

## Community Health Webinar: “Tips and Falls” when managing community and health contracts

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**30 March 2021**

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# Webinar housekeeping

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- All attendees will be on mute and their cameras turned off for the entire webinar
- We have BD tech support live to assist with any technical issues
- Use the chat function for any comments/technical issues
- Use the Q&A function for specific questions related to the webinar content – Questions will be addressed at the end of the webinar
- There will be a post webinar survey link sent at the end of the webinar. We value attendee feedback
- We will also have a QR code linking to our feedback survey towards the end of the presentation so you can provide instant feedback

## Disclaimer

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The information contained in this presentation is intended as **general commentary only** and should not be regarded as legal advice

Should you require specific advice on the topics or areas discussed, please contact the presenters directly

## Webinar overview

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Exploration of topical contract management issues arising in the community health sector with a specific focus on:

- **Client service agreements** – including tips to develop them and roll them out
- **Funding Agreements** – traps to watch out for before you accept funding
- **Health Practitioner Agreements** – who is providing services to who?
- **Partnering, consortiums and MOUs** – tips for avoiding dispute

# Considerations

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## Pre-contract phase

- Pre-contractual planning is best practice
- Consider contract lifecycle and scenario plan
- Draft the contract before the relationship begins
- Establish contract governance arrangements in advance
- Senior leadership team to reflect on recent events in a proactive way
- Tension between theoretical best practice and reality

## Contract phase

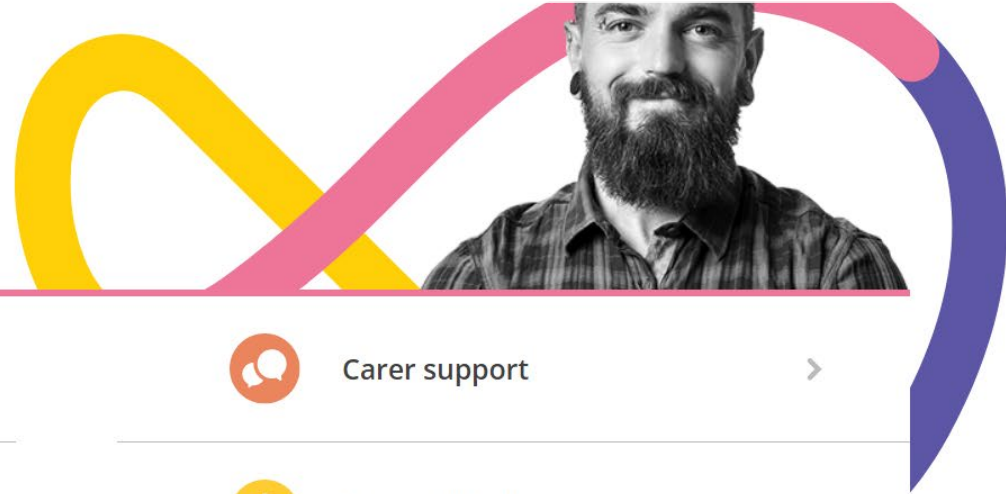
- Opportunities to demonstrate excellence in contract governance -  
Conformance / performance divide
- Importance of managing contract risk when contract on foot

# Case Study: Carer Gateway



# Case Study: Carer Gateway


Practical advice and support  
for carers.  
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 Help and advice >

 Carer support >

 Taking a break (respite) >

 Financial help >

 Real-life stories >

 Tips >



## Carer support

### Getting help through Carer Gateway

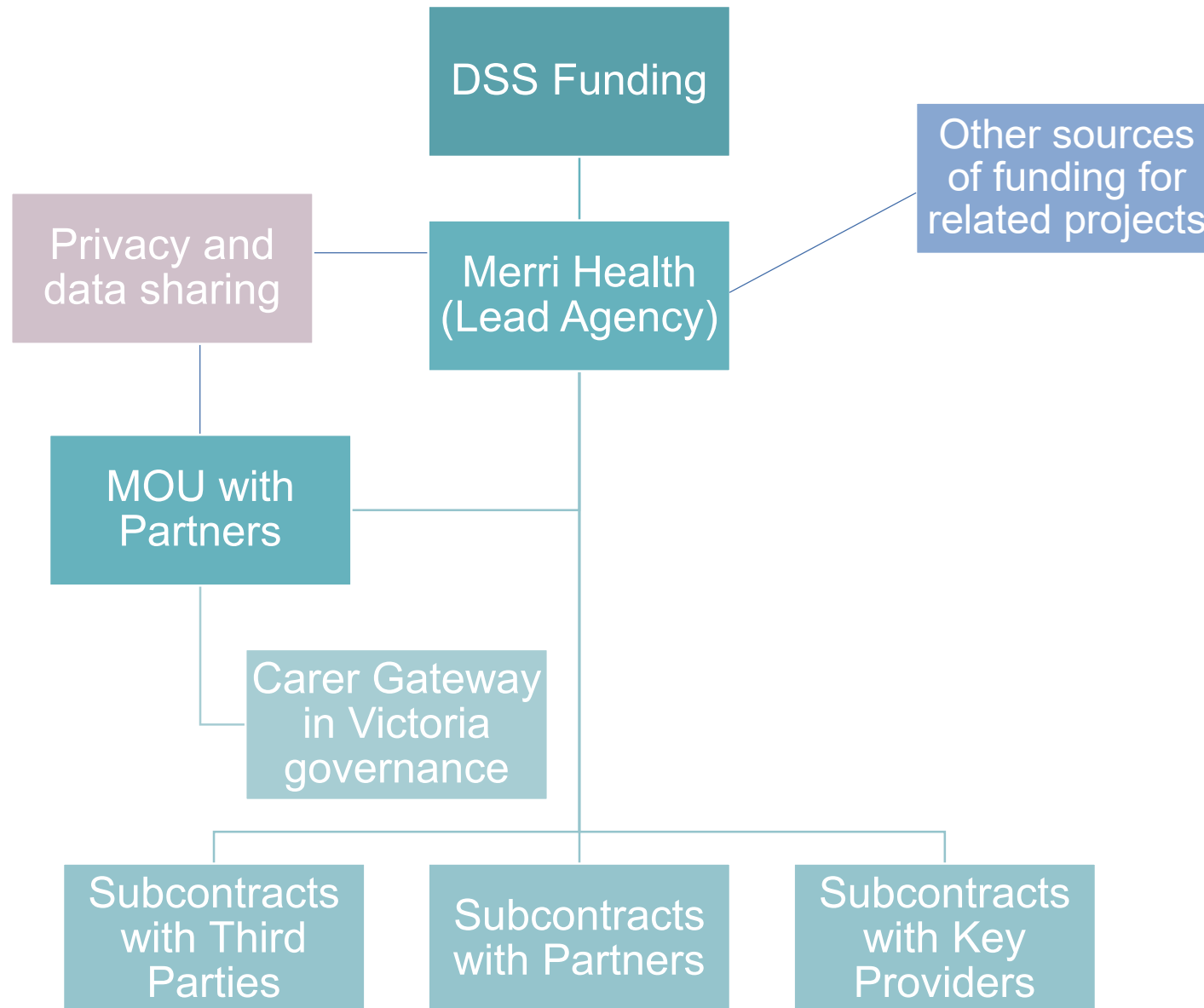
Carer Gateway aims to make your life easier.

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# Case Study: Carer Gateway





# Flow through of Department funding obligations

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- What are the Department's funding obligations?
- Express or implied flow through
- Limited appreciation at the subcontracting practitioner level of lead consortium member obligations and liabilities
- Lack of awareness of risk and liability flows
- Audit and inspection access rights
- Acquittal and reporting obligations

# MOUs and Binding Agreements

- How agreements intersect across the consortium
- Funds distribution
- Requirement for lead consortium member to ‘take the lead’.

Attribute	MOU	Contract
Length	Short	Long
Payments	No	Yes plus GST
Obligations	High-level, strategic, vague. No liability for failures	Detailed, specific, measurable, precise, deliverables, timelines
Binding	No	Yes
Language Style	Informal, industry, passive	Formal, legal, imperative
Duration	Various or indefinite	Specific duration
Termination	Either party may terminate at no cost	Termination restricted. Obligations to compensate
Review	Parties may trigger review of relationship	Principal or independent third party may review contractor’s delivery of goods or services.

# Funding Agreements vs Services Agreements

Attribute	Services	Grant/Funding
Beneficiary	Customer entity	The community
Payments	Price, fees, costs, charges, expenses	Funding, grant, payments, incentives, contributions
How payments agreed	Market rates. Achieves commercial return for contractor	Payment to cash flow recipient. Bucket of funds to be spent “at cost”. Unspent funds to be returned.
Cost overrun	Contractor bears risk, but additional fees might be charged	Recipient bears risk of funding any gap. Payment may be insufficient to cover all work activities.
Acquittal	Deliverables	Financial statements, audited, reports

# Corporate and Clinical Governance

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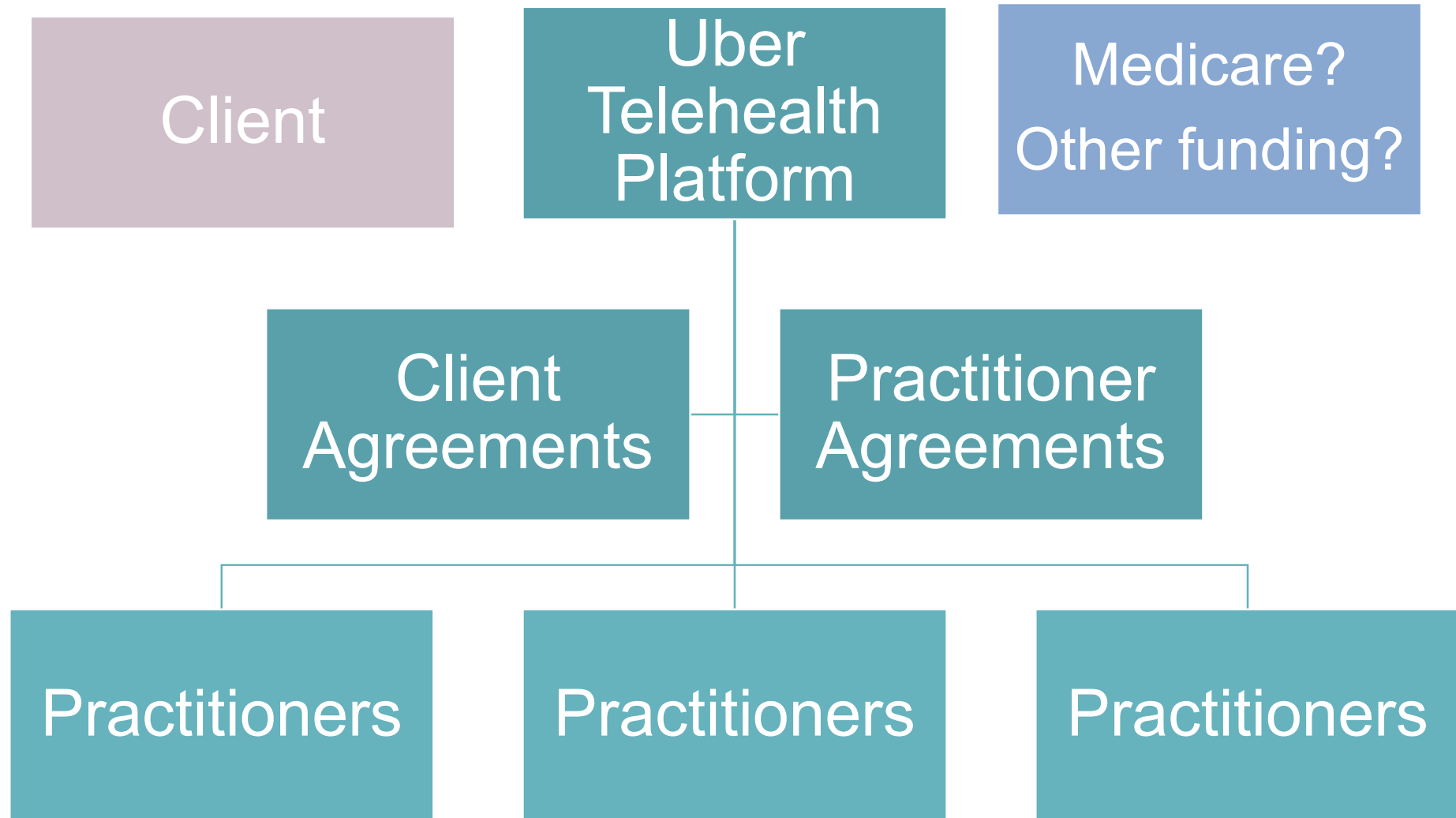
- Consider Board / subcommittee oversight of significant contracts – reporting regime
- Collective obligations under ACNC Governance Standards
- Risk matrix for complex multi-party contracting arrangements
- Insurances (eg VMIA coverage)
- Instruments of delegation and authorities
- Policies for engagement with partner consortium entities
- Reputation management re adverse events
- Requirement for clear delineation of responsibilities

# Case Study: Uber Telehealth



# Case Study: Uber Telehealth

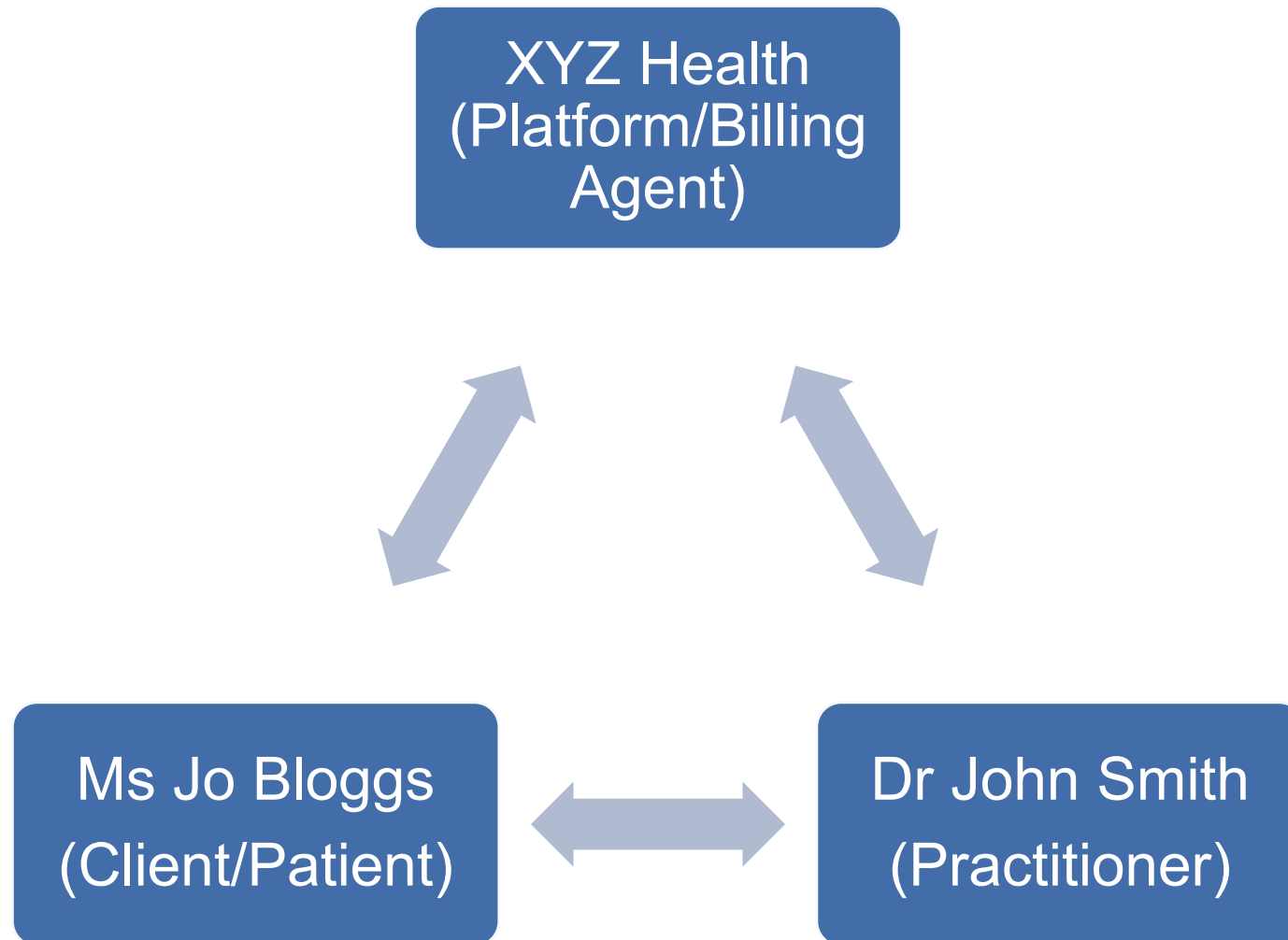
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# Case Study: Uber Telehealth

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Who are the parties to the agreements?



# Case Study: Uber Telehealth

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- Clinical liability
- MBS funded services - provider must be an individual
- “Private” vs “public” patients
- Is the Practitioner a contractor or employee?
- Payroll tax? GST?
- Corporate/clinical governance
- Records?
- Whose patients/clients?




# Case Study: Uber Telehealth

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- Client agreements
  - Health practice conventions?
  - Needed when funded by government?
  - Consider Australian Consumer Law - Unfair terms in standard contracts
  - Presenting agreements as a form
  - Plain English? Easy English?
  - Signing / Acceptance
  - Adopting new versions of client agreements


# Case Study: HeadtoHelp



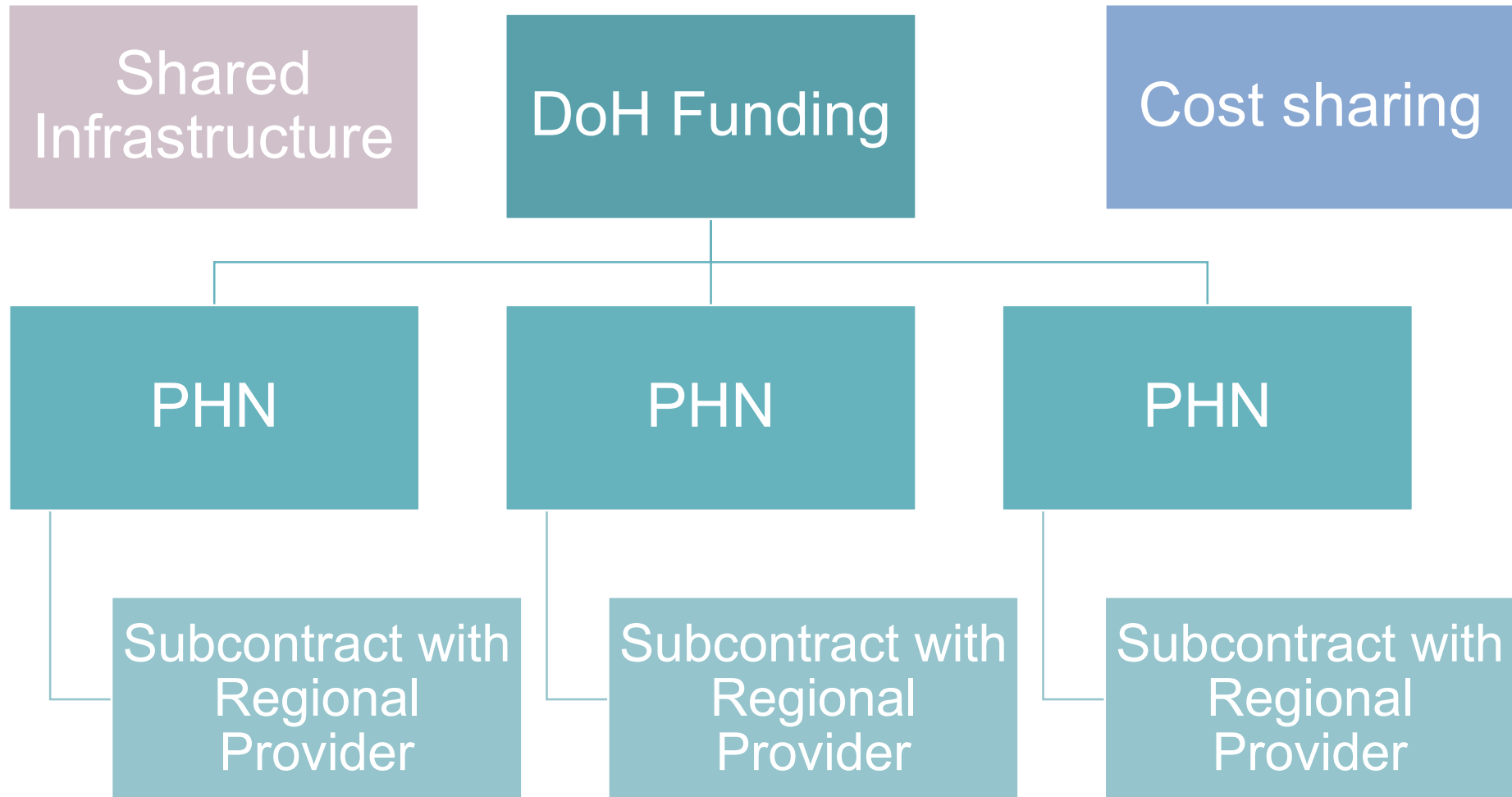
A cartoon illustration of a brown bear sitting and talking on a white mobile phone. The bear has a friendly expression with a wide smile.

**Feeling stressed,  
anxious, or sad?  
Help is here.**

 **Call now**

A cartoon illustration of a brown bear's head in profile, looking thoughtful or slightly sad.

**The sooner you HeadtoHelp,  
the better you'll feel**



**Closing thoughts**



## Reflect on experiences from any previous contracts

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- Are there loopholes to be closed?
- Did it work as intended or will it be managed differently?
- What complaints or disputes arose?

## Termination for convenience

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- **Rule against fettering:** government can't contract to fetter powers or discretions it must exercise in the public interest or per legislative criteria
- **Executive necessity:** Special government privilege to break contracts for policy reasons
- **War time origins:** defence/military need
- Different approaches from Commonwealth and Victorian Governments

## Force majeure

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- **Force Majeure** - a circumstance beyond the control of a party to a contract, which enables that party to escape liability for failing to perform the contract as a result of the circumstance.
- *Force majeure* clauses are not implied as a matter of law – need to be written into the contract
- Risks with widely drafted / unqualified *force majeure* clauses and catch all definitions.
- The party who seeks to rely on a force majeure clause bears the onus to prove out.



# Key Takeaways

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1. Do you have a proactive approach to contract risk management?
2. Do your contracts have the right balance between assurance/reliance?
3. Is your organisation ready to launch a program at short notice? If not, what do you need to do to prepare?
4. Are working **with** another organisation or are they providing services **for** you? Have you got the right agreements in place?
5. Do you have visibility and accountability from the top with complex, large or risky contracts?
6. Are you thinking about the end-to-end contract lifecycle in advance?
7. Do you understand and have you properly documented who is responsible for what?
8. Before entering a contract, are you asking yourself what are the key risks associated with a particular program?

Questions?



# Contacts

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