

EXPLANATORY STATEMENT

*Federal Financial Relations (National Partnership Payments) Determination No. 168
(May 2020)*

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).

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

National Partnership payments 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 before it 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 on Federal Financial Relations website.

National Partnership payments

All money raised or received by the Commonwealth forms part of the Consolidated Revenue Fund. Legislative authority is required for the Commonwealth to spend money from the Consolidated Revenue Fund. The *Public Governance, Performance and Accountability Act 2013* (s 80) provides that, if another Act establishes a special account and identifies the purposes of the account, the Consolidated Revenue Fund is appropriated up to the balance of the account at any point in time for expenditure for the purposes of the account.

In this context, the relevant Act is the *COAG Reform Fund Act 2008* which establishes the COAG Reform Fund, a special account which has the purpose of making grants and financial assistance to States and Territories.

The FFR Act (s 16) then allows the Minister (who can be any Treasury portfolio Minister) to credit funds to the COAG Reform Fund for the purpose of providing financial assistance to the states in the form of National Partnership payments. Once the funds are credited to the COAG Reform Fund they are debited from the fund to make the payments to the states.

The Minister's determinations in respect of National Partnership payments 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 National Partnership payments 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 Reform Fund Act 2008* requires that the terms and conditions on which financial assistance is granted are to be set out in a written agreement between the Commonwealth and the state.

National Partnerships are the written agreements that set out the terms and conditions for payments made under section 16 of the FFR Act. 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 makes 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 makes 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 are 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 National Partnership payments in the financial year starting on 1 July 2019 must not exceed \$25,000,000,000. This amount is set out in *Supply Act (No. 2) 2019-2020* and *Appropriation Act (No. 2) 2019-2020*.

The total amount determined for National Partnership payments to date in the 2019-20 financial year does not exceed the debit limit.

Commencement

The determination commenced on the day it was made.

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 and Territories. Through the negotiation process, the States and Territories 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 and Territories meet the overwhelming majority of performance requirements in National Partnership agreements. The associated funding is then paid in accordance with the determinations for National Partnership payments (NPPs), 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 (Article 3, Convention on the Rights of Persons with Disabilities);
- the right to education (Article 13, International Covenant on Economic, Social and Cultural Rights; Article 28, Convention of the Rights of the Persons with Disabilities);
- the right to be physically and mentally healthy (Article 12, International Covenant on Civil and Political Rights);
- the right to adequate housing (Article 11, International Covenant on Civil and Political Rights);
- realisation of the right to work through vocational training (Article 6, International Covenant on Economic, Social and Cultural Rights; Article 27, Convention on the Rights of Persons with Disabilities); and
- the right to an adequate standard of living (Article 11, International Covenant on Civil and Political Rights).

At an aggregate level, total National Partnership payments 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 and Territories transition to full implementation of the National Disability Insurance Scheme. As a result of these variations, trends in NPPs for sectors that support human rights do not necessarily reflect trends in overall payments to the States and Territories for service provision.