Guidance document – Commonwealth funding agreements

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| Acronyms The following acronyms are used in this document | |
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| Acronyms | Full form |
| ANAO | Australian National Audit Office |
| COAG | Council of Australian Governments |
| COPE | Commonwealth own-purpose expense |
| FMA | *Financial Management Act* |
| IGA | Intergovernmental Agreement on Federal Financial Relations |
| IP | Implementation plan |
| NA | National agreement |
| NPA | National partnership agreement |
| NT | Northern Territory |
| PA | Project agreement |
| SPP | Specific purpose payment |

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# Introduction

## 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* (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.

## 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 design principles, allocating roles and responsibilities, and establishing processes requiring endorsement and approvals commensurate with the financial 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.

## Legislative basis and related documents

* FMA
* Intergovernmental Agreement on Federal Financial Relations (IGA)
* Treasurer’s Direction – Commonwealth funding agreements
* Flowchart – Commonwealth funding agreements process.

## Background

Commonwealth funding agreements (excluding Commonwealth own-purpose expenses) are governed by the IGA, which establishes a framework for collaboration on policy development and service delivery, and facilitates implementing economic and social reforms in areas of national importance.

The IGA aims to benefit all Australians through fair and sustainable financial arrangements that recognise the primary roles of the states and territories in delivering government services in key sectors and provide ongoing financial support for those services, while acknowledging the role of the Australian Government in supporting the achievement of national outcomes to improve the wellbeing of all Australians.

### Financial support

Under the IGA, the Australian Government provides financial support for states and territories service delivery efforts, such as:

* general revenue assistance, including the on-going provision of goods and services tax payments to be used by the states and territories for any purpose
* national specific purpose payments to be spent in key service delivery sectors
* national health reform funding largely for public hospital services
* Quality Schools funding for government and non-government schools
* National Housing and Homelessness funding
* national partnership and project agreement payments.

### Centralised payment arrangements

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

### Council of Australian Governments

The Council of Australian Governments (COAG), comprising of the Australian Government and state and territory treasurers, monitors the progress on all aspects of the framework for federal financial relations.

# Overview

## Scope

The following Commonwealth funding agreements are includedin the scope of the Treasurer’s Direction – Commonwealth funding agreements and this guidance document:

* **National agreements (NAs) –** define the objectives, outcomes, outputs and performance indicators, and clarify the roles and responsibilities that guide the Australian Government and states and territories in the delivery of services in key sectors, such as:
  + health
  + education
  + skills and workforce development
  + disability services
  + affordable housing
  + indigenous reform.
* **Specific purpose payments (SPPs) –** are the funding mechanisms through which the Australian Government supports states’ and territories’ efforts in delivering services in key sectors. National SPPs are usually associated with national agreements.
* **National partnership agreements (NPAs) –** support the delivery of specified projects, facilitate reforms or reward those jurisdictions that deliver on nationally significant reforms, and are typically time limited.
* **Implementation plans (IPs), NPA schedules and project plans –** subsidiary documents to some NPAs that outline how an individual jurisdiction intends to achieve the outcomes and outputs specified in the overarching NPA.
* **Project agreements (PAs) –** are a simpler form of NPA used to implement projects considered low-value and or low-risk, and are typically time limited.

The following Commonwealth funding agreements are excludedfrom the scope of the Treasurer’s Direction and this guidance document:

* **Commonwealth own-purpose expense (COPEs) –** involve Commonwealth payments for goods and services, predominantly in a fee for service arrangement where funding is paid directly to agencies. COPEs are excluded from compliance with the Treasurer’s Direction **–** Commonwealth funding agreements, however, they may form part of NAs, or NPAs where they contribute to mutually agreed objectives.

# Roles and responsibilities

It is essential for portfolio agencies and central agencies to collaborate closely in the negotiation and development of Commonwealth funding agreements, to ensure sound agreement design through combining agencies’ expertise in policy and service delivery, with central agencies’ experience and expertise in Australian Government and NT Government financial relations.

## Portfolio agencies

As soon as practicable after becoming aware of the Australian Government’s intention to negotiate a Commonwealth funding agreement, portfolio agencies must contact central agencies to advise of the Australian Government’s intention, as well as provide all draft iterations of the agreement.

Portfolio agencies must also provide central agencies with contact details of a primary contact for each agreement.

In general, portfolio agencies will lead the negotiation and development of Commonwealth funding agreements, unless they are whole of government initiatives, which require coordination by central agencies.

## Central agencies

For the purposes of the Treasurer’s Direction and this guidance document, the central agencies are:

* Department of Treasury and Finance (DTF)
* Department of the Chief Minister (DCM).

Central agencies will lead the negotiation and development of whole of government initiatives. For all other Commonwealth funding agreements, central agencies will provide support and advice to portfolio agencies throughout the negotiation and development process to ensure:

* Commonwealth funding agreements are aligned with the principles of the IGA
* integrity within federal relations
* Commonwealth funding agreements align with the NT Government’s strategic priorities.

# Development and negotiation process

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

The Australian Government usually prepares initial drafts of NAs, NPAs and PAs. It then seeks feedback on the proposed terms of the agreement from the states and territories.

The states and territories are generally responsible for developing NPA schedules, IPs and project plans where required, once an overarching agreement has been developed and is in place.

## Negotiation principles

Negotiations should focus on ensuring, at a minimum, all of the following are met:

* the specified outcomes, outputs, performance measures and reporting requirements are appropriate and achievable
* the proposed level of funding is adequate to meet the proposed targets
* the draft agreement is consistent with the principles of the IGA.

### Benefit to the Northern Territory

Funding agreements offered by the Australian Government are usually about advancing national priorities, and may not necessarily advance NT Government priorities or outcomes. The NT Government, however, will often commit to national priorities to advance Australia‑wide initiatives or support COAG decisions. It is a matter of balancing relationships and outcomes.

When assessing the benefit to the NT, agencies should consider all of the following:

* the existence of a program logic or evidence base that indicates the agreement is designed to support outcomes
* whether a component of the agreement imposes unnecessary costs and or restrictions on the delivery of services and infrastructure
* if the agreement contains onerous administrative and reporting requirements
* if there is a requirement for matched funding and whether this has been factored into the budget
* the durability of agreements entered into, and arrangements or expectations at the expiry of the agreement for ongoing funding.

### Realistic and achievable for Northern Territory

Outputs, outcomes and reporting requirements linked to payments must be realistic and achievable for the NT. There is potential for reputational damage to the NT if portfolio agencies do not comply with the terms of the agreement, along with increased risk in funding shortfalls for service or program delivery. If the terms cannot be negotiated to reflect what is achievable, the benefits of the agreement need to be weighed carefully against the potential for non-compliance.

## Development design principles

Commonwealth funding agreements are to be consistent with the design principles agreed under the IGA, and in accordance with **Appendix D** of the Treasurer’s Direction.

Templates for all Commonwealth funding agreements are available on the [Council on Federal Financial Relations](https://federalfinancialrelations.gov.au/guide-drafting-new-agreements) website. Agencies should refer to the templates and guidance material when developing or negotiating agreements, and ensure the correct template is used and all mandatory clauses provided.

Key design principles for Commonwealth funding agreements set out under the IGA include:

* Commonwealth funding agreements are to focus on the achievement of outputs and outcomes, and avoid the use of financial and other input controls, such as:
  + clauses requiring:
    - maintenance of effort
    - cost matching or sharing
    - income and expenditure reporting
    - acquittals and auditing
    - return of unspent funds or quarantine of savings
  + clauses prescribing:
    - how funds are to be spent
    - procurement methods
    - staffing arrangements and costs.
* NPA schedules, IPs, and project plans should be developed in conjunction with the overarching NPA at the time of developing the NPA. Where this is not possible, these should be developed within six months of the NPA being signed.
* Where an NPA is within the scope of any national agreement, the NPA should link directly to the objectives, outcomes, and outputs of the national agreement.

### Reducing Commonwealth prescription on programs and service delivery

The states and territories have primary responsibility for service delivery in their jurisdictions. The principles of the IGA commit to reducing Commonwealth prescription on program or service delivery by the states and territories.

Limitations on the NT Government’s flexibility to deliver programs and services, such as directing how many doctors, police, or childcare workers are deployed and where the services should be based are inconsistent with the IGA 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 be consistent with NT Government’s priorities and policies, otherwise they risk undermining programs and strategies already in place. For example, clauses requiring maintenance of effort and cost matching have a tendency to detract from established priorities.

### Clear accountability

Agreements should clearly define the roles and responsibilities of the parties to ensure greater accountability and transparency and enable coordination and integration of program areas. 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.

Performance indicators should be meaningful, measurable and have credible links to outcomes, rather than simply measure inputs. Agreements should include review and evaluation provisions to allow changes that will better align activity with objectives.

### Funding and payment schedules

Commonwealth funding agreements may:

* include Commonwealth funding only, or a combination of Commonwealth and state and territory funding contributions
* include graduated performance benchmarks and partial payment arrangements, so the NT Government can receive a proportion of total available funding for an activity where it has only partially achieved the agreed outcomes
* be determined on a competitive bidding process **–** agencies must provide copies of any bids made to central agencies.

Funding schedules must outline the type and timing of payments, relevant milestones or performance benchmarks to trigger payments and any financial contributions required of the NT Government.

Reward funding not required to be allocated to an agreed portfolio area is classified as untied NT Government revenue. Where a Commonwealth funding agreement requires reward payments to be tied for a specific purpose, this should refer to the broad portfolio area rather than a specific program.

### Performance indicators and benchmarks

Performance indicators should be few in number and reflect the most relevant information to report progress in achieving the objectives of the Commonwealth funding agreement.

All NPAs, PAs and associated IPs or project plans are required to include a performance framework that specifies how progress towards objectives and outcomes or the achievement of project milestones will be measured.

Components of a performance framework may include:

* a list of performance indicators
* information on the data collections used for quantitative indicators
* the performance benchmarks or milestones on which payments are tied
* a timetable for the delivery of performance information to Australian Government departments or third parties.

Performance indicators should be achievable in a NT Government context and consistent with performance indicators in the relevant NA.

Performance indicators and benchmarks must not be input focused.

### Financial implications and risks

Agencies must assess the financial implications and risks of all draft Commonwealth funding agreements when developing and negotiating draft agreements, and when seeking ministerial approval.

When reviewing draft Commonwealth funding agreements, agencies must refer to the range of issues outlined at **Appendix E** of the Treasurer’s Direction (such as policy intent, financial, reporting and performance) to frame analysis, and to ensure due consideration of issues from a whole of government perspective.

### Reporting obligations

Reporting obligations in Commonwealth funding agreements are not to place undue administrative or compliance burden on the NT Government.

Commonwealth funding agreements are also not to include financial reporting requirements, as there is a separate acquittal process coordinated by the DTF, Intergovernmental Relations unit.

The reporting requirements should not require in-depth reporting about service delivery arrangements. In general, project agreements are to have less onerous reporting requirements than NPAs. Existing forms of progress reports should be used if appropriate to avoid duplication.

Performance reporting should be:

* limited to the minimum amount of information necessary for the assessment of performance against the outcomes and objectives of the agreement
* agreed by the accountable officer and chief financial officer, prior to being provided to the Australian Government.

Reporting cycles must be on a financial year basis (calendar year for the education sector), and in general, must not be more frequent than every six months.

### Review provisions

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. 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.

# Endorsement and approvals process

The type of Commonwealth funding agreement along with an assessment of relevant factors will determine the endorsement and approval process and who can sign the agreement.

At a minimum, the factors to be considered include whether the Commonwealth funding agreement:

* relates to government strategic priorities, significant policy issues or proposals
* is contentious
* is high risk
* includes high value funding, including capital
* has significant financial, reporting and or administrative implications
* affects multiple NT Government agencies
* impacts state and territory relations
* represents a new policy or service arrangement, and whether Cabinet has already endorsed the new policy or service arrangement presented in the agreement.

In general, the higher the risk, complexity or strategic importance of the funding agreement, the higher the level of endorsements and approvals required before the funding agreement can be signed-off.

## Whole of government initiatives

A Commonwealth funding agreement whole of government initiative refers to an agreement with the Australian Government that either involves more than one portfolio agency, represents a strategic risk, an investment opportunity, or is of strategic importance to the NT Government.

These types of agreements tend to include high value funding, with significant financial implications. The involvement of multiple agencies and multilateral focus adds to the agreement’s complexity.

As a result, all whole of government initiatives require Cabinet approval. The Cabinet submission is coordinated by the central agencies.

Once approved by Cabinet, a whole of government initiative can only be signed by the Chief Minister.

## Agency or sector specific agreements

Agency or sector specific agreements refer to all other agreements with the Australian Government that are not whole of government initiatives.

### National agreements, specific purpose payments and national partnership agreements

For NAs, SPPs and NPAs, there are two possible endorsement and approval processes, as outlined in the Treasurer’s Direction and Appendix B of the Treasurer’s Direction:

* Chief Minister and Treasurer
* or Cabinet.

Central agencies will confirm with the portfolio agency the correct endorsement and approval process, as negotiations near finalisation. The portfolio agency is then responsible for preparing and seeking relevant endorsements and approvals.

Once approved, a NA, SPP, or NPA can only be signed by the Chief Minister.

### National partnership agreement schedules, implementation plans, project agreements and project plans

For NPA schedules, IPs, PAs, and project plans, there are three possible endorsement and approval processes, as outlined in the Treasurer’s Direction and **Appendix C** of the Treasurer’s Direction:

* Portfolio minister
* Chief Minister and Treasurer
* or Cabinet.

Central agencies will confirm with the portfolio agency the correct endorsement and approval process, as negotiations near finalisation. The portfolio agency is then responsible for preparing and seeking relevant endorsements and approvals.

Once approved, the portfolio minister can sign the funding agreement.

## Ministerial correspondence

Correspondence seeking ministerial endorsements or approvals should clearly explain the outcomes of the issues considered in **Appendix E**, along with any other issues identified during the development and negotiation process.

It is recommended agencies implement standardised reporting procedures to capture the assessment of potential issues, as this assessment occurs well before ministerial endorsements or approvals are sought. This will then help facilitate timely preparation of ministerial correspondence.

# Managing Commonwealth funding agreements

## 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 benchmarks or milestones. This enables central agencies to assess the impact at a whole of government level and, if appropriate, discuss mitigation strategies with portfolio agencies.

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.

## Reporting arrangements

Portfolio agencies are responsible for submitting required reports to the Australian Government.

NT Government expenditure of Commonwealth funding agreements is reported to the Commonwealth by DTF, consistent with the acquittal process set out in the IGA.

The DTF reports total annual expenditure for each Commonwealth funding agreement, generally within six months of the end of financial year, including NT Government contributions. This information is collected by DTF from portfolio agencies.

## Reviews

The Australian Government 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.

## Expiring agreements

Accountable officers should only engage with the Australian Government to negotiate the arrangements for cessation, extension or renewal of Commonwealth funding agreements after consulting first with the central agencies.

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

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.

## Variation of agreements

Variations to Commonwealth funding agreements should only occur because of significant policy or performance measurement issues and must comply with the requirements in the Treasurer’s Direction, including adhering to the design principles outlined in **Appendix D**.

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

## Performance audits

The Australian National Audit Office (ANAO) is able to conduct performance audits on portfolio agencies receiving Commonwealth funding under the IGA, 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.

Initial consultation will generally take place with DCM, the NT Auditor-General and the portfolio agency in relation to any proposed audits. Where possible, the NT Auditor-General will have agreements flagged for audit placed on the NT audit list.

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](https://www.anao.gov.au/work/corporate/guide-to-conducting-performance-audits) on the ANAO’s website may assist agencies when undertaking a performance audit.

# Glossary

#### Agency or sector specific agreements

All other agreements with the Australian Government that are not whole of government initiatives.

#### Bilateral agreement

An agreement between the Australian Government and one state or territory.

#### Commonwealth own‑purpose expenditure (COPE)

Expenditure by the Commonwealth in the conduct of its own general government sector activities, including for the purchase of goods and services and associated transfer payments. They are the only intergovernmental financial transfers not covered by the payment arrangements agreed under theIGA.

#### Implementation plan (IP)

A bilateral agreement associated with a NPA that provides additional detail as to how a jurisdiction intends to achieve the outcomes specified in the NPA. Not all NPAs require IPs.

#### 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 IGA, such as income and expenditure reporting or reporting on staffing arrangements and costs.

#### Intergovernmental Agreement on Federal Financial Relations (IGA)

A multilateral agreement providing the overarching framework for financial relations between the Commonwealth and the states and territories. It aims to improve the quality and effectiveness of government services by reducing Commonwealth prescriptions on service delivery, providing increased flexibility in the way states and territories deliver services to the Australian people. It also provides for clearer specification of the roles and responsibilities of each level of government and an improved focus on accountability for the achievement of outcomes.

#### 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.

#### Multilateral agreement

An agreement between the Australian Government and two or more states or territories.

#### National agreements (NA)

Ongoing agreements established under theIGA*,* guiding the Commonwealth and the states and territories in the delivery of services across key sectors (healthcare, education, skills and workforce development, disability services, affordable housing and Indigenous reform). NAs broadly define the objectives, outcomes, outputs and performance indicators for each sector, and clarify the roles and responsibilities of the parties.

#### National partnership agreements (NPA)

Time-limited agreements established under the IGA that provide financial support from the Commonwealth to states and territories for the delivery of reforms, service delivery improvements or projects of national importance. Payments under NPAs are aligned with the achievement of outcomes and outputs, as measured through clearly specified performance indicators within the agreement. They are not legally enforceable.

#### Schedule

An attachment to an agreement setting out additional details. Sometimes used to provide state-specific details similar to an IP.

#### Specific purpose payments (SPP)

Tied Commonwealth funding to the states and territories for use in providing government services in key sectors. States and territories are required to spend each SPP in the service sector relevant to the payment but they have full budget flexibility to allocate funds within that sector to achieve mutually agreed objectives set out in the relevant NA.

#### 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 benchmark

Quantifiable changes in a performance indicator, usually expressed in respect of a period of time. Performance benchmarks should be few in number, objective and measurable.

#### 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.

#### Project agreement (PA)

A simpler form of a NPA, used where the project or payment is considered straightforward, low value or low risk. PAs typically include less detail, with fewer reporting requirements and payments than NPAs. PAs do not require IPs, but sometimes require a project plan or schedule.

#### Project plan

Similar to an IP but is tied to an agreement associated with a capital project. Project plans are bilateral arrangements.

#### Whole of government initiative

An agreement with the Australian Government that either involves more than one portfolio agency, represents a strategic risk, a significant investment opportunity, is of strategic importance to the NT Government.