

FEDERATION FUNDING AGREEMENT – INFRASTRUCTURE

An agreement between

- the Commonwealth of Australia and
- the States and Territories, being:
 - ◆ New South Wales
 - ◆ Victoria
 - ◆ Queensland
 - ◆ Western Australia
 - ◆ South Australia
 - ◆ Tasmania
 - ◆ the Australian Capital Territory
 - ◆ the Northern Territory

This Agreement will contribute to the delivery of specified initiatives in the Infrastructure sector. It consolidates current funding arrangements in the Infrastructure sector, with the exception of sector wide funding arrangements. It also provides a framework for facilitating future funding initiatives in the Infrastructure sector.

Federation Funding Agreement – Infrastructure

OVERVIEW

1. This Federation Funding Agreement (Agreement) is created subject to the provisions of the Intergovernmental Agreement on Federal Financial Relations (IGA FFR) and should be read in conjunction with that Agreement and its Schedules, which provide information in relation to performance reporting and payment arrangements under the IGA FFR.

Purpose

2. This Agreement will contribute to the delivery of specified initiatives in the Infrastructure sector. It consolidates and rationalises National Partnership Agreements, Project Agreements and Schedules under the National Partnership for Streamlined Agreements in the Infrastructure sector, into Schedules under this agreement.
3. This agreement provides a framework for facilitating initiatives in the Infrastructure sector. Establishing this sector based agreement seeks to reduce the complexity in the funding arrangements to states while maintaining accountability and transparency.
4. This Agreement contributes to the reduction of the overall number of agreements between the Commonwealth and the States by consolidating National Partnership Agreements, and Project Agreements into Schedules attached to this agreement (FFA Schedules).

Reporting Arrangements

5. Reporting requirements in existing National Partnership Agreements, and Project Agreements will not change due to their consolidation in this agreement.
6. Reporting ensures all parties are satisfied milestones and outcomes funding is provided for are met. For future funding agreements, reporting requirements will be proportionate to the scale of funding and risk. Reporting will be meaningful and assist public understanding of how the funding has delivered benefit to the community.
7. Reporting arrangements for the duration of this Agreement are set out in Part 4 – Performance Management and Reporting.

Financial Arrangements

8. The Commonwealth and States' estimated financial contributions to the operation of this Agreement are set out in each FFA Schedule. Consolidation of agreements does not alter existing funding levels or funding profiles.

PART 1 – FORMALITIES

Parties to this Agreement

9. This Agreement is between the Commonwealth of Australia (the Commonwealth) and the States and Territories (the States). FFA Schedules to this Agreement are between the Commonwealth and signatory States.

Term of the Agreement

10. This Agreement will commence as soon as the Commonwealth and one other Party sign it.
11. The arrangements under this Agreement will be ongoing unless otherwise agreed by all Parties. CFFR's review of funding agreements may lead to variations to this Agreement.
12. This Agreement consolidates all National Partnership Agreements and Project Agreements related to the Infrastructure sector. This Agreement also transfers the Infrastructure sector Schedules from the National Partnership for Streamlined Agreements, and applies the clauses in the body of this Agreement to those Schedules. The list of consolidated agreements is at Attachment A.
13. General arrangements that apply to all initiatives are set out in the body of this Agreement. Specific arrangements for individual initiatives are set out in individual FFA Schedules. There are no changes to existing arrangements under FFA Schedules. In the event of an inconsistency between the FFA Schedules and this Agreement, the FFA Schedules will prevail.
14. Future FFA Schedules to this Agreement commence as soon as the Commonwealth and the relevant Party/Parties sign them and expire on completion of the initiative, including final performance reporting and processing of final payments against milestones.

PART 2 – OBJECTIVES AND OUTPUTS

Objectives

15. This Agreement will:
 - a. contribute to the delivery of specified initiatives in the Infrastructure sector.
 - b. consolidate current funding arrangements for the Infrastructure sector into one agreement, with the exception of sector wide funding arrangements; and
 - c. provide a framework for facilitating future funding initiatives in the Infrastructure sector, that reduces complexity while maintaining accountability and transparency.

Outputs

16. Outputs of individual initiatives to be delivered under the Agreement are set out in the individual FFA Schedules.
17. The objectives of this Agreement will be achieved by:
 - a. providing a framework for facilitating initiatives in the Infrastructure sector; and
 - b. reducing the number of agreements by consolidating National Partnership Agreements, Project Agreements and Schedules under the National Partnership for Streamlined Agreements in the Infrastructure sector, into Schedules under this agreement.

PART 3 – ROLES AND RESPONSIBILITIES OF EACH PARTY

18. Under this Agreement, the Parties have specific roles and responsibilities, as outlined below. Any additional roles specific to individual initiatives will be outlined in the FFA Schedules. This Agreement will not alter any of the existing roles and responsibilities which are set out in existing FFA Schedules.

Role of the Commonwealth

19. The Commonwealth agree to be responsible for:
- a. providing a financial contribution to the States to support the implementation of the initiatives as specified in the FFA Schedules;
 - b. monitoring and assessing the performance in the delivery of the initiatives under FFA Schedules to ensure that outputs are delivered and outcomes are achieved within the agreed timeframe;
 - c. where applicable to the initiatives outlined in the FFA Schedules¹, in accordance with the *Building and Construction Industry (Improving Productivity) Act 2016*, ensuring that financial contributions to a building project or projects are only made where a builder or builders accredited under the Australian Government Building and Construction WHS Accreditation Scheme is contracted; and
 - d. where applicable to the initiatives outlined in the FFA Schedules¹, ensuring that compliance with the Code for the Tendering and Performance of Building Work 2016 (Building Code 2016) is a condition of Australian Government funding.

Role of the States and Territories

20. The States agree to be responsible for:
- a. all aspects of delivering on initiative outputs and outcomes set out in the FFA Schedules to which they are a party;
 - b. reporting on the delivery of outputs and outcomes to which they have agreed as set out in the FFA Schedules and in Part 4 – Performance Management and Reporting;
 - c. where applicable to the initiatives outlined in the FFA Schedules to which they are a party¹, ensuring that financial contributions to a building project or projects are only made where a builder or builders accredited under the Australian Government Building and Construction WHS Accreditation Scheme is contracted; and
 - d. where applicable to the initiatives outlined in the FFA Schedules to which they are a party¹, ensuring that compliance with the Building Code 2016 is made a condition of tender for and performance of building work by all contractors and subcontractors, and providing the necessary assurances to the Commonwealth.

Shared roles and responsibilities

21. The Parties will meet the requirements of Schedule E, Clause 26 of the IGA FFR, by ensuring that prior agreement is reached on the nature and content of any events, announcements,

¹ See interpretation

promotional material or publicity relating to activities under this Agreement, and that the roles of both Parties will be acknowledged and recognised appropriately.

PART 4 – PERFORMANCE MONITORING AND REPORTING

Performance benchmarks or milestones

22. Milestones for initiatives, their relationship to the activities, expected completion dates, relevant reporting dates and expected payments to be made will be set out in the FFA Schedules. The Parties agree to meet the milestones and/or performance benchmarks set out in these FFA Schedules. The Commonwealth will make payments subject to the performance report demonstrating the relevant milestone has been met. Milestones should reflect the completion of a phase of the initiative.
23. The States will provide performance reports in accordance with requirements they have agreed to in FFA Schedules. The States will report the minimum required to demonstrate that milestones have been met against the agreed performance benchmarks or milestones, that is, yearly and at most six-monthly. Each performance report is to contain a description of actual performance in the period to date against the initiative milestones.
24. Reporting requirements should be proportionate to the risk involved by the initiative. States have the flexibility to determine how best to meet the reporting requirements of this Agreement and can make use of any appropriate data sources, including existing State reporting mechanisms.
25. Performance indicators should be meaningful, simple and comprehensible to the public. Indicators should be limited to those necessary to measure performance and inform the public about progress of initiatives or other outputs.
26. This Agreement will not alter any of the States existing reporting requirements under the FFA Schedules.

PART 5 – FINANCIAL ARRANGEMENTS

Financial contributions

27. The Commonwealth's and the States' estimated financial contributions to the operation of this Agreement, including through National Partnership payments to the States paid in accordance with Schedule D — Payment Arrangements of the IGA FFR, are shown in the FFA Schedules. All payments are GST exclusive.
28. Budgets contained in the FFA Schedules are indicative only and States retain the flexibility to move funds between components and/or years, as long as outcomes are not affected. The Commonwealth contribution can only be moved between years with the agreement of the Commonwealth.
29. If a milestone is met in advance of the due date, where the relevant performance report demonstrates that the milestone has been met, the Commonwealth may make the associated payment earlier than scheduled provided it falls within the same financial year as the original milestone date.
30. The Commonwealth's funding contribution will not be reduced where the States secure funding from other activity partners.
31. Unless otherwise stated, having regard to the agreed estimated costs of initiative specified in FFA Schedules to this Agreement, the States will not be required to pay a refund to the

Commonwealth if the actual cost of the initiative is less than the agreed estimated cost of the initiative. Similarly, the States bear all risk should the costs of an initiative exceed the agreed estimated costs. The Parties acknowledge that this arrangement provides the maximum incentive for the States to deliver initiatives cost effectively and efficiently.

32. This Agreement will not alter any existing funding levels, funding arrangements or funding profiles under the FFA Schedules.

PART 6 – GOVERNANCE ARRANGEMENTS

Enforceability of the Agreement

33. The Parties do not intend any of the provisions of this Agreement to be legally enforceable. However, this does not lessen the Parties' commitment to this Agreement.

Review of the Agreement

34. To assess if the agreement is fit for purpose and the degree to which the agreed objectives have been achieved, a review of the Agreement may commence by July 2021.

Variation of the Agreement

35. This Agreement (excluding the FFA Schedules) may be varied or terminated at any time by agreement in writing by all the Parties.
36. FFA Schedules may be amended or added at any time by agreement in writing by all relevant Commonwealth and State portfolio ministers. Attachment A may be consequentially amended to include initiatives that are added to this Agreement.
37. FFA Schedules and/or *Performance requirements, reporting and payment summary* Tables that have no impact on other Parties to the FFA Schedules may be amended or agreed at any time by agreement in writing by the relevant Commonwealth and State portfolio ministers.
38. For multilateral FFA Schedules, performance milestones or benchmarks, reporting dates, associated payments and summary of estimated financial contributions that have no impact on other Parties to the FFA Schedules may be amended at any time by agreement in writing by the relevant Commonwealth and State portfolio ministers.
39. A Party to the Agreement may terminate their participation in the Agreement at any time by notifying all Parties in writing.

Delegations

40. The relevant Commonwealth Minister is authorised, as agreed by CFFR, to agree and amend FFA Schedules and to certify that performance benchmarks set out in relevant Schedules have been achieved, so that payments may be made.
41. The relevant Commonwealth Minister may delegate the assessment of project-based performance benchmarks or milestones in FFA Schedules and the authorisation of related project payments to senior Commonwealth officials, having regard to the financial and policy risks associated with those payments.
42. Attachment A can be amended by Commonwealth Treasury officials responsible for Commonwealth-State relations.

Dispute resolution

43. Any Party may give notice to other Parties of a dispute under this Agreement.
44. Officials of relevant Parties will attempt to resolve any dispute in the first instance.
45. If a dispute cannot be resolved by officials, it may be escalated to the relevant Ministers.

Interpretation

46. The Australian Government Building and Construction WHS Accreditation Scheme (the Scheme) and the Building Code 2016 (the Code) (as amended from time to time) apply to all construction projects indirectly funded by the Australian Government through grant and other programs where, from 1 January 2015:
 - a. for the purposes of the Scheme, the value of the Commonwealth contribution is at least \$6,000,000 (including GST) and represents at least 50% of the total project value, and for the purposes of the Code, the value of the Commonwealth contribution is at least \$5,000,000 (including GST) and represents at least 50% of the total project value; or
 - b. for the purposes of the Scheme and Code, the value of the Commonwealth contribution is \$10,000,000 (including GST) or more, irrespective of the proportion of Commonwealth funding; and
 - c. for the purposes of the Scheme, the head contract for building work is valued at \$4,000,000 or more, and for the purposes of the Code, the head contract for building work is valued at \$3,000,000 or more.
47. In this Agreement:
 - a. **FFA Schedules** means all initiatives under this agreement.

LIST A – ALL SCHEDULES TO THE NATIONAL PARTNERSHIP FOR STREAMLINED AGREEMENTS CONSOLIDATED UNDER THIS AGREEMENT

Name of Schedule

LIST B – ALL NATIONAL PARTNERSHIP AGREEMENTS CONSOLIDATED UNDER THIS AGREEMENT

Name of Agreement
Land Transport Infrastructure Projects (2019-2024)

LIST C – ALL PROJECT AGREEMENTS CONSOLIDATED UNDER THIS AGREEMENT

Name of Agreement
Adelaide City Deal
Barkly Regional Deal
Darwin City Deal: Education and Community Precinct
Geelong City Deal
Launceston City Deal - Tamar River Estuary Catchment Management
Launceston City Deal - Tamar River Estuary Urban Water
Townsville City Deal: Port of Townsville Channel Capacity Upgrade
Western Sydney City Deal