Commonwealth funding agreements – guidance document

NORTHERN TERRITORY GOVERNMENT

Document title	Commonwealth funding agreements – guidance document
Contact details	Intergovernmental Relations Department of Treasury and Finance dtf.intergovrelations@nt.gov.au Strategic Coordination and National Reform Department of the Chief Minister and Cabinet NT.IGR@nt.gov.au
Approved by	Director of Intergovernmental Relations
Date approved	May 2024
Document review	Every two years

Version	Date	Author	Changes made
1.0	May 2024	Intergovernmental Relations	Revised version

Acronyms	Full form
ANAO	Australian National Audit Office
CFFR	Council on Federal Financial Relations
FFA	Federation Funding Agreement
FMA	*Financial Management Act 1995*
IGA FFR	Intergovernmental Agreement on Federal Financial Relations
NT	Northern Territory
NSPP	national specific purpose payment

Contents

1. Introduction

1.1. Purpose

To provide best practice guidance to assist accountable officers and agencies to meet their obligations under the Treasurer's Direction – Commonwealth Funding Agreements, the *Financial Management Act 1995* (FMA), and other relevant legislation.

Guidance material in this document is not mandatory. If a conflict arises between this guidance document and the Treasurer's Directions or other legislative requirements, the legislation takes precedence followed by the Treasurer's Directions.

The Treasurer's Directions generally designate responsibility to the accountable officer. Unless specifically excluded by the FMA or Treasurer's Directions, accountable officers may choose to delegate certain responsibilities and functions to agency employees. This can be done through a number of mechanisms, such as accountable officer approved policies, procedures and agency delegations.

Responsibilities assigned to ministers cannot be delegated.

1.2. Statement

The objectives of the Treasurer's Direction – Commonwealth Funding Agreements and this guide are to establish a framework that minimises the financial risk posed by Commonwealth funding agreements to the Northern Territory (NT) Government. This is achieved through good negotiation principles, allocating roles and responsibilities, and establishing processes requiring endorsement and approvals commensurate with the risks of each Commonwealth funding agreement.

Agencies are strongly encouraged to ensure all employees engaged in developing, negotiating and seeking approval for Commonwealth funding agreements are aware of and have access to this guide.

1.3. Legislative basis and related documents

- Treasurer's Direction – Commonwealth funding agreements
- Appendix A: Federation Funding Agreement (FFA) Framework
- Appendix B: Commonwealth funding agreement development, negotiation and approval processes
- Appendix C: Commonwealth funding agreement risk assessment
- Appendix D: Commonwealth funding agreement negotiation principles
- Federal Financial Relations - Guide to drafting new FFA schedules and templates
- FMA
- Intergovernmental Agreement on Federal Financial Relations (IGA FFR)

1.4. Background

Commonwealth funding agreements (excluding Commonwealth own-purpose expenses) are governed by the FFA Framework and the IGA FFR, which provide the basis for collaboration on policy development and service delivery, and facilitate implementing economic and social reforms in areas of national importance.

The **FFA Framework** provides the governance arrangements for Commonwealth-state funding agreements. The Framework comprises five elements: the IGA FFR; Council on Federal Financial Relations (CFFR) and its role as gatekeeper; the FFA architecture; the FFA principles; and the administrative arrangements. *Appendix A: FFA Framework* provides a summary of the key components of the FFA Framework.

The **IGA FFR** outlines the objectives, principles and institutional arrangements governing financial relations between the Commonwealth and the state and territory governments. It recognises that the states have primary responsibility for many areas of service delivery but coordinated action is necessary to address Australia's economic and social challenges. It provides the foundation to establish funding agreements between the Commonwealth and states. The IGA FFR contains six principles:

1. Primary responsibility for service delivery sits with states and territories.
2. Focus on improving the wellbeing of Australians.
3. Coordinated federal action for genuinely cooperative working arrangements.
4. Accountability to the community.
5. Financial support from the Commonwealth to states and territories.
6. Greater incentives for economic and social reform.

A key feature of the IGA FFR is centralised payment arrangements that simplify payments to states and territories, aid transparency and improve the states and territories' budget processes. Under these arrangements, all payments are processed centrally by the Commonwealth's Department of Treasury and paid directly to each state and territory treasury, which is then responsible for distributing the funds within its jurisdiction.

CFFR has responsibility for all Commonwealth-state funding agreements and aims to make sure that agreements are negotiated and administered efficiently, including through the standardisation of agreements where possible. CFFR's level of involvement in the negotiation of agreements may be determined by National Cabinet, or on its own. CFFR will assume more direct involvement in agreement negotiation where an agreement is of national significance, provides substantial economic benefit, may post major social or fiscal risks, or involves particular complexities.

FFA architecture consolidates all existing federal funding agreements into two forms of agreements: national federation funding agreements and sectoral FFAs. National federation funding agreements contain significant policy content and act as sources of ongoing funding, and have relatively complex and bespoke terms and conditions. Sectoral FFAs are overarching agreements with no funding that provide a framework for facilitating sector wide initiatives under the five categories of: health, education and skills; infrastructure; environment; affordable housing; community services and other. New agreements under the relevant sectoral FFA are termed FFA schedules, which provide funding for specific sector outcomes for states and territories. National Partnership Agreements (NPA) and project agreements were part of the old Federal Financial Relations architecture and have been consolidated under sectoral FFAs. They are being phased out or renewed as FFA schedules as they expire.

The **FFA Principles** formalise CFFR's role in influencing the policy direction and content of new agreements under the FFA Framework. These principles outline how new agreements should be constructed and the process for their negotiation. The FFA Principles should be read alongside the complementary IGA FFR Principles. The eight FFR Principles are:

1. *Strong economic, social and fiscal outcomes* – new agreements will promote strong economic and social outcomes and support strong fiscal outcomes (for example: improved employment outcomes, the facilitation of private sector investment where appropriate, and regard for social or health needs or efficiency of service delivery).

2. *Limit the number of low value agreements to ensure value for money* – CFFR will monitor new agreements to limit the number of low value agreements to minimise the administrative costs associated with the agreement and avoid complexity that does not deliver significant benefit.
3. *Balance government priorities* – new agreements will recognise and balance the priorities of all levels of government.
4. *Budget autonomy and greater flexibility* – new agreements will provide states with budget autonomy and flexibility, where practical, to deliver services and infrastructure in a way that they consider will most effectively and efficiently improve outcomes for Australians.
5. *Funding certainty* – new agreements that fund ongoing services will provide states with funding certainty where possible.
6. *CFFR will retain oversight over agreements* – portfolio ministers are required to inform CFFR once they have policy authority for a new agreement.
7. *CFFR will involve portfolio ministers* – CFFR will decide whether new agreements are pursued, and the allocation of responsibilities for new agreement negotiation, implementation, monitoring, evaluation, and renewal. As required, CFFR should leverage the expertise of portfolio ministers.
8. *Accountability and transparency* – agreements, and exchanges of letters that constitute agreements, will be published on the CFFR website to promote transparency and accountability. Reporting should include what measured outcomes were achieved and evidence on their cost effectiveness.

Administrative arrangements include circulars that provide instructional advice to agreement drafters, a website and reporting to CFFR that support operation of the Framework.

2. Scope

The following Commonwealth funding agreements are included in the scope of the *Treasurer's Direction – Commonwealth funding agreements* and this guidance document:

- **national federation funding agreements** – contain significant policy content and acts as a source of ongoing funding to states and territories with relatively complex and bespoke terms and conditions.
- **sectoral federation funding agreements** – overarching agreement with no funding that provides a framework for facilitating sector wide initiatives under the five categories of: health, education and skills; infrastructure; environment; affordable housing; community services and other.
- **federation funding agreement schedules** – sit under sectoral FFAs and provide funding for specific sector outcomes for states and territories.
- **national IGA FFR agreements** – overarching agreement that defines the objectives, outcomes, outputs, performance indicators, and the roles and responsibilities that will guide the Commonwealth and states and territories in the delivery of services across a particular sector.
- **national specific purpose payment (NSPP**) – Commonwealth financial contribution to support state and territory delivery of services in a particular sector and is linked to a National IGA FFR Agreement. These payments are being phased out.
- **national partnership agreements (NPAs)** – defines the objectives, outputs and performance benchmarks related to the delivery of specified projects, to facilitate reforms or provide rewards for delivery of national reforms or achieving service delivery improvements. Project agreements are simple forms of NPAs for low value or low risk agreements.

Appendix A: FFA Framework provides a summary of in-scope agreements.

The Commonwealth own-purpose expenses, which involve Commonwealth payments for goods and services predominantly in a fee-for-service arrangement where funding is paid directly to agencies, are excluded from the scope of the Treasurer's Direction – Commonwealth funding agreements and this guidance document.

3. Development, negotiation and approval of Commonwealth funding agreements

Appendix B: Commonwealth funding agreement development, negotiation and approval process provides a summary of the roles and responsibilities of portfolio agencies and central agencies.

Portfolio agencies' role is to lead the development, negotiation and approval of Commonwealth funding agreements in accordance with the Treasurer's Direction – Commonwealth funding agreements, with central agencies providing support and advice. It is essential for portfolio agencies and central agencies to collaborate closely in the development and negotiation of Commonwealth funding agreements, to ensure sound agreement negotiation through combining portfolio agency expertise in policy and service delivery with central agency experience and expertise in Commonwealth and NT Government financial relations.

When an agreement involves multiple agencies, a lead agency should be determined before the negotiation phase begins, and if there is any uncertainty central agencies can be consulted for advice.

3.1. Agreement initiation

The development of Commonwealth funding agreements occurs following identification of an area for policy collaboration between the Commonwealth and states and territories.

The Commonwealth usually prepares initial drafts of agreements. It then seeks feedback on the proposed terms of the agreement from states and territories.

The states and territories will be responsible for developing any relevant implementation plans, once an overarching agreement has been developed and is in place.

3.2. Risk assessment

Portfolio agencies must form an overall risk determination for a Commonwealth funding agreement, consult with central agencies to confirm the risk assessment and verify an agreement's approval process.

Appendix C: Commonwealth funding agreement risk assessment provides a list of risk factors as a guide for portfolio agencies in undertaking a risk assessment for a Commonwealth funding agreement. The portfolio agency may include other relevant risk factors in consultation with central agencies.

All national federation funding agreements are considered high-risk agreements.

3.3 Negotiation parameters

Negotiation parameters for a high risk agreement require Cabinet approval, and medium and low risk agreements require consultation with and agreement from central agencies.

Commonwealth funding agreements should be consistent with the IGA FFR and FFA Framework principles. *Appendix D: Commonwealth funding agreement negotiation principles* provides a list of principles as a guide for portfolio agencies in developing negotiating parameters, and includes key IGA FFR and FFA Framework principles. These principles include:

- alignment with Territory's strategic objectives, priorities, policies and constitutional role – agreements should align with the Territory's strategic objectives, priorities, policies and constitutional role in order to maximise economic, social and fiscal outcomes for Territorians, and mitigate transfer of

Commonwealth responsibilities or liabilities to the NT Government and not risk undermining programs and strategies already in place. For example, clauses requiring maintenance of effort and cost matching may detract from established priorities

- alignment with the four Closing the Gap Priority Reforms in order to maximise life outcomes for Aboriginal people
- clear policy rationale, evidence base and program logic – agreements should have a clear policy rationale and evidence base in order to invest in projects and programs that provide good economic, social and fiscal outcomes for Territorians
- clear responsibilities and balanced accountabilities – agreements should clearly define the roles and responsibilities of the parties to ensure greater accountability and transparency, and thereby minimise delivery and financial risks. Where there is a change or shift in responsibility, transition arrangements should be provided along with clear timeframes for the transition and duration of the change, and adequate resourcing
- simple, achievable and measurable performance indicators, milestones, outputs and outcomes, and performance indicators should be:
  - meaningful, measurable and have credible links to outcomes, rather than simply measure inputs
  - achievable in a NT Government context, few in number and reflect the most relevant information to report progress in achieving the objectives of the Commonwealth funding agreement
- autonomy and flexibility:
  - the states and territories have primary responsibility for service delivery in their jurisdictions. Limitations on the NT Government's flexibility to deliver programs and services, such as directing how many workers are deployed and where services should be based are inconsistent with the IGA FFR and FFA Framework principles, and can compromise effective service delivery and outcomes. Portfolio agencies are best placed to determine how resources should be used to deliver programs and services most effectively in the NT. Flexibility for place-based service provision and stakeholder involvement in design and delivery are particularly important given the demographics and geography of the NT
  - agreements should avoid the use of financial and other input controls, such as:
    - maintenance of effort
    - co-contributions
    - income and expenditure reporting, acquittals and auditing
    - how funds are to be spent
    - procurement methods
    - staffing arrangements and costs
- adequate funding:
  - agreements should include funding that at a minimum covers the cost of program delivery, financial risks from potential cost overruns and indexation.
  - co-contributions from the NT Government should be minimised and where possible funded from within existing portfolio agency resources.

  - agreements should not require unspent funds to be quarantined or returned to the Commonwealth.

- value for money and effort – agreements should invest in economic, social and infrastructure activities that maximise returns on effort and expenditure for Territorians, and avoid complexity that does not deliver significant benefit

- limit consequential financial and service delivery impacts:

  - agreements should not impact other revenue sources as far as possible, such as GST, as well as existing NT Government programs and expenditures

  - portfolio agencies should contact central agencies to undertake a GST impact assessment for high and medium risk agreements

- appropriate minimal reporting – performance reporting should:

  - not place undue administrative or compliance burden on the NT Government

  - be limited to the minimum amount of information necessary to assess performance against the outcomes and objectives of the agreement, and should not require in-depth reporting about service delivery arrangements. Existing forms of progress reports should be used if appropriate to avoid duplication

  - not include financial reporting requirements, agreed by the accountable officer and chief financial officer, prior to being provided to the Commonwealth

  - be on a financial-year basis (calendar year for the education sector) and not be more frequent than every six months

- review and evaluation:

  - agreements should include review and evaluation provisions to allow changes that will better align activity with objectives

  - where a Commonwealth funding agreement is developed to deliver a significant reform initiative, the inclusion of a mid-term review provision may be warranted

  - a mid-term review should consider the achievement of objectives, outcomes and outputs as well as consistency with the design principles of the IGA FFR and FFA principles. Mid-term reviews assist in identifying if remedial action is required to ensure agreed outcomes or outputs are achieved by the time the agreement expires

  - a final review may be warranted in addition to, or instead of, a mid-term review. Final reviews are to provide a means of assessing whether policy objectives and outcomes of Commonwealth funding agreements have been achieved, to inform decisions regarding the treatment of expiring agreements

- consistency with IGA FFR and FFA principles and agreement templates:

  - agreements should comply with IGA FFR and FFA principles. Key principles such as autonomy and flexibility, value for money, clear responsibilities and accountabilities have been separately included in *Appendix D: Commonwealth funding agreement negotiation principles*

  - templates for Commonwealth funding agreements are available on the Council on Federal Financial Relations website. Portfolio agencies should refer to the templates and guidance material when developing or negotiating agreements, ensure the correct template is used and all mandatory clauses are provided

- funding certainty and streamlined agreements – agreements should provide funding certainty where possible by reducing the number and frequency of agreement renewals and negotiating longer term agreements.
- manage expectations – portfolio agencies may need to manage expectations to permanently maintain programs and activities, especially if Commonwealth funding is for a limited period.

3.3. Negotiation

Funding agreements with the Commonwealth must be negotiated according to Cabinet approved negotiation parameters for high risk agreements, and according to negotiation parameters agreed with central agencies for medium and low risk agreements.

Templates for Commonwealth funding agreements are available on the Council on Federal Financial Relations website. Funding schedules must outline the type and timing of Commonwealth payments, relevant performance milestones to trigger payments, and any financial contributions required of the NT Government.

Implementation plans should be developed in conjunction with the overarching agreement. Where this is not possible, these should be developed within six months of the agreement being signed.

3.4. Approval and signature

The risk assessment of a Commonwealth funding agreement will determine the approval process and who can sign the agreement. Agencies should form an overall risk determination for a Commonwealth funding agreement and discuss with central agencies to verify an agreement's approval process.

Risk factors in *Appendix C: Commonwealth funding agreement - Risk assessment factors* provide a guide to undertaking a risk assessment for a Commonwealth funding agreement. The agency may include other relevant risk factors in consultation with central agencies.

High risk agreements require Cabinet approval to accept the agreement and for the relevant portfolio minister to sign the agreement, and medium and low risk agreements require the relevant portfolio minister to accept and sign the agreement.

4. Management monitoring and evaluation of Commonwealth funding agreements

4.1. Performance reporting arrangements

Portfolio agencies are responsible for establishing and maintaining appropriate performance reporting systems and submitting required reports to the Commonwealth.

4.2. Funding and performance risks

Portfolio agencies are required to advise central agencies if funding from a Commonwealth funding agreement is at risk due to failure to achieve performance milestones and advise on the strategy to be implemented to minimise risks to the Territory. This enables central agencies to assess the impact at a whole of government level.

The financial risks associated with Commonwealth funding agreements lies with portfolio agencies. Any funding shortfalls are to be met from within agencies' resources, unless alternative arrangements have been approved by Cabinet.

4.3. Evaluation and reviews

The Commonwealth is responsible for initiating reviews of Commonwealth funding agreements, in consultation with states and territories.

Final reviews of Commonwealth funding agreements that deal with complex issues or include significant capital contributions should be completed at least 12 months prior to scheduled expiry. Reviews may be conducted independent of or jointly by the parties to the agreement. Reviews provide an opportunity for agencies to consider and engage with the Commonwealth on the design of any new or extended agreement after expiry of the current agreement.

The Australian National Audit Office (ANAO) is able to conduct performance audits on portfolio agencies receiving Commonwealth funding in accordance with the *Auditor-General Act 1997*.

Performance audits involve the independent and objective assessment of a portfolio agency's programs, policies, projects or activities for which Commonwealth funding has been provided. The audit can include consideration of cost minimisation, efficiency and effectiveness, and legislative and policy compliance.

Performance audits will usually involve the commitment of resources by both the ANAO and the portfolio agency being audited.

Audit reports (both draft and final) will be provided to the relevant portfolio agency and may be provided to the NT Auditor-General for comment. Final reports are tabled in the federal parliament and made publicly available.

Guidelines on the ANAO's website may assist portfolio agencies with performance audits.

5. Variation of Commonwealth funding agreements

Variations to Commonwealth funding agreements can occur for various reasons. Generally minor variations to performance milestones and delivery dates are likely to be deemed low risk. Agencies should undertake another risk assessment (Appendix C) and follow the requirements under the Treasurer's Direction – Commonwealth funding agreements.

Variations to Commonwealth funding agreements should not be undertaken without considering the net benefits of varying an agreement compared to developing a new agreement.

6. Expiring Commonwealth funding agreements

Accountable officers should only engage with the Commonwealth to negotiate the arrangements for cessation, extension or renewal of Commonwealth funding agreements after consulting first with the central agencies. Best practice is to consider an expiring agreement about 12 months prior to an agreements' expiry.

Consideration should be given to whether an expiring agreement will be renewed, if the associated programs will continue and how they will be funded.

The Commonwealth or states and territories may decide to withdraw from a Commonwealth funding agreement at any stage, including prior to its scheduled expiry. Portfolio agencies should develop exit strategies, with consideration of how future arrangements should be managed, including the impact of cessation to funding on continuing service provision, non-government organisations and staffing levels.

7. Glossary

Implementation plan

A bilateral agreement associated with an overarching agreement that provides additional detail as to how a jurisdiction intends to achieve the outcomes specified in the agreement.

Input control

A prescription on the manner in which an outcome and or output is delivered, or a prescription on reporting content that is inconsistent with the FFA Framework, such as income and expenditure reporting or reporting on staffing arrangements and costs.

Milestone

An action or event marking completion of a project or phase of a project. These should be clearly defined, understandable in terms of achievement or non-achievement, verifiable and not open to any subjectivity.

Outcomes

The impact a government activity is expected to have on community wellbeing. Outcomes are specific goals for change and should be strategic, high-level and observable, and expressed in clear, measurable and achievable terms.

Outputs

The projects or services being delivered by governments to achieve outcomes.

Performance indicators

Data that informs the community about how governments are progressing towards achieving objectives, outcomes and outputs. Performance indicators should provide sufficient evidence to the community that funds are progressing towards or achieving desired outcomes and outputs.

8. Appendices

Appendices	Title
Appendix A	Federation Funding Agreement Framework
Appendix B	Commonwealth funding agreement development, negotiation and approval processes
Appendix C	Commonwealth funding agreement risk assessment
Appendix D	Commonwealth funding agreement negotiation principles