

GUIDANCE ON DRAFTING FEDERATION FUNDING AGREEMENT SCHEDULES

Summary

This circular provides guidance to Commonwealth portfolio agencies on drafting Federation Funding Agreement (FFA) Schedules.

I. GUIDANCE TO COMMONWEALTH PORTFOLIO AGENCIES ON DRAFTING FFA SCHEDULES

All new funding agreements, except National Agreements¹, should be developed as FFA Schedules under one of the five sectoral FFAs, which include Health; Environment; Infrastructure; Education and Skills; and Affordable Housing, Community Services and Other. It is intended that FFA Schedules should be relatively streamlined and consistent with the standard terms and conditions in the relevant sectoral FFA.

Further information, including FFA Schedule templates, is available on the Federal Financial Relations [website](#). Additionally, the Council on Federal Financial Relations (CFFR) has agreed that new FFA Schedules should be guided by the FFA Principles, which are set out in Circular No. 2021/01.

The steps below describe the process a Commonwealth portfolio agency should follow when developing a new FFA Schedule where the Commonwealth is seeking to make payments for specific purposes under the FFA Framework.

In the first instance, Commonwealth agencies that wish to develop a FFA Schedule should approach Commonwealth Treasury for advice on developing the FFA Schedule, timing considerations, and any other process questions.

Step 1 - Commonwealth Portfolio Ministers obtain Cabinet endorsement to initiate a FFA Schedule

Commonwealth Portfolio Ministers submit new policy proposals to the Expenditure Review Committee of Cabinet as part of the relevant Budget update process. The Commonwealth Treasurer or the Prime Minister may also submit a proposal on behalf of CFFR, National Cabinet or the National Federation Reform Council.

Portfolio departments that plan to develop proposals involving funding to states should work with their Departmental External Budgets team, their Agency Advice Unit at the Department of Finance, and the Commonwealth Treasury State Payments team. They will also need to seek a Commonwealth Own Purpose Expense classification from the Department of Finance, to confirm that the proposal will proceed as a payment to/through the states.

¹ National Agreements are agreements that are important drivers of policy and provide a significant amount of enduring funding in their respective key areas. For more information regarding existing or new National Agreements please contact the State Payments team in the Commonwealth Treasury at state.payments@treasury.gov.au.

Step 2 - Commonwealth portfolio agencies contact the Commonwealth Treasury to request CFFR's involvement

Once a Portfolio Minister has authority to negotiate or vary a FFA Schedule, they will need to seek CFFR's decision on the appropriate negotiation pathway for that FFA Schedule. This process can be conducted at a departmental level, with agencies notifying Commonwealth Treasury (see Circular No. 2021/03). The Treasury then refers the agency's proposal to negotiate a FFA Schedule onto CFFR for consideration.

All proposed FFA Schedules are considered by CFFR, which determines which negotiation pathway the FFA Schedule will follow. State Treasuries are at this point informed of the new agreement and invited to comment on and agree to the negotiation pathway decisions made by CFFR.

Box 1.1 sets out the pathways available to CFFR when considering the negotiation process for developing new National Agreements and schedules under the FFAs.

Box 1.1 – Negotiation Pathways

Pathway A: Treasurers would lead negotiations for schedules within their portfolios, or may be requested by First Ministers to lead negotiations on key aspects of National Agreements or other significant schedules outside their portfolios. When developing schedules under Pathway A, CFFR may sign the schedule with National Cabinet's agreement (otherwise National Cabinet can choose to do so).

Pathway B: Portfolio Ministers lead negotiations, with CFFR maintaining an active interest in negotiations and providing strategic guidance. Pathway B schedules will likely be nationally significant, involve substantial economic benefits, core social policy outcomes or major fiscal risks, or contain terms and conditions that are non-standard in nature. These could also include new or revised National Agreements.

Possible actions available to CFFR in the development of Pathway B schedules include: providing early strategic guidance, negotiating funding, requesting that Treasuries be engaged in the negotiation process, requiring regular reports on progress, requiring reports on how CFFR's strategic guidance and the FFA principles have been applied, designing key elements of a schedule, and/or providing final endorsement and signing schedules.

Pathway C: The majority of schedules (by number, not value) will be developed as Pathway C schedules under the FFA Framework. These should be relatively standardised and straightforward with the process managed by Portfolio Ministers.

- Portfolio Ministers would sign Pathway C schedules.
- To the extent that a Pathway C schedule sought to include significant non-standard terms and conditions, CFFR's approval would need to be sought before Portfolio Ministers' signature.
- Should the non-standard terms and conditions be significant, in addition to CFFR's approval being sought, a schedule's pathway may be changed to Pathway B, providing CFFR with greater oversight of the negotiations.

Step 3 - Commonwealth agencies work with Commonwealth Treasury and the Department of the Prime Minister and Cabinet to draft the schedule, and release the schedule for negotiation with states

Agencies must work with Treasury and the Department of the Prime Minister and Cabinet (PM&C) on drafting the FFA Schedule. Treasury and PM&C will advise against any unnecessary non-standard terms of the relevant FFA. If non-standard terms and conditions have been added after CFFR has

assigned a FFA Schedule to Pathway C, Commonwealth or state Treasuries may request that the FFA Schedule's pathway should be reconsidered at CFFR.

Step 4 – The Commonwealth negotiates terms with state counterparts

Once a draft schedule is agreed with Treasury and PM&C, Commonwealth agencies should begin negotiating the terms of the schedule with relevant state counterparts. Commonwealth Treasury and PM&C will also provide copies of the draft schedules to state Treasuries and state First Ministers' departments, to allow states to provide whole-of-state feedback on the draft schedule.

If there are concerns during the negotiation process, portfolio agencies should engage their respective Treasury and First Ministers departments to review the schedule and to help resolve any issues that may arise. State portfolio agencies are advised to engage with their First Ministers and Treasury departments if they have any concerns during the negotiation process.

Step 5 – Finalising and executing the schedule

Once negotiations are complete, Commonwealth agencies must share a final version with Treasury and PM&C for final agreement and then have the responsible Commonwealth Portfolio Minister sign. If CFFR requested reports or provided strategic guidance on the schedule, the responsible Commonwealth Portfolio Minister should respond via letter to the Treasurer. Pathway A and B schedules may need to return for CFFR for endorsement at this stage, if requested by CFFR.

It is the responsibility of the Commonwealth Portfolio Minister to deliver the signed schedules to their state counterparts for consideration and signature. After the FFA Schedule has been signed by a state, Treasury can begin making payments that are consistent with the terms specified in the FFA Schedule. Payments are made subject to appropriate sign-off by the responsible Minister (or a departmental officer authorised by the Minister) that any milestones have been met and payment can be made.

All finalised FFA Schedules are published on the [FFR website](#) including variations to schedules. A copy of the complete, signed FFA Schedule (and any subsequent variations) must be provided to the Commonwealth Treasury before payments can be made.

Consideration of state and territory timeframes

States are likely to require funding agreements to clear their own formal approval process, including state cabinet. Sufficient time should be allowed for this. Early and ongoing engagement between the states and the Commonwealth will help to facilitate a successful outcome to encourage both parties to negotiate in good faith and with flexibility.

The evaluation and renewal process

CFFR may consider whether to evaluate any FFA Schedules that have followed Pathway A. CFFR will decide whether they, or Portfolio Ministers evaluate any FFA Schedules that have followed Pathways B and C (if CFFR deems an evaluation is required).

An Expiring Agreements Report is updated once a year and provided to CFFR ahead of MYEFO, enabling CFFR to discuss their preferences for multi-jurisdictional expiring schedules. The Expiring Agreements Report is an opportunity for states to highlight high priority schedules, as well as discuss schedules that may not have met policy goals or are no longer a priority and should not be renewed.

Enquiries:

For questions relating to the circulars please contact the State Payments Team at Commonwealth Treasury.

Email: state.payments@treasury.gov.au