Development and Approval of Grant Program Guidelines

Department of Finance and Deregulation

Canberra ACT
30 May 2012

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken an independent performance audit across agencies in accordance with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit, and the accompanying brochure, to the Parliament. The report is titled *Development and Approval of Grant Program Guidelines.*

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's Homepage—http://www.anao.gov.au.

Yours sincerely

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Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
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Abbreviations and Glossary

ANAO	Australian National Audit Office
ANAO's Better Practice Guide	ANAO Better Practice Guide-*Implementing Better Practice Grants Administration*, Canberra, June 2010
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 and subject to applications meeting the assessment criteria to a minimum acceptable standard, so as to maximise the achievement of program objectives.
CGGs	Commonwealth Grant Guidelines
CPGs	Commonwealth Procurement Guidelines
DCCEE	Department of Climate Change and Energy Efficiency
DSEWPaC	Department of Sustainability, Environment, Water, Population and Communities
ERC	Expenditure Review Committee
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
Finance	Department of Finance and Deregulation
Finance Minister	Minister for Finance and Deregulation
FMA Act	*Financial Management and Accountability Act 1997*
FMA Regulations	*Financial Management and Accountability Regulations 1997*

LTAWP   Live Trade Animal Welfare Partnership

NHMRC   National Health and Medical Research Council

PM&C   Department of the Prime Minister and Cabinet

Selection criteria   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:

- 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.

Strategic Review   Strategic Review of the Administration of Australian Government Grant Programs, July 2008

Threshold criteria   The criteria identified in program guidelines that all applications must satisfy in order to be considered for funding. Threshold criteria may also be referred to as eligibility, compliance, mandatory and/or gateway criteria.

Summary and Recommendations

Summary

Introduction

1. Grants administration is an important activity for many Commonwealth entities, involving the payment of billions of dollars of public funds each year. Commencing in December 2007, significant enhancements have been made to the Australian Government's grants administration framework in light of significant parliamentary and ANAO concerns with the administration of various grants programs over a number of years. The initial enhancements included the introduction of requirements for guidelines to be developed for any new discretionary grant programs[1], and approved by the Expenditure Review Committee (ERC) of Cabinet. The December 2007 Finance Minister's Instructions further required:

- agencies to have adequate arrangements in place to manage grant programs in accordance with relevant legislation, regulations and guidance; and

- Ministers to receive departmental advice on the merits of grant applications relative to the guidelines for the relevant program before making any decisions on discretionary grants (where funding decisions are made by Ministers).

2. Revised Finance Minister's Instructions issued in January 2009 retained these requirements and expanded their coverage to all types of grant programs (rather than being limited to discretionary grant programs). These revised Instructions were introduced to reflect Government decisions made in December 2008 in response to the July 2008 report of the Strategic Review of the Administration of Australian Government Grant Programs (Strategic Review). Also consistent with the recommendations of the Strategic Review, with effect from 1 July 2009, the Commonwealth Grant Guidelines (CGGs)[2]

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[1] Discretionary grants were defined as: 'grants where the minister or agency has discretion in determining whether or not a particular application receives funding and may or may not impose conditions in return for the funding' and not including 'entitlement-based and demand-driven payments or rebates.'

[2] The CGGs, issued under Regulation 7A of the FMA Regulations, represent the whole-of-government policy framework for grants administration and apply to all departments and agencies subject to the *Financial Management and Accountability Act 1997* (FMA Act). The CGGs also stipulate a number of policy and statutory requirements with which Ministers must comply when performing the role of financial approver in relation to grants.

were issued and related changes were made to the *Financial Management and Accountability Regulations 1997* (FMA Regulations). The CGGs set out a number of policy and agency requirements in respect of grant program guidelines, as summarised in Table S 1.[3]

Table S 1

Key requirements for grant program guidelines under the Commonwealth Grant Guidelines

CGG reference	CGG requirement
Paragraphs 3.16 and 3.17	Under the financial management framework[1], there is an overarching requirement to manage an agency's affairs efficiently, effectively and ethically within the context of the Australian Government's policy framework. The policy requirements relating to grants administration include…the guidelines applying to a granting activity, such as grant program guidelines.
Paragraph 3.23	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.
Paragraph 3.24	Agencies *must* ensure that grant guidelines and related operational guidance are in accordance with the CGGs.
Paragraph 3.22	The Australian Government has agreed that 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.

Notes:

1. As required by Section 44 of the FMA Act and FMA Regulation 9.

Source: *Commonwealth Grant Guidelines, Policies and Principles for Grants Administration,* July 2009, pp. 9 and 11.

3. In September 2010, in light of experience with the grant program approval arrangements and broader changes being made to Cabinet processes, it was decided that not all grant program guidelines would require approval by the ERC. Draft program guidelines were now to be submitted for ERC approval on a case-by-case basis, according to a risk assessment undertaken by the administering agency. The Department of Finance and Deregulation (Finance) was to be consulted on all risk assessments, with these assessments being used to decide whether a program[4] was:

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[3]   The emphasis reflected in Table S 1 is as per the CGGs. In this respect, obligations set out in the CGGs that must be complied with in all circumstances are denoted by the use of the term *must* or *mandatory*.

[4]   This approval framework applies to all programs, not just grant programs.

- low risk (such that the guidelines could be approved and issued by the relevant portfolio Minister, subject to the agreement of the Minister for Finance and Deregulation (Finance Minister) with the risk assessment);

- medium risk (in these circumstances, the Finance Minister is empowered to either consider and agree to the release of the guidelines or propose that they be referred to the ERC); or

- high risk/sensitive (in which case, the program guidelines are to be referred to the ERC unless they need to be issued urgently, in which case the Finance Minister is able to approve them).

Audit objectives and scope

4. The objective of the audit was to assess the implementation and effectiveness of the enhanced grants administration requirements relating to the development and approval of new grant guidelines and revision of existing grant guidelines.

5. The scope of this audit included the administration of the grant program approval processes that were first introduced in December 2007, as well as analysis of trends with the September 2010 changes to the approval requirements. In addition, ANAO analysed 369 grant program guidelines prepared by agencies between December 2007 and June 2010.[5] As the enhanced grants administration framework progressively introduced since December 2007 has a particular focus on the establishment of transparent and accountable decision-making processes for the awarding of grants, the focus of ANAO's analysis was on the extent to which those guidelines identified how:

- potential funding recipients would be able to access the program; and

- decisions would be made about the awarding of grants (including by outlining the selection criteria that will be used and the identity of the person that would make the funding decisions).

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[5] As part of the audit, a survey was conducted by ANAO of all agencies subject to the FMA Act to identify grant programs that had been in operation since December 2007, when the first enhancements were made to the grants administration framework. Agencies were requested to provide a copy of the final approved guidelines for each program and advice on the process by which those guidelines had been approved. This material, together with examination of relevant records concerning Ministerial consideration and approval of grant guidelines held by Finance and the Department of the Prime Minister and Cabinet (PM&C), provided the basis for the analysis undertaken for this audit. ANAO also examined records held within Finance as to that department's analysis of draft grant program guidelines submitted for consideration by relevant agencies.

6. This audit is the second cross-agency audit looking broadly at the implementation of key aspects of the enhanced grants administration framework. The first of these audits, which examined the administration of the various grant reporting obligations, was tabled in January 2012.[6] ANAO also continues to include performance audits of grant programs in its performance audit work program. These audits provide an opportunity to examine the extent to which the enhanced grants administration framework is having the desired effect, as well as to identify any opportunities to further improve the framework. In addition, in light of the significant enhancements made to the grants administration framework, in June 2010 ANAO updated its better practice guide on grants administration.[7]

Overall conclusion

7. The transparency, accountability and probity with which grant decisions are made have been matters of longstanding Parliamentary and public interest. This is because grants are a widely used means of contributing to the achievement of particular public policy objectives, and involve the use of significant levels of public money to provide financial benefits that recipients would not otherwise have received. In the context of many grant programs, this will involve some potential recipients being successful, while others are not. It is also recognised that there is the potential for electoral advantage to arise, or be sought, from the making of grants.

8. The introduction of a requirement for program guidelines to be developed and appropriately approved for all grant programs was a key part of the Government's response to the concern[8] that grant program planning and design had not been sufficiently robust. In addition, the approach taken in the

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[6] ANAO Audit Report No.21 2011–12, *Administration of Grant Reporting Obligations,* Canberra, 24 January 2012.

[7] Since 1994, the Australian National Audit Office's (ANAO) suite of Better Practice Guides has included a publication focused on grants administration. In respect to grant program guidelines specifically, the previous 2002 version of the ANAO Better Practice Guide (the version extant at the time enhancements to the grants administration framework were first introduced in December 2007) had emphasised that clear, consistent and well-documented program guidelines are an important component of an effective grant program administration system (see further in ANAO Better Practice Guide—*Administration of Grants*, May 2002, p. 37). Similar guidance is set out in the current version of the Better Practice Guide, which was published in June 2010 (see further in ANAO Better Practice Guide–*Implementing Better Practice Grants Administration*, June 2010, pp. 51–67).

[8] See, for example, Mr Peter Grant PSM, *Strategic Review of the Administration of Australian Government Grant Programs*, 31 July 2008, pp. 6 and 54-71.

development of the enhanced grants administration framework reflected the recognition that potential grant program applicants and other stakeholders have a right to expect that program funding decisions will be made in a manner, and on a basis, that is consistent with the published program guidelines.[9] In this respect, the CGGs highlight that guidelines for a particular program are a policy of the Commonwealth to be addressed when consideration is being given to approving a spending proposal under a particular grant program. This, and other measures taken, were a positive response by government to deficiencies in earlier arrangements for administering grants.

9. The appropriate level of content for a set of grant guidelines will vary depending upon the size, scope and nature of the relevant program, having regard to 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 guidance provided to agencies through the CGGs provides a sound framework to support the development and publication of sound grant program guidelines.[10] However:

- a small number of agencies continue to administer a significant number of one-off or ad hoc grants, with this form of granting activity not subject to the requirement that grant program guidelines be developed;

- the quality of grant program guidelines remains quite variable, with a significant proportion of the guidelines examined by ANAO not clearly identifying the person or persons who would make funding decisions; the threshold and assessment criteria that would be applied in making those decisions; and/or the way in which value for money considerations would be taken into account.[11] These are key matters to be addressed in any set of grant program guidelines in order to support transparent and accountable grants administration; and

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[9] ibid, p. 56.

[10] The requirement to publish program guidelines applies where eligible persons and/or entities are able to apply for a grant under a program.

[11] Achieving value for money is one of the seven key principles of grants administration outlined in the CGGs.

- notwithstanding the preference expressed in the CGGs for competitive, merit-based selection processes that are based upon clearly defined selection criteria, more than one-third of the grant program guidelines examined by ANAO which outlined the selection process that was to be employed indicated that a non-competitive process would be adopted.[12]

10.   One factor contributing to this situation was that there was a relatively high level of non-compliance by agencies with the approval requirements for draft program guidelines. Specifically, more than 62 per cent of the new guidelines and changes to existing guidelines developed in the two-and-a-half-year period examined by the ANAO had not been submitted for the required Ministerial approval. Against this background, the September 2010 decision to adopt a risk-based approval framework is sound in principle, but will need to be supported by agencies giving increased attention to program planning and design considerations, and improved oversight by Finance of agency practices in this area.[13]

11.   Within the above context, the enhanced grants administration requirements relating to the development and approval of program guidelines have yet to be fully and effectively implemented. Accordingly, ANAO has made four recommendations. The first is aimed at limiting the extent to which grants related to a common type of activity are administered without a set of program guidelines being developed and approved. The second is aimed at enhancing Finance's oversight of the program guideline risk assessment and approval arrangements. A third recommendation relates to agencies taking steps to ensure guidelines developed before the enhanced framework was introduced are consistent with the CGGs and associated legislative provisions. The final, and most important, audit recommendation relates to greater efforts being made by agencies to establish, through the relevant program guidelines,

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[12] Through the conduct of this audit, Finance consulted with ANAO to identify ways in which the CGGs could usefully be enhanced to increase the number of grant programs, and therefore grant selection processes, that operate through competitive, merit-based processes. Areas of particular interest were additional guidance from Finance to agencies in respect to choosing the selection process for grant programs during the program design phase, together with agencies being required to document the reasons for any decision not to use a competitive, merit-based selection process (such an obligation exists in respect to procurement activity under the Commonwealth Procurement Guidelines).

[13] In particular, it will be important that Finance has systems in place to be assured that agencies are consulting with it on draft program guidelines and are not bypassing the approval processes (as had occurred under the prior arrangements).

transparent and accountable decision-making processes for the awarding of grants.

12. This audit of grant program guidelines complements ANAO's recent audit of the administration of various grant reporting obligations, which tabled in January 2012.[14] The two audits examined related aspects of grants administration over the same two-and-a-half-year period. Since the first report was tabled, ANAO has worked closely with Finance to identify opportunities for improving the CGGs as well as ways in which Finance can provide greater assistance to agencies. Nevertheless, it is important to emphasise that responsibility for adhering to the requirements of the grants administration framework and improving the quality of grants administration depends to a significant extent on agencies improving their own practices.

Key findings by chapter

Ministerial Approval of Grant Program Guidelines (Chapter 2)

13. The development of grant program guidelines is a significant activity in the Commonwealth. In the two-and-a-half year period examined by ANAO, each week, on average, agencies collectively produced one set of guidelines for a new grant program and one set of guidelines for a new round of an existing grant program. Agencies also undertake work revising guidelines for existing programs as changes are made to the program arrangements.

14. There also remain a small number of agencies that administer a large number of one-off and ad hoc grants, and the CGGs do not require that guidelines be developed to cover this type of granting activity. Accordingly, particularly where a number of proposed or potential one-off and ad-hoc grants relate to similar purposes, there would be benefits in the relevant agencies working with Finance to identify any opportunities to incorporate more of their grant-giving activities within the structure of a grant program.[15]

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[14] ANAO Audit Report No.21 2011–12, *Administration of Grant Reporting Obligations,* Canberra, 24 January 2012.

[15] An example of this approach being adopted related to the Better Regions Program, which was established solely to fund 105 commitments made by the Australian Labor Party (ALP) in the context of the 2007 election campaign. Consistent with the enhanced grants administration framework, Better Regions Program Guidelines were developed, approved by the ERC and published. See further in ANAO Audit Report No.24 2010–11, *The Design and Administration of the Better Regions Program*, Canberra, 27 January 2011.

15. Since December 2007, a series of decisions have been taken by the Government in respect to the arrangements applying to the consideration and approval of grant program guidelines. Between December 2007 and September 2010, there was a requirement for new program guidelines, and significant revisions to existing guidelines, to be considered by the ERC, the Prime Minister or, where approval was urgently required, the Finance Minister. It was intended that these approval arrangements would provide assurance that a robust planning process had been undertaken, and that the proposed grant program was appropriately structured to achieve its intended outcomes. However, in the period examined by ANAO up to June 2010, more than 62 per cent of new grant program guidelines or changes to existing guidelines were not submitted for the required approval. In September 2010, the Government decided that consideration of draft grant program guidelines would be removed from the Cabinet agenda[16], with the level of approval required to be decided on the basis of a risk assessment.

16. In light of experience with the prior approval arrangements, Finance has advised ANAO that it will develop an integrated strategy to improve compliance with the CGGs and reduce the risk of grant program risk assessments not being undertaken. In this respect, there would also be considerable benefits in Finance having a central record of all risk assessments undertaken by administering agencies and the results of the related approval processes to inform its oversight of the revised approval arrangements. For example, there would be value in the data that could be captured being used by Finance's Grants Framework Unit to identify and reinforce identified better practices across agencies, as well as to provide a focus on any apparent systemic shortcomings in the development and approval of grant program guidelines.

17. Even where a program is longstanding, and the applicable guidelines themselves (subject to minor updates) are also longstanding, there remains a requirement for the relevant agency to ensure that the guidelines and related operational guidance being applied in the administration of the grant program are consistent with the CGGs.[17] In light of government expectations in

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[16] With the objective of supporting strong and effective Cabinet Government, this change was one of a number made to remove items of a more routine nature from the Cabinet agenda (see paragraph 3).

[17] The obligation for program guidelines and related operational guidance to be in accordance with the CGGs is separate to the obligations requiring the development and appropriate approval of guidelines for new programs and significant changes made to existing guidelines.

promulgating the CGGs, it would be reasonable to expect that guidelines developed before the enhanced framework was introduced would likely require amendment to ensure consistency with the CGGs and associated legislative provisions. However, there are a number of grant programs that are still operating under guidelines that have not been subject to any significant change since the CGGs were issued in July 2009; including programs that are still operating under guidelines that have not been the subject of any significant revisions since the first enhancements were made to the grants administration framework in December 2007.

Content of Grant Program Guidelines (Chapter 3)

18.   The appropriate level of content of grant guidelines will vary depending upon the size, scope and nature of the program. Nevertheless, all aspects of a grant program need 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 will 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 will inform the efficient, effective and accountable administration of the program. In particular, amongst other matters, program guidelines should identify:

- how potential funding recipients will be able to access the program;

- who will make the funding decisions; and

- how decisions will be made about the awarding of grants (including outlining the selection criteria that will be used).

19.   The CGGs outline that, unless specifically agreed otherwise, competitive, merit-based selection processes should be used, based upon clearly defined selection criteria.[18] However, the promulgation through the July 2009 CGGs of a preference for competitive, merits-based selection processes (no such preference had previously been expressed) did not result in

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[18]   Department of Finance and Deregulation, *Commonwealth Grant Guidelines, Policies and Principles for Grants Administration*, July 2009, p. 29.

a marked increase in the extent to which these types of processes have been adopted.[19]

20. Clarity about roles and responsibilities also aids the efficiency of grants administration by avoiding unnecessary procedures and practices. However, within the grant program guidelines provided to ANAO in response to the audit survey, it was relatively common for the guidelines to not identify who would be the decision-maker, with this being the case with 30 per cent of the guidelines examined.[20]

21. Agency performance has also been quite mixed in terms of developing program guidelines that clearly outline the selection criteria[21] to be employed in deciding upon the award of grants under the relevant program.[22] Specifically:

- consistent with the key principles for grants administration included in the CGGs, almost all (97 per cent) of the program guidelines examined by ANAO identified one or more threshold criteria that applicants would be required to meet. However, agency practices varied in terms

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[19] For 94 per cent of the program guidelines provided to ANAO by agencies as having been developed over the period between December 2007 and June 2010, the nature of the selection process that would be employed was clearly outlined, but in only 62 per cent of those instances were grants to be awarded through a competitive process.

[20] For the 70 per cent of program guidelines where the decision-maker was identified, it was common (72 per cent of instances) for the guidelines to outline that decisions would be made by a Minister (including Parliamentary Secretary).

[21] Selection criteria comprise:

- threshold criteria, which are the criteria that a proposal 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, which are used to assess all eligible, compliant proposals in order to determine their merits against the program objectives and, for competitive programs, other competing applications.

[22] As outlined in ANAO's Better Practice Guide, selection criteria form the key link between a program's stated objectives and the outcomes that are subsequently achieved from the funding provided. Accordingly, they are important in attracting good potential candidates for funding and encouraging entities that are unlikely to be successful not to invest unnecessary resources in preparing an application. See further in ANAO Better Practice Guide–*Implementing Better Practice Grants Administration,* June 2010, pp. 61–62.

of whether all threshold requirements were grouped and clearly identified as such in the program guidelines[23]; and

- similarly, a high proportion (86 per cent) of the program guidelines examined identified assessment criteria that would be used in selecting funding recipients.[24] However, notwithstanding the critical importance of published assessment criteria to efficient, effective and transparent grants administration, a significant proportion (14 per cent) of the grant program guidelines examined did not include assessment criteria.[25]

22. In addition to adopting a more consistent approach to specifying, and clearly identifying, in grant program guidelines all of the threshold and assessment criteria that will be applied in selecting funding recipients, audit analysis indicates that there would be benefits from agencies:

- assigning relative weightings, rankings or priority to individual assessment criteria, in order to assist in targeting available funding at projects that exhibit particular characteristics having regard for the program objectives. Specifically, whilst 29 per cent of the guidelines examined by ANAO that included assessment criteria had also identified a weighting, ranking or priority associated with the criteria, this practice was not commonly adopted by most agencies[26];

- greater attention being paid to identifying value for money as an explicit consideration in the awarding of grants; and

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[23] For just under one-third of guidelines, the threshold criteria were not identified in a separate section or sections of the guidelines. In addition, for some guidelines that did include a specific section or sections identifying threshold criteria, additional statements included in other sections of the guidelines also represented mandatory requirements that were required to be satisfied in order to receive funding. This often involved the use of expressions such as 'must', 'must not', 'will' or 'will not'. However, this presentation did not assist in ensuring applicants were aware of all mandatory requirements, or that all such criteria would be consistently applied in the assessment of applications.

[24] Also of note was that there were very few instances (under two per cent of relevant program guidelines) where the guidelines provided any capacity for the assessment criteria to be amended, and even fewer (just under one per cent) where the program guidelines outlined that the assessment criteria could be waived.

[25] In addition, similar to the situation with threshold criteria, whilst most (93 per cent) guidelines with assessment criteria separately grouped and identified those criteria, for nearly 13 per cent of those guidelines, the benefit of adopting this approach was diminished by additional assessment criteria also being stipulated in other parts of the guidelines (without any cross-referencing to ensure potential applicants were aware of the need to also address these additional criteria in their application, and that all relevant criteria were consistently taken into account in the assessment process).

[26] Of the program guidelines examined that did include weightings, rankings or identified priorities, 44 per cent related to programs administered by only two agencies.

- where practical, developing a single program guidelines document that represents the reference source for guidance on the grant selection process, including the relevant threshold and assessment criteria, and how they will be applied in the selection process. Where more than one document is produced and each outlines important aspects of the grant selection process, it is important that agencies recognise that, collectively, all such documents constitute the program guidelines for the purposes of the CGGs. Accordingly, these should collectively be subject to the grant program approval requirements and made available to stakeholders.

23. In this respect, the CGGs outline an expectation that value for money will be a core consideration in determining funding recipients under a grant program. However, whilst 30 per cent of the program guidelines examined by ANAO had identified value for money as either a separate assessment criterion, or an overarching issue to be taken into account in the grant selection process, 70 per cent of guidelines did not make any such reference to value for money. Again, the explicit referencing of value for money as playing a role in the selection of grants was a predominant feature in the program guidelines developed by only a small number of agencies (three), with the majority of program guidelines developed by most agencies in the period examined by ANAO not addressing value for money.

Summary of agency responses

24. In addition to responding to one or more of the audit recommendations, a number of agencies provided summary comments on the audit report, as follows.

Department of Finance and Deregulation

The Department of Finance and Deregulation supports the four recommendations in the report.

In relation to Recommendation 2, Finance agrees to develop and implement systems and procedures to support the analysis of grant program guidelines, and their relevant risk assessments. This risk based analysis should prove useful for Finance to better target guidance, training and support for agencies.

Finance will offer to assist agencies with their consideration and implementation of the other ANAO recommendations. Finance will also develop and implement strategies to improve agency compliance with the CGGs, particularly in relation to the development and approval of grant program guidelines.

Australian Prudential Regulation Authority

APRA has only a modest grant program. That said, APRA generally supports the four recommendations contained in the proposed audit report. APRA's grant guidelines and reporting procedures have been reviewed since the Commonwealth Grant Guidelines were issued in July 2009, and the recommendations are not expected to have a significant impact on APRA's operations.

Australian Research Council

The ARC welcomes the report and agrees with the recommendations. The ARC will continue to review its processes for the development and approval of grant guidelines to ensure that they comply with the better practice processes identified in the Commonwealth Grant Guidelines.

Attorney-General's Department

The Attorney-General's Department (AGD) welcomes and agrees with the recommendations within the ANAO audit report on the *Development and Approval of Grant Program Guidelines*.

In relation to paragraphs 2.8 and 2.13 of the report, AGD agrees with ANAO's finding that the results, as presented in Table 2.3, reflect the uncertainty about the requirement for Ministerial consideration of revisions to existing grant program guidelines.[27]

The department will implement the recommendations, including their incorporation into internal policy guidance, training material and assurance processes.

Australian Securities and Investments Commission

Overall, the Australian Securities and Investments Commission accepts the ANAO's findings and agrees with the key recommendations contained in the report. The recommendations will assist agencies in complying with the Commonwealth Grant Guidelines.

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[27] A significant proportion of the grant program guidelines that did not receive the required approval related, as indicated by AGD, to revised guidelines for existing programs. However, as outlined at paragraph 2.14, notwithstanding the clear and consistent guidance since December 2007 requiring consideration by the ERC (or other relevant authority) of guidelines for all new grant program guidelines, 36 per cent of such guidelines provided to ANAO in response to the audit survey had not been submitted for the required approval processes. These instances represented 26 per cent of all program guidelines developed between December 2007 and June 2010 that were not submitted for ERC or other relevant approval in accordance with the requirements of the enhanced grants administration framework.

Cancer Australia

> Cancer Australia commenced operations on 3 May 2006. As of 30 June 2011 Cancer Australia and the National Breast and Ovarian Cancer Centre (a Body under the *Commonwealth Authorities and Companies Act 1997* (CAC Act)), were amalgamated and as part of this process we have been reviewing those areas where the *Financial Management and Accountability Act 1997* (FMA Act) requirements may impact on work previously undertaken under the CAC Act.

> The audit provides a valuable tool to support this review process as well as guiding Cancer Australia's current grant arrangements. In recognition of the priority that Cancer Australia places on compliance with the legislative and policy requirements under the FMA Act particularly as they relate to grant arrangements, Cancer Australia has invested in a dedicated resource with extensive grants and procurement expertise to oversight the compliance framework for grants and procurement, and lead an extensive training program targeted to the needs of the agency. Cancer Australia recognises both the important role that the CGGs play in maximising value for money and the ongoing need to ensure that the grant processes, as well as the outcomes of the grant programs, deliver value with public money and achieve government policy objectives.

Department of Agriculture, Fisheries and Forestry

> DAFF has established practices, including consultation with the Departments of Finance and Deregulation and Prime Minister and Cabinet on grant program risk assessments, to ensure grant program guidelines are developed and approved in accordance with the Commonwealth's grant policy framework. As a part of our continuous improvement of internal practices, we regularly review the department's guidance and templates to ensure clear and consistent grant program guidelines.

> DAFF differs with the ANAO on the interpretation of the Department of Finance and Deregulation's guidance and advice. While DAFF does not agree with the inclusion of its programs in Table 2.3 based on ANAO's

interpretation[28], it supports the recommendations of the report which will ensure consistent application of the Commonwealth's grant policy requirements in the future.

Department of Climate Change and Energy Efficiency

The Department of Climate Change and Energy Efficiency (the Department) welcomes the report and agrees with the ANAO's recommendations.

Since the conclusion of the audit, the Department has invested considerable resources in grants management. In mid-2011, a dedicated Grants Management Unit was established and, in early 2012, a new Grants Management Framework introduced. The Framework aligns with the requirements of the *Commonwealth Grant Guidelines-Policies and Principles for Grants Administration* and incorporates the better practice processes and procedures expressed in the ANAO's *Better Practice Guide: Implementing Better Practice Grants Administration.*

The Department will now review its Grants Management Framework to ensure that processes for the development and approval of grant program guidelines are consistent with the recommendations of this report.

Department of Education, Employment and Workplace Relations

The Department of Education, Employment and Workplace Relations is committed to the sound administration of government grant programs.

The recommendations in this report are supportive of a whole of government approach aimed at continuous improvement and transparency in relation to grant funding arrangements.

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[28] In order that any guidelines not previously identified as having been approved could be brought to ANAO's attention, or errors with ANAO's analysis otherwise identified, in February 2012 ANAO provided Finance with details of each individual instance included in Table 2.3 of the required Ministerial approval of program guidelines not being obtained. The Department of Agriculture, Fisheries and Forestry (DAFF) was also provided with this information in relation to those of its guidelines that had been included in Table 2.3. Where DAFF provided evidence that demonstrated the guidelines had either obtained the required approval, or that approval was not required (for example, changes to the guidelines for an existing program were minor or the CGGs did not apply due to the nature of the program), they are no longer included in Table 2.3. Nevertheless, there remained three sets of revised grant program guidelines where the changes from the prior version were not minor in nature. For example, there had been changes to the objectives/targets for program funding, changes to program eligibility requirements and/or assessment criteria and/or changes to the selection process (including, for one program, the introduction of an external panel to assess applications rather than this being undertaken within the department). DAFF was provided with details of ANAO's analysis that led to ANAO concluding these three sets of guidelines required approval. DAFF did not provide ANAO with any further advice or evidence to inform any ANAO re-consideration of the audit assessment.

The Department will review internal controls, guidance and training material to ensure the better practice outlined in the report is incorporated into the Department's practices.

Department of Families, Housing, Community Services and Indigenous Affairs

The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) has reviewed the proposed report and supports the four proposed recommendations.

FaHCSIA seeks guidance on the development of its program guidelines and any related issues through the Department of Finance and Deregulation (Finance). From advice received, compliance with the Commonwealth Grant Guidelines is not always 'black and white. Accordingly, the department has been advised to use its discretion and judgment when making decisions about whether grant guidelines need to be reviewed and/or approved by the Expenditure Review Committee of Cabinet (ERC) or Finance. As a result, the department did not believe it was necessary to submit some guidelines for existing programs to ERC.[29]

As part of routine 'good businesses', all of FaHCSIA's program guidelines are currently being reviewed to ensure they meet the latest requirements of the Commonwealth Grant Guidelines.

Department of Immigration and Citizenship

The Department is supportive of all the recommendations outlined in the ANAO's proposed report, *Development and Approval of Grant Program Guidelines*, and welcomes the opportunity for the Department of Finance and Deregulation to provide more guidance to agencies on a program specific basis.

Department of Industry, Innovation, Science, Research and Tertiary Education

The Department of Industry, Innovation, Science, Research and Tertiary Education agrees with recommendations 1 – 4. The department considers that the number of one-off grants made by the former Department of Innovation, Industry, Science and Research during the study period was overstated, due to a number of sponsorships of a procurement nature being reported as grants. The department's guidance on sponsorships was updated in 2011 to address

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[29] In each of the six relevant instances, ANAO sought from FaHCSIA evidence (such as prior versions of the relevant guidelines) that would support an assessment that the changes made in the revised guidelines were minor such that they did not require Ministerial consideration and approval. In two instances, the available documentation evidenced significant changes in the revised guidelines from those that previously applied. In the remaining four instances, FaHCSIA advised ANAO it was not in a position to provide additional documentation for analysis.

this and these payments are now managed in accordance with the Commonwealth Procurement Rules.

Department of the Prime Minister and Cabinet

The Department of the Prime Minister and Cabinet welcomes the report of the ANAO into the *Development and Approval of Grant Program Guidelines*. Australian Government grants programs provide support to a wide range of community activities and endeavours and enable the payment of billions of dollars to the community each year. In order to ensure that public confidence is maintained in the integrity of government grant programs, it is vital that payments made under the programs are transparent and comply with the CGGs.

As such, the Department of the Prime Minister and Cabinet supports the recommendations of the ANAO which seek to ensure the ongoing effectiveness of the CGGs and consistency across risk assessment of programs. Commonwealth Government departments and agencies must ensure that their administered grant programs operate consistently across the Commonwealth and that public confidence in the system is maintained.

Department of Regional Australia, Local Government, Arts and Sports

The Department of Regional Australia, Local Government, Arts and Sport has adopted a continuous improvement approach to our grants management priorities and uses this, as well as inter-agency consultative groups and various audit reports, as one of the many tools to assist us to refine and enhance our grants management processes.

I agree with all recommendations made, and note that many of these recommendations are already standard practice within the Department of Regional Australia, Local Government, Arts and Sport.

Department of Sustainability, Environment, Water, Population and Communities

The Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC) generally agrees with the audit recommendations and is grateful for the opportunity to provide comment. It recognises the need for robust program guidelines that include clearly defined objectives and evaluation criteria and that seek proper approval.

DSEWPaC has a growing maturity in the development and evaluation of grant programs and since the audit's reporting period has implemented a new and robust grants administration framework and dedicated resources to assist with this important activity. In June 2011, DSEWPaC implemented a framework which comprised comprehensive administrative tools for staff in order to provide policy and legislative guidance and better practice on how granting activities should be properly developed and managed.

DSEWPaC is committed to further development of already strong engagement and relationships with the Department of Finance and Deregulation and the Department of the Prime Minister and Cabinet; combined with a drive to identify opportunities and receive guidance on better practices and contribute to whole of government activities.

Department of Veterans' Affairs

The two grants administration sections within the Department of Veterans' Affairs have conferred and agree with the findings and recommendations of the proposed report. Specific agreed responses to the recommendations are provided.

The Department of Veterans' Affairs administers the following ongoing grants programs:

- *Saluting Their Service* Commemoration Grants (STS);

- *Building Excellence in Support and Training* Grants to Ex-service organisations (BEST) (including Grants-in-Aid to national ex-service organisations); and

- *Veteran and Community Grants* to organisations that support veterans (V&CG).

In the 2011/12 financial year the Department of Veterans' Affairs also administered a one-off Service Delivery Integration Grant.

National Health and Medical Research Council

The National Health and Medical Research Council (NHMRC) operates within a strict legislative and regulatory framework. The *National Health and Medical Research Council Act* 1992 charges NHMRC with raising the standard of individual and public health, fostering national consistency in health standards, supporting health and medical research and training, and fostering consideration of ethical issues relating to health. NHMRC administers health and medical research funding in strict accordance with the legislation and operates to ensure competition, transparency and the best value for money, consistent with the CGGs.

NHMRC embodies these policies and principles in the design and administration of its funding programs. In administering funding for health and medical research the NHMRC seeks research applications through annual or targeted calls in line with requirements set out in detailed funding rules for each scheme. These applications are subject to rigorous assessment by peer review to identify the best as judged by criteria such as scientific quality, significance and innovation and the ability of the researchers to achieve results.

Consistent with the principles set out in the CGGs, the NHMRC works continually to strengthen its probity and compliance arrangements, particularly around transparency of assessment through peer review guidelines, confidentiality and managing conflicts of interest. The NHMRC is working to streamline the administration of its many funding programs through the simplification and standardisation of funding rules into a universal set of funding rules, and the establishment of a single funding deed. The NHMRC will endeavour to structure any new funding guidelines to be as clear as possible in separately identifying the elements identified as being best practice in the constitution of funding guidelines

Office of the Fair Work Ombudsman

The Fair Work Ombudsman is in agreement with the recommendations contained in the draft audit report. The Fair Work Ombudsman in particular believes the changes made in September 2010 regarding the approval process for grant program guidelines has significantly improved the timeliness of delivering grant programs.

Recommendations

Recommendation No. 1 **Paragraph 2.38**	ANAO recommends that agencies that have administered a significant number of one-off or ad hoc grants, particularly where such grants have related to a common type of activity, identify opportunities for appropriately incorporating the relevant grant-giving activity within the structure of a grant program. Agencies should seek advice and assistance from the Department of Finance and Deregulation once opportunities have been identified. *Agreed*: 21 of the 22 responding agencies. *Agreed in Principle:* the Department of Regional Australia, Local Government, Arts and Sport.
Recommendation No. 2 **Paragraph 2.43**	ANAO recommends that the Department of Finance and Deregulation develop and implement procedures and systems that will: • record grant program risk assessments undertaken by agencies as required under the revised guideline approval requirements introduced in September 2010; and • enable analysis to be undertaken of these risk assessments and other data, and better target guidance, training and support for agencies. *Agreed*: All responding agencies.

Recommendation No. 3 **Paragraph 2.46**	ANAO recommends that, where a grant program is operating under guidelines that have not been the subject of a significant revision since the Commonwealth Grant Guidelines were issued, the administering agency review the content and structure of the guidelines to ensure they are in accordance with the Commonwealth Grant Guidelines and associated legislative provisions. *Agreed:* All responding agencies.
Recommendation No. 4 **Paragraph 3.46**	ANAO recommends that when developing grant program guidelines, administering agencies promote clarity, transparency and consistency in the administration of granting activities by clearly and separately identifying in the program guidelines:

- the person or persons expected to approve grant funding;

- all threshold requirements that must be met in order to be considered for funding;

- for relevant selection processes, the assessment criteria that will be used to differentiate between eligible, compliant applications and, where appropriate, the relative weighting or priority attached to each of these criteria; and

- the way in which value for money considerations (as outlined in the FMA Regulations and Commonwealth Grant Guidelines) will be taken into account in the awarding of grants.

Agreed: All responding agencies.

Audit Findings

1. Introduction

This chapter outlines the changes made in recent years to the framework for Commonwealth grants administration, including the introduction of a requirement that guidelines be developed and approved in respect to each new grant program (which is the subject of this performance audit). The chapter also outlines the audit objective, scope and criteria.

Background

1.1   Grants administration is an important activity for many Commonwealth entities, involving the payment of billions of dollars of public funds each year.[30] Commonwealth grant programs are subject to applicable financial management legislation. Specifically, the *Financial Management and Accountability Act 1997 (*FMA Act) provides a framework for the proper management of public money. That framework includes requirements governing the process by which decisions are to be made about whether public money should be spent on individual grants, as well as various accountability requirements.

1.2   Prior to late 2007, there was no official guidance to agencies relating specifically to the administration of grant programs. Nevertheless, since 1994, the Australian National Audit Office's (ANAO) suite of Better Practice Guides has included a publication focused on grants administration, with the objective of providing practical assistance to those involved with the planning, project selection, management and review of Commonwealth grant programs. For example, in respect to grant program guidelines, the 2002 version of the ANAO Better Practice Guide (which remained the extant version until 2010) had emphasised that clear, consistent and well-documented program

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[30]   In announcing the Government's intention to reform grants administration, the then Minister for Finance and Deregulation stated that, in 2006, Commonwealth expenditure on discretionary grants alone had totaled $2.7 billion (The Hon Lindsay Tanner MP, Minister for Finance and Deregulation, National Press Club Address, 6 February 2008). The July 2008 *Strategic Review of the Administration of Australian Government Grant Programs* 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 (Mr Peter Grant PSM, *Strategic Review of the Administration of Australian Government Grant Programs*, 31 July 2008, p. 1).

guidelines are an important component of an effective grant program administration system.[31]

1.3   Against the background of a number of critical ANAO performance audits examining the administration of particular grants programs, Finance Minister's Instructions issued in December 2007 included new requirements applying to the administration of grant programs. In respect to grant program guidelines, this included that:

- guidelines for any new discretionary grant programs were to be considered by the Expenditure Review Committee of Cabinet (ERC);

- agencies were to have adequate arrangements in place to manage discretionary grant programs in accordance with relevant legislation, regulations and guidance; and

- Ministers were not to make any decisions on discretionary grants[32] without first receiving departmental advice on the merits of the grant application relative to the guidelines for the relevant program.

1.4   This was the first time that there was a requirement for the development and approval of guidelines for grant programs, rather than the development and promulgation of guidelines being promoted as better practice.

Strategic Review of the Administration of Australian Government Grant Programs

1.5   In February 2008, the then Minister for Finance and Deregulation (Finance Minister) announced that a comprehensive review of the value of discretionary grants and the transparency and effectiveness of existing programs would be undertaken.[33] In establishing and undertaking the review,

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[31]   ANAO Better Practice Guide—*Administration of Grants,* May 2002, p. 27. The 2002 version of the Better Practice Guide was extant at the time the first enhancements to the grants administration framework were introduced in December 2007. Similar guidance is provided in the current version of the Better Practice Guide, which was published in June 2010 following the full implementation of the enhanced grants administration framework (see further in ANAO Better Practice Guide–*Implementing Better Practice Grants Administration*, June 2010, pp. 51–67).

[32]   Discretionary grants were defined as: 'grants where the minister or agency has discretion in determining whether or not a particular application receives funding and may or may not impose conditions in return for the funding' and not including 'entitlement-based and demand-driven payments or rebates.'

[33]   The Hon Lindsay Tanner MP, Minister for Finance and Deregulation, National Press Club Address,, 6 February 2008.

particular attention was paid to the findings and recommendations of the wide range of audits of grants administration undertaken by the ANAO. In this respect, the July 2008 report of the Strategic Review of the Administration of Australian Government Grant Programs (Strategic Review) commented that many of these audits had raised significant issues going both to the overall framework for the administration of grant programs and to the quality of administration of individual programs.[34]

1.6   The Strategic Review identified the following four key framework requirements that need to be in place to support the effective administration of grants across the Commonwealth:

- 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 administration requirements and public accountability objectives.[35]

1.7   The Review noted that there were important gaps and weaknesses in respect to each of these elements and made 26 recommendations for improvements to the existing policy framework for the administration of grants. More broadly, it also identified seven high-level principles to guide the process of reform: robust planning and design; an outcomes orientation;

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[34]   Mr Peter Grant PSM, *Strategic Review of the Administration of Australian Government Grant Programs,* 31 July 2008, p. 2.

[35]   ibid., p. 3.

collaboration and partnership; proportionality; governance and accountability; probity and transparency; and value for money.[36]

1.8   The Review emphasised the importance of grant program guidelines to grants administration, as follows:

> A clear set of program guidelines is essential for the efficient, effective and consistent administration of a grant program. In the interests of transparency and equity of access, program guidelines should be not only published but actively publicised to potentially interested parties. Agencies also have a responsibility to ensure that their published program guidelines and documented internal procedures are consistently applied through staff training, appropriate supervision and management oversight, and that any departures from those guidelines and procedures are both well informed and appropriately authorised. Potential applicants and other stakeholders have a right to expect that program funding decisions will be made in a manner, and on a basis, consistent with the published program guidelines and selection documentation.[37]

1.9   However, the Strategic Review proposed that different arrangements be adopted to the then existing requirement that all grant program guidelines be approved by the ERC to provide assurance about the quality of program design and planning. In this respect, the report of the Review stated that it:

> …supports strongly the intended purpose of this requirement, but questions whether it is the most efficient means of providing ERC with the assurance that it needs. As an alternative, it suggests that the information to be reported as part a new policy proposal should be designed to provide assurance that a robust planning process has been undertaken, and that the proposed grant program is appropriately structured to achieve its intended outcomes.
>
> Where the information supporting a new policy proposal is not adequate to provide the level of assurance required, any approval of a new grant program should be made on an in-principle and conditional basis only, on the understanding that no payments would be made under the program until the responsible Minister had provided evidence that a robust planning process had been completed. Where additional assurance was needed in any particular case, it would be open to ERC to require the submission of draft program

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[36]   In this respect, the report of the Strategic Review noted that experience gained in the procurement area and elsewhere had demonstrated the value of establishing a set of high-level principles to help guide the process of whole-of-government reform (ibid., p. 21).

[37]   ibid., p. 56.

guidelines (or other appropriate evidence) before the program was formally implemented and any payments made.[38]

1.10 After considering the Strategic Review, in December 2008 the Government agreed to a range of measures to reform the administration of grants.[39] Amongst other things, the Government decided to retain the requirement that guidelines for new grant programs be approved by the ERC.

Amendments to the financial framework for grants

1.11 The Strategic Review found that the lack of any Commonwealth-wide policy guidance on grants was a major gap in the overall framework and recommended that a whole-of-government policy framework be developed for the administration of grant programs.[40] It was further recommended that the new grants policy framework be established under the *Financial Management and Accountability Regulations 1997* (FMA Regulations) in the form of guidelines issued by the Finance Minister, with a requirement that Ministers and officials performing functions in relation to the administration of grants should have regard to those guidelines, and comply with any mandatory requirements.[41]

1.12 Other areas where the Strategic Review recommended changes to the then FMA Regulations related to:

- the approval of spending proposals, where it was recommended that the Regulations be reviewed and restructured with a view to improving their logical sequence, increasing clarity and promoting consistency of interpretation and application across FMA Act agencies; and

- recording the basis of a grant approval, where it was recommended that the Regulations be amended to require all approvers of grant spending proposals to record in a document the basis on which the approver was satisfied that the proposed expenditure represented an efficient and effective use of public money, and was in accordance with relevant Commonwealth policies.[42] In this respect, guidelines for a

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[38] ibid., p. 6.

[39] The Hon Lindsay Tanner MP, Minister for Finance and Deregulation, *Improving Government Grants*, Media Release, 9 December 2008.

[40] Mr Peter Grant PSM, *Strategic Review of the Administration of Australian Government Grant Programs,* 31 July 2008, p. 45.

[41] ibid., Recommendation 2, p. 47.

[42] ibid., p. 50 (Recommendation 3) and p. 68 (Recommendation 9).

particular program are a policy of the Commonwealth to be addressed when consideration is being given to approving a spending proposal under a particular grant program.

1.13 These recommendations were accepted by the Government. Accordingly, on 1 July 2009, the FMA Regulations were amended to:

- insert a new FMA Regulation 3A that defined the meaning of the term 'grant' based on an arrangement exhibiting each of four specified characteristics.[43] In general, all arrangements that satisfy that definition are subject to the grants administration framework. However, Regulation 3A(2) specifies certain arrangements that are to be taken not to be grants and which are, therefore, exempt from the requirements of the grants framework. With effect from 1 July 2010, Regulation 3A(2) was amended to identify an additional type of arrangement that will be taken not to be a grant, being a payment of assistance for the purposes of Australia's international development assistance program, which is treated by the Commonwealth as official development assistance;

- insert a new FMA Regulation 7A, providing that the Finance Minister may issue *Commonwealth Grant Guidelines* (CGGs) for matters relating to grants administration, and requiring officials to act in accordance with the CGGs; and

- amend FMA Regulation 12 to require that, where a spending proposal relates to a grant, the approver must record the basis on which they are satisfied that the proposal complies with Regulation 9[44] (as well as the

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[43] 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 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 or conditions specified in the arrangement.

This is similar to the definition of a grant included in the Finance Minister's Instructions of 16 January 2009 being: 'an arrangement for the payment of public money, with conditions, to an external recipient for a specified purpose. Grants are provided to recipients to assist them to achieve their goals, while furthering the policy objectives of the Australian Government'.

[44] FMA Regulation 9 prohibits approval of a spending proposal unless the approver is satisfied, after making reasonable inquiries, that it would be a proper use of Commonwealth resources.

terms of the approval, which were already required to be recorded for all approved spending proposals).

1.14   The Strategic Review had further recommended that the Department of Finance and Deregulation (Finance) develop and promulgate whole-of-government guidance covering the definition of each major class of Commonwealth financial transaction and the principles to be applied in determining the appropriate classification of individual transactions.[45] As discussed in paragraph 1.13, with effect from 1 July 2009, the FMA Regulations were amended to, for the first time, include a definition of a grant, and Finance issued associated guidance to assist agencies in the classification of various financial transactions.[46]

Promulgation of the Commonwealth Grant Guidelines

1.15   The CGGs, issued under new FMA Regulation 7A, took effect from 1 July 2009 and represent the whole-of-government policy framework for grants administration. They apply to all agencies subject to the FMA Act and also include a number of process requirements that apply to Ministers where they exercise the role of financial approver in relation to grants.

1.16   The CGGs are in two parts. Part One outlines the legislative and policy framework for grants administration, including certain mandatory process requirements[47] which are categorised as:

- Ministerial requirements;

- Expenditure Review Committee requirements;

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[45]   Mr Peter Grant PSM, *Strategic Review of the Administration of Australian Government Grant Programs*, 31 July 2008, p. 45.

[46]   See Finance Circular 2009/03, *Grants and other common financial arrangements,* Department of Finance and Deregulation, 29 June 2009.

[47]   In issuing the CGGs, the then Finance Minister stated that: 'The Guidelines are intended to improve the transparency and accountability of grants administration. The Government has mandated transparent and accountable decision-making processes and timely public reporting through agency websites.' (Department of Finance and Deregulation, *Commonwealth Grant Guidelines, Policies and Principles for Grants Administration* July 2009, Foreword, p. v.) The CGGs further highlight the mandatory nature of certain requirements set out in Part I of the Guidelines (including process requirements that apply to Ministers when exercising the role of approver), advising that: 'Obligations that *must* be complied with, in all circumstances, are denoted by the use of the term *must* or *mandatory* in these CGGs. The use of the term *should* denotes matters of sound practice. The matters dealt with in Part I generally relate to mandatory requirements, while the matters dealt with in Part II generally relate to sound practice.' (Department of Finance and Deregulation, *Commonwealth Grant Guidelines*, *Policies and Principles for Grants Administration, July 2009,* p. 2).

- agency requirements; and

- web-based reporting requirements.

1.17   These mandatory requirements retained some of the obligations contained in the January 2009 Finance Minister's Instructions, but also placed additional requirements on agencies. In respect to grant program guidelines, the CGGs set out a number of policy and agency requirements, as summarised in Table 1.1.[48]

Table 1.1

Key requirements for grant program guidelines under the Commonwealth Grant Guidelines

CGG reference	CGG requirement
Paragraphs 3.16 and 3.17	Under the financial management framework[1], there is an overarching requirement to manage an agency's affairs efficiently, effectively and ethically within the context of the Australian Government's policy framework. The policy requirements relating to grants administration include…the guidelines applying to a granting activity, such as grant program guidelines.
Paragraph 3.23	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.
Paragraph 3.24	Agencies *must* ensure that grant guidelines and related operational guidance are in accordance with the CGGs.
Paragraph 3.22	The Australian Government has agreed that 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.

Notes:

1.   As required by Section 44 of the FMA Act and FMA Regulation 9.

Source: Department of Finance and Deregulation, *Commonwealth Grant Guidelines, Policies and Principles for Grants Administration,* July 2009, pp. 9 and 11.

Grants Framework Unit

1.18   In terms of implementing an enhanced grants administration framework, the Strategic Review commented that:

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[48]   The emphasis reflected in Table 1.1 is as per the CGGs. In this respect, obligations set out in the CGGs that must be complied with in all circumstances are denoted by the use of the term *must* or *mandatory*.

A significant investment of resources will be needed to address the serious framework deficiencies identified in [*the Strategic Review report*], and to put in place more robust and effective arrangements for the future. Having regard to the scale of work required, the Review considers that a dedicated unit should be established within Finance to coordinate the development of a new policy framework for grants administration and to oversee its implementation across the Commonwealth. The new unit should consult closely with line departments and agencies during the development phase of its work; moreover, when a new policy framework for grants has been fully developed and endorsed by government, the unit should actively engage with agencies both to explain the terms of the new framework and to assist them in implementing its requirements. On an ongoing basis, the unit should serve as a 'port of call' and source of expert assistance and advice on any matters relating to the interpretation of the framework or the administration of grant programs more generally.[49]

1.19 The Review acknowledged that there would be a cost associated with this proposal, but considered that it would be significantly outweighed by the long-term benefits which would accrue from a robust whole-of-government framework for the administration of grants, commenting that:

The corresponding investment made some years ago in the development of a procurement policy framework provides supporting evidence for this view. By dint of that investment, as noted [*in the report of the Strategic Review*], there is now a much clearer understanding of procurement policy requirements across agencies; far greater consistency in the interpretation and application of that policy; a higher level of transparency and accountability in the management of procurement processes; a well-designed reporting system for procurement, closely linked to agencies' own information systems; and more generally, a marked improvement in the professionalism of procurement activity across the Commonwealth as a whole.[50]

1.20 Accordingly, the Strategic Review recommended that:

- Finance establish an identifiable unit within its structure to take responsibility for developing and implementing the new policy framework for grants administration and for co-ordinating action on government decisions arising from the Review;

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[49] Mr Peter Grant PSM, *Strategic Review of the Administration of Australian Government Grant Programs*, 31 July 2008, p. 51.

[50] ibid., pp. 51–52.

- the unit established within Finance should work collaboratively with portfolios and agencies to explain the terms of the new grants policy framework and to assist them in implementing its requirements; and

- the Government provide funding for Finance to perform these two functions.[51]

1.21 Government decisions in respect to the Strategic Review were taken in December 2008, with this recommendation being agreed in-principle, noting that funding for the unit would be considered in the 2009–10 Budget.[52] In agreeing to its formation, the Government was advised that the establishment of a dedicated unit within Finance would support agencies by providing a single point of contact on the new grants framework, and would be a key factor in mitigating the risk of the new framework not meeting its policy objectives or not being implemented in a consistent and robust manner across agencies. The staff resources for the Grants Framework Unit are part of the Financial Framework Policy Branch within Finance's Financial Framework Division.

1.22 As outlined in a related ANAO performance audit[53], the level of resources that has been made available to the Grants Framework Unit and, therefore, the associated level of activity in relation to engaging with agencies to support the effective and consistent implementation of the new grants policy framework, has been less than that envisaged and funded through the Budget.[54] In March 2012 Finance advised ANAO that the average staffing level budgeted for the Grants Framework Unit in 2012–13 is five.

Audit objective, scope and criteria

1.23 The objective of the audit was to assess the implementation and effectiveness of the enhanced grants administration requirements relating to

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[51] ibid., Recommendation 5, p. 52.

[52] The May 2009 Budget included an expense measure of $3.5 million over four years (comprising $1 million in both the 2009–10 and 2010–11 financial years, $0.8 million in 2011–12 and $0.7 million in 2012–13) for Finance to establish a Grants Framework Unit.

[53] See further in ANAO Audit Report No.21 2011–12, *Administration of Grant Reporting Obligations,* Canberra, 24 January 2012, p. 70.

[54] In particular, in the first two years of operation of the CGGs, the staffing level of the Grants Framework Unit was nearly three-quarters lower than that budgeted.

the development and approval of new grant guidelines and revision of existing grant guidelines. The high-level audit criteria are outlined in Table 1.2

Table 1.2

Audit criteria

Area	Criteria
Development of guidelines by agencies	• Have all grant guidelines developed by FMA Act agencies since December 2007 been of an appropriate standard to promote effective grants administration?
Provision of guidelines to Ministers for approval	• Have all new grant guidelines been subject to the required level of Ministerial consideration? • Where significant changes are proposed to guidelines for existing grant programs, have agencies consulted with the Department of Finance and Deregulation on whether the proposed change will give rise to the need for Ministerial consideration of the Guidelines (since 1 July 2009 onwards)?
Department of Finance and Deregulation involvement	• Does the Department of Finance and Deregulation have and apply appropriate procedures to assess grant guidelines provided to Ministers for their consideration? • Does the Department of Finance and Deregulation provide sound advice to Ministers in relation to grant guidelines, and revisions to existing guidelines, being put forward for Ministerial consideration?

1.24 As part of this audit (and a related audit on the administration of the various grant reporting requirements), ANAO conducted a survey of all FMA Act agencies which sought to identify the grant programs that had been in operation since December 2007 (when the first enhancements were made to the grants administration framework). The audit survey:

- included a list of grant programs for each agency that ANAO had identified through research of publicly available information such as agency websites and public reports;

- asked agencies to confirm whether the list of their grant programs was accurate and complete or, alternatively, to advise of any corrections including providing details of any grant programs that had not been identified by ANAO from publicly available material;

- requested agencies to provide a list of all grant programs for which program guidelines had been developed in the period December 2007 to 30 June 2010, together with a copy of the final approved guidelines for each program; and

- requested agencies to provide:

- advice as to whether these guidelines had been approved by a Minister or Ministers (including relevant Cabinet Committees) and, if so, provision of the relevant details;

- details of any instances where guidelines were publicly released, on the grounds of urgency, prior to their consideration by Ministers; and

- information on any occasions where changes had been made to guidelines for an existing grant program including, where relevant, any consideration and approval of the changes by Ministers together with a copy of any revised guidelines subsequently issued in relation to each relevant grant program.

1.25 This material, together with examination of relevant records concerning Ministerial consideration and approval of grant guidelines held by Finance and the Department of the Prime Minister and Cabinet (PM&C), provided the basis for the analysis undertaken for this audit. ANAO also examined records held within Finance relating to that department's analysis of draft grant program guidelines submitted for consideration by relevant agencies.

1.26 In total, there were 369 grant program guidelines examined by ANAO that had been prepared by agencies between December 2007 and June 2010.

1.27 The audit was conducted in accordance with ANAO auditing standards, at a cost to the ANAO of $573,000.

Report structure

1.28 The audit findings are reported in the following Chapters.

Chapter	Chapter Overview
2. Ministerial Approval of Grant Program Guidelines	Examines the implementation of arrangements requiring agencies to develop grant program guidelines for consideration and approval by Ministers, including oversight of the recent adoption of a risk-based approval process.
3. Content of Grant Program Guidelines	Analyses the content of grant program guidelines developed between December 2007 and June 2010, with particular emphasis on whether the guidelines have outlined transparent and accountable decision-making processes for the awarding of grants.

2.   Ministerial Approval of Grant Program Guidelines

This chapter examines the implementation of the arrangements requiring agencies to develop grant program guidelines for consideration and approval by Ministers, including oversight of the recent adoption of a risk-based approval process.

Background

2.1   The CGGs recognise[55] that granting activity can take a variety of forms, including a payment made on a one-off or ad hoc basis, as well as grants that result from competitive, applications-based processes and those that are awarded provided specified criteria are satisfied (often referred to as demand-driven grant programs). However, whilst agencies should have regard to the seven key principles of grants administration outlined in the CGGs for all forms of granting activity, the specific requirement for guidelines to be developed applies to grant programs, not grants awarded on a one-off or ad hoc basis.

2.2   Through the audit survey, ANAO sought to identify all grant programs in existence between December 2007 (when enhancements to the grants administration framework were first made) and June 2010. In response:

- 26 agencies indicated through their survey response that they had administered, collectively, more than 400 one-off grants.[56] The majority (73 per cent) of these had been administered by four agencies, as follows:

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[55]   Department of Finance and Deregulation, *Commonwealth Grant Guidelines, Policies and Principles for Grants Administration,* July 2009, p. 4.

[56]   In this respect, the second element of the Strategic Review had commented that: 'Very few—if any—discretionary grant programs should deliver funding to a single recipient, operate for a single year, or provide one-off "rewards".'

- 119 one-off grants were advised to ANAO by the then Department of Industry, Innovation, Science and Research[57];

- the survey response from the Department of Foreign Affairs and Trade identified 76 ad hoc grants;

- 68 one-off grants were advised to ANAO by the Department of Sustainability, Environment, Water, Population and Communities; and

- 45 one-off grants were advised to ANAO by the Department of Education, Employment and Workplace Relations;

- 21 of the 26 agencies that reported having administered one or more one-off grants in the period examined informed ANAO that they had also administered one or more grant programs in the same period; and

- there were also a further 13 agencies that reported having administered one or more grant programs in the relevant period, but whose survey response did not identify any one-off grants.

Agency development of grant program guidelines

2.3   The development of grant program guidelines is a significant activity in the Commonwealth. In this respect, as part of this audit, 24 FMA Act agencies[58] provided ANAO with 369 grant program guidelines that had been prepared between December 2007 and June 2010.

2.4   Most commonly, the guidelines provided to ANAO related to a newly established program. Specifically, 146 guidelines for a new grant program were provided to ANAO by 19 agencies. This indicates that, on average, at least one set of grant program guidelines was developed each week over the

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[57]   Of these 118 one-off grants, 54 were reported on the department's website under the program component title 'AusIndustry Sponsorship' as having been awarded between 9 July 2009 and 28 June 2010. The grants in question were reported predominantly as being funding for conferences or industry events awarded to recipients including state, territory and local governments, chambers of commerce, industry groups and universities. Three-quarters of these 54 grants were reported in the period April to June 2010 (14 were reported in April 2010; 13 were reported in May 2010; and 14 were reported in June 2010).

[58]   Not all agencies that informed ANAO that they had administered grant programs had developed program guidelines in the period covered by the audit (December 2007 to June 2010). This arose as a result of some grant programs administered in the period examined being legacy programs that had been established at some time prior to December 2007 and had continued to operate in some or all of the period examined by ANAO.

two-and-a-half-year period examined by ANAO. Many of the 19 agencies involved had produced guidelines for only a small number of grant programs (five or fewer) in the audit timeframe. Conversely, four agencies had produced more than 16 program guidelines for new grant programs in that period. Table 2.1 provides further information on the number of program guidelines prepared for new grant programs between December 2007 and June 2010 that were provided to ANAO by agencies as part of their survey response.

Table 2.1

Agencies producing guidelines for a new grant program: December 2007 to June 2010

Number of guidelines prepared	Agencies
5 or fewer	Attorney-General's Department; Australian Prudential Regulation Authority; Cancer Australia; Department of Broadband, Communications and the Digital Economy; Department of Climate Change and Energy Efficiency; Department of Families, Housing, Community Services and Indigenous Affairs; Department of Immigration and Citizenship; Department of Regional Australia, Regional Development and Local Government; Department of the Prime Minister and Cabinet; Department of Veterans' Affairs; National Health and Medical Research Council; and Office of the Fair Work Ombudsman.
Between 6 and 10	Australian Research Council; and Department of Resources, Energy and Tourism.
Between 11 and 15	Department of Innovation, Industry, Science and Research.
Between 16 and 20	Department of Agriculture, Fisheries and Forestry.
More than 20	Department of Education, Employment and Workplace Relations; Department of Health and Ageing; and Department of Sustainability, Environment, Water, Population and Communities.

Source: ANAO analysis of agency data.

2.5   It was also common for new guidelines to be issued in respect to a new funding round of an already established grant program. In total, 19 agencies provided ANAO with 133 grant program guidelines that had been prepared for a new round of an existing program (see Table 2.2). In 106 instances (80 per cent), the program had been established before the first enhancements to the grants administration framework were made in December 2007.

Table 2.2

Agencies producing guidelines for a new round of an existing grant program: December 2007 to June 2010

Number of guidelines prepared	Agencies
5 or fewer	Bureau of Meteorology; Cancer Australia; Department of Agriculture, Fisheries and Forestry; Department of Broadband, Communications and the Digital Economy; Department of Climate Change and Energy Efficiency; Department of Defence; Department of Immigration and Citizenship; Department of Regional Australia, Regional Development and Local Government; Department of Resources, Energy and Tourism; Department of the Prime Minister and Cabinet; and Department of Veterans' Affairs.
Between 6 and 10	Attorney-General's Department; Department of Families, Housing, Community Services and Indigenous Affairs; and Department of Innovation, Industry, Science and Research.
Between 11 and 15	Department of Health and Ageing; and Department of Sustainability, Environment, Water, Population and Communities.
Between 16 and 20	Australian Research Council; and Department of Education, Employment and Workplace Relations.
More than 20	National Health and Medical Research Council

Source: ANAO analysis of agency data.

2.6   In the period examined, a number of agencies also undertook work revising the guidelines that had been previously published in respect to one or more grant programs. In total, agencies provided ANAO with 68 sets of revised guidelines. Sometimes the revision of existing guidelines occurred in conjunction with a new funding round for the program but, more commonly, guidelines were revised to reflect changes in program arrangements or parameters.

Introduction of Ministerial approval requirements

2.7   Since December 2007, a series of decisions have been taken by the Government in respect to Ministerial consideration and approval of grant program guidelines. As noted at paragraph 1.3, in December 2007 a requirement was introduced for guidelines for new grant programs to be considered by the ERC. This requirement was retained in the CGGs, issued with effect from 1 July 2009.

2.8   Prior to the promulgation of the CGGs, the requirement for Ministerial consideration of revisions to existing grant program guidelines was not

explicit. This oversight was addressed through paragraph 3.22(a) of the CGGs stating:

> 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.

2.9 In September 2009, the Government decided that different arrangements would apply to the consideration of guidelines that required urgent public circulation, but which could not be accommodated by scheduled meetings of the ERC. In these circumstances, the relevant Minister was to consult the Finance Minister in writing[59] prior to public circulation of the guidelines, outlining the reasons for the urgency of public circulation prior to ERC consideration as well as any proposed consultation arrangements.

2.10 Over the period examined, ANAO also observed instances in which, due to the need to publish grant program guidelines prior to the next available ERC meeting, the then Prime Minister provided the necessary approval.

2.11 The arrangements relating to the approval of grant program guidelines, as they were constructed at the relevant point in time, applied to the grant program guidelines examined by ANAO in the course of this audit. For the purposes of this report, the term 'required approval' is used to refer to consideration of grant program guidelines by the ERC or another committee of Cabinet; correspondence between the agency Minister and the Finance Minister on grounds of urgency; or consideration by the Prime Minister.

Extent to which grant program guidelines received the required approval

2.12 It was intended that the approval arrangements for grant program guidelines would provide assurance that a robust planning process had been undertaken, and that the proposed grant program was appropriately structured to achieve its intended outcomes.[60] In this context, of the 362[61] program guidelines examined by ANAO, there were 117 (32 per cent) where

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[59] Copies of this advice were also to be provided to the Prime Minister and the Treasurer.

[60] Mr Peter Grant PSM, *Strategic Review of the Administration of Australian Government Grant Programs*, 31 July 2008, p. 6.

[61] Of the 369 grant program guidelines examined by ANAO, there were seven demand-driven grant programs which, due to their non-discretionary nature, were excluded from the grant approval requirements which applied.

evidence of the required approval was provided to ANAO by the relevant agency, Finance or PM&C. However, it has been quite common for grant program guidelines to not be submitted for the required approval. Specifically, for 245 of 362 grant program guidelines provided to ANAO by agencies (68 per cent), there was no evidence that the guidelines had received the required approval through consideration by the ERC or another committee of Cabinet; correspondence between the agency Minister and the Finance Minister on grounds of urgency; or consideration by the Prime Minister. In 46 instances, the ANAO was provided with advice and/or information outlining that the guidelines did not require approval because the changes were minor. Table 2.3 provides further details of the remaining 199 guidelines (63 per cent of relevant guidelines) where the approval requirements were to have been applied.[62]

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[62] In February 2012 ANAO provided Finance with details of each individual instance summarised in Table 2.3 in order that any guidelines not previously identified as having been approved could be brought to ANAO's attention. Agencies that sought the underlying data for Table 2.3 were also provided with this information.

Table 2.3

Grant program guidelines for which there was no evidence of the required approval being obtained

Number of guidelines	Agencies
5 or fewer	Australian Bureau of Statistics; Australian Securities and Investments Commission; Australian Trade Commission; Bureau of Meteorology; Department of Agriculture, Fisheries and Forestry; Department of Broadband, Communications and the Digital Economy; Department of Climate Change and Energy Efficiency; Department of Defence; Department of Education, Employment and Workplace Relations; Department of Regional Australia, Regional Development and Local Government; Department of Resources, Energy and Tourism; and Department of Veterans' Affairs.
Between 6 and 10	Attorney-General's Department; Cancer Australia; Department of Families, Housing, Community Services and Indigenous Affairs; Department of Innovation, Industry, Science and Research; Department of Immigration and Citizenship; and Department of the Prime Minister and Cabinet.
Between 11 and 15	No agencies.
Between 16 and 20	Department of Sustainability, Environment, Water, Population and Communities
More than 20	Australian Research Council; Department of Health and Ageing; and National Health and Medical Research Council.

Source: ANAO analysis of agency data.

2.13   As noted at paragraph 2.8, prior to the promulgation of the CGGs, the requirement for equivalent approval of revisions to existing grant program guidelines was not made explicitly clear. This was reflected in the agency practices, with approval by the ERC (or other relevant authority) being sought in only:

- two of the 106 occasions where the guidelines were for a new round of a program that had existed before December 2007;

- 20 per cent of the 25 instances where revised guidelines were issued for a new round of a program established after December 2007. This included instances where the original program guidelines had been subject to the required approval process, but where the subsequently

prepared revised guidelines were not submitted for similar consideration; and

- 32 per cent of instances where program guidelines were revised.

2.14 In addition, notwithstanding the clear and consistent guidance since December 2007 requiring consideration by the ERC (or other relevant authority) of guidelines for all new grant program guidelines, 36 per cent of such guidelines provided to ANAO in response to the audit survey had not been submitted for the required approval processes. These instances represented 26 per cent of all program guidelines developed between December 2007 and June 2010 that were not submitted for ERC or other relevant approval in accordance with the requirements of the enhanced grants administration framework.

Programs operating under guidelines issued before December 2007 and that have not been the subject of any significant revisions

2.15 Programs already in existence when the first enhancements to the grants administration framework were made in December 2007 are not exempt from that framework. In addition, since the commencement of the CGGs on 1 July 2009, there has been a mandatory requirement that agencies ensure all grant guidelines and related operational guidance are in accordance with the CGGs.[63] In requiring that agencies comply with this mandatory requirement, the CGGs make no provision for agencies to differentiate between program documentation relating to ongoing grant programs that commenced prior to 1 July 2009 and the documentation that applies to grant programs developed since 1 July 2009.

2.16 The obligation for program guidelines and related operational guidance to be in accordance with the CGGs is separate to the obligations requiring the development and appropriate approval of guidelines for new programs and significant changes made to existing guidelines. Accordingly, even where a program is longstanding, and the applicable guidelines themselves (subject to minor updates) are also longstanding, there remains a requirement for the relevant agency to ensure that the guidelines and related operational guidance being applied in the administration of the grant program

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[63] Department of Finance and Deregulation, *Commonwealth Grant Guidelines, Policies and Principles for Grants Administration,* July 2009, p. 11.

are consistent with the CGGs. In light of government expectations in promulgating the CGGs, it would be reasonable to expect that guidelines developed before the enhanced framework was introduced would be likely to require amendment to ensure consistency with the CGGs and associated legislative provisions.

2.17 Against this background, in responding to ANAO analysis of instances where revisions to existing program guidelines had not been submitted to ERC for consideration, a number of agencies advised ANAO that there had been no significant revisions to the relevant program guidelines since December 2007. In some cases, agencies advised that any revised guidelines that had been prepared since that time had not required ERC consideration; while in other cases, based on agency responses to the audit survey, there had been no revisions made to the guidelines applying to ongoing grant programs. This was the case despite the original program guidelines having been developed before the enhanced grants administration framework commenced, meaning they had not been developed having regard to the guidance in the CGGs.

2.18 For example, in April 2012 the Department of Education, Employment and Workplace Relations advised ANAO that:

> The Workforce Innovation Program was a 're-badging' of an existing program previously called the National Skills Shortages Strategy which operated from 2004 to 2008. Referral to the ERC of guidelines pertaining to a long established program was not considered necessary within the reading of the guidance that existed at the time.

2.19 Another example involved the Live Trade Animal Welfare Partnership (LTAWP) program, which had been announced in the 2009–10 Budget, with $1.6 million in Australian Government funding over three years.[64] Program guidelines were issued on 6 August 2009, but without having been provided to the ERC for approval. The guidelines outlined that the LTAWP program was 'building on' the predecessor Live Animal Trade Program (LATP) that had existed since 2004. In April 2012, the Department of Agriculture, Fisheries and Forestry advised ANAO that it considered that ERC approval was not needed for the LTAWP guidelines as the program contained no change within its

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[64] The 2009–10 Budget Papers announced that the LTAWP would replace the animal welfare project component of the *International Agriculture Cooperation — Live Animal Trade Program — continuation* measure announced in the 2008–09 Budget.

policy intent and aimed to achieve the same outcomes and had the same eligibility criteria as the LATP. However, ANAO analysis was that:

- the items eligible for funding were expanded in LTAWP (compared with LATP) to now include infrastructure improvements. In addition, technical assistance and capacity building was no longer one of the listed types of activities eligible for funding;

- the second of the three program objectives was changed in an important way. The LATP Guidelines had an objective of supporting live animal exporting countries (a reflection of the response to the Keniry Report which was focused on the Australian <u>exporting</u> industry) whereas the LTAWP guidelines instead showed that the second program objective was no longer focused on the Australian exporting industry, but on supporting importing countries to adopt and implement animal welfare standards. The 2009-10 Budget Papers reflected this change in focus, indicating that further funding was to improve animal welfare outcomes in countries <u>importing</u> Australian livestock;

- the LATP Guidelines reflected that funding was $1m per year ending in 2007-08 whereas the LTAWP guidelines reflected the additional Australian Government funding over a three year period, but through a 50:50 funding partnership with Australian producers and livestock exporters. By way of comparison, the LATP Guidelines did not outline any partnership requirement; and

- an important change was made to the selection process. Specifically, rather than DAFF advising the Minister on the projects that should be funded (as was the case for the LATP), the LTAWP guidelines outlined that a LTAWP Project Advisory Committee would evaluate proposals, score and rank proposals and provide written recommendations to DAFF for submission to the Minister.

2.20 One significant grant administering agency where relatively few grant program guidelines were submitted for ERC consideration in the period examined by ANAO was the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). In the course of the audit,

FaHCSIA advised ANAO that it has a large number of diverse grant activities[65] and that changes have occurred since 2007 in the way some of the programs operate (including changes generated by the revised Council of Australian Governments arrangements and Machinery of Government). However, based on the information provided to ANAO by FaHCSIA in response to the audit survey, and subsequent departmental advice during the course of the audit, there were only 12 new and revised program guidelines[66] developed by that department in the two-and-a-half-year timeframe covered by the audit (representing just over three per cent of the guidelines prepared by all agencies examined in the audit).[67] Of those, two were submitted to the ERC for approval.[68]

2.21   Another notable feature of ANAO's analysis was that the National Health and Medical Research Council (NHMRC) had not submitted for ERC consideration any of the 33 program guidelines[69] developed in relation to the grant programs it administered in the period covered by the audit.[70] In April 2012, the NHMRC advised ANAO that:

> The NHMRC's funding program is unlike many other Commonwealth grant funding programs, which may often need to regularly review the purpose of

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[65]   In its responses to the audit survey, FaHCSIA identified 176 grant-giving 'activities'. FaHCSIA also advised ANAO that: 'In FaHCSIA, programs are listed in the Portfolio Budget Statements under each FaHCSIA Outcome. Under some programs are program components. Both programs and program components have a range of Activities which are delivered by service providers to achieve the high-level program outcome. …The funding awarded under these subsequent titles of activities is the result of selection processes with successful funding recipients having met the specific criteria for that activity.'

[66]   Comprising two new program guidelines for new grant programs and 10 revised program guidelines for an existing grant program (of which two did not involve significant amendments).

[67]   Similarly, data provided by Finance to ANAO in April 2012 was that, under the risk-assessment based approval arrangements, between September 2010 and December 2011 FaHCSIA had submitted risk assessments for seven grant programs (5.5 per cent of all such assessments submitted to Finance in that time period).

[68]   In two instances where the revised program guidelines did not involve significant amendments, Ministerial approval as per the CGGs was not required. Approval was sought for one of the two sets of guidelines developed for a new grant program, and in respect to one set of revised guidelines for an existing grant program.

[69]   Of which relatively few (three) were new grant program guidelines rather than revisions to existing guidelines.

[70]   As outlined at paragraph 3.32, NHMRC was one of only two agencies that commonly identified a weighting, ranking or priority for assessment criteria but other aspects of its approach to developing and revising grant program guidelines were less well aligned with the guidance provided in the CGGs. Specifically: for 42 per cent of the program guidelines provided to ANAO by the NHMRC, the decision maker was not clearly identified (an issue addressed more broadly at paragraph 3.16); and it was common for the NHMRC guidelines to state that the threshold criteria could be waived and/or amended (see further at paragraph 3.22.)

their grants and the eligibility of grant applicants. On the contrary, the fundamental purpose and eligibility for health and medical research funding from the Medical Research Endowment Account has been and continues to be clear and stable in accordance with the NHMRC Act.

Given all the terms of our enabling legislation and that the Minister has no authority to vary funding recommendations, NHMRC was not at the time of a clear understanding as to whether our grant funding activities were discretionary.[71] Given also the longstanding stability of NHMRC's funding arrangements, NHMRC had determined that the annual variation to guidelines were not significant and of low risk, and therefore generally not captured by the guidelines approval requirements.

In further consideration of the ANAO's Issues Paper, and in the context of Finance advice provided through Estimates Memorandum 2011/19[72], NHMRC recognises it is appropriate to seek further advice on its previously held understanding and will engage with Finance to clarify the scope of changes to funding scheme administration arrangements that is captured by Estimates Memorandum 2011/19.

2.22 Against the above background, ANAO's analysis draws attention to the importance of agencies reviewing extant grant program guidelines against the CGGs where there have been either no changes at all or no significant changes made to the guidelines since 1 July 2009. For example, in this respect, the Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC) commented to ANAO in April 2012 in respect to the department producing guidelines (since December 2007) for 46 grant program guidelines that:

DSEWPaC were one of only three agencies that had produced guidelines for such a high number of programs, which is reflective of the growing maturity it has in administering grant programs. In producing guidelines for programs, pleasingly, the objectives, evaluation and outcome requirements are documented and clearly defined.

That guidelines are produced for additional rounds of existing grant programs demonstrates the department's continuing growth, capability and adherence

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[71] In the course of the audit, ANAO informed the NHMRC that the grants framework applies to all grants (as defined in the FMA Regulations), and there is no distinction between what used to be called discretionary grants and any other form of grant (as defined). Accordingly, grants captured by the framework include legislated schemes and demand-driven programs, as well as what are often called discretionary grant programs.

[72] See further at paragraph 2.30.

to grants requirements. As capability and support services continue to mature we expect to see further increases.

September 2010 changes to the approval requirements

2.23 In September 2010, as part of various changes made with the objective of supporting strong and effective Cabinet Government, it was decided that items of a more routine nature, such as draft grant program guidelines, would be removed from the Cabinet agenda. Draft program guidelines are now to be submitted on a case-by-case basis, according to a risk assessment undertaken by the administering agency. Agencies are required to consult with Finance and the relevant policy area in PM&C before the risk self-assessment is finalised.[73] The graduated approval processes explained in the following paragraphs are then to be applied.

Low risk programs

2.24 Following consultation by the portfolio agency with Finance and PM&C, the relevant portfolio Minister is able to approve and agree to the release of guidelines for programs with an assessed low level of risk. Prior to the guidelines being released, the Finance Minister is to be written to, and informed of the relevant Minister's decision to approve the guidelines. The Finance Minister is also to be provided with a copy of the relevant draft guidelines and the related risk assessment, including any proposed mitigation strategies for identified risks. Finance advised ANAO that between October 2010 and December 2011, 105 programs were assessed as low risk (83 per cent of the total number of programs subject to a risk assessment in that period).

2.25 Guidance from Finance to agencies is that the Finance Minister should receive this correspondence at least ten days before the responsible Minister intends to publish the guidelines. The Finance Minister has the authority to request amendments to the guidelines or to propose referral of the guidelines to the ERC for further consideration should she decide that the program poses a higher level of risk than that assessed by the portfolio agency. Finance advised ANAO that there was one instance in respect to those 105 programs

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[73] In May 2012, the Attorney-General's Department commented to ANAO that Finance and PM&C could assist agencies planning for the release of grant program guidelines by including within Estimates Memorandum 2011/19 the indicative timeframes for their review of agencies' risk assessments.

assessed as low risk between October 2010 and December 2011 where the guidelines were referred to the ERC.[74]

Medium risk programs

2.26   For programs that are assessed as representing a medium risk, the Finance Minister is to consider the guidelines and either agree to their release or propose ERC consideration. Similar to the process for programs assessed by the portfolio agency as representing a low risk, the correspondence to the Finance Minister from the relevant portfolio Minister is to include a copy of the draft guidelines and the related risk assessment, including any proposed mitigation strategies for identified risks. Again, agencies are advised that the Finance Minister should receive this correspondence at least ten days before the responsible minister intends to publish the guidelines.

2.27   The Finance Minister may agree to the release of the guidelines as proposed by the relevant Minister; agree to their release subject to specified amendment; or may propose that they be submitted to the ERC for further consideration. Finance advised ANAO that there were 16 programs assessed as medium risk between October 2010 and December 2011 (12 per cent of all programs that were the subject of a risk assessment in this period). In respect to two of these programs, the guidelines were referred to the ERC.

High risk/sensitive programs

2.28   For programs assessed as high risk or sensitive, the portfolio Minister is to write to the Cabinet Secretary, with copies to the Finance Minister and the Treasurer, requesting ERC consideration of the draft program guidelines. The correspondence is to include a copy of the draft guidelines and the related risk assessment, including any proposed mitigation strategies for identified risks. Advice to agencies from Finance is that it was expected that only a small number of grant program guidelines will require consideration by ERC each year. Finance advised ANAO that of the 127 programs that were the subject of a risk assessment between October 2010 and December 2011, six (five per cent) were assessed as being high risk/sensitive, with the ERC considering the guidelines for five of these programs.

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[74]   This related to the guidelines for the Regional Development Australia Fund (RDAF), which Finance advised ANAO had been referred to ERC by the Finance Minister due to sensitivities. ANAO has commenced an audit of the conduct of the first round of the RDAF, which is expected to table in the first half of 2012–13.

2.29 Where guidelines for a high risk/sensitive program require urgent public circulation, the responsible portfolio Minister is able to seek the agreement of the Finance Minister to that publication, without referring the guidelines to the ERC. The administrative arrangements require that the Finance Minister be consulted prior to public circulation of the guidelines, that reasons for urgency be outlined and that she be provided with a copy of the draft guidelines, the related risk assessment, including any mitigation strategies for identified risks. In this context, the ERC considered five of the six guidelines where a program had been assessed as high risk, with the Finance Minister considering the guidelines for the remaining program under the urgency provisions.[75]

Promulgation of advice concerning the revised approval arrangements

2.30 There was some delay in the September 2010 changes to the approval arrangements for grant program guidelines being formally communicated to all agencies. Specifically, written advice was provided by PM&C to agencies in May 2011 (by way of a circular) and by Finance to agencies in June 2011 (by way of an Estimates Memorandum).[76] However, these advices did not address the approval arrangements, if any, that were to apply in circumstances where:

- new guidelines are issued in respect to further rounds of an existing grant program that had been the subject of an earlier risk assessment and approval process, or that had been approved prior to the risk assessment process being introduced. For example, the advice provided to agencies did not indicate whether revised guidelines are to be subject to approval at the same level, based on the same program risk assessment, as had applied when the guidelines for the program were first developed and approved; or

- guidelines are revised to reflect changes in the operation of the relevant program.

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[75] Finance advised ANAO in April 2012 that this instance related to the Chronic Disease Prevention and Service Improvement Fund.

[76] In March 2012, Finance informed ANAO that, in addition to the Estimates Memorandum to all agencies, it provided advice to agency staff on the proposed grant guidelines approval process, from late 2010. Finance indicated that this advice tended to be provided in response to queries from agencies and when Finance received grant guidelines for consideration, and that Finance also advised agencies on the proposed process through meetings and other discussions.

2.31 In addition, as of April 2012, Finance was in the process of revising the CGGs to reflect the changes to the approval requirements for grant program guidelines, as well as:

- changes made to mandatory website reporting requirements for grants, to require that they be published within 14 days of a funding agreement being signed (the previous requirement was for reporting to occur within seven days of a funding agreement being signed);

- updates to reflect July 2010 changes made to FMA Regulations 7 to 12; and

- the new government requirement for Australian Industry Participation Plans for grants of $20 million or more, and where grant money may involve the acquisition of goods or services that can be purchased internationally.

2.32 In addition, in the context of being consulted by Finance on proposed changes to the CGGs, ANAO raised with Finance the merits of the proposed changes to the CGGs also addressing:

- Finance's response to Recommendation 2 in ANAO's performance audit on the Infrastructure Employment Projects Stream of the Jobs Fund[77], which related to improving guidance that the seven better practice principles should be applied to non-competitive or non-applications based processes; and

- Finance's response to the first part of Recommendation 2 in ANAO's audit of the administration of grant reporting obligations[78], which related to improving the clarity and utility of the CGG requirements and associated guidance to agencies when advising Ministers on proposed grants, and the recording of reasons in circumstances where agency recommendations are not accepted by Ministers.

2.33 In April 2012, Finance advised ANAO that policy approval was required for these two audit recommendations to be implemented and that, more broadly, proposed changes to the CGGs have yet to be agreed by the Finance Minister.

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[77] ANAO Audit Report No.7 2011–12, *Establishment, Implementation and Administration of the Infrastructure Employment Projects Stream of the Jobs Fund*, Canberra, 22 September 2011, p. 140.

[78] ANAO Audit Report No.21 2011–12, op. cit., p. 92.

Oversight of the revised approval arrangements

2.34 The September 2010 changes to the grant program approval arrangements mean that there is no longer an expectation that Finance will provide advice and input on the development of grant program guidelines for all grant programs. Rather, the arrangements provide for Finance advice and input on draft guidelines only for those programs assessed by the responsible agency as representing a medium or high risk. Nevertheless, the revised approval arrangements require that Finance be consulted on all program risk assessments.

2.35 As noted at paragraph 2.12, there was a significant incidence of grant program guidelines being issued without receiving the scrutiny required under the prior approval arrangements. In this context, in April 2012 Finance advised ANAO that it:

> proposes to further develop an integrated strategy to improve compliance with the CGGs and reduce the risk of grant program risk assessments not being undertaken. This will involve targeting agencies, identified through a range of information sources. Finance will examine options to develop this approach to enable improved compliance with the CGGs.

2.36 As illustrated in ANAO Audit Report No. 22 2011–12 *Administration of the Gateway Review Process*, capturing and maintaining data on risk assessment results can provide useful information for management analysis.[79] In the context of a risk-based approach to the development and approval of grant program guidelines, a comprehensive record of risk assessments and the results of the related approval processes could be used by Finance's Grants Framework Unit to:

- identify circumstances where an agency that is known to administer a relatively large number of grant programs has submitted very few risk assessments, as well as other forms of possible non-compliance with the requirement for a risk assessment to be completed in consultation with Finance;

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[79] In that audit report, ANAO noted (at paragraph 2.24) that the quality and consistency of the recording of Gateway Assessment Tool results had varied over the years, with various spreadsheets used to capture risk assessment information (in lieu of a database or master list). Nevertheless, the information held in these spreadsheets was a useful starting point for ANAO analysis of significant issues and trends in the administration of the Gateway Review Process.

- identify any trends that may require further investigation[80] or an adjustment to the conduct of risks assessments;

- identify and reinforce across agencies any identified better practices, and also provide a focus on any apparent systemic shortcomings in the development of grant program guidelines;

- provide a feedback loop in respect to the robustness of the risk assessment process, for example in instances where significant issues are subsequently identified in the implementation of a grant program or with the outcomes that have been achieved; and/or

- provide a sound basis for performance reporting in respect to this aspect of the enhanced grants administration framework.

Conclusions

2.37   The development of grant program guidelines is a significant activity in the Commonwealth. In the two-and-a-half year period examined by ANAO, each week, on average, agencies collectively produced one set of guidelines for a new grant program and one set of guidelines for a new round of an existing grant program. Agencies also undertake work revising guidelines for existing programs as changes are made to the program arrangements. However, there also remain a small number of agencies that administer a large number of one-off and ad hoc grants, and the CGGs do not require that guidelines be developed to cover this type of granting activity. Accordingly, particularly where a number of proposed or potential one-off and ad-hoc grants relate to similar purposes, there would be benefits in the relevant agencies working with Finance to identify any opportunities to incorporate more of their grant-giving activities within the structure of a grant program.[81]

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[80]   For example, given the policy underpinning that led to the adoption of new governance arrangements for the development and approval of grant program guidelines, further investigation would be warranted if very few grant programs were being self-assessed by agencies as representing other than a low risk.

[81]   A good example of this approach being adopted related to the Better Regions Program, which was established solely to fund 105 commitments made by the Australian Labor Party (ALP) in the context of the 2007 election campaign. Consistent with the enhanced grants administration framework, Better Regions Program Guidelines were developed, approved by the ERC and published. See further in ANAO Audit Report No.24 2010–11, *The Design and Administration of the Better Regions Program*, Canberra, 27 January 2011.

Recommendation No.1

2.38 ANAO recommends that agencies that have administered a significant number of one-off or ad hoc grants, particularly where such grants have related to a common type of activity, identify opportunities for appropriately incorporating the relevant grant-giving activity within the structure of a grant program. Agencies should seek advice and assistance from the Department of Finance and Deregulation once opportunities have been identified.

2.39 All 22 agencies that responded to this recommendation agreed[82], or agreed with principle[83], with it. Eight of these agencies also provided comments on the recommendation, as follows:

- the Australian Securities and Investments Commission stated that it would provide further guidance to staff.

- Cancer Australia stated that, as part of the amalgamation process with the National Breast and Ovarian Cancer Centre, it has been reviewing the matter of ad hoc grants being amalgamated into a coherent program of work where possible.

- the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) stated that it manages one-off or ad hoc grant arrangements under a wider program and ensures that the CGG requirements are followed when managing these grant arrangements. FaHCSIA further stated that, where necessary, activity guidelines are developed as part of the relevant program guidelines.

- the Department of Immigration and Citizenship stated that the Settlement Grants Program is targeted to deliver a comprehensive range of settlement services to clients through annual funding rounds

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[82] Namely: the Department of Finance and Deregulation; the Attorney-General's Department; the Australian Prudential Regulation Authority; the Australian Research Council; the Australian Securities and Investments Commission; Cancer Australia; the Department of Agriculture, Fisheries and Forestry; the Department of Broadband, Communications, and the Digital Economy; the Department of Climate Change and Energy Efficiency; the Department of Defence; the Department of Education, Employment and Workplace Relations; the Department of Families, Housing, Community Services and Indigenous Affairs; the Department of Foreign Affairs and Trade; the Department of Health and Ageing; the Department of Immigration and Citizenship; the Department of Industry, Innovation, Science, Research and Tertiary Education; the Department of the Prime Minister and Cabinet; the Department of Sustainability, Environment, Water, Population and Communities; the Department of Veterans' Affairs; the Office of the Fair Work Ombudsman; and the National Health and Medical Research Council.

[83] Namely, the Department of Regional Australia, Local Government, Arts and Sport stated that it agreed in principle, subject to meeting the intent of Government commitments.

to avoid one-off and ad-hoc grants being necessary. However, the department further stated that it is happy to engage with Finance once opportunities, for incorporating any such grants within the structure of a grant program, have been identified.

- the Department of Industry, Innovation, Science, Research and Tertiary Education commented that it considers that the number of one-off grants made by the former Department of Innovation, Industry, Science and Research during the audit period was overstated, due to a number of sponsorships of a procurement nature being reported as grants. The department further advised that its guidance on sponsorships was updated in 2011 to address this and these payments are now managed in accordance with the Commonwealth Procurement Rules.

- the Department of Sustainability, Environment, Water, Population and Communities stated that it is already working closely with Finance for all grant program approvals. The department further advised that a central register of all grants is now kept and analysis undertaken on a regular basis and, in addition, a consultative business model is in place to educate line areas on requirements and assist with the development of program guidelines.

- the Department of Veterans' Affairs stated that, in addition to administering grant programs listed it administers a number of one-off or ad hoc grants and, while they do not all relate to a common type of activity, it will seek advice and assistance from Finance in relation to those that might be incorporated.

- the National Health and Medical Research Council noted that it:

    ...administers relatively few one-off or ad-hoc grants. On the occasions that these are made available (for example, the Urgent Call for Research into the Hendra Virus), there is a clearly established policy and funding rules which set out the rationale, criteria and development and assessment process for deciding on the award of this funding, summarised here - http://www.nhmrc.gov.au/_files_nhmrc/file/grants/types/granttype/targeted_call_for_research_summary_120113.pdf

2.40 Since December 2007, a series of decisions have been taken by the Government in respect to the arrangements applying to the consideration and approval of grant program guidelines. Between December 2007 and September 2010, there was a requirement for new program guidelines, and significant revisions to existing guidelines, to be considered by the ERC of Cabinet, the Prime Minister or, where approval was urgently required, the Finance

Minister. It was intended that these approval arrangements would provide assurance that a robust planning process had been undertaken, and that the proposed grant program was appropriately structured to achieve its intended outcomes. However, in the period examined by ANAO up to June 2010, more than 62 per cent of new grant program guidelines or changes to existing guidelines were not submitted for the required approval.

2.41 In September 2010, the Government decided that consideration of draft grant program guidelines would be removed from the Cabinet agenda.[84] Draft program guidelines are now to be submitted for ERC approval on a case-by-case basis, according to a risk assessment undertaken by the administering agency. Finance was to be consulted on all risk assessments, with these assessments being used to decide whether a grant program was:

- low risk (such that the guidelines could be approved and issued by the relevant portfolio Minister, subject to the agreement of the Finance Minister with the risk assessment);

- medium risk (in these circumstances, the Finance Minister is empowered to either consider and agree to the release of the guidelines or propose that they be referred to the ERC); or

- high risk/sensitive (in which case, the program guidelines are to be referred to the ERC unless they need to be issued urgently, in which case the Finance Minister is able to approve them).

2.42 In light of experience with the prior approval arrangements, Finance has advised ANAO that it will develop an integrated strategy to improve compliance with the CGGs and reduce the risk of grant program risk assessments not being undertaken. In this respect, there would also be considerable benefits in Finance having a central record of all risk assessments undertaken by administering agencies and the results of the related approval processes to inform its oversight of the revised approval arrangements. For example, there would be value in the data that could be captured being used by Finance's Grants Framework Unit to identify and reinforce identified better practices across agencies, as well as to provide a focus on any apparent systemic shortcomings in the development and approval of grant program guidelines.

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[84] With the objective of supporting strong and effective Cabinet Government, this change was one of a number made to remove items of a more routine nature from the Cabinet agenda.

Recommendation No.2

2.43 ANAO recommends that the Department of Finance and Deregulation develop and implement procedures and systems that will:

- record grant program risk assessments undertaken by agencies as required under the revised guideline approval requirements introduced in September 2010; and

- enable analysis to be undertaken of these risk assessments and other data, and better target guidance, training and support for agencies.

2.44 All 19 agencies that responded to this recommendation agreed to it.[85] Seven agencies also provided the following comments on the recommendation:

- the Australian Securities and Investments Commission stated that it would welcome formal procedures and systems on risk assessment.

- the Department of Families, Housing, Community Services and Indigenous Affairs commented that it welcomed the opportunity to further work with Finance.

- the Department of Immigration and Citizenship stated that it is contributing to a whole-of-government working party being coordinated by the Department of the Prime Minister and Cabinet looking at performance reporting including risk management and welcomes the opportunity to share information with Finance on risk management outcomes.

- the Department of the Prime Minister and Cabinet noted that a less resource intensive approach may be to recommend either a random, or targeted, sample of risk assessments and other data to be submitted by agencies to Finance for analysis. It considered that this could also provide the basis for the development of targeted guidance, training

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[85] Namely: the Department of Finance and Deregulation; the Attorney-General's Department; the Australian Prudential Regulation Authority; the Australian Research Council; the Australian Securities and Investments Commission; Cancer Australia; the Department of Agriculture, Fisheries and Forestry; the Department of Broadband, Communications and the Digital Economy; the Department of Climate Change and Energy Efficiency; the Department of Families, Housing, Community Services and Indigenous Affairs; the Department of Foreign Affairs and Trade; the Department of Immigration and Citizenship; the Department of Industry, Innovation, Science, Research and Tertiary Education; the Department of the Prime Minister and Cabinet; the Department of Regional Australia, Local Government, Arts and Sport; the Department of Sustainability, Environment, Water, Population and Communities; the Department of Veterans' Affairs; the National Health and Medical Research Council; and the Office of the Fair Work Ombudsman.

and support for agencies and would balance the need to ensure that risk assessments are undertaken and that the risk rating given to programs is appropriate.

- the Department of Sustainability, Environment, Water, Population and Communities stated that the department already contributes to this end by providing risk management information for each program to Finance and has established a centralised grants register of which regular analysis is conducted to identify trends and improvement opportunities.

- the Department of Veterans' Affairs stated that it will work with Finance in the development and implementation of these procedures and systems. It further advised that grants programs administered by the Department of Veterans' Affairs are considered low risk as the Repatriation Commission must approve the guidelines for all grants programs administered by the Department of Veterans' Affairs.

- The National Health and Medical Research Council (NHMRC) commented that:

  In addition to the recommended systems being implemented and information being made available, the NHMRC requests that the Department of Finance and Deregulation makes available more guidance and advice on issues relating to the Commonwealth Grant Guidelines (CGGs), including advice on risk assessment, interpretation of the CGGs, procedures for obtaining approvals, appropriate contact officers and related matters.

2.45 Even where a program is longstanding, and the applicable guidelines themselves (subject to minor updates) are also longstanding, there remains a requirement for the relevant agency to ensure that the guidelines and related operational guidance being applied in the administration of the grant program are consistent with the CGGs.[86] In light of government expectations in promulgating the CGGs, it would be reasonable to expect that guidelines developed before the enhanced framework was introduced would likely require amendment to ensure consistency with the CGGs and associated legislative provisions. However, there are a number of grant programs that are

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[86] The obligation for program guidelines and related operational guidance to be in accordance with the CGGs is separate to the obligations requiring the development and appropriate approval of guidelines for new programs and significant changes made to existing guidelines.

still operating under guidelines that have not been subject to any significant change since the CGGs were issued in July 2009; including programs that are still operating under guidelines that have not been the subject of any significant revisions since the first enhancements were made to the grants administration framework in December 2007. In other cases, based on agency responses to the audit survey, there had been no revisions made to the pre-December 2007 guidelines applying to ongoing grant programs.

Recommendation No.3

2.46 ANAO recommends that, where a grant program is operating under guidelines that have not been the subject of a significant revision since the Commonwealth Grant Guidelines were issued, the administering agency review the content and structure of the guidelines to ensure they are in accordance with the Commonwealth Grant Guidelines and associated legislative provisions.

2.47 All 22 agencies that responded to this recommendation agreed to it.[87] Five agencies also provided the following comments on the recommendation:

- Cancer Australia stated that, as part of the amalgamation process with the National Breast and Ovarian Cancer Centre, it has been reviewing guidelines in the context of the CGGs and will as appropriate be revising such guidelines and seeking the requisite approvals to ensure compliance.

- the Department of Families, Housing, Community Services and Indigenous Affairs commented that it seeks guidance on the development of its program guidelines and related issues through Finance and is in the process of reviewing all its program guidelines to ensure that they meet the latest requirements of the CGGs.

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87   Namely: the Department of Finance and Deregulation; the Attorney-General's Department; the Australian Prudential Regulation Authority; the Australian Research Council; the Australian Securities and Investments Commission; Cancer Australia; the Department of Agriculture, Fisheries and Forestry; the Department of Broadband, Communications and the Digital Economy; the Department of Climate Change and Energy Efficiency; the Department of Defence; the Department of Education, Employment and Workplace Relations; the Department of Families, Housing, Community Services and Indigenous Affairs; the Department of Foreign Affairs and Trade; the Department of Health and Ageing; the Department of Industry, Innovation, Science, Research and Tertiary Education; the Department of the Prime Minister and Cabinet; the Department of Regional Australia, Local Government, Arts and Sport; the Department of Resources, Energy and Tourism; the Department of Sustainability, Environment, Water, Population and Communities; the Department of Veterans' Affairs; and the National Health and Medical Research Council; and the Office of the Fair Work Ombudsman.

- the Department of Sustainability, Environment, Water, Population and Communities stated that program guidelines are revised for content and compliance with the Commonwealth Grant Guidelines as per mandatory requirements when there is a significant change or implementation of a new funding round.

- the Department of Veterans' Affairs stated that the guidelines for DVA administered grant programs have been revised since the Commonwealth Grant Guidelines were issued in 2009, and as is the case with Veteran and Community Grants, are currently undergoing further revision. The department further advised that any changes to the guidelines must be approved by the Repatriation Commission, and any changes to funding policy affecting the program guidelines must have approval by the Minister for Veterans' Affairs.

- the National Health and Medical Research Council (NHMRC) commented that:

    The NHMRC is fully committed to ensuring that all NHMRC funding schemes comply with the objectives of the CGGs to ensure efficient, effective and ethical administration of Australian Government funding.

    All NHMRC funding is stringently peer reviewed to ensure value for money through the funding of only the best grant funding applications. In line with CGG requirements, NHMRC works continually to strengthen its probity and compliance arrangements, particularly around confidentiality and managing conflicts of interest. The peer review process is monitored by independent observers to ensure that procedures are followed diligently and to reassure government, grant applicants, the broader research community and the public at large that the selection of grants for funding is managed consistently and effectively.

    While no NHMRC funding schemes have been subject to significant revision since the CGGS were implemented, the NHMRC does undertake an annual review process to ensure the administrative efficiency and appropriateness of its schemes. Such reviews often result in minor machinery and operational changes and constitute a low risk. The NHMRC is working to streamline the administration of its many funding programs through the simplification and standardisation of funding rules into a universal set of funding rules, and the establishment of a single funding deed.

    Following discussions with ANAO, NHMRC has commenced the review of its grant program guidelines against the policies and principles set out in the CGGs. In addition, NHMRC is developing a protocol to ensure that new and

significantly changed guidelines are risk assessed and submitted to the Department of Finance and Deregulation in accordance with the CGGs.

3.   Content of Grant Program Guidelines

This chapter analyses the content of grant program guidelines developed between December 2007 and June 2010, with particular emphasis on whether the guidelines have outlined transparent and accountable decision-making processes for the awarding of grants.

Background

3.1   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, as outlined in the ANAO Better Practice Guide—*Implementing Better Practice Grants Administration* dated June 2010 (ANAO's Better Practice Guide), the guidelines are central to implementing an effective program that complies with the grants policy framework.[88] The importance of sound program guidelines to efficient, effective and ethical grants administration has also 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; and

- agencies must ensure that grant guidelines and related operational guidance are in accordance with the CGGs.[89]

3.2   In addition, 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 the key principles in grants administration, extracts of which are set out in Table 3.1.

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[88]   ANAO Better Practice Guide—*Implementing Better Practice Grants Administration*, June 2010, p. 53.

[89]   Department of Finance and Deregulation, *Commonwealth Grant Guidelines, Policies and Principles for Grants Administration,* July 2009, p. 11.

Table 3.1

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

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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 pp. 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: Department of Finance and Deregulation, *Commonwealth Grant Guidelines*, *Policies and Principles for Grants Administration*, July 2009.

3.3   The appropriate level of content for a set of grant guidelines will vary depending upon the size, scope and nature of the relevant 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 will:

- 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

- inform the efficient, effective and accountable administration of the program.

3.4 The enhanced grants administration framework progressively introduced since December 2007 has a particular focus on the establishment of transparent and accountable decision-making processes for the awarding of grants. Accordingly, the focus of ANAO's analysis of grant program guidelines developed between December 2007 and June 2010 was on the extent to which those guidelines have identified how:

- potential funding recipients will be able to access the program; and

- decisions will be made about the awarding of grants (including by outlining the selection criteria that will be used and the identity of the person that would make the funding decisions).

Outlining the nature of the grant selection processes to be employed

3.5 Depending upon the policy objective that is to be addressed by a grant program, there are a number of options available in respect to the process by which potential funding recipients are identified and are able to access the program. 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;

- 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 all applications that satisfy stated eligibility criteria receive funding, up to the limit of available appropriations; or

- one-off grants to be determined on an ad-hoc basis (usually by Ministerial decision, including by Cabinet).[90]

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[90] ANAO Better Practice Guide–*Implementing Better Practice Grants Administration* June 2010, p. 44.

3.6   The primary objective is to implement a process by which candidate grants most likely to contribute to the cost-effective achievement of the program objectives will be consistently and transparently selected for funding consideration.[91] Against this background, 94 per cent of the grant program guidelines examined by ANAO clearly outlined the means by which grant proposals would be sought under the relevant program; the selection criteria that would be employed; and the decision-making arrangements that would apply in selecting grant recipients. However, six per cent of the guidelines examined did not clearly outline how grant recipients would be identified and selected, and who would make the funding decisions under the relevant program.

Promoting the preference for competitive, merit-based grant selection processes

3.7   The CGGs outline that, unless specifically agreed otherwise, competitive, merit-based selection processes should be used, based upon clearly defined selection criteria.[92] The promulgation, through the CGGs published in July 2009, of a clear preference for competitive, merit-based selection processes was a significant advance in promoting the adoption of application and assessment processes that will equitably and transparently select funding recipients that best represent value for money in the context of the stated objectives of the grant-giving activity. In this respect, Finance advised ANAO in August 2011 that:

> Whilst competitive, merit-based selection processes are not a mandatory requirement of the CGGs, they represent best practice and as such agencies are strongly encouraged to employ such processes.[93]

3.8   However, in advising the Finance Minister on the adequacy of draft guidelines developed for new grant programs, Finance did not, in the period examined by ANAO, seek to promote the adoption of competitive, merit based selection processes. In this respect, whilst Finance's checklist (used to assess the quality of draft guidelines submitted by agencies) asked questions

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[91]   ANAO Audit Report No.7 2011–12, *Establishment, Implementation and Administration of the Infrastructure Employment Projects Stream of the Jobs Fund*, Canberra, 22 September 2011, p. 82.

[92]   Department of Finance and Deregulation, *Commonwealth Grant Guidelines, Policies and Principles for Grants Administration,* July 2009 p. 29.

[93]   ANAO Audit Report No.7 2011–12, *Establishment, Implementation and Administration of the Infrastructure Employment Projects Stream of the Jobs Fund*, Canberra, 22 September 2011, p. 36.

concerning the process by which funding was able to be accessed (under the heading 'application process'), it did not require that any decision to use a selection process that was not competitive and/or merit-based be explained by the relevant agency.

3.9 Against this background, the results of the ANAO's survey of grant programs undertaken as part of this audit (and a companion audit of the administration of grant reporting obligations) indicated that a significant proportion of granting activity has been operating through processes other than those based on competitive, merit-based selection. Specifically, while nearly 37 per cent of grant selection processes undertaken between July 2009 and June 2010 (as identified in Ministerial briefs provided to ANAO) were competitive in nature, some 63 per cent were not.[94]

3.10 In addition, in 62 per cent of those instances where the program guidelines clearly outlined the nature of the selection process that would be employed (see paragraph 3.6), the guidelines outlined that grants would be awarded through a competitive process. However, for the remaining 38 per cent of the grant program guidelines that clearly outlined the grant selection process, a non-competitive selection process was to be employed. Of note was that the promulgation through the CGGs of a preference for competitive, merits-based selection processes (noting that no such preference had previously been expressed) had not resulted in a marked increase in the extent to which these types of processes had been adopted.

3.11 The high proportion of programs in which non-competitive selection processes were being adopted is similar to the situation that an earlier ANAO audit had found to be the case in respect to procurement.[95] In particular, that earlier audit found that, notwithstanding an expectation that a significant proportion of procurement opportunities would be offered to the full market through open tenders[96], nearly half of all procurement activity was being conducted through direct sourcing[97], with significant use also being made of

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[94] ANAO Audit Report No.21 2011–12, *Administration of Grant Reporting Obligations*, Canberra, 24 January 2012, p. 55.

[95] See further in ANAO Audit Report No.11 2010–11, *Direct Source Procurement,* Canberra, 30 September 2010.

[96] An open tender is a procurement procedure in which a request for tender is published inviting all suppliers that satisfy the conditions for participation to submit tenders.

[97] Direct sourcing is a procurement process in which an agency may invite one or more potential supplier or suppliers of its choice to make submissions.

select tenders.[98] In this context, the Commonwealth Procurement Guidelines (CPGs) provide a more comprehensive framework for governing procurement activities that use processes other than the preferred process (being an open call for proposals) than the July 2009 version of the CGGs had provided in respect to granting activities that involve processes other than the preferred competitive, merit-based processes. Specifically, for covered procurements[99], the CPGs:

- set out the limited circumstances in which the responsible agency is not required to use a competitive call for proposals[100]; and

- require the preparation and appropriately filing within the agency's central filing system of a written report that includes a statement indicating the circumstances and conditions that justified the use of a procedure other than a competitive selection process.

3.12 In this latter respect, draft revised CGGs[101] circulated for agency comments in February and March 2012 included the following new obligation on agencies:

> Where a method, other than a competitive merit based selection process is planned to be used, agency staff *must* document why this approach will be used. *[Emphasis as per original]*

3.13 The draft revised CGGs also propose to include additional guidance in respect to choosing the selection process for grants programs. Specifically, agencies would be advised that:

> Key factors to be considered in deciding the most appropriate allocation process, include: the objective of the granting activity; the likely number and type of applications; the nature of the granting activity; the value of the grants;

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[98] Select tenders are a procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders.

[99] That is, those non-construction procurements by FMA agencies with an estimated value above $80 000, non-construction procurements by entities governed by the *Commonwealth Authorities and Companies Act 1997* with an estimated value above $400 000 and construction procurements with an estimated value above $9 million.

[100] The CPGs outline eight circumstances in which direct source procurement may be undertaken for covered procurements. These include circumstances in which an earlier approach to the market had failed and where extreme urgency is brought about by events unforseen by the agency.

[101] In April 2012, Finance advised ANAO that proposed changes to the CGGs have yet to be agreed by the Finance Minister.

and the need for timeliness and cost-effectiveness in the decision-making process, while maintaining rigour, equity and accountability.

…In establishing the application and selection process for a grant program or granting activity, agency staff should document and consider a range of issues associated with the available options, such as, the advantages and disadvantages, risk analysis, timeliness and cost-effectiveness of the decision making process, and maximizing access to grants.

Decision-making responsibilities

3.14   Clarity about roles and responsibilities aids the efficiency of grants administration by avoiding unnecessary procedures and practices. In this context, and as noted in ANAO's Better Practice Guide, 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.[102] In particular, Ministers may bring knowledge, insights and perspectives to bear in the decision-making process that may not be available to officials. Nevertheless, the delegation of decision-making responsibilities, in the appropriate circumstances, can contribute to efficient, effective and economical public administration, particularly given the additional obligations placed on a Minister or Ministers collectively when they make the substantive decisions about the awarding of grants.

3.15   In concert, the financial framework and the grants policy framework place a number of specific obligations on a person when acting as the decision-maker in relation to the awarding of grants. In this context, 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 (for both agencies and Ministers) where a Minister undertakes that role. Specifically:

- 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 administration;

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[102]   ANAO Better Practice Guide-*Implementing Better Practice Grants Administration*, June 2010, p. 27.

- 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;

- 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; and

- 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.[103]

3.16   Against this background, it was relatively common for the grant program guidelines examined by ANAO as part of this audit to not identify who the decision-maker would be, with this being the case for 30 per cent of the program guidelines examined.

3.17   Of the 70 per cent of program guidelines examined that did identify the relevant decision-maker, the significant majority (72 per cent) outlined that grant decisions would be made by a responsible Minister (including Parliamentary Secretary). Otherwise, the guidelines outlined that grant decisions would be taken by the relevant Chief Executive Officer or an official.

Selection criteria

3.18   As outlined in ANAO's Better Practice Guide, selection criteria form the key link between a grant program's stated objectives and the outcomes that are subsequently achieved from the funding provided.[104] Accordingly, they are important in both attracting good potential candidates for funding and in encouraging entities that are unlikely to be successful not to invest unnecessary resources in preparing an application.

3.19   In this context, selection criteria fall into two main groups, as follows:

- threshold criteria are the criteria that a proposal must satisfy in order to be considered for funding. These are also variously expressed as

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[103] Department of Finance and Deregulation, *Commonwealth Grant Guidelines*, *Policies and Principles for Grants Administration,* July 2009 pp. 10–11.

[104] ANAO Better Practice Guide–*Implementing Better Practice Grants Administration*, June 2010, pp. 61–62.

'eligibility criteria', 'mandatory criteria', 'compliance criteria' or 'gateway criteria'; and

- assessment criteria are the criteria against which all eligible, compliant proposals will be assessed in order to determine their merits against the program objectives and, for competitive programs, other competing applications.[105]

Threshold criteria

3.20 As noted in ANAO's Better Practice Guide, and as reflected in the CGGs, 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.[106] Against this background, well-constructed threshold criteria are straightforward, easily understood and effectively communicated to potential applicants, with the relevant program's published 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.

3.21 ANAO's analysis of the grant program guidelines examined for this audit showed that agencies had consistently included threshold criteria in their published guidelines. Specifically, 97 per cent of the examined guidelines identified one or more threshold criteria that applications were required to satisfy in order to be considered for funding under the relevant program. Commonly, the identified threshold criteria addressed the types of entities that were eligible to be funded; and/or the types of projects, services and/or cost items that could be funded under the program.

3.22 The CGGs require that grant guidelines identify the circumstances in which the eligibility and assessment criteria set out in grant guidelines may be waived or amended. Nevertheless, and consistent with better practice, for most agencies there were very few instances where the guidelines indicated that there was any capacity for those criteria to be waived or amended. However, for 20 per cent of program guidelines that included threshold criteria, the

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[105] ibid.

[106] ibid., p. 63.

guidelines stated that the threshold criteria could be waived and/or amended. In the majority of instances, this involved guidelines developed by two agencies (the Australian Research Council and the National Health and Medical Research Council).[107] In this context, the Australian Research Council (ARC) advised ANAO in May 2012:

> The ARC clearly identifies in its funding rules instances in which threshold criteria can be waived or amended. These instances are not changed during the assessment process. In many cases, the instances where eligibility criteria can be relaxed apply to circumstances where the ARC has determined that the identification of narrow eligibility requirements will lessen the extent to which the funding scheme is able to meet its objectives. Under the Future Fellowships scheme, for example, applicants for ARC funding are able to submit eligibility exemption requests in relation to the eligibility of individual researchers. This flexibility is to allow the ARC to take career interruptions into account in assessing eligibility. The provision of opportunities for career interruptions to be taken into account is a key component in encouraging those early in their career to continue to pursue research funding opportunities.

3.23   A common approach[108] observed in ANAO's analysis was for grant program guidelines to include a discrete section or sections outlining the entities and projects that were eligible to apply for funding under the relevant program and those that were not eligible. This approach provides clarity in relation to the existence, and nature, of the relevant threshold criteria.

3.24   However, it was also relatively common for the threshold criteria that applied in relation to a program to not be set out in a specific and separate section or sections of the guidelines. This was the case for just under one-third of the program guidelines examined that included threshold criteria. In addition, even where program guidelines did include a specific section or sections identifying threshold criteria, additional statements were sometimes included in other sections of guidelines that also represented mandatory requirements in order to receive funding. This often involved the use of expressions such as 'must', 'must not', 'will' or 'will not'. Not including such statements in those sections identified as containing the threshold criteria

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[107] As outlined in Table 2.3, these two agencies were prominent amongst those where guidelines had not been submitted for the required approval and, as a consequence, the guidance in the CGGs concerning the waiving and/or amendment of criteria may not have been sufficiently prominent in agency considerations at the time the guidelines were being developed or revised.

[108] This was the case for 68 per cent of those program guidelines examined by ANAO that had included threshold criteria.

applying to the program, or not clearly identifying threshold criteria as such, does not assist in ensuring applicants were aware of all mandatory requirements or in ensuring that all such requirements are consistently applied in the assessment of applications. Accordingly, such an approach does not assist in promoting observance of the seven key principles of grants administration (see Table 3.1).

3.25 Against this background, the clarity and transparency of the grant-giving process will be assisted by all of the threshold requirements a potential recipient will be required to meet before being eligible for funding consideration 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 about 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.

Assessment criteria

3.26 As noted at paragraph 3.19, assessment criteria provide the basis on which it will be determined whether a compliant grant proposal (that is, a proposal that has satisfied all relevant threshold criteria) merits funding under the relevant program, having regard for the program's objectives and the selection process set out in the guidelines. In this respect, various ANAO performance audits have pointed to the challenges to equitable and effective grants administration that arise where the relevant program guidelines do not stipulate the assessment criteria that are to be used in selecting funding recipients. For example:

- ANAO Audit Report No.7 2011–12 (*Establishment, Implementation and Administration of the Infrastructure Employment Projects Stream of the Jobs Fund*, Canberra, 22 September 2011) outlined that, whilst the published guidelines for the $650 million Jobs Fund included eligibility and threshold requirements that projects would be required to satisfy in order to be considered for funding, they did not clearly articulate the assessment criteria that would be applied in selecting which of the

compliant and eligible proposals would receive funding under both the competitive elements of the Jobs Fund and the non-competitive Infrastructure Employment Projects stream; and

- ANAO Audit Report No.3 2010–11 (*The Establishment, Implementation and Administration of the Strategic Projects Component of the Regional and Local Communities Infrastructure Program*, Canberra, 27 July 2010) outlined that no version of the guidelines published in respect to that program had identified the assessment criteria that would be used to select the successful applications from among those that had met the eligibility criteria, and that this approach had had a significant impact upon later decisions about which applications to fund and, ultimately, the extent to which the program achieved its objectives.

3.27 In comparison, of the program guidelines examined as part of this cross-portfolio performance audit that involved a relevant selection process[109], 86 per cent set out one or more assessment criteria.[110] However, notwithstanding the critical importance of published assessment criteria to efficient, effective and transparent grants administration, a significant proportion (14 per cent) of the guidelines examined by ANAO did not identify the assessment criteria to be applied in selecting grant recipients under the relevant program.

3.28 Similar to the situation in respect to threshold criteria (see paragraph 3.25), the clarity and transparency of the grant-giving process is assisted by all assessment criteria being grouped and clearly identified as such in the program guidelines. In this respect, for 93 per cent of those program guidelines that did include assessment criteria, at least some of the relevant criteria were

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[109] For some types of grant selection processes, only threshold criteria are relevant. For example, under a demand-driven grant program, all applicants that satisfy the eligibility and other threshold criteria set out in the program guidelines will receive funding (up to the limit of the available funding), without the need to apply any further assessment criteria to determine the merits of an application.

[110] Most commonly (78 per cent of relevant guidelines), six or fewer assessment criteria were published. However, there were also instances in which the relevant guidelines stipulated a significant number of assessment criteria (as many as 14). In this respect, publishing too many assessment criteria can also present challenges to efficient, effective and consistent selection and decision-making processes, as well as presenting difficulties for potential applicants in terms of both their capacity to ensure they have adequately addressed all criteria and the effort necessary to complete the application (which may not be proportional to the value of the grant being sought). There were very few instances (under two per cent of relevant program guidelines) where the guidelines provided any capacity for the assessment criteria to be amended, and even fewer (just under one per cent) where the program guidelines outlined that the assessment criteria could be waived.

separately grouped and identified. However, for nearly 13 per cent of those guidelines, the benefit of adopting this approach was diminished by additional assessment criteria also being stipulated in other parts of the guidelines (without any cross-referencing to ensure potential applicants were aware of the need to also address these additional criteria in their application, and that all relevant criteria were consistently taken into account in the assessment process).

Weighting of criteria

3.29   Particularly where competitive funding rounds are used, the purpose of the assessment criteria (as set out in the program guidelines) is to provide an efficient and effective means of differentiating between the eligible, compliant applications that are seeking access to the available funding. As noted in ANAO's Better Practice Guide, 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.[111]

3.30   It is important that, in deciding whether to apply weightings and, if so, the scale of those weightings, agencies sufficiently test their proposed approach in order to be comfortable that the assessment outcomes can reasonably be expected to result in the most meritorious applications (in terms of the program objectives) being ranked highest. It is similarly important that agencies recognise that the weighting of assessment criteria, particularly where the relative importance is communicated to potential applicants, can have a valuable influence on the number and nature of the applications received. Ultimately, it is the population of applications and their characteristics, when assessed in terms of the identified assessment criteria and any nominated weightings, that should determine the outcome of a competitive, merit-based selection process.

3.31   Where it is decided to apply weightings, rankings or relative priorities to the assessment criteria, 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 favoured in

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[111]   ANAO Better Practice Guide–*Implementing Better Practice Grants Administration*, June 2010, pp. 65–66.

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.

3.32 Of the grant program guidelines examined by ANAO that had included assessment criteria, 29 per cent identified a weighting, ranking or priority for the criteria. However, of particular note in this respect was that this was a relatively uncommon practice in most agencies, with 44 per cent of the guidelines that had adopted this approach relating to programs administered by only two agencies, as follows:

- the Australian Research Council, which had produced 24 program guidelines in which the relative importance of the assessment criteria had been clearly outlined[112]; and

- the National Health and Medical Research Council, which had produced 15 program guidelines that had outlined the relative importance of the various assessment criteria set out in the guidelines.[113]

3.33 However, there is some evidence that the benefits of weighting assessment criteria, and publicising those weightings within the program guidelines, have become more accepted. For example, the Department of Climate Change and Energy Efficiency (DCCEE), through the July 2010 and July 2011 versions of the guidelines for the National Solar Schools Program[114], when read in conjunction with an associated administrative arrangements document that was also published, outlined the weightings to be applied to each of the selection criteria. This approach was subsequently improved upon in respect to the Community Energy Efficiency Program also administered by DCCEE. Specifically, the assessment criteria weightings that would be applied in assessing applications for this latter program were published within the body of the February 2012 guidelines (see Figure 3.1).

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[112] In each instance, the guidelines outlined that the funding decisions would be made by a Minister.

[113] Where the guidelines identified who would make the funding decisions, the identified decision-maker was a Minister.

[114] This program is currently the subject of an ANAO performance audit.

Figure 3.1

Example of program guidelines weighting assessment criteria

Energy efficiency improvement potential 30%	**+**	Potential to encourage improved energy management practices 30%	**+**	Project design, funding & management 20%	**+**	Value for money 20%
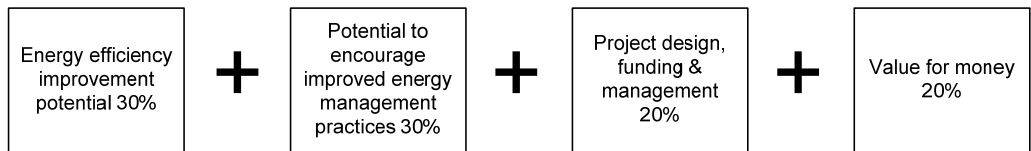
Source: February 2012 guidelines for the Community Energy Efficiency Program.

Value for money

3.34   Value for money is one of the seven key principles for grants administration outlined in the CGGs. Whilst the Commonwealth Procurement Guidelines outline that value for money is the core principle underpinning Australian Government procurement, value for money is not expressed in the CGGs as being more or less important than the other key principles for grants administration.

3.35   Nevertheless, assessments of the value for money offered by grant spending proposals are particularly important in the context of the financial framework.[115] As is reflected in the CGGs, it is expected that value for money will be a prime consideration in determining funding recipients under a grant program.

3.36   For competitive application-based programs, value for money analysis is typically undertaken by comparing the relative merits of all eligible, compliant proposals. While the particular measures that are applicable will vary depending upon the type of project involved, a value for money assessment of a proposal, based on consideration of the outcomes proposed for the amount of funding sought, is an important consideration in determining grant recipients.

3.37   Against this background, 30 per cent of the program guidelines examined by ANAO that included assessment criteria identified value for money as either a separate assessment criterion, or an overarching issue that would be taken into account in the grant selection process. Predominantly, this

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[115]   Specifically, FMA Regulation 9 provides that an approver (including a Minister) must not approve a spending proposal unless the approver is satisfied, after reasonable inquiries, that giving effect to the spending proposal would be a 'proper use' of Commonwealth resources. 'Proper use' is defined in the FMA Act to mean 'efficient, effective, economical and ethical use that is consistent with the policies of the Commonwealth'. In turn, efficient, effective and economical use is closely related to value for money.

approach was taken by the Department of Education, Employment and Workplace Relations[116], the Department of Sustainability, Environment, Water, Population and Communities and the Department of Health and Ageing, with those three agencies being responsible for more than half (58 per cent) of the program guidelines examined by ANAO that had adopted this approach. Most of the agencies represented in the guidelines examined by ANAO had included no explicit reference to value for money as either an assessment criterion or an overarching consideration in the selection of grant recipients in any of the program guidelines they had developed.

Program guidelines as a single reference source on the assessment process

3.38 The CGGs describe program guidelines as being a 'single reference source' for policy guidance, administrative procedures, appraisal criteria, monitoring requirements, evaluation strategies and standard forms.[117] However, ANAO observed instances where agencies were producing more than one document that each outlined important aspects of the grant selection process.

3.39 For example, in respect to the National Solar Schools Program administered by the DCCEE, for each of the July 2010 and July 2011 versions of the program guidelines an associated administrative arrangements document was also made available to applicants.[118] The material in the administrative arrangements documents provided important information on the assessment of competing applications, including the weightings that would be applied to each of the selection criteria, that was not otherwise included in the program guidelines. In April 2012, DCCEE advised ANAO that:

> At the time of ANAO's fieldwork, the department had not yet established a centralised grant management function and, consequently, administrative processes for grants were relatively underdeveloped. Since that time, the department has established a dedicated Grants Management Unit and put in

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[116] There have also been instances where the Department of Education, Employment and Workplace Relations has examined value for money in the selection processes for a grant program, even where the program guidelines did not explicitly identify this as an assessment criterion. See further in ANAO Audit Report No.7 2011–12, *Establishment, Implementation and Administration of the Infrastructure Employment Projects Stream of the Jobs Fund*, Canberra, 22 September 2011, pp.170–175.

[117] Department of Finance and Deregulation, *Commonwealth Grant Guidelines, Policies and Principles for Grants Administration,* July 2009, p. 22.

[118] The first version of the administrative arrangements document was published in August 2010, the month after the relevant program guidelines were released. The next version was issued in July 2011, the same month that the revised program guidelines were issued.

place a new governance framework for grants. Many of the issues that underlie the ANAO's findings were considered in the design of the department's grant management framework, including processes for the development and approval of grant program guidelines.

3.40 Similarly, FaHCSIA produced one document for the Gender Equality for Women program it titled 'program guidelines', as well as separate documents titled 'application guidelines' for the four funding components under that broad program. The application guidelines documents included information on the selection process that was not in the program guidelines document. This included the selection criteria and process that would be applied in selecting successful applicants, as well as the rating scale to be used for the selection criteria. This information, which forms an integral component of the design of the grant selection process, had not been included in the overarching program guidelines but, rather, was made available through the application guidelines. In these circumstances, collectively, both the 'program guidelines' and 'application guidelines' documents constitute the program guidelines for the purposes of the CGGs and, accordingly, should collectively be subject to the grant program approval requirements.

Conclusions

3.41 The appropriate level of content of grant guidelines will vary depending upon the size, scope and nature of the program. Nevertheless, all aspects of a grant program need 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 will 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 will inform the efficient, effective and accountable administration of the program. In particular, amongst other matters, program guidelines should identify:

- how potential funding recipients will be able to access the program;

- who will make the funding decisions; and

- how decisions will be made about the awarding of grants (including outlining the selection criteria that will be used).

3.42 The CGGs outline that, unless specifically agreed otherwise, competitive, merit-based selection processes should be used, based upon

clearly defined selection criteria.[119] However, the promulgation through the July 2009 CGGs of a preference for competitive, merits-based selection processes (no such preference had previously been expressed) did not result in a marked increase in the extent to which these types of processes have been adopted.[120]

3.43 Clarity about roles and responsibilities also aids the efficiency of grants administration by avoiding unnecessary procedures and practices. However, within the grant program guidelines provided to ANAO in response to the audit survey, it was relatively common for the guidelines to not identify who would be the decision-maker, with this being the case with 30 per cent of the guidelines examined.[121]

3.44 Agency performance has also been quite mixed in terms of developing program guidelines that clearly outline the selection criteria[122] to be employed in deciding upon the award of grants under the relevant program.[123] Specifically:

- consistent with the key principles for grants administration included in the CGGs, almost all (97 per cent) of the program guidelines examined by ANAO identified one or more threshold criteria that applicants

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[119] Department of Finance and Deregulation, *Commonwealth Grant Guidelines, Policies and Principles for Grants Administration,* July 2009 p. 29.

[120] For 94 per cent of the program guidelines provided to ANAO by agencies as having been developed over the period between December 2007 and June 2010, the nature of the selection process that would be employed was clearly outlined, but in only 62 per cent of those instances were grants to be awarded through a competitive process.

[121] For the 70 per cent of program guidelines where the decision-maker was identified, it was common (72 per cent of instances) for the guidelines to outline that decisions would be made by a Minister (including Parliamentary Secretary).

[122] Selection criteria comprise:

- threshold criteria, which are the criteria that a proposal 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, which are used to assess all eligible, compliant proposals in order to determine their merits against the program objectives and, for competitive programs, other competing applications.

[123] As outlined in ANAO's Better Practice Guide, selection criteria form the key link between a program's stated objectives and the outcomes that are subsequently achieved from the funding provided. Accordingly, they are important in attracting good potential candidates for funding and encouraging entities that are unlikely to be successful not to invest unnecessary resources in preparing an application. See further in ANAO Better Practice Guide-*Implementing Better Practice Grants Administration*, June 2010, pp. 61–62.

would be required to meet. However, agency practices varied in terms of whether all threshold requirements were grouped and clearly identified as such in the program guidelines[124]; and

- similarly, a high proportion (86 per cent) of the program guidelines examined identified assessment criteria that would be used in selecting funding recipients.[125] However, notwithstanding the critical importance of published assessment criteria to efficient, effective and transparent grants administration, a significant proportion (14 per cent) of the grant program guidelines examined did not include assessment criteria.[126]

3.45   In addition to adopting a more consistent approach to specifying, and clearly identifying, in grant program guidelines all of the threshold and assessment criteria that will be applied in selecting funding recipients, audit analysis indicates that there would be benefits from agencies:

- assigning relative weightings, rankings or priority to individual assessment criteria, in order to assist in targeting available funding at projects that exhibit particular characteristics having regard for the program objectives. Specifically, whilst 29 per cent of the guidelines examined by ANAO that included assessment criteria had also identified a weighting, ranking or priority associated with the criteria, this practice was not commonly adopted by most agencies[127];

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[124]   For just under one-third of guidelines, the threshold criteria were not identified in a separate section or sections of the guidelines. In addition, for some guidelines that did include a specific section or sections identifying threshold criteria, additional statements included in other sections of the guidelines also represented mandatory requirements that were required to be satisfied in order to receive funding. This often involved the use of expressions such as 'must', 'must not', 'will' or 'will not'. However, this presentation did not assist in ensuring applicants were aware of all mandatory requirements, or that all such criteria would be consistently applied in the assessment of applications.

[125]   Also of note was that there were very few instances (under two per cent of relevant program guidelines) where the guidelines provided any capacity for the assessment criteria to be amended, and even fewer (just under one per cent) where the program guidelines outlined that the assessment criteria could be waived.

[126]   In addition, similar to the situation with threshold criteria, whilst most (93 per cent) guidelines with assessment criteria separately grouped and identified those criteria, for nearly 13 per cent of those guidelines, the benefit of adopting this approach was diminished by additional assessment criteria also being stipulated in other parts of the guidelines (without any cross-referencing to ensure potential applicants were aware of the need to also address these additional criteria in their application, and that all relevant criteria were consistently taken into account in the assessment process).

[127]   Of the program guidelines examined that did include weightings, rankings or identified priorities, 44 per cent related to programs administered by only two agencies.

- greater attention being paid to identifying value for money as an explicit consideration in the awarding of grants. In this respect, the CGGs outline an expectation that value for money will be a prime consideration in determining funding recipients under a grant program. However, whilst 30 per cent of the program guidelines examined by ANAO had identified value for money as either a separate assessment criterion, or an overarching issue to be taken into account in the grant selection process, 70 per cent of guidelines did not make any such reference to value for money. Again, the explicit referencing of value for money as playing a role in the selection of grants was a predominant feature in the program guidelines developed by only a small number of agencies (three), with the majority of program guidelines developed by most agencies in the period examined by ANAO not addressing how value for money considerations would be taken into account in selecting grant recipients; and

- where practical, developing a single program guidelines document that represents the reference source for guidance on the grant selection process, including the relevant threshold and assessment criteria, and how they will be applied in the selection process. Where more than one document is produced and each outlines important aspects of the grant selection process, it is important that agencies recognise that, collectively, all such documents constitute the program guidelines for the purposes of the CGGs. Accordingly, these should collectively be subject to the grant program approval requirements and made available to stakeholders.

Recommendation No.4

3.46 ANAO recommends that when developing grant program guidelines, administering agencies promote clarity, transparency and consistency in the administration of granting activities by clearly and separately identifying in the program guidelines:

- the person or persons expected to approve grant funding;

- all threshold requirements that must be met in order to be considered for funding;

- for relevant selection processes, the assessment criteria that will be used to differentiate between eligible, compliant applications and, where

appropriate, the relative weighting or priority attached to each of these criteria; and

- the way in which value for money considerations (as outlined in the FMA Regulations and Commonwealth Grant Guidelines) will be taken into account in the awarding of grants.

3.47 All 23 agencies that responded to this recommendation agreed to it.[128] Six agencies also provided the following comments on the recommendation:

- the Australian Securities and Investments Commission stated that it would incorporate the recommendation into their internal guidelines.

- the Department of Families, Housing, Community Services and Indigenous Affairs stated that it has reviewed the templates used for the development of program guidelines in collaboration with Finance and determined that they meet this recommendation.

- the Department of Immigration and Citizenship stated that it consistently reviews grant program guidelines to address the points raised above, with the aim of promoting clarity, transparency and consistency in administration of grants management.

- the Department of Sustainability, Environment, Water, Population and Communities stated that its existing grants administration framework and subsequent guidance, advice and support services support this recommendation. The department further stated that its central grants support area provides quality assurance checks of all programs to ensure requirements are met and that program guidelines, evaluation criteria and supporting documentation are fit for purpose. The department also stated that collaboration between the central grants

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128 Namely: the Department of Finance and Deregulation; Cancer Australia; the Attorney-General's Department; the Australian Prudential Regulation Authority; the Australian Research Council; the Australian Securities and Investments Commission; the Department of Agriculture, Fisheries and Forestry; the Department of Broadband, Communications and the Digital Economy; the Department of Climate Change and Energy Efficiency; the Department of Defence; the Department of Education, Employment and Workplace Relations; the Department of Families, Housing, Community Services and Indigenous Affairs; the Department of Foreign Affairs and Trade; the Department of Health and Ageing; the Department of Immigration and Citizenship; the Department of Industry, Innovation, Science, Research and Tertiary Education; the Department of the Prime Minister and Cabinet; the Department of Regional Australia, Local Government, Arts and Sport; the Department of Resources, Energy and Tourism; the Department of Sustainability, Environment, Water, Population and Communities; the Department of Veterans' Affairs; the National Health and Medical Research Council; and the Office of the Fair Work Ombudsman.

support area, line areas, internal legal services and lead agencies is conducted on each program.

- the Department of Veterans' Affairs (DVA) stated that guidelines for DVA administered grants have clearly stated threshold requirements which are updated as required, and that the grant assessment process is open and transparent in the identification of eligible applicants. The department further advised that weighting applied to statistical information supplied on application forms and/or criteria priorities ensure value for money considerations are met, and that Ministerial approval is sought for all grants administered by DVA.

- the National Health and Medical Research Council (NHMRC) commented that:

As Australia's largest government funder of health and medical research, the NHMRC is committed to ensuring that the Australian public gains the most it can from research. To this end, it has established a rigorous framework for the administration of its extensive funding program.

The NHMRC has a variety of mechanisms to ensure transparency, so that applicants are fully informed of the criteria used to assess proposals and that they formally respond to assessments. Guidance material which covers the points set out in the above recommendation is provided to applicants to assist them in making their applications: refer to http://www.nhmrc.gov.au/grants/apply-funding. As highlighted in this ANAO performance audit and consistent with best practice, NHMRC program guidelines assign relative weightings to individual assessment criteria in order to target funding at projects which exhibit particular characteristics.

As noted above, all NHMRC funding is stringently peer reviewed. NHMRC's peer-review processes ensure funding decisions are fair, and use objective, expert assessment of proposals to ensure the best and most relevant research is funded. This ensures value for money in all NHMRC granting activities. This is a highly competitive process which results in only an average of one in five applicants being awarded a grant.

The NHMRC operates within a strict legislative and regulatory framework that fosters contestability and ensures that there can be no inappropriate or individual influence in the selection process. Under the *National Health and Medical Research Council Act* 1992, the Research Committee advises the CEO by way of the Council in accordance with the strategic commitment for health and medical research funding. In turn, the CEO is required to advise the Minister, who approves funding. The Minister has no power to change funding recommendations or to direct funding. In addition, the funds

themselves are held in the Medical Research Endowment Account, which is also subject to strict conditions.

The NHMRC's rigorous and transparent peer review processes are designed to select the best research proposals and the most capable researchers, which provides assurance that the best value is obtained for each research dollar spent. This is referred to in the CGGs as "achieving value with public money" (and in the draft report as "value for money"). The NHMRC achieves excellent value with public money. To gain benefits from health and medical research (ie achieve value), new knowledge must be created and also translated and implemented. Research creates the knowledge which provides the evidence base for the development of new or improved treatments, design of preventative health strategies, and provision of all health services.

The NHMRC will structure any new funding guidelines to be as clear as possible in separately identifying and clarifying the points set out in this recommendation.

Ian McPhee

Auditor-General

Canberra ACT

30 May 2012

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Preparation of Financial Statements by Public Sector Entities	Jun 2009
Business Continuity Management	
Building resilience in public sector entities	Jun 2009
Developing and Managing Internal Budgets	Jun 2008
Agency Management of Parliamentary Workflow	May 2008
Public Sector Internal Audit	
An Investment in Assurance and Business Improvement	Sep 2007
Fairness and Transparency in Purchasing Decisions	
Probity in Australian Government Procurement	Aug 2007
Administering Regulation	Mar 2007
Developing and Managing Contracts	
Getting the Right Outcome, Paying the Right Price	Feb 2007
Implementation of Programme and Policy Initiatives:	
Making implementation matter	Oct 2006