



Australian Government
Infrastructure Australia

National Public Private Partnership Guidelines

Volume 6: Jurisdictional Requirements



National PPP Guidelines

Jurisdictional Requirements

Volume 6

April 2011

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Components of the Guidelines

Volume	
National PPP Policy Framework	
National PPP Guidelines Overview	
National PPP Detailed Guidance Material	
	Volume 1: Procurement Options Analysis
	Volume 2: Practitioners' Guide
	Volume 3: Commercial Principles for Social Infrastructure
	Volume 4: Public Sector Comparator Guidance
	Volume 5: Discount Rate Methodology Guidance
	Volume 6: Jurisdictional Requirements

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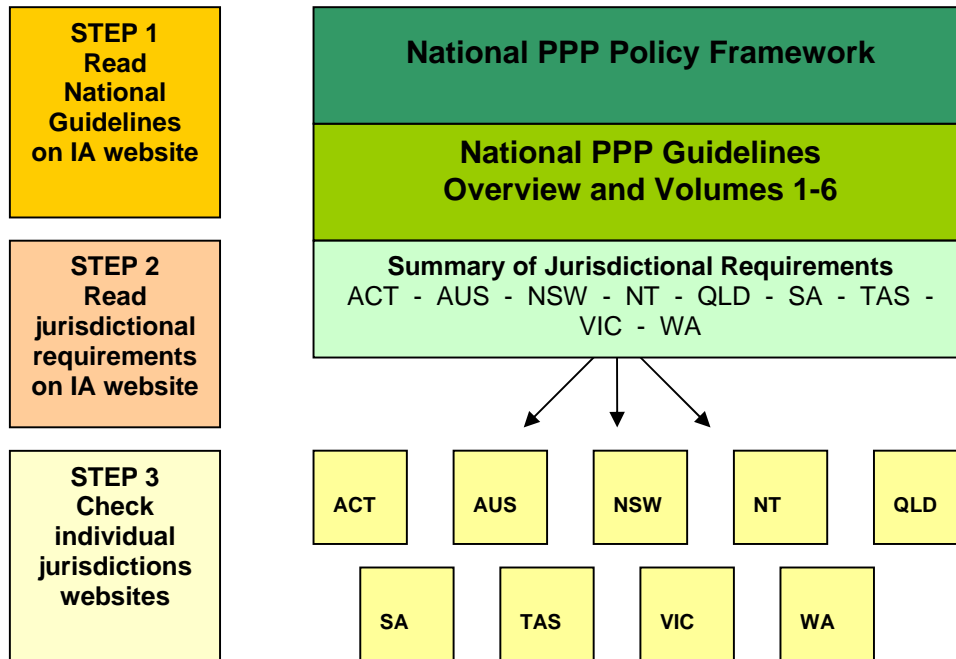
Introduction

The National PPP Policy and Guidelines have been prepared and endorsed by Infrastructure Australia and the State, Territory and Commonwealth Governments as an agreed framework for the delivery of PPP projects. The guidelines provide a framework that enables both the public and private sectors to work together to improve public service delivery through private sector provision of infrastructure and related non-core services.

The guidelines set a framework for the procurement of PPPs on a national basis, and apply across state, territory, and Commonwealth arrangements.

These guidelines represent a high level of uniformity across jurisdictions. However, specific requirements of individual jurisdictions, where different or in addition to the guidelines, are detailed in this document. These jurisdictional requirements will need to be read in conjunction with the national guidelines in order to understand how specific jurisdictional practices differ from the national PPP policy and guidelines.

Figure One: Accessing the national PPP guidelines



With the assistance of Infrastructure Australia, COAG will monitor, review and from time to time refine the national PPP policy and guidance material. Individual jurisdictions will be responsible for updating their respective sections of this document to ensure its currency.

National PPP Guidelines

Australian Government Requirements

June 2009

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1. Introduction

The Council of Australian Governments (COAG) endorsed the national Public Private Partnerships (PPP) policy framework and guidelines on 29 November 2008. The policy and guidelines apply to all Australian, State and Territory government agencies and are available at www.infrastructureaustralia.gov.au.

This document provides advice to Australian Government agencies on:

- applying the national PPP policy and guidelines; and
- Australian Government requirements for PPP project development and delivery.

2. Coverage of the national PPP policy and guidelines

Infrastructure Australia (IA) is responsible for the policy and guidelines. With the assistance of IA, COAG will monitor, review and from time to time refine the policy and guidelines. COAG is responsible for approving substantive changes to the policy and guidelines.

At the Australian Government level, the policy and guidelines apply to all agencies subject to the *Financial Management and Accountability Act 1997* (FMA Act) unless a specific government decision advises otherwise. For example, agency chief executives may put in place measures which allow exemption from the policy and guidelines for projects which involve national security issues. Any exemption must be adequately documented for future audit scrutiny.

The national policy and guidelines update and replace the majority of Australian Government PPP policy and guidance material.

The replaced financial management guidance (FMG) publications are:

- *Policy Principles for the use of Public Private Partnerships (No. 21)*;
- *Introductory Guide to the Public Private Partnerships (No. 16)*;
- *Public Private Partnerships: Risk Management (No. 18)*; and
- *Public Private Partnerships: Contract Management (No. 19)*

FMG No. 17, *Public Private Partnerships: Business Case Development*, has been retained to assist agencies with the process and requirements for obtaining Australian Government approval of PPP projects.

3. Scope of services

The Australian Government agency undertaking a PPP project is responsible for delivery of the core services of the project on behalf of the Commonwealth of Australia. The determination of core and non-core services will occur on a case-by-case basis at the early planning stages of each project.

4. PPP as a procurement option

A PPP is required to be evaluated as a potential procurement method for all infrastructure or asset projects with a capital investment over \$50 million. To determine whether a PPP option should be explored in the initial stages of project development, agencies must complete the PPP suitability checklist when seeking funding for new policy proposals for projects over this threshold in accordance with the budget process operational rules. The checklist is a simple, high level tool used to assess the likelihood of achieving value for money from a PPP option.

Projects below the \$50 million threshold may also be suitable for PPP delivery if they exhibit sufficient value for money drivers. The same process may be used to consider a PPP as a procurement option for these projects.

A procurement options analysis should be completed if the checklist indicates a project will be able to achieve value for money under a PPP arrangement, in accordance with the *National PPP Guidelines: Procurement Options Analysis* available at www.infrastructureaustralia.gov.au.

5. PPP project governance

Each PPP project will be overseen by, and be the responsibility of the relevant portfolio minister of the Australian Government agency undertaking the project. The agency undertaking the project is also responsible for the management and implementation of the project.

The Department of Finance and Deregulation (Finance) is the relevant PPP authority as defined in the national guidelines. Finance has whole-of-government responsibility for:

- advising government on the use of PPP arrangements and the value for money of particular proposals; and
- assisting and advising agencies with the preparation and development of PPP proposals as part of the budget process.

PPP projects will be subject to the Gateway review process, a project assurance methodology involving short, intensive reviews at critical points in the project's lifecycle, by a team of reviewers independent of the project. Gateway applies to all major projects undertaken by FMA Act agencies, including via PPPs. Further information is available at www.finance.gov.au/gateway.

The Auditor-General will have full and complete access as required to information on any Australian Government PPP project.

6. Public interest consideration

For Australian Government PPP projects, an agency's duty of care to the public and the impact of on the public must be considered, especially on those stakeholders identified as being directly affected by the project. An initial review of stakeholders will have been undertaken during the scoping study. This review will undergo further development in the interim business case with a focus on issues that may arise through project development and delivery. If appropriate, the agency should liaise with public interest groups and other relevant bodies and consider possible outcomes of a qualitative or quantitative nature that may possibly impact upon the value for money analysis.

The public consultation should consider the following points:

- effective achievement of service requirements;
- accountability and transparency;
- affected stakeholders;
- consumer rights;
- public access and equity;
- security; and
- privacy.

It may be appropriate for public consultation to continue throughout the life of the project (or at least during the construction and early years of operation), especially if it is deemed to have a major impact on the community. There are many avenues for communicating with the public, e.g. newsletters, email, flyers and public consultation forums.

7. Probity requirements

All procurement undertaken by Australian Government agencies, including via PPPs, must be conducted in accordance with FMG No. 14: *Guidance on Ethics and Probity in Government Procurement* available at www.finance.gov.au/publications/fmg-series.

Section 44 of the FMA Act specifies that agency chief executives are responsible for ensuring the efficient, effective and ethical use of Commonwealth resources. Probity considerations should be incorporated in the planning phase of a PPP.

8. Approval process

Financial Management and Accountability Act 1997

The FMA Act and associated *Financial Management and Accountability Regulations 1997* (FMA Regulations) set down a number of legal obligations which must be followed by officials involved in procuring any property and services for the Australian Government, including via PPPs.

FMA Regulation 8(1) requires officials to have regard to the *Commonwealth Procurement Guidelines* (CPGs) when conducting procurement processes.

FMA Regulation 9 requires an approver (an official with the delegated power to do so) to be satisfied amongst other things that the proposed expenditure is in accordance with the policies of the Australian Government and will make efficient and effective use of public money.

FMA Regulation 10 prohibits the approval of a spending proposal that is not fully supported by an available appropriation (either in an Act or proposed in a Bill before the Parliament), unless the finance minister has given written authorisation for the approval. *FMA Regulation 10* approval will, as a rule, be required for PPP arrangements due to their long duration.

PPP approvals

In addition to meeting the FMA approval requirements that relate to any procurement, there is the obligation to adhere to the approval requirements that apply to PPP projects.

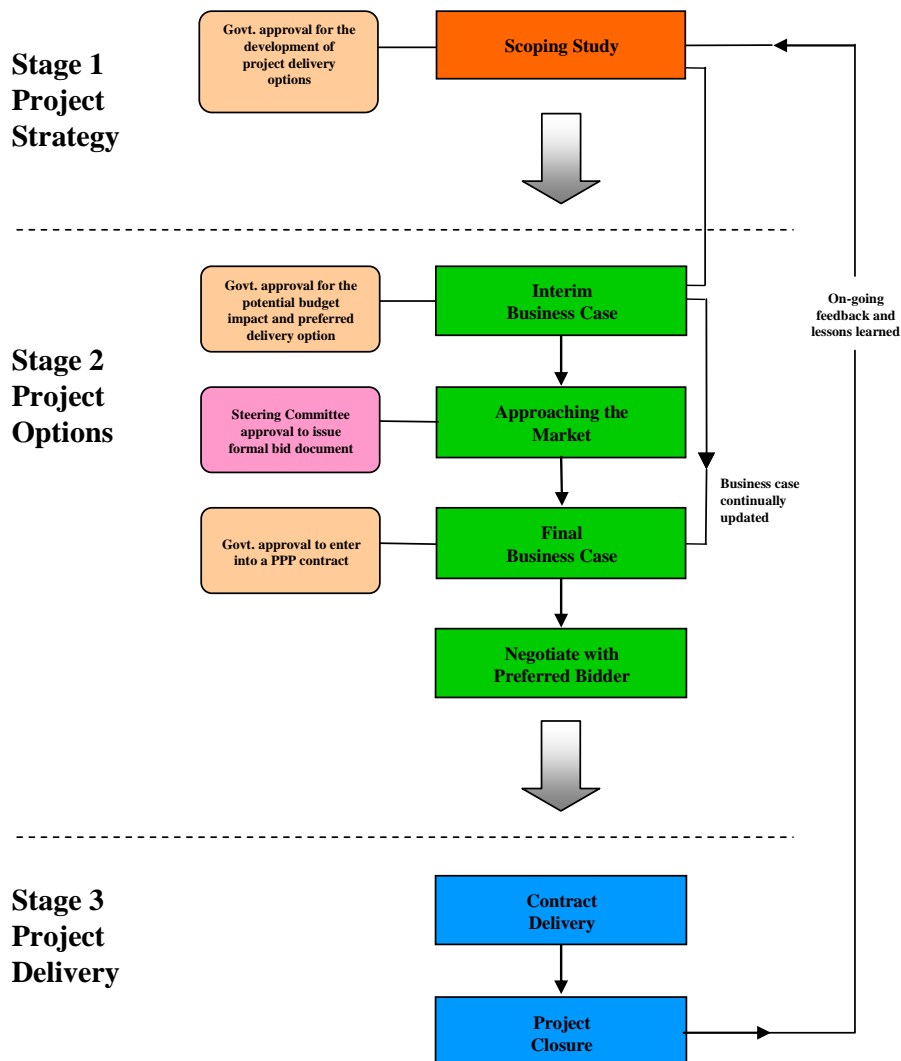
Capital Cost	Approval required
Below \$20 million	Agency chief executive
\$20 million or more but below \$50 million	Minister for Finance and Deregulation
\$50 million or more	Full government

Where a project is less than \$20 million, but has the potential to significantly limit or impact on an agency’s future activity or the government’s fiscal position, approval by the Finance Minister is required.

PPP project development cycle

The following diagram presents the three stages of development in an Australian Government PPP project:

Figure One: PPP project development cycle



Further information on the process and requirements for Australian Government approval of PPP projects is available in FMG No. 17: *Public Private Partnerships: Business Case Development* available at www.finance.gov.au/publications/fmg-series.

9. Public sector comparator requirements

A preliminary analysis of a Public Sector Comparator (PSC) must be included in the interim business case for approval by government

The raw (non-risk adjusted) PSC figure (together with high level assumptions) is to be disclosed in the request for proposal. It is important to recognise that releasing the PSC in the public domain means it will be subject to public scrutiny. The agency must therefore have a high level of confidence in the PSC calculations and assumptions before allowing release of the data.

10. Publication requirements

Australian Government agencies must publish all open approaches to the market, including an expression of interest, on AusTender in accordance with the requirements of the CPGs. AusTender is the electronic system for notification and publication of business opportunities with Australian Government agencies and is accessible at www.tenders.gov.au.

Further information on procurement publishing obligations is available in FMG No. 15: *Guidance on Procurement Publishing Obligations* available at www.finance.gov.au/publications/fmg-series.

11. Tender release requirements

The request for proposal (RFP) should include a draft contract in accordance with the CPGs. The issue of a draft contract with the RFP ensures all parties are aware of, and have sufficient opportunity, to consider the specific contractual terms that government is seeking.

12. National commercial principles

The national PPP commercial principles provide a consistent and efficient risk allocation framework, while recognising the need for flexibility for individual project needs. Any variation from the principles for project-specific issues must, however, be documented and agreed with Finance when government approval is sought to issue the RFP.

13. Tender requirements

Information on tender requirements is contained in the CPGs.

As part of the RFP response, bidders should be requested to provide a compliance schedule which identifies all instances of departure from the draft contract, including providing the rationale and cost for each departure. Bidders should also be asked to submit a fully marked up contract and schedules outlining any instances of departure.

As part of the RFP response, bidders should be asked for evidence of committed finance at bid submission, unless specific project circumstances deem otherwise.

14. Reimbursement of bid costs

In normal circumstances, the Australian Government would not contemplate payment of any part of the bid costs incurred by unsuccessful bidders.

15. Disclosure policy and requirements

All Australian Government PPP projects will be subject to the disclosure requirements of the CPGs. Further information is available in FMG No. 15: *Guidance on Procurement Publishing Obligations* and FMG No. 8: *Listing of Contract Details on the Internet (Meeting the Senate Order on Departmental and Agency Contracts)* available at www.finance.gov.au/publications/fmg-series.

Further information

For more information visit www.finance.gov.au/procurement/index.html

National PPP Guidelines

New South Wales Requirements

June 2009

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1. Executive summary

National public private partnerships (PPP) policy and guidelines draw on existing best-practice PPP material, primarily sourced from NSW and Victoria. NSW Treasury helped prepare and has endorsed the national guidelines, which should result in a consistent, best-practice approach to PPP delivery nationally.

NSW jurisdictional requirements are covered in the Working with Government (WWG) *Guidelines for Privately Financed Projects* policy document, published in December 2006. While national PPP guidelines are largely consistent with current NSW guidelines, this document examines NSW jurisdictional requirements that differ from the national guidelines.

These NSW specific differences are summarised in a section of the guidelines prepared by Infrastructure Australia. Jurisdictions will retain flexibility to apply their own requirements and principles in some areas including:

- unique legislative requirements;
- State Government approvals processes;
- public interest considerations;
- probity and disclosure policy requirements;
- tender publications requirements;
- project and contract management; and
- accounting issues.

The NSW guidelines reflect the following principles:

- A competitive and transparent process to provide a fair opportunity for all prospective private sector participants.
- No direct negotiations with a single proponent unless approved by the Budget Committee of Cabinet (BCC) whose decision will be made public.
- The Government will not guarantee private sector borrowings nor take an equity share-holding.
- Scope for Government to contribute land, capital works or revenue diversion.
- Disclosure of information on contracts and tenders in line with the Government's policy on the disclosure of information on Government contracts with the private sector.
- Delivery of services consistent with agreements and undertakings under the National Reform Agenda.
- Comply with the obligations under the *Environmental Planning and Assessment Act 1979* (EP&A Act).
- Fair treatment of public employees who may transfer to a private employer as part of a PPP.
- Encourage maximum Australian and New Zealand industry participation.
- Consider reimbursing bidders' reasonable bidding costs if a project is prematurely terminated for reasons unrelated to any commercial or technical aspect after the call for detailed proposals.
- Apply the NSW Guidelines in a professional, fair, equitable and open manner, ensuring probity and minimisation of tendering costs.

PPPs require careful consideration and the BCC will review and progressively approve projects at each development phase, consistent with the national guidelines. An agency must receive the Treasurer's approval under the *Public Authorities Financial Arrangements Act 1987* (PAFA Act) to enter a PPP.

2. Coverage of the NSW guidelines

All NSW Government agencies including State-owned corporations and public trading enterprises that are not State-owned corporations (collectively referred to as 'agencies' in the NSW Guidelines) must comply with the NSW Guidelines.

Councils are not bound by the NSW Guidelines. However, Part Six of Chapter 12 of the *Local Government Act 1993* (NSW), requires councils to comply with separate guidelines which outline specific processes and procedures councils must follow when entering into public private partnerships.

These national guidelines must be applied to a wide range of different types of projects. To efficiently procure infrastructure and to keep bid costs as low as possible, in some cases it may be appropriate to depart from the processes set out in the national guidelines.

In that case, the procuring agency must seek approval from NSW Treasury. Depending on the circumstances, Treasury may seek approval from the Treasurer or the BCC.

All procurement by agencies (but not State-owned corporations) is subject to the NSW Government Procurement Policy (www.treasury.nsw.gov.au/procurement/procure-intro) and its associated guideline documents. This is compulsory for all conventional procurement, PPP and outsourcing.

State-owned corporations are subject to the NSW guidelines for assessment of projects of State significance and the reporting and monitoring policy for Government businesses.

3. Scope of services

Private provision of infrastructure and non-core services does not mean privatisation of public services. The Government will continue to deliver core services. The distinction between core and non-core services will be determined case by case.

4. Unsolicited proposals

While unsolicited proposals can provide innovative ideas about improving delivery of government services, they must demonstrate an overall community benefit and be consistent with the Government's plans and priorities.

The Director-General of the Department of Premier and Cabinet (DPC) is the first point of contact for unsolicited proposals. DPC will consult with relevant agencies to assess the merits of a proposal and determine where it fits into the relevant priorities of agencies. The State Infrastructure Strategy (SIS) will be used to benchmark the proposal against current priorities and gauge its impact on other projects.

The Director-General will inform proponents of the outcomes of the preliminary assessment. The Government will not reimburse any costs incurred by a proponent in developing and presenting an unsolicited proposal. The Government will normally test unsolicited proposals in the market place through competitive tendering. The aim is to maximise both financial efficiencies and effective service delivery.

Requests to bypass the competitive tendering process and negotiate directly with the Government must be approved by the BCC. Approval will only be granted where the proponent can show there would be no viable competition for the delivery of the proposal's essential outcomes. See the following section for further guidance on Direct Negotiations.

5. Direct negotiations

Where direct negotiation is used for any proposal, the agency must demonstrate to the BCC the reasons and net benefits of not running a competitive tender process.

The proposal must meet the conditions contained in Section Two of the WWG Guidelines. The agency must have completed the necessary planning to specifically demonstrate the project is consistent with its capital investment strategic plan or asset strategy. The agency must have thoroughly researched the proposal and have independent evaluations confirming all of the following:

- only the proponent, because it owns real property, intellectual property, or another unique element, can deliver the proposal's essential outcomes;
- direct negotiation would preserve considerable benefits for the agency, the Government and the community;
- direct negotiations would provide better value for money than a competitive tender process;
- the proponent has the expertise, experience and financial capacity to successfully deliver the project; and
- the monetary value of any intellectual property.

Where direct negotiation is approved by the BCC, a public statement will be issued outlining the reasons for adopting this approach. The proponent will then have to provide a detailed proposal for assessment consistent with the elements of Table One below.

6. Approval process

A business case must be submitted to Treasury prior to an agency seeking BCC approval to procure new infrastructure. The business case must contain the following elements:

- scope and objectives of project;
- economic appraisal report;
- supporting information underlying the economic appraisal;
- financial appraisal;
- financial impact statement;
- risk assessment, mitigation and valuation; and
- a satisfactory Gateway review report at the planning and definition stage.

After the BCC approves procurement of a project and it is being considered for delivery via private finance, it is developed in a five phase process outlined in Table One below. These phases are based on BCC approval points.

PPPs procured by State-owned corporations or other public trading enterprises with a board of directors must obtain board approval before requesting BCC approval to go to the next phase. This approval process is required for all PPPs regardless of whether the project falls under other guidelines, such as the *Guidelines for Assessment of Projects of State Significance*.

The BCC may require submission of further updates at other points in the tender process.

7. Terms and conditions for negotiations of private sector infrastructure projects

Before seeking BCC approval to begin contract negotiations with one or more proponents, the agency together with Treasury, must develop a project-specific 'terms and conditions for negotiations of private sector infrastructure projects' agreement in the PSI-3 format (refer to Appendix Four in the WWG Guidelines).

This will inform the BCC of type of commercial deal the agency wants to pursue with the private sector. The terms and conditions submitted to the BCC must outline the scope of the project and areas for final negotiations, as well as any conditions that must be satisfied for the Government to support the project.

The agency submission should also provide the information needed to estimate any likely contingent liability of the project on the consolidated fund.

Phase	Title	Actions
1	PPP project planning and definition	<ul style="list-style-type: none"> ▪ Determine core v non core services and project scope ▪ Updated business case (including economic appraisal) ▪ Procurement strategy report, including a timetable for procurement showing key milestones ▪ Public interest evaluation ▪ Risk allocation matrix and management plan ▪ Preliminary public sector comparator ▪ Project management structure ▪ Preliminary statement of fiscal impacts in the format ▪ An estimate of contingent liabilities upon the consolidated fund ▪ Planning approval preliminary assessment and consultation
BCC approval to proceed		
2	EOI and short listing	<ul style="list-style-type: none"> ▪ Draft EOI documentation ▪ Probity plan prior to issue of the EOI ▪ Invite EOI ▪ Evaluation plan, evaluation and short listing ▪ Update of public interest evaluation ▪ Update of risk allocation matrix ▪ Environmental assessment
Possible concept approval under the EP&A Act		
BCC approval to proceed if required		
3	Detailed proposals and assessment	<ul style="list-style-type: none"> ▪ Draft call for detailed proposals document ▪ Draft contracts to issue with the call for proposals ▪ Issue call for detailed proposals ▪ For Process One project development approval under the EP&A Act and issue to bidders ▪ Update PSC prior to receiving proposals ▪ Evaluation plan and evaluation

Phase	Title	Actions
		<ul style="list-style-type: none"> ▪ Where applicable, proceed to best and final offer (BAFO) ▪ Prepare 'terms and conditions for negotiations of private sector infrastructure projects' ▪ Update: <ul style="list-style-type: none"> ▪ public interest evaluation; ▪ business case (including economic appraisal); ▪ risk allocation matrix and management plan; ▪ statement of fiscal impacts; ▪ assessment of loan council treatment; and ▪ assessment of probity, policy and other issues ▪ Accounting treatment and taxation opinion
		BCC approval to proceed
4	Negotiation and contracts	<ul style="list-style-type: none"> ▪ Where appropriate and approved, proceed with pre-selection negotiations ▪ Negotiations with preferred proponent ▪ Finalise contract ▪ Finalise accounting treatment ▪ Update: <ul style="list-style-type: none"> ▪ public interest evaluation; ▪ business case (including economic appraisal); ▪ risk allocation matrix and management plan; ▪ statement of fiscal impacts; ▪ assessment of loan council treatment; and ▪ assessment of probity, policy and other issues ▪ Accounting treatment and taxation opinion
		BCC approval to proceed required if significant variations arise in negotiations
		Treasurer's approval (PAFA Act)
		Project or development approval under the EP&A Act
5	Execution, disclosure and application	<ul style="list-style-type: none"> ▪ Execute contract ▪ Environmental assessment ▪ Publish project agreement and associated documents (excluding confidential information) ▪ Issue contract summary ▪ Implement and monitor project ▪ Post implementation review

In addition to the five phases outlined above, an agency will be required to seek BCC approval to continue the project in any of these following situations.

If at any time prior to signing the contract, the conclusions or major assumptions of the business case (including the economic and financial appraisals) significantly change, including:

- forecast construction, operating or maintenance costs, or forecast revenues changing by more than 10 per cent;
- likely development approval conditions;
- proposed or maximum user charges changing by more than five per cent;
- budget funding is required from government or from internally generated funds of the Agency which is additional to that previously approved;
- any previously set BCC conditions of approval are unlikely to be met;
- there is a material change in the risk allocation from that which was last approved by the BCC; and
- procuring the project, as a PPP or not, is no longer in the public interest or would not represent value for money.

An agency must seek the Treasurer's approval under the PAFA Act to enter into joint financing arrangements or PPPs. State-owned corporations may need to obtain the written approval of the shareholding ministers under Section 20X of the *State Owned Corporations Act 1989* (SOC Act). This section of the SOC Act deals with the acquisition and disposal of fixed assets and investments. State-owned corporations should check with NSW Treasury to determine if they need this approval for their particular privately financed project.

If the agency wants to renegotiate any significant areas of a PPP contract after it has been approved and signed by government, the agency must obtain BCC approval before starting renegotiations.

A further BCC approval is required before signing a contract if any of the negotiation terms previously approved by the BCC cannot be met.

If the agency wants to renegotiate or amend any element of a previously signed PPP contract without materially changing the workings of the contract, the agency must consult with NSW Treasury before commencing renegotiations. NSW Treasury will determine if it is appropriate to inform the Treasurer or BCC.

Any amendments to previously signed PPP contracts may require the Treasurer's approval under the PAFA Act. Planning and Environmental approvals must also be sought under the EP&A Act (NSW). For more information refer to Section 3.2 in the NSW WWG Guidelines.

8. Public interest evaluation

All projects covered by the NSW Guidelines will undergo an evaluation to ensure they are in the public interest. The BCC needs to be satisfied that it is in the public interest to procure the project as a PPP.

The public interest evaluation will be updated before the issue of the call for detailed proposals, after finalising the evaluation of the call for detailed proposals and prior to Government signing the contract documents.

The Public Interest Evaluation will concentrate on:

- whether the project is effective in meeting the Government's objectives;
- value for money;
- community consultation;
- consumer rights;
- accountability and transparency;
- public access;
- health and safety; and
- privacy.

For further information, refer to Appendix Two in the WWG Guidelines.

9. Public sector comparator

A preliminary public sector comparator (PSC) should be developed before issuing an expression of interest (EOI), and should be fully updated before accepting responses to the call for detailed proposals.

The Government is flexible about disclosing a summary of a PSC in tender documents. Disclosure is more likely where it will obviously assist the private sector's bid preparation process and result in higher quality and better value bids to the Government. The results of the PSC will ultimately be publicly available in the contract summary.

The national guidelines currently provide detailed guidance on constructing PSCs for social infrastructure and on the discount rate applied for social infrastructure projects. This excludes the use of the discount rate in cost benefit analysis associated with the investment decision.

Consistent with the national guidelines, PSCs for NSW social infrastructure will be constructed as a cash-flow model under traditional delivery methods because, unlike economic infrastructure, social infrastructure is primarily funded by payments from the Government.

The NSW Guidelines also provide high level guidance on constructing PSCs for economic infrastructure. PSCs for economic infrastructure projects will usually be developed on a project financed basis. The project delivery vehicle will normally be assumed to be a special purpose vehicle operating under the *State Owned Corporations Act (NSW) 1989*.

NSW Treasury is responsible for advising on the value for money aspects of private financing arrangements, including the development of the PSCs. Treasury will assist agencies throughout the project development process and provide advice on technical issues, such as discount rate to be used in constructing PSCs.

Further information can be found in Chapter Seven of the WWG Guidelines.

10. Probity and accountability

The NSW Government is committed to efficiency, fairness, impartiality and integrity in all its dealings. Probity is an important issue for government as custodian of the community's assets. A comprehensive probity plan is essential in all PPP projects and a probity auditor will be appointed for large, complex and/or unusually sensitive projects.

To ensure the participation of related companies in a tender does not impact on the probity, competitiveness or cost of a project, companies may be required to sign a probity process deed. To maximise community and business confidence in its tendering practices, the Government has established independent review mechanisms for complaints about tendering with government agencies.

The State Contracts Control Board is responsible for issues associated with probity, the National Reform Agenda and the Australian and New Zealand Government procurement agreement. The NSW Government's Code of Practice for Procurement applies to procurement by all NSW government agencies, and those doing business with and for government. This includes the procurement of services through privately owned and financed public infrastructure.

The Code establishes ethical principles and standards of behaviour for all parties involved and will apply to all procurement actions from calling for EOIs to project completion.

11. Tender publication requirements

Under the Premier's Memorandum 2006-11 *NSW Procurement Reforms*, government agencies are to make request for tender documents available. Tenders may be lodged through the NSW Government eTendering system which is managed by the NSW Department of Commerce through the Tenders NSW website (<http://tenders.nsw.gov.au>).

It also provides a mechanism for the receipt of tenders in electronic form, closing tenders, receiving late tenders, opening the tenders, the removal of tenders, publishing a listing of tenderers, and publishing contract award information.

12. Expression of interest (EOI) requirements

Having assessed the various issues of a proposal, the BCC will consider and approve if appropriate, a call for EOIs being issued to invite responses from the marketplace. Before the issue of EOIs, agencies in consultation with NSW Treasury, should:

- draft the EOI documentation;
- complete a probity plan prior to the release of the EOI; and
- complete the EOI evaluation plan, consistent with Phase Two of Table One.

The evaluation process must be fair and equitable and be consistent with the project probity plan. Responses to the call for EOI will be evaluated by an agency-established evaluation panel and coordinated by the project manager. Subject to a favourable outcome, the evaluation would lead to a shortlist of bidders.

13. Detailed proposal requirements

An agency may proceed to a call for detailed proposals "the Call" from the short listed bidders after gaining any required BCC approvals. The call should clearly specify the information required from bidders to enable the agency to assess whether bidders have satisfied the evaluation criteria.

For financial information, sponsoring agencies usually provide bidders with templates to submit with their bids. This provides the agency with information in a consistent format and makes comparing bids easier. To help government fully understand the private sector's funding package, short listed bidders must provide—with their response to the call for detailed proposals—the financial model used to support their bid.

Other information which may be required includes:

- signed terms sheets for key subcontractors (in some cases the agency may require draft contracts);
- signed terms sheets for the financing agreements, including evidence of credit committee approvals;
- in the case of equity funding, evidence of the extent to which equity has been committed; and
- a binding Australian Tax Office (ATO) ruling supporting the proponent's belief that the viability of the project is not threatened by tax risks.

Generally, the call for detailed proposals would specify what constitutes a conforming bid as well as identifying parameters within which variations to the above requirements would be accepted and the terms on which they will be accepted and evaluated.

These are often referred to as a variant conforming bid. Generally, the call for detailed proposals will specify that a variant conforming bid will only be considered if a conforming bid also has been submitted by a proponent.

A non-conforming bid is a bid which does not comply with the requirements for a conforming bid or a variant conforming bid. Agencies should ensure the call states that whether or not a non-conforming bid is accepted will be at the agency's sole discretion.

14. Disclosure policy and requirements

All PPPs are subject to Ministerial Memorandum No.2000-11 and the *Freedom of Information Act (NSW) 1989*, as amended from time to time, which sets specific disclosure requirements arising from NSW Government tenders and contracts.

The agency must ensure a contract summary is made available to the Auditor-General for audit within 30 days of the contract becoming effective. Within 90 days of receipt by the Auditor-General, the audited contract summary must be tabled in Parliament by the responsible minister.

Where Parliament is not sitting, the Clerk of the Legislative Assembly should receive the contract summary within 90 days of it being received by the Auditor-General, with a view to it being tabled the first day of Parliament's next sitting.

After the summary has been tabled, the agency must advertise the availability of the contract summary in the Public Notices. Contract summaries will also be placed on the Working with Government Website at www.treasury.nsw.gov.au/wwwg.

The contract summary must distinguish between the Background to the Project (which includes non-contractual information) and Elements of the Contract (which summaries the contractual information).

The summary must contain the following information:

Background to the project

- history of the project and its characteristics;
- full identity of the private party, including sponsors and cross ownership with relevant companies;
- a list of the contract(s), the nature and purpose of the contract(s), including a general description of the parties' obligations;

-
- a general statement on material excluded on the basis that it is subject to obligations of confidentiality or is 'commercial in confidence'
 - results of cost-benefit analyses and the public sector comparator compared with the successful private sector proposal;
 - significant evaluation criteria and the weightings used in the tender assessment;
 - the risk sharing in the construction and operational phases of the project, quantified in net present value terms (where possible) and specifying the major assumptions involved;
 - responsibilities of the State and contractor during the construction period;
 - a statement of the actual liabilities of the Crown; a statement of any indemnities and/or guarantees given by the Crown; and
 - a summary of the public interest evaluation.

Elements of the contract

- description of change control provisions;
- the commencement date, term and extension options of the contract;
- service delivery (including maintenance), quality and performance requirements;
- what and when assets are to be transferred by the public sector to the contractor;
- operation and/or maintenance provisions in the contract;
- the price to be paid by the public, and the basis for future changes in this price;
- provisions for negotiation;
- significant guarantees or undertakings between the parties, including loans entered into or agreed to be entered into;
- a statement that the Auditor-General's ability to carry out the audit function under the Public Finance and Audit Act 1983 has not been diminished by the contract(s);
- a description of the events of default and any termination rights;
- a statement as to contractual remedies available to the Government in respect of breach or losses otherwise caused by the private party, and remedies against the Government in any circumstances:
- a description of exit arrangements and costs of exiting;
- a description of the situations in which the Government may exercise its contractual right to step-in;
- a description of any pre-determined dispute resolution process;
- description on how insurance proceeds in the event it is called upon; and
- other key contractual arrangements elements not covered above.

A post implementation review of all PPPs will be undertaken jointly by NSW Treasury and the agency initiating the project.

15. Communications

NSW government agencies may have their own policies and guidelines in relation to communications strategy.

16. PPP project governance and contract management

The delivery agency manages the PPP project with assistance from NSW Treasury.

NSW Treasury sets PPP and general procurement policy. The delivery agency manages a PPP project, with Treasury providing varying degrees of assistance depending on the agency's experience with PPPs and procurement generally.

NSW government agencies may have their own contract management policies and procedures.

Further information can be found in Section Four of the WWG Guidelines.

17. Accounting and taxation issues

Agencies must assess the likely accounting treatment to be used for privately financed projects. A statement of accounting treatment must be prepared, showing balance sheet, operating statement and statement of cash flows.

NSW Treasury is responsible for accounting policy guidelines and should be consulted by agencies when the most appropriate accounting treatment is being considered for a particular PPP transaction.

An updated statement of accounting treatment must be submitted to NSW Treasury after negotiations have been finalised. Before the contract is executed, the agency should obtain a NSW Treasury determination on the accounting treatment and should advise the Auditor-General of the proposed accounting treatment.

Depending on the degree to which government (a tax-exempt entity) is deemed to have assumed commercial risk and control, Commonwealth taxation legislation may adversely affect PPPs. Tax risk is the responsibility of the private party, and NSW Government will not assume or underwrite risk associated with the denial of tax deductions.

For those tax risks that can threaten the viability of a project, agencies may require the private party to obtain a binding ruling from the ATO as a condition precedent to the contract becoming effective.

18. Commercial principles for social infrastructure

The National Guidelines contain updated NSW commercial principles for social infrastructure. Where the National Guidelines provide flexibility for specific commercial areas, agencies should contact NSW Treasury to clarify current policy.

19. Legal and policy references

Relevant legislation, policy and guidelines include:

NSW Acts

- *Public Authorities Financial Arrangements (PAFA) Act 1987;*
- *Public Finance and Audit (PFAA) Act 1983;*
- *Freedom of Information Act 1989;*
- *Local Government Act 1993;*
- *State Owned Corporations Act 1989;* and
- *Environmental Planning and Assessment Act 1979.*

NSW Premier's Memoranda

- M2006-11 *NSW Procurement Reforms Bill;* and
- M2007-01 *Public Disclosure of Information arising from NSW Government Tenders and Contracts.*

NSW Guidelines and Strategies

- NSW Treasury *Working with Government Policy* www.treasury.nsw.gov.au/wwg;
- NSW Government *Procurement Policy* www.treasury.nsw.gov.au/procurement/procure-intro;
- *Total Asset Management;*
- *Guidelines for Assessment of Projects of State Significance;*
- *Reporting and Monitoring Policy for Government Businesses;* and
- *NSW State Infrastructure Strategy.*

Commonwealth Acts

- *Income Tax Assessment Act 1936;* and
- *Income Tax Assessment Act 1997.*

Further information

For more information visit www.treasury.nsw.gov.au/wwg

National PPP Guidelines

Partnerships Victoria Requirements

January 2010 (Version 2)

Version Control	Last Updated	Updated sections	Rationale
1	June 2009		
2	January 2010	Section 12 and Annexure 6	<i>Public Sector Comparator (PSC) Requirements.</i> The new requirement is for Procuring Agencies to conduct an internal quality assurance review PSC workshop. The workshop objective is to reduce the risk of error or inaccuracy by cross-checking the PSC outputs against the inputs and assumptions, prior to release of the Request for Proposal.
		Annexure 3	A change made to the Notes related to Discount Rate Inputs (available on www.partnerships.vic.gov.au).

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1. Introduction

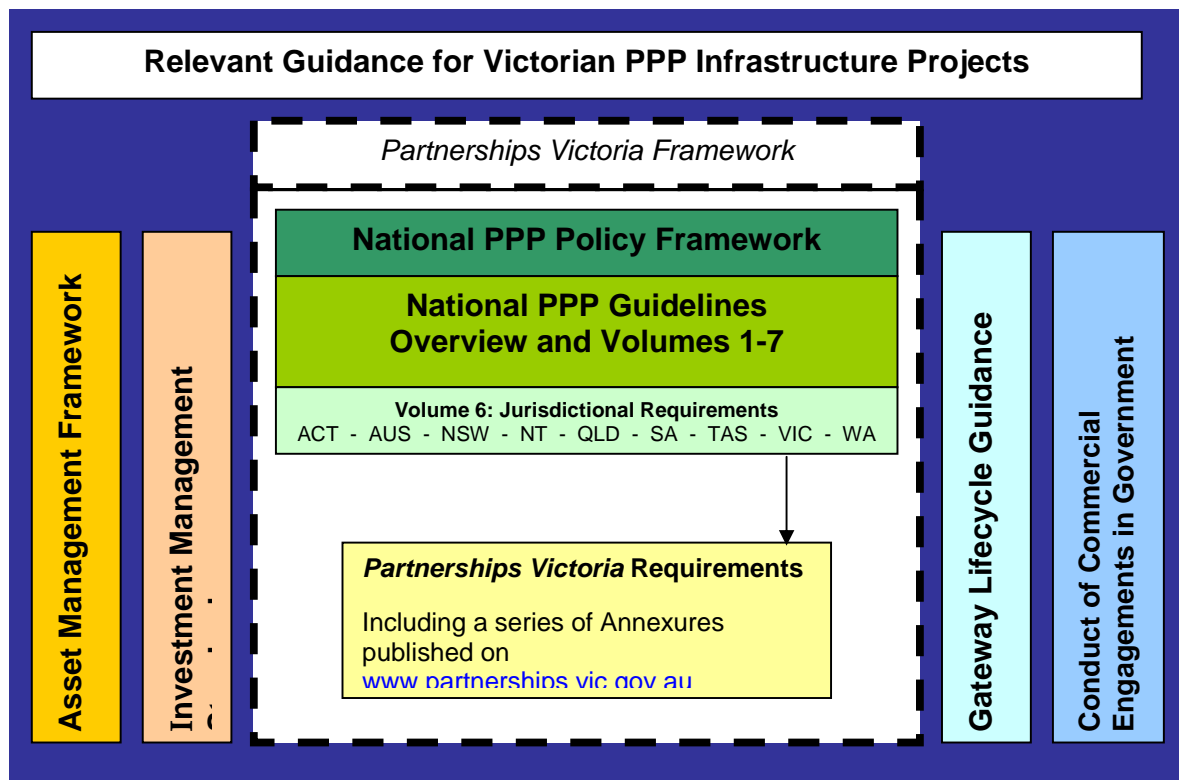
PPP projects will be procured under the *Partnerships Victoria* framework that requires compliance with both the:

- new national PPP policy and guidelines; and
- Victorian-specific requirements outlined in this document and its annexures.

The national PPP policy and guidelines have immediate effect and will apply to all Victorian PPP projects released to the market from January 2009. Where the national guidelines allow flexibility, the Victorian-specific requirements in this document and its annexures apply (see in particular Annexure One on commercial principles published on the *Partnerships Victoria* website). Other Victorian whole-of-government policies such as the *Asset Management Framework* and *Gateway Reviews* continue to apply to Victorian PPP projects.

Under the national guidelines, there is a new policy requirement to consider PPP delivery as one of the procurement options when planning for any capital expenditure over \$50 million. The national guidelines are consistent with the pre-existing *Partnerships Victoria* approach with the exception of the Discount Rate Methodology. While this changes the methodology for some projects, it is anticipated the outcome will not be materially different.¹

Figure One: Hierarchy of guidelines



¹ Under the previous *Partnerships Victoria* approach, special rules for discount rates applied to large and unusual projects, while general rules applied to all other projects. Under the National Guidelines, the special rules apply to all projects.

2. Objectives

The objectives of the *Partnerships Victoria* framework comprise the national PPP policy objectives (contained in the National Policy Framework document) as well as some specific objectives, namely to:

- maximise the social and economic returns from Government expenditure;
- promote growth and employment opportunities for the whole of Victoria; and
- manage *Partnerships Victoria* contracts in a proactive, practical and constructive manner to achieve project objectives incorporating balanced long-term value for money outcomes.

3. Coverage of the policy and guidelines

The policy applies to public infrastructure projects when the estimated value of payments to be made by the Government (and/or by consumers of a service) will exceed \$50 million for the assets underpinning the services to be delivered.

The national policy and guidelines and *Partnerships Victoria* requirements apply to all PPP projects entered into by Victorian budget sector agencies, unless a specific government decision advises that other provisions will apply.

Application of the policy to the provision of infrastructure by a government business enterprise (GBE) shall be determined on a project-by-project basis, following consideration by the portfolio minister of the business plan of the GBE. One variant process is set out in Annexure Nine *Non-Metropolitan Urban Water Authority Approval Process*.

The Treasurer remains responsible for developing and overseeing the *Partnerships Victoria* framework. The Treasurer is responsible for Victorian contributions to the national PPP policy and guidelines.

With the assistance of Infrastructure Australia, the Council of Australian Governments (COAG) will monitor, review and from time to time refine the national policy and guidance material. COAG is responsible for approving substantive changes to the national policy and guidelines. Individual jurisdictions are responsible for maintaining and updating their specific jurisdictional requirements, therefore it is likely that this document will be amended from time to time.

4. Scope of services

The national policy applies to the provision of public infrastructure and any related ancillary services which involve private investment or financing. In Victoria, the term infrastructure can extend beyond physical assets to encompass major information technology procurements. However, the policy does not apply to the general procurement of services by the Government where public infrastructure is not being provided.

The Victorian Government is responsible for the delivery of core services in a PPP project. The determination of core and non-core services will occur on a case-by-case basis at the early planning stages of each infrastructure project.

5. PPP as a procurement option

All public infrastructure projects with a total estimated investment (TEI) in capital goods over \$50 million are required to evaluate a PPP as a potential procurement method with regard to the value for money drivers, when conducting a procurement options analysis and seeking government approval. Projects of less than \$50 million may also be suitable for PPP delivery if they exhibit sufficient value for money drivers. The capital threshold may also be triggered by bundling projects together.

The procurement options analysis is to be done in accordance with the *National PPP Guidelines Procurement Options Analysis*, and Victorian guidelines such as the *Victorian Gateway Initiative Project Lifecycle Guidelines – Procurement Strategy Guidelines*.

6. PPP project governance

Each PPP project in Victoria will be overseen by, and be the responsibility of, the relevant portfolio minister. Procuring agencies are responsible for management and implementation of PPP projects. An appropriately skilled and resourced procurement team, led by a project director, will be responsible for delivery of the project.

The Department of Treasury and Finance (DTF) is the relevant PPP authority as defined in the national PPP guidelines. DTF has whole-of-government responsibility for:

- the *Partnerships Victoria* framework;
- supporting and reviewing *Partnerships Victoria* projects; and
- monitoring and independently advising the Treasurer and Cabinet on significant PPP issues.

Senior representatives of DTF and, where appropriate, other agencies such as DPC, are to be members of the PPP Project Steering Committee. DTF is also to be represented at project working group level.

Procuring agencies are to:

- specifically consult DTF in relation to budgeting, accounting and taxation matters on PPP projects;
- consider the assistance available from Major Projects Victoria. Further information is available at www.mpv.vic.gov.au; and
- consider the assistance available from the Victorian Government Architect in relation to design matters in the project development phase and ongoing tender phase of PPP projects. Further information is available at The Office of the Victorian Government Architect www.dpc.vic.gov.au/.

PPP projects will be subject to Gateway Reviews (except for Gate Four) in accordance with the Gateway Review Process at www.gatewayreview.dtf.vic.gov.au/. The Auditor-General will have full and complete access as required to information on any Victorian PPP project.

7. National commercial principles

The national commercial principles (NCP) provide a consistent and efficient risk allocation framework, while recognising the need for flexibility for individual project needs. Annexures One and Two outline the Victorian-specific requirements that derive from the NCP. These annexures will be updated from time to time to incorporate project lessons.

Any deviation from the NCP and the Victorian requirements in Annexures One and Two for sector or project-specific issues must be documented and agreed with DTF when:

- government approval is sought to issue the Request for Proposal (which contains the contract documentation) if the deviation is proposed by the Procuring Agency; or
- government approval is sought for the appointment of a preferred bidder or execution of contract, if the deviation is proposed by a bidder.

8. Public interest test

Victorian PPP projects must complete a public interest test and submit it with documentation seeking project approval. Confirmation, or updates to the public interest assessment are required at key stages throughout the project. The public interest test covers consumer rights, transparency and other criteria designed to protect the interests of the community.

Public interest test elements, submission requirements and templates are outlined in Annexure Seven.

9. Probity requirements

All commercial transactions by the Victorian Government must be conducted in accordance with the *Victorian Government Purchasing Board Policy for the Conduct of Commercial Engagements* and also with regard to the *Good Practice Guidelines - Conduct of Commercial Engagements in Government (2006)*. Refer to www.vgpb.vic.gov.au. These guidelines outline the role of probity practitioners and contain some template documents.

The Victorian public service code of conduct (available on www.ssa.vic.gov.au) applies to all Victorian Government employees involved in PPP projects. The engagement of private sector advisers as part of the procurement team will need to include confidentiality and conflict of interest (COI) requirements.

In accordance with the national guidelines, project directors are responsible for implementing COI guidelines and the principles based approach to the assessment of any COI event that arises. The project director may be supported by a senior responsible office in the procuring agency and a DTF project officer. All COI assessments in engaging private sector advisers are considered as part of the evaluation process and notifications made in accordance with that process. All COI assessments for private sector advisers outside the initial tender engagement process must be conducted in a timely manner and the adviser promptly notified of the outcome.

In relation to bidding companies, related party probity principles are outlined in the *National PPP Guidelines: Volume 2 Practitioner's Guide*.

10. Approval process

Underlying *Partnerships Victoria* is a commitment to thorough initial project preparation and an efficient Cabinet approval process. In accordance with the national PPP guidelines and these *Partnerships Victoria* requirements, the key approval steps for budget sector agencies include:

Stage	Approval Required
Review of project proposal	DTF review of initial project development, business case and procurement options analysis, preliminary public sector comparator (PSC) and public interest test. DTF must agree budget impacts of the project in accordance with the budget process requirements. The relevant Gateway reviews are Gate One: Strategic Assessment and Gate Two: Business Case.
Government approval of project and procurement method	Government to approve: <ol style="list-style-type: none"> a) the investment decision (budget funding) based on a business case (including the public interest test); and b) the procurement model based on the procurement options analysis/strategy.
Government approval of EOI	Government to approve release of EOI document. Following release of EOI and evaluation of responses, government or ministers may approve or endorse the short-list of bidders.
Government approval of PSC	Government to approve the public sector comparator (may be earlier than this point).
Government approval of request for proposal	Government to approve release of request for proposal to short-listed bidders. This signals that the Government is prepared to proceed with the project provided that a conforming bid offering value for money is received. The relevant Gateway review conducted prior to seeking approval is Gate Three: Readiness for Market.
Approval of preferred bidder	Following evaluation of responses, government or ministers may approve or endorse the appointment of a preferred bidder.
Government approval of contract execution	Following negotiations, government or the portfolio minister in consultation with the Treasurer to approve contract execution and note financial close.
Ministerial approval of project contract summary publication	The portfolio minister in consultation with the Treasurer to approve the release of the project contract summary within three months of financial close.
Government approval of contract administration plan	The portfolio minister in consultation with the Treasurer to approve the contract administration plan within three months of financial close.
Commissioning	Gateway Review: Gate Five Readiness for Service to be conducted.
Government approval of material contract variations during operations	Subject to existing delegation authority, there is an ongoing requirement for material contract variations to be considered and approved by Government.
Operations	One or more Gate Six: Benefits Evaluation Gateway Reviews should be conducted. The procuring agency should discuss the timing of these reviews with DTF.

In Victoria, the government approval of the business case (investment decision) involves an associated capital financial commitment and approval by the Expenditure Review Committee of Cabinet. In this way—should the PPP procurement process determine that value for money can not be obtained via a private sector bid—the project can still go ahead under an alternate procurement method as the funding has already been allocated towards the infrastructure project.

Additional government approvals are also required in certain situations, such as:

- where there is a material change to the project including an amendment to the key project objectives, scope of services, or the conclusions, or major assumptions of the business case (including the economic and financial appraisals) significantly change;
- there is any material change in the impact of the risk profile on the project which was last approved by government;
- an amendment to the budget funding is required; and
- where significant issues relating to the public interest arise.

Unless otherwise declared to suit the requirements of a particular project, this accountability structure and approval process will be applied consistently for PPP projects. Exceptions to this may be considered for GBEs, for example the *Partnerships Victoria* Non-Metropolitan Urban Water Authority Approval Process which is a streamlined process for smaller capital value projects (see Annexure Nine).

Government business enterprise approval process

The table below outlines the slightly different approval processes for projects being delivered by GBE's and the streamlined process for GBE's.

Project stage	Government Business Enterprise	Streamlined for Government Business Enterprise
Project Development/identifying service need	Usual GBE planning and reporting processes.	Usual GBE planning and reporting processes.
Review of project proposal	DTF review documents and agree budget impacts.	DTF review of documents and agree budget impacts
Government approval of project and procurement method	<p>If the project required budgetary funding (either directly or indirectly) for associated works, the project will need to be considered by ERC and must be supported by a business case.</p> <p>If no budget funding required proposal likely to be considered by EDC or another Cabinet committee.</p> <p>Once budget matters are considered, the project is also referred to the ESDC of Cabinet for approval.</p>	<p>If the project required budgetary funding (either directly or indirectly) for associated works, the project will need to be considered by ERC and must be supported by a business case.</p> <p>If no budget funding required proposal subject to joint governance arrangements and a streamlined approval process applies.</p>
Government approval of EOI	DTF to review EOI document. Cabinet (normally the ESDC) must approve the EOI prior to release.	DTF to review EOI document. Portfolio Minister endorses EOI and Treasurer approves release of EOI.

Project stage	Government Business Enterprise	Streamlined for Government Business Enterprise
Government approval of Request for Proposal	<p>DTF to review RFP document. Cabinet approval is required before releasing the RFP.</p> <p>Following receipt of bids, the Portfolio Minister (and Treasurer if appropriate) must endorse the preferred bidder recommendation before any parties are advised.</p> <p>During negotiations, Cabinet approval must also be sought before varying any conditions or principles previously agreed.</p>	<p>DTF to review RFP document. Portfolio Minister endorses RFP and Treasurer approves release of RFP.</p> <p>During negotiations with the preferred bidder, approval of Treasurer must also be obtained before varying any conditions or principles previously agreed.</p>
Government approval of contract execution	The Portfolio Minister advises the Treasurer that the final contract conforms to the business case before the contract is executed.	DTF requires sign-off that VFM has been achieved. Portfolio Minister to endorse contract execution and Treasurer approves execution of contract. (Responsible Minister signs contract).

11. Discount rate methodology

Procuring agencies are to consult DTF on the appropriate discount rate for use in assessing project finance. Discounted cash flow analysis is required to compare differing PSC and bid cash flows on a consistent basis. The national PPP guidance material provides a methodology for determining the discount rates to be used in making this comparison and determining whether PPP delivery offers value for money (refer *Volume Five: Discount Rate Methodology*).

The methodology for determining the discount rate under the national PPP guidelines is different from the previous Victorian approach. Previously, special rules applied to large and unusual projects while general rules applied to all other projects. Under the national guidelines, the special rules apply to all projects. Both methodologies adopt the capital asset pricing model (CAPM) to derive discount rates that factor in systematic risk when discounting PSC and bid cash flows for evaluation purposes.

The discount rate methodology under the national guidelines is not appropriate for use in making the investment decision, that is, it is not appropriate for deciding at business case stage whether the investment has merit and should proceed.

The national guidance material focuses upon the development of the discount rate for social infrastructure projects, i.e. projects with net cash outflows for government. Different considerations will apply to economic infrastructure projects.

For a summary explanation of the change in methodology as it relates to Victoria please refer to Annexure Four. The appropriate national guideline is *Volume Five: Discount Rate Methodology*. For further information on the determining the general inflation rate used in *Partnership Victoria* projects please refer to Annexure Five. Current discount rate inputs that apply in Victoria are available in Annexure Three.

12. Public sector comparator requirements

The Public Sector Comparator (PSC) is developed to a preliminary stage in the business case phase. It is developed in detail in the project development phase, and should be finalised prior to release of the Request for Proposal.

The PSC is to be approved by government at project approval or, at the latest, prior to the release of the Request for Proposal document. Any subsequent material changes must also be approved.

The Raw (non-risk adjusted) PSC figure (together with high level assumptions) is to be disclosed in the Request for Proposal unless there are justifiable reasons for non-disclosure. This is to enable bidders to clarify whether their concept of project scope is similar to that of government. The PSC will be subject to detailed analysis by the market and it must therefore have a robust development process.

The Risk Adjusted PSC (either in periodic cash flow or NPC form), excluding retained risk, is to be disclosed, following assessment on a project-by-project basis, as part of the value for money comparison in the project summary published post contract execution (refer section 19 of these Requirements).

Roles in the development of the PSC

Agency

Primary responsibility for the construction and use of the PSC rests with the Procuring Agency, in particular the development of the output specification and Reference Project.

The construction of a PSC requires a high level of specialist skills that will generally require the engagement of external expert advisers. The PSC construction process should be methodical and rational through the proper and systematic recording of cost and risk material throughout the stages of PSC development. Specifically, the Procuring Agency should maintain adequate documented evidence to support all costings and calculations for the PSC approved by government. For a set of Frequently Asked Questions and Common Problems regarding the PSC please refer to Annexure 6.

PSC Quality Assurance Review²

Procuring Agencies are to conduct and document a quality assurance review workshop on the PSC. The workshop objective is to improve the quality of the PSC and reduce risk of error and inaccuracies by conducting a quality assurance review which cross-checks the PSC outputs against the inputs. The QA review is to ensure that outputs are an appropriate reflection of the inputs and assumptions. The QA review should be conducted prior to government approval of the PSC, which must be before the Request for Proposal is released to bidders. For guidance on the implementation of this review requirement please refer to Annexure 6.3.

Department of Treasury & Finance

DTF may be involved in assisting with the development of preliminary costing of the main PSC components. DTF will review the first preliminary PSC as part of the business case and will review the PSC when government approval is sought prior to the release of the Request for Proposal to bidders.

² PSC Quality Assurance Review requirement effective from January 2010.

13. EOI publication requirements

All Victorian Government tenders, including the Expressions of Interest for PPP projects, are to be advertised on the Victorian Government Tenders Website www.tenders.vic.gov.au in accordance with the requirements of the Victorian Government Purchasing Board www.vgpb.vic.gov.au.

14. Tender release requirements

The Request for Proposal (RFP) document is to include comprehensive contractual documentation. The issue of the contract as part of, and concurrently with, the RFP, ensures that all short listed parties are aware of, and have enough opportunity, to consider the specific contractual terms that government is seeking. It also limits subsequent negotiations to clearly identified and fully drafted departures. The RFP normally includes a statement indicating that government may entertain variations from the contract in nominated areas.

15. Tender submission requirements

As part of the RFP response, bidders should be asked to provide a departure schedule which identifies all instances where they have departed from the draft contractual documents included as part of the RFP, including providing the rationale and cost for each departure. Bidders should also be asked to submit fully marked up contract and schedules outlining any instances of departures from the draft contractual documents. Term sheets are sufficient for some of the sub-contracts. While this does consume legal resources at the bidding stage, it leads to a more efficient negotiation stage.

As part of the RFP response, bidders should be asked for evidence of committed finance at bid submission, unless specific project circumstances deem otherwise. This usually takes the form of commitment letters from the providers of both debt and equity. For debt, this is likely to be a firm credit approval or term sheet signed by authorised officers, with clearly defined conditions which government can assess and evaluate. It should be recognised that these commitments generally provide an opportunity for financiers to withdraw from the project, as opposed to fully underwritten bids. For equity, a demonstration of Board commitment and funding capacity would be required.

The specification of a Complying Proposal should be made and assessed in accordance with project evaluation requirements in the RFP and the project teams' evaluation plan. The evaluation plan will need to address how:

- to assess any mandatory requirements (i.e. lodgement time);
- to evaluate how well each bid meets the requirements of the RFP and contract (this involves the project team ranking criteria and outlining how to deal with legal and commercial evaluation and design and service criteria); and
- to evaluate any additional features or enhancements offered.

The Victorian Government Industry Participation Policy (VIPP) applies to all PPP projects. Bidders will be asked to respond on this matter in accordance with the policy requirements that are available at www.diird.vic.gov.au.

Taxation rulings are not typically required at the bid submission stage, however where concerns regarding tax exist, Procuring Agencies may consider a requirement for a tax ruling as a condition precedent to financial close. The RFP should indicate the government may require this. Procuring Agencies are to consult DTF on taxation issues.

16. Interactive tender process

Victorian PPP projects are to incorporate an interactive tender process into the procurement process. This is to be done in accordance with the *National PPP Guidelines Volume Two Practitioner's Guide, Appendix E*. Further example templates for workshop protocols are available in Annexure 10 to this document. The interactive tender process will continue evolve and best practice examples from recent projects would be a useful reference when designing an interactive process for a project.

17. Accounting treatment and taxation matters

Accounting and taxation matters are a complex part of PPP transactions and require the advice of specialist advisers and liaison with DTF. The *National PPP Guidelines Volume Two: Practitioner's Guide* contains current advice on accounting and taxation matters that are also relevant in Victoria (refer Chapter Nine, page 40 and Appendices F and G).

DTF must be consulted on accounting issues and kept informed as to the likely balance sheet status of PPP projects and the budget implications of the accounting treatment. Early consultation with the Auditor-General's Office on PPP accounting is also desirable to ensure the correct accounting framework and any relevant accounting standards are appropriately considered and applied.

18. Reimbursement of bid costs

In normal circumstances, Victoria would not reimburse any part of the bid costs incurred by unsuccessful bidders. Exceptions may occur on a case-by-case basis and these circumstances should be identified and made known at the outset of a project.

19. Disclosure policy and project summary requirements

All Victorian PPP projects will be subject to review and disclosure requirements.

In accordance with Victorian Government Purchasing Board Policy (VGPB) the executed PPP contract must be published on the contracts website (www.contracts.vic.gov.au) within three months of financial close. Visit the contracts website or www.partnerships.vic.gov.au to view existing Victorian PPP contracts. The contract is to be published in full with limited exceptions from disclosure, guided by the criteria of the Victorian *Freedom of Information Act 1982*. Further information is available on the VGPB website at www.vgpb.vic.gov.au.

A project summary of each PPP project will be released within three months of the financial close of the project. The project summary will have two main sections:

- part one will summarise key project features. This is intended to provide a snapshot of the rationale for the project, its value and the parties involved; and
- part two will summarise the key commercial features of the project based on the contract.

The Treasurer and the responsible portfolio minister must approve any project summary before it is released. The minister is also responsible for tabling the project summary in Parliament at the time of its release (or the next Parliamentary sitting day).

In determining the appropriate content of the project summaries, each *Partnerships Victoria* project has its own specific and unique circumstances to take into account. The content of the

summaries will also evolve as new areas of public interest emerge. Agencies must update the project summaries if any significant changes are made to the nature of the project post-release.

A template is available to guide development of the project summary in Annexure Eight. Project summaries are also available at www.partnerships.vic.gov.au.

20. Contract management framework

Contract management is a key activity for agencies involved in managing a *Partnerships Victoria* project after the contract is executed. Implementation of effective contract management practices will assist government to achieve the broader objectives of *Partnerships Victoria*.

The *Partnerships Victoria Contract Management Guide* (2003) in Annexure 12 provides project managers with principles and tools to support effective contract management in PPP projects. (Part one of this guide is replicated as an appendix in the *National PPP Guidelines Volume Two: Practitioner's Guide*).

There is a requirement for a contract management plan to be approved by the portfolio minister in consultation with the Treasurer within three months of financial close. Following this plan, a more detailed contract administration manual is required to be developed (or cross referenced with existing internal processes). The manual—but not the plan—will evolve over time as the project moves through different phases. Contract management plans and administration manuals should cover both the 'design and construct' and operating phases of projects.

Contract management must form an integral part of the *Partnerships Victoria* project delivery process. Contract management issues should be considered early in the development of the project's contract documentation. Contract management personnel should be involved in the procurement phase where appropriate and there should be an effective transition/handover from Project Director to Contract Director.

The initial contract director (who may have been the project director during the procurement process) should be identified and appointed prior to contract execution. The processes contained in the contract administration manual must be implemented on a proactive basis while being capable of modification throughout the life of the project.

The procuring agency should establish and maintain appropriate governance structures and lines of communication between the public and private sector entities to facilitate a sustainable long-term partnership.

Agency accountability

The procuring agency will be responsible for establishing a robust contract management framework, maintaining effective contract management practices throughout the contract term, and successfully delivering project objectives. This is to include:

- appropriate governance structures and effective communication and reporting lines;
- ensuring that all PPP project contract directors and relevant members of their teams undertake appropriate training within six months of their appointment, unless they have existing contract management experience or credentials;
- systems to ensure the continuity and retention of project knowledge over the life of the project;
- risk and dispute mitigation and their reporting; and
- regular ongoing review of its contract management practices to identify outstanding and emerging issues and take into account recent and anticipated future developments

Treasury accountability

DTF will have responsibility for:

- supporting and reviewing the contract management of *Partnerships Victoria* projects, including assisting in risk mitigation and dispute resolution,
- facilitating the sharing of contract management knowledge, including through conducting forums for contract managers to share lessons learned and network with their peers;
- establishing and implementing an appropriately credentialed and professional standard training program for public sector contract directors/managers; and
- monitoring and independently advising the Treasurer and Cabinet on significant contract management issues.

List of annexures

Annexures available at www.partnerships.vic.gov.au:

- 1 A Commercial principles for social infrastructure—table of Victorian-specific requirements
- 1 B Commercial principles for social infrastructure—marked-up version of national principles reflecting Victorian requirements listed in the above table
- 3 Discount rate inputs for *Partnerships Victoria* projects
- 4 Summary explanation of Victorian discount rate changes
- 5 Determining the general inflation rate for use in *Partnerships Victoria* projects
- 6 Frequently asked questions and common problems in PSC development
- 7 Public interest
- 8 Project summary template
- 9 Non-metropolitan urban water authority approval process for *Partnerships Victoria* projects
- 10 Interactive tender process protocols
- 11 Mythbusters
- 12 Contract management guidance

Further information

For more information, visit www.partnerships.vic.gov.au.

National PPP Guidelines

Queensland Requirements

April 2011

Version Control	Last Updated	Updated sections	Rationale
1	June 2009		
2	April 2011	All	Minor changes to reflect updates to Qld legislation and changes in Government agency names.

Queensland Requirements

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1. Introduction

The national PPP policy and guidelines apply to all Queensland PPP projects that are released to the market from January 2009. Where the national PPP guidelines allow flexibility, the Queensland-specific requirements in this document and its annexures apply.

Existing Queensland whole-of-government policies such as the *Project Assurance Framework* and Gateway Reviews continue to apply to Queensland PPP projects.

The most significant Queensland departures are summarised in this document, with remaining detailed departures to be provided in annexures on the web-site, www.dip.qld.gov.au.

2. Objectives

The aim of the Queensland's PPP policy is to:

- to deliver improved services and value for money through appropriate risk sharing between public and private sector parties;
- encourage private sector innovation;
- optimise asset utilisation; and
- ensure integrated whole of life management of public infrastructure.

3. Coverage of the policy and guidelines

Under the national PPP policy guidelines, projects with a capital value of \$50 million will trigger consideration of PPP as a potential procurement option. As outlined in Section 4.3.2 of the national PPP policy, the consideration of the PPP option needs to have regard to the PPP value for money drivers, particularly sufficient scale and long term nature. As a result, PPP projects with a whole of life net present value greater than \$100 million attract most market interest.

The national and Queensland PPP policy and guidelines apply to all PPP projects undertaken by government departments in Queensland, unless a specific government decision advises that other provisions will apply. The following specific PPP exemptions continue to apply to Queensland:

- certain standard design and construction projects such as office buildings with long-term government tenants;
- information and communication technology projects;
- government owned corporations and Category One water authorities seeking community service obligation funding to procure new infrastructure; and
- general procurement of services by the Government where infrastructure is not being provided, for example through professional consulting services.

The Infrastructure Projects (IP) Division within the Department of Employment, Economic Development and Innovation (DEEDI) is responsible for developing and overseeing the Queensland PPP policy and supporting guidelines, and for Queensland's contribution to the national PPP policy and guidelines.

With the assistance of Infrastructure Australia, the Council of Australian Governments (COAG) will monitor, review and from time to time refine the national PPP policy and guidance material. COAG is responsible for approving substantive changes to the national policy and guidelines. Individual jurisdictions are responsible for maintaining and updating their specific jurisdictional requirements, therefore it is likely that this document will be amended from time to time.

4. Scope of services

The national PPP guidelines state the general principle that government will retain certain responsibility for delivering core services. In Queensland, government is responsible for the delivery of core services in a PPP project that involve direct delivery of community services to the public or the exercise of statutory power.

Unsolicited proposals and exclusive mandates

The national PPP overview document (Section 3.2) provides general guidance on unsolicited proposals and exclusive mandates. Queensland has more detailed guidance on policies and procedures when using exclusive mandates. This information can be found in Appendix One of the Queensland Government PPP *Guideline Value for Money Framework*.

5. PPP project governance

Each PPP project in Queensland will be overseen by—and be the responsibility of—the relevant portfolio minister. Procuring agencies are responsible for management and implementation of PPP projects and will be required to consult with DEEDI and Queensland Treasury.

Senior representatives of the procuring agency, DEEDI and Queensland Treasury are to be members of the PPP project steering committee and government project team. Procuring agencies are to specifically consult with Queensland Treasury in relation to budgeting, accounting and taxation matters on PPP projects.

6. Public interest assessment

Consistent with the national PPP guidelines, public interest matters will be considered in all investment evaluation decisions and any subsequent project procurement decision.

In Queensland, PPP projects must complete and submit a public interest test with documentation seeking project approval. Confirmation or updates to the public interest assessment are required at key stages throughout the project. The public interest test covers:

- the effectiveness in meeting the service requirement;
- the impact on stakeholders;
- accountability and transparency;
- public access and equity;
- consumer rights;
- security; and
- privacy.

The Queensland PPP guidelines (*Value for Money Framework*, Section 3.2.8) provides further detail on issues to be considered when completing a public interest assessment.

7. Probity requirements

All commercial and PPP transactions conducted by the Queensland Government must be in accordance with the Queensland *State Procurement Policy* and Queensland's *Probity and Process Governance* PPP supporting guideline.

All Queensland public servants, as a condition of employment, are under a general obligation of confidentiality to their employer. Accordingly, it is not necessary for members of the government project team who are public servants to execute a confidentiality undertaking in relation to a project. All government advisors, members of each bidding consortium and any other third party who are privy to commercially sensitive information must provide a formal undertaking to the Government that they will keep this information confidential. Clear security procedures should be implemented in line with Queensland PPP guidance material *Probity and Process Governance* supporting documentation.

8. Approvals process

The following table summarises the National PPP stages and approvals and the Queensland equivalent stages and approvals.

National PPP Stage and Approvals Required	Queensland Equivalent Stages and Approvals Required
Approval of project investment and procurement Obtain funding and project approval	Strategic assessment of service requirement
	Preliminary evaluation Initial determination of project priority and affordability
Project development phase	PPP business case Confirmation of project priority and affordability, and if PPP delivery seek approval to proceed to EOI stage and release the EOI
EOI phase Approval to release the EOI	EOI stage Approval of short-listed proponents and proceed to the binding bid/request for proposal stage
RFP phase Approval to issue the RFP to short-listed bidders Approval of preferred bidder	Binding bid or RFP stage Approval of preferred proponent (or preferred bidder) status Approval to finalise project agreements within agreed parameters and proceed to financial close
Negotiation and completion phase Approval to execute contract	Approval for the portfolio minister to execute the final project agreements in consultation with the Premier, Minister for Infrastructure and Planning, and the Treasurer
Contract management	Management of the project agreements

Queensland's PPP 'project' stages (i.e. post preliminary evaluation) align with the national PPP stages, except for the request for proposal (RFP) and 'negotiation and completion' phases. In Queensland, these latter two stages are compressed into a single 'binding bid' stage.

For the 'pre-PPP project' stage—namely strategic assessment and preliminary evaluation—these stages form part of the Queensland Government's *Project Assurance Framework*, which sets a minimum standard for investment decisions involving infrastructure projects.

Additional government approvals are also required in certain situations such as:

- where there is a material change to the project including an amendment to the key project objectives, scope of services or the conclusions or major assumptions of the business case (including the economic and financial appraisals);
- there is any significant material change in the risk allocation from that which was last approved by government;
- an amendment to the budget funding is required; and
- where significant issues relating to the public interest arise.

9. Discount rate methodology

The national PPP guidelines for using discount rates for social infrastructure projects aligns with Queensland's current policy of adopting the capital asset pricing model (CAPM) to derive discount rates that factor in systematic risk when discounting the public sector comparator (PSC) and bid cash flows for evaluation purposes.

10. Public sector comparator requirements

In Queensland, the PSC is initially developed in the preliminary evaluation stage and is refined further in the business case stage. The PSC is also updated prior to and during the RFP phase.

In Queensland, the raw (non risk adjusted) PSC will be released to short-listed bidders with the other bid documents unless there are exceptional circumstances where the release will materially compromise the State's negotiating position. (see the Queensland PPP guideline *Value for Money Framework*, Section 3.2.11).

Prior to the national PPP guidelines, Queensland required the detailed calculation of a Partnership Model to quantify the additional financing costs that must be offset by efficiency savings. In place of the detailed Partnership Model, Queensland will use an abridged version that—at a minimum—models the expected financial risks and benefits from a PPP solution. Supplementary guidance on the application of an Abridged Partnership Model is available on www.dip.qld.gov.au.

11. EOI publication requirements

Consistent with existing arrangements, under the National PPP Policy a notice should be published inviting interested parties to register their interest in participating in the expression of interest (EOI) process. The process will then take one of the following forms, where:

- all interested parties receive the EOI documentation; or
- interested parties are required to submit a précis of their experience and capabilities.

Suitable proponents will then receive the EOI documents. Selection of the appropriate EOI process will depend on expectations as to the level of private sector interest to be generated by the publication of the notice.

12. Request for proposal requirements

Consistent with existing arrangements, under the national PPP policy, the request for proposal (RFP) document will include comprehensive contractual documentation. Release of the contract as part of—and concurrently with—the RFP ensures that all parties are aware of—and have enough opportunity to consider—the specific contractual terms that government is seeking.

As part of the RFP response, bidders should be asked to provide a departures schedule which identifies all instances where they have departed from the draft contractual documents included as part of the RFP, including the rationale and cost for each departure. Bidders should also be asked to submit fully marked up contractual documents.

As part of the RFP response, bidders should be asked for evidence of committed finance and technical capabilities at bid submission, unless specific project circumstances deem otherwise. The specifications regarding what constitutes a conforming or non-conforming proposal must be set out in the documentation issued to proponents in the RFP documentation.

Bidders must also consider and comply with the following government policies and guidelines, in particular:

- *State Procurement Policy;*
- *Local Industry Policy;*
- *Arts + Place Policy;*
- *Building and Construction Contracts; Structured Training Policy (10 per cent Training Policy)*
- *Employment Security Policy.*

Agencies should also ensure the final project outcome is consistent with the *National Competition Policy*, the *Competition Principles Agreement* and Foreign Investment Review Board requirements.

PPP projects and the activities that occur during the process of establishing a PPP project must comply with all current and future relevant legislation including:

- *Right to Information Act 2009 (Qld);*
- *Information Privacy Act 2009 (QLD)*
- *Public Sector Ethics Act 1994 (Qld); and*
- *Financial Accountability Act 2009 (QLD)*

Taxation rulings are not typically required at the bid submission stage, however the State's standard policy is for a private binding tax ruling as a condition precedent to financial close. The RFP should indicate this requirement. Procuring agencies are to consult with Queensland Treasury on taxation issues.

13. Reimbursement of bid costs

Under normal circumstances, the Queensland Government would not contemplate the payment of any part of the bid costs incurred by unsuccessful bidders.

14. Disclosure policy and requirements

All Queensland PPP projects will continue to be subject to review and disclosure requirements.

In accordance with the Queensland *Probity and Process Governance* PPP supporting guideline and, as a minimum, a summary of the project agreements (excluding any genuine commercial-in-confidence material) is prepared by the portfolio minister and, if satisfactory, will be signed off by the Auditor-General as a fair reflection of the project agreements. This summary will then be tabled in Parliament following financial close, together with the probity auditor's final report.

In accordance with this document, regular updates will be given to government on the performance of PPP projects. In addition, procuring agencies will be required to detail PPP outputs in their annual reports. The Auditor-General is required to determine if matters contained in the annual reports concerning PPP projects are satisfactory, in addition to carrying out the duties contained in the *Financial Accountability Act 2009 (QLD)*

15. Contract management

The Queensland *Contract Development and Management* PPP supporting guideline provides high-level guidance related to contract development and the appropriate contractual mechanisms for undertaking a PPP project.

16. Accounting treatment

Accounting and taxation matters are a complex part of PPP transactions and require the advice of specialist advisers and liaison with Queensland Treasury. The national PPP guidelines *Volume Two: Practitioner's Guide* contains current advice on accounting and taxation matters that are also relevant in Queensland (refer Chapter Nine, page 40 and Appendices F and G).

Queensland Treasury must be consulted on accounting issues and kept informed as to the likely balance sheet status of PPP projects and the Budget implications of the accounting treatment.

Early consultation with the Auditor-General's Office on PPP accounting is also desirable to ensure that the correct accounting framework and any relevant accounting standards are appropriately considered and applied.

List of annexures

Annexures to be available at - www.dip.qld.gov.au

- National PPP Guidelines – Queensland Departures
- Abridged Partnership Model

Further information

For more information, visit www.dip.qld.gov.au/ or www.treasury.qld.gov.au/.

National PPP Guidelines

Western Australian Requirements

August 2010

Version Control	Last Updated	Updated sections	Rationale
1	June 2009		
2	August 2010	All	The Western Australian Requirements have been updated to reflect the current policy and processes of the State Government

1. Introduction

The Council of Australian Governments (COAG) endorsed the National Public Private Partnership (PPP) Policy and Guidelines (the National Guidelines) on 29 November 2008.

PPP projects in Western Australia are procured in accordance with the National Guidelines and the Western Australian specific requirements as outlined in this document.

2. Scope of Services

Services to be included in a PPP project will be determined on a project-by-project basis dependent on whether the inclusion of the services can deliver value-for-money and would be in the public interest.

3. PPP as a Procurement Option

Consistent with the National Guidelines, all general government infrastructure projects with a capital value of over \$50 million will be considered for delivery as a potential PPP.

PPPs are not a means of pursuing unfunded infrastructure projects. In this regard, social infrastructure PPPs can only be procured once an investment decision for the project has been made and funded in the context of the Government's overall budget priorities and financial targets.

PPP projects must comply with the DTF's *Strategic Asset Management Framework for Western Australian Public Sector Agencies*.

4. Governance Structure

The Treasurer is the Minister responsible for PPPs. In this role, the Treasurer is responsible for:

- overseeing the setting, implementation and application of Western Australian whole-of-government policy in relation to PPPs;
- endorsing, in consultation with the Portfolio Minister, adoption of the PPP approach for delivery of specific projects and key PPP milestones; and
- holding agencies accountable for performance against the key milestones.

The Minister responsible for the procuring agency (Portfolio Minister) is responsible for the outcomes of each PPP project in Western Australia.

The DTF is the Relevant PPP Authority as defined in the National Guidelines.

There is a specialist PPP function in Treasury, its responsibility includes:

- developing and maintaining whole-of-government PPP policy and guidelines;
- supporting and reviewing PPP projects at all stages from procurement options analysis to contract management; and
- advising the Treasurer on PPP policies, issues and projects, including the achievement of value-for-money.

In line with the State's Works Reform program, the DTF's Strategic Projects (SP) unit is responsible for project oversight of PPP projects during the contract development, tender and design-and-construct phases for non-residential building projects in the general government sector. SP will work in close consultation with the procuring agency to fulfil this role. SP's involvement in other general government projects will be determined on a project-by-project basis.

Consistent with the National Guidelines, project delivery is undertaken by a project-specific steering committee set up for each project. Project steering committee membership will include senior members of the procuring agency, the DTF and the State Solicitor's Office. Where appropriate, other agencies such as the Department of the Premier and Cabinet, may also be represented on the project steering committee.

The procuring agency is responsible for management of the operational phase of PPP projects.

Procuring agencies should consult with the DTF and the State Solicitor's Office to determine the procurement powers to enter into a contract.

The Auditor-General will have full and complete access, as required, to information on any Western Australian PPP project.

5. Approval Process

Approval of the Portfolio Minister and endorsement of the Treasurer is required to proceed at each of the following stages, with the Treasurer having discretion to refer any such decision to the Economic and Expenditure Reform Committee or Cabinet where the Treasurer considers it appropriate to do so:

- recommendation to procure as a PPP;
- release of invitation for expressions of interest;
- short-listing of proponents;
- release of request for proposal;
- selection of preferred proponent; and
- execution of contract documents.

As per the National Guidelines, additional approvals are required in certain situations such as:

- where there are material changes to the project including amendments to the key project objectives, scope of services or the conclusions or major assumptions of the business case (including the economic and financial appraisals) change significantly;
- if there is any material change in the risk allocation from that which was last approved by Government;
- if an amendment to budget funding is required; and
- where significant issues relating to the public interest arise.

In these circumstances, the Treasurer will be seeking assurance that the relevant PPP project could still deliver value-for-money, retains its overarching objectives and would not compromise the public interest.

Procuring agencies must obtain approval from the DTF prior to entering into any negotiations to amend existing PPP contracts. Any material changes to PPP contracts will require approval by the Treasurer.

6. Protecting the Public Interest

The Government is committed to ensuring that the delivery of a project as a PPP is in the public interest. Public interest matters will be considered and addressed throughout the procurement phase of the project to ensure that the public interest is protected throughout the contract term. In support of this, a public interest assessment will generally be made prior to release of the invitation for expressions of interest and prior to contract award.

7. Accountability, Transparency and Probity

The State Government has a responsibility to the people of Western Australia to ensure that it is open and accountable in its dealings and that it promotes the State's best interests. A PPP project may therefore involve scrutiny by the Parliament, the Auditor General and the public through freedom of information processes.

There are also statutory requirements that Government must comply with in its dealings, such as the *State Supply Commission Act (Probity and Accountability and Open and Effective Competition)*, the *Financial Management Act (Section 81)* and the *Public Works Act*.

8. Reimbursement of Bid Costs

In normal circumstances, the Western Australian Government will not reimburse any part of the bid costs incurred by unsuccessful bidders.

9. EOI Publication

All State Government public tenders are released through Tenders WA (see www.tenders.wa.gov.au).

10. Contract Management

Effective contract management practices are important to Government achieving its broader PPP procurement objectives. The purpose of contract management is to maintain the integrity and intent of the contract over its lifetime to achieve project objectives, including the achievement of value-for-money for the State over the long term.

The procuring agency is responsible for establishing a robust contract management framework, maintaining effective contract management practices throughout the contract term and successfully delivering project objectives.

The DTF is responsible for supporting the contract management of projects, facilitating the sharing of contract management knowledge and advising the Treasurer on significant contract management issues.

An adequately resourced contract management team should be established by the agency well before the final contract is executed. The team should retain members from the procurement team to maintain a thorough understanding of project objectives.

Contract management issues and the development of a contract management plan should be considered early in the development of the project's contract documentation. Appropriate

governance structures and lines of communication between the public and private sector entities are vital to facilitate a sustainable long-term partnership.

11. Coverage and Application of the National PPP Policy and Guidelines

The National Guidelines (including the Western Australian requirements) apply to all PPP projects entered into by Western Australian general government sector agencies. Application of the policy to the provision of infrastructure by Government Trading Enterprises will be determined by the Government on a project-by-project basis.

The Western Australian Government generally supports the objectives of the National Guidelines. However, the Government considers it to be essential that their application be assessed on a project-specific basis and that they are adapted to reflect the requirements and circumstances specific to Western Australia. Accordingly, the Government reserves the right to depart from the National Guidelines, including the commercial principles, as the Government may reasonably require. These circumstances may include:

- where the Government considers that it is reasonable or appropriate in the circumstances of each project;
- to ensure a competitive process and achievement of value-for-money;
- where the Government considers it to be in the public and State's interest to do so; or
- as may be necessary to meet the Government's policy and legislative requirements.

Further Information

For further information visit www.dtf.wa.gov.au.

National PPP Guidelines

South Australian Requirements

June 2009

Version Control	Last Updated	Updated sections	Rationale
1	June 2009		

South Australian Requirements

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1. Introduction

The national PPP policy and guidelines replace the *Partnerships SA* policy, as articulated in *Private Sector Participation in the Provision of Public Services Guidelines for the Public Sector* issued by the Department of Treasury and Finance (DTF).

The national PPP policy and guidelines provide a mechanism for state and territory departures required to accommodate local law and policies in force from time to time. This document sets out the departures required by the South Australian Government to accommodate South Australian laws and policies.

2. Coverage of the policy and guidelines

The national PPP policy and guidelines—as amended by these South Australian jurisdictional departures—applies to all PPP projects entered into by South Australian agencies, unless a specific government decision advises that other provisions will apply.

3. PPP as a procurement option

The National PPP Guidelines provide that projects with a total capital value exceeding \$50 million should be considered for delivery as a PPP. South Australian agencies are also required to comply with Treasurer's Instruction 17 *Evaluation of and Approvals to proceed with Public Sector Initiatives* and the *Guidelines for the Evaluation of Public Sector Initiatives* which form part of that instruction.

The decision as to whether or not a project will be delivered as a PPP will be determined by Cabinet, on a project-by-project basis.

4. PPP project governance

In South Australia, the Treasurer is the minister responsible for PPP policies and guidelines.

5. SA Government approvals

Any activities undertaken in contemplation of a PPP must be done in accordance with Treasurers' Instruction 17: www.treasury.sa.gov.au/dtf/financial_management/financial_publications_and_downloads/treasurers_instructions.jsp?.

Cabinet approval is required at various stages of a PPP project including:

- to issue EOI/RFP/BAFO;
- to short-list or select preferred or successful proponent/s;
- where there is a material change to the project including an amendment to the key project objectives, scope of services or the conclusions or major assumptions of the business case (including the economic and financial appraisals) significantly change;
- where there is any material change in the risk allocation from that which was last approved by government;
- where an amendment to the budget funding is required; and
- where significant issues relating to the public interest arise.

South Australian agencies are also required to comply with the policies and guidelines issued by the State Procurements Board www.spb.sa.gov.au/policiesandguides.asp.

6. Planning approval

In South Australia development of land for use in a PPP may be subject to local government planning and approval regulations or to the requirements of the *Development Act 1993* (SA). Section 46 of the Act provides mechanism for approval of developments or projects that are determined to be of major environmental, social or economic importance. Section 49 of the Act provides mechanism for approval of Crown developments and public infrastructure.

The private party will be responsible to obtain all necessary approvals, irrespective of which development approval process applies.

7. Core services

The national PPP guidelines provide that governments will generally retain responsibility for delivering core services (though this will be determined on jurisdictional basis). In South Australia this decision will be made on a project-by-project basis.

8. Public sector comparator

The public sector comparator (PSC) and the discount rate (and any subsequent material changes) are approved by DTF. The raw (non-risk adjusted) PSC figure (together with high level assumptions) may be disclosed in the request for proposal unless there are justifiable reasons for non-disclosure.

Timing in respect of the approval of the PSC and discount rate will be determined on a project-by-project basis. The disclosure of the total PSC value, e.g. the risk adjusted PSC (either in periodic cash flow or NPC form) may be disclosed following assessment on a project-by-project basis.

9. EOI publication requirements

All South Australian Government tenders, including the expressions of interest for PPP projects, are to be advertised on the South Australian Government tenders website www.tenders.sa.gov.au/tenders/index.do in accordance with the requirements of the State Procurement Board www.spb.sa.gov.au/policiesandguides.asp.

10. Commercial principles

The South Australian departures from the national commercial principles are set out in Table A below.

11. Reimbursement of bid costs

In normal circumstances, South Australia would not contemplate the payment of any part of the bid costs incurred by unsuccessful bidders.

12. Disclosure policy and requirements

All South Australian government contracts are required to be disclosed in accordance with the government's Contract Disclosure Policy http://www.premcab.sa.gov.au/pdf/circulars/pc027_disclosure_govt_contracts.pdf. The executed PPP contract will be published on the Contracts website <https://www.tenders.sa.gov.au/tenders/contract/list.do?action=contract-view> within three months of financial close.

The contract will be published in full with limited exceptions from disclosure approved in accordance with the *Freedom of Information Act 1991* (SA).

Further information

For more information visit www.treasury.sa.gov.au.

Table A: National commercial principles for social infrastructure – SA Departures

Clause reference	Comments
3.1 Expiry Date	In SA the operating term starts on the Date <u>for</u> Commercial Acceptance rather than the Date <u>of</u> Commercial Acceptance.
4.2.2 (Site conditions - Exception)	SA includes an additional option whereby a provisional sum for this work is agreed on the basis that it will be the subject of competitive tender at a downstream level. This option may provide a better outcome where the government is unable to properly evaluate a schedule of rates proposed by bidders.
5.2.5(d) (Unidentified pre-existing contamination)	Same as clause 4.2.2 above.
9.3.1 (Nature of tenure)	SA will consider granting a lease for premises used for commercial activities (for example, a hospital café or news agency), where the grant of lease may be necessary and/or appropriate on a project-by-project basis.
9.3.4 (Government need for access)	The SA position is that where a lease of the core Facility is granted the government's rights under any sublease should be as broad as possible, so that government can deal with the Facility without the need to obtain consent from the private party (as head lessor). Limiting government's rights to access for the purpose of exercising its rights and performing its obligations under the Project Agreement may not be sufficient.
11.5.1 (Completion)	In SA pre-requisites for Completion (whether Commercial Acceptance or Technical completion) are generally limited to only those issues that are necessary for the operation of the Facility. Accordingly SA does not include all of the items set out in clause 11.5.1.
11.5.5 (Completion Certifier)	In SA an Event of Default occurs if an independent expert assesses that completion will not occur by the relevant Completion Date.
11.6.2 (Defects liability)	In SA there is an ongoing obligation to rectify defects throughout the Term instead of a finite defects liability period.
17 (Relief Events Principle)	SA distinguishes between Intervening Events (clause 17) and Relief for Construction Delays (clause 12), given that these two concepts have distinct and different regimes. Depending on value for money considerations and the nature of the

Clause reference	Comments
	project, the SA Government may extend the contract term for Relief Events that occur during the 'D&C Phase' where these also extend the Date for Completion.
17.1(Relief Events)	In SA the Sunset Date is extended for certain Relief Events that occur during the D&C Phase where the Date for Completion is also extended.
17.1(b) (Relief Events)	SA does not adopt all of these Relief Events and may include other Relief Events, on a project-by project basis.
17.2.2(b) (Claiming Relief) and 18.2 (Threshold for Compensation)	In SA extensions of time will be awarded for a Relief Event that impacts upon a critical activity on the critical path of the Project.
19.1(b) (Calculation of compensation)	In SA fixed overheads and profit margins for the private party and its main subcontractors are added to base costs which are determined on an open book basis.
20 (Modifications)	<p>SA includes the following minor works regime:</p> <ul style="list-style-type: none"> • The minor works regime will be utilised by the private party to complete works that fall under a specified per event monetary threshold and which are considered to be a routine element of administering the relevant social infrastructure. All thresholds for minor works will be determined on a project-by project basis. • The minor works regime only applies to the operational phase of the project. • Minor works are deemed to be part of the Services. • No additional margin or other cost will be payable to the private party for the minor works. • The private party must cost minor works on an open book basis. • Minor works will not impact on risk between the private party and government. It is envisaged that minor works will generally be agreed directly between the facility operator and the facilities management subcontractor. • Generally any overspend of the provisional sum allowed for minor works over the operating term will be recovered directly by the facilities management subcontractor from the facility operator on an annual basis. Any annual overspend will be rolled forward to the next year. Any accumulated underspend will be payable to the State.
20.1.1 (Modifications-Right to request)	SA does not treat acceleration as a modification, as each occurrence gives rise to different entitlements. SA does not pay margins for acceleration but does pay fixed margins for modifications.
21.1.1(c) (Change in Law Definition)	SA does not agree that a Change in Law should include a change in court decisions. These decisions change binding precedents but do not change law and should not be treated as if they do. Further, as judicial opinion is

Clause reference	Comments
	open to interpretation this inclusion may give rise to unnecessary and/or unproductive dispute. This issue is further complicated by the effect of decisions on appeal.
21.1.2 (Change in –Law Exclusions)	SA does not include the words “ <i>in substantially the same form as the change eventuating after the date of the project agreement</i> ”, which narrows the application of clause 21.1.2 (c).
21.2.1 (Compensation for Changes in Law)	SA does not limit compensation for general Change in Law to the Operating Phase. Accordingly, SAG agrees to pay compensation for Changes in Law during the ‘D&C Phase’.
21.2.2 (Capital expenditure and hard operating cost)	In SA payment for General Changes in Law is deferred to a specified review date.
21.3.1 (Project specific changes compensable)	SA may require the Project Company to take a nominal threshold amount of risk for Project specific Change in Law on a project-by project basis.
27.5 (Transfer of senior debt obligations)	SA does not agree to any fetter of the government’s right to have the senior debt obligations transferred to it on termination.
31.1.8 (Refurbishment Bond)	SA does not generally require an end of term refurbishment bond (though it reserves the right to do so on a project-by-project basis.
33.1 (Government consent)	<p>In SA re-financing of a project that is not undertaken on a corporate finance basis does not include:</p> <ul style="list-style-type: none"> • Any re-financing specifically contemplated at financial close and reflected in the base case financial model; • Disposals of investments or commitments of debt or equity in an arms length transaction at market value; • The syndication or subscription of any debt under the current funding agreements contemplated at financial close; • Subject to the funding arrangements of a particular project, a change in control or sell down of any bonds in an arms length transaction at market value; • Waivers and consents and similar actions that relate to day to day administrative matters.
34.1.1 (Indemnity)	The SA Government policy on limitation of liability will apply for all SA PPPs http://www.treasury.sa.gov.au/dtf/financial_management/financial_publications_and_downloads/treasurers_instructions.jsp?

National PPP Guidelines

Tasmanian Requirements

June 2009

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Tasmanian Requirements

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1. Application of the Guidelines

In accordance with Section 4.3.1. of the national PPP guidelines policy framework, agencies will only consider a PPP as a procurement method where it can be clearly identified at the investment decision that there is market appetite for a PPP and that value for money drivers exist. Tasmania Government businesses are not required to apply the national PPP guidelines, but may use the guidelines on a case-by-case basis.

2. Scope of services

The Tasmanian Government retains responsibility for delivery of core services. The determination of core and non-core services will occur on a case-by-case basis at the early planning stages of each infrastructure project.

3. Compliance with procurement Treasurer's instructions

Tasmanian Government procurement is undertaken in accordance with the Treasurer's instructions established under the *Financial Management and Audit Act 1990*. Any proposed PPP process will be considered in the light of the Treasurer's instructions, and the relevant agency must apply for an exemption from the Treasurer's instructions should it identify any departure in its proposed process from the mandatory procurement requirements.

4. Confidentiality

The Tasmanian Government is committed to openness and transparency through its procurement processes. The Crown Contracts Confidentiality Policy provides that in any contract between the Crown and any other party, confidentiality requirements in relation to the provisions of the contract are not to be included unless it is in the public interest not to make the information publicly available. Exemptions from full disclosure, under public interest grounds, must be approved by the Crown Contracts Confidentiality Standing Committee. The restriction on confidentiality applies only to the contract itself, including annexures or schedules, but not to the services or products that flow from the performance of the contract.

Further information

For more information visit www.treasury.tas.gov.au.

National PPP Guidelines

Northern Territory Requirements

June 2009

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Northern Territory Requirements

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1. Introduction

The national PPP policy and guidelines replace *Territory Partnerships* which outlined the Northern Territory Government's position on PPPs.

2. Coverage of the policy and Guidelines

The national PPP policy and guidelines apply to all PPP projects entered into by Northern Territory budget sector agencies, unless a specific government decision advises that other policies and practices will apply.

Application of the policy to infrastructure delivery by a government owned corporation (GOC) will be determined on a project by project basis, based on the recommendations of the board of the GOC and consideration by the shareholding and the portfolio ministers.

As the minister responsible for PPP policy and practices in the Northern Territory, the Treasurer is responsible for developing and overseeing application of the national PPP policy and guidelines in the Northern Territory. The Treasurer is also responsible for Northern Territory contributions towards further development and enhancement of the national PPP policy and guidelines.

Infrastructure Australia (IA) is responsible for the national PPP policy and guidelines. With the assistance of IA, the Council of Australian Government (COAG) will monitor, review and from time to time refine the national PPP policy and guidance material. COAG is responsible for approving substantive changes to the national policy and guidelines.

3. Scope of services

The Northern Territory Government will be responsible for the delivery of core services in a PPP project. The determination of core and non-core services will occur on a case-by-case basis at the early planning stages of each infrastructure project.

4. PPP as a procurement option

All public infrastructure projects with a capital investment component of at minimum \$50 million are required to be evaluated for a PPP as a potential procurement approach. In undertaking this evaluation, consideration will be given to value for money drivers and market appetite and capacity. Projects with a capital value of less than \$50 million may be considered for PPP delivery if whole of life costs are expected to exceed \$50 million. The capital threshold may also be triggered by bundling projects together.

The procurement options analysis is to be undertaken in accordance with the *National PPP Guidelines Procurement Options Analysis* and other Northern Territory Government procurement policies applying from time to time.

A key factor affecting the Northern Territory in considering PPPs as a procurement approach is the Territory's small population base and geographic isolation. These factors potentially result in the requirement to consider a range of different PPP drivers and impacts in the Northern Territory context.

Economic infrastructure, for example, could be especially difficult to sustain for remote regions with large, highly dispersed Indigenous populations. On this basis, principles which would apply for social infrastructure may need to be applied to economic infrastructure depending on the allocation of demand and price risk.

5. PPP project governance

Each potential Northern Territory PPP project will be nominated and overseen by the relevant portfolio minister who will also be part of progressive Cabinet approval processes. Procuring agencies have primary responsibility for management and implementation of PPP projects.

The NT Treasury is the relevant PPP authority as defined in the national PPP guidelines. NT Treasury has responsibility for monitoring and independently advising the Treasurer and Cabinet on significant PPP issues.

Senior representatives of NT Treasury, the Department of Justice and—where appropriate—other agencies such as the Department of the Chief Minister, are to be members of the PPP project steering committee. NT Treasury is also to be represented at project working group level.

Procuring agencies are to specifically consult NT Treasury in relation to budgeting/accounting, commercial, risk management and taxation matters on PPP projects. Procuring Agencies are to specifically consult with the Department of Planning and Infrastructure in relation to initial project assessment and site identification and evaluation.

In relation to Indigenous land issues, the *Aboriginal Land Rights (NT) Act*, *Native Title Act* and *Northern Territory Sacred Sites Act* could apply. Depending on the nature of the particular PPP project, the ownership of the site and other factors, the procuring agency on behalf of the Northern Territory Government may take responsibility for all or part of initial consultations and negotiations on Indigenous land interest matters. It should be noted that over half of the Northern Territory has been claimed under the *Land Rights Act*, and that much of the rest has been claimed under the *Native Title Act*.

The Auditor-General will have full and complete access as required to information on any Northern Territory PPP project.

6. Public interest

The Northern Territory Government is committed to ensuring that each potential PPP project is assessed against the public interest. Public Interest assessments are undertaken early in the project development phase and in the subsequent preparation of business cases. Public interest issues are outlined project documentation.

The Northern Territory will ensure that the public interest is protected in infrastructure projects delivered through a PPP arrangement.

7. Approval process

In accordance with the national PPP guidelines, the key government approval steps include:

Stage	Approval Required
Government approval of project and procurement method	Government approves: <ol style="list-style-type: none"> a) the investment decision based on a business case; and b) the procurement model based on the procurement options analysis/strategy.
Government approval of EOI	Government approves release of EOI document.
Government approval of PSC	Government approves the public sector comparator (may be earlier than this point).
Government approval of short-listed bidders and request for proposal	Government approves release of list of short-listed bidders and the request for proposal to short-listed bidders. Procurement Review Board approval to the shortlist is required prior to consideration and approval by government generally (see Section Eight below).
Government approval of preferred bidder	Following evaluation of responses, government approves the preferred bidder. Procurement Review Board approval to the shortlist is required prior to general government consideration and approval (see Section Eight below).
Government approval of contract execution	Following negotiations, government or the portfolio minister in consultation with the Treasurer approves contract execution and financial close.
Government approval of material contract variations	Subject to existing delegated authority, there is an ongoing requirement for material contract variations to be considered and approved by ministers.

8. Links to Northern Territory procurement policy

The Department of Business and Employment has responsibility for administration of the Northern Territory Government's procurement policies. While the National PPP Policy and Guidelines are not encapsulated within Government's procurement policies, the principles which underpin Government's procurement framework apply. These principles are:

- value for money;
- open and effective competition;
- enhancing the capabilities of local business and industry;
- environmental protection; and
- ethical behaviour and fair dealing.

The Procurement Review Board (PRB) is a board established under the *Procurement Act* to review government procurement processes. Unless an exemption is obtained, PRB approval of short-listed tenderers and of the preferred tenderer is required prior to formal government consideration and decision.

9. Evaluation of tender responses

In the Northern Territory, evaluation of responses to EOI and requests for proposal will be undertaken by an evaluation team comprised of government representatives. Input from expert advisers will be sourced as necessary but expert advisers would not generally undertake the actual evaluation.

10. Public sector comparator requirements

The public sector comparator (PSC) is to be approved by government at project approval or, at the latest, prior to the release of the request for proposal document. Any subsequent material changes must also be approved.

Procuring agencies are to consult NT Treasury on the appropriate discount rate for use in developing and assessing project finance with NT Treasury also involved in the construction of the PSC and subsequent assessment of tender responses against the PSC.

11. National commercial principles

The national commercial principles provide a consistent and efficient risk allocation framework, while recognising the need for flexibility for individual project needs. While every endeavour will be made to maintain this consistency, each project has to be considered on its merits with an assessment made as to the suitability and impacts of the promulgated risk allocation framework.

Any proposed deviation from the national commercial principles for sector or project-specific issues will be documented and agreed with NT Treasury and the Treasurer when government approval is sought to issue the request for proposal.

12. Reimbursement of bid costs

In normal circumstances, the Northern Territory would not contemplate the payment of any part of the bid costs incurred by unsuccessful bidders. Exceptions may occur on a case-by-case basis.

Further Information

For more information visit <http://www.nt.gov.au/ntt/index.shtml>.

National PPP Guidelines

Australian Capital Territory Requirements

June 2009

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1	June 2009		

Australian Capital Territory Requirements

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1. Introduction

The national PPP policy and guidelines is to be known as the Territory's PPP policy and guidelines unless otherwise stated in this jurisdictional requirements document. To date the Territory has not engaged PPPs as a procurement delivery method, and—until it does so—it is not in the position to test the policy and guidelines.

This jurisdictional requirements document will be reviewed and updated as and when the Territory considers infrastructure projects that meet the mandatory thresholds or where it considers a project to be of value for money in using PPP as a procurement delivery method.

2. Coverage of the policy and guidelines

The PPP policy and guidelines apply to all PPP projects entered into by the Territory's budget sector agencies, unless a specific government decision advises that other provisions will apply. Application of the national policy to territory owned corporations is excluded, unless otherwise determined by the Treasurer.

The Treasurer remains responsible for developing and overseeing the implementation of the national policy and guidelines in the Territory.

Infrastructure Australia (IA) is responsible for the national PPP policy and guidelines. With the assistance of IA, the Council of Australian Government (COAG) will monitor, review and from time to time refine the national PPP policy and guidance material. COAG is responsible for approving substantive changes to the national policy and guidelines.

3. Scope of services

The Territory is responsible for the delivery of core services in a PPP project. The determination of core and non-core services will occur on a case-by-case basis at the early planning stages of each infrastructure project.

4. PPP as a procurement option

All public infrastructure projects with a capital investment over \$50 million are required to include consideration of a PPP as a potential procurement method with regard to the value for money drivers, when conducting a procurement options analysis. Projects of less than \$50 million may also be suitable for PPP delivery if they exhibit sufficient value for money drivers. The capital threshold may also be triggered by bundling projects together at the Territory Government's discretion.

The procurement options analysis is to be done in accordance with the national PPP guidelines procurement options analysis, and with reference to other ACT budget processes and procurement related law, regulations, policies and guidelines—largely referenced on the Procurement Solutions, Treasury and Government Procurement Board's websites—but may also include internal working papers.

5. PPP project governance

Consistent with project management in the ACT, each PPP project will be overseen by, and be the responsibility of the relevant portfolio minister. Procuring agencies are responsible for management and implementation of PPP projects, unless otherwise agreed by the Territory Government.

The Department of Treasury is the relevant PPP authority as defined in the national PPP guidelines. Treasury has whole-of-government responsibility for:

- PPP policy and guidelines;
- supporting and reviewing projects; and
- monitoring and independently advising the Treasurer and government on significant PPP issues.

6. Approval process

Approval processes will be consistent with the Territory's budget process and procurement guidelines.

Further Information

For more information visit <http://www.treasury.act.gov.au/>.

National Public Private Partnership Guidelines:
Volume 6: Jurisdictional Requirements

www.infrastructureaustralia.gov.au