

Commonwealth-State Agreement

APPROVAL PROCESS

It is critical that the Tasmanian Government effectively manages the process for the signing of new Commonwealth-State agreements to ensure that risks, including: longer term fiscal impacts; unsustainable service obligations; matching requirements or hidden costs (eg GST implications), are closely examined.

This approval process sets out the steps that Tasmanian Government agencies should follow when entering into a Commonwealth-State agreement. The approval process should be considered in conjunction with the Tasmanian Government Commonwealth-State Agreement - Principles for Participation.¹

The following approval process is supported by the flow diagram 'Approval Process for Commonwealth-State Agreements'.²

1. Initiation

Tasmanian Government agencies should consult with the Department of Premier and Cabinet (DPAC) and the Department of Treasury and Finance (Treasury) and undertake a preliminary assessment, before commencing detailed discussion with Commonwealth line agency officials about a potential new funding agreement (note that all Commonwealth proposals are considered by Commonwealth Cabinet before their line agencies begin negotiations). It is accepted that due to the Commonwealth approach, a preliminary assessment is not possible in all cases.

2. In-principle Agreement

State and Commonwealth line agencies should negotiate an in-principle agreement which should then be assessed in accordance with the 'Commonwealth-State Agreement Principles for Participation' in new Commonwealth-State negotiations. The Principles must be considered for National Partnership Agreements (NPAs) and Project Agreements (PAs), and serve as a framework for analysis of other agreements and activities. DPAC and Treasury should be consulted on matters of finance, if the proposed agreement raises whole-of-government issues, or any concern in relation to the application of the Principles for Participation.

¹ See http://www.dpac.tas.gov.au/divisions/policy/intergovernmental_relations/commonwealth-state_principles

² See http://www.dpac.tas.gov.au/divisions/policy/intergovernmental_relations/commonwealth-state_process_flow_diagram

3. Assessing the agreement, with major agreements or significant concerns considered by Cabinet

For agreements that are significant in nature (i.e. national reform arrangements or large National Partnership Agreements (NPAs)) or where there are significant concerns with respect to conditions (such as onerous matching funding or maintenance of effort conditions) it is proposed that agencies recommend to their Ministers that they seek Cabinet approval of a negotiating position

Alternatively where there are no significant concerns, DPAC and Treasury officials will assess the agreement and DPAC will advise the Commonwealth of Tasmania's likely acceptance of the agreement, along with any minor concerns still to be resolved. DPAC and Treasury will aim to provide formal feedback within reasonable timeframes, usually within two weeks.

Cabinet Budget Committee should be consulted in relation to agreements that have significant funding implications prior to funding negotiations being finalised.

4. Commonwealth Offer

Following advice from DPAC to the Commonwealth that the terms of the proposed agreement are likely to be acceptable to the Tasmanian Government, the Commonwealth Department of Prime Minister and Cabinet will advise the Prime Minister to write to the Premier inviting the Premier to sign the agreement.

For PAs, Commonwealth Portfolio Ministers will write to State Portfolio Ministers offering the PA or a schedule to a NPA.

5. Cabinet consideration

On receipt of an offer from the Commonwealth, Ministers should seek Cabinet's approval to sign an agreement in the case of a PA (except for non-controversial PAs) or schedules to a NPA. In the case of a NA or NPA, Cabinet's approval should be sought for the Premier to sign the agreement.

6. Exemption to Cabinet Consideration

It may not be practical or appropriate to seek Cabinet consideration of an agreement under certain conditions (ie time constraints). In these cases, Ministers can request that the Premier grant an exemption from Cabinet consideration prior to signing. The Premier's and the Treasurer's approval to sign an agreement is still required and the Minister must provide a Cabinet briefing post-signing.

DPAC and Treasury will advise on whether they believe an exemption is warranted due to time constraints or the minor nature of an agreement or variation.

7. Signing

NPAs should be signed by the Premier and PAs and schedules to NPAs should be signed by the relevant Portfolio Ministers.

When an agreement is signed, the response to the Prime Minister or Commonwealth Minister should be copied to the relevant portfolio agency, Treasury and DPAC.

Approval Process for Commonwealth-State Agreements

1. Initiation and Preliminary Assessment

At the earliest opportunity, line agencies should develop a Preliminary Assessment of the likely scope and risks associated with the proposed intergovernmental agreement, including whether the subject aligns with State objectives; the approach aligns with the Principles for Participation, and therefore the final terms are likely to be acceptable.

The preliminary evaluation should be discussed with DPAC and Treasury officers to identify areas of concern and the risk management approach. It is noted this will not be possible in all circumstances.

2. Negotiation and in-principle agreement

Line agency negotiate with the Commonwealth line agency (applying Principles for Participation), and consult with DPAC Policy and Treasury to ensure financial, policy, and IGAFRR alignment, as well as any concern in relation to application of Principles for Participation.

Escalation for second stage / COAG-led negotiation (not all agreements require this) DPAC negotiates with Department of Prime Minister and Cabinet on areas of concern in consultation with the line agency and Treasury.

3. Assessing the Agreement

With Cabinet consideration if required. For agreements that are significant in nature or where there are significant concerns with respect to conditions, the Minister/s should seek Cabinet approval of a negotiating position. Alternatively where there are no significant concerns, DPAC and Treasury officials will assess the agreement and DPAC will advise the Commonwealth of Tasmania's likely acceptance.

4. Australian Government Offer and Clearance Process

Line agency seeks guidance from DPAC and Treasury on the appropriate clearance process for the agreement.

Any financial commitments that may have an impact on budget flexibility or are outside the capacity of the Agency to manage should be referred to Budget Committee prior to consideration by Cabinet. Treasury should be consulted on this requirement.

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5. Cabinet Consideration

National Partnership Agreement or Project Agreement/ Schedule/ Implementation Plan with Central Agency concerns (ie financial commitments)

Agency prepares Cabinet Minute (with full central agency consultation) for submission by the Minister to Cabinet, outlining issues and choices and requesting Cabinet's support for the Premier or Minister to sign.

OR

6. Exemption to Cabinet Consideration

National Partnership Agreement with urgent timeframe

Agency prepares Memorandum for the Minister to send to the Premier requesting signing of the NPA (with copy to the Treasurer), to be followed by a Cabinet Brief prepared by the line agency (with full central agency consultation) on the NPA.

Project Agreement / Smaller value agreement / Schedules or amendments (no issues of concern)

Minister signs the agreement, prepares a Cabinet Brief (with full central agency consultation) to be provided to Cabinet for information.

7. Signing

National Partnership Agreement (non-urgent)

DPAC prepares a Minute to the Premier. Signed by the Premier under recommendation from Cabinet.

National Partnership Agreement (urgent)

DPAC prepares a Minute to the Premier. Signed by the Premier under recommendation from DPAC and line Minister (with clearance from Treasury / Treasurer).

Project Agreement / Schedules

Signed by the Minister (with clearance from central agencies Senior Officer/Director or Cabinet).

NOTIFICATION

National Partnership Agreement

Following signing by the Premier, DPAC Portfolio Services Unit sends hard copies to the Commonwealth and electronic copies to DPAC Policy. DPAC Policy then provide electronic copies to Commonwealth, Treasury and the relevant line agency.

Project Agreement / Schedules

Following signing by the Minister, the line agency send hard and electronic copies to the Commonwealth and provide electronic copies to DPAC Policy and Treasury Intergovernmental and Financial Policy Branch.