



Implementing Better Practice Grants Administration



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Foreword

Grants administration is an important activity for many Commonwealth entities involving the payment of many billions of public funds each year. In the light of the significant outlay of public funds and the issues arising from our audit coverage, since 1994 the Australian National Audit Office (ANAO) has published a Better Practice Guide on the administration of grants to encourage better administrative outcomes.

The earlier versions of this Better Practice Guide published in 1994, 1997 and 2002 had been prepared to provide practical assistance to those involved with the planning, project selection, management and review of Commonwealth grant programs. They also provided a normative model against which performance audits of grant programs would assess entity performance.

This current version of the Grants Administration Better Practice Guide has similar purposes, but has been prepared in a very different environment. Specifically, an enhanced legislative and policy framework for grants administration came into full effect on 1 July 2009. The new framework has a particular focus on the establishment of transparent and accountable decision-making processes for the awarding of grants. It includes a number of mandatory requirements, as well as outlining, in the *Commonwealth Grant Guidelines*, various better practice principles. This revised Better Practice Guide has been designed to complement the new framework for grants administration by providing a companion reference point that will assist decision-makers and administering agencies to understand and comply with their obligations and implement the better practice principles, having regard to the particular circumstances of individual grant programs.

When releasing the *Commonwealth Grant Guidelines*, the Finance Minister observed that, in his view, the administration of grant programs had become significantly debased and expressed the desire that the new framework would improve the quality of grants administration and ensure Australian taxpayers receive the best possible outcomes from Commonwealth grants. I support these sentiments, and hope that this revised Better Practice Guide can contribute to improved decision-making and more efficient and effective administration of approved grants. The ANAO will continue to include performance audits of grant programs in our work program; these audits will provide an opportunity to monitor the extent to which the enhanced framework is having the desired effect, as well as to identify any opportunities to further improve the framework.

Finally, I would like to express my thanks and appreciation to all those who have contributed to the development of the revised Guide. I would also like to acknowledge the valuable contribution to improving grants administration made by the 2008 Strategic Review of the Administration of Australian Government Grant Programs, as well as the collaborative approach taken by the Department of Finance and Deregulation in engaging with ANAO during the development of the new framework in response to the findings and recommendations of the Strategic Review.



Ian McPhee
Auditor-General
June 2010

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Abbreviations and Glossary

Accountability	Involves agencies and decision-makers being able to demonstrate and justify the use of public resources to government, the Parliament and the community. This necessarily involves keeping appropriate records.
ADJR Act	<i>Administrative Decisions (Judicial Review) Act 1977</i>
ANAO	Australian National Audit Office
Approver (or decision-maker)	This is the Minister or, where relevant, official with authority to determine whether an application or grant proposal will be funded under a grant program. The FMA Regulations and Commonwealth Grant Guidelines (CGGs) set down a number of requirements that are to be followed by an approver in determining whether a grant should be approved. The CGGs also set down reporting obligations where Ministers approve grants that the relevant agency recommended be rejected, and where Ministers who are Members of the House of Representatives approve grants in their own electorate.
Assessment criteria	The criteria against which all eligible, compliant applications will be assessed in order to determine their merits against the program objectives. In a competitive merit-based selection process, the assessment criteria also provide the means of ranking competing eligible applications in order of priority for approval up to the level of available program funding, so as to maximise the achievement of program objectives.
CEIs	Chief Executive's Instructions
CGGs	<i>Commonwealth Grant Guidelines-Policies and Principles for Grants Administration</i> , Financial Management Guidance No. 23, issued by the Minister for Finance and Deregulation in July 2009 under FMA Regulation 7A. The purpose of the CGGs is to establish the policy framework and articulate the Government's expectations for all agencies subject to the FMA Act and their officials when performing duties in relation to grants administration. The FMA Regulations require officials to act in accordance with the CGGs, with the CGGs setting out a number of mandatory requirements for both Ministers and officials.
Eligibility (or threshold) criteria	The eligibility, compliance and other mandatory (or gateway) criteria identified in program guidelines as threshold requirements that all applications must satisfy in order to be considered for funding.
ERC	Expenditure Review Committee of Cabinet
Executive schemes	Programs established and implemented by decision of the Australian Government under authority of the executive powers provided by section 61 of the Constitution and for which specific legislative authority is not sought from the Parliament, other than in relation to the appropriation of funding.
Finance	Department of Finance and Deregulation
Fit-for-purpose	The key design features and related processes of a grant program will be fit-for-purpose where they are commensurate with and proportional to the scale, nature, complexity and risks involved in the granting activity such that they support effective, transparent and accountable decision-making and administration of approved grants.
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FMA Regulations	<i>Financial Management and Accountability Regulations 1997</i>

Grant	<p>FMA Regulation 3A(1) defines a grant as an arrangement for the provision of financial assistance by the Commonwealth:</p> <ul style="list-style-type: none"> (a) under which public money is to be paid to a recipient other than the Commonwealth; and (b) which is intended to assist the recipient achieve its goals; and (c) which is intended to promote one or more of the Australian Government's policy objectives; and (d) under which the recipient is required to act in accordance with any terms and conditions specified in the arrangement. <p>FMA Regulation 3A(2) stipulates the financial arrangements that taken not to be grants for the purposes of the FMA Regulations and the CGGs.</p>
Grants administration	<p>The CGGs stipulate that the grants administration function encompasses the whole process of granting activity and includes:</p> <ul style="list-style-type: none"> (a) planning and design; (b) selection and decision-making; (c) the making of a grant; (d) the management of funding agreements; (e) reporting; and (f) review and evaluation.
Key principles for grants administration	<p>The CGGs sets out the seven key principles of grants administration established by the Australian Government, as follows:</p> <ol style="list-style-type: none"> (1) Robust planning and design. (2) An outcomes orientation. (3) Proportionality. (4) Collaboration and partnership. (5) Governance and accountability. (6) Probity and transparency. (7) Achieving value with public money.
Legislative grant programs	<p>Grant programs that are either:</p> <ul style="list-style-type: none"> • programs established by legislation (and, in some cases, related legislative instruments) under which the basis on which individual grants may be paid is determined by the provisions of the legislation; or • programs with a broad statutory basis, but which rely upon executive power for their implementation, including in relation to the selection of funding recipients and the criteria that will applied in that process.
Probity	<p>Probity refers to uprightness, honesty and ethical behaviour and 'good process'. In the context of a grant program, good process will involve clear decision-making procedures and criteria, consistent with the Government's policies and legislation and the legitimate interests of stakeholders, being established, understood and observed from the outset; all applicants being treated consistently and equitably in accordance with these procedures; and decisions being made in a transparent manner which allows them to be understood and justified.</p>
Program outcomes	<p>The results, impacts or consequences on the Australian community intended by government to arise through implementation of the program.</p>

Selection criteria	<p>The eligibility (or threshold) and assessment criteria identified in the guidelines promulgated in relation to a grant program as forming the basis on which funding recipients will be selected. The selection criteria form the key link between the program's stated objectives and the outcomes that are subsequently achieved from the funding provided. Selection criteria fall into two main groups, as follows:</p> <ul style="list-style-type: none"> • threshold criteria are the criteria that an application must satisfy in order to be considered for funding. These are also variously expressed as 'eligibility criteria', 'mandatory criteria', 'compliance criteria' or 'gateway criteria'; and • assessment criteria are the criteria against which all eligible, compliant applications will be assessed in order to determine their merits against the program objectives and, for competitive programs, other competing applications.
Spending proposal	<p>FMA Regulation 3 defines a 'spending proposal' as: 'a proposal that could lead to the creation of a contract, agreement or arrangement under which public money is, or may become, payable.' This includes a proposal relating to the making of a grant. FMA Regulations 9 to 13 outline the requirements relating to the expenditure of public money through the approval of a spending proposal.</p>
Strategic Review	<p><i>Strategic Review of the Administration of Australian Government Grant Programs</i>, 31 July 2008.</p>
Transparency	<p>Transparency refers to the preparedness of those involved in grants administration to open an activity and its processes to scrutiny. This involves providing reasons for all decisions that are taken and the provision of information to government, the Parliament and the community. Transparency provides assurance that grants administration processes undertaken are appropriate and that policy and legislative obligations are being met.</p>

1. Introduction





1. Introduction

1.1 Background

Conditional grants have been used increasingly in recent years as a mechanism for transferring funding to external parties for the purpose of achieving particular Australian Government policy objectives. The July 2008 report of the *Strategic Review of the Administration of Australian Government Grant Programs* (Strategic Review) estimated that Commonwealth expenditure on all forms of conditional grants (including specific purpose payments made under legislation to State, Territory and local governments and discretionary grants made to a variety of funding recipients) was likely to be between \$40 billion and \$50 billion per annum, or about one-sixth of total Commonwealth outlays.¹

Efficient, effective and ethical grants administration aims to:

- equitably and transparently select funding recipients that best represent value for money in the context of the stated objectives of the grant-giving activity; and
- efficiently and effectively deliver Australian Government funding to approved recipients to achieve desired government policy outcomes.

Prior to 2007, there was no official guidance issued to Australian Government agencies relating specifically to the administration of grant programs. In that context, since 1994, the Australian National Audit Office (ANAO) has published a Better Practice Guide on the administration of grants. The previous version, published in 2002, had the purpose of assisting organisations and others involved in the grant selection and administration process to:

- plan and manage grant programs and like funding arrangements;
- establish and manage individual funding agreements; and
- effectively review or evaluate grant programs.

1.1.1 Developments in grants administration since the 2002 version of the Better Practice Guide

In December 2007, Finance Minister's Instructions were issued providing detailed information about Budget and other related processes. The key instructions issued by the Finance Minister in respect to grants required that:

- guidelines for any new grant programs be considered by the Expenditure Review Committee of Cabinet (ERC);
- Ministers not make any decisions on grants without first receiving departmental advice on the merits of the grant application relative to the guidelines for the program;

¹ The Strategic Review further reported that the use of grants (that is, excluding Commonwealth specific purpose payments) had increased from fewer than 4 000 with a total value of about \$580 million in calendar year 2000 to around 49 000 with a total value of \$4.5 billion in calendar year 2007. Source: Mr Peter Grant PSM, *Strategic Review of the Administration of Australian Government Grant Programs*, 31 July 2008, p. 1.

- where a Minister decided not to follow departmental advice, a ministerial group would decide whether to award or reject a grant following a submission from the requesting Minister outlining why a decision should be taken to award the grant against departmental advice;
- Ministers who were members of the House of Representatives not make any decisions in relation to grants in their own electorate, even on the basis of departmental advice. Rather, these decisions would be taken by the ministerial group;
- agencies have adequate arrangements in place to manage grant programs in accordance with relevant legislation, regulations and guidance; and
- details of individual grants be published on agency websites within two days of the announcement of the grant.

In February 2008, the Australian Government announced that, in light of the results of significant Parliamentary and ANAO scrutiny of various grant programs, it would be undertaking a comprehensive review to examine the value of grants, and the transparency and effectiveness of existing programs. In July 2008, the Strategic Review reported that it had identified four key ‘framework’ requirements which needed to be in place in order to support the effective administration of grants across the Commonwealth, being:

- a standard framework of concepts, definitions and classification principles, providing a common understanding of the meaning of terms and a clear basis for the interpretation and application of policy guidance;
- a clear framework of policy principles governing the administration of grant programs across the Commonwealth;
- a strong financial management framework, with clear links drawn between the requirements of that framework and the responsibilities of decision-makers and others involved in the administration of grant programs; and
- a robust framework for the collection and reporting of statistical and other information on Commonwealth grants, designed to meet both administrative requirements and public accountability objectives.²

The Strategic Review concluded that there were important gaps and weaknesses in each of these respects and made a number of recommendations to government. This included a recommendation that a whole-of-government, principles-based policy framework for the administration of grant programs be established under the *Financial Management and Accountability Regulations 1997* (FMA Regulations), which are made under the *Financial Management and Accountability Act 1997* (FMA Act).³

In December 2008, the Government agreed to a range of measures to reform the administration of grants, including the development of an improved framework for grants administration. To give immediate effect to these measures, on 16 January 2009 the Finance Minister issued revised Finance Minister’s Instructions with new requirements for grant approvals and reporting (the latter taking effect from 1 January 2009).⁴ The revised Instructions continued to require that guidelines for any new grant programs be considered by the ERC and that Ministers should not approve grants without first receiving agency advice on the merits of the proposed grant.⁵ Key changes from the earlier Instructions were that:

- decisions involving the awarding of grants which the relevant agency had recommended be rejected would now remain within the remit of the responsible Minister (rather than being referred to a ministerial group), but that Ministers must:
 - record the basis of the approval, in addition to the terms of the approval, in the form of a written statement of the reasons for the decision; and
 - report annually to the Finance Minister on all instances where they had decided to approve a particular grant which the relevant agency had recommended be rejected, with this report (due by 31 March each year for the preceding calendar year) being required to include the statement of reasons prepared as part of the decision-making process;

² *ibid.*, p. 3.

³ *ibid.*, pp. 3 and 23.

⁴ Also on 16 January 2009, the Department of Finance and Deregulation released detailed guidance to agencies regarding the new Instructions, in the form of an Estimates Memorandum.

⁵ The revised Instructions also retained the requirement for details of individual grants to be published on agency websites, although this was now required to occur within seven days of the funding agreement being signed by both parties, rather than the earlier requirement of within two days of the grant being announced.

- decisions involving the awarding of grants within a Minister's own electorate (where the Minister is a member of the House of Representatives) would now remain within the remit of the responsible Minister or other approver in the portfolio or agency concerned, but decision-makers must record the basis of the approval, in addition to the terms of the approval, in the form of a written statement of the reasons for the decision;
- the Finance Minister was to be advised of the details each time a Minister who was a member of the House of Representatives approved a grant in respect to his or her own electorate; and
- in recording the basis of approvals, Ministers and agencies were required to comply with the requirements of Regulation 9 of the FMA Regulations.

As of 1 July 2009, a new framework was introduced for the administration of grant programs by agencies subject to the FMA Act. This new framework incorporated the policy requirements established in January 2009, together with a range of new requirements and guidance as part of the Government's full response to the Strategic Review. The new framework involves:

- the continued application of the general requirements set out in the financial management framework regulating the expenditure of public money, which reflect sound principles that have evolved over time;
- new specific requirements under the financial management framework in relation to grants administration; and
- Commonwealth Grant Guidelines issued under the FMA Regulations.

1.2 Commonwealth Grant Guidelines

The *Commonwealth Grant Guidelines: Policies and Principles for Grants Administration* (CGGs) were issued in July 2009 by the Minister for Finance and Deregulation under FMA Regulation 7A. The CGGs establish the grants policy framework and articulate the Government's expectations within which agencies subject to the FMA Act are to determine their own specific grants administration practices. Officials performing duties in relation to the administration of grants must act in accordance with the CGGs.⁶

The CGGs are in two parts:

- Part I outlines the legislative and policy framework for grants administration, including certain mandatory requirements of both officials and Ministers involved in grants administration; and
- Part II provides guidance on sound practice in grants administration that agencies should have regard to in implementing grant programs.

The CGGs stipulate that the *grants administration* function encompasses the whole process of granting activity and includes:

- (a) planning and design;
- (b) selection and decision-making;
- (c) the making of a grant;
- (d) the management of funding agreements;
- (e) reporting; and
- (f) review and evaluation.

Part II of the CGGs sets out guidance on sound practice in respect to the grants administration process. That guidance is discussed in the context of seven key principles established by the Australian Government for grants administration, as set out in [Figure 1](#).

⁶ See FMA Regulation 7A. The introduction of a statutory basis for the issuing of grant guidelines placed the administration of grant programs on the same footing as procurement activities, which are subject to the requirements of the Commonwealth Procurement Guidelines (CPGs). The CPGs are issued under FMA Regulation 7, which stipulates that officials performing duties in relation to the procurement of property or services must act in accordance with the CPGs.

Figure 1

Seven key principles for grants administration

1.	Robust planning and design which underpins efficient, effective and ethical grants administration, including through the establishment of effective risk management processes.
2.	An outcomes orientation in which grants administration focuses on maximising the achievement of intended government outcomes from the available funding.
3.	Proportionality in which key program design features and related administrative processes are commensurate with the scale, nature, complexity and risks involved in the granting activity.
4.	Collaboration and partnership in which effective consultation and a constructive and cooperative relationship between the administering agency, grant recipients and other relevant stakeholders contribute to achieving more efficient, effective and equitable grants administration.
5.	Governance and accountability in which a robust governance framework is established that clearly defines the roles and responsibilities of all relevant parties; establishes the policies, procedures and guidelines necessary for defensible funding recipient selection and administration processes that comply with all relevant legal and policy requirements; and supports public accountability for decision-making, grant administration and performance monitoring.
6.	Probity and transparency in which program administration reflects ethical behaviour, in line with public sector values and duties; incorporates appropriate internal and fraud control measures; ensures that decisions relating to granting activity are impartial, appropriately documented and publicly defensible; and complies with public reporting requirements.
7.	Achieving value with public money which should be a prime consideration in all aspects of grant administration and involves the careful consideration of costs, benefits, options and risks.

Source: *Commonwealth Grant Guidelines—Policies and Principles for Grants Administration*, Financial Management Guidance No. 23, July 2009.

The key principles set out in Figure 1 are interrelated and remain relevant throughout the life cycle of the grants administration process. Reflecting that, the guidance provided in the CGGs in relation to implementing each key principle canvasses matters relevant to a number of the stages in the administration of a grant program and of individual grants.

The sound practice guidance set out in the CGGs is, in large part, drawn from the 2002 version of the ANAO Administration of Grants Better Practice Guide, with the material being re-presented within the context of the new policy framework for grants administration. The guidance set out in the CGGs is supplemented by associated Finance Circulars issued by the Department of Finance and Deregulation (Finance) in relation to grants administration.⁷ There is also a range of other Finance Circulars that provide more general advice on the application of the financial framework to the expenditure of public money, including for the purpose of making a grant.⁸

7 See, for example, Finance Circular No. 2009/03, *Grants and other common financial arrangements*, 29 June 2009 (which provides guidance in relation to distinguishing a grant from other common types of financial arrangements, and the relevant framework that applies to the administration of each arrangement) and Finance Circular No. 2009/04, *Grants—Reporting Requirements*, 29 June 2009 (which provides guidance on the grant reporting requirements of the CGGs). Both Circulars are available at <<http://www.finance.gov.au/publications/finance-circulars/index.html>> [accessed 24 May 2010].

8 See, for example, Finance Circular No. 2009/05, *Commitments to spend public money (FMA Regulations 7 to 13)*, 29 June 2009; Finance Circular No. 2007/01, *FMA Regulation 10*, 21 June 2007; and Finance Circular No. 2009/06, *Certificate of Compliance—FMA Act Agencies*, 11 August 2009. Each Circular is available at <<http://www.finance.gov.au/publications/finance-circulars/index.html>> [accessed 24 May 2010].

Further guidance in relation to particular aspects of grants administration is also available from:

- the Australian Government Solicitor, which has issued advice in relation to aspects of grants administration, with a particular focus on the establishment and management of funding agreements⁹; and
- the Commonwealth Ombudsman, who issued a report in August 2009 which examined the benefits and drawbacks of executive schemes and common issues of concern arising in complaints made to the Ombudsman in relation to grant programs. That report also presented eight best practice principles for agencies to consider when developing and administering executive schemes. Some executive schemes will be subject to the CGGs.¹⁰

In addition, the Australian Taxation Office (ATO) encourages agencies to seek its advice on the tax implications associated with grant programs, particularly where the program is complex, affects a large number of people or has particular sensitivities. In this respect, the 2008 Strategic Review had found that the taxation treatment of grants had been another area of significant confusion and uncertainty. The ATO advises agencies to seek early advice on tax implications, particular during the development phase of a grant program, in order to fully inform decision-making and the budgetary process. ATO's advice should also be sought where changes to existing grant programs are being proposed.

1.3 Purpose of this Better Practice Guide

The transparency, accountability and probity with which grant funding decisions are made have been matters of longstanding Parliamentary and public interest.

This is reflective of the fact that, while a widely used means of contributing to the achievement of particular public policy objectives, the making of grants also involves the use of public money to provide a financial benefit that the recipient would not otherwise have received. In the context of many grant programs, this will involve some potential recipients being successful in obtaining funding, while others are not. This may involve choosing between entities with competing interests such as:

- non-profit research, service, charitable or community organisations that compete for a limited pool of public funding to supplement other funding sources; or
- for-profit or commercial entities for which the receipt of a non-repayable grant has a positive financial effect that may not be available to a possible competitor, including increasing after-tax cash flows to the funding recipient, but without the recipient being required to pay a return on those funds. Such grants also involve the transfer of wealth from the public to the private sector, for the purpose of achieving a public policy objective.

It is also recognised that there is the potential for electoral advantage to arise, or be sought, from the making of grants.

Accordingly, a key element of effective grants administration is the establishment and consistent implementation of a process for the selection of funding recipients that:

- demonstrates compliance with all legislative and policy requirements for the expenditure of the public money involved;
- maximises value for money in achieving the stated policy objectives for the program; and
- promotes public confidence that the program has been administered in an ethical and equitable fashion, with due regard for probity, transparency and accountability.

Recent ANAO audits of grant programs have highlighted that, in addition to promoting public confidence in the conduct of grant activities, selecting grant applications that demonstrably satisfy soundly-based selection criteria is considerably more likely to lead to a positive result in terms of achieving program objectives, as well as being more efficient for agencies to administer. In other words, selecting the best applications promotes optimal outcomes for least administrative effort and cost.

9 See Australian Government Solicitor, Legal Briefing 83, *Grants and Funding Programs: Legal Issues*, 17 November 2009, available at <<http://www.ags.gov.au/publications/agspubs/legalpubs/legalbriefings/index.htm>> [accessed 7 December 2009].

10 Report by the Commonwealth Ombudsman, Prof. John McMillan, under the *Ombudsman Act 1976*, Report No.12 2009, *Executive Schemes*, Canberra, August 2009, available at <http://www.ombudsman.gov.au/files/investigation_2009_12.pdf> [accessed 7 December 2009].

In that context, a key focus of the new grants administration framework has been the establishment of specific legislative and policy requirements in relation to the grant assessment and approval process, and the public reporting of approved grants. In issuing the CGGs, the Minister for Finance and Deregulation stated:

The Guidelines are intended to improve the transparency and accountability of grants administration. The Government has mandated transparent and accountable decision-making processes for grants and timely public reporting through agency websites.

The CGGs and associated Finance Circulars now represent the core policy guidance that agencies should have regard to throughout the grants administration process.

This revised Better Practice Guide has been designed to complement the CGGs by providing a companion reference point that will assist decision-makers and administering agencies to understand and comply with key obligations. As Part II of the CGGs draws extensively on the 2002 version of the ANAO's Better Practice Guide¹¹, this updated Guide is directed at assisting agencies to implement the new policy requirements and related guidance which, as noted, have a particular focus on decision-making processes for the awarding of grants.

¹¹ Department of Finance and Deregulation, *Commonwealth Grant Guidelines—Policies and Principles for Grants Administration*, Financial Management Guidance No. 23, July 2009, p. 14.

2. Legislative and policy framework for grants administration



Key Points

The grants policy framework promotes transparent, accountable and cost-effective grants administration through a combination of legislative and policy requirements and associated guidance which form the context in which programs are to be administered. This framework is aimed at promoting a consistently high standard in grants administration to the benefit of applicants, government and the broader community. Key considerations are that:

- grant programs occur within the context of the overarching obligation to make proper use of Commonwealth resources. In this context, consideration of alternative financial arrangements will assist in establishing whether a grant is the most appropriate and cost-effective financial arrangement to achieve the relevant government objective;
- the grants policy framework applies to all spending proposals that satisfy the principles-based definition of a grant set out in the FMA Regulations, regardless of the means by which the program is established or a proposal is brought forward for consideration; and
- grant approval and administration processes that comply with the statutory and mandatory policy requirements set out in the FMA Regulations and CGGs, as well as observing the sound practice guidance set out in the CGGs, are considerably more likely to see the best applications selected for funding, as well as enabling effective administration of approved funding for the least effort and cost.



2. Legislative and policy framework for grants administration

A threshold issue in the effective administration of the expenditure of public money is establishing the substantive nature of a transaction and, accordingly, the legislative and policy requirements that must be complied with.

2.1 Framework for the administration of grant programs

Ministers, agencies and officials operate within an environment of legislation and government policy. Within this broad context, the financial management framework consists of the legislation and policy governing the management of Commonwealth resources. The grants policy framework introduced from 1 July 2009 is a subset of the financial management framework.

Agency Chief Executives are required to provide the Minister for Finance and Deregulation with an annual Certificate of Compliance certifying as to his or her agency's compliance with the financial management framework and reporting any instances of non-compliance. In that context, it is expected that Chief Executives will ensure that their agency has sufficient processes and controls in place to provide reasonable confidence that officials are complying with the financial management framework.¹²

It is a matter for agencies to determine their specific practices and procedures for grants administration, provided they are consistent with the grants policy framework, incorporating the CGGs and financial management framework. This will usually be achieved through the Chief Executive's Instructions (CEIs) issued by the agency's Chief Executive¹³, other general policies and procedures established within the relevant agency in relation to financial management, and the specific guidelines and administrative arrangements established for individual grant programs. The CEIs may:

- interpret the grants policy framework and the wider financial management framework, focussing on the agency's particular needs; and
- provide primary operational instructions to agency officials in carrying out their duties related to grants administration, in a way that is tailored to the agency's particular circumstances and needs.

Ensuring that the relevant requirements are well understood and effectively incorporated into the design and administration of any grant program is essential in order for Ministers, agencies and officials to fulfil their obligations in a transparent, accountable and cost-effective manner. In turn, adherence to these obligations is expected to deliver high quality grants administration and promote the achievement of program and broader policy objectives.

¹² For further guidance, see Finance Circular No. 2009/06, as referred to in footnote 8.

¹³ FMA Regulation 6 authorises Chief Executives to give instructions to officials in their agency on any matter necessary or convenient for carrying out or giving effect to the Act or the Regulations.

2.1.1 Financial management framework

The FMA Act provides a framework for the proper management of public money.¹⁴ Most of the detailed rules regarding the expenditure of public money are set out in the FMA Regulations made under the Act.¹⁵ The FMA Act and associated Regulations apply to Ministers and officials in Australian Government Departments of State, Departments of the Parliament and agencies prescribed in the FMA Regulations.

Section 44 of the FMA Act sets out an overarching requirement applying to all aspects of an agency's resource management, which requires that:

A Chief Executive must manage the affairs of the Agency in a way that promotes proper use of the Commonwealth resources for which the Chief Executive is responsible.

Section 44(3) of the Act defines 'proper use' as:

efficient, effective and ethical use that is not inconsistent with the policies of the Commonwealth.

In fulfilling their obligations under section 44 of the FMA Act, Chief Executives must comply with the Act, FMA Regulations, Finance Minister's Orders, Special Instructions and any other law (FMA Act s.44(2)).

Part 4 of the FMA Regulations, *Commitments to spend public money*, sets out a hierarchy of requirements that must each be satisfied, in the appropriate sequence, in order for a commitment to spend public money to be lawfully entered into. These requirements regulate the process to be applied in determining whether or not to approve a spending proposal, including those relating to grants, and control the capacity for any person to lawfully enter into any arrangement under which public money may become payable. The general requirements that relate to all spending proposals are as follows:

- Regulation 3 defines a 'spending proposal' as a proposal that could lead to the creation of a contract, agreement or arrangement under which public money is, or may become, payable;
- in concert, Regulations 3 and 11 define who has authority to act as an approver of a spending proposal and in what circumstances;
- under Regulation 10, a person who otherwise has authority to act as an approver is not able to lawfully approve a spending proposal that involves expenditure for which there is not sufficient uncommitted appropriation available unless the Finance Minister (or delegate) has authorised the approver in writing to give such an approval;
- Regulation 9 prohibits an approver from approving a spending proposal unless satisfied, after undertaking reasonable inquiries, that giving effect to the proposal would be a proper use of Commonwealth resources (within the meaning given by subsection 44(3) of the Act);
- under Regulation 12, approvers must make a written record of the factual terms of the approval, either at the time of giving approval or as soon as practicable after that; and
- Regulation 13 prohibits any person, whether a Minister, official or any other person, from entering into a contract, agreement or arrangement under which public money is, or may become, payable unless a relevant spending proposal has been properly approved in accordance with Regulation 9 (including that, where necessary, the Regulation 9 approval was properly authorised for the purposes of Regulation 10).

¹⁴ Public money means money in the custody or under the control of the Commonwealth; or money in the custody of any person acting for and on behalf of the Commonwealth in respect of the custody or control of the money (including such money that is held on trust for, or otherwise for the benefit of, a person other than the Commonwealth) (Section 5, FMA Act).

¹⁵ Section 65 of the FMA Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

Additional FMA Regulations specific to grants administration

In addition to the general requirements relating to the expenditure of public money, the introduction of the new framework for grants administration involved the specification of additional statutory requirements, as follows:

- Regulation 3A identifies which financial arrangements will be subject to the grants policy framework. Regulation 3A(1) defines the characteristics that will result in a payment being considered a 'grant' for the purposes of the Regulations and the CGGs, while Regulation 3A(2) lists a number of arrangements that are specifically taken not to be grants for the purposes of the Regulations and CGGs;
- Regulation 7A provides authority for the Finance Minister to issue the CGGs, and stipulates that officials performing duties in relation to grants administration must act in accordance with the CGGs; and
- Regulation 12 now includes an additional requirement that, where the spending proposal relates to a grant, approvers must also make a written record of the basis on which they are satisfied that the spending proposal complies with Regulation 9.

2.1.2 Policy requirements

As noted, agencies are required to make efficient, effective and ethical use of Commonwealth resources in a manner that is not inconsistent with the policies of the Commonwealth, with the same requirement applying to approvers of spending proposals. In this respect, the CGGs stipulate that the policy requirements that must be complied with in administering a grant program include:

- the CGGs, which are the core policy of the Commonwealth relating to grants administration;
- applicable policies and legislation of the Commonwealth¹⁶;
- the guidelines applying to a granting activity; and
- grant-specific process requirements decided by government.¹⁷

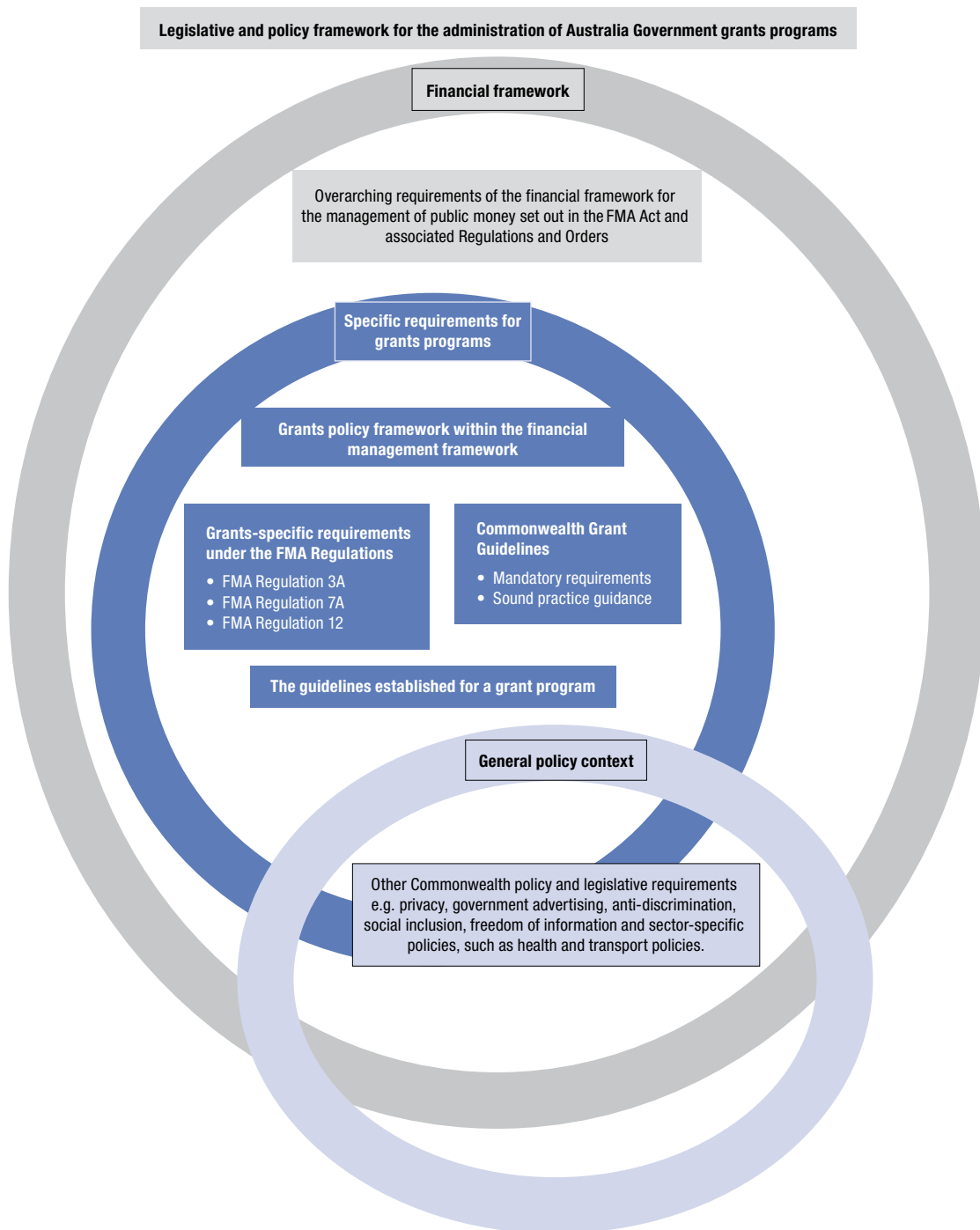
Accordingly, the grants policy framework sits within the general financial management framework, but also requires grants administration to take appropriate account of the broader policy context (see Figure 2).

¹⁶ These may include, but are not limited to, policies relating to privacy; government advertising; anti-discrimination and equity of access; social inclusion; freedom of information; sector specific policies, such as health and transport policies; and, in the case of construction projects, the National Code of Practice for the Construction Industry.

¹⁷ Commonwealth Grant Guidelines, op. cit., paragraphs 3.16–3.17.

Figure 2

Grants policy framework within the context of the general financial framework and Australian Government policy



Source: ANAO analysis.

Mandatory policy requirements under the CGGs

The CGGs identify a number of mandatory process, decision-making and reporting requirements for both Ministers and officials involved in grants administration, as set out in Figure 3.

Figure 3

Summary of mandatory policy requirements under the Commonwealth Grant Guidelines

Ministerial requirements	Agency requirements
<p>CGG 3.19: Where a Minister exercises the role of a financial approver relating to a grant, they will not approve a grant without first receiving agency advice on the merits of the proposed grant.</p>	<p>CGG 3.23: Agencies are responsible for advising Ministers on the requirements of the CGGs, and <i>must</i> take appropriate and timely steps to do so where a Minister exercises the role of financial approver in grants administration.</p>
<p>CGG 3.20: Each time a Minister who is a Member of the House of Representatives approves a grant in respect to their own electorate, the Minister will write to the Finance Minister advising of the details.</p> <ul style="list-style-type: none"> • If the agency recommended that the grant be approved, it will be sufficient to provide the Finance Minister with a copy of the correspondence advising the recipient of the grant. If there is no correspondence, the Minister must write to the Finance Minister advising of the decision as soon as practicable after it is made. • If the approval related to a grant that the agency had recommended be rejected, the Minister’s written advice to the Finance Minister must also include a brief statement of the basis for the approval. 	<p>CGG 3.15: Officials involved in grants administration <i>must</i> ensure that they:</p> <ol style="list-style-type: none"> (a) always take care to behave in accordance with the law (including regulations), government policy, agency rules (for example, CEIs) and with applicable funding agreements; (b) keep commercially sensitive information secure and never use it for personal gain or to prejudice grants administration processes; (c) disclose information that the Government requires to be notified; and (d) disclose to their agency any form of current or prospective personal interest that might create a conflict of interest in grants administration.
<p>CGG 3.21: Approval of grants that the agency recommended be rejected:</p> <p>By 31 March each year, Ministers must provide the Finance Minister with a report on all instances in the preceding calendar year in which the Minister decided to approve a grant which the agency had recommended be rejected, including a brief statement of the basis of the approval of each grant. The annual report must include any such grants approved in the Minister’s own electorate previously advised to the Finance Minister in accordance with CGG 3.20.</p>	<p>An agency <i>must</i> publish, on its website, information on its individual grants no later than seven working days after the funding agreement for the grant takes effect. Other requirements apply where agencies determine that publishing grant information in accordance with the CGGs is contrary to legislative requirements, the specific terms of a funding agreement or could adversely affect the achievement of government policy outcomes. The grant information should be retained on the website for at least two financial years. Where this is not done, the agency <i>must</i> document the reasons for that.</p>
<p>Other mandatory process requirements likely to involve both Ministers and agencies, having regard for Ministerial policy responsibility:</p>	
<p>CGG 3.24: Agencies <i>must</i> develop grant guidelines for new grant programs, and make them publicly available (including on agency websites) where eligible persons and/or entities are able to apply for a grant under a program.</p>	
<p>CGG 3.25: Agencies <i>must</i> ensure that grant guidelines and related operational guidance are in accordance with the CGGs.</p>	
<p>CGG 3.22: The Expenditure Review Committee (ERC) will consider guidelines for new grant programs. Where a change is proposed to the guidelines for an existing grant program, agencies should consult with Finance on whether the proposed change will give rise to the need for ERC consideration of the guidelines.</p>	

Source: *Commonwealth Grant Guidelines—Policies and Principles for Grants Administration*, Financial Management Guidance No. 23, July 2009.

2.2 When does the grants policy framework apply?

The term 'grant' has traditionally been used to refer in a general sense to an arrangement where, subject to terms and conditions specified by the grantor, a sum of money is given to an organisation, individual or another level of government for a specified purpose that will also contribute to the achievement of the grantor's policy objectives.

However, the Strategic Review found that a lack of clear principles to guide the classification of transactions and the absence of a common understanding of what exactly constituted a 'grant' or a 'grant program' had resulted in widespread inconsistency and potential for confusion. The Strategic Review reported that there was little clarity as to what key features should distinguish a 'grant' from a 'gift', 'procurement' or other form of financial transaction.¹⁸

2.2.1 Definition of a grant

Under the principles-based grants administration framework established in response to the recommendations of the Strategic Review, the term 'grant' has been assigned a specific meaning for the purposes of the FMA Regulations and the CGGs. FMA Regulation 3A(1) defines a *grant* as an arrangement for the provision of financial assistance by the Commonwealth:

- (a) under which public money is to be paid to a recipient other than the Commonwealth¹⁹; and
- (b) which is intended to assist the recipient achieve its goals; and
- (c) which is intended to promote one or more of the Australian Government's policy objectives; and
- (d) under which the recipient is required to act in accordance with any terms and conditions specified in the arrangement.

The CGGs, and the provisions of the FMA Regulations that relate specifically to grants administration, only apply to funding arrangements that satisfy the definition of a grant set out in the Regulations. However, a granting activity that will be subject to the CGGs can take a variety of forms, including:

- a payment made on a one-off or ad-hoc basis;
- payments made as a result of competitive assessment; or
- payments made on a non-competitive basis provided specified criteria are satisfied.²⁰

In this respect, in the past it has been reasonably common for consideration of grant programs to be focussed on the term 'discretionary grants'. Such schemes are established and implemented by decision of the Australian Government, with the awarding of any grant being at the discretion of the program decision-maker.

However, the new grants policy framework does not make any reference to 'discretionary grants'. This reflects the approach taken in its development, which has been to provide a comprehensive framework for the administration of all financial arrangements that satisfy the definition of a grant under the Regulations. Regardless of the basis on which a program is established or the description assigned to it, the substantive purposes and characteristics of the program will determine whether it is to be taken to be a grant program for the purposes of the FMA Regulations and the CGGs.

¹⁸ Strategic Review of the Administration of Australian Government Grant Programs, op. cit., p. 3.

¹⁹ A recipient means a recipient that is external to the legal entity of the Commonwealth. Notional payments and receipts by agencies within the meaning of section 6 of the FMA Act are not grants.

²⁰ Commonwealth Grant Guidelines, op. cit., paragraph 2.7.

Accordingly, in implementing the framework, it is important for agencies to appreciate that a grant program to which the CGGs will apply may arise through a variety of means, including:

- statutory programs under which the basis on which individual grants may be paid is determined by the provisions of the legislation;
- programs with a broad statutory basis, but which rely upon executive power for their implementation, including in relation to the selection of funding recipients and the criteria that will be applied in that process; or
- executive schemes established and implemented by decision of the Australian Government under authority of the executive powers provided by section 61 of the Constitution and for which specific legislative authority is not sought from the Parliament other than in relation to the appropriation of funding.

Examples of each form of grant program are shown in Figure 4.

Figure 4

Examples of grant programs subject to the CGGs

Example of a grant program established by legislation

The Roads to Recovery Program (R2R), under which road funding grants are provided to all local government authorities, was originally established by the *Roads to Recovery Act 2000* (R2R Act). That Act established the framework for the program, including the purposes for which the funding could be used. The Act required the gazettal of a list of funding recipients and the amounts each was to receive, which was based upon a formula derived from the process applied in determining grants provided under the *Local Government (Financial Assistance) Act 1995*. The R2R Act also required the gazettal of the conditions that applied to payments made under the Act. A second R2R program was established under the *Auslink (National Land Transport) Act 2005* (now renamed the *Nation Building Program (National Land Transport) Act 2009*), with a legislative instrument made under that Act specifying the funding recipients and the amount of grant that is to be provided to each recipient. The Minister can vary the list of funding recipients in certain circumstances, but cannot revoke the list once made. By operation of the Act, each amount specified in the legislative instrument is payable to the listed funding recipient. The Act also requires the Minister to make a written determination of the conditions that will apply to all payments, which is required to include certain mandatory conditions stipulated in the Act. As from 1 July 2009, the Roads to Recovery Program has been subject to the CGGs.

Example of a grant program with a broad statutory basis but which relies upon executive power for its implementation

Part 6 of the *Auslink (National Land Transport) Act 2005* established the AusLink Strategic Regional Program. While the Act specified the types of projects that were eligible for funding and certain mandatory requirements in relation to the making of approval instruments and funding agreements in relation to individual grants, it provided the responsible Minister with considerable discretion as to the matters that would be taken into account in determining whether it was appropriate to approve a particular project for funding and in determining how and when proposals for funding would be invited and from whom. In June 2009, the Act was renamed the *Nation Building Program (National Land Transport) Act 2009*, with Part 6 of the Act being amended to replace all references to 'Strategic Regional Projects' with 'Nation Building Program Off-Network Projects' and to remove other regional references. However, the provisions of the Act that provide the responsible Minister with discretion as to the matters that will be taken into account in determining whether it is appropriate to approve a particular project for funding as an Off-Network Project and in determining how and when proposals for funding will be invited and from whom continued to operate in the same manner as under the AusLink Act. As from 1 July 2009, the Minister and relevant agency have been subject to the CGGs in exercising that discretion.

Example of an executive scheme established and implemented wholly by decision of government

The Regional Food Producers Innovation and Productivity Program is a grant program established by decision of the Australian Government and funded through the annual Budget process. It is directed at improving the productivity, innovation and profitability of Australia's regional food producers. Applicants submit expressions of interest, which are assessed against eligibility criteria. Those considered eligible and likely to meet the program objectives are invited to submit an application. This application is assessed against merit criteria. The Regional Food Producers Innovation and Productivity Program Independent Advisory Panel appointed by the Minister for Agriculture, Fisheries and Forestry assesses all applications against the eligibility and merit criteria set out in the Program Guidelines and make recommendations to the program decision-maker for funding. The Program Guidelines advise applicants that funds are limited and therefore meeting eligibility and merit criteria does not guarantee funding. As from 1 July 2009, the administration of this program has been subject to the CGGs.

Source: ANAO analysis.

2.2.2 Payments that are not subject to the CGGs

FMA Regulation 3A(2) stipulates a number of financial arrangements that are taken not to be grants for the purposes of the Regulations and, therefore, to which the grants policy framework does not apply. However, the general financial management framework does apply to all expenditure of public money, and other policy, process and legal requirements may also apply. For example, a procurement of property or services is identified in Regulation 3A(2) as being taken not to be a grant, but will be subject to the Commonwealth Procurement Guidelines.

Figure 5 sets out the financial arrangements listed at the time of publication of this Guide as not representing a grant for the purposes of the Regulations, and the alternative policy framework that should be complied with in undertaking each type of transaction. Finance Circular No. 2009/03²¹ provides further guidance on how to distinguish a grant from other common types of financial arrangements, and the relevant policy and legal framework to apply in administering such payments.

21 Finance Circular No. 2009/03, op. cit.

Figure 5

Financial arrangements taken not to be grants and applicable policy framework or guidance

Financial arrangements that are taken not to be grants	Applicable policy framework or guidance within the general financial management framework
The procurement of property or services by an agency, including the procurement of the delivery of a service by a third party on behalf of an agency.	Commonwealth Procurement Guidelines
A gift of public property or public money, including an ex gratia payment. ¹	Finance Circular 2009/09, <i>Discretionary Compensation and Waiver of Debt Mechanisms</i>
A payment of compensation made under: (i) an act of grace arrangement; or (ii) an arrangement for employment compensation; or (iii) a similar arrangement. ²	Finance Circular 2009/09, <i>Discretionary Compensation and Waiver of Debt Mechanisms</i> , Applicable legislation Legal Service Directions
A payment of benefit to a person, including a payment of an entitlement established by legislation or by a government program.	Applicable legislation, guidelines or program documentation.
A tax concession or offset.	Applicable legislation and Australian Taxation Office rulings
An investment or loan of public money. ³	Applicable authorising legislation or s.39 FMA Act. Finance Circular 2005/11, <i>Investment of public money</i> , s.30 FMA Act.
Financial assistance provided to a State in accordance with s.96 of the Constitution.	Applicable legislation Intergovernmental Agreement on Federal Financial Relations National Partnership Agreements
A payment to a State or Territory that is made for the purposes of the <i>Federal Financial Relations Act 2009</i> , including the following: (i) General Revenue Assistance; (ii) Other General Revenue Assistance; (iii) National Specific Purpose Payments; (iv) National Partnership Payments. ⁴	Federal Finances Circulars released by the Department of the Treasury on the operation of the <i>Federal Financial Relations Act 2009</i>

Financial arrangements that are taken not to be grants	Applicable policy framework or guidance within the general financial management framework
<p>A payment that is made for the purposes of the:</p> <ul style="list-style-type: none"> • <i>Local Government (Financial Assistance) Act 1995</i>; • <i>Schools Assistance Act 2008</i>; or • <i>Higher Education Support Act 2003</i>.⁵ 	<p>Applicable legislation</p>
<p>Notes:</p> <ol style="list-style-type: none"> 1. A gift is an unconditional payment of public money from the Commonwealth to another party which does not require the recipient to undertake the expenditure in accordance with a specified purpose(s). If a financial arrangement takes the form of a conditional gift, it is essentially a grant of money, subject to <u>conditions</u>, and is considered a grant for the purposes of the CGGs. 2. This includes, but is not limited to, payments made under the Scheme for Compensation for Detriment caused by Defective Administration; payments made under section 73 'Payments in special circumstances' of the <i>Public Service Act 1999</i>; payments made under the <i>Remuneration Tribunal Act 1973</i>; and settlements made in accordance with the Legal Services Directions. 3. Some forms of financial assistance provided by way of concessional loans may be subject to the CGGs. 4. Other forms of financial assistance made to States and Territories may be subject to the CGGs. 5. Other forms of financial assistance made to local government or educational institutions may be subject to the CGGs. 	

Source: ANAO analysis of FMA Regulation 3A(2) as at May 2010 and Finance Circular 2009/03, *Grants and other common financial arrangements*. 29 June 2009.

2.2.3 Is a grant program needed and appropriate?

Governments have the executive authority to establish and abolish programs, but require the Parliament to appropriate funds to enable expenditure to occur. As providing policy advice to government is a core function of the Australian Public Service, grant programs are often established with the benefit of prior agency advice, but this is not always the case.

In some cases, the development of a grant program may be proposed to government by a relevant agency as a means of addressing particular policy objectives. In those circumstances, it is important to establish that there is a need for the program and that it will be effective in achieving the desired outcomes. This includes:

- clearly identifying and articulating the relevant strategic policy objective;
- undertaking a needs and gap analysis in order to:
 - assess the availability of funding from other existing sources that could be accessed by intended funding recipients to achieve the same or similar objective;
 - identify the level of unmet demand within the community for funding assistance within the area under consideration; and
 - assess whether an existing grant program could be expanded or modified to meet the identified need, rather than establishing an additional program; and
- consideration of alternative financial arrangements in order to assess whether a grant program is the most appropriate approach to achieving the relevant government outcome.

Where a grant program is selected, it is also worth evaluating the impact of the program for possible unintended consequences, whether economic, environmental, social or political. For example:

- a grant program aimed at a particular line of medical research may appear to give government endorsement to ethical or moral positions, which may be opposed by particular sectors of the community; or
- the design of a grant program directed at promoting activity within a particular industry needs to include consideration of the potential for the program to cause the industry to grow at an unsustainable pace and/or to give rise to regulatory risks.

In other cases, the Government may determine that a grant program is to be established in order to achieve a particular policy objective, with the relevant agency being responsible for implementing that decision. In those circumstances, it is advisable that agencies consider, as part of the implementation process, whether further needs analysis would assist in ensuring the available funding will be directed towards funding recipients or projects that will maximise the effectiveness of, and value for money achieved by, the program. Again, it would also be appropriate for agencies to provide advice to government in relation to the risk of unintended consequences arising, and the manner in which those risks might be best mitigated. Analysis of that nature will inform the detail of the program's implementation.

2.2.4 Consideration of alternative financial arrangements

Grants are one type of financial arrangement available to achieve a particular strategic objective. However, a range of other financial arrangements is also potentially available to achieve the same objective, including those identified in the FMA Regulations as not being 'grants' for the purposes of the Regulations and the CGGs (see Figure 5).

In that context, it would not be appropriate for an agency to elect to structure a particular program or payment as a procurement or other type of financial arrangement, rather than as a grant, for the principal purpose of avoiding the application of the mandatory requirements now applying to the administration of grants.²² In this respect, Finance has advised that, in considering possible alternative approaches, agencies should focus on the substantive purposes and characteristics of the financial arrangement, seek advice on their implications, and document the reasons for adopting them.²³

Similarly, in some cases government may provide discretionary assistance by way of mechanisms such as discretionary compensation payments, act of grace payments, *ex gratia* payments or by waiving debts owed. In general, this assistance may be granted where it is considered that the Australian Government has a moral responsibility to provide assistance, rather than a legal responsibility. The making of unconditional gifts, or *ex gratia* payments, may avoid the administrative costs involved in oversighting the satisfaction of the terms and conditions associated with a grant.²⁴ However, the *ex gratia* payments policy managed by the Department of the Prime Minister and Cabinet provides that the provision of an *ex gratia* payment is only considered appropriate once all other avenues have been exhausted.²⁵

Consideration of the alternatives may reveal less costly or more effective means of achieving a policy objective than through a grant program. In considering the relative merits of alternative funding arrangements, it is important that agencies recognise that the nature of the financial arrangement that is adopted will give rise to particular legal and/or policy requirements which must be observed in implementing each form of arrangement. For example:

- loans, or a mixture of loans and grants, perhaps on favourable terms, may be a better economic option, particularly for larger amounts or where commercial activities are being assisted. Although funding organisations may be reluctant to assume the extra administrative burden of a loan program, the cost of such work may well be offset by a reduction in the net cost of the assistance. The opportunity costs incurred in making grants or loans should also be clearly identified during the planning process²⁶; or
- relief from fees or taxation may be another form of assistance that may give better value for money. Care must be taken in these circumstances to ensure that all implications of the arrangement are fully costed from a whole-of-government perspective, and that the policy ramifications are thoroughly examined with the ATO or fee-charging authority.²⁷ There are also reporting requirements associated with such arrangements, particularly through the Tax Expenditure Statement required by the *Charter of Budget Honesty Act 1997*.

It is important to examine both the economic and policy consequences of the various options and ensure that these are consistent with the Government's objectives and policies, and obligations arising from international agreements (such as trade agreements, environmental protocols or health conventions).

22 In this respect, the Strategic Review reported that, in relation to past classification practices: 'Convenience rather than principle has often been at work: for example, some agencies have openly acknowledged that a factor underlying their large number of grant programs has been a wish to avoid the application of the Commonwealth Procurement Guidelines.' (Source: Strategic Review of the Administration of Australian Government Grant Programs, op. cit., p. 3.) As discussed, subsequent to the Strategic Review, the CGGs have been issued, which include mandatory requirements for grants administration. Further, additional mandatory requirements have been introduced into the FMA Regulations relating solely to the approval of grants, which require the approver to record the basis for the approval. This additional requirement does not apply to the approval of any other type of spending proposal, for which the approver is only required to record the factual terms of the approval.

23 Finance Circular No. 2009/03, op. cit., p. 1.

24 See Note 1 to Figure 5.

25 Finance Circular No.2009/03, op. cit., p. 4. Further guidance on act of grace, *ex gratia* and discretionary compensation payments and the waiving of debt is provided in Finance Circular 2009/09, *Discretionary Compensation and Waiver of Debt Mechanisms*, 25 November 2009, available at <<http://www.finance.gov.au/publications/finance-circulars/index.html>> [accessed 24 May 2010].

26 FMA Regulation 3A(2)(f) stipulates that a loan of public money is to be taken not to be a grant and, therefore, not subject to the CGGs. Finance has advised agencies that, while an amount of money which is required to be repaid without interest or at a concessional rate of interest should generally be considered a concessional loan rather than a grant, some forms of financial assistance provided by way of concessional loans may be subject to the CGGs (Finance Circular No.2009/03, op. cit., pp. 3 and 6). Agencies should consult with Finance if they are unsure whether the CGGs apply in particular circumstances.

27 Subsidies and rebates provided by the Australian Government to individuals or organisations are generally intended to provide financial assistance, whether directly to a recipient or through a third party. Finance has advised agencies that a key consideration in deciding whether the CGGs will apply in such cases is whether the subsidy or rebate is an entitlement. In this respect, FMA Regulation 3A(2)(d) stipulates that a payment of benefit to a person, including a payment of an entitlement established by legislation or by a government program, is taken not to be a grant. Regulation 3A(2)(e) similarly provides that a tax concession or offset is taken not to be a grant.

Programs may be a hybrid of financial arrangements

In some cases, it is possible that a single program may include payments that are subject to the CGGs, as well as payments that the FMA Regulations specify are taken not to be grants and to which the CGGs, therefore, do not apply.

For example, as discussed, one option for the design of a program may involve the use of a mixture of loans and grants. Under the terms of the FMA Regulations, such a program may involve some payments (grants) which are subject to the grants policy framework, together with other payments (loans on favourable terms) which may or may not be subject to that framework (depending upon the terms of the loan), but which are subject to the general requirements of the financial framework and other relevant legislative and policy requirements.

In other cases, a single grant program may involve payments that, while similar in most substantive aspects, differ as to whether they are subject to the CGGs based on the identity of the funding recipient and the administrative arrangements under which the various payments are made.

In these circumstances, it will be important that agencies accurately identify the obligations attached to the administration of each payment and design the program's administrative arrangements accordingly. However, it is also appropriate for consideration to be given in the program planning phase to the desirability in terms of accountability, transparency and cost-effective administration of having such an arrangement, or before amendments are made to an existing program that will result in such an arrangement.

Application of the principles underpinning the CGGs to payments that exhibit similar characteristics as 'grants' (as defined in the FMA Regulations)

A further consideration is that some payments defined as not being a grant for the purposes of the Regulations may, nevertheless, exhibit many of the same characteristics as grant payments to which the CGGs apply. In that context, whilst not mandatory, consideration of the principles outlined in the CGGs may assist to promote transparency and accountability in the effective administration of such payments.

3. Identifying decision-making roles and responsibilities



Key Points

A central objective underpinning the new grants policy framework is to improve the transparency and accountability of grants administration. Accordingly, understanding all relevant requirements and how they might be complied with in a cost-effective manner is an essential element in the implementation of a grant program. Key considerations include that:

- establishing a robust governance framework which clearly defines the roles and responsibilities of the various participants in the administration of a grant program facilitates accountability;
- only persons that have been provided with the appropriate authority may legitimately perform the role of approver. In this respect, in the normal course, the responsible Minister is the approver unless otherwise agreed;
- the statutory requirements that apply are the same regardless of whether the decision-maker is the responsible Minister or an official. However, the grants policy framework stipulates additional mandatory requirements where a Minister undertakes that role;
- in determining who is performing the role of approver, and therefore is subject to the associated obligations, it is necessary to look to the substance of the administrative arrangements. The key test is that, to be the approver, a person must have the genuine authority and discretion to make the decision as to whether or not a potential recipient will receive a grant;
- having regard for the advice set out in the CGGs that the grants administration function itself should provide value, there will be merit in agencies appropriately advising Ministers of opportunities to enhance the cost-effectiveness of program administration, including through the assignment of specified decision-making authority to officials;
- the limits FMA Regulation 10 places on the authority of an approver (whether a Minister or official) to approve a grant for which there is insufficient available appropriation must be appropriately observed in the grant approval process; and
- in establishing the decision-making arrangements for a grant program, it is advisable for consideration to be given as to whether unsuccessful applicants will be provided with any opportunity to seek a review of funding decisions and, if so, for the program guidelines to document the processes and criteria that will apply to any such request.



3. Identifying decision-making roles and responsibilities

An important element in designing a robust governance framework for a grant program is obtaining clarity as to who will be undertaking the role of decision-maker in relation to the awarding of grants. In order to clearly define program roles and responsibilities, and avoid unnecessary processes, the question of who will be the decision-maker, and how compliance with the associated statutory and policy obligations will be achieved in a cost-effective manner, is best considered (and documented) prior to commencement of the program.

3.1 Identifying the decision-maker informs program design

Clarity about roles and responsibilities aids the efficiency of grants administration by avoiding unnecessary procedures and practices. In this context, Ministers perform a pre-eminent role in the administration of government programs which needs to be recognised and respected in the design of individual programs. In particular, Ministers may bring knowledge, insights and perspectives to bear in the decision-making process that may not be available to officials.

A robust governance framework which clearly defines the roles and responsibilities of the various participants in the administration of a grant program facilitates accountability. It enhances the capacity to design and implement administrative arrangements that will satisfy the program's policy objectives, while ensuring efficient and effective compliance with all applicable obligations. This has been reflected in *Governance and Accountability* being established as one of the seven key principles for grants administration, with the CGGs stating that:

Granting activity should be underpinned by solid governance structures and clear lines of accountability. (CGGs p. 23)

The FMA Regulations regulate decisions to approve grants through application of the defined concepts of:

- 'approver' (discussed further below);
- 'pending proposal', whereby Regulation 3 defines proposals that will attract the operation of Part 4 of the Regulations, *Commitments to spend public money*' (see Chapter 2); and
- 'grant', whereby Regulations 3A(1) and 3A(2) define those arrangements that will result in a pending proposal being taken to relate to a grant (and, therefore, be subject to the grants framework), and those arrangements that are taken not be grants (see Chapter 2).

In concert, the financial and grants policy frameworks place a number of specific obligations on a person when acting as the decision-maker in relation to the awarding of grants. The statutory requirements that apply to the approval of grant proposals are the same regardless of whether the decision-maker is the responsible Minister or an agency official. However, the grants policy framework stipulates additional mandatory obligations where a Minister undertakes that role (see Figure 3).

Understanding each of these statutory and policy requirements, and their application in the context of a grant program, is important for ensuring compliance with them in implementing the program. In this respect, Finance advises agencies that:

The FMA Regulations establish important statutory obligations for approvers (including Ministers, Chief Executives and officials). There should therefore be clarity as to who is exercising approval powers and their authority to do so. In particular, as part of planning complex procurements or establishing or reviewing grant programs, FMA Act agencies should undertake an analysis of their proposed processes in the context of the FMA Act and the FMA Regulations and any other specific relevant legislation. This will help identify the most appropriate timing for FMA Regulation 9 and FMA Regulation 10 decisions and should clearly establish who will make, and therefore be accountable for, those decisions.²⁸

Agencies are responsible for advising Ministers on the requirements of the CGGs, and *must* take appropriate and timely steps to do so where a Minister exercises the role of a financial approver in grants administration.²⁹ In fulfilling that obligation, it would ordinarily be prudent for agencies to provide this advice to the Ministerial decision-maker each time a grant proposal is put forward for his or her consideration, given there are steps for the Minister to follow should he or she choose not to follow departmental advice in relation to the funding of a grant application. Provision of advice relating to the decision-maker's obligations can be incorporated into the standard briefing template used in relation to the relevant program.

However, it is also important to recognise that whether the responsible Minister is exercising the role of approver will be determined by the administrative arrangements established for the program. Therefore, in practice, advising Ministers of the statutory and policy requirements that apply in grants administration needs to initially occur as part of planning the program, including in relation to:

- the requirements that would arise under the FMA Regulations and the CGGs should the Minister choose to exercise the role of approver, and how cost-effective compliance with those obligations might be achieved; and
- advice on alternative arrangements that could be adopted should the Minister so choose.

This will inform Ministerial and/or government decisions in relation to whether the Minister or officials will act as the approver.

3.2 Authority to act as an approver

Only persons authorised to do so may legitimately perform the role of approver in relation to a spending proposal, including for the purpose of making a grant.

In this respect, the financial framework governing the entering into of commitments to spend public money reflects sound principles that have evolved over time. One of the areas of key change in that process has related to the application of the financial framework to spending decisions taken by Ministers. Specifically, compared to the predecessor *Audit Act 1901* framework, the FMA Act framework that has applied since January 1998 was drafted so that it clearly applies to Ministers, or groups of Ministers, when they are making decisions about whether to approve the spending of public money.

3.2.1 The Minister is the approver unless others have been given the authority to perform that role for the relevant program

In concert, FMA Regulations 3 and 11 define who may act as approver of a spending proposal and in what circumstances. Specifically, Regulation 3 defines an 'approver' as:

- (a) a Minister; or
- (b) a Chief Executive; or
- (c) a person authorised by or under an Act to exercise a function of approving proposals to spend public money.

²⁸ Finance Circular 2009/05, op. cit., p. 2.

²⁹ Commonwealth Grant Guidelines, op. cit., paragraph 3.23.

Consequently, reflecting their executive power under the Constitution, Ministers are specifically recognised in the Regulations as having the authority to act as an approver and are subject to the requirements of the Regulations where they choose to do so. Alternatively, Ministers can elect to agree to administrative arrangements under which officials will undertake that role in respect to a given program.

Reflecting their inherent powers under the FMA Act, agency Chief Executives are also specifically recognised in the Regulations as having the authority to approve spending proposals relating to their agency. In practice, however, this would normally be subject to any decision by the relevant Minister to retain that role in relation to a given program to him or herself.

Authority for other agency officials to approve spending proposals

Regulation 11 stipulates that:

An official must not approve a spending proposal unless authorised by a Minister or Chief Executive, or by or under an Act, to approve the proposal.

Consequently, (unless specifically authorised by an Act to do so), agency officials are unable to undertake the role of approver in respect of a given program unless they have been provided with the authority to do so, either by the relevant Minister or Chief Executive. The three main ways in which this devolution of authority can be achieved are through:

- an express power to delegate: Legislation may expressly provide a statutory procedure for the devolution of a power. This most commonly takes the form of an express power to delegate the power to another person in writing;
- an express power to appoint an authorised officer: Some legislation expressly provides for the appointment of ‘authorised officers’, or the authorisation of persons, to exercise specified statutory powers; and
- an implied power to authorise: Where legislation does not expressly provide a person in whom a statutory power is vested with the power to delegate or to authorise others to exercise the statutory power for, and on behalf of, that person, they may, in some circumstances, be able to rely on an implied power to authorise. Such a power is commonly referred to as the ‘*Carltona*’ principle.³⁰

Delegations and authorisations play a key role in the Westminster system of public administration. They are the mechanism by which, in certain circumstances, officials may be provided with the authority to exercise a statutory power that the Parliament has vested in another individual or office-holder. However, the manner in which a delegate³¹ exercises the power in question is fundamentally different from that of someone who is authorised by an office-holder to exercise a power for and behalf of the office-holder.

A delegate exercises a delegated power by applying their own discretion and acts in their own capacity, not that of the person who delegated the power to them. In contrast, the act of an authorised person is, at law, an act of the person in whom the power is vested. A person exercising a power for, and on behalf of, another does so as the ‘alter ego’ of the person in whom the power is vested.³²

30 That principle, established in *Carltona Ltd v Commissioners of Works* [19430 2 ALL ER 560], applies, in certain circumstances, to infer to a Minister a power to authorise officials to exercise, on the Minister’s behalf, a power vested in the Minister, despite the absence of an express power to delegate or authorise. The Australian Government Solicitor has advised that, in *Carltona*, the court’s reasoning indicates that there are two grounds which justify inferring such a power to a Minister, as follows:

- the Minister is ultimately responsible to the Parliament for the decision of an authorised official; and
- in modern government, Ministers have so many functions and powers, administrative necessity dictates that they act through duly authorised officials (Source: Legal Briefing Number 74, *Delegations, authorisations and the Carltona principle*, Australian Government Solicitor, 14 December 2004, p.7).

31 Or statutory authorised officer.

32 Legal Briefing Number 74, op. cit., pp. 2 and 6.

Delegation of authority to approve grant proposals by the agency Chief Executive

Where a Minister agrees to the awarding of grants under a particular program being decided at the agency level, relevant officials will, in the normal course, obtain authority to act as the approver through a delegation made by their Chief Executive under FMA Regulation 26.³³ In this respect, it is usual for agency CEIs to stipulate that only officials who have been delegated in writing by the Chief Executive may approve proposals to spend public money.

Delegated officials who approve grants must comply with any limits specified in the Chief Executive's delegation and any CEIs that relate to their function as a delegated approver. However, as a delegate, an official will be required to exercise the discretion of an approver in his or her own right, consistent with the obligations imposed by the FMA Regulations and the CGGs.

Authorisation by the Minister to approve grant proposals

There is no general express power under the FMA Act or Regulations for Ministers to delegate their power to approve spending proposals to officials.³⁴ However, it may be possible, in reliance on the Carltona principle, for a Minister to elect to authorise an agency official to undertake the role of approver on the Minister's behalf. As noted, the actions of an authorised official in undertaking the role of approver will be the act of the Minister.

Where a Chief Executive is authorised by a Minister to approve grants on the Minister's behalf (rather than exercising the Chief Executive's own authority to act as an approver in his or her own right), it would be prudent for that authority to be expressly given³⁵ and for it to occur in writing. This will provide clarity as to the capacity in which the Chief Executive is acting when approving the grant. Seeking the Minister's express authorisation also provides the Minister with the opportunity to consider whether he or she wishes to place any limitations or restrictions on the exercise of the power by the Chief Executive.

Other agency officials require an express authorisation from the relevant Minister in order to be empowered to perform the role of approver on the Minister's behalf. Again, it is prudent for such an express authorisation to be given in writing. Where an authorisation is given orally, normal recordkeeping and accountability obligations would require that the relevant officials make and retain a written record of having received such authorisation, the date on which it was received, and any related terms or conditions.

3.2.2 Use of an advisory panel in the selection of grant recipients

Whilst a common approach is for agency officials to undertake the assessment of applications to a grant program³⁶, it is also relatively common for expert or advisory panels comprising representatives from a relevant industry or community service sector, other levels of government and/or the broader community to be used to provide advice and/or recommendations to the program decision-maker in respect to which applications should be funded.

For example, this approach can be of value where a program relates to grants for specialised activities (such as research and development in a particular field; the provision of specialised health or community services; environmental projects; or providing funding to support emerging or innovative businesses); or for programs directed at achieving broad economic outcomes, such as

33 FMA Regulation 26 provides that an agency Chief Executive may delegate to an official, by signed instrument, any of the Chief Executive's powers or functions under the Regulations. Finance Circular No. 2009/05 notes that: 'Most commonly, officials obtain the authority to approve spending proposals through a delegation from their Chief Executive.' (Finance Circular No. 2009/05, op. cit., p. 6).

34 The exceptions are that: section 62 of the FMA Act provides that the Finance Minister may, by written instrument, delegate any of the Minister's powers or functions under the Act to an official (except for the power to make Orders); and section 62A of the FMA Act provides that the Treasurer may, by signed instrument, delegate to nominated officials of the Department of the Treasury any of the Treasurer's powers or functions under the Act.

35 In some circumstances, it may be possible to imply an authorisation for an agency Chief Executive to approve grant proposals on behalf of the Minister.

36 In some cases, cross-agency committees can assist in the assessment of applications to programs relevant to the achievement of objectives in multiple portfolio areas. For example, this approach has been adopted in relation to various streams of the Jobs Fund.

industry restructuring assistance or stimulus programs. It has also been a long-standing practice under various governments to form advisory committees to provide advice on aspects of regional development, including in relation to grant programs directed at regional and rural Australia.³⁷

Where such panels are used, it is important that the standing of the panel's advice and/or recommendations is established and documented prior to the application process commencing, and that applications are submitted to the advisory panel for consideration in accordance with the documented program procedures. Deviations from the approved processes may adversely affect the quality of the advice which, in turn, will have implications for the defensibility of the decision-making process, such as where:

- the advisory panel is provided with a significantly truncated timeframe in which to provide its advice;
- the panel is provided with insufficient information to enable it to provide informed advice or recommendations in relation to an application;
- funding decisions are taken prior to receiving the panel's advice; and/or
- the panel is not asked to provide advice in respect of particular applications.

Managing potential conflicts of interest

Another issue to be considered in the establishment of advisory panels is the potential for actual or perceived conflicts of interest to arise, which can be damaging to government, the agency and the granting activity. A conflict of interest could arise where a panel member has, or could be perceived as having, a direct or indirect interest that might prejudice, or be seen to prejudice, their partiality in the selection of projects or activities for funding.

The potential for actual or perceived conflicts of interest to arise is also a relevant consideration to be appropriately managed in relation to decision-makers and officials involved in grants administration. However, this issue may require a particular focus where persons with expertise in a relevant field are involved in the grant selection process. This is due to the inherent likelihood that panel members will have existing relationships within the sector from which grant applications are being sought. This risk may be heightened where the panel is drawn from a specialist area in which there is a relatively small pool of appropriately qualified candidates, particularly where those candidates may themselves qualify for grants under the program.

In this respect, the CGGs advise that agencies should put in place appropriate mechanisms for identifying and managing potential conflicts of interest.³⁸ Depending upon the nature of the program, relevant measures may include:

- ensuring that grant program guidelines clearly outline what constitute potential conflicts of interest (and the circumstances in which they are relevant) in relation to the respective roles undertaken by decision-makers, officials and others involved in grant administration (including advisory panel members); and
- establishing clear procedures for:
 - the declaration of actual, perceived or potential conflicts of interest; and
 - managing such conflicts, including clearly identifying who will be responsible for ensuring they are dealt with appropriately.³⁹

³⁷ For example, under the former Regional Partnerships Program, non-profit Area Consultative Committees (ACCs) comprising business, community and local government representatives from a particular region performed a range of functions, including as a point of interface between the Commonwealth Government and regional communities, assisting proponents to develop grant applications and providing formal recommendations to the responsible Minister in relation to whether each application should be funded and its relative priority for the region. The ACCs have since been restructured and now comprise a network of committees that make up Regional Development Australia and are directed at building partnerships between governments, regional development organisations, local businesses, community groups and key regional stakeholders to provide strategic and targeted responses to economic, environmental and social issues affecting the regions of Australia.

³⁸ Commonwealth Grant Guidelines, op. cit., p. 28.

³⁹ In some circumstances, it may also be prudent for the administering agency to implement a register of private interests, and protocols for the register's operation.

It would also be advisable for agencies to develop a risk-based strategy for the systematic monitoring and review of compliance with the conflict of interest management procedures, as well as monitoring the selection process for any unusual trends or outcomes.

Advisory panels may be subject to the CGGs

Where the use of an advisory panel is being contemplated, it is important to recognise that, depending upon the nature of the role to be undertaken by the panel, its members may be required to comply with the grants policy framework in the same manner as applies to agency officials. Specifically, in some circumstances, the members of the panel may be deemed to be 'officials' of the agency. This arises because 'Agency' as defined by the financial framework legislation includes:

- persons who are allocated to a Department of State for the purposes of the FMA Act by the FMA Regulations (s.5 FMA Act), with Regulation 4(a) stipulating that a person who performs a financial task for a Department of State is allocated to that department; and
- a prescribed agency (s.5 FMA Act). Prescribed agencies are listed in Schedule 1 to the FMA Regulations, with Regulation 5 stipulating that the prescribed agency includes the body, organisation or group mentioned in Schedule 1 and any other persons who perform financial tasks in relation to a function of that body, organisation or group.

FMA Regulation 3 defines a 'financial task' for the purposes of determining persons who are allocated to a Department of State or who are part of a prescribed agency as:

a task or procedure relating to the commitment, spending, management or control of public money.

The assessment of applications and formulation of recommendations for the approval of grants of public money will, in some circumstances, be considered to be a task or procedure relating to the commitment, spending or management of public money. Accordingly, in designing the grant program and associated accountability structures, it will be important for agencies to consider whether the role an advisory panel is intended to perform will constitute a 'financial task' as defined in Regulation 3. Where it is determined that this is the case, the members of the panel will need to be advised of their obligations under the CGGs as 'officials' of the agency. For example, the funding recommendations of the advisory panel will need to be formulated in a manner that is consistent with the program guidelines.

Ministerial staff undertaking assessment and selection processes may also be subject to the CGGs

ANAO has observed instances in which Ministerial staff have undertaken assessment of grant applications. Sometimes this has been additional assessment undertaken subsequent to the output from the agency assessment process being submitted to the Minister for decision. In other cases, the only consideration of the merits of funding a particular grant proposal has occurred in the Minister's Office.

As with advisory panel members, depending upon the circumstances and the role played in the selection of successful applicants, staff within a Minister's Office who undertake assessment and selection processes in relation to a grant program may also be considered 'officials' that are subject to the grant policy framework in undertaking that task.⁴⁰

Wherever either advisory panels or Ministerial staff are considered to be 'officials' due to the nature of the task undertaken, it will be important for the administering agency to take positive steps to support those individuals in observing relevant obligations, including in relation to the annual Certificate of Compliance process.

⁴⁰ In this context, under FMA Regulation 4(d), persons employed under the *Members of Parliament (Staff) Act 1984* on the staff of an office-holder or a Senator or Member are allocated to Finance, as the Department of State to which the money out of which the person's remuneration is paid is appropriated.

Can an advisory panel member act as the approver?

From time to time there have been suggestions that, in some circumstances, consideration might be given to an advisory panel or an eminent external individual (perhaps the chair of the panel) making the final determination as to which applications will be funded under a program.

However, given the definition of ‘approver’ set out in the FMA Regulations, this will only be possible where both of the following conditions are satisfied:

- the relevant individual is confirmed to be an official of the agency for the purposes of the FMA Act by virtue of undertaking a financial task for the agency. In that context, approving a spending proposal would be likely to be considered a ‘financial task’ within the definition set out in Regulation 3; and
- the relevant individual has been given specific authority by the Minister or, with the Minister’s agreement, by the agency Chief Executive to act as an approver for the purposes of FMA Regulation 9.

If both of those conditions are not satisfied, the final approval of a grant for the purposes of the financial framework will need to be referred to the Minister or an agency official, who will be required to undertake that role in accordance with the FMA Regulations.

3.2.3 Maintaining separation between the approver and the assessment process

Whether the approver is a Minister or an official, it is prudent for the approver (and their office, where relevant) to remain at arms length from the assessment process in order to avoid the potential for perceptions to arise that the approver has influenced the funding recommendations subsequently put forward for the approver’s consideration. This matter was highlighted in the report of the Strategic Review, which advised that:

Should there be a reason, in exceptional circumstances, for the department to discuss the merits of a proposal with a Minister or Minister’s office before the completion of its appraisal process, it would be prudent for this to occur only with the agreement of a senior member of the department’s executive. To protect the probity of the selection process, any such discussions should be appropriately documented.⁴¹

Similar considerations apply in relation to involvement in the assessment process of an official that is the decision-maker for a grant program.

In this respect, in some cases consideration has been given to an official from the agency responsible for administering a grant program being included on an advisory panel formed to undertake or contribute to the assessment process, with that official also being delegated as the approver for the grant program. Care needs to be taken in adopting such an approach to ensure there is no actual or perceived conflict between the official’s role as the Regulation 9 approver and his or her participation in the panel’s deliberations.

3.3 The substance of the administrative arrangements determines where the obligations reside

Obtaining clarity, prior to a grant program opening to applications, in relation to the assignment of the statutory role of approver is necessary in order to ensure the administrative arrangements support the appropriate observance of the associated legislative and policy obligations. Accordingly, in agreeing the administrative arrangements for a grant program, it is better practice for Ministers to explicitly address the question of whether officials will be able to make funding decisions in relation to applications and, if so, whether any conditions (in addition to the legislative and policy parameters for the program) will apply.

In order to determine the party that has been assigned the role of approver for a particular program, it is necessary to look to the substance of the agreed administrative arrangements. The key test is that, to be the approver, a person must have the genuine authority and discretion to make the decision as to whether or not a potential funding recipient will receive a grant.

⁴¹ Strategic Review of the Administration of Australian Grant Programs, op. cit., p. 63.

If the Minister has determined that agency officials are not able to make decisions on whether to fund or not fund individual applications without reference to the Minister, the officials are not capable of fulfilling the role of approver (or the associated obligations). In this respect, ANAO has observed instances in which, after being advised of a Ministerial decision to award a grant, officials have completed a template form in which the official purports to be giving the approval for the purposes of the FMA Regulations. This has usually involved the official stating that he or she had undertaken reasonable inquiries and was satisfied as to the matters required by Regulation 9. While this approach can give the impression of the official being the approver for the purposes of the Regulations (and now the CGGs), this 'form' is unlikely to have any legal effect and does not alter the substance of the administrative arrangements. In addition, the Strategic Review observed that such approaches can contribute to confusion about decision-making roles, and the fulfilment of the attendant obligations.⁴²

Therefore, it is important that program documentation is designed to properly reflect the point at which there is substantive approval of grants and, consequently, a need to comply with the legislative and policy requirements that regulate such decisions.

3.3.1 Conditional approvals are still an approval

The test as to whether an approval of a grant must conform to the requirements of Regulation 9 and the CGGs is whether the person who has authority under the program to approve a grant has, in fact, given the approval required for the grant proposal to proceed—even if the approval is conditional on some actions being subsequently undertaken by other parties in order to give effect to the approved grant.

For example, a Minister might approve the substantive elements of a grant (such as the funding amount, funding recipient and approved purpose), but, in order to ensure the grant will make proper use of the public money involved, decide to attach certain conditions such as that:

- the funding recipient must satisfy certain requirements (such as confirming the availability of partner funding or meeting certain timing requirements for commencement or completion of the project); or
- agency officials are to finalise a funding agreement with the funding recipient which contains details such as milestones for the payment of grant funds.

Where any subsequent decision to withdraw or amend the grant offer can only be taken by the Ministerial decision-maker, the Minister will have retained the role of approver, rather than transferring that role to the officials charged with implementing the conditional approval. For example, this will be the case where officials are not empowered to:

- decide, without further reference to the Minister, that a grant conditionally approved by the Minister will be withdrawn or not proceed based on a determination by the official that one or more of the conditions imposed by the Minister has not been satisfied; or
- vary the substantive terms of the Minister's approval, or add or remove conditions attached to the Minister's approval, without seeking the Minister's concurrence with the proposed action.

3.3.2 Identifying the date of approval

The CGGs require that agencies publish information on individual grants on their websites no later than seven working days after the funding agreement for the grant takes effect.

The instructions for publishing grant information on agency websites set out in Attachment A to Finance Circular No. 2009/04, *Grants—Reporting Requirements*⁴³ include a requirement to include a field titled 'approval date'. The Finance Circular advises that, for the purposes of the reporting obligation, 'approval date' is the date the funding agreement takes effect.

⁴² Strategic Review of the Administration of Australian Government Grant Programs, op. cit., p. 55.

⁴³ Available at <<http://www.finance.gov.au/publications/finance-circulars/index.html>> [accessed 24 May 2010].

This should not be confused with the date on which the grant was approved for the purposes of the FMA Regulations (and associated policy obligations under the CGGs), which is the date on which the approver gave the substantive approval for the grant to proceed. As noted, that approval may be given subject to the subsequent execution of a funding agreement with the funding recipient before payment will be made. In many cases, considerable time may elapse between the approval of the grant and the execution of the funding agreement.

3.4 The decision-making arrangements can have implications for cost-effective program administration

The CGGs highlight that the grants administration function itself should provide value, as should the selection of grant recipients to deliver grant outcomes.⁴⁴ In that context, there are options for assigning various levels of decision-making authority to officials that can be canvassed with Ministers, as appropriate, as a means of improving the efficiency and cost-effectiveness of program administration.

3.4.1 Options for assigning decision-making authority to officials

Particularly for programs involving a large number of low-value grants, assigning the decision-making role to officials can offer substantial opportunity to improve the responsiveness and timeliness of the assessment process with relatively low risk. Even for programs involving higher value grants, officials performing the role of approver can help to reduce the potential for an interpretation that funding decisions were taken for political reasons and not on the merits of applications.

Where Ministers exercise a preference to retain the role of substantive decision-maker for a grant program, there may still be merit in agencies seeking Ministerial consideration of measures that may assist in improving the cost-effectiveness of program administration. Depending upon the nature of the grant program, options that could be canvassed with the Minister include:

- limited decision-making authority being provided to officials, based on a risk-assessment of the nature of applications expected to be received. For example:
 - where a program is expected to involve applications seeking funding across a wide range of values, officials could be given authority to make decisions on applications seeking grants up to a nominated value, with decisions on higher value grants being made by the Minister; and/or
 - where a program allows applicants to propose projects of varied nature, decision-making authority could be provided to officials in relation to projects considered to involve low risk activities, with the Minister retaining the role of decision-maker for projects that involve more sensitive, complex and/or higher risk activities; or
- measures that will reduce the need to apply significant resources to the assessment of ineligible or poor quality applications, while allowing the Minister to retain the capacity to determine which compliant applications will be awarded funding, the amount of funding awarded and any conditions that are to be attached. For example, this could involve:
 - agency officials being given authority to exclude demonstrably ineligible applications from further consideration, without the need to refer each such application to the Minister for a final decision;
 - agency officials being given authority to deem as unsuccessful any applications that are assessed as clearly not satisfying one or more of the published selection criteria, without the need for reference to the Minister for a final decision; and/or
 - the Minister instructing the agency that only those eligible applications that are assessed as meeting the assessment criteria to a high standard overall are submitted for the Minister's consideration, with the remaining applicants being advised by the agency that they were unsuccessful.

⁴⁴ Commonwealth Grant Guidelines, op. cit., p. 30.

Authority of agency officials to vary a Ministerial approval

A further matter to be determined in implementing a grant program is the extent, if any, to which officials will be given authority to make decisions that:

- (a) alter the terms of a grant as originally approved by the Minister (for example, changes to the grant value or project scope); or
- (b) alter or remove a condition the Minister had placed upon a grant.

This is an important consideration because, under the FMA Regulations, the funding agreement executed for a grant must be in accordance with the terms of the relevant approval made under Regulation 9. Accordingly, where officials do not have authority to make grant decisions under the program, any proposal to vary the terms of the original approval is itself a new spending proposal that will need to be referred to the Minister for decision. This can have implications for the cost-effectiveness and efficiency of program administration.

Again, depending upon the nature of the program, options that could be canvassed with the Minister in this respect include the Minister agreeing to officials being given authority to approve, within an agreed framework, minor variations to the project parameters included in funding agreements for approved grants. For example, the Minister may choose to place restrictions on the extent to which any variations approved by officials result in circumstances such as:

- the Australian Government funding for a project exceeding the amount approved by the Minister;
- any of the conditions imposed on the grant funding determined by the Minister in giving the original approval being revised or removed; or
- the variation resulting in significant changes in the proportion of total project costs that are to be met by the Australian Government, as opposed to contributions from other sources.

Clearly documenting the advice provided to Ministers in relation to the determination of these administrative arrangements, and any Ministerial decisions or instructions made, will provide clarity and transparency in relation to the authority and role of officials in administering funding agreements with successful applicants. It is also advisable for such matters to be settled prior to applications being called.

3.5 Authority to approve a grant for which there is insufficient available appropriation

Under existing arrangements, the other key aspect of authority that must be established before a grant can be lawfully approved relates to the requirements of FMA Regulation 10, which stipulates that:

If any of the expenditure under a spending proposal is expenditure for which an appropriation of money is not authorised by the provisions of an existing laws or a proposed law that is before the Parliament, an approver must not approve the proposal unless the Finance Minister has given written authorisation for the approval.

Within the context of a grant program, Regulation 10 means that an approver, whether a Minister or official, has no general authority to approve a grant unless there is sufficient uncommitted appropriation available to cover the maximum amount that could become payable. Authority to consider approving grants that involve expenditure for which there is not sufficient available appropriation must be given in writing by the Finance Minister, or a delegate of the Finance Minister.

An authority to approve a grant given for the purposes of Regulation 10 does not create an appropriation. No expenditure can be actually incurred in relation to the grant unless there is an appropriation available. Authorisation under Regulation 10 also does not represent approval of the proposed grant. Whether or not to approve the grant must be subsequently considered by the authorised approver in accordance with Regulation 9 and the CGGs.

Regulation 10 plays an important role in the financial framework. Its purpose is to help manage the extent to which commitments to spend public money are entered into where funds have not yet been appropriated. This manages the “lock-in” of future Budgets by the government of the day. Consequently, its requirements must be given early consideration in the implementation of a grant program in order to ensure that the administrative arrangements established for the program will support both compliance with the financial framework and efficient program administration.

3.5.1 FMA Regulation 10 has particular relevance for grant programs funded through administered annual appropriations

The need for Regulation 10 authorisation is most likely to arise (but not exclusively) in relation to multi-year spending proposals where the relevant appropriation is an annual appropriation. In that context, Regulation 10 will be an important consideration for the administration of many grant programs because the relevant appropriation is usually provided through annual administered appropriations, which are not available after the end of the relevant financial year and cannot be used to meet future commitments. This is the result of a process set out in the Annual Appropriation Acts which effectively reduces the amount of an annual administered appropriation item to the actual expenditure under that item in the relevant financial year, as reported in the financial statements included in the agency’s Annual Report.⁴⁵

The forward estimates set out in the budget papers are not appropriations and, therefore, do not play a role in determining whether Regulation 10 authorisation is required.⁴⁶ However, appropriations included in a Bill (such as the annual Budget Bills) that is before the Parliament at the time the spending proposal is being considered can be included in determining whether there is sufficient appropriation available to cover the proposal.

Regulation 10 authority must be obtained prior to the approver considering the spending proposal

An area of confusion that can arise within agencies relates to determining when in the grant administration process Regulation 10 authority is required. This arises in part due to the inclusion of a reference to Regulation 10 within Regulation 13, but not within Regulation 9. Regulation 13 specifies that:

A person must not enter into a contract, agreement or arrangement under which public money is, or may become, payable unless a spending proposal has been approved under regulation 9 and, if necessary, in accordance with regulation 10.
[Emphasis added]

Some agencies have interpreted Regulation 13 as meaning that Regulation 10 is only triggered at the point of entering into the funding agreement with an approved grant recipient. However, that interpretation incorrectly applies the financial framework designed to regulate decisions to approve the spending of public money, as set out at the time of publication of this Guide.

Regulation 10 relates to the authority to consider approving spending proposals. In the context of a grant program, it is relevant at the point at which the assessment and/or recommendation in relation to grant applications is being prepared for submission to the approver for his or her consideration. Accordingly, in establishing the administrative arrangements for a grant program, it will be important for agencies to appreciate the respective roles played by FMA Regulations 10, 9 and 13, as follows:

- Regulation 10 regulates the authority of a Minister, Chief Executive or official who otherwise has authority to act as an approver to consider approving a grant that involves expenditure for which an existing appropriation is not available;
- Regulation 9 regulates the basis on which the authorised approver may then give such approval; and
- Regulation 13 requires that there be an appropriately approved spending proposal before any person may enter into any arrangement under which public money may become payable in relation to the grant, including that the approver was duly authorised in accordance with Regulation 10 where that was required.

⁴⁵ See, for example, section 11 of *Appropriation Act (No. 1) 2009–10*.

⁴⁶ However, the forward estimates are relevant to establishing the limit on the delegation from the Finance Minister to agency Chief Executives of the power to authorise the approval of spending proposals to which Regulation 10 applies. Further advice on determining when Regulation 10 authorisation is required and other aspects of the application of Regulation 10 are set out in Finance Circular No. 2007/01, *FMA Regulation 10*, 21 June 2007 [available at <<http://www.finance.gov.au/publications/finance-circulars/index.html>> [accessed 24 May 2010].

Therefore, if a proposed grant involves expenditure for which an appropriation is not currently available, written authority to approve the grant must be obtained under Regulation 10 before the approver considers the spending proposal. Once appropriately authorised, the approver must then determine whether to approve the grant or not, in accordance with the requirements of Regulation 9 and the CGGs. If the approver decides the grant will not be approved, the question of a funding agreement will not even arise.

Delegation of the power to authorise approval of a spending proposal

The power to authorise the approval of spending proposals under Regulation 10 has been delegated, with limits, from the Finance Minister to all FMA Act agency Chief Executives.⁴⁷ In some cases, the Finance Minister may make agency-specific determinations that alter the limits of the delegation to particular Chief Executives. In general, Chief Executives have, in turn, sub-delegated the power to provide authorisations for the purposes of Regulation 10 to nominated agency officials, within the terms of the relevant delegation.⁴⁸ There is no provision for the Finance Minister to delegate the Regulation 10 function to another Minister.

Accordingly, where Ministers perform the role of approver for a grant program, it will be necessary for the Minister to obtain prior written authority to approve proposed grants to which Regulation 10 applies from either:

- the Finance Minister; or
- the agency Chief Executive or a delegated official.

The purpose of the Finance Minister's delegation is to enable officials to undertake the authorisation function up to a specified level of forward commitment.⁴⁹ If the expenditure under a proposed grant, or collection of grants (for example, the total amount expected to be awarded under a competitive grant round), for which there is not sufficient uncommitted appropriation would exceed the limits of the Regulation 10 delegation or agency-specific determination, the relevant Minister will need to write to the Finance Minister seeking the Finance Minister's written authorisation to approve the relevant grants.

In some cases, there may be advantages in terms of the efficiency and effectiveness of program implementation from the responsible Minister seeking an overarching Regulation 10 authorisation in relation to the program from the Finance Minister, rather than relying upon the power delegated to officials being exercised in relation to individual grant proposals. It will be appropriate for agencies to consult with the Department of Finance and Deregulation where such an approach is proposed.

Don't confuse the giving of a delegation with the exercise of the delegation

The delegation to Chief Executives and officials of the Finance Minister's authorising power under Regulation 10 should not be confused with the actual giving of an authorisation to consider approving a spending proposal. The delegation must be exercised in writing before a Minister or official is able to lawfully approve the proposal. The Finance Minister's delegation instrument⁵⁰ sets out a number of requirements that must be observed by delegated officials including:

- a delegate is prohibited from authorising the approval of a spending proposal unless it identifies a number of specified matters (subdivision 1.09 of the delegation instrument);
- matters specified in the delegation must be considered by a delegate in authorising approval of a spending proposal (subdivision 1.10 of the delegation instrument); and
- a delegate must ensure that a written record is kept of the matters mentioned in subdivisions 1.09 and 1.10 of the delegation instrument and any other relevant factors considered, and of the authorisation.

47 The delegation current at the time this Guide was published was included in the *Financial Management and Accountability (Finance Minister to Chief Executives) Delegation 2009* (compilation prepared on 17 February 2010) available at <<http://www.finance.gov.au/financial-framework/fma-legislation/fma-delegations.html>> [accessed 21 April 2010].

48 Section 53 of the FMA Act provides agency Chief Executives with an express power to delegate, by written instrument, any of the Chief Executive's powers or functions under the Act, including powers or functions delegated to the Chief Executive by the Finance Minister or Treasurer, to an official in any agency.

49 The limits set out in the delegation do not represent an allowance by which existing appropriations can be exceeded in the approval of grants before a need for Regulation 10 authorisation will arise.

50 See footnote 47.

3.6 Capacity for funding decisions to be reviewed

Once the decision-maker for a grant program has taken a formal decision to approve or not approve funding for a particular application, it is important that any re-consideration or revision of that decision be undertaken in a transparent manner, in accordance with the documented decision-making process.

In that context, a further matter to consider in establishing the decision-making arrangements for a grant program is whether unsuccessful applicants will be provided with any opportunity to seek a review of funding decisions and, if so, the processes and criteria that will apply to any such request.

3.6.1 Review of decisions made under legislation

Decisions of an administrative character, such as in relation to the awarding of a grant, that are made under legislation may be subject to judicial review by the Federal Court of Australia under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act). Such reviews are not a review of the merits of the decision as such, but a review of the processes undertaken to reach that decision so as to ensure that they were fair.⁵¹

The Administrative Appeals Tribunal does not have a general power to review decisions made under Commonwealth legislation. The Tribunal can only review a decision if an Act, regulation or other legislative instrument states that the decision is subject to review by the Tribunal.

3.6.2 Review of decisions made under an executive scheme

A feature of grant programs established by executive decision is that they are not subject to review under the ADJR Act, which covers only decisions made under an enactment, or by generalist or specialist administrative tribunals, such as the Administrative Appeals Tribunal. The Commonwealth Ombudsman is the only administrative law agency that can review decisions made under executive schemes. The Ombudsman may make recommendations to the relevant agency or Minister, but cannot overturn decisions.⁵²

Nevertheless, it is appropriate for agencies to consider and, as relevant, advise Ministers on the merits of including in the decision-making framework established for a grant program some form of mechanism by which applicants that are not awarded funding, or are awarded less funding than they had applied for, can seek a re-consideration of that decision. The Commonwealth Ombudsman recommends that such mechanisms be established for executive schemes.⁵³

Such mechanisms contribute to ensuring funding decisions have been taken in a manner that is consistent with the procedures outlined in the guidelines provided to applicants. They also assist in identifying instances in which the assessment on which the funding decision was based may have been premised on a misunderstanding of the information provided by the applicant or was otherwise flawed.

However, it is important that the approach taken to implementing such review mechanisms does not result in inequities such as some applicants being given an opportunity to revise, supplement or amend their application or otherwise engage in negotiation or debate with the agency or Minister as to the merits of their application where that opportunity is not available or known to other applicants.

51 Pursuant to section 6 of the ADJR Act, the Federal Court has jurisdiction to review administrative decisions on the following grounds: (a) that a breach of the rules of natural justice occurred in connection with the making of the decision; (b) that procedures that were required by law to be observed in connection with the making of the decision were not observed; (c) that the person who purported to make the decision did not have jurisdiction to make the decision; (d) that the decision was not authorised by the enactment in pursuance of which it was purported to be made; (e) that the making of the decision was an improper exercise of the power conferred by the enactment in pursuance of which it was purported to be made; (f) that the decision involved an error of law, whether or not the error appears on the record of the decision; (g) that the decision was induced or affected by fraud; (h) that there was no evidence or other material to justify the making of the decision or (j) that the decision was otherwise contrary to law.

52 See further in Report by the Commonwealth Ombudsman, Prof. John McMillan, under the *Ombudsman Act 1976*, Report No.12 2009, *Executive Schemes*, Canberra, August 2009, p. 4.

53 *ibid.*, p. 29.

It is equally important that, where it is determined that it is appropriate to include a review or appeal mechanism in the design of a grant program, the processes that will apply to such reviews are fully set out in the published program guidelines and are consistently complied with in program administration. In particular, it is advisable for the guidelines to document:

- who will have standing to seek re-consideration of a funding decision, including clearly identifying whether any parties other than the unsuccessful applicant (such as the relevant Federal Member of Parliament) are able to seek such re-consideration;
- the grounds on which a review may be sought and the procedural requirements for seeking such a review;
- the basis on which it will be determined whether an application will be accepted for review; and
- the process by which any application accepted for review will be re-considered. In this respect, in the interests of probity, it is advisable that any review be undertaken by officials not involved in the original assessment of the application, with a recommendation being provided to the decision-maker.⁵⁴ Where officials, rather than the Minister, are the decision-makers in relation to the program, it may also be advisable for the review decision-maker to be independent of the original decision-maker.

A necessary corollary to the effective implementation of a review mechanism is that all unsuccessful applicants are provided with the full and actual reasons for the rejection of their application, or with reasonable opportunity to seek advice from the agency on the reasons for their application being unsuccessful.

Complaint and queries mechanisms

Regardless of whether a formal review or appeal mechanism is to be included within the guidelines for a grant program, it would be prudent for agencies to consider the need to identify, in consultation with the Minister as necessary, the process by which complaints and other queries that may be received in relation to the program will be handled. Such complaints may relate to unsuccessful applications, but may also relate to other aspects of program administration.

To be effective, it will be necessary for information on such mechanisms to be made available to applicants through the program guidelines, other program documentation (such as a 'frequently asked questions' fact sheet) and other means, such as the agency's website. The establishment of a documented process for the consistent and timely handling of complaints and queries will promote sound public administration and assist in maintaining public confidence the integrity of the program.

⁵⁴ For example, the recommendation could be that the original funding decision should stand; that the agency should undertake a further detailed assessment of the application; or that the original decision should be reversed and funding awarded to the applicant.

4. How will potential funding recipients access the program?



Key Points

The core objective in implementing a grant program is to maximise the cost-effective achievement of the outcomes sought by government, while providing transparent and equitable access to grants. This will be supported by:

- at the outset of the planning process, clearly defining and documenting the strategic and operational objectives of the program and establishing a performance information framework that will support informed and accurate reporting on the extent to which the desired outcomes are actually achieved through the grants awarded;
- selecting a grant application process that is cost-effective, accessible and likely to maximise the attraction and selection of high quality applications, noting that the CGGs require that, unless specifically agreed otherwise, competitive, merit-based selection processes should be used, based upon clearly defined selection criteria; and
- designing an application and assessment process that, while cost-effective and proportional to the nature of the program, obtains sufficient information to reach an informed assessment of the merits of each application, including the extent to which it is likely to contribute to the achievement of program objectives and provide value for money.



4. How will potential funding recipients access the program?

Effective grants administration will be supported by agencies choosing application and assessment methods that will promote open, transparent and equitable access to grants and the cost-effective delivery of a program focused on the achievement of the objectives and outcomes sought by government.

4.1 Outcomes and value for money must drive the grant giving process

Governments have the executive authority to establish and abolish programs, but require the Parliament to appropriate funds to enable expenditure to occur.⁵⁵ Funding is appropriated to FMA Act agencies by the Parliament within the context of an outcomes and outputs framework. The key elements of the framework are:

- specification of the outcomes government is seeking to achieve, which are the intended results, impacts or consequences of actions by the government on the Australian community;
- specification of how the actual deliverables (outputs) will assist in achieving the outcomes;
- identification of expenses, revenues, assets or liabilities managed by agencies on behalf of the government (administered items);
- establishment of a performance management regime that includes indicators of effectiveness and efficiency; and
- annual performance reporting of agencies' contributions to the achievement of outcomes and the delivery of outputs.

Within that framework, as discussed in Chapter 3 of this Guide, it is usual for the funding used to make grant payments to be appropriated to the responsible agency as an administered expense; that is, as funding managed on behalf of government.⁵⁶ Depending upon the nature of the grant program, this may occur through either:

- special appropriations, which are made in Acts that deal with particular purposes of spending. Special appropriations are allocated to the budgeted administered expenses for the relevant outcome of the responsible agency; or, more commonly
- annual appropriations, made through the Annual Appropriation Acts. Annual administered appropriations are made in relation to a specified agency outcome and may only be spent for the purposes of that outcome.

Outcome statements explain the purpose and therefore the legal basis on which funds are appropriated by the Parliament for use by agencies. They are also used as a basis for budgeting, measuring performance and reporting against the use of the appropriated funds. Agencies are responsible for measuring and reporting on their intended and actual performance in terms of outcomes, reflecting the outcome statement relating to the relevant appropriation.

⁵⁵ Section 83 of the Constitution provides that no money may be drawn from the Treasury of the Commonwealth without a legal appropriation authority. A valid appropriation at law provides the parliamentary authority to withdraw amounts from the Consolidated Revenue Fund. An appropriation must specify the purpose for which it is made and it must nominate an amount to be appropriated, or specify a formula or criteria by which the amount appropriated can be determined.

⁵⁶ Funding for the cost to the agency of administering the grant program will usually be provided to the relevant agency as part of its annual departmental expenses appropriation.

4.1.1 Clearly defined operational objectives provide the linkage between grant program design and the outcomes and outputs framework

Reflecting this overarching framework, achieving an outcomes orientation has been established as one of the seven key principles to be applied in the implementation of grant programs. Accordingly, before the process that will be used to identify and select funding recipients under a particular grant program can be appropriately designed, it is important that the operational objectives of the program are clearly defined, documented and linked to the outcomes set by government. This will guide and inform the implementation of a program that supports:

- the transparent and accountable selection of grant recipients that will maximise cost-effective achievement of the desired outcomes; and
- the capacity of the relevant agency to provide the Parliament with comprehensive and accurate reporting on the extent to which the outcomes for which the funding was appropriated have been achieved.

Further guidance in relation to the establishment of a performance framework that links an agency's strategic directions and the grant's operational objectives to government outcomes is set out in Part II of the CGGs. Further general guidance on annual performance reporting is also set out in the Better Practice Guide, *Performance Information in Portfolio Budget Statements*, issued by the ANAO in 2002, and the Better Practice Guide, *Better Practice in Annual Performance Reporting*, jointly issued by the ANAO and the then Department of Finance and Administration in 2004.

4.2 Determining the application process

An early and important consideration in the design of a grant program is establishing how to structure the process by which potential funding recipients will be able to access the program. Depending upon the policy objective that is to be addressed, there are a number of options available. These include:

- competitive funding rounds which open and close to applications on nominated dates, with eligible applications received by the closing date being assessed against the selection criteria set down for the program and then prioritised against competing, eligible applications for the available funding;
- targeted or restricted competitive funding rounds open to a small number of potential funding recipients based on the specialised requirements of the program or project under consideration;
- a non-competitive, open process under which applications may be submitted at any time over the life of the program and are assessed individually against the selection criteria set down for the program, with funding decisions in relation to each application being determined without reference to the comparative merits of other applications;
- a demand-driven process under which applications that satisfy stated eligibility criteria receive funding, up to the limit of available appropriations and subject to revision, suspension or abolition of the program; or
- one-off grants to be determined on an ad-hoc basis (usually by Ministerial decision, including by Cabinet).

4.2.1 Selecting the appropriate process

In selecting the process through which potential applicants will be given the opportunity to access a grant program, regard should be had to the seven key principles established in the CGGs for grants administration, including proportionality⁵⁷; collaboration and partnership⁵⁸; and achieving value with public money.⁵⁹

In that context, the factors that are relevant in selecting the appropriate application and assessment process for a given program include:

- the objective of the program;
- the likely number and type of applicants;
- the type of projects or activities for which funding may be sought;
- the value of grant that individual applicants will be able to apply for;
- the nature of inquiries that will be required in order to appropriately address the risk profile associated with potential applications, which may vary between different types of applicants and projects; and
- the need for timeliness and cost-effectiveness in the decision-making process, while maintaining rigor and equity.

It is also necessary to balance a desire to maximise access to a program with the need to maintain appropriate standards of public administration. For example, a demand-driven program may provide an efficient means of supporting or promoting activity in a particular sector. However, this will need to be supported by appropriate risk analysis and management practices in order to avoid unintended consequences and/or poor levels of achievement against the intended outcomes.

Similarly, a discretionary program that is open to applications at any time provides flexibility for potential applicants in relation to the timing of the development of their proposals to the point of being ready for submission. This is particularly the case where funding contributions for the project are also being sought from other sources, or where there is a need to satisfy planning or other regulatory requirements in order for a project to proceed. However, some possible drawbacks of this approach include that:

- it is likely to result in applications being assessed in relative isolation, making it more difficult to ensure there are consistent processes, standards and interpretations of the program guidelines applied in the decision-making process; and
- the absence of defined opening and closing dates for applications and the announcement of decisions can result in applicants experiencing differing timeframes between lodging an application and being advised of the outcome.

These factors can increase uncertainty (which may affect project viability); reduce transparency and perceived equity (which may affect public confidence in the program); and may disadvantage some potential funding recipients.

Conversely, a merit-based, competitive funding round approach offers advantages such as:

- greater certainty of timeframes for applicants (which is important for project planning and viability) and agencies (which is important for effective resource management); and
- a more transparent and reliable method of selecting successful applicants, having regard for the stated objectives of the program, in that the process of ranking competing eligible applications based on their relative performance against the published assessment criteria provides a further layer of assessment.

57 Granting activity should be 'fit for purpose'. That is, key design features and related processes should be commensurate with the scale, nature, complexity and risks involved in the granting activity (Commonwealth Grant Guidelines, op. cit., p.19).

58 Effective consultation, leading to a shared set of understandings and expectations, will help achieve more efficient and effective grants administration (Commonwealth Grant Guidelines, op. cit., p. 21).

59 Achieving value with public money should be a prime consideration in all aspects of grants administration (Commonwealth Grant Guidelines, op. cit., p. 30).

In this respect, the CGGs advise that:

unless specifically agreed otherwise, competitive, merit-based selection processes should be used, based upon clearly defined selection criteria.⁶⁰

In that context, in establishing the form of application and selection process to be applied to a particular grant program, it is advisable for agencies to document consideration of the risks, costs and benefits of the available options and, where it is proposed to use a method other than a competitive, merit-based selection process, to also document the formal approval of that approach.

Funding streams may assist in ensuring application processes are fit-for-purpose

The application process for some grant programs is relatively straight-forward. For example, demand-driven schemes are often premised on achieving a single objective through the payment of a set amount of funding to eligible applicants to be used for a specified purpose.

However, a grant program may be more complex in both its objectives and the types of applicants and/or projects it is seeking to support. In those circumstances, it may be appropriate to tailor the application and assessment process to accommodate various streams of potential applicants.

Funding streams might be based on considerations such as the size of grant being sought; the nature of the applicant; the nature and overall size of the project for which the funding is being sought; and/or the outcomes being sought from the granting activity through the achievement of separate, but related, operational objectives. The application and assessment process applied to each stream can be tailored to appropriately balance the cost effectiveness of the program for both potential applicants and the administering agency with the requirement for appropriate accountability for, and oversight of, the public money involved. For example:

- the application form used for each stream can be tailored to collect the information relevant to assessing particular types of applicants and projects, without requiring unnecessary or overly detailed information to be provided by other types of applicants and projects;
- the timeframes for the opening and closing of application rounds and the announcement of funding decisions can be tailored to take account of the characteristics of likely applicants to each stream and the nature of projects it is seeking to support, as well as the resource planning requirements of the administering agency; and
- the assessment procedures developed for each stream can be separately articulated, with officials being trained appropriately in the application of those procedures. Cost-effective administration may also be enhanced through the use of dedicated teams to undertake assessments in respect of each stream, within the context of a coordinated overall assessment process.

A streaming approach can also assist in managing the expectations of potential funding recipients. For example, clearly identifying the total funding available under a particular stream, and the maximum (and, if relevant, minimum) grant that will be awarded, can be helpful in minimising the extent to which proponents invest time and effort in submitting proposals seeking funding contributions that are unlikely to be provided within the parameters of the grant program (and which also absorb agency resources).

The appropriate definition of operational objectives for a granting activity can assist in identifying potential streaming options. Equally, the use of distinct streams within an overarching program can assist in ensuring that the operational objectives stated for the program do not become too broad to provide a meaningful basis for selecting grant recipients and reporting on program performance. For example, while an overarching objective might be expressed for an overall government initiative or program, the definition of concise, unambiguous, realistic, outcome-oriented statements of what the granting activity is intended to achieve may reveal natural streaming options, each directed at achieving a specific aspect of the outcomes expected by government. The merits of each application are then able to be considered in the context of other applications that are seeking access to the same pool of funds in order to achieve similar objectives.

60 Commonwealth Grant Guidelines, op. cit., p. 29.

4.3 What information will be needed from applicants?

Due diligence is a process undertaken to obtain sufficient information for informed decision-making and to verify the accuracy and completeness of information that has been provided. In that context, another important factor in determining the appropriate application process for a grant program is the information that will be required in order to properly assess applications and adequately inform funding decisions.

4.3.1 Proportionality within the context of the financial management framework

An overly complex application form with extensive information requirements may be difficult for some potential funding recipients to complete and can potentially disadvantage some applicants. However, this must be balanced against the obligation to perform appropriate due diligence in relation to grant applications. In this respect, a key aspect of the financial framework is the obligation placed on approvers to undertake reasonable inquiries in order to satisfy themselves that a proposed grant:

- will make efficient, effective and ethical use of the public money; and
- would not be inconsistent with the policies of the Commonwealth which, as noted in Chapter 2 of this Guide, include the CGGs and the specific guidelines established for the relevant program.

In the normal course, the assessment process undertaken by the relevant agency or advisory panel will be relied upon by the approver in fulfilling that obligation. A key element in relation to those 'reasonable inquiries' is providing potential funding recipients with appropriate opportunity to submit information in support of their application. In particular, the design of the application form should assist applicants to provide information in respect of all selection criteria identified in the program guidelines.

Information supplied by applicants can then be analysed, together with relevant information from other sources⁶¹, in order to assess the merits of each application based on the criteria articulated for the program.

In this respect, there are efficiencies for both applicants and agencies from:

- clearly specifying in the program guidelines and application form the information required to support an application, including, as relevant:
 - what information must accompany an application in order for it to be considered; and
 - whether additional information may be sought or accepted from the applicant as part of the assessment process⁶²;
- only seeking information that is needed and relevant;
- clearly specifying in the program guidelines the extent to which additional supporting material that might be included with applications (such as letters of support) will be taken into account in the selection of successful applications. A further matter to consider in this respect is that, while the approach of providing grant applicants with the opportunity to demonstrate broader support for their project is relatively common, there is a risk that some projects may also have community opposition—

61 For example, it is prudent for agencies administering grant programs to incorporate into their assessment of applications a process by which the potential for 'double dipping' to occur is independently assessed. 'Double dipping' occurs when an applicant is seeking funding for a project for which Australian Government funding has already been provided, or is available, either through the relevant agency or another Australian Government agency.

62 Determining whether additional information will be sought or accepted from applicants to assist in the assessment process should be based upon appropriate consideration that weighs any risks to maintaining equity and probity against the need to ensure funding decisions are appropriately informed. Where it is determined that no additional information will be sought or accepted once applications have closed, it will be important that assessments and agency recommendations provided to the decision-maker are appropriately qualified to reflect any shortcomings in the information submitted with an application (for example, where the failure to provide required information has resulted in the agency being unable to form a view as to whether the application satisfies a criterion or in the assessed risk profile of a project being elevated). Equally, where it is determined that, as necessary, additional information will be sought from applicants in order to fully inform the assessment (with that component of the assessment methodology being clearly stated in the program guidelines), care should be taken to ensure that only information supporting the project that was set out in the application lodged by the closing date is considered and that applicants are not inadvertently provided with an opportunity to substantively revise or replace their application in order to address identified shortcomings. It is also important that there are clear probity procedures in place to ensure all applicants are provided with equivalent opportunities, if any, to address matters raised in agency assessments.

something that the applicant is unlikely to draw attention to in its application for funding. Accordingly, it will be prudent for agencies to also consider, and document, the approach that will be taken should letters indicating community opposition be received in relation to funding applications during the assessment and decision-making process;

- determining in the program's planning stage whether the skills necessary to appropriately examine information to be provided by applicants are available within the agency and, where that is not the case, identifying (prior to the assessment commencing) the process by which the necessary expert advice will be obtained and acted upon; and
- identifying ways of facilitating the provision of information by applicants, such as through the use of dedicated web-based portals and electronic application forms. In this respect, it is important for agencies to consider the likelihood of applicants needing to lodge substantial supporting attachments with their application, which may cause difficulties when using email solutions.

Again, the key principle of proportionality is relevant in determining the information required of applicants. For example, the extent of financial and other information that may reasonably be required in order to assess applications for low-value grants by community organisations would be likely to be considerably less than that which would be expected to be obtained in relation to applications for funding submitted by commercial organisations or for use in complex or high-value projects.

A two-stage application approach may be appropriate in some circumstances

For some grant programs, the capacity to maximise the extent to which high quality applications are submitted for consideration, and the cost-effectiveness of the program for both the administering agency and prospective applicants, may be enhanced by adopting a two-stage application approach. Under such an approach, a form of pre-assessment can be used to assist prospective applicants in determining whether there is likely to be any merit in them investing in the preparation of a full application.

For example, as outlined in Figure 4 on page 17, the Regional Food Producers Innovation and Productivity Program administered by the Department of Agriculture, Fisheries and Forestry involves a pre-assessment filter. Prospective applicants are provided with the capacity to register their entity's details on the department's website, which are used to make an initial assessment of eligibility. The proponent is then asked to lodge a clear, concise and convincing expression of interest that provides just enough information to allow the department to determine whether the project is likely to be eligible. If, after assessment of the expression of interest, the program decision-maker determines that the applicant and project are likely to meet the program eligibility criteria and could be competitive, the proponent is invited to submit a full application by a nominated date, which is then assessed as part of a competitive, merit-based round based on the program criteria. While an approach of this nature may result in a longer overall process for some applicants, it may also be beneficial in terms of the capacity to effectively target grant funding and administrative effort.

An alternative approach to an expression of interest stage might involve either the administering agency or another entity (for example, consultative panels such as the Regional Development Australia committees) working with proponents to develop their proposals to the point at which they can be accepted as a full application to the program at the next available opportunity. Alternatively, the proponent may be assisted to identify that their proposal is unlikely to be successful under the program and thereby avoid unnecessary costs and delays. Where an approach of this type is adopted, it will be important to establish mechanisms that will provide appropriate transparency in regard to the pre-application processes undertaken.

4.3.2 What does the information obtained from applicants need to provide?

Regardless of the scale and nature of a grant program, the key requirement is that the information obtained from applicants and other sources is sufficient to reach an informed assessment of the merits of each application under the relevant program's guidelines. In the normal course, the completeness of the information obtained in the application and/or assessment process will determine the extent to which the program decision-maker will be in a position to demonstrate that they have based their decisions upon the 'reasonable inquiries' that FMA Regulation 9 requires.

The matters that will need to be considered in that context will, to some degree, depend upon the nature of the program. Further, the key principles of proportionality and value for money (including in the administration of a program) outlined in the CGGs are relevant considerations in determining the level of inquiry that would be considered reasonable in the context of a given grant program. However, Figure 6 sets out a number of criteria that will be useful reference points for determining the information that will need to be obtained through the application process for a particular grant program.

Figure 6**Criteria for assessing the adequacy of information required to be provided by potential funding recipient**

Criterion	Relevance to effective assessment of grant applications
The information obtained provides sufficient reliable evidence to determine whether the applicant satisfies threshold eligibility criteria set out in the program guidelines and/or, where relevant, the legislation establishing the program.	The reliability of the information provided to substantiate the eligibility of a grant application is important in demonstrating that government objectives are being met through the making of the grant and to the equitable conduct of the program in a manner that is compliant with the grants policy framework. For non-competitive or demand-driven grant programs, particular issues can arise in this regard as there may be no further assessment process once an application has passed through a gateway eligibility criterion. Objective evidence of the satisfaction of an eligibility criterion provides a sounder basis for assessing compliance than assertions made in the application (a factor that is a relevant consideration in framing the eligibility criteria).
The information obtained is sufficient to inform a reliable assessment of the financial viability of the project or activity for which the grant funding is being sought.	For many programs, the financial viability of the project for which funding is being sought, such that it is both likely to be completed within the proposed budget and remain sustainable beyond the funded project period, is important in assessing the merits of an application. The reliability of project cost and/or revenue estimates is of particular relevance for projects at higher risk of estimating error, inadvertent or deliberate misstatement and/or cost increases/revenue shortfalls (for example: construction projects; projects involving an exposure to foreign exchange movements; or projects that are reliant upon generating minimum revenue streams in order to achieve the projected outcomes). A relevant consideration in determining the application requirements is the extent to which it is appropriate that applicants be required to provide documentation supporting cost and/or revenue estimates set out in the application.
The information obtained is sufficient to accurately identify the potential funding recipient, including their legal status.	Particular matters of relevance in this regard are determining the applicant's eligibility and capacity to enter into an enforceable funding agreement. Particularly for grant programs that allow applications from commercial organisations, it will be important for the applicant entity's position within a corporate structure to be identified in order to assess any resulting risks in relation to project viability, governance over the grant funding or the capacity for the corporation to fund the project without government assistance.
The information obtained identifies the party that will actually be undertaking the project to which the grant funding would contribute.	In some cases, the entity that submits an application to a grant program is not the entity that will actually undertake the relevant project. As well as determining the eligibility and value for money of the application (including the potential for cost shifting), appropriate consideration of this issue will include assessing whether the entity undertaking the project has the necessary skills to effectively do so; and that the project implementation arrangements will support appropriate oversight of the grant funding.
The information obtained provides a clear and comprehensive description of the project being proposed, and identifies the outcomes that will be achieved.	In order to undertake a robust assessment that appropriately informs decision-making, the information obtained must allow the assessor to fully understand the location, nature and scope of the project being proposed and how that relates to the outcomes claimed. For example, unless the full parameters of the proposed works are identified, it will not be possible to appropriately assess the adequacy of the proposed budget and, therefore, the likelihood of the project being completed.
The information obtained enables an informed assessment of the likelihood of the project being completed without the grant and/or the claimed outcomes being otherwise achieved.	Should either circumstance arise, the value for money to be achieved from approving the grant will be significantly diminished. For example, examination of the project timelines and other information set out in the application may indicate that the applicant was already committed to the project. It is advisable for agencies to maintain oversight of this issue throughout the assessment process, particularly where there is a considerable delay between application and decision-making. Equally, applications seeking only a small proportion of project costs may indicate that the project would proceed regardless of the outcome of the application.
The information obtained will enable a funding agreement, deed or other arrangement to be entered into with a successful applicant (where this is an element of the program's design).	It is reasonable to expect that the extent of information obtained from applicants will be such that, should funding be approved, a funding agreement will be able to be drafted without seeking further information, with the funding recipient then being asked to comment on the draft agreement. This is particularly the case where, as is commonly the case, a standard funding agreement is used. Particularly for project-based grants, completing the agreement following funding approval typically involves populating the relevant schedules with details of the project to be delivered (including scope, budget, funding contributions, timelines and milestone requirements, and required outputs and outcomes). If these matters are not able to be derived from the material on which the grant approval was based, the quality of the assessment in terms of appropriately informing decision-making under the program guidelines, the financial framework and the grants policy framework will fall into question.

Source: ANAO analysis.

5. Developing program guidelines and procedures



Key Points

The guidelines that are established for a grant program play a central role in the conduct of effective, efficient and accountable grants administration. Important considerations in establishing program guidelines include that:

- a key obligation under the new grants policy framework is for all grants programs to have guidelines in place, with the guidelines representing one of the policy requirements that grants must be consistent with in order to be approved under the program;
- clear and comprehensive published guidelines promote effective grants administration by encapsulating in one document all relevant information concerning the program (including any relevant legislative provisions; program 'entry' criteria and assessment criteria; the process that will be applied in determining successful applicants; and the obligations that funding recipients will be required to satisfy). This facilitates potential funding recipients' understanding of the program, thereby encouraging high quality applications to be submitted in accordance with program timetables and with the information required for the application to be fully assessed, whilst at the same time discouraging applications that are ineligible or of doubtful merit in relation to the grant program's objectives; and
- soundly based selection criteria will provide an effective link between the program's objectives and the outcomes achieved through the grants awarded.



5. Developing program guidelines and procedures

The guidelines promulgated in relation to a grant program play an essential role in establishing and implementing an effective program that funds the most meritorious applications and promotes public confidence in the equity and probity of the grant-giving process. The development and implementation of documented internal procedures support both the application of consistent standards of administration in accordance with the published program guidelines, and the capacity to demonstrate that all applicants have received equitable opportunities to access funding.

5.1 Guidelines are required for all grant programs

The specific guidelines that are established for a particular grant-giving activity provide a key starting point for parties considering whether to participate in the program. Accordingly, the guidelines are central to implementing an effective program that complies with the grants policy framework. In particular, program guidelines identify how:

- potential funding recipients will be able to access the program;
- successful applicants will be determined; and
- approved grants will be administered in order to achieve the stated program objectives, including the obligations that funding recipients will be required to satisfy.

The importance of sound program guidelines has been emphasised in the CGGs, which stipulate that:

- agencies *must* develop grant guidelines for new grant programs, and make them publicly available (including on agency websites) where eligible persons and/or entities are able to apply for a grant under a program (CGGs paragraph 3.24);
- agencies *must* ensure that grant guidelines and related operational guidance are in accordance with the CGGs (CGGs paragraph 3.25); and
- the ERC will consider guidelines for new grant programs. Where a change is proposed to the guidelines for an existing grant program, agencies should consult with Finance on whether the proposed change will give rise to the need for ERC consideration of the guidelines (CGGs paragraph 3.22).

There is a clear expectation under the CGGs that grant program guidelines will be made public and be freely accessible by stakeholders, with the CGGs also advising more broadly that care should be taken to ensure that the rules of a granting activity are simply expressed and clear in their intent, and are effectively communicated to stakeholders.⁶³

63 Commonwealth Grant Guidelines, op. cit., p. 22.

5.1.1 Guidelines continue to be required even where the program has a legislative authority

The CGGs make no exception in regard to the requirement to develop guidelines for all new grant programs, irrespective of whether the program is an executive scheme or has a statutory basis (see Figure 4).

The extent to which separate guidelines will need to be developed for a program that has some form of statutory basis will depend upon the provisions of the relevant legislation. It is possible for the legislation or legislative instrument establishing a grant program to be drafted such that it sets out all of the criteria and decision-making processes that will apply. However, in the normal course, in order for the administration of the program to fully comply with the CGGs, the legislation establishing a grant program will need to be supplemented by published guidelines that fully document the grant-giving process. This will particularly be the case where the legislation establishes the framework for a scheme, but relies upon the exercise of executive discretion and decision in order to be implemented.

For example, legislation may provide the responsible Minister with discretion in respect to how proposals from potential funding recipients will be sought and/or in relation to the matters the Minister might take into account in determining whether a proposal should be approved. Program guidelines provide the means by which the specific application and selection processes to be applied in exercising that discretion will be articulated and advised to stakeholders, as required under the CGGs.

Further, even where the relevant legislation specifies all eligibility and assessment criteria that will be applied, the program guidelines provide the vehicle for informing potential funding recipients of the terms and conditions that will apply to any approved funding, and the obligations they will need to satisfy should they be successful.

5.1.2 Are guidelines required if the program is to be utilised to fund projects that were the subject of election commitments?

It is common during election campaigns for political parties, Ministers and other government and non-government candidates to make various announcements that represent undertakings to provide certain funding, services or facilities in the event the relevant party is elected or re-elected to government. The importance to governments of delivering upon their election commitments is recognised. Nevertheless, the use of public money to fulfil such commitments may only occur in accordance with the financial framework that governs the expenditure of funds from the Consolidated Revenue Fund, being:

- the availability of a valid appropriation at law; and
- satisfaction of the requirements of relevant legislation governing the expenditure of public money.

Application of the financial framework and CGGs to consideration of grant proposals relating to election commitments

Election commitments are frequently implemented by way of grant payments. Neither the FMA Regulations nor the CGGs make any differentiation between proposed grants that were the subject of an earlier election commitment and any other grant proposal. Rather, the Regulations provide a principles-based framework for determining the obligations that will apply in approving a grant. In particular, as discussed in Chapter 2 of this Guide:

- Regulation 3 defines a 'spending proposal' for the purposes of determining the circumstances that attract the obligations relating to the approval of a proposal to spend public money set out in Part 4 of the Regulations, *Commitments to spend public money*; and
- Regulation 3A defines a 'grant' for the purposes of determining the circumstances that attract the obligations set out in the Regulations that are specific to grants administration, and in the CGGs issued under authority of Regulation 7A. The definition of a grant set out in Regulation 3A relates to the character of the payment being proposed⁶⁴, with the CGGs further stating that, within that definition:

*A granting activity can take a variety of forms, including a payment made on a one-off or ad hoc basis, payments made as a result of a competitive assessment, or provided specified criteria are satisfied.*⁶⁵

64 In this respect, Finance has advised agencies that: 'It is essential that agencies determine the character of the financial arrangement they employ, in order to comply with the relevant framework applying to the arrangement.' (See Finance Circular No. 2009/03, op. cit., p. 1.)

65 Commonwealth Grant Guidelines, op. cit., paragraph 2.7.

Wherever a proposed payment (including in relation to fulfilling an election commitment) satisfies the definitions of 'spending proposal' and 'grant' set out in the Regulations, the relevant obligations will need to be observed in relation to that proposal. The 2008 Strategic Review emphasised this point, as follows:

The statutory obligations applying to the approval of spending proposals deriving from election commitments are no different from those attaching to the approval of any other spending proposal; accordingly, departments should provide their Ministers with advice on options for the funding of election commitments, having regard both to a Minister's statutory obligations and the extent to which the spending proposals satisfy the eligibility or assessment criteria for grant programs which might be used to fund the commitments.

In preparing their advice to Ministers on the funding of election commitments, departments have a responsibility to ensure that Ministers are appropriately informed both as to the nature of the spending proposal and whether it is likely to make efficient and effective use of public money (consistent with the requirements of FMA Regulation 9). For this purpose, documentation will often need to be obtained from project proponents providing evidence of need and details of the proposed expenditure, sufficient to allow Ministers to make an informed judgement in carrying out their statutory responsibilities. It is also important that departments advise their Ministers on any measures necessary to manage risks to the Commonwealth associated with the approval and implementation of election commitments.⁶⁶

In this light, the Government accepted the Strategic Review's recommendation⁶⁷ that the requirement on Ministers to receive and consider agency advice on the merits of proposed grants, as assessed against the relevant program guidelines, before taking any decisions on the award of individual grants⁶⁸ should apply to all grant spending proposals, including proposals designed to satisfy commitments made in the context of election campaigns. This policy requirement is now reflected in the CGGs.⁶⁹

In this respect, as with all proposals to spend public money, the financial framework requires that any decision to approve expenditure to satisfy an election commitment be undertaken in a manner that, through a process of reasonable inquiry, considers whether the proposed expenditure represents proper use of the public money involved (FMA Regulation 9 refers). Similarly, and consistent with the recommendations of the Strategic Review, all other relevant requirements that arise under the Regulations and CGGs in relation to grants administration must also be observed in considering whether to approve a grant to satisfy an election commitment. These include that:

- if the grant is approved, the approver is required to record in writing the basis on which he or she was satisfied that the grant complies with Regulation 9 (FMA Regulation 12); and
- Ministers are to report any decision to approve a grant that the agency has recommended be rejected to the Finance Minister, together with a brief statement of the basis of the approval (CGGs paragraph 3.21). Ministers are also required to advise the Finance Minister of any grants approved in the Minister's own electorate.

Accordingly, the effective implementation of commitments made in the context of an election campaign is reliant on both:

- the development of an administrative approach that ensures both decision-makers and potential funding recipients are made aware of the need for projects proposed for funding to satisfy minimum standards set out in relevant legislation, and for funding to be available from appropriations passed through the Parliament, before they can be considered for funding by the incoming or returned government; and
- the consistent and comprehensive implementation by the responsible agency of a program of inquiry and assessment in relation to each project being considered for funding, in order to appropriately inform the decision-maker.

66 Strategic Review of the Administration of Australian Government Grant Programs, op. cit., p. 63.

67 Recommendation 7(b), *ibid.*, p. 66.

68 This requirement was originally introduced through Finance Minister's Instructions issued in December 2007, which stipulated that Ministers should not make any decisions on discretionary grants without first receiving departmental advice on the merits of the grant application relative to the guidelines for that grants program.

69 Commonwealth Grant Guidelines, op. cit., paragraph 3.19 (see Figure 3 of this Guide).

The application of grant program guidelines to the funding of election commitments

As part of the process for allocating election commitments to Ministerial portfolios for administration following an election, agencies are responsible for assessing, and providing early advice to government on, options for funding the commitments. Where election commitments are intended to be implemented through grants, it will be necessary to consider the most appropriate administrative arrangements for considering those proposals.

Funding election commitments through existing grant programs may be problematic

As discussed in Chapter 2 of this Guide, the Commonwealth policies with which a proposed grant must not be inconsistent in order to be approved under Regulation 9 include the guidelines applying to the program from which the expenditure is proposed to be made.⁷⁰ In that context, in the normal course, it may be problematic to seek to fund election commitments through an existing grant program.

It would not generally be feasible for consideration of grant proposals to fulfil election commitments to occur within the context of a competitive, rounds-based grant program. Even where an existing program is not competitively-based⁷¹, it would be expected that application requirements and threshold criteria will have been established in relation to that program which a proposed grant would need to satisfy in order to be funded through the program. However, the policy intent underpinning an election commitment may not be consistent with the eligibility or other criteria established for the existing program, such that the grant proposal is unlikely to satisfy those criteria. In this context, the Strategic Review drew attention to the challenges that may arise in situations where the assessment of an election commitment identifies shortcomings with the proposal in terms of the published eligibility or assessment criteria for an existing program. Specifically:

The situation may arise that a spending proposal deriving from an election commitment satisfies the requirements of the FMA Regulations but fails to meet the eligibility or assessment criteria for the relevant funding program. For example, where a grant program is structured on a contestable basis, the proposal covered by the election commitment may fail to satisfy one or more of the eligibility criteria specified in the grant program guidelines, or alternatively may fail to make the selection cut when it is assessed on its merits against other competing applications. In such circumstances, should the Minister wish to proceed with the funding of the election commitment, a suitable funding platform for that purpose would need to be found.⁷²

The funding of election commitments through existing grant programs also needs to be carefully considered in terms of the potential for this to reduce funding that would be otherwise available under the program, thereby possibly leading to calls for the size of the program to be increased.

Funding election commitments through dedicated grant programs may be a more appropriate approach

In general, a more appropriate funding platform for the implementation of one or more election commitments relating to a particular portfolio of responsibility is likely to be the establishment of a separate grant program to be used for the exclusive purpose of administering the election commitments. Where this option is taken, the CGGs require that guidelines be developed (and considered by the ERC) for the new program⁷³ to guide the consideration of the proposed grants within the context of the financial management and grants policy frameworks.

In accordance with the guidance set out in the CGGs, relevant considerations in the development of the guidelines for such programs will include that they be fit for purpose (having regard for the policy objective of the program), while supporting the decision-maker's capacity to demonstrate that funding decisions have been taken in accordance with the relevant statutory and policy requirements.

70 Commonwealth Grant Guidelines, op. cit., paragraphs 3.16–3.17.

71 For example, some grant programs involve each application being considered individually against specified criteria, without reference to the relative merits of other applications submitted to the program.

72 Strategic Review of the Administration of Australian Government Grant Programs, op. cit., pp. 63–64.

73 Commonwealth Grant Guidelines, op. cit., paragraphs 3.24 and 3.22 (see Figure 3 of this Guide).

In administering such a program, an important role for agencies in putting election commitment projects forward for funding approval is to ensure Ministers are appropriately informed as to the nature of the project and whether it is likely to make proper use of the public money. Given election commitments are typically announced in broad terms, this process will usually involve project proposals being sought from the relevant proponents. Those proposals are then to be assessed against the guidelines in order to determine their suitability for funding approval, including assessing relevant risks to the Commonwealth achieving value for money and the extent to which those risks might be able to be treated or mitigated.

The guidelines established for such programs provide the vehicle for advising proponents of election commitment projects:

- that funding can only be approved where the Government is satisfied that the project would be an efficient and effective use of public money;
- of the factors that will be considered in making that determination (including, as appropriate, the standards their project proposal will need to meet); and
- of the obligations that proponents of approved projects will be expected to satisfy.

Figure 7 sets out an example of good practice in the establishment and implementation of a grant program for the implementation of election commitments, including through the establishment of appropriate program guidelines.

Figure 7

Case study—Establishing a grant program for implementing election commitments: Better Regions Program

During the 2007 Federal election campaign, the then Opposition announced commitments to fund a number of regional projects should it be elected to government. Funding of \$176 million over four years was subsequently announced in the 2008–09 Budget to implement the Government’s regional election commitments through the Better Regions Program. Program Guidelines were published in August 2008 after consideration by the Expenditure Review Committee, with the responsible Minister noting that the Guidelines reflected the fact that the projects to be considered had already been identified, but also addressed issues such as:

- program criteria, including assessment criteria;
- process issues, such as the application, assessment and decision-making processes, including the roles of Ministers and officials in decision making; and
- administration issues, including payment and acquittals processes, timelines and milestones.

The Guidelines advised that proponents would need to provide information including details of:

- the proponent’s organisation and any related entities in the corporate group;
- the project, including funding arrangements;
- financial information including quotations, cost estimates and budgets;
- project timeframes;
- project delivery information including project and business plans; and
- all statutory and other approvals required if relevant for the project.

Based on the information provided, the department would undertake a risk analysis which would analyse: anticipated project results (which needed to be consistent with those identified in the election commitment); proponent viability; and project viability. The Guidelines further advised that:

- following an assessment by the department to ensure that the project was ready for funding, approval would be sought from the responsible Minister for the release of funds;
- the Minister would consider whether the project will make efficient and effective use of public money as required by Commonwealth legislation and whether any risk management strategies would need to be imposed as a condition of funding; and
- for approved projects, the proponent would need to enter into a Funding Agreement before any Better Regions funding could be paid.

In recognition of the need for grant proposals in relation to election commitments to be considered in accordance with the financial framework, the Guidelines further advised that:

Proponents should not make financial commitments based on receiving funding from the Australian Government until the Funding Agreement (contract) has been executed.

The program Guidelines also advised proponents that, for approved projects:

The Department will work with the proponent with the aim of finalising the Funding Agreement (contract) within 16 weeks of the project being approved by the [Minister]. The offer of funding may be withdrawn if the proponent cannot meet the timeframe, has not obtained agreement from the Department to obtain an extension to this timeframe, or if there are significant reasons as to why the project cannot commence.

Source: ANAO analysis.

5.1.3 What if there were program guidelines in place prior to the commencement of the CGGs?

Programs already in existence when the new grants policy framework was introduced on 1 July 2009 are not exempt from that framework, including the mandatory requirement that agencies must ensure that grant guidelines and related operational guidance are in accordance with the CGGs.

The regulations that amended the FMA Regulations to introduce the CGGs and associated grants-specific statutory obligations contain a broad transitional and savings provision to provide sufficient opportunity for agencies to adjust their internal procedures, CEIs, delegations and related materials for existing grant programs to ensure they are compliant with the CGGs.⁷⁴

Where the guidelines for on-going grant programs that commenced prior to 1 July 2009 are not compliant with the CGGs (for example, they have not disclosed all of the decision-making criteria and processes applied under the program), the guidelines will need to be revised and re-issued in a compliant form.

5.1.4 ERC consideration of changes to program guidelines

As noted in Chapter 1 of this Guide, since December 2007 there has been a policy requirement that guidelines for new grant programs be considered by the ERC, with this requirement now being reflected in the CGGs. Once a program has been established (whether prior to or after commencement of the CGGs), the CGGs state that:

Where a change is proposed to the guidelines for an existing grant program, agencies should consult with [the Department of Finance and Deregulation] on whether the proposed change will give rise to the need for ERC consideration of the guidelines.⁷⁵

While guidance will need to be sought from Finance in relation to specific programs, in general terms the matters that could be expected to represent a significant change to a program's guidelines that may require ERC approval would include any matters that have a substantive effect upon the opportunity for an entity to successfully access funding through the program. This could include:

- changes to the stated objectives and focus of the program;
- changes to eligibility criteria and other aspects of the guidelines that affect who may access funding under the program;
- alterations to the assessment criteria that will be applied in selecting funding recipients or to the interpretation that is to be applied to a criterion, including the introduction of any new or additional capacity to waive or amend criteria in relation to particular applications;
- changes to the application and assessment process, such as a change from an open process to a closed funding round approach or to the terms and conditions with which applications must comply in order to be accepted for consideration; or
- any changes that will have retrospective effect in relation to the capacity to consider the approval of funding for applications already submitted, including through previous funding rounds.

Changes that may have a material effect upon the budgetary profile of the program, including in relation to the approach that will be taken to paying approved funding to successful applicants (such as the use or otherwise of advance payments), would also be likely to be considered a significant change that may require ERC approval.

In respect to on-going programs that were in existence as at 1 July 2009, agencies may need to seek advice from Finance as to whether the publication of revised guidelines that provide public disclosure of existing program parameters not previously included in the published guidelines for that program (as opposed to amending or changing those parameters) will require ERC consideration.

⁷⁴ Australian Government Solicitor, Legal Briefing 83, op. cit., p. 2.

⁷⁵ Commonwealth Grant Guidelines, op. cit., paragraph 3.22.

5.2 Determining the content of program guidelines

The appropriate level of content of grant guidelines will vary depending upon the size, scope and nature of the program, having regard for the need for all aspects of the program to conform to the key principles established for grants administration including proportionality; governance and accountability; and probity and transparency. In that context, the underlying principle is that program guidelines address the matters necessary to promote transparent and equitable access to grants (while minimising wasted effort being applied to the submission of proposals that are ineligible or unlikely to be funded), and fully inform the efficient, effective and accountable administration of the program. This would involve the guidelines articulating:

- the program's purpose, scope, objectives and desired outcomes;
- the total funding that is available and any limitations on the amount individual applicants will be able to apply for;
- the types of projects that will (and will not) be funded;
- the entities that are eligible to apply for or receive funding, and any that are not eligible;
- the governance arrangements that will apply to the program's administration (including the respective roles and responsibilities of the Minister, agency officials and any advisory panel that may be involved)⁷⁶;
- the process by which eligible entities will be able to apply to the program, including the information that is required to accompany any application and any deadline for submitting applications⁷⁷;
- the process by which funding recipients will be selected, including specifying all criteria on which funding decisions will be based (including whether there is discretion for criteria to be waived or amended during the assessment and/or decision-making process and, if so, how that discretion will be exercised);
- any review or appeal mechanism that will be available to unsuccessful applicants and the processes that will be applied⁷⁸; and
- the terms and conditions that will apply to the provision of a grant, including the reporting and other accountability requirements that funding recipients will be expected to comply with. It is advisable for a copy of the funding agreement for the program to accompany the published guidelines.

Part II of the CGGs sets out a range of guidance in relation to how the recommended content and presentation of grant program guidelines can contribute to achieving key principles in grants administration, extracts of which are set out in Figure 8.

76 See discussion in Chapter 3.

77 See discussion in Chapter 4.

78 See discussion in Chapter 3.

Figure 8

Extracts of guidance set out in the CGGs on the content and purpose of grant program guideline

Key Principle: Collaboration and Partnership (CGGs p. 22):

Clear, consistent and well-documented grant guidelines are an important component of effective and accessible grants administration. A single reference source for policy guidance, administrative procedures, appraisal criteria, monitoring requirements, evaluation strategies and standard forms, helps to ensure consistent and efficient grants administration.

As well as being understandable, grant guidelines should clearly inform potential recipients if the Commonwealth has terms and conditions that recipients will need to meet during the life of the project (such as financial and performance reporting).

Key Principle: Governance and Accountability (CGGs p. 23):

Agencies should develop such policies, procedures and guidelines as are necessary for the sound administration of grants. In the case of grant programs, this should include grant guidelines and associated operational guidance for the administration of the program. When developing such guidance, agencies must act in accordance with the CGGs.

Grant program guidelines should be fit for purpose and should include information on the outcomes and objectives of the grant program, governance arrangements (including roles and responsibilities), funding and selection processes, performance monitoring and reporting, evaluation, operational issues and complaint handling mechanisms.

Key Principle: Probity and Transparency (CGGs p. 28–29):

Agencies should put in place appropriate mechanisms for identifying and managing potential conflicts of interest. Relevant measures may include (*inter alia*): ensuring that grant guidelines clearly outline what constitutes a conflict of interest. Clear procedures for declaring conflicts of interest and their management should be established.

In the interests of transparency, accountability and equity, grant guidelines should document the circumstances in which the eligibility and assessment criteria set out in grant guidelines may be waived or amended. Guidelines for new grant programs require ERC consideration and these issues should be addressed in that context.

Source: Commonwealth Grant Guidelines, *Policies and Principles for Grants Administration*, Financial Management Guidance No. 23, July 2009.

It is important that the guidelines established in relation to a grant program have been appropriately considered, including through internal review and quality assurance mechanisms, before being published. In this respect, the CGGs suggest that it may also be useful for agencies to consider testing the clarity of program information and grant guidelines with relevant client groups. This may assist in avoiding the need for subsequent significant and/or numerous amendments to the guidelines. Frequent changes in program guidelines can lead to confusion or uncertainty among potential applicants, as well as increasing the complexity of grants administration.

5.3 Determining the due date for submitting applications

Clearly specifying the date by which applications will be required to be submitted is an important aspect of program guidelines. This is particularly the case for rounds-based programs. However, it is also important information to make available to potential applicants to other grant processes, given most programs have a defined life-span based on budgetary arrangements.

An important consideration in establishing the due date for applications is whether the time allowed between the public calling of applications and the deadline for submission is adequate to provide potential applicants with a reasonable opportunity to develop proposals that are robust and comprehensively respond to the published guidelines. Issues that are relevant in this regard include:

- the nature of projects for which funding is likely to be sought;
- the budgetary cycle of expected sources of co-funding, particularly where this relates to other Australian Government bodies, State or Territory bodies, local government authorities or private trusts and foundations (which often announce funding in annual or periodic rounds); and
- the extent to which factors such as strategic collaboration between entities is identified in the guidelines as improving an application's chances of success.

Agencies will also need to consider other factors that may impact upon the receipt of applications, such as:

- whether the nominated closing date coincides with a public holiday in a particular State or Territory; or
- the potential for applicants to become confused where there is daylight saving in operation in some States or Territories, but not others. Clarity in this respect can be achieved through the guidelines clearly advising applicants of the time zone that applies to the closing time for the submission of applications.

In the interests of clarity and probity, it is also advisable for program guidelines to:

- clearly state that applications not received within the required timeframe or through the required application process will not be accepted; and
- define what would constitute a complete application and stipulate whether incomplete applications will be considered.

5.4 Drafting selection criteria

The criteria that are to be applied in determining funding recipients under a grant program are the key link between the program's stated objectives and the outcomes that are subsequently achieved from the expenditure of public money. Accordingly, they play an important role in both:

- attracting good potential funding recipients to apply to the program and encouraging entities that are unlikely to be successful not to invest unnecessary resources in preparing an application; and
- providing the basis for a transparent, accountable and effective grant program.

5.4.1 Characteristics of sound selection criteria

As the CCGs advise, achieving value with public money should be a prime consideration in all aspects of grants administration.⁷⁹ Accordingly, value for money is expected to underpin the selection criteria established for grant programs.

The criteria that will be appropriate will depend upon the nature of the program. However, there are some common characteristics that will assist in ensuring selection criteria contribute to achieving an accountable and effective grant program that complies with the policy underpinnings of the CCGs—see Figure 9.

⁷⁹ Commonwealth Grant Guidelines, *op. cit.*, p. 30.

Figure 9

General characteristics of sound selection criteria for a grant program

Characteristic	Relevance to effective grants administration
Outcomes focused and aligned with the policy objective	The establishment of a clear read between the objectives articulated for the program and the selection criteria to be applied assists in ensuring that the selection process will be focussed on funding those applications that will contribute to the cost-effective achievement of desired outcomes.
Promote additionality	In order to promote the achievement of value for money from grant expenditure, it is important that the criteria developed for a grant program, and the assessment procedures applied, appropriately consider the extent to which the funding being sought by an applicant will result in an outcome that is additional to those that are likely to occur regardless of whether the application is successful.
Comprehensive	The program guidelines must articulate all criteria that will be applied in determining whether a particular application will be awarded funding. This should not be confused with a blanket requirement for heavily detailed criteria to be included in all program guidelines—such an approach would not be consistent with the requirement under the CCGs that all aspects of grants administration be fit-for-purpose. Instead, this characteristic is reflective of the fact that only those criteria set out in the program guidelines should be applied in the selection of funding recipients.
Unambiguous	Selection criteria that are expressed in ambiguous or non-exclusive terms can lead to confusion on the part of both potential funding recipients and program administrators as to what criteria may be used in the selection of funding recipients. It is also detrimental to the transparency and accountability of the selection process.
Objectively assessable	Criteria that are able to be objectively assessed on the basis of the information and supporting documentation provided by applicants and available from other sources (such as public records) maximise the potential for the relative merits of all applications to be consistently assessed, leading to informed decision-making. Criteria that are based on subjective assessments and/or statements by applicants are likely to diminish the robustness, consistency and defensibility of the selection process.
Easily understood, plain language, with translation services provided.	Grant program guidelines, including selection criteria, need to be expressed in easily understood, plain language and effectively communicated, including through the appropriate availability of alternative language forms. This maximises program accessibility.
Key terms are defined	In order to support the submission of high quality applications and the conduct of a transparent and consistent assessment process, it is important that all key terms that impact upon an application's chances of being successful are clearly defined in the published guidelines.
Internally consistent	It is advisable to check the selection criteria set out for a particular grant program for any internal inconsistencies so as to ensure there is clarity for both applicants and program administrators.

Source: ANAO analysis.

5.4.2 Types of criteria

It is important to appreciate the different types of criteria that may be established for a grant program and the role they play in the assessment process. Selection criteria fall into two main groups, as follows:

- threshold criteria are the criteria that an application must satisfy in order to be considered for funding. These are also variously expressed as 'eligibility criteria', 'mandatory criteria', 'compliance criteria' or 'gateway criteria'; and
- assessment criteria are the criteria against which all eligible, compliant applications will be assessed in order to determine their merits against the program objectives and, for competitive programs, other competing applications.

Threshold criteria

It is important that program guidelines clearly identify any threshold requirements that must be satisfied in order for an application to be considered for funding. Well-constructed eligibility criteria are straightforward, easily understood and effectively communicated to potential applicants, with the guidelines clearly stating that applications that do not satisfy all threshold criteria will not be considered. This helps to reduce frustration and unnecessary costs by assisting potential applicants to avoid developing and submitting applications that are ineligible or that have little chance of success, and will promote consistent assessment processes.

A common approach is for grant program guidelines to include a discrete section outlining the entities and projects that are eligible to apply for funding and those that are not. However, it is also common for additional statements to be included in other sections of program guidelines that also represent mandatory requirements that must be satisfied in order to receive funding. This often involves the use of expressions such as 'must', 'must not', 'will' or 'will not'.

In that respect, the clarity and transparency of the grant-giving process will be assisted by all threshold requirements being grouped and clearly identified as such in the program guidelines. This has benefits for both potential applicants and the administering agency, in that adopting this approach can provide a comprehensive checklist of minimum and mandatory requirements that:

- potential applicants can easily use to inform a decision as to whether to invest resources in developing an application; and
- officials or others undertaking the assessment can use to ensure any applications that fail to satisfy one or more of the threshold requirements set out in the guidelines are identified as being ineligible for funding consideration. This can then be appropriately reflected in advice provided to the decision-maker.

For some types of grant programs, satisfying nominated threshold criteria is all that is required in order for an applicant to receive funding. In such programs, the nominated criteria provide the means by which funding is directed toward the achievement of the relevant government objective. For other programs, the purpose of threshold criteria is also to be clear about the standard of application that will be considered for funding in the context of the relevant program's objectives. This assists in discouraging the submission of unsuitable applications and, if necessary, to eliminate such applications from the assessment process.

It is advisable to examine draft criteria for the potential to cause unintended consequences, as there is a risk that the inclusion of extensive mandatory requirements may unintentionally result in suitable applicants being excluded from the process.⁸⁰ Equally, however, the careful specification of minimum mandatory requirements can assist in focussing both grant funding and scarce agency resources on applications that are more likely to contribute to the program's objectives. In particular, all eligibility requirements agreed by government or the relevant Minister in establishing the program must be clearly set out in the guidelines.

Eligibility criteria in demand-driven programs

A demand-driven program can be an effective means of providing intended recipients with efficient access to funding in order to facilitate the achievement of the intended impact or objective. This approach may also be effective in minimising administrative costs.

However, the role of eligibility criteria applied in such programs is of particular importance. In order to be effective, they must both:

- reflect the core objective of the program; and
- be capable of appropriate scrutiny and objective validation.

Unless that is the case, it will be more difficult for the responsible agency to accurately measure and report on actual achievement against the outcome for which the program funding was appropriated, as opposed to the commonly adopted approach of simply reporting the number of grants given as a performance measure.

⁸⁰ Australian Government Solicitor, Legal Briefing 83, op. cit., p. 9.

Another important consideration in establishing demand-driven programs is the potential for the program to become oversubscribed. This may result in the program needing to be closed to further applications earlier than originally planned, unless additional funding is made available. It is important that the potential for this situation to arise is assessed in the program's design phase, in order to appropriately inform:

- the decision as to whether a demand-driven program is the most appropriate vehicle for achieving the relevant government objective;
- the determination of the total funding that will be required to achieve nominated outcome levels; and
- a decision as to the maximum grant that will be available to an individual applicant to the program.

Ongoing monitoring of current and expected demand levels in order to provide appropriate and early advice to government, together with early establishment of contingency plans to facilitate the orderly withdrawal of the program should the need arise, are also important aspects of the implementation of a demand-driven program. Further, it is desirable for the program guidelines to clearly alert stakeholders to the potential for the program to be closed earlier than the publicised date should the available funds be exhausted, and the arrangements that will apply to any pending applications should that situation arise.

Equally, where demand falls well below expectations, it is unlikely that the program will be achieving the intended outcomes. In that circumstance, it is important for administering agencies to update demand forecasts based on appropriate data and market research, in order to provide budgetary and policy advice to government in relation to options for the reduction, amendment or cessation of the program.

Assessment criteria

Assessment criteria provide the basis on which it will be determined whether a compliant grant proposal merits funding under the relevant program, having regard for the program's objectives and the selection process set out in the guidelines.

Consider whether the grant will achieve desired outcomes that would not otherwise be achieved

The CGGs highlight that the effective appraisal of grant proposals is an important element in achieving value with public money, noting that:

A fundamental appraisal criterion is that a grant should add value by achieving something worthwhile that would not occur without grant assistance.⁸¹

In that context, as a general principle, unless a project would either not proceed, or would not proceed in the desired manner or time scale, without assistance, any grant paid simply releases the applicant's funds for other purposes that may not contribute to the objectives of the grant program. Funds paid in such circumstances provide no added value and also represent an opportunity cost.

Accordingly, an issue to be considered in establishing program guidelines is the extent to which it will be appropriate to incorporate specific criteria that will help to guard against grant funding failing to generate a net increase in achieved outcomes. Depending upon the nature of the program, this can include criteria relating to factors such as:

- retrospectivity—under which potential applicants are advised that funding will not be approved for expenditure already incurred or for projects or activities that have already commenced. In this context, unless allowed under the terms of the program, one of the clearest indicators that funding assistance is not essential is if the project starts, and/or the proponent enters into a legal or financial commitment in relation to the project, before the grant has been approved; or
- cost shifting—under which potential applicants are advised that funding will not be approved for projects or activities that are the responsibility of another level of government and/or which result in the Australian Government funding enabling another level of government to reduce the level of its own source funding that is applied to the relevant activity (resulting in a substitution of effort, rather than a net increase in effort from the grant funding).

81 Commonwealth Grant Guidelines, op. cit., p. 30.

Assessing overall value for money

An issue for agencies to remain cognisant of in both framing assessment criteria and assessing applications against those criteria is that, in some circumstances, applications may not represent value for money to the Australian Government despite appearing to satisfy certain criteria to a high level. Accordingly, it is important that the program guidelines and assessment procedures incorporate:

- appropriate advice to potential applicants in relation to how varying levels of achievement against a particular criterion will be viewed in the assessment process; and
- appropriate benchmarks and triggers to alert assessors to applications that would benefit from particular scrutiny from that perspective.

For example, a criterion commonly applied in grant programs is the extent of partnership funding contributions proposed in the application. Partnership (or 'cocktail') funding arrangements involve a project being financed from a range of different sources. It can also involve a project being divided into different components, so as to obtain funding from more than one source in order to deliver the overall project.

In administering partnership requirements, the focus is often on maximising the contributions from other partners in order to achieve a high degree of reported 'leverage' from the Australian Government funding, but with the outcomes from the project proposed by the applicant being assessed as arising from the grant being sought. The effectiveness of the assessment process will be enhanced by balancing this approach with a recognition that a high ratio of partnership contributions to Australian Government funding can be a strong indication that the project could well proceed without funding assistance. Accordingly, such grants may not represent value for money in that any grant funding is unlikely to result in outcomes that are in addition to those likely to be achieved through the funding already committed by the applicant and other parties.

Similarly, ANAO has observed instances in which projects have been assessed highly in relation to the outcomes claimed in the application, such as the number of jobs expected to be generated or the projected level of increase in community services, but where further examination of the information provided by the applicant, and otherwise available through public records, would have highlighted that the applicant was committed to the project regardless of whether the grant application was successful.

Even in circumstances where grant conditions require a project to have reached a certain stage before a grant will be given, the relationship between the objectives of the project and those of the grant program need to be clearly understood if funding assistance is not to be awarded unnecessarily. For example, awarding a grant primarily in order to secure favourable exposure by being associated with an important or high profile project that will proceed regardless of the Australian Government funding would be unlikely to represent a sound use of public money.

Weighting of criteria may be appropriate

Particularly where competitive funding rounds are utilised, the purpose of the assessment criteria (as set out in the program guidelines) is to provide an efficient and effective means of differentiating between eligible, compliant applications that are seeking access to the available funding.

A relevant consideration in this respect is whether it would be appropriate to assign relative weightings to individual assessment criteria, in order to target available funding at projects that exhibit particular characteristics. When determining whether weightings will be applied, it is important to consider the contribution each criterion makes to assessing the relative merits of an application against the objectives of the program. This will assist in ensuring that maximum value for money is achieved through the grants that are awarded. If a criterion is considered to be of marginal or relatively low consequence in that regard, it may be appropriate to consider eliminating it from the guidelines in the interests of streamlining the process for both applicants and the responsible agency.

The transparency, consistency and defensibility of the assessment process will be supported by:

- grant program guidelines making clear the extent, if any, to which nominated assessment criteria will be more heavily weighted (or favoured) in determining an application's overall assessment and, where relevant, relative ranking in comparison to competing applications; and
- the assessment process subsequently applied being transparently based upon the advice set out in the guidelines.

5.5 Capacity to waive or amend criteria during the assessment process

It is open to governments to amend the parameters of grant programs in response to changes in circumstances or program objectives. This will typically be given effect to by the issuing of revised guidelines for the conduct of subsequent rounds of a given grant program, or to set the parameters against which any further applications to an existing program will be considered for funding.⁸²

However, departing from the selection criteria advised to potential applicants during the assessment of applications submitted in response to those criteria is more problematic as it may be detrimental to the conduct of a transparent and equitable grant program. Where such amendments are considered necessary, robust grants administration will be supported by:

- the amendments to the program's published selection criteria being advised to stakeholders in a timely manner through the publication of revised guidelines; and
- the revised guidelines clearly identifying the extent, if any, to which the amended criteria will be applied to extant applications and/or whether potential funding recipients will have any opportunity to re-submit an application based upon the revised criteria. In this respect, it is advisable to avoid retrospective application of amended criteria to applications already lodged unless there is a clear public policy benefit from doing so, particularly where doing so would act to the disadvantage of the applicant.

In this respect, the CGGs indicate that there may be instances (such as emergencies, urgent or unforeseen circumstances) where it is considered necessary to waive or amend the eligibility or assessment criteria established for a granting activity, without such changes being reflected in a revision to the published program guidelines. However, the CGGs also advise that, in the interests of transparency, accountability and equity, the grant guidelines should document the circumstances in which this might occur.⁸³

The disclosure to all potential applicants of the circumstances in which amendment or waiving of published selection criteria might occur during the assessment of applications enhances transparency. However, as the CGGs further advise:

- agencies should seek appropriate authority before invoking provisions for waiving or amending eligibility and assessment criteria; and
- careful consideration should be given to seeking Ministerial authority in these circumstances, and appropriate records should be kept.⁸⁴

As the CGGs indicate, the circumstances in which it might be appropriate to consider invoking provisions for waiving or amending criteria during the application assessment process would be expected to be confined to emergencies, urgent or unforeseen circumstances. In this respect, as discussed above, in the normal course probity and transparency are likely to be best supported by a change in relevant circumstances being dealt with through formal amendment of the published program guidelines (or, alternatively, through the abolition of the existing program and the establishment of a new program).

82 For grant programs with a statutory basis, legislative amendment may be required.

83 The CGGs further advise that these issues should be addressed in the context of the ERC consideration of guidelines for new grant programs (Commonwealth Grant Guidelines, op. cit., p. 29).

84 *ibid.*

5.6 Documenting internal procedures

The parameters set down in the guidelines promulgated in relation to a grant program must be implemented by the responsible agency in a manner that supports both procedural consistency and cost-effective administration. In this respect, the CGGs advise that:

Agencies should develop such policies, procedures and guidelines as are necessary for the sound administration of grants. In the case of grant programs, this should include grant guidelines and associated operational guidance for the administration of the program. When developing such guidance, agencies must act in accordance with the CGGs.⁸⁵

Sound administration of a grant program is supported through the establishment of documented internal procedures to guide each aspect of the administration process, including the procedures and protocols that are to be applied in:

- seeking and receiving applications or grant proposals, including communication with proponents (both prior to proposals being submitted and during the assessment process);
- the assessment of applications or grant proposals, consistent with the program guidelines;
- submitting agency advice and funding recommendations in relation to assessed applications to the decision-maker for consideration, and recording the decisions made;
- advising successful and unsuccessful applicants of the outcome of their grant application;
- administering approved grants;
- evaluating project and program outcomes; and
- managing potential conflicts of interest, fraud or unethical behaviour through the application of internal controls.

It is important to document such procedures prior to the commencement of the application process and for there to be appropriate review and maintenance of the documented procedures over the life of the grant program (including through appropriate version control and change logs, so as to enable identification of the approved procedures that applied at various stages of program implementation). In particular, any changes to the approved program guidelines or administrative arrangements will need to be reflected in the documented procedures in a timely manner in order to ensure program administration remains consistent with the approved program parameters.

⁸⁵ *ibid.*, p. 23. The requirement for the operational guidance prepared in relation to a grant program to be in accordance with the CGGs is a mandatory requirement (see paragraph 3.25 of the CGGs).

6. Implementing the selection process



Key Points

A key consideration in the case of grant programs is whether decision-makers have equitably and transparently selected for funding the applications that represent best value for public money in the context of the objectives and outcomes of the granting activity, as set out in program guidelines. Achieving this objective is best supported by:

- establishing a robust process for the submission and receipt of applications;
- documenting and implementing an assessment process that is fully consistent with the parameters set out in the program guidelines; undertaken by appropriately skilled assessors; and which affords all applicants the same opportunities. The transparency and accountability of the assessment process will be promoted by any departures from the documented application and assessment processes being clearly reflected in the assessment material provided to the decision-maker, together with advice in relation to any resulting risks to probity and/or value for money. This will assist the decision-maker in demonstrating that they have satisfied their obligations under the financial framework and the CCGs (which highlight that the policies a grant proposal must not be inconsistent with in order to be approved include the relevant program guidelines);
- providing decision-makers with advice that effectively and consistently differentiates between projects of varying merit in terms of the selection criteria and the objectives of the program including, for competitive programs, a priority ranking of eligible applications based on their relative merits. In practice, this advice will include a clear funding recommendation in respect to each application, which will enhance the capacity to demonstrate that the policy intent underpinning the grants policy framework has been achieved, as well as assisting Ministers in meeting their reporting obligations in relation to the approval of grants; and
- the decisions taken in relation to grant applications being documented in a manner that promotes transparency and accountability and demonstrates compliance with all relevant statutory and policy requirements, including by recording the information on which the decision was based and the substantive reasons for the decision.



6. Implementing the selection process

The selection of funding recipients must be undertaken in a manner that demonstrates that the program parameters, as established by the Government and advised to the public, were being met; all relevant statutory and policy obligations were satisfied; and all applicants were treated equitably and fairly.

6.1 Receiving applications

For all grant programs, it is important to establish a system by which applications are registered as they are received, including recording the date and time of receipt, the party from whom the application was received and the manner of submission (for example, applications might be received via a web-based portal, email or hard-copy).

Appropriately recording the receipt of applications is an important aspect of grant program administration, regardless of the type of application process being used. For example, for programs not involving defined funding rounds, it provides a means of accurately tracking the level of actual program up-take over time. This can be assessed against the expected demand levels on which total program funding was based in the budgetary process, and advice provided to government as appropriate.

For rounds-based programs, this information is required in order to be able to identify whether each application was received by the published closing time on the nominated date. In the normal course, late applications would be considered ineligible under the terms of the program guidelines.

Where electronic application processes are used, agencies will need to consider the potential for technology difficulties to cause some applications to be submitted either late or incomplete. In other cases, unforeseen circumstances such as natural disasters may impact upon the timely receipt of applications from some applicants. The probity and integrity of program administration will be best supported by the protocols to be applied in situations of this nature being documented prior to the application process commencing.

Having an up-to-date register of existing applications may also be important in circumstances where there is a change made to the program's design or selection criteria and, therefore, a need to be able to differentiate applications received under the previous guidelines from those received under the revised guidelines. Tracking the receipt of applications is also an important input into resource management for the administering agency.

6.2 Appropriately resourcing the grant assessment process

An important aspect of achieving value for money in a grant program is establishing an assessment process that is efficient and effective in that it supports both:

- timely completion of the decision-making process; and
- robust assessment of grant proposals based on appropriate analysis and due diligence, having regard for the nature of the program and the program guidelines.

Applying insufficient or inadequately skilled resources to the management of a grant program increases the risk that the program's objectives may not be achieved in an efficient, effective and timely manner. Accordingly, it is important that officials involved in the assessment of applications have skills that are appropriate in the context of the relevant program.

On the other hand, the application of too much administrative effort is not an efficient use of funds and could divert expenditure away from the effective achievement of the objectives of the program. An important consideration in this respect is the extent to which efficiencies can be incorporated into the grants administration process. For example, as discussed in Chapter 4 of this Guide, the efficiency and consistency of assessing applications to a program that involves funding directed at applicants and/or projects of varying types could be enhanced through the use of dedicated teams that specialise in a particular stream.

6.3 Applying the criteria set out in the program guidelines

As discussed in Chapter 5 of this Guide, departing from the selection criteria advised to potential applicants is detrimental to the conduct of a transparent and equitable grant program, and may also be detrimental to the achievement of the program objectives from which the published criteria had been derived.

Departures from the published selection criteria can occur through a variety of means, including:

- the application of a different interpretation to a criterion than had been reflected in the guidelines available to applicants;
- the criteria that had been set out in the published guidelines being replaced by different criteria, either in whole or in part;
- the application of additional unpublished criteria to either exclude certain applications from further consideration, or to improve the opportunity for certain applications to be approved for funding; and/or
- the failure to apply certain criteria that had been set out in the published guidelines.

Given the criteria set out in the program guidelines are expected to have been soundly-derived from the program's stated objectives, the amendment or waiving of selection criteria during the assessment of applications is likely to increase the risk of projects that will not maximise value for money and program outcomes being nevertheless approved for funding. It can also give rise to perceptions that projects have been approved based on considerations other than merit, particularly where such departures occur in respect to some applications, but not others.

Reflecting this principle, the grants administration framework that has applied since 1 July 2009 requires decision-makers to make grant decisions in a manner that is consistent with the relevant program guidelines, including the selection processes and criteria set out in the guidelines. Accordingly, in the normal course, each of the criteria set out in the guidelines are to be applied in assessing applications, with no additional criteria able to be introduced.

In order to maintain the integrity of a grant program, it is important that any proposed amendments to either the terms of the published selection criteria and/or the manner in which the criteria will be applied are documented, appropriately considered and, where approved, formally incorporated into both the advice provided to potential funding recipients and the agency's internal assessment procedures.

6.3.1 Applying threshold criteria

Eligibility and other mandatory criteria advised to potential funding recipients must be transparently and consistently applied in the assessment process. It is advisable to confirm the compliance of each application with those criteria as the first stage of the assessment process. This aids the efficiency of program administration because, in the interests of probity and fairness, non-compliant applications would be expected to be clearly identified as ineligible and excluded from further consideration.

It is not appropriate for the failure of a proposal to satisfy a criterion expressed in the program guidelines as representing a threshold requirement to be presented as only reducing the overall quality of the proposal or as presenting a risk that would need to be managed should the proposal be selected for funding. Nor is it advisable for applications that have not satisfied mandatory requirements to be assessed and recommended for funding on the condition the proponents subsequently satisfy that requirement. Over time, such practices have been found to cause reputational damage to grant programs which, in turn, can adversely affect whether the desired program outcomes are able to be achieved.

An approach of that nature would diminish the capacity to demonstrate that all applicants have been consistently and equitably treated in the assessment process. It would also not accord fairness to other potential funding recipients, including those who may have chosen not to apply to the program on the basis of the information set out in the published guidelines.

It is important for any proposal to amend, reduce or remove threshold requirements from program guidelines to be based on sound analysis of the reasons for initially stipulating the requirement, and of the risks and benefits to achieving the program's objectives that may arise from amending that requirement, including the potential for unintended consequences to arise as a consequence of the amendment. As with other amendments to program guidelines, as discussed in Chapter 5 of this Guide, it is advisable that:

- any such changes be implemented through formal amendment of the published guidelines and applied consistently; and
- protocols in relation to whether the revised guidelines will apply to applications already on hand also be documented and approved.

Decision-making in relation to ineligible applications

Where the administrative arrangements agreed for a grant program provide for the Minister or a nominated official to be the sole decision-maker under the program, it will be necessary to submit applications assessed as ineligible to the decision-maker for final determination. In the interests of probity and transparency, any agency advice provided to the decision-maker in relation to such applications would be expected to clearly:

- identify the basis on which it is ineligible under the guidelines;
- advise that, as approval of the application would be contrary to the terms of the published guidelines, it would be unlikely to satisfy the decision-maker's obligations under the FMA Regulations and CCGs; and
- recommend that it not be approved for funding.

Where the decision-maker has agreed to administrative arrangements under which other officials are empowered to deem applications to be ineligible and exclude them from further consideration⁸⁶, that process may be finalised as part of the documented assessment, with the advice provided to the decision-maker at the conclusion of the assessment process either:

- excluding non-compliant applications (with the decision-maker being advised that this action had been taken in accordance with the agreed administrative arrangements); or
- for the decision-maker's information, clearly identifying those applications that had been deemed ineligible and, in accordance with the agreed administrative arrangements, reaffirming that this resulted in the merits of those applications not being further assessed against the program's guidelines.

6.3.2 Applying published assessment criteria and processes

Where relevant to the program design, applications identified as being compliant with all threshold requirements should progress to a full assessment in accordance with the guidelines approved and published for the program.

The assessment processes undertaken in relation to each application must be adequate and appropriate such that they represent inquiries that would be considered reasonable in the relevant circumstances in order to support a defensible decision to award or not award the grant. This is necessary in order to support the ability of the decision-maker to demonstrate that he or she has satisfied the statutory obligations that arise when deciding whether to approve a spending proposal (discussed further below).

86 See discussion in Chapter 3.

Robustness and adequacy of assessments

The extent of inquiry that will be reasonably required will vary depending upon the nature of the program, the projects for which funding is being sought and the type of criterion being assessed. However, an important consideration will be the extent to which it will be appropriate for claims made in proposals submitted to the program to be subject to independent verification, having regard for the relative importance of a criterion to the achievement of the program's objectives.

For example, the matters that would reasonably be considered in an assessment of a partner funding criterion would include the extent to which the applicant has provided documentation confirming that partnership funding proposed in the application will be forthcoming. In relation to an applicant's own proposed funding contribution, it may be prudent for the assessment to also consider the confirmed availability of the proposed funding (including through examination of relevant documentation), particularly where the applicant is proposing to finance its contribution through commercial borrowings or from working capital, or where the contribution is subject to formal approval processes. It may also be appropriate for assessors to seek to independently confirm claimed third-party contributions by contacting nominated project partners and/or examining public records (for example, Council meeting minutes where a contribution from local government is proposed).

In this respect, while the existence of multiple sources of funding is often viewed favourably as representing wide support for a project, it will represent an increased risk to project viability should the proposed contributions not be forthcoming, or where actual contributions are at a level lower than that proposed by the application. This risk is heightened for applicants that have few financial resources of their own to contribute to the project. The reliability of assessments of partner contributions proposed by applicants will be enhanced by benchmarks for the achievement of nominated ratings being articulated in the program guidelines and internal procedures, and those benchmarks being consistently applied in the assessment process. For example, the guidelines could identify the various ratings that will be assigned to an application based on the proportion of project costs represented by partner contributions.

Similarly, effectively assessing and managing viability risks to both applicants and projects will be a critical factor affecting the success of many grant programs in producing sustainable, desirable outcomes. A fundamental underpinning for the effective identification and assessment of viability risks is for sufficient and appropriate information to be obtained for analysis.

This does not mean that higher risk projects that have been assessed as satisfying any threshold criteria and meeting other assessment criteria to a high standard should not necessarily be funded. It simply means that sufficient information is required to fully appreciate the risks so that an informed decision can be made as to whether they can be either accepted or cost-effectively mitigated, should the grant be approved, or that the risks are such that the grant should not be approved.

The obligation on agencies to undertake appropriate due diligence in the conduct of grant programs has been well recognised, including by Parliamentary Committees. For example, in the report of its inquiry into the funding of a Dairy Regional Assistance Program application, the then Senate Finance and Public Administration References Committee commented that:

In a government grants program... the administering department has a responsibility to conduct thorough checks on applicants to ensure that any funding decision takes account of all relevant information.⁸⁷

In this respect, it is important for agencies to:

- carefully consider the form and content of the information that will be sought through the application process;
- ensure that all required information has been provided by the applicant or otherwise obtained; and
- subject the information obtained to robust analysis. This may require utilising external experts to supplement the skills available within the agency. Where relevant, the efficiency, effectiveness and consistency of the assessment process will be enhanced by the assessment procedures established for the program setting out parameters to guide decisions on when external advice is to be sought in relation to an application, including through consideration of the size and complexity of the overall project, as well as the quantum of funding being sought.

⁸⁷ Senate Finance and Public Administration References Committee, *A Funding Matter Under the Dairy Regional Assistance Program*, June 2003, p. 47.

6.4 Agency advice to the decision-maker

The CGGs advise that:

The design of a granting activity should ensure that decisions in relation to the approval or refusal of applications for grants are transparent, well documented and consistent with the legislative and policy requirements set out in Chapter 3 of these CGGs.⁸⁸

In that context, the assessment and decision-making processes implemented in relation to a grant program need to accord with the processes set out in the promulgated guidelines. As also noted, the CGGs advise that unless specifically agreed otherwise, competitive, merit-based selection processes should be used, based upon clearly defined selection criteria.

An appropriately conducted competitive, merit-based grant selection process involves all eligible, compliant applications being assessed in the same manner against the same criteria, and then being ranked in priority order for receipt of the available funding based upon the outcome of those assessments. This advice is then provided to the decision-maker for his or her consideration.

6.4.1 Method and scale applied in rating and ranking applications

It is important for careful consideration to be given to the method and scale that will be applied in rating and (where relevant) ranking individual applications. The process should provide for the consistent application of the selection process outlined in the published guidelines (including any relative weighting between criteria identified in the guidelines—as discussed in Chapter 5 of this Guide), and (for competitive selection processes) be able to effectively and consistently differentiate between projects of varying merit in terms of the selection criteria.

Numerical rating scales have the advantage of being able to differentiate quite effectively between individual projects and classes of project. Scoring applications against criterion using qualitative ordinal scales (such as: High/Medium/Low or Highly meets/Generally meets/Barely meets/Does not Meet) makes it inherently more difficult to arrive at an overall rating for each application. Further considerations are that:

- the use of ordinal scales usually results in fewer rating points, with a greater number of applications in each rating point than with numerical scales;
- there are not fixed differences between the respective ratings when an ordinal scale is used; and
- there is not a clear basis for consistently combining qualitative ratings against each criterion into an overall qualitative rating of individual applications, or for forming conclusions in respect to the relative merits of applications assigned the same overall rating.

These factors are likely to make it more difficult for decision-makers to differentiate the relative merits of projects within the same rating point on the ordinal scale, as well as diminishing the demonstrable equity and robustness of the assessment process. This is illustrated in Figure 10.

88 Commonwealth Grant Guidelines, op. cit., p. 28.

Figure 10

Example of a comparison of numerical and ordinal rating scales

Application X	Numerical Rating Scale										Ordinal Rating Scale				
	1 lowest	2	3	4	5	6	7	8	9	10 highest	Low	Low Medium	Medium	Medium High	High
Criterion 1 [#]										✓					✓
Criterion 2					✓								✓		
Criterion 3						✓							✓		
Criterion 4							✓							✓	
Criterion 5								✓						✓	
Criterion 6		✓									✓				

Most important criterion that is weighted as being twice as important as any other criterion.

Note 1: Under the numerical scale, the aggregated score for Application X would be 49 out of 60 (i.e. ((2x10)+5+6+7+9+2).

Note 2: Under the ordinal scale, it is not clear as to what combination of ordinal rating would equate to an overall score of Low, Low/Medium, Medium, Medium/High or High.

Source: ANAO analysis.

Equally, however, care should be taken with the range of numerical ratings for each criterion and the weighting of the criterion relative to others to avoid potential misinterpretation or unintended consequences. Numerical rating scales will only produce useful results if they are based on a sound underlying methodology. The assumption underlying the production of an aggregate score from a numeric scale is that, using the example in Figure 10, a rating of ten indicates ten times more satisfaction of the criteria than a rating of one and so forth for the other ratings. If this is not the case, it is only an ordinal scale that uses numbers to identify the categories, rather than qualitative descriptors.

6.4.2 Documenting the assessment process

In the interests of transparent and accountable grants administration, it is necessary for the assessment of applications to be adequately documented. This involves those responsible for undertaking the assessment documenting, for each application, the information that was considered, and the conclusions reached, in respect to:

- each of the threshold criteria; and
- for compliant applications, each of the assessment criteria.

Typically, the results of the assessment process in relation to each application are then documented in a project brief provided to the decision-maker that provides a summary of the assessment against each criterion, as well as an overall conclusion/rating concerning the application. The appropriate level of detail included in the assessment brief for each application will depend upon the nature of the program. These individual assessments can then be used as the basis for determining an overall ranking of competing applications (in a competitive merit-based process) or to identify those applications that may be funded (in non-competitive program). The approach of preparing individual assessments of each application received has considerable merit, and should be adopted wherever practical.⁸⁹

⁸⁹ Amongst other things, this approach helps decision-makers meet their obligations under Regulation 12 to record in writing the basis on which the approver is satisfied that approved grants comply with Regulation 9, as well as providing transparency of the reasons for not approving grants for other applications.

6.4.3 Agency funding recommendations

As noted, the Minister for Finance and Deregulation has stated that the CGGs are intended to improve the transparency and accountability of grants administration, with the Government having mandated transparent and accountable decision-making processes for grants and timely public reporting through agency websites.⁹⁰

The CGGs stipulate that Ministers will not approve a grant without first receiving agency advice on its merits.⁹¹ In practice, advice on the merits of a grant application includes a clear agency recommendation to the Minister concerning whether or not funding should be approved for that application under the program guidelines. Finance has confirmed that this reflects the policy intent underpinning the requirement that Ministers obtain prior agency advice. In particular, as part of its response to the Strategic Review, in December 2008 the Government agreed to a recommendation that the advice and related briefing material provided to Ministers on grant program approvals should explicitly address the requirements of the FMA Regulations and make a clear recommendation.⁹² That approach is also supported by the context in which the policy requirement was developed, and other related mandatory requirements also set out in the CGGs.⁹³ In particular, Ministers are required to report annually to the Finance Minister on all instances where they have decided to approve a grant which the relevant agency had recommended be rejected.

In that context, the absence of a clear recommendation from agencies as to whether a proposed grant should be approved or not will significantly diminish both the extent to which the intent of the policy requirements set out in the CGGs is demonstrably achieved, as well as the capacity for Ministers to ensure they consistently and demonstrably comply with their obligations.

For example, an approach under which the agency assesses an application as having little merit against the program guidelines, but makes no formal recommendation that it not be funded, may result in the Minister not reporting approval of that grant to the Finance Minister on the basis that the agency had not formally recommended that it be rejected. As well as diminishing the transparency of the decision-making process, this scenario also raises the potential for inconsistent practices to develop across grant programs, which is contrary to the purpose of promulgating a standard grants policy framework.

In addition, the new requirement under FMA Regulation 12 for approvers of grants to record the basis for their decisions is particularly relevant in circumstances where the decision-maker reaches a decision that is not consistent with the agency assessment of the application against the program guidelines. Inclusion of formal funding recommendations in the advice provided to decision-makers by agencies will assist in highlighting to approvers those instances in which it will be necessary for them to document the basis for any decision to approve the grant.

Practices that would not sit comfortably with the new policy framework for grants decision-making include:

- the decision-maker being provided with a list of projects variously rated against qualitative ratings (for example, *High*, *Medium*, *Low*) but with no recommendation or advice as to:
 - which individual projects were ranked highest and should be preferred for approval within the available funding, having regard for their capacity to contribute to the achievement of program objectives both in relation to their assessment against the criteria and in comparison to other eligible applications, or
 - which projects the agency recommends should not be funded, having regard for their capacity to contribute to the achievement of program objectives both in relation to their assessment against the criteria and in comparison to other eligible applications; or

90 Commonwealth Grant Guidelines, Foreword, op. cit., p. v.

91 *ibid.*, paragraph 3.19.

92 Review of the Administration of Australian Government Grant Programs, op. cit., Recommendation 7(c) and (d), p. 66.

93 As noted in Chapter 2, the requirement that Ministers obtain agency advice before approving a grant was first introduced in December 2007 as part of interim arrangements for grants administration established through Finance Minister's Instructions pending the outcome of the 2008 Strategic Review. In particular, the interim arrangements specified that: Ministers were not to make decisions on discretionary grants without first receiving departmental advice on the merits of the grant application; and if a Minister chose not to follow departmental advice, the decision to award or reject a grant would be referred for determination by a Ministerial Group. The interim arrangements were, accordingly, premised on the agency advice clearly indicating whether the agency considered that the grant should be approved. As also noted, the revised Finance Minister's Instructions issued in January 2009 and, from 1 July 2009, the CGGs have similarly required that Ministers obtain agency advice on the merits of a proposed grant before approving the grant, as well as imposing reporting obligations on Ministers where they decide to approve a grant which the relevant agency has recommended be rejected.

- a minimum threshold approach under which the decision-maker is provided with a short list of all applications that, based on a risk assessment (rather than the application of objective, comparative assessment criteria), the agency considers could be funded subject to available funding but without any recommendation as to which individual applications were ranked highest and should be preferred within the available funding having regard for their capacity to contribute to the achievement of program objectives both in relation to their assessment against the criteria and in comparison to other applications.

6.4.4 Clearly identify in agency advice to the decision-maker any limitations on the assessment processes undertaken

The transparency and accountability of the assessment process will be promoted by any departures from the requirements set out in the program guidelines and application form being clearly advised in the assessment material provided to the decision-maker. For example, this would involve the assessment clearly identifying to the decision-maker any instances in which required information had not been provided; appropriately qualifying the assessment of the application against the relevant criteria; and informing the decision-maker of the extent of any heightened risks that result.⁹⁴

As noted, the CGGs indicate that there may be instances, such as emergencies, urgent, unforeseen or exceptional circumstances, where it is considered necessary to waive or amend the criteria established for a granting activity, but that, in the interests of transparency, accountability and equity, program guidelines should document the circumstances in which such this may occur. Where the inclusion in such provisions in program guidelines has been agreed, the CGGs further advise that:

- agencies should seek appropriate authority before invoking such provisions; and
- careful consideration should be given to seeking Ministerial authority in these circumstances and appropriate records should be kept.⁹⁵

In that context, it is important that applications that are 'fast-tracked' for funding consideration, including through the application of amended criteria or the waiving of criteria, in response to the sort of urgent or unforeseen circumstances described in the CGGs are still subjected to appropriate levels of due diligence and scrutiny. Similar considerations apply when assessments are truncated in response to requests from a Minister or his or her Office that the agency bring forward advice on a proposed grant within a short timeframe.

Where ever the extent of scrutiny and assessment undertaken in relation to a proposed grant has been restricted or truncated, it is important that agencies appropriately qualify the advice and funding recommendation subsequently provided in relation to the proposal. This is necessary to appropriately inform the decision-maker in relation to his or her obligation to be satisfied, based on reasonable inquiries, that the grant would make proper use of the public money before giving approval.

As relevant, this will include advice of any limitations or gaps in the information that was available to the assessment; any matters that had not been examined or on which the agency had been unable to form a view; and the risks to value for money that these limitations give rise to. The funding recommendation provided should be based upon the extent to which the agency has been able to establish the proposed grant's merits under the program guidelines. A proposal that does not demonstrably satisfy the selection criteria set out in the guidelines would generally result in a recommendation that it not be approved, having regard for the requirements of the CGGs and Regulation 9.

6.4.5 Engagement with applicants or their representatives during the decision-making process

In the interests of probity, all eligible applicants to a grant program should have equitable opportunities to access funding. This includes in relation to the extent, if any, to which applicants or representatives of applicants will be given an opportunity to engage with, or make additional representations to, either:

- agency officials and/or advisory panel members undertaking the assessment process; or
- Ministerial or other decision-makers prior to the grant outcome being formally determined and announced.

⁹⁴ As noted in Chapter 5 of this Guide, it would be advisable for program guidelines to stipulate whether incomplete applications will be considered for funding.

⁹⁵ Commonwealth Grant Guidelines, op. cit., p. 29.

In the normal course, unless the program guidelines specifically provide applicants with the capacity to make representations in support of their application, it is advisable for contact with applicants to be limited to that necessary to keep them appropriately informed and for such contact to be conducted through formal, documented processes. For example, it may be appropriate to provide applicants with written acknowledgement of receipt of their application and/or to provide a help line over which applicants will be able to seek general advice on the progress of the decision-making process for the program.

The extent to which it will be necessary or appropriate for assessors to engage more directly with applicants during the assessment process will vary depending upon the nature of the grant program. In some cases it will be appropriate and reasonable to base the assessment process entirely on the information submitted with the application. For example, this would generally be the case for programs involving a large volume of applications seeking relatively small amounts of funding for straightforward purposes.

Particularly for programs involving proposals seeking funding for more complex and/or high value projects, appropriately conducted correspondence (including via email) between assessors and applicants during the assessment process may be important to ensuring assessments and funding recommendations are well informed and soundly based. This may involve assessors seeking clarification of information submitted with the application and/or requesting additional information identified as necessary to fully assess an application against the guidelines. Again, it is prudent for such inquiries to be recorded and conducted through procedures that are clearly documented in the material made available to applicants (such as the program guidelines) and the internal procedures established for the program.

Equally, while Ministers may find access to additional information that applicants may offer or be able to provide useful to inform their decisions, it is important that there be a clear understanding on the arrangements that will apply in circumstances where the assessment process is still active. This will assist in avoiding perceptions that some applicants have been provided with an opportunity to engage in that process in a manner that is not generally available or made known to potential applicants. Accordingly, it would be prudent for agencies to, in consultation with Ministers, also develop protocols that provide for contact between applicants and the Minister or his or her Office during the decision-making process to be documented and incorporated into the record of the program's administration, particularly where they are significant to Ministerial consideration of individual grant applications.

The situation is more complicated when it comes to applicants or potential applicants approaching their local Federal Member of Parliament for assistance with securing grant funding. It is important for grants administrators and decision-makers to recognise that:

- Australia's parliamentary system is based on the principles of representative and responsible government; and
- Members of Parliament are elected by the people to govern Australia in the public interest and individuals are able to approach a Member of Parliament, including Ministers, for assistance.

Against this background, instances of Parliamentarians seeking to make representations to Ministers or agency officials in respect to applications for grant funding need to be handled sensitively and in a way that does not compromise the integrity of any selection processes. There is a role for program guidelines in explicitly addressing how such representations are to be handled and taken into account in the assessment and decision-making process. For example, if such representations are to be viewed favourably, it would be inequitable for the guidelines not to advise all potential applicants of this. Otherwise, there is the potential for the program to fund the applications that are best represented rather than those that are most meritorious.

Addressing the handling of representations from Parliamentarians in the program guidelines would also assist Ministers, given they are expected to discharge their responsibilities in accordance with wide considerations of public interest. Where arrangements are put in place to provide assistance through grant programs, this public interest includes equitable treatment of participants. Consistent with this principle, the December 2007 Standards of Ministerial Ethics outline a Minister's obligations in respect to integrity, fairness, accountability, responsibility and to act in the public interest.⁹⁶

⁹⁶ Australian Government, *Standard of Ministerial Ethics*, December 2007, p. 2 <accessed on 25 March 2010 from http://www.pmc.gov.au/guidelines/docs/ministerial_ethics.pdf>.

6.5 Demonstrating compliance with the legislative and policy obligations on the approver

As discussed, FMA Regulation 9 sets out specific legislative requirements that must be satisfied in order for an approver to properly approve a grant. In addition, the CGGs set out a number of grants-specific decision-making and reporting requirements that apply where Ministers are the approver. Accordingly, it is important that the decision-maker's consideration of, and decisions in relation to, agency assessments and funding recommendations are recorded in a manner that promotes transparency and accountability and which is capable of demonstrating compliance with relevant statutory and policy obligations.

6.5.1 Demonstrating compliance with FMA Regulation 9

Regulation 9 establishes a single test—comprising a number of elements—which must be applied by an approver in considering a spending proposal. An important change in the financial management framework introduced in concert with the implementation of the grants policy framework was the amendment of Regulation 12 to include an additional requirement for grants under which the approver of a grant *must* record in writing the basis on which he or she is satisfied that the grant complies with Regulation 9.

The essential limbs of Regulation 9 that an approver must comply with in exercising his or her judgement as to whether to approve a proposed grant are:

- to undertake, or cause to be undertaken, such inquiries in relation to the proposed grant as are reasonable in the context of the grant program; and
- on the basis of those inquiries, determine whether he or she is satisfied that the proposed grant would make proper use of Commonwealth resources. In order to satisfy this test, the approver is required to be satisfied that the grant:
 - will make efficient, effective and ethical use of the Commonwealth resources involved; and
 - is not inconsistent with the policies of the Commonwealth.

Documenting the inquiries that were undertaken

It is important to remember that, regardless of the funding recommendation submitted by the agency, the outcome of the process prescribed by Regulation 9 may result in the program decision-maker deciding not to approve a particular grant proposal. Indeed, Regulation 9 prohibits an approver from approving a grant where he or she is not satisfied as to the matters specified. Alternatively, the decision-maker may decide that, following completion of that process and consideration of the resulting information, he or she is in a position to properly approve the grant. In either scenario, the decision-maker is required to base their decision upon the outcome of reasonable inquiries.

Approvers need to exercise their judgement in determining what are 'reasonable inquiries', taking into consideration the significance and value of the proposed grant and any associated risks or sensitivities, with an important consideration being whether the approver has marshalled sufficient information to make a defensible decision.⁹⁷ In the context of a grant program, the inquiries undertaken need to be sufficient to assess the merits of a grant in relation to the criteria set out in the guidelines promulgated for the program. In the normal course, those inquiries will be undertaken through the assessment process undertaken by the relevant agency and/or advisory panel.

Where Ministers or other decision-makers agree with the agency funding recommendation, they are able to point to the agency assessment and advice as representing the reasonable inquiries they have made as required by Regulation 9, so long as they are satisfied that the assessment was conducted with rigour and in accordance with the guidelines. In this latter respect, as noted, it would be expected that the advice provided would highlight any aspect of the assessment that may have been truncated or not completed.

97 Finance Circular 2009/05, op. cit., p. 9–10.

Different conclusions can often legitimately be drawn from the same set of information. Where decision-makers form a contrary view to the agency recommendation based entirely on the inquiries and information contained in the agency assessment, it will be necessary for the decision-maker to identify the basis for their alternative conclusion (this issue is discussed further below in relation to documenting the basis for approvals).

However, Ministers may also elect to make further inquiries or undertake additional assessment processes (either personally or through their advisers), with agency officials being unaware of the nature or extent of those inquiries or assessment processes.⁹⁸ Where decision-makers either fully or partly base a decision to approve a grant on information or advice that is additional to that considered in the assessment process, they will need to document, for retention within the records of the administration of the grant program, the nature of that information (and, where relevant the inquiries that may have been undertaken to obtain it) and the manner in which it was taken into account in the decision-making process.⁹⁹ Applying the same approach in relation to grants that are not approved on the basis of additional inquiries undertaken by the decision-maker and/or information that is additional to that considered by the agency will aid program transparency and accountability.

Demonstrating the basis on which the approver determined whether a grant would make proper use of Commonwealth resources

Under Regulation 9, an approver must not approve a grant unless he or she is satisfied that the expenditure will make efficient, effective and ethical use of the public money 'that is not inconsistent' with the policies of the Commonwealth. In practical terms, that latter requirement means that the expenditure must be consistent with all relevant policies. The CGGs stipulate that the policy requirements relating to grants administration include:

- the CGGs—accordingly, approval of a grant through a process that is inconsistent with the CGGs will not satisfy the requirements of Regulation 9; and
- the guidelines applying to a particular grant program—as a result, approval of a grant that is not compliant with the guidelines, including selection criteria, established for the relevant program or through a process that is inconsistent with that set out in the guidelines will also not satisfy the requirements of Regulation 9.

Accordingly, decision-makers will necessarily be required to base the rationale for a funding decision on the merits of the relevant application when considered against the program guidelines. Where the guidelines have stated that funding recipients will be determined based on a competitive, merit-based selection process, this will need to include consideration of the relative merits of competing eligible applications.

As discussed above, where decision-makers agree with the agency funding recommendation in respect to a grant application (irrespective of whether the recommendation was that it be approved or not approved), they are able to point to the agency assessment against the program guidelines as documenting the basis on which they have concluded whether the grant would make proper use of the Commonwealth resources for the purposes of Regulations 9 and 12 (as long as they are satisfied that the assessment was conducted with rigour).

Where decision-makers decide to approve a grant that the agency had, based on its assessment, recommended be rejected, the decision-maker will be required to separately document the substantive reasons for the approval, either at the time of giving the approval or as soon as practicable thereafter. In such circumstances, as noted, the CGGs further require that Ministers report annually to the Finance Minister on all instances where they have decided to approve a grant that the agency recommended be rejected, including a brief statement of the basis for the approval.

In that respect, it is also important to recognise that, in the context of a grant program, transparency of the reasons for not approving funding for individual applications is as important to accountability as it is in relation to decisions to approve other applications. Accordingly, it would be good practice for agencies to invite Ministers and other decision-makers to also record the basis for any decision not to approve an application that the agency assessment had indicated merited funding.

⁹⁸ In accordance with the CGGs, it is important that any additional processes applied accord with the program guidelines. As discussed in Chapter 3, a further consideration in this respect is that, depending upon the circumstances and the role played in the selection of successful applicants, staff within a Minister's Office who undertake assessment and selection processes in relation to a grant program may be considered 'officials' that are subject to the grants policy framework in undertaking that task.

⁹⁹ This is necessary for the approver to satisfy his or her obligations under FMA Regulation 12.

Documenting the basis for funding decisions is of particular importance where the program guidelines had stated that successful applicants would be selected through a competitive, merit-based process. In those circumstances, transparent and accountable grants administration will be promoted by the decision-maker documenting not only the basis on which he or she concluded whether an individual application had merit in its own right, but also the reasons for either elevating or demoting an application as compared to the ranked order of priority indicated by the assessment process.

The documented assessment and decision-making process must be maintained consistently as part of the official record, in accordance with National Archives of Australia standards and guidelines, and be accessible under Freedom of Information provisions as applicable.

6.6 Approving applications to the limit of available appropriation funding

The total funding that will be available under a grant program is identified at the time of announcing the program and, for programs that are to be delivered through funding rounds, the total amount that will be available through a particular round is commonly announced as the round is opened to applications. The identified funding envelope is made available through the budgetary process, either as a specific Budget measure appropriated to the relevant agency or through the appropriation allocation process reflected in the Portfolio Budget Statements.

In that context, it is common for grant programs to be oversubscribed, with the funding sought by applicants exceeding the available funding. In that circumstance, the application of appropriately robust, transparent and accountable assessment and selection processes will be important in determining which applicants will be successful within the available funding.

However, in that process, it is important for agencies and decision-makers to remain cognisant of the fact that only compliant, eligible applications that will demonstrably provide value for the public money involved should be selected for funding, given the requirements set out in Regulation 9 and the CGGs. As discussed, applications that do not satisfy the assessment criteria set out in the program guidelines are unlikely to meet those requirements.

Accordingly, under the financial management and grants policy frameworks, it is not acceptable for applications to be approved in order to exhaust the available appropriation despite insufficient applications of adequate quality being on hand. In some circumstances, it would be prudent for agencies to include advice to this effect in the advice provided to decision-makers (noting that agencies are responsible for advising Ministers on the requirements of the CGGs, and *must* take appropriate and timely steps to do so where a Minister exercises the role of financial approver in grants administration¹⁰⁰).

6.6.1 Consider retaining contingency funding

Even in circumstances where sufficient high quality applications are received to fully allocate the funding available under a grant program, it is advisable for agencies to consider the merits of retaining a proportion of funding as a contingency element.

For example, the importance of decisions to fund infrastructure projects being based on robust cost estimates is well recognised. Nevertheless, it is not possible for the application of cost estimating standards to eliminate cost overruns. Accordingly, the management of cost overruns, as well as any savings for individual projects, is an important aspect of the overall management of infrastructure funding programs.

While Australian Government grants are usually expressed to be financially capped to the approved amount, in some circumstances unanticipated cost increases are unable to be met by the funding recipient and other partner funding may not be forthcoming. This can result in a reduction in the scope of works undertaken for the project (with a commensurate decrease in the benefits achieved from the grant) or, in some cases, the viability of the project may be compromised.

Particularly for grant programs that are funding activities with an identifiable history of cost increases, it would be prudent for agencies to document consideration of this issue in the design and implementation of the program.

100 Commonwealth Grant Guidelines, op. cit., paragraph 3.23.

6.6.2 Additional funding for oversubscribed grant programs

In some cases, government may decide to make additional funding available for a grant program in order to promote the achievement of program objectives and/or to satisfy previously unmet demand. In that circumstance, the principles of value for money, probity and accountability will be promoted by:

- in circumstances where it is proposed to re-consider funding for applications that were submitted under a previous funding round, providing applicants with the opportunity to advise whether they wish to continue with the application and, if so, update any details (such as projected timeframes, estimated costs and the amount of any partner funding); and
- where new applications are to be considered, providing potential applicants with equitable access to this opportunity.

6.7 Announcing grants

The announcement of grants can be a very sensitive issue at any time but especially in the lead up to an election, be it for Commonwealth, State, Territory or local governments. It is accepted that governments may choose the timing of announcements to suit their purposes having regard to other priorities. Nevertheless, from a program administration perspective and as a matter of good practice, it is preferable for all decisions on approved or unsuccessful projects to be announced together as soon as practicable after the decisions have been made, or within a relatively short period of time.

This approach enables proponents to know the outcome of their proposals as soon as possible so they can begin implementing their projects or pursue alternative sources of funding. It also has the added advantage of avoiding any perception that the timing of announcements is being used for party-political purposes. Avoiding such perceptions will be further aided where, irrespective of their political affiliation, all relevant Federal Members are provided with similar opportunities to be involved in the announcement of funding and promotion of the achievement of project milestones.

A further consideration in this respect is the announcement of grants that have been approved subject to conditions which, if not satisfied, will result in the withdrawal of the grant. The public announcement of grant approvals, particularly when done through media releases involving the local Member or candidate of the party then in government, necessarily involves an element of promotion to the broader community. In that context, it would be appropriate for the intended audience of the announcement to be provided with all relevant information in relation to the grant, including appropriate reference to the existence of any funding conditions that will need to be satisfied before the grant will proceed.

6.7.1 Publication of approved grants on agency websites

The CGGs stipulate that an agency *must* publish, on its website, information on its individual grants no later than seven working days after the funding agreement for the grant takes effect.

Instructions for publishing grant information on agency websites is set out Attachment A to Finance Circular No. 2009/04, *Grants—Reporting Requirements*.¹⁰¹

101 Available at <<http://www.finance.gov.au/publications/finance-circulars/index.html>> [accessed 16 December 2009].



7. Administering approved grants



Key Points

The expectation is that grants will have been approved on the basis that they will contribute to achieving the relevant program's stated objectives. Accordingly, it is important that approved grants are administered in a manner that will promote cost-effective and accountable achievement of those objectives. Key considerations include that:

- agencies should seek to engage and manage risks to the achievement of program objectives, including risks relating to individual grants. Some risks can be managed through the funding agreement, but others are best managed as an element of determining which projects should be approved for funding;
- the funding agreement, which must be fully consistent with the terms of the decision-maker's approval, provides the mechanism for identifying the outcomes expected to result from an approved grant and the governance arrangements that will apply, including for the management of relevant risks;
- effective planning of the strategy to be used in paying approved funds to grant recipients helps to ensure that relevant budgetary factors are taken into account and that there is appropriate observance of the obligation to make proper use of the public money involved, including appropriate management of the risk of fraud or non-completion of the project;
- an on-going monitoring regime to ensure funding recipients are meeting agreed milestones and other key requirements of their funding agreements is integral to the success of a grant program. Early identification of projects requiring remedial action and/or increased oversight will assist in minimising the consequences for program administration; and
- an essential component of any grant program is the establishment of an effective performance framework that enables the administering agency to reliably establish the outcomes achieved through individual grants, as well as overall program outcomes.



7. Administering approved grants

The approach taken to administering approved grants is instrumental to achieving the expected community benefits and value for money on which the approval was based, and in ensuring there is appropriate accountability to the Parliament and the community for the outcomes achieved through the expenditure of the public money involved.

7.1 Introduction

In administering approved grants, agencies must comply with the overarching obligation to make efficient, effective and ethical use of Commonwealth resources that is not inconsistent with the policies of the Commonwealth.

A range of guidance on establishing and administering funding agreements and an effective performance information framework for grant programs is set out in the CGGs and associated guidance from Finance, as well as in guidance published by the Australian Government Solicitor.¹⁰²

Key points of good practice in administering approved grants are summarised in this chapter.

7.2 Risk management

Risk management is an integral part of effective public administration, including for grant programs, and plays an important part in securing value for money for the Commonwealth. From the initial program planning and design stage through to the final evaluation of a completed program, structured risk management will promote more effective and transparent decision-making and efficient resource allocation.

The importance of appropriate risk analysis to informing sound grants administration is reflected in the seven key principles established in the CGGs, which are focused on achieving the outcomes required by government in a manner that maximises transparency, accountability and cost-effectiveness from the perspective of both the community and the administering agency. Guidance on the application of risk management in grants administration is set out in the CGGs, including in relation to managing the potential for risks to:

- the achievement of program objectives and value for money, including through the selection of inappropriate grant recipients or the failure of approved projects to achieve the expected outcomes;
- public confidence in the equity, probity and accessibility of the program, including the capacity for Ministers and agencies to demonstrate that all relevant statutory and policy obligations have been met and that appropriate fraud control and other internal procedures were implemented;
- the efficiency of program administration for both the agency and potential funding recipients; and
- the ability of agencies to clearly identify and evaluate the outcomes actually achieved through the expenditure, both in relation to individual grants and the program as a whole.

¹⁰² See Australian Government Solicitor, Legal Briefing 83, op. cit.

7.2.1 Appropriate strategies and controls

Risk management involves the systematic identification, analysis, treatment and allocation of risks, both in relation to the overall design of a grant program and in the assessment and, where relevant, administration of individual grants. There are five strategies that can be adopted for treating risks in the context of a grant program:

- accept the risk and leave it untreated;
- avoid the risk by choosing a different course of action;
- treat the risk, bearing in mind that there is a trade-off between the cost of the treatment and the benefit derived from the level of reduction in the risk achieved;
- transfer the risk to the grant recipient—the appropriateness of this approach needs to be considered in terms of the capability of the recipient to manage the risk. In general, risks should be allocated to the party best equipped to manage them at least cost. In the context of grant programs, relevant considerations include:
 - if transferring risk to grant recipients as an element of program design is likely to adversely affect the extent to which intended funding recipients subscribe to the program, it may be appropriate to re-examine the design and/or re-consider whether a grant program is the most appropriate vehicle for achieving the relevant government objectives¹⁰³; and
 - care needs to be taken in using the transfer of risk to funding recipients as a basis for approving and administering individual grants. For example, a common practice has been for an assessed risk of project funding shortfall to be transferred to the funding recipient through an obligation to accept responsibility for any project cost increases. While this approach may appear to mitigate the risk to the Australian Government, it may not be effective in terms of maximising program outcomes from the grants approved. In particular, approved projects may not be delivered as envisaged where funding recipients are unable to source funding to meet increased costs; and
- retain the risk—some level of residual risk will often be retained following risk reduction measures, where the residual risk is considered acceptable, or because of other reasons that require them to be retained by the public sector organisation.

Managing risk is not the same as avoiding risk. Agencies should seek to engage risk and manage it, taking into account not only the likelihood of risks eventuating, but also their impact. Managing risk in the context of a grant program is also not a 'set-and-forget' function to be undertaken once at the outset of the program. New and/or different risks can be expected to emerge over the life of a program, having regard for changes in the administrative and political environment in which it is being delivered, together with the potential for the risk-profile associated with individual grants to change between initial submission of an application, approval of the grant and finalisation of the grant acquittal process.

Further guidance on the role of risk management and analysis in sound grants administration can be found in Part II of the CGGs, particularly in relation to the key principles of:

- robust planning and design;
- proportionality;
- governance and accountability;
- probity and transparency; and
- value for money.

More detailed guidance on risk management can be found in the Risk Management Standard AS/NZS ISO 31000:2009 *Risk management—Principles and guidelines*.

¹⁰³ For example, some programs are designed such that grant payments are made on a reimbursement basis—sometimes referred to as 'rebates'. In some circumstances, this approach is effective in mitigating risks to the program, but may not be appropriate in terms of maximising program outcomes in other circumstances.

7.3 Establishing and managing funding agreements

In order for a payment of Australian Government funding to be subject to the grants policy framework, the recipient must be required to act in accordance with terms or conditions specified in the arrangement. The document setting out the terms and conditions on which a grant is provided is commonly described as a 'funding agreement', but can take a variety of forms.

The CGGs advise that, wherever possible, an enforceable agreement should be established, such as a deed, contract, conditional gift or an exchange of letters.¹⁰⁴ In that context, having regard for the principles of proportionality, collaboration and partnership, and governance and accountability, the CGGs further advise that, unless legislation or policy mandates the form of an agreement, agencies should choose the appropriate form of agreement based on:

- an analysis of the risks;
- the context in which the grant is made (for example, the nature of the recipient, relevant applicable legislation, and relevant policy directions);
- the desired remedy for non-compliance; and
- legal advice, where appropriate.¹⁰⁵

7.3.1 Funding agreement must comply with the terms of the approval

An important point for agencies to remain cognisant of is that the funding agreement is the means by which the responsible agency gives effect to the decision-maker's approval of a grant under FMA Regulation 9. Accordingly, the terms of the agreement entered into with the funding recipient must be fully consistent with the terms of the approval. This obligation arises under FMA Regulation 13.¹⁰⁶ In the context of a grant program, the key requirements set down under Regulation 13 are that, prior to the funding agreement being entered into:

- the grant must have been approved by the program decision-maker under Regulation 9. Regulation 12 requires that a written record be made by the approver of both the terms of, and basis for, the approval; and
- if the grant relates to expenditure for which there is insufficient appropriation available, the decision-maker must have been authorised in writing to give the approval, either by the Finance Minister or a delegate, before giving the approval.

Accordingly, the project parameters, including project scope, funding contributions and deliverables, described in the funding agreement must reflect the project as described in the proposal submitted to the approver or, where the approver has decided to approve funding for a varied project, as described in the written approval. Further, any conditions imposed on the grant by the decision-maker must be either satisfied prior to a funding agreement being executed or, if appropriate given the nature of the condition specified by the approver, be reflected in the funding agreement and complied with in its administration. In particular, for grants that cannot proceed until conditions specified by the approver have been satisfied, effective program administration will be promoted by ensuring relevant proponents are advised of the timeframe in which they will be expected to satisfy the condition, with timely advice in relation to considering the withdrawal of the grant approval being provided to the decision-maker where compliance is not achieved in that timeframe.

A further matter for agencies to remain alert to in administering funding agreements is whether changes in the grant or project parameters requested by funding recipients in the course of project delivery are of sufficient scope to represent a new spending proposal that requires referral back to the program decision-maker for consideration. Guidance in this regard can be provided through the internal procedures manual developed for the grant program.

104 Commonwealth Grant Guidelines, op. cit., p. 24.

105 *ibid.*

106 This requirement is also highlighted by the CGGs, which stipulate that: 'A grant funding agreement *must* be consistent with the terms of the approval given under FMA Regulation 9, including any conditions on the approval.' (*ibid.*, paragraph 3.11).

7.3.2 Monitoring compliance with terms and conditions

Once the appropriate form of funding agreement for a grant has been determined and executed, it is important for agencies to be careful to ensure that the Commonwealth's rights and obligations under the agreement are appropriately observed and maintained. This will require timely and pro-active monitoring of compliance with the terms of the agreement.

In particular, the Commonwealth's rights under the agreement may be adversely affected by actions taken, or not taken as the case may be, in response to a failure by the funding recipient to satisfy the terms of the agreement. This can arise through verbal or written interchanges with the funding recipient, as well as a failure to exercise a right available under the agreement in a timely manner. Such actions may:

- inadvertently vary the agreement (even though the variation procedures set out in the agreement have not been followed);
- be considered a waiver of the funding recipient's relevant obligation; or
- result in the Commonwealth being prevented (estopped) from taking certain actions due to having given the funding recipient cause to believe it could proceed on the basis that such action would not be taken.

Given that the purpose of entering into enforceable agreements with funding recipients is to protect the Commonwealth's interests and manage risks, the application of sound contract management principles will require that, where a breach occurs, the remedies set out in the agreement are applied unless there is a sound policy basis for not doing so. This is particularly the case where a funding agreement expresses an action to be taken in response to a breach of the agreement in absolute terms (for example, that the Commonwealth 'will' or 'will not' take a particular course in the event of a certain circumstance arising).

If it is considered that following the terms of the funding agreement would produce an undesirable outcome in terms of the program's policy objectives, it is advisable for the merits of formally varying the agreement to provide for an alternative course of action to be explicitly considered and appropriately documented. If approved, the variation process set out in the funding agreement will need to be applied in order to ensure the Commonwealth's rights under the agreement are appropriately protected.

If the funding agreement states that, should a particular circumstance arise (such as failure to meet project milestones), the Commonwealth 'may' choose to take a certain action (such as terminating the agreement or suspending payments), it is advisable to determine the course that is to be taken based on appropriate risk analysis and, if necessary, legal advice and for that process to be properly authorised and documented.

Further guidance on establishing and administering funding agreements is set out in:

- Parts I and II of the CGGs, particularly in relation to the key principles of:
 - proportionality;
 - collaboration and partnership; and
 - governance and accountability; and
- the Australian Government Solicitor's Legal Briefing. Legal Briefing 83, *Grants and Funding Programs: Legal Issues*, 17 November 2009.

7.4 Funding strategies

An important aspect of administering grant programs is determining the most appropriate strategy for:

- determining the amount to be awarded as individual grants; and
- paying approved grants to funding recipients.

Effective planning of the funding strategy helps to ensure that relevant budgetary factors are taken into account and there is appropriate management of the risk of fraud or non-completion of the project (and, therefore, non-achievement of the outcomes on which the grant approval was based).

7.4.1 Strategies for determining the amount of grant to be awarded

The appropriate approach for determining the amount that will be awarded to successful applicants to a grant program may vary depending upon the nature of the program and considerations of cost-effective administration. For example, grants may be determined as:

- *Lump sum funding* paid at a set amount for all funding recipients, irrespective of the actual cost of individual projects. For example, this approach is often used in programs under which, in order to provide an incentive to invest in technologies or other practices that have a broader community benefit, eligible applicants receive the same amount as an offset of the associated cost (irrespective of the actual costs incurred by individual applicants). The main benefit of this approach is to minimise administration costs. However, it can involve unnecessary or inefficient grant expenditure, because some applicants may have proceeded with a payment that was less than the set amount and/or the actual cost to the applicant of undertaking the relevant project may be less than the grant amount. The risk can be reduced by adjusting the level of funding to the scale of the project, but it is still possible for recipients to be in a position of retaining grant monies in excess of their project requirements. Alternatively, if the amount of grant assistance to be provided is too low compared to the actual cost to many potential applicants of undertaking the relevant activity, the program may be unsuccessful in incentivising program participation. A lump sum program may be most appropriate when individual funding is small in value;
- *Standard percentage funding*, under which the grant paid is calculated as a standard percentage of the project's costs. This method has similar advantages to lump sum funding, but using percentages reduces the potential for unnecessary grant expenditure in proportion to the outcomes achieved, or for program participation to be diminished due to the relationship between the grant available and total costs of undertaking the relevant activity being too great for some potential applicants. To assist manage the Commonwealth's overall financial exposure under a grants program, standard percentage funding should normally be subject to a fixed upper limit in the grant agreement;
- *Flexible funding*, where applicants are able to apply for varying amounts of grant funding, depending upon their project's needs, and an assessment of the application against the program guidelines determines the amount and terms of the grant. Particularly when large individual grants are anticipated, this approach is normally preferred in order to optimise program expenditure. However, it can also be appropriate for programs involving smaller individual grants, as it assists in ensuring grant recipients are only provided with the level of assistance necessary to achieve the program objectives, thereby maximising access to the available funding. This strategy can also provide a greater degree of control over the recipient's use of funds through the tying of funds to the completion of project milestones; or
- a combination of the above.

7.4.2 Strategies for paying approved grants to funding recipients

Regardless of which method is adopted for determining the grant amount to be awarded to individual recipients, care needs to be taken to ensure that the strategy adopted for the payment of approved funds appropriately safeguards the public money and promotes achievement of the agency's obligation to make proper use of Commonwealth resources. In this respect, in no circumstances should funding be paid before a grant has been formally approved by the program decision-maker and the funding agreement has been executed.

The timing and structure of grant payments needs to appropriately reflect:

- the cash flow required in order to progress the project, including consideration of whether funding contributions required from the proponent and other sources are being applied to the project at the same proportional rate as the grant contribution¹⁰⁷;
- the risk of non-performance of obligations, or non-compliance with the terms of the grant. In particular, the Australian Government's capacity to influence project delivery can be expected to diminish once the grant has been substantially paid; and
- the cost to the Australian Government, through interest foregone, of payment of grant funds earlier than needed to achieve program objectives.

The appropriate payment strategy will, in part, depend upon the nature of the grant program. However, options for providing grant assistance in a manner that minimises the risk of fraud and non-performance should always be carefully considered.

For example, a program where single grants are available, such as in the form of a cost offset or 'rebate', can be structured such that funds are paid upon the presentation of required evidence of the original outlay for the specified purpose.

For project-based grants, value for money and sound risk-management would be promoted by funds becoming payable only upon the demonstrated completion of work that represents a milestone defined in the relevant funding agreement.¹⁰⁸ That is, if project work is not completed satisfactorily, no further funds would be forthcoming.¹⁰⁹ This strategy provides a greater degree of control over the recipient's use of funds. It is also important for agencies to consider the impact of under performance against a milestone on the continued viability of the project in terms of the project budget, the achievement of remaining milestones and the project completion date, and provide advice to the Minister or other decision-maker as appropriate.

There should be a demonstrated net benefit from making advance payments

A practice commonly adopted by agencies has been to pay a proportion of approved funding in advance upon execution of the funding agreement. In some instances, an initial payment of grant funding may be warranted in order to enable the funding recipient to initiate the project in a timely fashion. However, in other cases observed by ANAO, agencies have adopted a standardised approach under a grant program of paying a proportion of grant funding upon execution of funding agreements regardless of the relevant project's proposed timing and overall funding structure. In some cases, this approach has been used as a means of maximising program expenditure in a given financial year. However, it may not be consistent with the obligation to make proper use of Commonwealth resources.

¹⁰⁷ In this respect, agencies should be alert to the potential for grant recipients to delay making any financial contribution to project expenditure until after the Australian Government grant, and other sources where relevant, have been exhausted. This strategy can be used to transfer financing costs from the funding recipient to the Australian Government. This is particularly relevant where the proponent had proposed funding its contribution to project costs through commercial borrowings.

¹⁰⁸ In order to minimise interest foregone by the Commonwealth through the payment of funds in advance of the needs of a funded project, the funding paid upon reaching a milestone should be determined, where possible, by reference to actual project expenditure incurred to date. In other words, it is not advisable for agencies to draft funding agreements such that a grant installment will become payable in response to achievement of a stage in the project that does not give rise to significant costs to the proponent.

¹⁰⁹ Where the grant involved is of low value and is to be used for a straight-forward, nominated purpose, it may be appropriate to make a single payment. However, again, payment in advance of need should be avoided in order to reduce program risks and the overall cost of grant to the Australian Government.

Where payments are made in advance, there should be a net benefit in doing so. The net benefit could be demonstrated by:

- comparing the cost of administering payments in arrears to interest foregone;
- efficiencies for the recipient in either reducing the time to complete the project or total funds required (possibly linked to reducing the amount of grant funding as these benefits are realised); or
- establishing that the funded activity would not proceed at all or in a timely fashion without payment in advance.

A comprehensive documented risk assessment and cost benefit analysis will assist in establishing whether payment in advance of need is warranted and, if so, the proportion of the grant that should reasonably be paid. In this respect, it is appropriate for consideration to also be given to whether the funding contributions being provided by the funding recipient and other parties is proportional to the investment made by the Australian Government (in terms of both timing and quantum).

The performance reporting and monitoring regime established for a grant recipient will need to take appropriate account of the increased risks that arise where payments are made in advance of progress, having regard for the nature of the funding recipient entity and the type of project involved.

Expending grant payments before further payments are made

A further consideration in the effective payment of grant funds is to ensure funding recipients have expended, or will soon spend, previous instalment payments prior to receiving any further payments.

In this respect, where grants are to be paid in instalments, it is advisable for agencies to include provisions in the funding agreement requiring the funding recipient to demonstrate that any funds previously received have been expended, or are soon to be spent, when requesting subsequent instalment payments, and enabling the administering agency to withhold further payments until it is satisfied that previous payments have been expended or will be spent in the near future. The interaction of such provisions with the milestones and associated payment schedule established for a project will also be an important consideration in framing the funding agreement.

This approach will assist in avoiding the circumstance arising in which a funding recipient builds up a significant balance of grant funding on which the recipient might earn interest, representing interest foregone by the Commonwealth. Making payments in line with project cash flow requirements also provides a financial incentive to proponents to progress their project in a timely manner.

Retaining a proportion of the grant until project completion and acquittal

It is also good practice to retain a portion of the grant funds until the recipient has completed and fully acquitted the project. This provides an incentive for funding recipients to comply with all obligations set down in the funding agreement. To be effective, the amount retained must be sufficiently large to provide an incentive, but not so significant that it endangers the timely completion of the project. As with most aspects of grants administration, agencies should endeavour to strike an informed balance, consistent with the proportionality principle outlined in the CGGs.

In circumstances where the Commonwealth is not the only financial contributor to the activity for which funds have been granted, effective administration of the grant will be supported by the funding recipient being required to fully acquit all project expenditure and revenue, not just the Australian Government grant component. It is only by fully accounting for project costs and funding contributions that agencies will be able to:

- consider the extent to which the grant has contributed to overall outcomes;
- demonstrate that the project was delivered in accordance with the arrangements specified in the funding agreement; and
- determine whether the project was completed for less than the expected total cost. In this respect, assessing the merits of including appropriate provision for a share of project cost savings to be returned to the Australian Government is an important element in determining the terms and conditions that should be included in a funding agreement.

Effective project acquittal requires agency officials to be appropriately trained in analysing the financial and other information provided by funding recipients, and for adequate and appropriate guidance to be set out in the internal procedures manual established for the program.

Further guidance on mechanisms for safeguarding grant funding through the structure and administration of funding agreements is set out in:

- Part II of the CGGs, particularly in relation to the key principle of governance and accountability; and
- the Australian Government Solicitor's Legal Briefing *Legal Briefing 83 Grants and Funding Programs: Legal Issues*, 17 November 2009.

7.5 Monitoring progress

Integral to the success of the grant funding process is an on-going monitoring regime to ensure funding recipients are meeting agreed milestones and other key requirements of their funding agreements. Monitoring is important throughout the project cycle, from the implementation stage through on-going management to post-implementation evaluation.

Grant monitoring encompasses a range of techniques that can be applied by agencies in order to obtain assurance that projects are proceeding as planned and grant funding is being appropriately applied. These include:

- requiring funding recipients to submit regular progress reports, including acquitting the expenditure of grant funds received to date, total costs incurred to date and the source of any additional funds contributed to project costs to date;
- monitoring the timely provision of required reports and taking corrective action as necessary;
- analysing progress reports and other available information in order to identify projects that are slipping behind schedule or that otherwise require additional oversight due to other factors that may impact on full achievement of the project scope (such as cost increases, particularly where the additional costs are unfunded, or unforeseen impediments to the project progressing), and implementing management plans for those projects; and
- instituting processes for verifying the achievement of milestones to support the payment of grant instalments, such as undertaking site inspections and/or obtaining relevant documentary evidence.

The extent and timing of monitoring can be a challenge, particularly for smaller grant programs with limited resources, and for programs funding a large number of relatively low-value grants. Consistent with the principle of proportionality, cost-effective administration of a grant program will be supported by agencies adopting a risk-based approach to defining the extent, timing and frequency of monitoring, including:

- the frequency and level of detail of the reporting requirements that are to be imposed on funding recipients; and
- the methodology to be applied in scrutinising reports received from funding recipients and otherwise verifying project progress.

There may also be opportunities to improve the efficiency of the reporting process for both funding recipients and the administering agency by leveraging off reporting that the funding recipient must undertake to satisfy its own governance requirements. For example, local government authorities often submit reports on significant projects to the elected Council. Similarly, non-profit organisations may have to report to governing boards etcetera.

The reporting requirements determined in relation to individual grants, based on a risk analysis of the project and funding recipient involved, will need to be specified in the relevant funding agreement to ensure they are enforceable.

7.5.1 Are there arrangements to ensure consistent, high-quality, and appropriate frequency of monitoring?

Effective monitoring is assisted by clear definition of responsibilities for monitoring individual grants. Monitoring staff need appropriate skills and knowledge of the activity being undertaken and adequate administrative support to process routine monitoring data.

Where possible, decentralising responsibility for grant monitoring will increase the ability to bring local knowledge to bear and support effective communication between officials and funding recipients. However, this approach can increase the risk of inconsistency in monitoring processes. This can be avoided by:

- setting standards for frequency, consistency and quality of monitoring and ensuring that these are met at all locations; and
- reviewing the scope and completeness of the monitoring actually carried out and watching for any backlog of unmonitored cases.

It is particularly important that the monitoring methodology documented for a program identifies the procedures to be adopted where:

- funding recipients fail to provide the progress reports required under the relevant funding agreement; and/or
- reports or other advice provided by funding recipients indicate that the project is not proceeding as planned and/or other risks to project implementation have arisen.

Early identification of projects requiring remedial action and/or increased oversight will assist in minimising the consequences for program administration. In this respect, ANAO has observed instances in which the response to requests from funding recipients for a significant extension to the due dates for project milestones and/or the overall project completion date has been to reduce the reporting obligation on the recipient (by delaying any further reports until there has been substantive progress toward the next required milestone). Where projects are exhibiting increased risk of failure to achieve the required outcomes, program governance would be better served by the agency responding to such requests by:

- requiring that a progress report be submitted containing the information (including financial acquittal) specified in the funding agreement; and
- using the information provided in the progress report to assist in informing its decision about whether to agree to an extension and, if so, the duration of any such extension.

Where the agency agrees to the extension, it would also be appropriate to consider whether the project's circumstances (and associated heightened risks of non-completion) warrant it being subject to closer monitoring. In this respect, in promoting the application of the principle of proportionality in the administration of grants, the CGGs advise that agencies may wish to consider adjusting the detail of their accountability and reporting requirements in line with a recipient's established record of compliance and performance.¹¹⁰ This will support the provision of timely and appropriate advice to the decision-maker in relation to options for managing the grant.

7.5.2 Monitoring procedures applied to individual grants should have regard to the nature of the project and funding recipient

The purpose of monitoring grants is to reduce risk, including the risk of fraud, ineffective project implementation and/or non-completion. Although a monitoring strategy will have been established during the program planning stage, regular review of that strategy helps to ensure that adequate resources continue to be available to deal with the size, perceived risk and sensitivity of the grants awarded.

110 Commonwealth Grant Guidelines, op. cit., p. 20.

In this respect, the nature and extent of monitoring procedures applied to individual grants should appropriately reflect the risk factors associated with that project. Relevant considerations include the:

- size of the grant;
- nature of the risks and their assessed priority;
- sensitivity of the grant;
- degree of uncertainty or subjective judgement in the original appraisal;
- type of grant (for example, is it repayable?);
- type of funding recipient; and
- type of project (for example, is it innovative, open to unintended changes of use or ownership, or exposed to high risks of delay or cost increases?).

The type of entity involved may also have implications for monitoring a grant

Different types of funding recipient may exhibit particular characteristics that will need to be taken into account in establishing a cost-effective monitoring regime.

For example, as noted in Chapter 6 of this Guide, risks to project viability through the non-receipt of expected funding contributions are heightened for funding recipients that have few financial resources of their own to contribute to the project, such as non-profit organisations. Accordingly, an important aspect of monitoring such grants is to maintain appropriate oversight of actual project costs and funding, in order to provide timely advice of any emerging threats to project viability. This is particularly the case for higher value grants relating to complex projects, such as construction projects. Where potential difficulties in completing the project are identified, it is advisable for agencies to work closely with the funding recipient to ensure the recipient does not take actions that further heighten the risks to achievement of program objectives (for example, by obtaining additional funding through means that transfer ownership of the asset being acquired or constructed using the Australian Government funding).

However, the limited resources of many non-profit or voluntary bodies can also give rise to particular challenges in establishing a monitoring regime that provides appropriate oversight of the grant funding, but does not involve undue compliance costs for both the agency and funding recipient. This risk can be reduced by the program guidelines informing applicants of the monitoring requirements they will be expected to comply with; focusing reporting requirements on the critical aspects of project oversight; and ensuring that compliance can be achieved with a minimum of effort.

Particular issues also arise in monitoring grants awarded to commercial or for-profit entities. Government grants are a valuable source of funding to such organisations. This is because obtaining grant funding increases after tax cash flows to the funding recipient, but without the recipient being required to pay a return on those funds. In some circumstances, a for-profit entity may seek to delay investing its own resources in the relevant project until after the grant and other funding sources (if any) have been exhausted. This approach can be effective in minimising the funding recipient's financing costs, particularly where the project is able to be completed at a cost that is less than the budget originally proposed. Such entities are also susceptible to changes in ownership or corporate structure, which may impact on the continuing eligibility of the funding recipient and/or achievement of program objectives. Accordingly, it is appropriate that for-profit entities be expected to provide monitoring information that demonstrates:

- whether the funding recipient is investing its resources and/or funding obtained through commercial borrowings, equity raisings etcetera into the project in a manner that is consistent with the funding agreement; and
- whether ownership of the entity that is receiving the financial benefit from the project continues to reflect the basis on which the grant was approved.

7.5.3 Verify milestone achievement before making associated payments

It is important that, where grant payments are payable upon completion of nominated milestones, the scrutiny applied to the progress claimed by funding recipients is sufficient to provide appropriate assurance that a milestone payment is properly payable under the terms of the funding agreement. Particular issues in this respect arise in relation to grants that are to be used in the acquisition or construction of physical assets. For grants of that nature, it is prudent for agencies to be careful to obtain assurance about the physical process actually achieved before making grant payments, and that the project is being implemented in accordance with the funding agreement. This assists in avoiding making inefficient use of the public money, as well guarding against fraud.

Verifying actual project progress can be achieved through a variety of means. For example, recipients' advice of progress can be supplemented through:

- photographic evidence included with project progress reports;
- requiring funding recipients to provide documentary evidence of the completion of a milestone (such as evidence of: planning approval; commercial loan approval; formal acceptance of quotes and associated terms and conditions; completion of tender processes including cost outcomes; contracts, leases or partnership agreements executed in relation to the project; engagement of relevant personnel; acquisition of relevant equipment; completion of phases of construction such as certificate of completion etc);
- requiring independent verification or evidence of actual project expenditure and revenue to date. For example, this might include the provision of bank statements; copies of invoices, receipts or cheques; and/or independent auditor certificates; and/or
- undertaking physical inspections of projects.

Other sources can also be used to substantiate claims made by funding recipients, such as local government authority Council minutes; State government agency websites; public reporting to bodies such as the Australian Securities and Investments Commission, Australian Stock Exchange or in annual reports; or through the use of internet search engines.

The verification procedures adopted in relation to each grant should be proportional to the nature of the project and assessed risks.

7.5.4 Are arrangements in place to recover grant funds when the recipient has not complied with grant conditions?

Where a funding recipient is in breach of the terms of the funding agreement, it is possible for a debt to the Commonwealth to arise. Depending upon the terms of the agreement, this may arise due to circumstances such as the funding recipient failing to complete the funded project; failing to provide required progress reports; or failing to provide payment to the relevant agency of unspent grant funds in accordance with the terms of the funding agreement.

Section 47 of the FMA Act obliges agency Chief Executive Officers to take action to recover debts owed to the Commonwealth, unless:

- the debt has been written off as authorised by an Act; or
- the Chief Executive is satisfied that the debt is not legally recoverable; or
- the Chief Executive considers that it is not economical to pursue recovery of the debt.

Section 34 (1)(a) of the FMA Act allows the Finance Minister to waive a debt to the Commonwealth, with that power having been delegated to the Finance Chief Executive and Finance officials. Guidance on applying for a debt waiver is set out in Finance Circular 2009/09, *Discretionary Compensation and Waiver of Debt Mechanisms*, which advises that the circumstances under which waiver of debt requests are approved can broadly be characterised as where the Minister or delegate considers that it is appropriate to provide redress because recovery of the debt would, in the particular circumstances of a case, be inequitable or cause ongoing financial hardship. The waiver power is available to provide a remedy in respect of all FMA Act agencies. However, it is generally a remedy of last resort and used only where there is no other viable remedy.¹¹¹

Accordingly, the administrative arrangements for a grant program must be designed to provide for the appropriate and timely consideration of the recovery of grant funds where a funding recipient has failed to comply with the terms under which the grant was provided, as set out in the executed funding agreement.

Any recurring need to recover grants may be an indicator that a program is not achieving its objectives, or that appraisal of applications may not be fully effective. Accordingly, it is advisable for agencies to periodically monitor the levels of recovery arising under a grant program and to analyse the causes.

Further guidance on the monitoring of funded projects is set out in Part II of the CGGs, particularly in relation to the key principles of:

- proportionality; and
- governance and accountability.

7.6 Measuring outcomes

As discussed in earlier chapters of this Guide, one of the seven key principles established for grants administration is to have an outcomes orientation in all aspects of program design and implementation. Accordingly, an essential component of any grant program is the establishment of an effective performance framework that enables the administering agency to reliably establish:

- the outcomes achieved through individual grants; and
- overall program outcomes.

The evaluation of individual grants is best achieved through robust performance management against performance measures specified in funding agreements. Effective performance measures established for individual grants will enable a reliable assessment to be made of the extent to which the expected outcomes on which the grant approval was based have been achieved. Monitoring throughout the life of a project should focus, to the extent possible and reasonable (having regard for the nature of the grant program), on the contribution to overall program objectives as well as the achievement of project specific goals. On the completion or termination of a grant, the outcomes achieved should be evaluated in terms of the project specific and program related objectives.

In general, the strategy established for evaluating a grant program within the outcomes/outputs framework will need to support assessments of:

- the continued relevance or appropriateness of the program;
- the effectiveness of the program (i.e. whether program outcomes are achieving stated objectives). In this respect, effectiveness indicators demonstrate the extent to which programs make positive contributions to specified outcomes. Targets should generally be set for effectiveness indicators¹¹²;
- whether there are better ways of achieving those objectives;
- the need to establish new programs or extend existing programs; and
- whether resourcing should remain at current levels, be increased, reduced or discontinued.

¹¹¹ For example, the Finance Minister's power to allow a debt to be paid in instalments (FMA Act s. 34(1)(c)) or defer the time for payment (FMA Act s. 34(1)(d)) has been delegated to all FMA Act agency Chief Executives.

¹¹² ANAO Better Practice Guide, *Performance Information in Portfolio Budget Statements*, Canberra, May 2002, p. 25.

Care should be taken to ensure program evaluations are informed by analysis of actual, demonstrated outcomes formally advised by funding recipients through the funding agreement reporting framework (rather than basing such evaluations on the expected outcomes identified in the assessments on which the funding approval was based or the funding agreements subsequently executed).

The frequency and type of evaluation will need to be informed by the risk assessment undertaken in the planning phase of the program.

7.6.1 Common traps in performance measurement design

There are a number of common traps that can diminish the effectiveness of the performance indicators established for a grant program, including:

- assuming that the awarding of a grant automatically secures the forecast outcome;
- assuming that the consumption of inputs (for example, expending the grant funds) results in desired outputs and outcomes;
- using the number of grants awarded under a program as a measure of program output and achievement against the desired government outcomes (this is simply a measure of administrative activity);
- framing performance indicators that are reliant upon data provided by the funding recipient, without validating the recipient's capacity to produce accurate, reliable and complete data;
- not relating performance measures to operational and strategic objectives or outcomes. It is more important to achieve the desired strategic outcomes from the program than to maximise, for example, the number or value of grants approved; and/or
- identifying large numbers of performance indicators because they are easy to measure rather than focussing on key indicators, which are difficult to measure or assess but are more directly related to the program's objectives.

There are also a number of 'trade-offs' to be considered in the design of a performance information framework (see Figure 11).

Figure 11
Factors that may affect the effectiveness of a performance information framework

Factor	Potential influence on effectiveness of performance measurement
Behavioural	Performance measurement influences, and can also distort, behaviour. Poorly designed performance information can encourage agencies and grant recipients to adopt inefficient or ineffective practices which allow them to achieve short-term targets, but endanger the achievement of long-term goals.
Cost	Performance measurement costs time and money. In addition, poorly designed performance systems can adversely affect the performance of the program they are measuring. Care should be taken to ensure that performance information is not over specified to the detriment of the efficient conduct of the program.
Stability versus improvement	Performance information is most effective where trends can be established over time. However, performance information may need to be altered over the course of the program to improve measurement, which inhibits trend analysis.

Source: ANAO analysis.

7.6.2 Equity of distribution of program funds

A measure of achieved grant program outcomes that is frequently the subject of public and parliamentary scrutiny is the distribution of funding awarded under the program. In this respect, the geographic and political distribution of grants may be seen as indicators of the general equity of access to a program, as well as its effectiveness in targeting funding in accordance with the stated policy objectives of the program.

In relation to applications received, relevant performance measures include the extent to which the nature and distribution of applications submitted to the program aligns with the program's intended target population(s) and/or anticipated take-up rate. This provides a measure of the effectiveness of the communication of the program and of the avenues for completing and lodging applications that were made available. Similar considerations apply in relation to approved funding.

A further measure of the equity of decision-making that is frequently applied is the distribution of approved funding across party electorates, including consideration of the status of the electorates in which funding recipients were located (for example, whether the relevant electorates were categorised by the Australian Electoral Commission as 'marginal', 'fairly safe' or 'safe' following the most recent election). However, other indicators of the equity and impartiality of the decision-making process may include:

- the extent to which the geographic distribution of approved funding correlates with the pattern of applications received;
- the extent to which the funding approved for recipients located in electorates held by each political party correlates with the distribution of applications received from applicants located in each type of electorate;
- the relative success rates of applications received from applicants located in electorates held by each political party; and
- where relevant, the extent to which applications received from applicants located in electorates held by each political party were represented in those applications either approved against agency advice or not approved despite being recommended by the agency.

These factors are broad indicators only, with the awarding of grants expected to be based upon the merits of individual applications in relation to the criteria set out in the program guidelines. However, it would also be expected that the factors that led to any significant differences in relation to the above indicators would be readily discernable from the documented assessment and decision-making process, given there is now a requirement for approvers to record the basis on which they have decided to award a grant.

Further guidance on adopting an outcomes orientation in grants administration is set out in the CGGs.

More broadly, the Better Practice Guide, *Performance Information in Portfolio Budget Statements*, issued by the ANAO in 2002, and the Better Practice Guide, *Better Practice in Annual Performance Reporting*, jointly issued by the ANAO and the then Department of Finance and Administration in 2004 may also be of assistance.

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