

EXPLANATORY STATEMENT

*Federal Financial Relations (National Partnership payments) Determination No. 126
(October 2017)*

This determination is made under section 16 of the *Federal Financial Relations Act 2009* (FFR Act).

Background

The *Intergovernmental Agreement on Federal Financial Relations* (the IGA) provides a foundation for collaboration on policy development and service delivery between the Commonwealth and the States and Territories (the States).

When developing this framework, the Commonwealth committed to the provision of on-going financial support for the States' service delivery efforts. This includes the provision of National Partnership payments (NPP) to support the delivery of specified outputs or projects, to facilitate reforms, and to reward jurisdictions that deliver on nationally significant reforms. Under the IGA, NPPs are made on the 7th of each month, or the first business day thereafter. Extraordinary payments can be made if necessary.

The IGA's payment provisions in respect of National Partnerships are implemented by way of a determination by the Minister under section 16 of the FFR Act.

Consultation

The IGA was subject to extensive consultation with the States and was agreed by the Council of Australian Governments (COAG) on 29 November 2008. The IGA and individual National Partnership agreements are publicly available on the Council for Federal Financial Relations website.

National Partnership payments

The FFR Act (s 16) provides that the Minister (who can be any Treasury portfolio Minister) may credit amounts to the COAG Reform Fund for the purpose of providing financial assistance to the States in the form of NPP. Once the amounts are credited to the COAG Reform Fund they are debited from the fund to make the payments to the States.

The *COAG Reform Fund Act 2008* (COAG Act) establishes the COAG Reform Fund and provides that it is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

The Minister's determinations in respect of NPPs are legislative instruments and are registered on the Federal Register of Legislation, but are not disallowable. The Commonwealth has an obligation under the IGA to make NPPs in a prescribed manner. Exemption from the disallowance provisions of the *Legislation Act 2003* allows the Minister to ensure that this obligation is met.

Payment conditions

Subsection 7(2) of the COAG Act requires that the terms and conditions on which financial assistance is granted through the COAG Reform Fund are to be set out in a written agreement between the Commonwealth and the State.

National Partnerships will clearly set out the payment profile in respect of each State. Where the achievement of pre-determined milestones or performance benchmarks is required before a payment is made to a State:

- (a) in the case of payments to reward nationally significant reforms, the relevant Commonwealth Minister or delegate will make a determination as to whether the incentive payment will be paid following receipt of an independent assessment as to whether a pre-determined performance benchmark has been achieved; and
- (b) in the case of payments to facilitate reform and to support the delivery of specified outputs or projects, the relevant Commonwealth Minister or delegate will make a determination, based upon expenditure and performance reporting arrangements set out in the National Partnership, as to whether the facilitation or project payment will be paid.

Where the achievement of a performance benchmark is not required before a payment is made to a State, payments will be scheduled in accordance with the payment profile set out in the National Partnership.

Debit limits

Under subsection 16(3) of the FFR Act the total amount credited to the COAG Reform Fund for the purpose of making NPPs in the financial year starting on 1 July 2017 must not exceed \$25,000,000,000.00.

The amounts specified in Table 1 are the total amounts determined in the 2017-18 financial year in respect of NPPs, including this determination.

The total amount determined for NPPs to date in the 2017-18 financial year does not exceed the debit limit.

Table 1: Total cumulative payments of National Partnership payments in 2017-18

State	Amount of National Partnership Payments
New South Wales	\$276,669,431.34
Victoria	\$96,333,872.68
Queensland	\$233,843,182.50
Western Australia	\$191,195,639.93
South Australia	\$49,873,130.09
Tasmania	\$43,418,074.29
Australian Capital Territory	\$5,916,763.81
Northern Territory	\$36,312,263.42
Total	\$933,562,358.06
debit limit for 2017-18	\$25,000,000,000.00
Remaining debit limit for 2017-18	\$24,066,437,641.94

Commencement

The determination is taken to have commenced retrospectively on 4 October 2017.

Revocation of previous determination

The determination revokes the *Federal Financial Relations (National Partnership Payments) Determination No. 125 (October 2017)*, effective from the commencement date of that determination (ie, 4 October 2017). Accordingly, that determination has (and is taken to have had) no legal effect. This is necessary to correct an error in that determination.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

National Partnership agreements set out mutually-agreed objectives, outcomes, outputs and performance requirements for the specific services, project or reform to be delivered under that agreement. Each agreement is negotiated between the Commonwealth and the relevant States. Through the negotiation process, the States have input into the setting of benchmarks to be used to measure progress in delivering services, projects and reforms. As such, the benchmarks in National Partnership agreements are agreed by all parties as achievable and demonstrating the realisation of the mutually-agreed policy objectives.

The States meet the overwhelming majority of performance requirements in National Partnership agreements. The associated funding is then paid in accordance with the determinations for NPP, consistent with the terms and conditions of the relevant agreement. The setting of performance requirements promotes the progressive realisation of human rights by creating an incentive for the efficient delivery of services, projects and reforms in sectors such as health, education, housing and community services. For example, this determination includes payments that support:

- the rights of people with disabilities to full and effective participation and inclusion in society (art 3, Convention on the Rights of Persons with Disabilities);
- the right to education (art 13, International Covenant on Economic, Social and Cultural Rights; art 28, Convention of the Rights of the Child; art 24, Convention on the Rights of Persons with Disabilities);
- the right to be physically and mentally healthy (art 12, International Covenant on Civil and Political Rights);
- the right to adequate housing (art 11, International Covenant on Civil and Political Rights); and
- the right to an adequate standard of living (art 11, International Covenant on Civil and Political Rights).

At an aggregate level, total NPPs vary from month to month and year to year for a variety of reasons. Different projects and reforms are delivered over different time periods, and annual funding allocations under individual agreements vary over the term of the agreement depending on the pace at which services, projects or reforms are expected to occur. Structural changes to the way that services are provided can also mean that funding arrangements change. For example, funding for the provision of disability services is currently experiencing significant change as the Commonwealth and the States transition to full implementation of the National Disability Insurance Scheme. As such, and more generally, trends in NPPs for sectors that support human rights do not necessarily reflect trends in overall payments to the States for service provision.