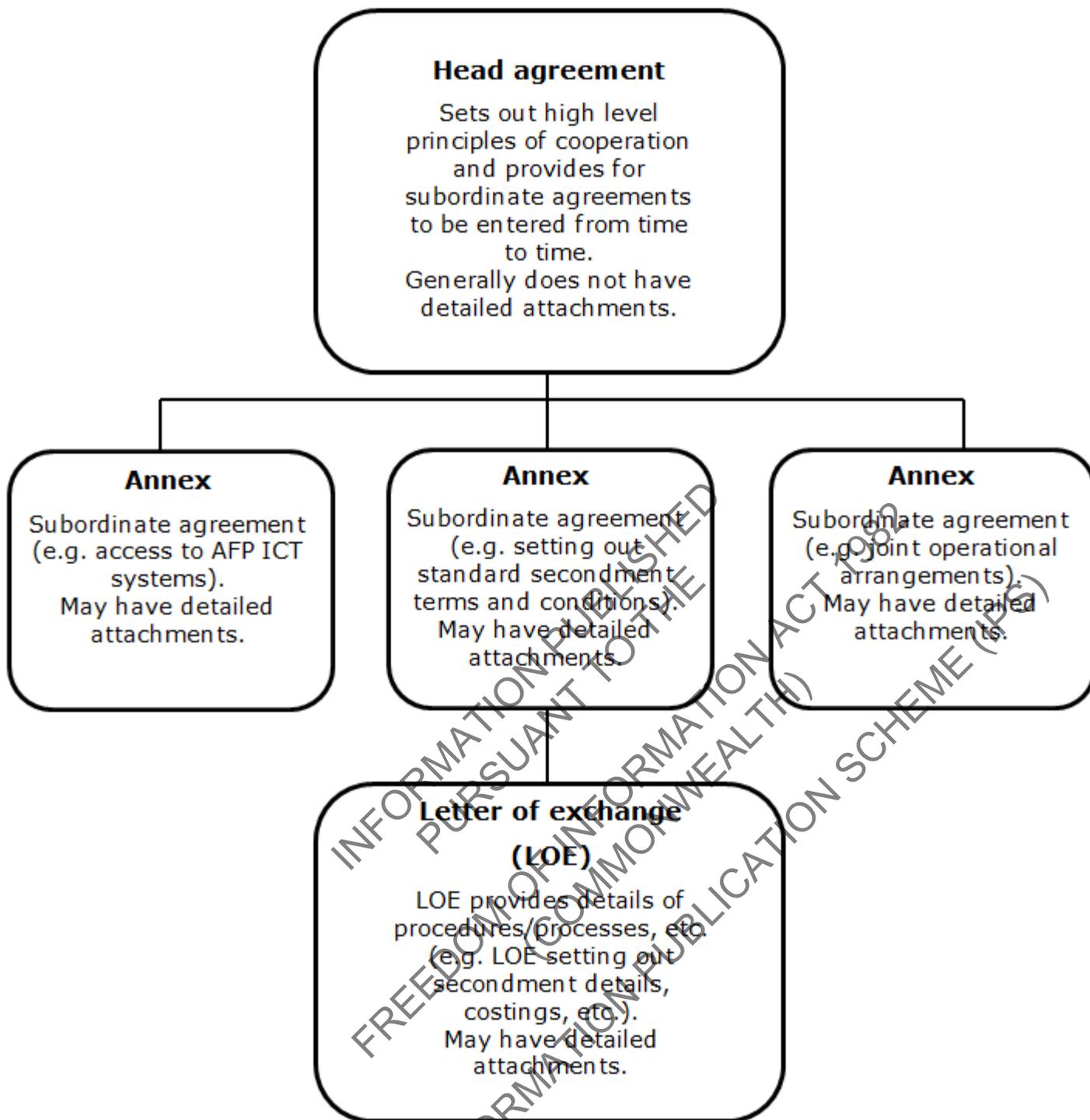
If an MOU is entered with an agency where there could be a number of specific areas of agreement, it is better to allow for subordinate agreements, usually in the form of annexes, to support the MOU (see diagram below).

9.2 Letters of exchange

Formal letters of exchange are commonly used to support, vary or extend an MOU and/or its annexes to specify procedural and administrative details. For example, letters of exchange are often used to detail the specifics of a secondment arrangement (e.g. name of secondee, financial arrangements, etc.) where an annex already provides the broad terms and conditions for secondment between the participants.

Letters of exchange may also be used as correspondence to clarify a particular issue or arrangement with a manager/officer from another agency without the need for an MOU to be in place. Usually this document would not warrant formalisation as an external agreement and publication on the Governance Instrument Framework.

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10. Secondment agreements

Secondment agreements are often created as subordinate agreements under a head agreement. If they are not created under a head agreement, assistance should be sought from AFP Legal. Secondment agreements usually cover costs, administration and governance arrangements for either:

- AFP appointees seconded to assist another agency under s. 40F of the [Australian Federal Police Act 1979](#) (Cth). These appointees remain subject to AFP employment terms and conditions, professional standards and insurance cover, e.g. to the Australian Crime Commission.

- personnel seconded to the AFP from agencies or outside bodies to assist the AFP under s. 69D of the [Australian Federal Police Act 1979](#) (Cth). These seconded personnel are AFP appointees for the purposes of the AFP Act and subject to AFP professional standards.

Secondment agreements are usually negotiated and entered on a case by case basis. The participants may agree to full, partial, or no cost recovery if it is for professional development.

The AFP Operations Coordination Centre establishes and manages the framework for full cost recovery secondments of appointees to other Commonwealth agencies.

11. Commercial arrangements

AFP National Managers (including Chief Police Officer for the ACT, Chief Information Officer and Chief Financial Officer) may create guidelines to detail internal governance which supports commercial arrangements, particularly for providing protective services.

The AFP provides protective security and consultancy services under s. 8A and s. 69E of the [Australian Federal Police Act 1979](#) (Cth), usually on a commercial basis to Commonwealth clients and non-Commonwealth entities where there is a Commonwealth interest.

The AFP may also enter external agreements to provide regulatory services, such as criminal history checks on a fee for service basis.

Where a proposed arrangement with an external entity involves commercialisation issues, AFP appointees must consult the [AFP National Guideline on procurement and contracting](#).

12. Joint operation and investigation agreements

For routine joint operations the AFP and partner agencies should enter joint operational plans. The Management of Serious Crime Coordinator and Operational Committees are responsible for approving the requirement and content of joint operation plan documentation. AFP appointees should seek advice from Legal if an agency requests clauses to specify responsibility or liability for financial or legal matters.

Where an agency and the AFP agree to conduct a substantial joint investigation or operation (requiring protracted and significant resources, for example a joint task force), a joint operational agreement should be entered. The agreement should address management and administrative issues (e.g. records management) in addition to the operational objectives. AFP Finance and Commercial should also be consulted if assets are to be provided or shared under the agreement.

13. Treaties and international agreements

The Australian Government recognises 2 kinds of international agreement:

- those with **treaty status** which are **legally binding** and subject to international law
- those with **less than treaty status** which are not legally binding or subject to international law (e.g. a head agreement in the form of a memorandum of understanding).

The AFP may enter into external agreements that are not legally binding with foreign agencies

(e.g. the Indonesian National Police). **The AFP is not authorised** to enter into agreements which have treaty status.

The Australian Government may enter into international agreements and treaties (e.g. the multilateral treaty for police and other assistance to Solomon Islands). Consultation should take place between the AFP, the Department of Foreign Affairs and Trade, and the Attorney-General's Department from an early stage.

14. Developing an agreement

AFP appointees creating an external agreement should have regard to the section 'Procedures for developing an external agreement' at [Attachment 1](#). They may also follow specific advice issued within their functional stream.

The AFP prefers that its agreement templates be used. AFP Legal or other relevant AFP function [governance network member](#) may be able to provide a suitable template or precedent. However, another agency may prefer or insist upon its own format for an external agreement.

15. Signing an external agreement

Head agreements and many subordinate agreements (including joint operation and investigation agreements) should be signed by the:

- Commissioner
- Deputy Commissioner
- Chief Operating Officer
- Chief Police Officer for the ACT
- National Manager
- Chief Information Officer
- Chief Financial Officer.

In some cases it may be necessary or appropriate for external agreements (particularly subordinate agreements and letters of exchange) to be signed by:

- Managers
- Office Managers
- Airport Police Commanders
- Commanders of overseas missions
- overseas Liaison Officers
- Coordinators.

In such cases the intended signatory should first obtain authorisation to sign from, as appropriate, the relevant head agreement signatory or their functional National Manager (including Chief Police Officer for the ACT, Chief Information Officer or Chief Financial Officer).

16. Review, variation and extension

External agreements should include review dates and processes to determine when and how an agreement should be extended, amended or terminated.

External agreements are reviewed internally by the AFP every 2 years as part of the governance review cycle. Amendments identified during an internal review process should be formalised and/or accepted through a letter of exchange to the other party.

Joint-agency reviews may also occur as specified within an external agreement or as otherwise arranged between the participants. Unless dealt with expressly within an agreement, a variation or extension should be dealt with and formalised through a letter of exchange.

Review officers should advise the agreement owner that a review has been completed and if a published version needs to be amended or revoked on the Governance Instrument Framework.

17. Termination and expiry

The procedures for termination of an external agreement should be provided for within an agreement. Termination of an external agreement should occur through consultation with the other party.

If the process is not provided for in an agreement, a variation or extension should be dealt with and formalised through a letter of exchange between the participants.

When an agreement which is published on the Governance Instrument Framework (GIF) is terminated or otherwise ceases to have effect, its owner should arrange for the archiving of that agreement from the GIF, through their functional [governance network member](#).

18. Record keeping

Agreement owners must record drafting, development or review negotiations and decisions, and ensure an original signed copy is stored and accessible (see the [AFP National Guideline on managing records](#)).

If the agreement is to be published on the Governance Instrument Framework, an electronic copy of the signed original must be emailed to the Governance Coordination and Review team for publishing.

19. AFP project officer role

The AFP project officer role may be undertaken by one AFP appointee or include a combination, e.g. an author, relevant functional [governance network members](#). The role of the AFP project officer may include:

Drafting and review phases:

- liaising or negotiating with agencies involved
- drafting or reviewing agreements
- consulting with Legal and all other potential stakeholders
- proofreading and approving documents for signature
- where relevant, providing the Governance Coordination and Review team with a Word copy and a scanned (PDF format) copy of the original signed document.

Ongoing:

- day-to-day management, reporting, liaison and administration
- ensuring proper financial management and accountability arrangements are in place if any payments are to be made under the agreement
- resolving or initiating the resolution of disputes
- identifying ongoing strategies to minimise risk
- handling the variation, extension or termination of the arrangement
- preserving records for audit purposes.

20. National Manager role

National Managers (including Chief Police Officer for the ACT, Chief Information Officer and Chief Financial Officer) own, and are responsible for managing, the external agreements which most directly affect their functional stream. Their role is to:

- authorise the signature of, or sign, head agreements and subordinate agreements
- authorise Managers, Airport Police Commanders, Commanders of overseas missions, overseas Liaison Officers and Coordinators to sign external agreements
- resolve disputes between participants
- issue all-staff emails for any agreement published in the Governance Instrument Framework
- identify and establish project officers/governance network members to undertake ongoing management and review of external agreements
- ensure ongoing management, review and termination occurs as necessary.

21. AFP Legal role

Legal reviews draft external agreements and provides technical legal and drafting advice in response to specific issues. Legal is also available to provide advice on the form of a draft external agreement where an appropriate template or precedent is not available.

22. Further advice

Queries about the content of this guideline should be referred to the relevant functional [governance network member](#).

23. References

Legislation

- [Australian Federal Police Act 1979](#) (Cth).

AFP governance instruments

- [AFP National Guideline on the disclosure of information](#)
- [AFP National Guideline on the Governance Instrument Framework](#)
- [AFP National Guideline on managing records](#)
- [AFP National Guideline on procurement and contracting](#)
- [Commissioner's Financial Instructions](#).

24. Attachments

Attachment 1 – Procedures for developing an external agreement

1. **Search** the Governance Instrument Framework (GIF) to identify relevant published external agreements, and consult the relevant functional [governance network members](#) to identify any unpublished agreements or those under development.
2. **Prepare a business case** to seek approval from the relevant Operations Committee and/or functional National Manager (including Chief Police Officer for the ACT, Chief Information Officer or Chief Financial Officer) to begin negotiations with the agency concerned. The following considerations may assist in the preparation of the business case:
 - relevant existing governance instruments (including head agreements)
 - duration times
 - objective(s) and parameters
 - relationship to international conventions, treaties, Commonwealth and state/territory legislation and any public undertakings of government
 - relationship to government policies or administrative schemes
 - impact on the GIF, i.e. identify the need (by assessing the risks that need to be treated) to create, amend or revoke any GIF instrument
 - potential points of disagreement with any other party
 - financial and other resources needed to develop the agreement
 - projected costs, including financial and operational impact of the agreement
 - internal stakeholders and consultation process to be used
 - preferred AFP signatory
 - security and publicity.

These considerations are not exhaustive. AFP appointees should assess the extent of any arrangement with another agency, balancing the resources needed to create an external agreement against its overall benefit. In some cases a letter of exchange or a resolution recorded in the minutes of a meeting may be sufficient to record the agreement of the participants.

3. Once approval is granted, **inform** your functional [governance network member](#) that you are developing a new external agreement. The relevant functional National Manager (or equivalent) will determine if the agreement, once signed, will be published on the GIF.
4. **Enter 'in principle' discussions** with the other agency.
5. **Consult** with relevant AFP function [governance team members](#) and AFP Legal for assistance with drafting or obtaining a suitable template.
6. After discussions are concluded, complete as much detail of the agreement as possible and consult with, if possible:
 - **AFP Operations Coordination Centre** regarding full cost recovered secondment of appointees to Commonwealth agencies
 - **Legal** for other agreements and where agencies seek material variations to client service or secondment arrangements
 - **AFP enabling areas** that are affected by, or can advise on, particular issues or risks

raised by the agreement (e.g. finance, ICT security, health and safety, professional standards).

7. After completing internal consultation, **forward the agreement** to the other party for comment.
8. **Consult** AFP Legal or other AFP business area, as needed, on comments by the other party.
9. **Negotiate** with other party to settle the final draft.
10. **If the agreement requires spending AFP funds**, approval must be obtained in accordance with the [Commissioner's Financial Instructions](#) (financial delegations), and consult with Finance Governance and Policy.
11. **Arrange signing**, having regard to this guideline and whether AFP Corporate Communications should be advised or involved.
12. **Arrange publication**. If the National Manager (or equivalent) deems that the agreement should be published within the GIF, scan the original signed document as a PDF document and store the original document within an official AFP record keeping system (generally, an AFP registry file).
13. If publication is approved, forward any scanned original (in PDF format) **and** a Word version to the Governance Coordination and Review team. A PDF of the electronic Word version of the signed agreement, with basic metadata, will then be published as part of the GIF. This is an official record that the agreement exists.
14. If published on the GIF, **issue an all-staff email** to inform AFP appointees that a new external agreement exists, its significance, and where it can be viewed. A template for this email is in [Attachment 2](#).

Attachment 2 – External agreement all-staff email template

From: [System generated data]
Sent: [System generated date]
To: [All-AFP-Staff]
Subject: New OR Revised [insert title of External Agreement]

All AFP Staff

On **[date of signature]** the AFP entered into a formal arrangement with **[enter name of other agency/ies]**.

This **[new or revised]** external agreement **[describe content, purpose or significance of agreement as fully as you need to]**.

Staff are encouraged to familiarise themselves with this instrument, which can be accessed through the following URL link:

[insert URL link provided by the Governance Coordination and Review team]

Please contact **[insert name and contact details of an appropriate officer who can**

address any enquiries] for any queries you may have in relation to the content of this instrument.

**Title Block of
Authorising Officer or
Instrument Owner**

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