# Terms of Participation

**Victorian Property Fund Grants Program: Environmentally Sustainable Housing Funding Round 2017-18**

These Terms of Participation should be read in conjunction with the Invitation for Expressions of Interest (IEOI), the Response and Certification Form (the Response Form) and any other documentation produced by Consumer Affairs Victoria (CAV) for the Victorian Property Fund (VPF) Environmentally Sustainable Housing Funding Round 2017-18 (together, ‘the Documents’). This document sets out additional terms and conditions that apply to all respondents to the IEOI or formal applicants for VPF funding under the 2017-18 Environmentally Sustainable Housing Funding Round (the Round).

## Representations and warranties

CAV does not make any representations or provide any undertakings to any respondent or applicant (together, ‘Applicant’) under the Round other than to invite them to submit a response to the IEOI (Response) or, if requested in writing, a formal grant application to the VPF Grants Program (Application).

CAV does not warrant the accuracy of the content of the Documents and CAV will not be liable for any error or omission or any inaccurate information contained in the Documents or otherwise provided by CAV during the Round. The information in the Documents has been compiled by CAV for the purpose of inviting responses to the IEOI or grant applications for the Round and must not be relied on for any other purpose.

The Documents do not contain all the information that Applicants may require in reaching decisions in relation to submitting a Response or Application. Applicants should form their own views as to what information is relevant to such decisions, and make their own independent investigations in relation to any such information.

No representation made by or on behalf of CAV in relation to the Documents, the subject matter of the Documents or the Round, including in connection with any information sessions or meetings held, shall be binding on CAV unless that representation is in writing and is incorporated into the funding agreement entered into by CAV with a successful Applicant (Funding Agreement).

## Confidentiality and privacy

CAV will not disclose the confidential information of Applicants without prior written consent, except to the extent necessary to evaluate or obtain a decision on any Response or Application or as otherwise required by law. Applicants agree that CAV may disclose their Response or Application, along with any other information disclosed by the Applicant to CAV during the Round or application process, to other Victorian Government departments, consultants, advisers, and the Minister’s Office for assessment purposes, reporting purposes, or for considering alternative funding opportunities.

Applicants must specify any content in their Response or Application that they consider constitutes confidential information, in order that CAV may treat that information as confidential. However, CAV reserves the right, in its absolute discretion, to dispute an Applicant’s claim that information is confidential.

Any personal information which CAV collects as part of the Round or application process will be handled in accordance with the *Privacy and Data Protection Act 2014 (Vic)*.

## Ownership

The Documents and any other supporting material provided by or on behalf of CAV is, and shall remain, the property of CAV. All documents submitted by Applicants in connection with the IEOI or grant application process become the property of CAV on submission.

## Intellectual property

CAV does not seek any ownership rights in the intellectual property owned or developed by Applicants during the Round or application process or in the course of undertaking the project, the subject of the Application (Project) (if successful).

Applicants grant CAV a license (including the right to sub-license) to reproduce, adapt or modify the whole or any portion of their Response or Application for the purpose of the application process and, whether the Applicant is successful or unsuccessful, for non-commercial use. CAV’s licence to use such information does not extend to the confidential information of Applicants.

## Communications

Applicants must not make any public statements or communications, or publish any media releases, in relation to this application process or any VPF grant awarded, without first providing a copy of the statement, communication or media release to CAV and obtaining the prior written approval of CAV.

## Conflict of interest and collusion

Applicants must declare if they have any actual, potential or perceived conflict of interest between the interests of the State and the Applicant’s interests in the context of the Round. Where a conflict of interest arises, it must be assessed and be resolved in favour of the public interest and to CAV's satisfaction. If a conflict of interest cannot be resolved to CAV's satisfaction, CAV may exclude the Applicant from participating in the Round in its absolute discretion.

Subject to any collaboration that is notified to CAV, each applicant warrants and agrees that it is in all respects independent and that no collusion has taken place or will take place between the applicant and any other applicant or other entity in connection with the application process.

## Termination or alteration of application process

CAV may terminate the Round, alter the IEOI or grant application process or the scope of the Round, or vary the timing of the Round in its absolute discretion.

CAV does not bind itself, and each applicant agrees that CAV is not bound to accept any Response or Application under the Round.

For the avoidance of doubt, references to the 'application process' in the Documents (including this document) means the process for seeking and assessing responses to the IEOI and formal VPF grant applications, and includes selecting each successful respondent or applicant and concludes upon the execution of a Funding Agreement by each successful applicant.

## No legal relationship

No contract (including any process contract) for the provision of funding is formed between CAV and any person by reason of the Documents, the Response or Application, or any part of the application process.

A legally binding contractual relationship for provision of funding will only arise if the Minister for Consumer Affairs awards a VPF grant and the successful applicant and CAV enter into a Funding Agreement.

## Funding agreement and implementation of project

A grant recipient will be required to enter a Funding Agreement with CAV in the form of the Victorian Common Funding Agreement (VCFA). The standard terms and conditions of the VCFA are not negotiable. A copy of the standard terms is available for download at the Victorian Common Funding Agreement page on the DHHS website (<https://providers.dhhs.vic.gov.au/victorian-common-funding-agreement>). The Funding Agreement will also include a Schedule with project-specific terms and conditions.

The Funding Agreement will include clauses covering performance, measurement against milestones and objectives, payment arrangements, intellectual property ownership, confidentiality, audit processes, breach of contract, reporting and other relevant matters.

These Terms of Participation, together with the Application and the Documents form part of the Funding Agreement. Funding must be spent on the Project as described in the Application and as outlined in the Funding Agreement. Failure to do so may result in a request by CAV to repay funding.

The Funding Agreement must be signed prior to funding being provided. Funding will be provided to successful applicants by way of an initial advance on execution of the funding agreement and the balance paid on completion of agreed milestone deliverables completed within agreed timeframes and supported by appropriate evidence.

Projects will not be funded retrospectively nor will funding be granted to Projects that have commenced prior to signing of the Funding Agreement.

Projects must be completed within agreed timeframes. Successful applicants will be required to provide CAV with satisfactory reports as specified in the Funding Agreement. Projects must acknowledge the support of CAV and the Victorian Government in all Project communications, which must be approved by CAV prior to public release.

If requested, grant recipients must provide Project information to CAV for program evaluation and educational purposes, and assist in the development of case studies for use by other community housing organisations.

Projects must be covered for insurance as specified in the Documents. Applicants must provide evidence of adequate insurance coverage prior to entering into the Funding Agreement.

## Application documents

The Applicant must ensure its Response or Application (including any attachments) is correctly completed and signed and meets the requirements of the Documents.

Applicants must provide any additional information requested by CAV for the purposes of assessing and evaluating their Response or Application (including attachments) within such reasonable time period as may be specified by CAV.

If a Response or Application is incomplete or does not conform to the required form, CAV may, in its absolute discretion, exclude the applicant's Response or Application or any part of it from consideration.

CAV may, in its absolute discretion, require or allow the Applicant to amend, alter or otherwise change its Response or Application at any time during the application process.

## Method of lodgement

Applicants must submit their completed Response or Application form (including any attachments) in the manner and by the closing time and date specified in the Documents.

## Late submissions

It is the Applicant’s responsibility to adhere to all response and application submission instructions, including submission times and dates specified in the Documents.

Emailed Responses and Applications must be received by CAV by no later than 5pm on the relevant closing date as specified in the Documents. The time to lodge responses or applications may be extended by CAV in its absolute discretion.

The determination of CAV as to the actual time that a Response or Application is received is final. All late Responses or Applications will be recorded by CAV. CAV will notify any Applicant whose Response or Application is received late.

Subject to CAV’s sole discretion, Responses or Applications lodged late or in a manner that is contrary to the submission requirements specified in the Documents will not be considered unless:

* the Applicant can clearly document to the satisfaction of CAV that an event of exceptional circumstances caused the document to be lodged late; and
* CAV is satisfied that accepting a late submission would not compromise the integrity of the Round or application process.

## Costs

Applicants are required to meet all costs and expenses related to the preparation and lodgement of their Response or Application, any subsequent negotiation, and any future process connected with or relating to the application process.

CAV is not liable for any costs, expenses, losses, claims or damages that may be incurred by any Applicant in connection with the application process, execution of the Funding Agreement or participation in the Round, including in preparing or submitting its Response or Application, providing further information to CAV or persons engaged by CAV, or participating in discussion or negotiations (if any) with CAV.

## Applicant to assume all liability for loss

Applicants should note that implementing energy efficiency improvements to residential dwellings involves a range of risks, including but not limited to:

* product suitability, reliability and performance risks
* warranty risks, including risks that manufacturers, suppliers or installers do not comply with consumer laws or go bankrupt or insolvent
* financial risks, including the risk that anticipated electricity and gas bills savings are not realised or that works carried out do not attract subsidies
* project implementation risks, including budget overspends and time overruns
* potential impacts on insurance policies and premiums
* health and safety risks, including those faced by residents or contractors (e.g. faulty equipment or non-compliant wiring increasing fire risk for residents, or contractors being exposed to unsafe working conditions such as asbestos).

Applicants are required to assume all risk and responsibility for their proposed improvement projects. CAV does not endorse the appropriateness of any investment and is not liable for any loss arising as a consequence of any project funded through a VPF grant, including but not limited to any loss suffered as a result of the quality or condition of any goods or services purchased with VPF grant funding or otherwise in connection with the Round. The Applicant must satisfy itself of the fitness and suitability for purpose of any such goods or services.

## Product suppliers, installers and other subcontractors

Due to the complex and technical nature of energy efficiency improvement projects, CAV recognises that Applicants may need to sub-contract some or all of the services required to implement the Project. Applicants are responsible for the procurement, supply and installation of all energy efficiency improvements. Applicants must take complete responsibility for the activities, defaults or omissions of any product suppliers, installers or other subcontractors (Subcontractors). The Applicant is required to ensure that any Subcontractors:

* have been continuously operating in Australia since 1 November 2015.
* are suitably qualified and appropriately licenced in their respective trades to undertake the activities required by the Project, including that:
	+ registered electrical contractors will be engaged for any type of electrical work
	+ all electrical tradespeople will be licensed
	+ licensed gasfitters will be used for any installation or repairs involving gas work
	+ licensed plumbers will be engaged for any plumbing installations or repairs
	+ solar PV suppliers and installers are Approved Solar Retailers under the Clean Energy Council Solar Retailer Code of Conduct.
	+ insulation Installers must be a member of the Clean Energy Council’s Insulation Accreditation Scheme, which requires training in OH&S policies and procedures and the safe installation of insulation products. Insulation must be installed in compliance with *Australian Standard AS 3999:2015, Bulk thermal insulation – installation*.
* if required to create Victorian Energy Efficiency Certificates (VEECs) – are qualified, accredited and approved, as appropriate, by the Essential Services Commission to install energy efficiency upgrades and create VEECs according to the requirements of the *Victorian Energy Efficiency Target Act 2007* and the *Victorian Energy Efficiency Regulations 2008* for all Prescribed Activities specified in the *Victorian Energy Efficiency Regulations 2008*, including:
	+ accreditation by the Victorian Registrations and Qualifications Authority (VRQA) of *22311VIC – Course in Retrofitting for Energy and Water Efficiency* or equivalents; and
	+ undertaking the mandatory safety training requirements

as outlined in the Essential Services Commission “*Explanatory note – creating Victorian Energy Efficiency Certificates from Proscribed Activities*”, Version 6.0 – 19 January 2017.

* undertake all activities in accordance with the laws, regulations and codes of practice applicable to that activity. This includes, but is not limited to, compliance with the *Electricity Safety Act 1998*, the *Gas Safety Act 1997*, the *Building Act 1993*, the *Plumbing Regulations 2008* and the *Ozone Protection, Synthetic Greenhouse Gas Management Act 1989*, the *Occupational Health and Safety Act 2004* and the *Competition and Consumer Act 2010 (Cth)*.
* maintain a level of insurance cover with a reputable insurer that is compliant with the requirements of their registered body, and for not less than the following amounts:
	+ Public liability insurance of $20 million
	+ Professional indemnity insurance of $5 million.
* hold an OH&S ‘White Card’ and any relevant certifications required by the relevant industry body.
* have received a briefing on the project and their role in it from the Applicant, and project-specific OH&S processes.

## Minimum standards for solar improvements

Where the Project involves solar improvements, the Applicant must engage a fully accredited Clean Energy Council (CEC) solar PV designer to approve the design of the solar PV system/s.  The designer and the installer may be the same person or firm.

The installer of the solar PV system must have as a minimum:

* demonstrated experience in the installation of solar PV systems of a similar size;
* electrical licence sufficient for the scope of the work, inclusive of meter changes and connections to the grid; and
* full accreditation with the CEC with no demerit points, or provisional accreditation.

As a minimum, solar modules must:

* be approved for use in Australia by the CEC and included on the list of approved products under the Renewable Energy Certificate Scheme;
* have appropriate roof interfacing for the existing roof materials and design;
* have certification to AS 1170.2 provided by the installer for the roof the dwelling;
* have an output warranty of 80% after 25 years as a minimum; and
* be warranted for a minimum of 10 years.

As a minimum, solar inverters must:

* be approved for use in Australia by the CEC and included on the list of approved products under the Renewable Energy Certificate Scheme;
* be sized appropriately so as to not curtail the output from the solar modules at peak output;
* provide maximum output for modules across their output range (with minimal clipping of output for high power and high temperatures);
* be installed in an area out of reach from children and in full-shade; and
* be warranted for a minimum of 10 years.

## Victorian Industry Participation Policy (VIPP)

The Victorian Industry Participation Policy (VIPP) seeks to maximise opportunities for Australian, New Zealand and Victorian suppliers to compete for government business on the basis of best value for money over the life of the goods or services. The VIPP is implemented by Victorian Government departments and agencies to help drive local industry development.

The VIPP will apply if the total cost of the project meets or exceeds either:

* $1 million in regional Victoria/statewide; or
* $3 million in metropolitan Melbourne.

If the VIPP does apply the grant recipient must register the grant with ICN (Industry Capability Network) and comply with the requirements of the VIPP, including preparing a VIPP Plan and providing annual project reports.

## Change in circumstance

The Applicant must inform CAV promptly in writing of any material change to any of the information contained in its Response or Application (including attachments), and any material change in circumstances that may affect the completeness or accuracy of any of the information provided in its Response or Application.

## Questions

Any questions or requests for further information regarding the application process or clarification of the Documents must be submitted to CAV in writing before the end of the Clarification Period set out in the Documents, by email to the address specified in the Documents.

Except where CAV is of the opinion that issues raised apply only to an individual applicant, questions submitted and answers provided will be made available to all potential applicants by email or posting on the CAV website without identifying the person or organisation having submitted the question. In all other cases, CAV may deliver any written notification or response to an applicant by email addressed to the applicant (as notified to CAV).

An Applicant may, by notifying CAV in writing, withdraw a question submitted in accordance with this section (Questions) in circumstances where the Applicant does not wish CAV to provide its response to the question to all potential applicants.

## Clarifications

CAV may at any time during the application process, request clarification of any part of a Response or Application or additional information concerning the Response or Application. Applicants must provide any additional information within such reasonable time period as may be specified by CAV.

CAV reserves the right, in its absolute discretion, to enter into any discussion or written communications with any applicant to seek clarifications and obtain additional information to enable evaluation of an application or negotiate with any applicant without undertaking similar discussions or written communications with any other applicant.

## Regulatory compliance checks

Upon CAV’s request the Applicant must provide CAV with a copy of its latest Housing Registrar Annual Report to evidence compliance with regulatory requirements of the Office of Housing Registrar.

## GST

Project costs disclosed in the Response or Application should be stated as exclusive of any input tax credits to which the Applicant is entitled in respect of those costs.

Applicants are required to be registered for GST, and an amount for GST will be included in any grant payment. CAV will issue a recipient created tax invoice (RCTI) for any payment. It is the responsibility of the grant recipient to use the RCTI provided by CAV to remit the GST amount to the Australian Tax Office.

## Governing law

The Documents including any funding agreement shall be governed by the laws of the State of Victoria. The Applicant irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria, Australia.

## Other CAV rights

For the removal of doubt, CAV may in its absolute discretion:

* reject a Response or Application that is not duly signed, does not include all the information requested, or is not in the format required;
* after concluding a preliminary evaluation, reject any Response or Application that in its opinion is unacceptable;
* disregard any content in a Response or Application that is illegible without any obligation whatsoever to seek clarification from the Applicant;
* request clarification of a Response or Application, or the amendment and resubmission of a Response or Application considered unclear;
* disqualify an incomplete Response or Application, or evaluate it solely on the information contained within it;
* alter the structure and/or the timing of the Round or application process;
* vary or extend any time or date specified in the Documents for any or all Applicants.

Notwithstanding anything else in this document, and without limiting its rights at law or otherwise, CAV reserves the right, at its absolute discretion at any time, to:

* cease to proceed with, or suspend the Round;
* alter the structure, including the conditions of participation, of the Round;
* vary or extend any time or date specified in the Documents;
* terminate the participation of any Applicant;
* require additional information or clarification from any Applicant or any proposed partner organisation;
* negotiate with one or more Applicants in relation to some or all of the scope of activity described and allow any Applicant to alter its Response or Application;
* accept Responses in relation to some and not all of the scope of eligible activity described in the Documents;
* invite one, more than one, or no organisations to formally apply for a VPF Grant Application;
* reject any Response that does not comply with the requirements of the Documents; or
* consider and accept or reject any alternative Responses.