

COMMONWEALTH GRANTS COMMISSION

INDIGENOUS FUNDING INQUIRY

FINAL SUBMISSION

From: ACT Government

Submission No.: **IFI/SUB/0080**

Date Received: **16/01/2001**

Mr RJ Searle
Secretary
Commonwealth Grants Commission
Cypress Court
5 Torrens Street
CANBERRA ACT 2612

Dear Mr Searle

I refer to the Commissions Indigenous Funding Inquiry and would like to take this opportunity to thank you for the opportunities afforded to the ACT Government to make submissions in this process.

Firstly, the ACT would like to congratulate the Commission on its work. In large part the ACT supports the preliminary findings presented in the draft report and which were discussed at your Canberra Conference on 1-2 November 2000.

The ACT in particular congratulates the Commission on its recognition that the high level of absolute need makes relative need between Indigenous communities of limited relevance. Whilst the Aboriginal and Torres Strait Islander communities in the ACT might appear relatively well advantaged in comparison to remote communities it is clear that there is still a high level of need and that in comparison with the rest of the ACT community they remain disadvantaged.

The ACT is pleased to note that the Commission highlights that Indigenous specific funding is meant to supplement mainstream funding. In its original submission the ACT highlighted that this is the approach that it has taken and that there is a constant process aimed at better providing for the specific needs of Indigenous people through mainstream services.

In the original submission the ACT noted that it is the only state or territory that does not have an ATSIC Manager overseeing ATSIC's interests in the state or territory, and is the only jurisdiction in Australia that is part of an ATSIC region administered in another state. While the ACT Government and the Council have established liaison and consultative frameworks and strategies, these are informal and depend largely on existing networks and contacts, and thus cannot guarantee continuity or consistency over the longer term. This lack of a state management role to provide a more formal ATSIC coordination and management role in the ACT may mean that, compared to other jurisdictions, the ACT is disadvantaged by having comparatively less input to ATSIC program or funding decisions and arrangements affecting the ACT.

Finally and in relation to the ACTs' chief concern with the draft report. The ACT concurs with the Commission's observation in their letter of 26 October 2000 that the contents of Chapter 5 relating to Commonwealth-State arrangements and the Commonwealth's ability to influence the regional allocation of resources are particularly important. Indeed, the discussion relating to SPPs is the one area of the Report that causes the most concern for the ACT.

The Commission would be aware that SPPs have become an increasing source of friction between the Commonwealth and the States in more recent years resulting in difficult negotiations. States and Territories believe that SPP arrangements need to be questioned because they often place decision making further away from the point of service delivery.

The deficiencies in the current negotiation and administrative arrangements for SPPs have been well documented in various reports and submissions. Apart from the obvious loss of State/Territory autonomy, other problems with SPPs from a State/Territory perspective include:

- lack of flexibility and efficiency incentives (focus on program inputs rather than outputs and outcomes);
- duplication of roles and responsibilities (reconciling Commonwealth/State/Territory processes for joint planning and decision making), and costs of compliance and administration;
- lack of consultation between Commonwealth and State/Territory agencies; and
- blurred accountability to clients and the general community.

State and Territory Treasuries have been concerned for some time that little tangible progress has been made in addressing these deficiencies. A joint discussion paper identifying the States' and Territories' concerns, with recommendations for a way forward, was provided to the Commonwealth Treasury in March 1999. Heads of Treasuries subsequently signed off on an SPP Best Practice Principles Paper. A copy is provided at [Attachment A](#).

The SPP Best Practice Principles Paper is intended to provide guidance on "best practice" in developing and agreeing to SPP arrangements that meet the objectives of both the Commonwealth and the States and Territories. Importantly, it is also intended to serve as a guide for negotiators and administrators of SPP agreements at all levels of Government.

It is against this background that the ACT is concerned with the draft findings outlined in Chapter 5 of the Indigenous Funding Inquiry draft report. The preliminary shortcoming of this chapter of the Indigenous Funding Inquiry draft report is that it is contradictory. On the one hand it outlines some of the concerns which the SPP Guidelines seek to address (such as blurring of responsibility, no monitoring of outcomes and the high cost of monitoring), and on the other, it suggests that to make Indigenous SPPs more effective, the Commonwealth should put in place more controls and reporting requirements.

A range of key principles underlying the basis for future SPP arrangements are considered essential for the provision of high quality economic and strategic budgetary advice to Governments. Adoption of a common range of core principles and practices should also facilitate the establishment of strategic alliances between jurisdictions. This in turn will assist in addressing SPP issues and help ensure that rationalisation and reform are progressed by all parties.

In this context, the ACT would suggest that the following key principles should underpin any future recommendations by the Commission in the IFI final report:

- where feasible, to broadband smaller SPPs (covering related policy areas within agencies) into a larger funding pool to increase flexibility of service provision and reduce administrative costs;
- to simplify administrative and accountability arrangements and standardise wherever possible and to provide enhanced SPP details, such as funding levels, schedules and timetables for renegotiation of agreements, which should be known well in advance of the expiration date;
- to reflect a spirit of co-operation between Governments, defining broad principles, objectives and performance measures where responsibilities are shared, with a view to defining the achievement of broad outcomes or delivery of outputs, rather than expenditure or input measures. Where it is appropriate, States and Territories should be accountable for results;
- to ensure flexible arrangements so that States and Territories can tailor programs to suit local needs resulting in effective and efficient programs; and
- to clearly define the criteria for the allocation of resources between the States and Territories, including any indexation arrangements, and to avoid potential increases in the unnecessary and costly duplication of functions between different levels of Government.

Operational guidelines have been designed for negotiators and administrators to implement the key principles underpinning the reform of SPP arrangements. These guidelines should help the Commission in framing their future recommendations. They include adhering to:

- an outcome/output focus - SPP agreements should state the overall policy purpose of the program by clearly identifying why a national approach agreed between the Commonwealth, States and Territories is appropriate, and clearly define the broad program outcomes or outputs to be achieved;
- the adoption of clear responsibilities - agreements should clearly define the responsibilities of each level of Government;
- a demonstrated commitment - agreements should allow each level of Government to demonstrate their commitment to the program;

- the clear identification of financial mechanisms - SPP funding agreements should provide predictability and stability to enable forward planning to be undertaken by each level of Government;
- the adoption of incentives over sanctions - one way to ensure good programs and service delivery and the fulfillment of all obligations is through the use of incentives as opposed to sanctions; and
- flexibility and dispute resolution - good SPP arrangements are based on shared objectives and a mutual understanding of the requirements of the agreement.

Each Treasury, including the Commonwealth, has agreed to determine the most appropriate way of promulgating the principles and guidelines with all jurisdictions indicating they intend to seek their respective Cabinet endorsements.

The ACT Government has endorsed the principles and guidelines and directed all agencies to apply them in all future negotiations.

I trust that this information will assist the Commission in its deliberations in preparing its final report.

If you have any questions in relation to this matter please do not hesitate to contact Glenn Welby on (02) 6207 8708.

Yours sincerely

Robert Tonkin
Chief Executive

PRINCIPLES FOR SPECIFIC PURPOSE PAYMENT (SPP) AGREEMENTS

This paper is intended to serve as a guide for negotiators and administrators of SPP agreements, at all levels of government. It provides guidance on “best practice” in developing and agreeing SPP arrangements that meet the objectives of both the Commonwealth and the States and Territories. A model template encompassing the principles is provided at [Appendix A](#).

- SPPs are payments made by the Commonwealth to or through the States and Territories for policy purposes related to particular functional activities; such payments are made under Section 96 of the Commonwealth Constitution.
- SPPs differ from untied grants in that they must be used for the particular policy purpose set out in individual SPP agreements.
- Similarly, SPPs differ from Commonwealth own-purpose outlays that are for similar purposes, even if Commonwealth funding is passed through State Governments.
- Unlike contracts, SPP agreements are not legally binding. Rather, they encapsulate administrative and political agreements that impose conditions upon grants.

SPPs represent one way to meet policy objectives that have been agreed between the Commonwealth and States and Territories. In some cases, SPPs are used for States and Territories to deliver Commonwealth policy objectives in areas of Commonwealth policy responsibility.

Individual SPP arrangements can, however, become an impediment to the achievement of policy objectives, particularly where:

- Detailed prescriptions provide a disincentive to innovative policy and administrative solutions;
- Financial arrangements are focused on inputs rather than desired policy results (input focus rather than outcomes or outputs focus); and
- Administrative costs are high relative to the grant being paid.

KEY PRINCIPLES

This section encapsulates key principles that should form the basis for SPP arrangements. A number of more detailed issues which follow from these principles are discussed in the next section.

- SPP agreements should be constructed to maximise the coverage of related policy areas, rather than establish multiple separate agreements.
- Combining a number of smaller SPPs into a larger funding pool can increase flexibility and reduce administrative costs. Options such as broadbanding would enhance this process.
- Administrative and accountability arrangements should be simplified and standardised wherever possible.
- SPP details, such as funding levels and schedules and timetables for renegotiation of agreements, should be known well in advance. Access to a common SPP database would assist in this process.
- Where responsibilities are shared, SPP agreements should reflect a spirit of cooperation between governments, defining broad principles, objectives and performance measures.
- Where it is appropriate that States and Territories should be accountable for results, these should be defined in terms of the achievement of broad outcomes or of delivering outputs, rather than for their own expenditure or inputs.
- Flexibility for States and Territories to tailor programs to suit local needs can lead to more effective and efficient programs. Agreements should avoid prescribing delivery mechanisms wherever possible.
- Criteria for the allocation of resources between the States and Territories, including indexation arrangements, should be clearly defined within each SPP.
- SPPs should be avoided where there is potential to increase unnecessary and costly duplication of functions between different levels of government. Where necessary, SPP agreements should encourage coordination of the SPP with any similar existing State programs.
- In keeping with their status as Intergovernmental Agreements, SPP agreements should be written in plain English rather than in the nature of a legally binding document – including any provision for sanctions which may be included in the agreement.

OPERATIONAL GUIDELINES

This section describes a number of guidelines that put into operation the key principles set out above.

Outcome/Output Focus

SPP agreements should state the overall policy purpose of the program. For example, they should make clear why a national approach agreed between the Commonwealth and States and Territories is appropriate, and clearly define the broad program outcomes or outputs to be achieved.

- Examples of outcomes are: reduction in instances of severe harm, proportions of students attaining particular levels of education, proportions of children in care.
- Examples of output measures are: number of people treated, number of students graduating, number of children accessing childcare.

Various guides are available in different jurisdictions on the specification of outputs and outcomes, including from the Commonwealth Department of Finance and Administration (See *Fact Sheet – Outcomes and Outputs* available at [www.dofa.gov.au/budgetgroup- Training Materials and Courses](http://www.dofa.gov.au/budgetgroup-Training Materials and Courses)).

Detailed reporting of input data should be avoided in SPP agreements.

- Examples of input data are: staff numbers and hours of service, number of regional offices, and level of State or Territory expenditure.

All reporting should be based on achievable outputs and outcomes; agreed benchmarks should provide clarity and direction without being unduly prescriptive.

The Australian National Audit Office has found that performance information for SPPs has been below average in the past and therefore specific emphasis needs to be given to the establishment, collection and reporting of output-based performance information.

Clear Responsibilities

Agreements should clearly define the responsibilities of each level of government.

- For example, agreements should specify whether the Commonwealth is contributing to a State program, whether the State/Territory is running the program as a shared responsibility with the Commonwealth or whether the

State/Territory is acting as an agent contracted to run the program on behalf of the Commonwealth in an area of Commonwealth policy responsibility.

- SPP agreements need to recognise that a State or Territory may already commit resources to a similar program. Such recognition can avoid duplication of administrative effort and unduly complex reporting mechanisms.
- Agreements should specify policy-setting and operational responsibilities.
- Duplication should be avoided wherever possible.
- For each program area, one level of government should have clear responsibility for operational program management.
- Coordination with other jurisdictions (if appropriate), information sharing, reporting and review procedures should be clearly specified.
- Administrative costs associated with management, monitoring and reporting should be minimised and be commensurate with the funding involved.

Demonstrated Commitment

Agreements should allow each level of government to demonstrate their commitment to the program.

- Priority should be on demonstrating commitment through the achievement of agreed broad outcomes/outputs, rather than requirements to maintain expenditure or match the funding contribution of another level of government.

Clear Financial Mechanisms

SPP funding agreements should provide predictability and stability, to enable forward planning to be undertaken by each level of government.

- Where relevant, individual agreements should clearly specify the main components and timing of funding.
- If needed, appropriate formulas for indexation and to cover unavoidable increases in expenses resulting from growth in service demand should be included to cover the period of the agreement.
- Cashflow arrangements should facilitate the States and Territories entering into commitments without needing to affect other programs. This may require funding to be released ahead of or concurrently with the associated expenditure obligations.

- Conditions attached to SPPs may restrict States from taking action to discontinue or curtail programs where they become no longer viable. Such conditions should be minimised.

SPP agreements sometimes require that States and Territories indemnify the Commonwealth for any loss arising from a project.

- A State or Territory should be responsible for those matters over which it has control.
- Indemnification should only be given where the State or Territory has breached an agreement or has been negligent.

Individual SPP agreements sometimes give rise to intellectual property rights.

- Any agreement about intellectual property rights should reflect the contribution made by each party and existing knowledge prior to the agreement.

Incentives and Sanctions

One way to ensure good programs and the fulfilment of all obligations is through the use of incentives.

- Incentives can include clearly specified arrangements whereby States and Territories which achieve increased productivity may retain SPP funding to be used elsewhere within the broad policy area covered by an SPP agreement.

SPP agreements can also include sanctions, including withholding funds or imposing financial penalties for non-performance.

- SPPs should be cooperative arrangements between the Commonwealth and the States and Territories.
- Where appropriate (in light of respective roles and responsibilities) SPP agreements should establish a process by which the Commonwealth will cooperatively identify with the States and Territories the impediments to achieving targets, agree on actions to address impediments and to provide for re-setting targets in the event they are found to be unrealistic.

Where sanctions are considered necessary, they should:

- apply only to factors within the control of the State or Territory;
- apply only if performance is clearly not within an agreed performance range (eg., per cent variation from target output); and
- only be used following consultation between the Commonwealth and the State / Territory to resolve disagreement through a previously specified dispute resolution mechanism.

The wording of incentive and sanction provisions in SPP agreements should reflect their functional status as intergovernmental agreements rather than legally binding contracts.

- The courts have shown a tendency to construe such agreements made by the Crown as merely administrative or political arrangements.

Varying the Agreement and Resolving Disputes

Good SPP arrangements are based on shared objectives and mutual understandings of the requirements of the agreement. Nevertheless, problems or new issues may arise during implementation, despite the best intentions of all parties. In such cases, all parties to an SPP agreement are entitled to fair consideration.

- Any jurisdiction that proposes a change to an agreement, or a related document, should provide sufficient time for comment.
- Changes should be by mutual agreement, and be in writing.
- Dispute resolution procedures should include appropriate consultation mechanisms :
 - Agreement managers should attempt to resolve any dispute, in the first instance;
 - If this fails, Ministers should discuss and attempt to resolve;
 - States and Territories consider that, as a final recourse, the parties should appoint an independent arbiter to resolve the dispute.

Renewal of the Agreement

Each SPP agreement should be framed with a view to whether it is likely to be renegotiated or renewed.

- Where renegotiation or renewal are likely, specifying such expectations will provide some funding and operational certainty.
- Such a clause will not remove the need for all parties to reach agreement on any renewal.

A Template SPP Agreement

Background

This template is to be used as a general checklist of desirable features to be included in SPP agreements. Administrative and accountability arrangements should be simplified and standardised wherever possible. In essence, SPPs would be built upon standard type agreements, modified as necessary to reflect individual circumstances.

The template is at a broad level to take into account the varied nature of SPPs, which range from programs where the major responsibility is largely at one level of government to more complex programs where responsibility is more evenly shared.

Given the complexity of some programs covered by SPP agreements, it may be necessary for a multilateral agreement (between all jurisdictions) to be complemented by bilateral agreements between the Commonwealth and individual States and Territories (eg. to specify agreed outcome/output targets at the State/Territory level). This will allow States and Territories flexibility to tailor programs to suit local needs.

The features outlined below will promote best practice in SPP agreements.

The text (in italics) can be used as a guide to fill in relevant sections. Further explanation is set out below as necessary.

Parties to the Agreement

This Agreement is between

- *the Commonwealth of Australia (the "Commonwealth"); and*
- *the States and Territories.*

- Depending on the exact signatories

Representation

The Commonwealth shall be represented for the purposes of this Agreement by (specify Minister and Department).

The States and Territories shall be represented for the purpose of this Agreement by the Minister and Department as notified to the Commonwealth.

- This is necessary for addressing relevant communications and notices.

Preamble

This Agreement supersedes

- Previous arrangements may occasionally be regarded as being in force unless they are explicitly mentioned.

In entering this Agreement, the Commonwealth and the States and Territories recognise that

- Eg. the Commonwealth and the States and Territories have a mutual interest to improve outcomes in this area and must work together; this Agreement focuses on those issues which require a national approach.

This Agreement is closely linked to

- Describe any linkages and interrelationships with other programs or agreements. In designing or reviewing an SPP, careful consideration should be given to the relationship with related programs and policies to ensure that any gaps or overlaps are minimised and managed.
- A process should also be established for dealing with any boundary issues that may arise between related programs and agreements.
- Agreements should give consideration to the conditions for future broadbanding of related SPPs, both when considering incentives for performance and considering boundary issues. Broadbanding can allow greater flexibility in the distribution of funds in a particular area.

Interpretation

In this Agreement, unless the contrary intention appears –

- Definition of any terms that require explanation.
- May be included as a schedule to the Agreement.

Term of the Agreement

This Agreement will commence on and expire on
(specify details)

Renewal of the Agreement

An agreement to replace this Agreement shall be negotiated and agreed prior to
(specify date eg. prior to expiry of current agreement)

- This is necessary for programs that are envisaged to be ongoing.

Purpose of the Agreement

The purpose of this Agreement is to
(specify eg. : assist those whose needs for appropriate cannot be met by the private market. This Agreement provides a framework agreed by the

Commonwealth and the States and Territories to underpin the provision of assistance/services across Australia).

- Agreements should contain a statement of purpose, which generally should remain unchanged during the development of the program. The purpose should be stated in terms which are unambiguous, realistically pursuable by government and emphasises outcomes rather than inputs and processes.
- The overall policy purpose of the program should be agreed by the parties at the initial stage and should specify goals that are based on meeting clearly defined needs.

Guiding Principles

The principles guiding the Commonwealth and the States and Territories in the development and implementation of this Agreement are :

(specify eg. :

- provide priority assistance to those with the highest needs;
- provide assistance on a non-discriminatory basis;
- give reasonable choice, and meet community standards on consumer rights and responsibilities;
- program arrangements should be sufficiently flexible to reflect the diversity of situations which currently exist in the States and Territories;
- funding arrangements should promote efficiency and cost effective management).

The parties agree to use their best endeavours to operate within these principles.

- Where principles will be used to guide program management, delivery and assessment, they should be agreed and stated. Principles act both to guide and limit the discretion of program designers, managers and reviewers, and so need to be agreed and made explicit.

Role of Each Party

All parties will work in partnership to realise the goals and commitments made in this Agreement.

The Commonwealth and States and Territories will work together to :

(specify eg. :

- operate within the principles specified above;
- undertake appropriate joint planning and policy setting for the program).

The Commonwealth will have responsibility to :

(specify eg. :

- ensure that implementation of this Agreement is part of a coherent national strategy;
- make available financial assistance to the States and Territories as specified in for the purpose of meeting the agreed outcomes specified in).

The responsibilities of the States and Territories are to :

(specify eg. :

- establish priorities and strategies for their own jurisdictions, consistent with the overall national policy approach;
 - develop, implement and manage services and/or programs to achieve the agreed outcomes specified in).
- Agreements should clearly define the roles and responsibilities of each party.

Agreed Outcomes /Outputs and Performance Indicators

States and Territories agree to meet the following target outcomes and/or outputs :
(specify)

- Provide a broad description of the target outcomes and/or outputs to result from the program. States and Territories should be held accountable for results, defined in terms of the achievement of outcomes or delivering outputs, rather than for their own expenditure or inputs.
- Target outcomes/outputs would usually be defined in terms of meeting client needs and should be described in terms of desired progressive improvements in critical areas of performance. Target outcomes/outputs may be modified over time by review.

Achievement of these outcomes/outputs will be assessed by reference to the following performance indicators :

(specify)

- The performance indicators should provide a basis for objective judgements to be made as to whether the target outcomes are achieved cost effectively. As examples, measures may refer to benchmarks, standards or to target outputs for key result areas, depending on the stage of development of the program.
- In recognition of the diversity of areas in which the program will operate, provision would be made for variations in target outcomes/outputs and performance indicators to suit local conditions. For example, it may be necessary to specify these in bilateral agreements between the Commonwealth and individual States and Territories (refer to Bilateral Agreement below).
- Detailed program outcomes/outputs together with strategic level plans could form a schedule to an agreement (multilateral or bilateral), where considered necessary. Strategic level plans should be developed jointly by the parties.

Bilateral Agreement

The Commonwealth and individual States and Territories may make Bilateral Agreements.

The purpose of a Bilateral Agreement is to

(specify eg. provide for agreement and action between the Commonwealth and individual States and Territories on strategic plans and outcomes and outputs to suit local conditions).

A Bilateral Agreement will include
(specify eg. target outcomes/outputs and performance indicators for individual States and Territories).

Financial Arrangements

Funding Components

The Commonwealth will provide the following funding :
(specify amount, components if appropriate and period of funding commitment)

- Where the program is an agreed cost sharing arrangement, specify the relevant funding formula.

Indexation

Commonwealth funds will be indexed each year as follows :
(specify index or indexes to be used, which component(s) this will be applied to and when the index will be applied).

- If relevant, specify any other conditions or trigger points under which the funding will be varied.

Criteria for Allocation between States and Territories

Commonwealth funding will be allocated between States and Territories in accordance with the following
(specify criteria and/or amounts)

Payment Schedule

Commonwealth funding for each year will be paid ininstalments in advance, or as otherwise agreed.
(specify timing of payments).

Other

- Any other financial arrangements (eg. any caps on administrative expenses, restrictions on use of funds or disposal of assets).

Reporting Requirements

States and Territories will provide a performance report against agreed performance indicators to the Commonwealth by no later than
(specify timing eg. annual or at completion of the program).

- All performance reporting should be based on achievable outcomes and outputs as set out above.
- Where a capacity to produce the required data is not already in place, a timeframe and funding arrangements may be negotiated to facilitate production of the data.

- Agreements should detail the differential information requirements of the parties, if appropriate (eg. the Commonwealth may need to provide national data or reports to States and Territories).

Incentives and Non-Performance

If States and Territories meet (or exceed) the agreed outcomes/outputs and performance indicators, the following incentives will apply :
(specify if relevant)

- Positive incentives could be built into agreements which would encourage program performance against objectives.
- Incentives can include clearly specified arrangements whereby States and Territories that achieve increased productivity may retain SPP funding to be used elsewhere within the broad policy area covered by an SPP agreement.

If States and Territories do not meet the agreed outcomes/outputs and performance indicators, the following process will apply:
(specify)

- Include adequate consultation process between the parties, opportunity for corrective action and any sanctions if appropriate.
- Where sanctions are considered necessary, they should:
 - apply only to factors within the control of the State or Territory;
 - apply only if performance is clearly not within an agreed performance range (eg., per cent variation from target output); and
 - only be imposed after consultation between the Commonwealth and the State/Territory to resolve disagreement through a joint process of identifying impediments, developing solutions, implementation and monitoring.

Management/Administration Arrangements

This Agreement will be administered as follows :
(specify)

- Outline any strategic and policy oversight arrangements and which party will have responsibility for operational matters.
- Detail any administrative arrangements to be established (eg. committees; designated program/agreement managers).

Dispute Resolution

Any party may give notice to other parties of a dispute under this Agreement :

- *the Agreement Managers will attempt to resolve any dispute, in the first instance; and*
- *if this fails, Ministers will discuss and attempt to resolve by mutual agreement.*

- States and Territories consider that, as a final recourse, the parties should appoint an independent arbiter to resolve a dispute.

Review of the Agreement

A review of the Agreement will be undertaken by

(specify timing eg. after 3 years, as part of the preparations for a new agreement to take effect following the fourth year).

The review will be undertaken jointly by the parties and examine :

(specify issues to be covered and implications eg. appropriateness, effectiveness, efficiency, administration).

- Set out arrangements for reviewing performance against agreed measures, and evaluating the overall progress in achieving desired outcomes. Detail the process for review including the involvement of all parties to the Agreement.

Variation of the Agreement

This Agreement may be varied by agreement in writing between the parties.

Variations may include, but are not limited to, the provision of financial assistance and performance information requirements.