

PROCESSES FOR DRAFTING, NEGOTIATING, FINALISING AND VARYING AGREEMENTS UNDER THE FEDERAL FINANCIAL RELATIONS FRAMEWORK, AND RELATED ESTIMATES AND PAYMENTS PROCESSES

SUMMARY

This circular has been developed by Commonwealth, state and territory agencies¹ to provide guidance to officers on the processes for developing, negotiating and agreeing National Partnerships, Implementation Plans and Project Agreements under the federal financial relations framework, and related estimates and payments processes.

This circular sets out the following:

- I. Pre-drafting processes for National Partnerships and Project Agreements
- II. Drafting, negotiating and finalising National Partnerships
- III. Drafting, negotiating and finalising Implementation Plans
- IV. Drafting, negotiating and finalising Project Agreements
- V. Publishing finalised agreements
- VI. Varying National Partnerships, Implementation Plans and Project Agreements
- VII. Payments and estimates processes for finalised agreements

Appendix A – National Partnership Road Map

Appendix B – National Partnership comments template

Appendix C – Implementation Plan Road Map

Appendix D – Project Agreement Road Map

Appendix E – Variation template

First ministers' departments and treasuries must be consulted on draft agreements as early as possible in their development and before negotiations between Commonwealth and state portfolio agencies commence. Portfolio agencies should read this circular in conjunction with the [Federal Finances Circulars 2015/01, *Developing National Partnerships under the Federal Financial Relations Framework*](#) and [2015/02, *Developing Implementation Plans for National Partnerships*](#).

¹ The term 'agencies' is used to refer to Commonwealth and State central and portfolio agencies. However, from 1 July 2014, Commonwealth portfolio agencies are known as non-corporate Commonwealth entities under the *Public Governance, Performance and Accountability Act 2013*.

I. PRE-DRAFTING PROCESSES FOR NATIONAL PARTNERSHIPS, IMPLEMENTATION PLANS AND PROJECT AGREEMENTS

There are several requirements that must be met by Commonwealth ministers and their portfolio agencies before the process of drafting a National Partnership or Project Agreement begins. Specifically, Commonwealth portfolio ministers must obtain policy and Budget authority for the proposal, and Commonwealth agencies are required to obtain a payment classification from the Department of Finance for all related payments, before a National Partnership or Project Agreement is considered.

Once policy and Budget authority has been obtained and if the proposal involves payments classified as National Partnership Payments, then Commonwealth portfolio agencies are responsible for consulting with Commonwealth central agencies to determine whether a National Partnership or Project Agreement will be required to implement the proposal, or whether an existing National Partnership or Project Agreement can be used to deliver the objectives, outcomes and outputs.

1. 1 Policy and Budget approval

1. Commonwealth portfolio ministers are responsible for obtaining policy and Budget authority for any proposal requiring an agreement with the States and Territories (States) before approaching Commonwealth central agencies regarding the drafting and negotiation of an agreement under the Intergovernmental Agreement on Federal Financial Relations (Intergovernmental Agreement).

2. All New Policy Proposals that have financial implications affecting the Commonwealth's forward estimates are subject to the processes set out in the Budget Process Operational Rules and Cabinet decisions relating to the achievement of the Commonwealth's fiscal targets.

- All New Policy Proposals that have actual or potential financial implications must be considered in the Budget process unless the Prime Minister agrees otherwise.
- All correspondence from Commonwealth portfolio ministers to the Prime Minister relating to New Policy Proposals must be copied to the Treasurer and the Minister for Finance. Sufficient time must be provided for the Treasurer and the Finance Minister to provide timely advice to the Prime Minister on the merit of the proposal, and savings/offset options before a decision is required.

3. New Policy Proposals should not pre-empt the requirement for a National Partnership where programme design and payment details are not known. Rather, they should seek authority to enter into an appropriate form of agreement with the States, with the form of that agreement to be determined in consultation with Commonwealth central agencies once programme design and payment details are known and the payment has been classified by the Department of Finance (Finance). See [Section 1. 2 Classification of payments by the Department of Finance](#).

4. New Policy Proposals may reflect consultations with the States, including through review and/or evaluation processes, subject to Budget-in-confidence considerations. Where National Partnerships are the expected form of implementation, collaborative working arrangements will be required to facilitate a focus on long term policy development and enhanced government service delivery, particularly in areas of nationally significant reform or service delivery improvements, consistent with the objectives of the Intergovernmental Agreement. This recognises that the States have primary responsibility for many of the service sectors covered by the Intergovernmental Agreement, but that coordinated action is necessary to address many of the economic and social challenges that

face the Australian community. During the policy development phase, Commonwealth portfolio agencies, in consultation with central agencies, should also consider jurisdiction specific differences where initiatives are likely to involve the development of National Partnerships.

5. Authority for any new funding must be obtained through Budget processes prior to any Commonwealth commitment being made and before drafting commences. See [Budget Process Operational Rules](#) for further information.

1.2 Classification of payments by the Department of Finance

6. The classification of payments determines whether a payment falls under the federal financial relations framework. As outlined in *Federal Finances Circular 2015/01 on Developing National Partnerships under the Federal Financial Relations Framework*, Finance has responsibility for classifying payments.

7. Payments to the States can be classified as either Commonwealth Own Purpose Expenses (COPEs) or National Partnership Payments (NP payments). Commonwealth Own Purpose Expenses fall outside the Intergovernmental Agreement and require funding agreements other than National Partnerships. All NP payments fall within the Intergovernmental Agreement and require either National Partnerships or Project Agreements, which are a type of National Partnership. National Partnerships cannot be used as a vehicle for paying COPEs to the States. However, where COPEs and State Own-Purpose Expenses directly contribute to the objectives, outcomes and outputs of a National Partnership agreement that also includes NP payments, estimates should be disclosed in the National Partnership to provide context.

8. When determining whether a payment is a COPE or an NP payment, Commonwealth portfolio agencies should consider relevant programme information against the criteria of contestability and the nature of transactions as described in [Resource Management Guide No. 419, Classification of payments to other levels of government for specific purposes and Commonwealth Own-Purpose Expenses](#).

9. Specifically, Commonwealth portfolio agencies should consider whether the funding is to another level of government and if so, whether there is contestability, i.e. whether the funding is available to all sectors of the economy including other levels of government. If the answer to that question is “yes”, then the payment will be a COPE and a National Partnership will not be required, although another form of funding agreement will be required. If the answer is “no”, then Commonwealth portfolio agencies should consider the nature of the transactions. If the State government does not have primary responsibility for the activity, then the payment will be a COPE. However, if the State government does have primary responsibility for the activity, then the payment would be classified as an NP payment and a National Partnership or Project Agreement will be required.

10. Once Commonwealth portfolio agencies have considered these issues and conducted the necessary analysis, they must consult with Finance (cope@finance.gov.au) so that their conclusions regarding the classification of the payment can be verified.

11. An agreement under the federal financial relations framework must not be drafted or negotiated before the classification of any proposed payment is verified by Finance.

1.3 Type of agreement

12. Once policy and Budget authority has been obtained and if the proposal involves payments classified as NP payments, Commonwealth portfolio agencies should contact the Departments of the Prime Minister and Cabinet and Treasury to determine whether a National Partnership or a Project Agreement will be required to implement the proposal, or whether an existing National Partnership or Project Agreement can be used to deliver the objectives, outcomes and outputs. Contact may be made directly or through the following inboxes: csrs@pmc.gov.au or federalrelationssecretariat@treasury.gov.au.

13. There are two types of National Partnerships: *project* National Partnerships that contain project payments; and *reform* National Partnerships that contain reward payments and often facilitation payments. Where facilitation and reward payments are not appropriate, initiatives that are regarded as reforms are implemented as *project* National Partnerships. See [Federal Finances Circular 2015/01, Developing National Partnerships under the Federal Financial Relations Framework](#) for further information on payment types and payment design.

14. National Partnerships:

- define the mutually agreed objectives, outcomes, outputs and performance benchmarks or milestones related to the delivery of specific projects, improvements in service delivery or reform;
- may require the use of schedules including Implementation Plans;
- may be bilateral or multilateral;
- are signed by Commonwealth and State first ministers; and
- are required to be drafted and negotiated in consultation with Commonwealth and State first ministers' and treasury departments. See [Part II, Drafting, negotiating and finalising National Partnerships](#).

15. Project Agreements are a type of *project* National Partnership appropriate for projects that are relatively low value and/or low risk activities. They are:

- simple in nature and constitute the entire agreement – if there are programme characteristics that mean that essential elements such as funding and performance reporting information or jurisdiction-specific implementation details could not be captured in the Project Agreement itself, then a National Partnership would be required;
- bilateral or multi-lateral, provided all the relevant information can be captured in the Project Agreement itself;
- outputs-focussed and do not include aspirational objectives;
- signed by relevant Commonwealth and State portfolio ministers; and
- required to be drafted and negotiated in consultation with Commonwealth and State first ministers' and treasury departments. See [Part IV, Drafting, Negotiating and Finalising Project Agreements](#).

16. If Commonwealth portfolio agencies consider that a Project Agreement is appropriate, they must provide the Departments of the Prime Minister and Cabinet and Treasury with:

- a short description of the initiative, its funding and programme design, including whether it is a bilateral or multi-lateral agreement, and any relevant implementation issues;
- information on policy and Budget approval for the initiative/s including the duration of funding and the allocation of funding across the Budget and forward estimates period; and
- an explanation of why a Project Agreement is appropriate, i.e. how it meets the criteria described above and in particular, why it is considered to be low value or low risk or both.

17. Once this information is received, the Departments of the Prime Minister and Cabinet and Treasury will consult to determine whether a National Partnership or a Project Agreement is appropriate, and advise the Commonwealth portfolio agency of the outcome.

II. DRAFTING, NEGOTIATING AND FINALISING NATIONAL PARTNERSHIPS

Commonwealth portfolio agencies are responsible for the drafting and negotiation of National Partnerships, in consultation with central agencies. Consultation on policy and programme design issues should occur between Commonwealth and State portfolio agencies following policy and Budget approval. However draft National Partnerships cannot be provided to the States at any stage until a draft has been agreed between Commonwealth central and portfolio agencies for circulation to the States.

The Departments of the Prime Minister and Cabinet and Treasury will initiate negotiations through State first ministers' and treasury departments respectively, and the process as outlined in this section should be followed until a draft National Partnership is agreed in-principle by Commonwealth and State central and portfolio agencies.

The Commonwealth portfolio minister is required to write to the Prime Minister seeking approval to the final National Partnership and approval for it to be circulated to State first ministers for signature.

2.1 Drafting National Partnerships

18. National Partnerships are drafted by the Commonwealth agency with portfolio responsibility for the initiative in question, in consultation with Commonwealth central agencies. Unless otherwise agreed, accountability for the negotiation, policy, implementation and evaluation aspects of National Partnerships rests with portfolio ministers.

19. Following Commonwealth policy and Budget approval of the proposal, consultation on policy and programme design issues should occur between Commonwealth and State portfolio agencies in accordance with the collaborative nature of National Partnerships, noting that the Commonwealth may have consulted with States, including through review and/or evaluation processes, as a means of informing initial policy design, subject to Budget-in-confidence considerations. States and Territories have the opportunity to provide feedback on the appropriate form of agreement and whether an existing agreement could be used (recognising that, in some circumstances, the Commonwealth will have reached a view in advance as to the preferred type of agreement). Consultations with other parties as appropriate, including data collectors and providers such as the Australian Bureau of Statistics, can also start during the drafting process, although this is most likely to occur in relation to reform National Partnerships.

20. Portfolio agencies take the lead in most consultations, collaborating with their respective central agencies particularly in ensuring any cross-portfolio issues are considered. For significant National Partnerships, COAG and Senior Officials may wish to be involved in the policy and programme design.

- Draft National Partnerships or documents that could be regarded as draft National Partnerships cannot be provided to State portfolio agencies at this stage of the process. Rather, policy and programme design issues should be canvassed with State portfolio agencies in issues papers if this is required.

21. Commonwealth portfolio agencies must consult with Commonwealth central agencies on all draft National Partnerships before they are provided to the States. This usually involves an initial meeting to discuss the requirements and processes for drafting and negotiating National Partnerships and provide guidance material, followed by the portfolio agency drafting the agreement and providing it to the Departments of the Prime Minister and Cabinet and Treasury for comment. The consultation process between Commonwealth central and portfolio agencies continues until a draft has been agreed for negotiation with the States.

22. Where reform National Partnerships are proposed to be developed, particular consideration must be given to the provisions of the Intergovernmental Agreement, as well as to payment design, particularly the use of reward payments. Commonwealth portfolio agencies must consult with the Departments of the Prime Minister and Cabinet and Treasury on these matters. They must also consult on the use of the conceptual framework which supports performance reporting under the Intergovernmental Agreement, and is of particular relevance to reform National Partnerships.

23. See [Federal Finances Circular 2015/01, *Developing National Partnerships under the Federal Financial Relations Framework*](#) for information on policy issues relating to the development of National Partnerships.

2.2 Negotiating National Partnerships

24. The Department of the Prime Minister and Cabinet will initiate negotiations with State first ministers' departments on the draft National Partnership, and Commonwealth Treasury will initiate negotiations with State treasuries. In most cases, the Commonwealth and State portfolio agencies will then have the lead on negotiations and will have responsibility for keeping central agencies informed of progress. In some cases, particularly in the case of reform National Partnerships, central agencies may lead the negotiations.

25. Once a draft National Partnership has been agreed by Commonwealth central and portfolio agencies, the following process applies:

- i. the Department of the Prime Minister and Cabinet emails the draft National Partnership to State first ministers' departments and copies it to the Commonwealth Treasury and portfolio agency contact officers;
- ii. Commonwealth Treasury emails the draft National Partnership to State treasuries and copies it to the Department of the Prime Minister and Cabinet and portfolio agency contact officers;

*** States should aim to provide comments on the draft National Partnership within two weeks. ***

- iii. States provide comments directly into the comments template at [Appendix B](#) (not in an email or in track changes), consolidated through first ministers' departments and sent to the

Department of the Prime Minister and Cabinet (each jurisdiction's comments should reflect input from the relevant State portfolio agency, treasury and first minister's department);

*** The Commonwealth should aim to respond to comments and provide an updated comments table and a revised draft National Partnership to the States within two weeks. ***

- iv. Commonwealth portfolio agencies consolidate comments by jurisdiction in one version of the table, draft initial responses (particularly to policy issues), and provide the table to the Departments of the Prime Minister and Cabinet and Treasury;
- v. relevant Commonwealth portfolio and central agencies, including Finance as appropriate, meet either face to face or by teleconference, to discuss States' comments and agree on responses (this step can occur after step vii, depending on the complexity of issues raised by the States);
- vi. the Departments of the Prime Minister and Cabinet and Treasury, in consultation, update the comments table with responses to all State comments relating to the Intergovernmental Agreement and the associated federal financial relations framework, but may also comment on policy issues, and amend the draft National Partnership in track changes where States' comments are accepted;
- vii. the Commonwealth portfolio agency updates the comments table with responses to all State comments relating to policy issues, and amends the draft National Partnership in track changes where States' comments are accepted;
- viii. the Departments of the Prime Minister and Cabinet and Treasury, and the Commonwealth portfolio agency agree on the updated comments table and revised draft National Partnership;
- ix. the Department of the Prime Minister and Cabinet emails the updated comments table and revised draft National Partnership to State first ministers' departments and copies it to the Commonwealth Treasury and portfolio agency contact officers;
- x. Commonwealth Treasury emails the revised draft National Partnership and updated comments table to State treasuries and copies it to the Prime Minister and Cabinet and portfolio agency contact officers; and
- xi. Commonwealth central and portfolio agencies follow steps iii. to x. until the draft National Partnership is agreed in principle at officer level.

26. Consideration of whether Implementation Plans are required for new National Partnerships should occur during the negotiation phase as Implementation Plans should be developed in conjunction with the overarching National Partnership. Where this is not possible, the Implementation Plan should be developed within six months of the National Partnership being signed. See Section 3.1 of this circular on Drafting Implementation Plans.

2.3 Finalising National Partnerships

27. Once the draft National Partnership is agreed in principle by Commonwealth and State central and portfolio agencies, the Commonwealth portfolio minister writes to the Prime Minister seeking agreement to the final National Partnership and approval for it to be circulated to State first ministers for signature.

28. The Department of the Prime Minister and Cabinet is responsible for coordinating the signing process with State first ministers' departments. National Partnerships can be signed at a COAG

meeting where there is prior in-principle agreement from all parties. Otherwise, they can be signed out-of-session by correspondence.

29. In limited circumstances, first ministers may decide to delegate authority to sign the National Partnership to the relevant portfolio ministers, following consultation between the Department of the Prime Minister and Cabinet and State first ministers' departments.

30. The Commonwealth should not sign the National Partnership until at least one State has signed. Preferably, all States which are parties to the National Partnership should have signed before the Commonwealth.

31. See the National Partnership Road Map at [Appendix A](#) for a summary of the process for developing, drafting, negotiating and finalising National Partnerships, and [Part V, Publishing finalised agreements](#).

III. DRAFTING, NEGOTIATING AND FINALISING IMPLEMENTATION PLANS

Implementation Plans are drafted by the relevant jurisdiction, in consultation with the Commonwealth portfolio agency. However, the Commonwealth is responsible for drafting certain aspects of Implementation Plans, for example, those parts that detail Commonwealth payments to the States.

Portfolio agencies are responsible for the negotiation, policy, implementation and review aspects of Implementation Plans. Commonwealth portfolio agencies must consult with Commonwealth central agencies on draft Implementation Plans once an initial draft has been agreed in principle between the Commonwealth and State portfolio agencies.

The process as outlined in this section should be followed until a draft Implementation Plan is agreed in principle by Commonwealth and State central and portfolio agencies and final clearance has been received. The State portfolio minister provides the Implementation Plan to the Commonwealth portfolio minister for agreement or signature, noting that where payment information and the performance benchmarks or milestones on which payments are to be based are included in the Implementation Plan, the Commonwealth portfolio minister will provide this information to the State portfolio minister for inclusion in the Implementation Plan.

3.1 Drafting Implementation Plans

32. Implementation Plans are not required for all National Partnerships, and should not be used for Project Agreements.

33. Implementation Plans may be required in National Partnerships where:

- there are material differences in jurisdictional context or approach;
- jurisdictions agree that the complexity and risks inherent in the reform or project warrant additional transparency; or
- there is not sufficient detail in the National Partnership specific to each jurisdiction concerning performance and reporting arrangements, noting that these details should be in the National Partnership (it is only in exceptional circumstances that they should be required in the Implementation Plan).

34. Wherever possible, Implementation Plans should be developed in conjunction with the overarching National Partnership. Where this is not possible, the Implementation Plan should be developed within six months of the National Partnership being signed.
35. Implementation Plans are generally drafted by the jurisdiction responsible for the delivery of the project or reform, in consultation with the relevant Commonwealth portfolio agency. However, Commonwealth portfolio agencies may have specific responsibilities for some aspects of Implementation Plans. For example, where the National Partnership does not include State-specific financial arrangements, the Commonwealth portfolio agency is responsible for drafting those sections of the Implementation Plan that detail Commonwealth payments to the State in question, including the amount and the State-specific performance benchmarks or milestones.
36. See [Federal Finances Circular 2015/02, *Developing Implementation Plans for National Partnerships*](#) for further information.
37. Accountability for negotiation, policy, implementation and review aspects of Implementation Plans rests with portfolio ministers. The authority to agree or amend Implementation Plans is generally delegated by first ministers to relevant Commonwealth and State portfolio ministers in the overarching National Partnership.
38. Commonwealth portfolio agencies must consult with Commonwealth central agencies on draft Implementation Plans once an initial draft has been agreed in principle between the Commonwealth and State portfolio agencies. The consultation process between Commonwealth and State central and portfolio agencies continues until it is agreed in principle at officer level. State portfolio agencies are responsible for consulting with their central agencies.

3.2 Negotiating Implementation Plans

39. Negotiations on Implementation Plans will be led by Commonwealth and State portfolio agencies, in consultation with their respective central agencies. The Commonwealth portfolio agency should consult with the Departments of the Prime Minister and Cabinet and Treasury on any State comments relating to the Intergovernmental Agreement and the associated federal financial relations framework.
40. Once an Implementation Plan has been drafted by the relevant State portfolio agency in consultation with the relevant Commonwealth portfolio agency, the following process applies:
- i. the Commonwealth portfolio agency consults with the Departments of the Prime Minister and Cabinet and Treasury on any issues relating to, or which may relate to, the Intergovernmental Agreement and the associated federal financial relations framework, and related policy issues;
 - ii. the Commonwealth portfolio agency provides the State portfolio agency with comments on the draft Implementation Plan, noting that comments have developed in consultation with the Departments of the Prime Minister and Cabinet and Treasury;
 - iii. where Commonwealth comments are not accepted, the State advises the Commonwealth portfolio agency;
 - iv. Commonwealth central and portfolio agencies follow steps i. to iii. until the draft Implementation Plan is agreed in principle at officer level; and

- v. the Commonwealth portfolio agency provides the revised draft Implementation Plan to the Departments of the Prime Minister and Cabinet and Treasury for final clearance, and checking for consistency with the Intergovernmental Agreement.

3.3 Finalising Implementation Plans

- 41. Once the draft Implementation Plan is agreed in principle by Commonwealth and State central and portfolio agencies, and final clearance has been received from the Departments of the Prime Minister and Cabinet and Treasury, the State portfolio minister provides the Implementation Plan to the Commonwealth portfolio minister for agreement and signature where the Implementation Plan is limited to the State explaining how the reform or project will be implemented in its own jurisdiction. However, where payment information and the performance benchmarks or milestones on which payments are to be based are included in the Implementation Plan, the Commonwealth portfolio minister will provide this information to the State portfolio minister for inclusion in the Implementation Plan. The State portfolio minister will then submit the Implementation Plan to the Commonwealth portfolio minister for agreement and signature.
- 42. Authority to agree or sign Implementation Plans may not be delegated below the relevant portfolio minister, as portfolio ministers are accountable for overarching National Partnerships, and authority to agree or amend Implementation Plans has already been delegated by first ministers to relevant portfolio ministers.
- 43. The Commonwealth should not agree or sign the Implementation Plan until the relevant State has agreed. Ministerial agreement to the Implementation Plan can be facilitated by correspondence, but the Implementation Plan itself should include ministers' signatures and the date on which it was signed for public accountability and transparency reasons.
- 44. See the Implementation Plan Road Map at [Appendix C](#) for a summary of the process for developing, drafting, negotiating and finalising Implementation Plans, and [Part V, Publishing finalised agreements](#).

IV. DRAFTING, NEGOTIATING AND FINALISING PROJECT AGREEMENTS

Commonwealth portfolio agencies are responsible for the drafting of Project Agreements, in consultation with central agencies. Accountability for negotiation, policy, implementation and review aspects of Project Agreements rests with portfolio ministers.

Consultation on policy and programme design issues should occur between Commonwealth and State portfolio agencies following policy and Budget approval. However, draft Project Agreements cannot be provided to the States until a draft has been agreed between Commonwealth central and portfolio agencies for circulation to the States.

The process as outlined in this section should be followed until a draft Project Agreement is agreed in principle by Commonwealth central and portfolio agencies and final clearance is received.

The Commonwealth portfolio minister provides the Project Agreement to the State portfolio minister(s) for signature, and the Commonwealth should not sign the Project Agreement until the relevant State(s) have signed.

4.1 Drafting Project Agreements

45. Project Agreements are drafted by the Commonwealth agency with portfolio responsibility, in consultation with Commonwealth central agencies. Accountability for negotiation, policy, implementation and review aspects of Project Agreements rests with portfolio ministers.

46. Following Commonwealth policy and Budget approval of the proposal, and agreement of Commonwealth central agencies to use of a Project Agreement, consultation on policy and programme design issues should occur between Commonwealth and State portfolio agencies, noting that the Commonwealth may have consulted with States, including through review and/or evaluation processes, as a means of informing initial policy design, subject to Budget-in-confidence considerations. States and Territories have the opportunity to provide feedback on the appropriate form of agreement and whether an existing agreement could be used (recognising that, in some circumstances, the Commonwealth Government will have reached a view in advance as to the preferred type of agreement). Portfolio agencies take the lead in consultations with their State counterparts.

- Draft Project Agreements or documents that could be regarded as draft Project Agreements cannot be provided to State portfolio agencies at this stage of the process. Rather, policy and programme design issues should be canvassed with State portfolio agencies in issues papers if this is required.

47. Commonwealth portfolio agencies must consult with Commonwealth central agencies on draft Project Agreements before they are provided to the States. This usually involves an initial discussion regarding the processes for drafting and negotiating Project Agreements and the provision of guidance material, followed by the portfolio agency drafting the agreement and providing it to the Departments of the Prime Minister and Cabinet and Treasury for comment. The consultation process between Commonwealth central and portfolio agencies continues until a draft has been agreed for circulation to the States.

4.2 Negotiating Project Agreements

48. Once a draft Project Agreement has been agreed by Commonwealth central and portfolio agencies, the following process applies:

- i. the Departments of the Prime Minister and Cabinet and Treasury advise the relevant State first ministers' department and treasury that a Project Agreement has been drafted and will be circulated for negotiation between Commonwealth and State portfolio agencies;
- ii. the Commonwealth portfolio agency emails the draft Project Agreement to the State portfolio agency for comment, noting that it has been developed in consultation with the Departments of the Prime Minister and Cabinet and Treasury;

*** The State should aim to provide comments on the draft Project Agreement within two weeks. ***

- iii. the State portfolio agency consults with its central agencies and provides comments to the Commonwealth portfolio;

*** The Commonwealth should aim to respond to comments and provide a revised draft Project Agreement in track changes where the State's comments are accepted, within two weeks. ***

- iv. the Commonwealth portfolio agency consults with the Departments of the Prime Minister and Cabinet and Treasury on any State comments relating to, or which may relate to, the Intergovernmental Agreement and the associated federal financial relations framework, and related policy issues;
- v. the Commonwealth portfolio agency provides a revised draft Project Agreement to the State once it has been agreed with the Departments of the Prime Minister and Cabinet and Treasury, noting that agreement to the revised draft has been obtained from the Prime Minister and Cabinet and Treasury;
- vi. Commonwealth central and portfolio agencies follow steps iii. to v. until the draft Project Agreement is agreed in principle at officer level; and
- vii. the Commonwealth portfolio agency provides the revised draft Project Agreement to the Departments of the Prime Minister and Cabinet and Treasury for a final check for consistency with the Intergovernmental Agreement. In some cases, Commonwealth central agencies may decide to refer approval of a draft Project Agreement to their ministers.

49. Where multilateral Project Agreements are being negotiated, the same process should be followed simultaneously with all relevant jurisdictions.

4.3 Finalising Project Agreements

50. Once the draft Project Agreement is agreed in principle by Commonwealth and State central and portfolio agencies, and final clearance has been received from the Departments of the Prime Minister and Cabinet and Treasury, the Commonwealth portfolio minister provides it to the State portfolio minister for signature.

51. Project Agreements can be signed at a ministerial meeting where there is prior in-principle agreement from all parties. Otherwise, they can be signed out-of-session by correspondence.

52. Authority to sign Project Agreements may not be delegated beyond portfolio ministers, as Project Agreements are a type of National Partnership and authority has already been delegated by the Prime Minister to the Commonwealth portfolio minister.

53. The Commonwealth should not sign the Project Agreement until at least one State has signed. Preferably, all States which are to be parties to the Project Agreement should have signed before the Commonwealth.

54. See the Project Agreement Road Map at [Appendix D](#) for a summary of the process for developing, drafting, negotiating and finalising Project Agreements, and [Part V, Publishing finalised agreements](#).

V. PUBLISHING FINALISED AGREEMENTS

Public accountability and transparency are key principles of the Intergovernmental Agreement. For this reason, all finalised National Partnerships, Implementation Plans and Project Agreements are published on the Council on Federal Financial Relations website. As Commonwealth Treasury is responsible for making payments to State treasuries from the COAG Reform Fund, this also enables it to meet its responsibilities under the COAG Reform Fund Act 2008, which requires payments to be made in accordance with written agreements.

55. For public accountability and transparency reasons, all National Partnerships, schedules including Implementation Plans and Project Agreements are published on the [Council on Federal Financial Relations](#) website. Sensitive information that should not be publicly available may be withheld on request. For example, where agreements contain commercial-in-confidence information, publication may be withheld or delayed, or sensitive material may be removed from the relevant document.

56. However, National Partnerships, schedules including Implementation Plans and Project Agreements should be drafted in the knowledge that they are intended to be public documents. Consequently, all National Partnerships, Implementation Plans and Project Agreements will be published unless the Department of the Prime Minister and Cabinet or the Commonwealth Treasury is advised by the portfolio agency that publication should be delayed or sensitive material removed from the relevant document.

57. Commonwealth portfolio agencies are responsible for ensuring that all final, agreed versions of National Partnerships, schedules including Implementation Plans and Project Agreements are lodged with the Department of the Prime Minister and Cabinet.

58. The Commonwealth Treasury is then provided with electronic copies of final, signed agreements, for publication on the [Council on Federal Financial Relations](#) website. For this reason, portfolio agencies should ensure that all published documents are readable, and in a Word and PDF searchable format.

59. Other Commonwealth or State agencies can link their websites to the [Council on Federal Financial Relations](#) website to ensure consistent and up to date versions of documents are available to the public.

60. A copy of the complete, signed agreement (and any subsequent variations, see [Part VI, Varying Agreements](#)) must be provided to the Commonwealth Treasury before payments can be made. This enables Commonwealth Treasury to meet its responsibilities under the *COAG Reform Fund Act 2008*, subsection 7(2) of which 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 or Territory.

VI. VARYING NATIONAL PARTNERSHIPS, IMPLEMENTATION PLANS AND PROJECT AGREEMENTS

Commonwealth and State portfolio agencies with primary responsibility for the National Partnership, Implementation Plan or Project Agreement lead the variation process, in consultation with first ministers' and treasury departments. Agreements should only be amended to address significant shortcomings that put the achievement of policy objectives at risk or respond to unforeseen circumstances, or to improve the efficiency and effectiveness of their operation.

Where variations to National Partnerships are sought by the Commonwealth, the Commonwealth portfolio minister is required to write to the Prime Minister seeking agreement for a variation. Where variations are sought by the State, the State First Minister is required to write to the Prime Minister seeking agreement for a variation.

Portfolio agencies should use a standard variation template when amending National Partnerships, which forms a schedule to the National Partnership and is published on the Council on Federal Financial Relations website.

Variations to Implementation Plans and Project Agreements should be made to the document themselves, and a variation schedule is not required.

6.1 Variations to National Partnerships

61. National Partnerships include a standard variation clause, allowing them to be 'amended at any time by agreement in writing by all the Parties'. Any variation to an existing National Partnership (other than schedules, including Implementation Plans) may only be agreed by first ministers.

62. Commonwealth and State portfolio agencies with primary responsibility for the National Partnership lead the variation process, in consultation with first ministers' and treasury departments in the first instance, particularly as policy and Budget authority may be required before the variation process can start. Commonwealth central agencies will advise on issues relating to the Intergovernmental Agreements and related policy issues as appropriate.

- Where variations are sought by the Commonwealth portfolio minister, this will involve them writing to the Prime Minister, copied to the Commonwealth Treasurer and the Finance Minister, setting out the nature and reason for the variation and seeking the Prime Minister's agreement. Where the Prime Minister supports the variation, the Prime Minister should write to the relevant first minister/s seeking agreement to the variation.
- Where variations are being sought by the State, this will involve the State First Minister writing to the Prime Minister, copied to the Commonwealth Treasurer, Finance Minister and Commonwealth portfolio minister, setting out the nature and reason for the variation and seeking the Prime Minister's agreement.

63. National Partnerships should only be amended to address significant shortcomings that place the achievement of policy objectives at risk or respond to unforeseen circumstances, or to improve the efficiency and effectiveness of their operation. Amendments to National Partnerships are usually made where there is a change, such as to scope, timing or funding, which has significant implications

for the agreement. National Partnerships are not amended for administrative matters, such as the timing of reviews, or other matters that are not material to the efficiency and effectiveness of their operation, or to correct minor inaccuracies that do not reduce transparency or public accountability.

64. Where National Partnerships are proposed to be amended for provisions relating to reward payments, including associated issues relating to performance benchmarks or milestones, payment eligibility and partial payments, Commonwealth portfolio agencies must consult with the Departments of the Prime Minister and Cabinet and Treasury at the earliest possible opportunity.

65. Amendments to National Partnerships should be progressed using the standard variation template at [Appendix E](#) that, once agreed in writing, forms a schedule to the varied National Partnership. The schedule details each proposed amendment to the National Partnership and is agreed by the parties to the National Partnership through correspondence between first ministers. However, the schedule itself should be signed and dated by the parties for transparency and public accountability reasons, and all parties to the agreement are required to sign the variation for it to take effect. Once the schedule is agreed in writing, the National Partnership itself is updated accordingly, and the schedule is attached.

- Portfolio agencies may wish to use the National Partnership comments template at Appendix B to facilitate the variation process, where appropriate.

66. Varied National Partnerships and the agreed variation schedule must be provided by the relevant portfolio agency to Treasury for publication on the [Council on Federal Financial Relations](#) website, following the process described in [Part V, Publishing Finalised Agreements](#), above.

6.2 Variations to Implementation Plans and Project Agreements

67. Implementation Plans and Project Agreements include standard variation clauses allowing them to be ‘amended at any time by agreement in writing by all the Parties.

68. Commonwealth and State portfolio agencies with primary responsibility for the overarching National Partnership or the Project Agreement, should lead the variation process, in consultation with first ministers’ and treasury departments in the first instance, particularly as policy and Budget authority may be required before the variation process can start. Commonwealth central agencies will advise on issues relating to the Intergovernmental Agreement and related policy issues as appropriate.

69. As with National Partnerships, Implementation Plans and Project Agreements should only be amended to address significant shortcomings that place the achievement of policy objectives at risk or respond to unforeseen circumstances, or to improve the efficiency and effectiveness of their operation. Amendments to Implementation Plans and Project Agreements are usually made where there is a change, such as to scope, timing or funding, which has significant implications for the agreement. Implementation Plans and Project Agreements are not amended for administrative matters, such as the timing of reviews, or other matters that are not material to the efficiency and effectiveness of their operation or do not reduce public accountability. See [Federal Finances Circular 2015/02, Developing Implementation Plans for National Partnerships](#) for further information.

70. Amendments to Implementation Plans and Project Agreements should be made to the document themselves: a variation schedule is not required. However, the varied Implementation Plan or Project Agreement should note that it replaces the previous agreement and include a reference to the date of that agreement. For example, “This Implementation Plan/Project Agreement replaces the previous Implementation Plan/Project Agreement on [insert name] of [insert date]”.

71. Authority to amend Implementation Plans or Project Agreements may not be delegated below the relevant portfolio minister, as portfolio ministers are accountable for overarching National Partnerships, and authority to agree or amend Implementation Plans has already been delegated by first ministers to relevant portfolio ministers.

72. Varied Implementation Plans and Project Agreements must be provided by the relevant portfolio agency to Treasury for publication on the [Council on Federal Financial Relations](#) website, following the process described in [Part IV, Publishing Finalised Agreements](#), above.

VII. PAYMENTS AND ESTIMATES PROCESSES FOR FINALISED AGREEMENTS

Commonwealth Treasury is responsible for making payments to the States in accordance with the requirements of Schedule D of the Intergovernmental Agreement. Commonwealth Treasury also manages associated accruals and budget estimates processes. In accordance with the Budget Process Operational Rules, any transfer of budget estimates to the Commonwealth Treasury and movements of funds processes are coordinated through the Finance Minister.

The *Public Governance, Performance and Accountability Act 2013* applies to all agreements and payments under the federal financial framework.

7.1 Payment arrangements

73. Under the centrally administered payment arrangements of the federal financial framework, the Commonwealth Treasury makes payments directly to State or Territory treasuries in respect of:

- National Specific Purpose Payments (National SPPs);
- National Health Reform funding;
- Students First (Schools) funding;
- National Partnership payments (including payments relating to Implementation Plans and Project Agreements); and
- General revenue assistance, consisting of GST payments and other general revenue assistance.

74. Payments are made each month on:

- the 7th day of the month for National SPPs, National Health Reform, Students First and National Partnership payments; and
- the 21st day of the month for general revenue assistance (including GST payments).
 - Where the scheduled payment day is a Saturday, Sunday or public holiday in Canberra, the payment will be made on the next business day of the Reserve Bank of Australia in Canberra.

75. [Schedule D of the Intergovernmental Agreement](#) provides further information on payment arrangements under the Intergovernmental Agreement.

7.1.1 Public Governance, Performance and Accountability Act 2013

76. The *Public Governance, Performance and Accountability Act 2013 (PGPA Act)* applies to agreements and payments under the federal financial framework.

77. Section 15 of the PGPA Act requires accountable authorities of Commonwealth entities to govern the entity in a way that promotes the proper use and management of public resources for which the authority is responsible. 'Proper' is defined to mean 'efficient, effective, economical and ethical'. Section 21 of the PGPA Act requires accountable authorities of non-corporate Commonwealth entities to govern the entity in a way that is not inconsistent with the policies of the Australian Government. The Intergovernmental Agreement and the associated federal financial relations framework provide the overarching policy framework against which Commonwealth portfolio agencies discharge their obligations under the PGPA law and Commonwealth officials are obliged to develop and manage agreements in accordance with those policies.

78. Before a Commonwealth minister enters into an agreement with the States, it is the responsibility of the accountable authority to ensure that the requirements of the PGPA Act have been met. Treasury officials are not accountable authorities for the purposes of payments under the federal financial relations framework unless the programme falls within the Treasury portfolio.

79. An accountable authority should establish appropriate approval processes as part of their internal controls. These processes should be consistent with the accountable authority's duties under sections 15 to 19 of the PGPA Act, which include a duty to promote the proper use of public resources and to promote the financial sustainability of the entity (and public resources generally) (section 15).

80. Section 23 of the PGPA Act confers on accountable authorities of non-corporate Commonwealth entities, the power to approve commitments of relevant money and enter into arrangements relating to the affairs of the entity. These powers can be delegated to officials.

81. The PGPA framework allows flexibility in the approval of commitments of relevant money, for accountable authorities to apply controls that are appropriate to their entity and specific circumstances. In determining what controls to apply to approval processes, an accountable authority should identify and assess the risks and balance these with the efficiency of operations to achieve appropriate processes for the commitment of relevant money.

82. Section 18 of the PGPA Rule (Approving commitments of relevant money), which applies to all Commonwealth entities under the PGPA Act and to all officials involved in the commitment of relevant money, sets out the core legal requirements that apply to officials who approve commitments of relevant money.

83. Section 71 of the PGPA Act imposes requirements on a Minister when approving a proposed expenditure of relevant money. If a Minister chooses to personally approve a proposed expenditure of relevant money, he or she must not do so unless they are satisfied, after making reasonable inquiries, that it constitutes a proper use of the money.

84. For further information on making commitments of relevant money under the PGPA Act, refer to the Department of Finance's guidance, [*Resource Management Guidance No. 400, Approving commitments of relevant money*](#), and related guidance.

7.1.2 Accruals

85. As part of Treasury's annual financial statements process, Treasury is required to record liabilities for accrued expenses on behalf of portfolio agencies for payments to the States.

86. Information on the arrangements for the end of year accruals process will be provided by Treasury to portfolio agencies towards the end of each financial year.

7.2 Estimates

87. Treasury is responsible for reporting in the Commonwealth's Budget papers estimates relating to payments to the States. Agencies are required to provide Treasury with updated estimates for each Budget round.

88. Estimates are to be included in the forward estimates only up to the expiry of the National Partnership or Project Agreement. Any proposal to extend payments beyond the expiry date of the National Partnership or Project Agreement represents a New Policy Proposal and requires the explicit agreement of Cabinet.

89. Agencies should also refer to Estimates Memoranda issued by Finance that provide more detailed Budget guidance and instructions on particular issues, including on matters that appear in the Budget Process Operational Rules.

7.2.1 Transfer of estimates to the Commonwealth Treasury

90. In accordance with the Budget Process Operational Rules, reallocations between Annual Administered Appropriation Bill No. 1 and Special Appropriations paid through the COAG Reform Fund Special Account (i.e. National Partnership payments) require the written approval of the Finance Minister. Commonwealth portfolio ministers are required to write to the Finance Minister (copied to the Treasurer) requesting the reallocation of the appropriation to the Treasury (i.e. the COAG Reform Fund Special Account).

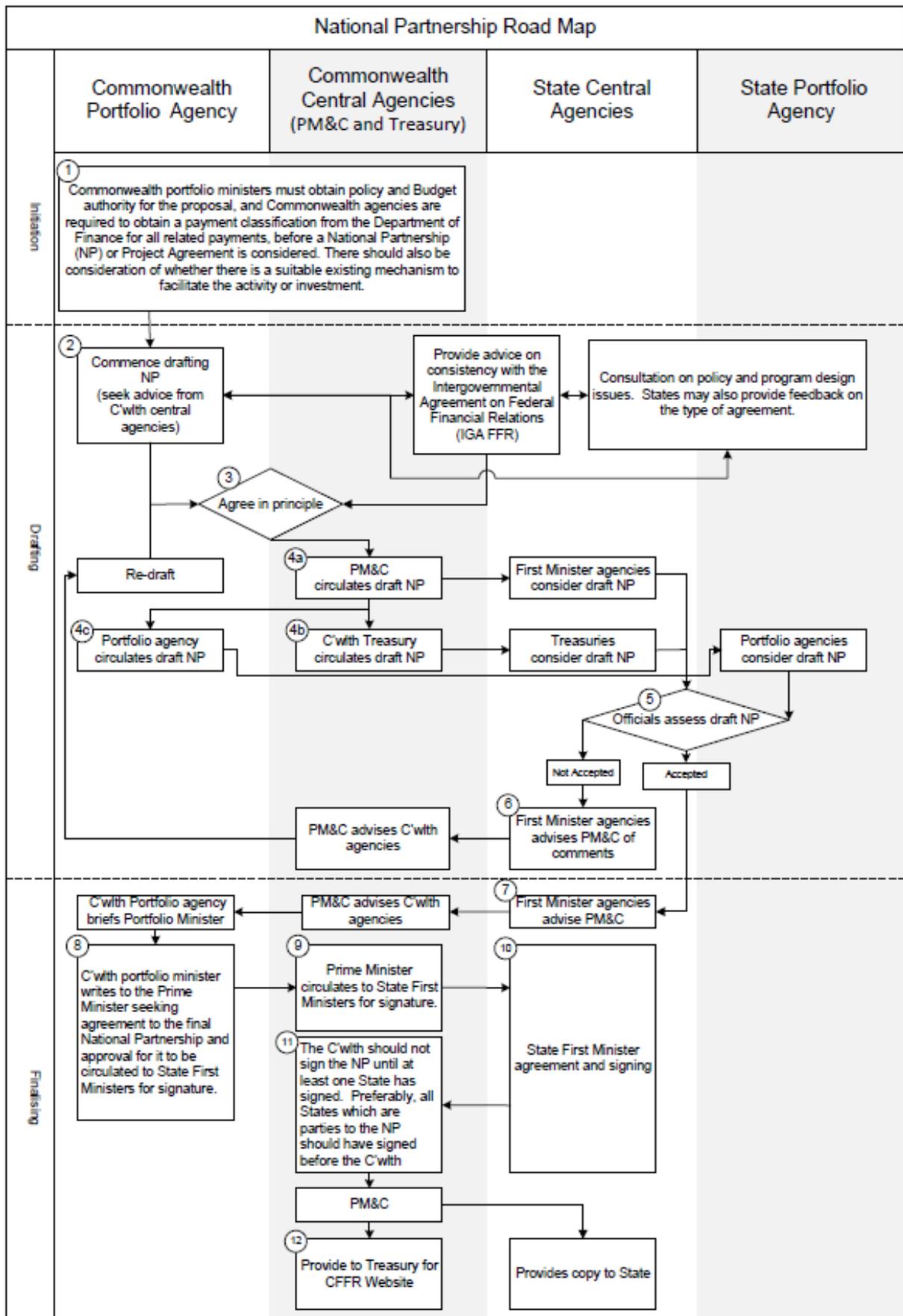
91. Where necessary, Commonwealth portfolio agencies are required to arrange for the reallocation of appropriations as soon as possible after a National Partnership or Project Agreement has been finalised. Where this occurs outside of an estimates update round, Finance will quarantine amounts against the relevant portfolio agency's appropriation source.

7.2.2 Movements of funds

92. In accordance with the Budget Process Operational Rules, Commonwealth portfolio ministers are required to write to the Finance Minister (copied to the Treasurer) with applications for movements of funds requests relating to payments to the States. Agencies should also forward details of these requests to Treasury's Commonwealth-State Relations Division.

93. Where National Partnership agreements, Implementation Plans or Project Agreements are being drafted or amended, any changes to the agreed funding profile need to be approved by the Finance Minister prior to the agreement or variation schedule being provided to relevant jurisdictions.

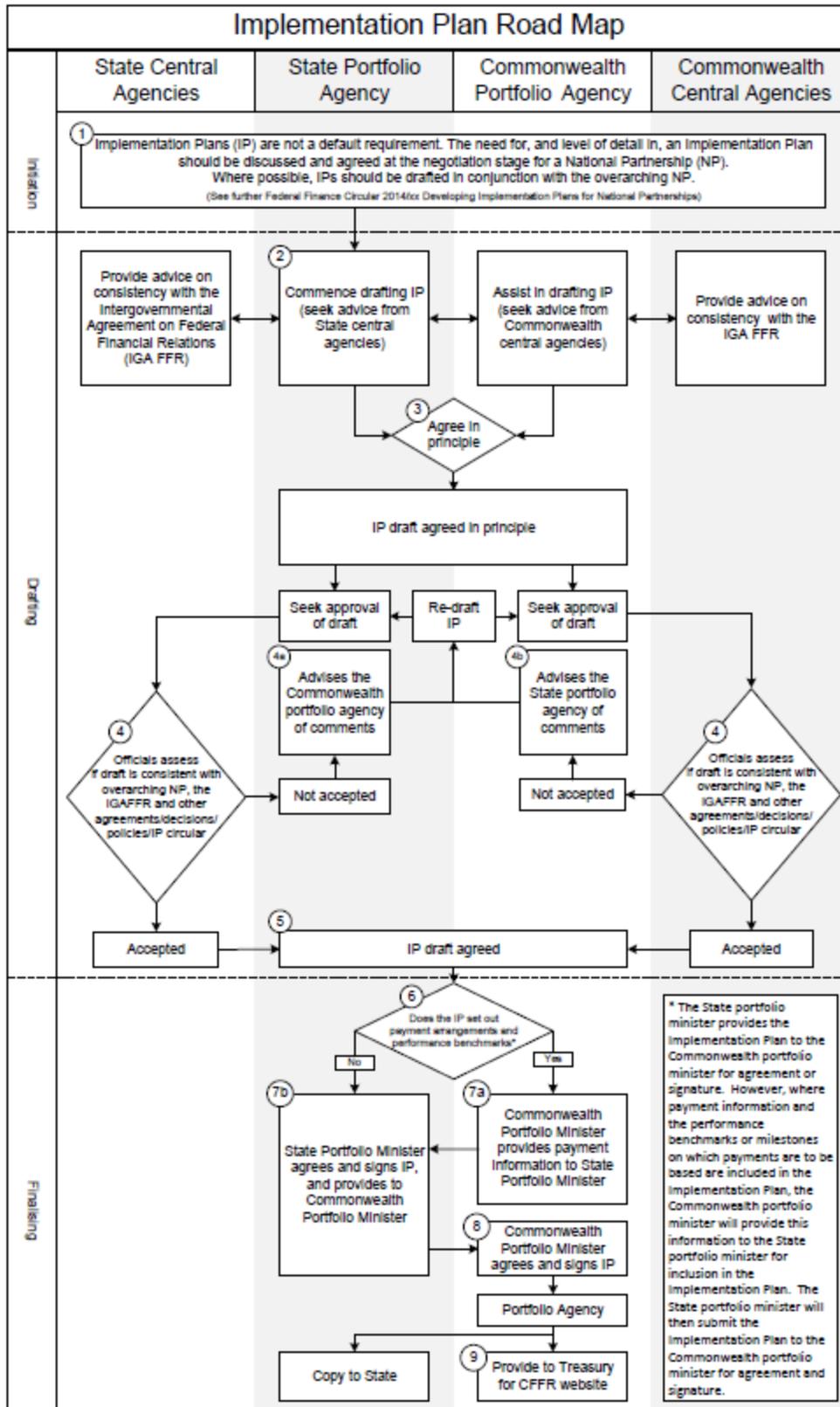
APPENDIX A: NATIONAL PARTNERSHIP ROAD MAP



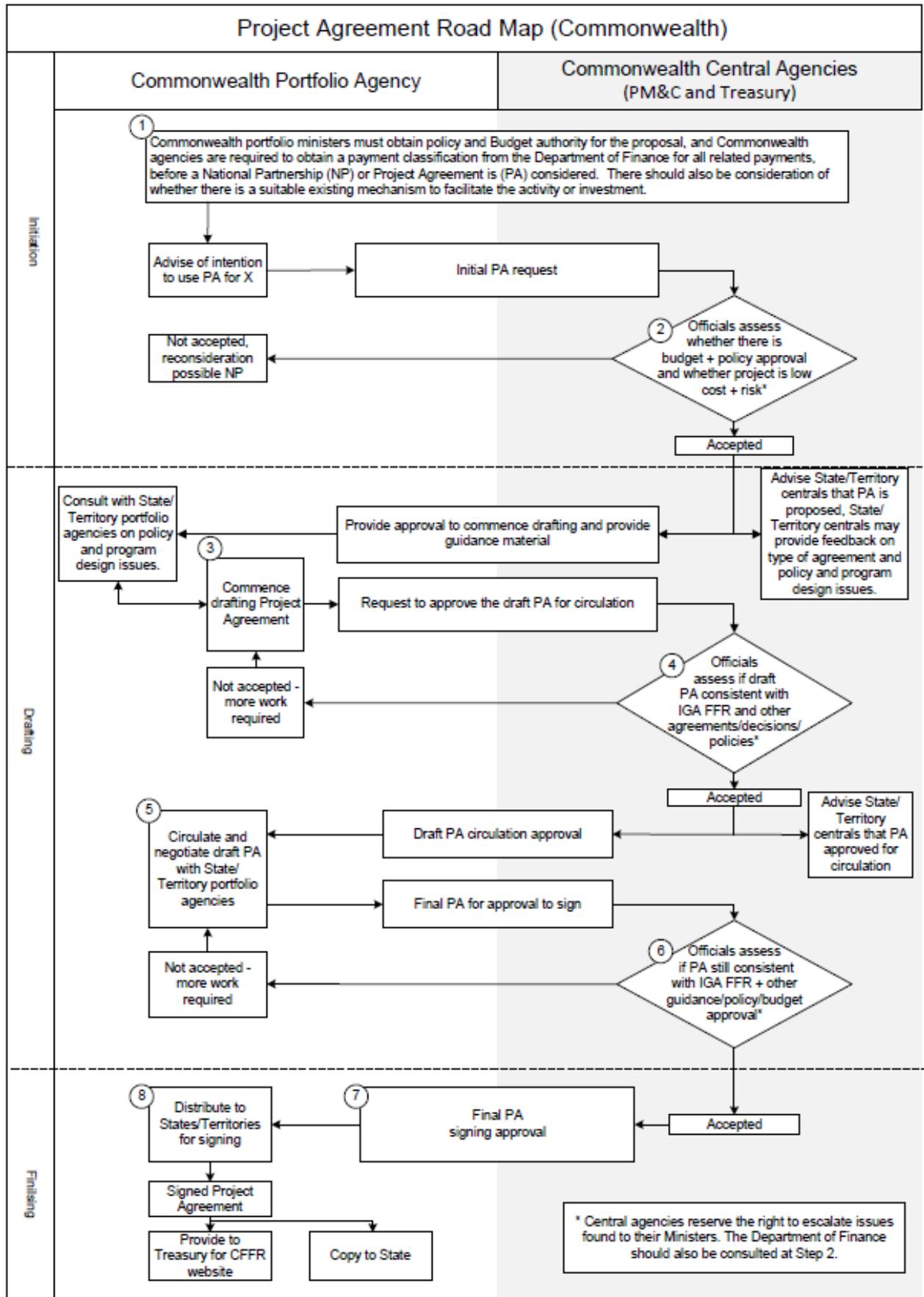
APPENDIX B: NATIONAL PARTNERSHIP COMMENTS TEMPLATE

Comments by clause number	State/s commenting	Commonwealth response	Revision to draft NP?
1. Clause x (insert clause number in order of appearance in draft NP) Insert or summarise comments.	List State/s that have commented on the clause, e.g. NSW, Vic, Qld, WA, SA, Tas, ACT, NT	Agree/disagree + comments as appropriate	Yes/no + comments or revised clause as appropriate
2.			
3.			
4.			
5.			
6.			
7.			
8.			

APPENDIX C: IMPLEMENTATION PLAN ROAD MAP



APPENDIX D: PROJECT AGREEMENT ROAD MAP



APPENDIX E: STANDARD VARIATION TEMPLATE**Schedule [insert letter]**

Variation to the National Partnership Agreement on [insert name]

INTERGOVERNMENTAL AGREEMENT ON FEDERAL FINANCIAL RELATIONS

OVERVIEW

- A1. Schedule [insert letter] (this Schedule) varies the National Partnership Agreement on [insert name of NP] (the Agreement). Variations are specified in this Schedule. In all other respects, the National Partnership Agreement remains unchanged.

DESCRIPTION

- A2. This schedule:

Former clause		Varied clause
(a)	<p>Clause X</p> <p>Example: This Agreement will commence as soon as the Commonwealth and one other Party signs the Agreement and will expire on dd mmmm yyyy, or if agreed projects as outlined in Implementation Plans and Project Plans are not completed by this date, when these projects are completed.</p>	<p>Clause X – replaces [replaces/adds/deletes]</p> <p>Example: This Agreement will commence as soon as the Commonwealth and one other Party signs the Agreement and will expire on dd mmmm yyyy, or if agreed projects as outlined in Implementation Plans and Project Plans are not completed by this date, when these projects are completed.</p>
(b)	[Any further clauses to be varied].	[Any further replacements, additions or deletions].
<p><i>[Note: The numbering of clauses in the original National Partnership agreement should be preserved to maximise transparency. For example, if an additional clause is required after clause 10, it should be clause 10A rather than clause 11.]</i></p>		
<p>A3. This Schedule will take effect as soon as the Commonwealth and [insert names of relevant jurisdictions or "the States" where the] sign the Schedule.</p> <p>Agreed for and on behalf of the Commonwealth of Australia by:</p> <p>[Name and title of Prime Minister]</p> <p>[Date]</p> <p>Agreed for and on behalf of the State of [insert relevant State/s] by:</p> <p>[Name and title of Premier or Chief Minister]</p>		

[Date]

[Note: All Parties to the Agreement are required to sign the variation for it to take effect.]