

# **Commercialisation Australia Program**

Department of Industry

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Canberra ACT  
17 June 2014

Dear Mr President  
Dear Madam Speaker

The Australian National Audit Office has undertaken an independent performance audit in the Department of Industry titled *Commercialisation Australia Program*. The audit was conducted in accordance with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit to the Parliament.

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee', is positioned above the printed name.

Ian McPhee  
Auditor-General

The Honourable the President of the Senate  
The Honourable the Speaker of the House of Representatives  
Parliament House  
Canberra ACT

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# Abbreviations

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|           |   |
|-----------|---|
| ANAO      | Australian National Audit Office  |
| CA        | Commercialisation Australia   |
| CEI       | Chief Executive Instructions  |
| CEOCA     | Chief Executive Officer Commercialisation Australia   |
| CGGs      | Commonwealth Grant Guidelines   |
| CIG       | Customer Information Guide  |
| CM        | Case Manager  |
| COMET     | Commercialising Emerging Technologies Program   |
| CPRs      | Commonwealth Procurement Rules  |
| CSM       | Customer Service Manager  |
| DIISR     | Department of Innovation, Industry, Science and Research (department name from December 2007 to December 2011)                              |
| DIISRTE   | Department of Industry, Innovation, Science, Research and Tertiary Education (department name from December 2011 to March 2013)             |
| DIICCSRTE | Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education (department name from March to September 2013) |
| EPE       | Eligible Partner Entity   |
| ERC       | Expenditure Review Committee of Cabinet   |
| FMA Act   | <i>Financial Management and Accountability Act 1997</i>   |
| GLAM      | Grants and Loans Activity Management system   |
| IA        | Innovation Australia  |
| ICT       | Information and Communication Technology  |

|      |   |
|------|---|
| IP   | Intellectual Property                   |
| KPI  | Key Performance Indicator               |
| PFRA | Publicly Funded Research Agency         |
| PPDC | Program and Performance Data Collection |



# Glossary

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|   |  |
|---|--|
| Applicant   | An applicant is the person or persons seeking a grant or other assistance, either as an individual or business, company or other entity. See also participant.   |
| AusIndustry   | AusIndustry is a specialist program delivery division within the Department of Industry and its predecessors, delivering programs for the department and on behalf of a number of other government departments.            |
| Case Manager  | An external contractor with experience in commercialisation contracted to guide participants through the commercialisation process and to undertake analysis as part of the grant assessment process.                      |
| Chief Executive Officer<br>Commercialisation Australia<br>(CEOCA) | In the context of the CA Program, this is an SES Band 1 officer responsible for management of the department's CA Branch, and a range of functions for the CA Program.   |
| Commonwealth Commercialisation Institute (the Institute)          | When first announced by the Government in May 2009, the commercialisation program was referred to as the Commonwealth Commercialisation Institute. In September 2009, the name was changed to Commercialisation Australia. |
| Commercialisation Office  | An entity within an Australian University or a Publicly Funded Research Agency that assists researchers to commercialise their research.   |
| Early Stage Commercialisation                                     | Activities associated with bringing a new product, process or service to market.   |
| Eligible expenditure  | Expenditure incurred directly on an agreed project as detailed in a Funding Agreement.   |

|                                 |   |
|---------------------------------|---|
| Expert Network                  | A network of volunteer experts with extensive experience in management and commercialisation, who offer knowledge, skills and insights to program participants.   |
| Funding Agreement               | A written agreement between the Commonwealth and a participant outlining the obligations and expectations of both parties with respect to delivery and funding of the agreed project.   |
| Participant                     | Once a Funding Agreement has been agreed, the grant applicant is referred to as a participant.  |
| Program Delegate                | An employee of the department who has been empowered to approve Commercialisation Australia applications, funding amounts and payments to participants.   |
| Proof of Concept                | Activities associated with establishing the commercial viability of a new product, process or service.  |
| Publicly Funded Research Agency | An organisation that is: at least 50 per cent owned or controlled by the Commonwealth, or an Australian state or territory government; and primarily carrying out research and development activities in relation to science or technology (collection, interpretation or publication of information, or provision of training, services, or facilities). |

## **Summary and Recommendations**



# Summary

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## Introduction

1. In the context of an increasingly competitive global economy, successive Australian Governments have sought to strengthen the nation's competitive advantage and improve living standards by adopting policies directed at supporting and strengthening Australia's capacity to innovate. Key focus areas have included funding for science and research, the provision of incentives for business research and development, and the provision of financial assistance<sup>1</sup> and other types of support for high risk enterprises.
2. The Commercialisation Australia (CA) Program was established in 2009 to support companies and innovators during the commercialisation phase of developing their products and ideas.<sup>2</sup> During this phase many companies find it difficult to attract the necessary private sector finance and support to prove their ventures, so as to transition from experimentation and development to commercial production.<sup>3</sup> In 2013, a report by the Australian Bureau of Statistics indicated that consistent with previous results, 45 per cent of Australian businesses reported at least one barrier to innovation. One in five businesses reported lack of access to additional funds, making this the most frequently reported barrier.<sup>4</sup>

## The Commercialisation Australia Program

3. The CA Program's objective is to build the capacity of, and opportunities for, Australia's researchers, entrepreneurs and innovative firms to convert ideas into successful commercial ventures, enhancing Australia's participation and

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1 A form of 'venture capital'.

2 Since the 1990s the Australian Government had established a wide range of innovation support, including grants, tax concessions and venture capital programs. At the time the CA Program was announced these programs included: the Commercial Ready and Commercial Ready Plus Program; Intermediary Access Program; Industry Collaboration Innovation Program (ICIP) and the Commercialising Emerging Technologies (COMET) Program.

3 This phase of business development has been described as: 'So treacherous that high-tech start-ups call it the valley of death. The global financial crisis has made this valley considerably wider.' See Australian Government, *Powering Ideas: An Innovation Agenda for the 21st Century*, Commonwealth of Australia, Canberra, 2009, p.15.

4 Australian Bureau of Statistics, *Selected Characteristics of Australian Businesses, 2011–12*, cat.no. 8167.0 [Internet], ABS, Canberra, 2013, available from <<http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/8167.0Main%20Features9201112?opendocument&tabname=Summary&prodno=8167.0&issue=2011-12&num=&view>> [accessed 27 March 2014].

competitiveness in the global economy and generating commercial returns from Australia's significant investment in public sector research.<sup>5</sup>

4. The 2009–10 Budget included funding of \$196.1 million over four years for the CA Program, with ongoing funding of \$82 million per annum beyond the forward estimates. The program is administered by the Department of Industry.<sup>6</sup>

5. The CA Program opened for applications on 4 January 2010. The original program design included four grant components spanning the commercialisation life-cycle, providing both financial and non-financial support. Two components provide applicants with access to skills, knowledge and expertise in order to build their capacity—extending the focus of the program to the participant as well as the project being commercialised. A third component provides funds to establish the commercial viability of the applicant's venture as part of the proof-of-concept stage, while the fourth component provides funds for the steps necessary to bring the venture to market, as part of early stage commercialisation activities. In addition, applicants have: access to Case Managers<sup>7</sup> (CMs) to support them for the duration of their involvement with the program; and advice from members of the program's Expert Network.<sup>8</sup>

6. The CA Program was intended to operate flexibly and this is reflected in aspects of its design. Applications for funding may be made at any time, in recognition that applicants are likely to seek financial assistance at different stages of commercialising their product or service and may not be in a position

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5 Australian Government, *Commercialisation Australia Program, Ministerial Program Direction No.1 of 2011*, Canberra, December 2011, p. 2, clause 6.

6 Since the commencement of the CA Program, the title of the administering department has changed several times. Unless there is a need to specify the full name or the acronym, this audit report uses 'the Department of Industry' to refer to: the Department of Innovation, Industry, Science and Research (from December 2007 to December 2011, abbreviated as DIISR); the Department of Industry, Innovation, Science, Research and Tertiary Education (from December 2011 to March 2013, abbreviated as DIISRTE); the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education (from March 2013 to September 2013, abbreviated as DIICCS RTE); and the Department of Industry (from 18 September 2013).

7 Case Managers are expected to possess extensive knowledge and experience in commercialisation, or a relevant area of expertise. They are contracted by the department following a tender process. The program currently contracts approximately 30 Case Managers.

8 The Expert Network became operational in November 2010. Network members are volunteers who attend networking opportunities facilitated by the department. In addition to providing advice to applicants, Network members are provided with visibility of, and the opportunity to invest in, early stage high growth companies.

to wait for grant funding rounds to open and close.<sup>9</sup> Applicants can also enter and exit the program at various stages on the commercialisation pathway and, in some circumstances, can access different grant components concurrently.

7. In 2009, the then Government decided that in addition to the grant components, the CA Program would also include: a program of research and analysis to support future commercialisation policy and program development; and ongoing collection and analysis of data to measure the short and long term impacts of the CA Program<sup>10</sup>. These activities were intended to support an active process of review and adjustment to the program's design, to maintain its relevance and effectiveness.

8. In March 2011, the department sought the Minister's approval to establish a fifth program component, the CA Pilot Program (Pilot Program), to provide financial assistance for assessments of the practicality and effectiveness of new, alternative methods of support for commercialisation.<sup>11</sup> The fifth component was also established as a grant program, with separate program guidelines. Funding of up to \$2 million per annum (on all projects combined) was available for the Pilot Program, with \$500 000 in financial assistance awarded by the department to itself in January 2013. The department suspended the Pilot Program in August 2013 following its consideration of issues raised by the ANAO during this audit.

9. The department's Business Competitiveness and Trade Division (specifically, the Commercialisation Australia (CA) Branch) has policy responsibility for the CA Program and directly administered the Pilot Program until its suspension. The department's specialist program delivery division, AusIndustry<sup>12</sup>, is responsible for delivery of the four original grant components.

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9 This approach contrasts with that adopted in many grant programs, which involve: periodic application rounds with defined opening and closing dates; and the competitive assessment of applications from each round. Under the CA Program batches of applications are generally assessed every six weeks.

10 The decision as later documented in a formal Ministerial Direction. See Australian Government, *Commercialisation Australia Program, Direction No.1 of 2011*, Canberra, 2011, p. 3, clause 6(i).

11 Australian Government, *Commercialisation Australia Pilot Program Guidelines*, DIISR, Canberra, December 2011, p. 2.

12 AusIndustry delivers programs for the department and a number of other government agencies.

10. The CA Program's governance arrangements include the CA Board, which was established to provide expert advice and merit rank applications for grant funding. Board members are appointed for their experience in commercialisation.<sup>13</sup>

11. Between January 2010 and 31 December 2013, the CA Program received 6 084 applications, of which 992 progressed to be considered by the CA Board. Of these, 616 applications have been approved for funding by the Program Delegate to a value of \$207 million. A total of \$224.7 million was expended as at 31 December 2013.<sup>14</sup>

12. The department advised that the CA Program was suspended on 21 March 2014 pending the outcome of the 2014–15 Commonwealth Budget process. Subsequently, as part of the 2014–15 Budget, the Government announced cessation of the CA Program from 1 January 2015.<sup>15</sup>

## Audit objectives, criteria and scope

13. The audit objective was to assess the effectiveness of the department's administration of the CA Program.

14. To form a conclusion against the audit objective, the ANAO adopted the following high-level criteria:

- program planning, risk assessment and governance arrangements support effective grants administration;
- selection and approval processes for awarding grant funding are well-designed, appropriately implemented and consistent with the Commonwealth Grant Guidelines; and
- management of program reporting and performance is sound.

15. The audit examined the department's delivery and administration of all components of the CA Program, including the CA Pilot Program.

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13 The CA Board is a committee of the Innovation Australia Board, established under the *Industry, Research and Development Act 1986*.

14 This figure includes: grant funding provided to participants, the department's program administration costs and other program costs such as Case Manager services.

15 The department further advised that while the CA Program is now closed to new applications, applications received prior to the program's suspension in March 2014 are being considered in accordance with the existing CA Program Guidelines and within available (albeit reduced) funding to 2016–17. The announced changes do not affect existing projects.



## Overall conclusion

16. The Commercialisation Australia Program (CA Program), a 2009–10 Budget measure<sup>16</sup>, has operated since January 2010 to help strengthen Australia's competitive advantage by promoting innovation and the commercialisation of Australian products and ideas. Administered by the Department of Industry, the program provides grant funding and other support to the stage where recipients are able to attract private capital and carry forward their venture to full commercialisation. The CA Program comprises four original grant components and a fifth component introduced in 2011, the Pilot Program, which was suspended in the course of the audit.<sup>17</sup>

17. Overall, the effectiveness of the department's administration of the CA Program has been mixed. While the department's administration of the four original grant components has been generally effective, its decision to apply for grant funding under the Pilot Program led to non-compliance with financial framework requirements and a conflict of roles<sup>18</sup> for departmental staff involved in the program's administration.

18. The department's delivery of the original four grant components has been generally in accordance with the CA Program Guidelines and the Commonwealth Grant Guidelines. Between January 2010 and 31 December 2013, the CA Program received 6 084 applications. Of these applications, 992 were considered and merit ranked by the CA Board and 616 were approved for funding by the departmental program delegate to a value of \$207 million. Of this funding, \$185 million was directed to proof-of-concept and early stage commercialisation projects; with private investors contributing an equal level of funding to these projects. Program participants indicated satisfaction with the wider program, including unsuccessful applicants who considered that their company was better positioned for commercialisation following the application process, due to the quality of support and feedback

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16 The 2009–10 Budget included program funding of \$196.1 million over four years, with ongoing funding of \$82 million per annum beyond the forward estimates.

17 As noted in paragraph 12, the CA Program as a whole was suspended on 21 March 2014, and the Government announced its cessation from 1 January 2015 in the context of the 2014–15 Budget.

18 A conflict of roles, or a conflict of interest, may arise: where agency decision makers or staff involved in grants administration have a direct or indirect interest, which may influence the selection of a particular project or activity; and where a grant recipient has a direct or indirect interest, which may influence the selection of their particular project or activity during the application process. Conflicts may also arise when undertaking the grant project. See Department of Finance and Deregulation, *Commonwealth Grant Guidelines, 2nd Edition*, DOFD, Canberra, June 2013, p. 58, clause 13.6.

provided by departmental case managers as part of the application assessment phase.

19. However, the Pilot Program's design, which made provision for the department to apply for a Commonwealth grant, and the department's decision to apply for grant funding, demonstrated a lack of understanding of the Australian Government's financial management framework, resulting in the department granting financial assistance of \$500 000 to itself.<sup>19</sup> Under the financial framework, a 'grant' is defined as an arrangement for the provision of financial assistance to a recipient 'other than the Commonwealth'<sup>20</sup> and there is no provision for a department to receive or retain<sup>21</sup> a Commonwealth grant. The department's decision to award itself a grant and to retain the funding resulted in breaches of framework requirements.<sup>22</sup> Further, the department applied for and received the grant under the Pilot Program notwithstanding a requirement in the program guidelines that applicants be incorporated under the *Corporations Act 2001*. As a department of state with the legal personality of the Commonwealth, the department did not satisfy this threshold criterion. The Pilot Program's design, and the department's decision to apply for a grant while also administering and advising on the program, created a situation where departmental officials had a conflict of roles; with potential implications for the equitable treatment of external applicants.

20. The department's experience with the Pilot Program highlights the risks which can arise when agencies seek to access administered<sup>23</sup> program funds for an internal project, an uncommon occurrence requiring careful assessment by agency management.

21. More broadly, there remains scope for improvement by the department in aspects of program governance, relating to: risk management; performance

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19 The branch responsible for the administration of the Pilot Program proposed and received financial assistance through the Pilot Program to procure services from external providers to develop an Ecosystem Mapping Strategy (EMS) to collate and analyse data about innovation across specific business sectors. The EMS project involved a trial to assess the effectiveness of the mapping strategy as a policy development tool and to determine its potential scalability to other sectors. The project was assessed by the CA Board as consistent with the objectives of the Pilot Program.

20 Financial Management and Accountability Regulations 1997 (FMA Regulations), regulation 3A(1).

21 FMA Regulations 15(1) and 15(2) prescribe the types of receipts which an FMA Act agency, such as a department, may retain. Grants are not a type of prescribed receipt.

22 The financial framework breaches were subsequently reported in the department's 2012–13 Certificate of Compliance; an annual process which requires all FMA Act agencies to report on non-compliance with the financial management framework to the responsible Minister, copied to the Finance Minister.

23 'Administered' funding is provided to agencies to deliver program outcomes, such as grants of financial assistance. 'Departmental' funding is provided for the operating costs of agencies, such as salaries.

reporting and evaluation. While the CA Program provides financial and other assistance for commercialisation activities which are inherently risky, and which may therefore show little or no return on the Australian Government 'investment', the program is not supported by a program-level risk management framework to identify program risks and inform the department's treatment of those risks.<sup>24</sup> Other risk mitigation strategies documented in the Ministerial Directions<sup>25</sup>, such as a program of research and ongoing data analysis to measure the short and long term impacts of the program<sup>26</sup>, have not been progressed. The department and CA Board also agreed, early in the life of the CA Program, to a set of key performance measures to track and report on program performance against objectives.<sup>27</sup> After three years, only one report on program performance was prepared for the CA Board's consideration, in 2013, and the quality of data collected has generally been poor and would require a significant investment of time and skills to reliably inform research and analysis on program performance. Further, while two internal evaluations of the CA Program have been undertaken to date<sup>28</sup>, they have had limited input from sources external to government.<sup>29</sup>

**22.** The ANAO has not made recommendations in this audit, as key issues relating to the CA Pilot Program were addressed by the department in the course of the audit, and the CA Program will cease from 1 January 2015. However, this audit has highlighted that there remained scope for the department to improve its administration of aspects of the CA Program relating to risk management, performance reporting and evaluation. Further, the department will need to take steps towards the program's orderly closure, and to draw on lessons learned, particularly from the CA Pilot Program experience, to inform its administration and the development of future grants programs.

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24 The department advised that it has an established enterprise-level framework for risk management and planning, to which the CA Program area contributes high level inputs.

25 Australian Government, *Commercialisation Australia Program, Direction No.1 of 2011*, Canberra, 2011, p. 3, clause 6(i). This legal Direction was made by the then Minister for Innovation, Industry, Science and Research.

26 To allow for adjustments to the program design if needed.

27 At the same time, the department established a database for information collected: at the commencement of each project; during each project; and for five years after project completion.

28 An 'interim' evaluation was conducted by the CA Branch in 2010 and the 'full' evaluation was conducted in 2012–13 by the department's internal evaluation unit.

29 Notably, the CA Board was not represented on the relevant governance groups, notwithstanding its mandated role in monitoring and reviewing the CA Program.

## Key findings by chapter

### CA Program Grants Process (Chapter 2)

23. The Commercialisation Australia (CA) Branch<sup>30</sup> has overall policy responsibility for the CA Program and manages the CM network. As the department's specialist program delivery division, AusIndustry is responsible for delivery of the four original grant components<sup>31</sup> and provides secretariat support to the CA Board.

24. AusIndustry's delivery of the original four grant components has been generally in line with the CA Program Guidelines and in accordance with the Commonwealth Grant Guidelines (CGGs). AusIndustry's network of state and territory locations combined with phone services and websites supported promotion efforts and gave applicants access to relevant information and assistance. AusIndustry also maintained good documentation in the form of procedures manuals, customer information guides and operational guidelines. This information was regularly updated and was readily available to staff and where applicable, potential applicants.

25. The department employed a two-stage application process as a means of promoting high quality applications and reducing the impost on applicants until it was confirmed that preparation of a full application was warranted. Once eligibility was established and a full application received, the CM applied a due diligence process to examine the competitiveness of the application against the selection criteria. This process informed the CA Board's merit assessment and ranking of applications. The establishment of the CA Board, with expert members drawn from outside the department, was a further strategy to mitigate the risks associated with commercialisation projects, which can include the risk of project failure.

26. To offer potential applicants flexibility, the CA Program assessed applications on an ongoing basis; with the CA Board meeting approximately every six weeks. This approach to grants administration presents challenges in maintaining consistency of assessments and an even distribution of available funding over the financial year. The department sought to address these risks

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30 A part of the Business Competitiveness and Trade Division.

31 AusIndustry's responsibilities entail: general awareness raising; receipt and processing of applications in preparation for their assessment by the CA Board; negotiating Funding Agreements; and monitoring participants' progress. The Program Delegate position also resides in AusIndustry.

through continuity of CA Board membership, the due diligence process applied to applications, and the use of funding 'brackets'<sup>32</sup> to help provide for an even spread of funding across all grant types.

27. The ANAO's examination of the CA Board's assessment process indicated that it was actively supported by AusIndustry; the Board's documentation was sound; conflict of interest procedures existed and were applied; assessment decisions were based on the program guidelines; and board assessments were recorded.

28. The ANAO's analysis of a sample of successful applications also indicated that the process followed by the department's Program Delegate when considering and approving funding recommendations had appropriate regard to the requirements of the financial management framework and the CGGs. The department's procedures for negotiating funding agreements with successful applicants and monitoring their progress were also implemented in a manner consistent with the CA Program Guidelines, broader departmental requirements and the CGGs.

29. However, there was variation across the AusIndustry network in the approach adopted to obtaining and recording Declarations of Interest (DOI) from CMs, prior to referring an application for due diligence assessment.

30. As part of the 2014–15 Budget, the Government announced cessation of the CA Program from 1 January 2015. In light of the Government's decision the department will need to take steps towards the program's orderly closure.

### **CA Pilot Program (Chapter 3)**

31. In the course of this performance audit, a number of issues were identified by the ANAO relating to the design and administration of the fifth component of the CA Program; the Pilot Program, which was introduced in 2011.

32. The Pilot Program's design and administration demonstrated a lack of understanding of the Australian Government's financial management framework,

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32 Once the CA Board rated individual applications, they were ranked within a funding bracket (from small to large funding brackets). The recommended applications were then determined based on the highest ranked applications within each bracket. This approach was adopted to provide for successful applications across the full range of grant types and grant value.

resulting in the department granting financial assistance of \$500 000 to itself, for a project to be delivered by external service providers.<sup>33</sup>

33. The definition of a 'grant', for the purposes of the *Commonwealth Grant Guidelines* (CGGs), as an arrangement for the provision of financial assistance by the Commonwealth to a recipient 'other than the Commonwealth'<sup>34</sup> precluded the department from providing such a grant of public money for its own projects.

34. Further, the financial management framework provides that if monies are received by an agency, only receipts prescribed by the financial regulations may be retained by the agency.<sup>35</sup> In this context, the regulations make no provision for an FMA Act agency to receive or retain a Commonwealth grant.<sup>36</sup>

35. The department's decisions to 'grant' itself public money as a form of financial assistance for an internal project, and to retain that public money, were not soundly based and gave rise to breaches of the financial framework.<sup>37</sup>

36. Further, the department applied for and received financial assistance under the Pilot Program notwithstanding a requirement in the program guidelines that applicants be incorporated under the *Corporations Act 2001*. As a department of state with the legal personality of the Commonwealth, the department did not satisfy this threshold criterion but nonetheless advised the CA Board<sup>38</sup> on an alternative interpretation of the guidelines<sup>39</sup>, which the Board accepted notwithstanding its reservations documented in the course of considering the department's funding application.

37. The department's decision to apply for a grant while also administering and advising on the program, created a situation where departmental officials had a conflict of roles; with potential implications for the equitable treatment of external applicants.<sup>40</sup> While the Pilot Program Guidelines referred to the

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33 The project is discussed in footnote 19.

34 Financial Management and Accountability Regulations 1997 (FMA Regulations), regulation 3A(1).

35 *Financial Management and Accountability Act 1997* (FMA Act), section 31.

36 FMA Regulations, regulations 15(1) and 15(2).

37 See paragraph 40.

38 The CA Board was established to provide expert external advice and to merit rank applications for grant funding under the CA Program.

39 Contrary to the program guidelines approved by the Minister, the department advised that this threshold criterion only applied to external applicants.

40 Both the CGGs and internal departmental guidance emphasised the need to avoid situations where the interests of staff might compromise their independence; including the real or perceived independence of their administration, advice or decision-making.



existence of formal procedures for managing potential conflicts, the potential for conflicts of interest were embedded in the Pilot Program component as a consequence of its design, making it difficult to manage such conflicts.

38. Further weaknesses related to departmental advice in a minute to the Minister that observed the CA Board had endorsed the draft Pilot Program Guidelines, after the Board had advised the department that the guidelines required ‘further development’. The department also misunderstood advice received from a central agency<sup>41</sup> relating to the draft Pilot Program Guidelines, which had included observations on the potential for conflicts of interest to arise due to the program’s design.

39. Examination of these issues with the department led the ANAO to conclude that elements of the Pilot Program were not consistent with the requirements of the CGGs and aspects of the department’s administration were not compliant with the Australian Government’s financial management framework.<sup>42</sup> The ANAO discussed potential audit findings with senior departmental representatives during August 2013. The department subsequently sought advice from the Department of Finance regarding resolution and management of these issues and, as a result, took action to suspend the Pilot Program in August 2013.

40. The department subsequently reported two breaches of the financial management framework, arising from its receipt of a grant under the Pilot Program, in its 2012–13 Certificate of Compliance to the responsible Minister.<sup>43 44</sup>

## **Risk Management and Governance (Chapter 4)**

41. Sound risk management practices can support effective program administration by identifying risks and appropriate treatments. While the department has an established enterprise-level risk management framework, the CA Program is not supported by a program-specific risk management framework

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41 The then Department of Finance and Deregulation, which administered and advised agencies on the application of the CGGs.

42 The financial management framework is applicable to the Department of Industry as a prescribed agency subject to the *Financial Management and Accountability Act 1997* (the FMA Act) and the Financial Management and Accountability Regulations 1997 (FMA Regulations).

43 The breaches related to section 44 of the FMA Act and FMA Regulation 7A.

44 The chief executives of all agencies subject to the FMA Act are required to provide a completed Certificate of Compliance to their portfolio minister each year. The purpose of the Certificate is to improve compliance with the Australian Government’s financial management framework, and to ensure that Ministers are kept informed of compliance issues within their portfolios.

to inform the department's treatment of program-level risks. Had the CA Program continued beyond 1 January 2015, there would have been benefit in the department developing and maintaining a targeted risk management plan for the program. The design of the Pilot Program also introduced a number of risks, including the potential for conflicts of interest and role, and inconsistency with financial framework requirements. The involvement of the CA Board in the development of the Pilot Program, a new strategic direction for the CA Program as a whole, may have provided the department with additional insight on the risks associated with the Pilot Program's design.

42. As part of the original CA Program design, the then Minister decided that the department undertake a program of research and analysis, regular data collection and monitoring and reporting, to allow for timely adjustments (if needed) to the program's operation. However, the program of research and analysis has not commenced after three years and the department advised there are no immediate plans to initiate this work.

43. The then Government also established governance arrangements intended to mitigate CA Program risks, in particular the CA Board, which was intended to support the program at both a technical and strategic level through the knowledge and expertise of CA Board members. However, the Board's contribution to the CA Program has largely focused on the technical assessment of applications, and in practice responsibility for setting strategic directions for the CA Program has been a departmental rather than a shared responsibility.

## **Program Performance and Evaluation (Chapter 5)**

44. The Ministerial Directions and CA Program Guidelines state that achievement of program objectives would be supported through the regular collection and analysis of data to: measure the short and long term impact of the program; and inform development of future innovation and commercialisation initiatives. The CA Program Guidelines also require the department to monitor projects funded by the program, by: collecting baseline data as participants enter the program; and monitoring participants' commercialisation achievements for at least five years following their departure from the program.



45. In consultation with the CA Board, the department agreed to a number of performance measures (referred to as KPIs) as a basis for measuring change during and immediately after the provision of support through the CA Program. The department also established a Program and Performance Data Collection (PPDC) in 2010 to collect and store participant data.<sup>45</sup> While data has been regularly collected from participants, at a cost to participants and the department, its quality is poor and would require significant attention before it can be used with any confidence to report on program performance against its intermediate and long term objectives, or to reliably inform research and analysis.

46. The department has not used the KPIs agreed with the CA Board in 2010 to report on the CA Program's progress and achievements. The failure to report against the KPIs largely stems from the department's approach that commercialisation outcomes are only measurable over the long term. This perspective focuses on measuring CA Program performance in terms of the final commercialisation of an idea or product, and does not make provision for the use of proxy measures<sup>46</sup> or intermediate outcomes at different stages of the commercialisation process, to improve stakeholders' capacity to assess performance.

47. In establishing the CA Program, the then Government requested that regular and independent evaluations be conducted; and the department proposed rigorous and broad ranging parameters for such evaluations, including the examination of long and short term impacts. Two internal evaluations have been conducted: an 'interim' evaluation by the CA Branch in 2010 and a 'final' evaluation by the department's internal evaluation unit in 2012–13. Both evaluations, oversighted largely by departmental officers, reported positively on the program's achievements, notwithstanding the range of issues subsequently observed in this audit report. Further, the evaluations had limited input from sources external to the government, including the CA Board, notwithstanding the Board's mandated role in monitoring and reviewing the CA Program, and advising on its strategic direction.

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45 Participant data is collected at the commencement of projects, during projects and for five years following completion of a project.

46 Proxy measures are output-level performance indicators and may be useful to indirectly measure effectiveness in certain situations. See Department of Finance and Deregulation, *Performance Information and Indicators* (October 2010), Finance, Canberra, 2010, p. 3; and ANAO Audit Report No.21 2013–14, *Pilot Project to Audit Key Performance Indicators*, p. 74.

## Summary of agency response

48. The Department of Industry's summary response to the proposed report is provided below, with the full response at Appendix 1. Extracts of the proposed report were also provided to the Chair of the Commercialisation Australia Board, who did not provide a written response.

It is pleasing to note the Department's, through AusIndustry, strong performance record in service delivery. The Australian National Audit Office (ANAO) report highlights that AusIndustry delivered the four original grant components in accordance with the Commonwealth Grant Guidelines and in line with the Commercialisation Australia Program Guidelines. AusIndustry also received positive feedback in providing applicants access to relevant information and assistance, and maintained comprehensive documentation in the form of procedures manuals, customer information guides and operational guidelines.

The program received over 6000 expressions of interest to 31 December 2013. As acknowledged by the ANAO, 992 applications were considered and merit ranked by the Commercialisation Australia Board. Of these, funding totalling \$207 million has been provided for 616 separate components. The funding resulted in the creation of new high-tech, high-growth businesses in key sectors such as innovative manufacturing, agribusiness, mining technology, medical technology, ICT and advanced services.

The department acknowledges the contribution the audit made to enhance the program administration of the Commercialisation Australia Program. During the course of the audit, issues relating to some aspects of the design and administration of the Pilot Program were addressed by the department.

As part of the 2014–15 Budget, the Government announced the closure of the Commercialisation Australia Program from 1 January 2015. The Department will implement an appropriate closure strategy for the program.

## **Audit Findings**



# 1. Introduction

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*This chapter provides background information on the Commercialisation Australia Program. It also outlines the audit approach including its objective, scope and methodology.*

## Background

**1.2** In May 2009, the then Australian Government (the Government) announced the establishment of the Commonwealth Commercialisation Institute (the Institute) aimed at providing support to firms and innovators during the commercialisation phase of their products and ideas. The initiation was announced as part of the then Government's framework to develop Australia's innovation system, outlined in the policy paper *Powering Ideas*.<sup>47</sup> Funding for the Institute was provided as part of the 2009–10 Budget, with the Government allocating \$196.1 million over the first four years to 2012–13 and ongoing annual funding of \$82 million.

**1.3** The announcement of the Institute coincided with a number of significant changes to existing commercialisation programs<sup>48</sup>, and the Government indicated that the Institute was expected to provide a 'radical' alternative to previous commercialisation initiatives by considering innovative approaches to leverage venture capital<sup>49</sup> and other sources of finance to support commercialisation. Before funds were expended, the arrangements for the Institute were to be refined in consultation with stakeholders and considered by a committee of government and external representatives (the Committee).<sup>50</sup>

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47 Australian Government, *Powering Ideas: An Innovation Agenda for the 21<sup>st</sup> Century*, Commonwealth of Australia, Canberra, 2009.

48 These changes included termination of the Commercial Ready and Commercial Ready Plus programs, and finalisation of the Intermediary Access Program and the Industry Collaboration Innovation Program. In addition, the PreSeed Fund was fully subscribed and the Commercialising Emerging Technologies Program was due to conclude on 30 June 2011.

49 Venture capital is defined as high risk private equity capital for typically new, innovative or fast growing unlisted companies where there is a prospect for rapid growth, and with a higher risk/higher returns profile than later stage private equity investment.

50 The Committee comprised representatives from: the Department of the Prime Minister and Cabinet; the Department of the Treasury; the then Department of Finance and Deregulation; the then Department of Innovation, Industry, Science and Research; the then Department of Climate Change; the then Department of Education, Employment and Workplace Relations; the then Department of Resources, Energy and Tourism; Austrade; the National Health and Medical Research Council; and National ICT Australia (NICTA). On 28 July 2009, Dr Laurie Hammond was appointed as independent chair of the Committee.

Following a period of consultation and analysis, the Committee reported to the Government in September 2009 on its recommendations for a new model to support commercialisation. The recommendations are summarised in Table 1.1.

**Table 1.1: Committee’s key observations and proposed model**

| The Committee observed:  |
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| <ul style="list-style-type: none"> <li>• widespread agreement amongst stakeholders that gaps in skills, knowledge and finance were critical failures impeding the commercialisation of new ideas;</li> <li>• support provided by previous schemes tended to be narrowly targeted, focusing on specific products and industries with limited coordination of initiatives across jurisdictions;</li> <li>• state and territory governments provide high levels of support for knowledge and capability building;</li> <li>• limited support is provided for the proof of concept (activities associated with establishing the commercial viability of a new product, process or service) and early stage commercialisation (activities associated with bringing a new product, process or service to market);</li> <li>• support provided by the Institute should be based around the stage of the life-cycle of the project requiring assistance— from development of skills and knowledge, through to demonstrating viability and bringing the project to market;</li> <li>• the Institute should leverage private sector investment; and</li> <li>• that the initiative should, as a priority, ensure ‘additionality’ by targeting commercialisation activity that would not otherwise take place without support.<sup>(a)</sup></li> </ul>   |
| The Committee proposed:  |
| <ul style="list-style-type: none"> <li>• the Institute consolidate support for commercialisation into a single program open to entrepreneurs, researchers and businesses across all sectors;</li> <li>• due to the commercial focus of the Institute, decision-making should be informed by people with ‘hands-on’ experience in commercialising new ideas and that these people should be independent from government;</li> <li>• the Institute should complement state and territory programs rather than duplicate them, with state and territory governments encouraged to continue to provide ongoing support for capability building, providing a platform for access to support provided by the Institute;</li> <li>• assistance provided by the Institute to support knowledge and capability building would be at an increased scope and intensity to that offered by states and territories;</li> <li>• an integrated suite of tools including grant funding and non-financial support provided through a network of Case Managers tasked with assisting applicants for the duration of their interaction with the Institute;</li> <li>• the Institute impose mutual obligation conditions requiring applicants to contribute funds to match a proportion of grant funds provided by the Government; and</li> <li>• grants for early stage commercialisation activities be repaid by recipients upon successful commercialisation of their product or idea.</li> </ul> |

Source: Compiled by the ANAO.

Notes (a): Additionality refers to the net positive difference as a result of government intervention.

**1.4** In September 2009, based on the recommendations and findings of the Committee, the Government agreed to the final design for the Institute. On 21 October 2009, the then Minister for Innovation, Industry, Science and Research (the Minister)<sup>51</sup> announced details of the Institute, including a change of name for the Institute to 'Commercialisation Australia' (CA).<sup>52</sup> The Minister's press release also called for expressions of interest for membership of the CA Board, which was established soon after by the Minister under the *Industry, Research and Development Act 1986* (the Act) to provide advice and assistance regarding administration of the CA Program. Pending the establishment of the CA Board, an interim Board was formed to guide establishment and early implementation of the program. The full CA Board was confirmed in February 2010 and met for the first time to consider applications in March 2010.

## CA Program overview

**1.5** The CA Program opened for applications on 4 January 2010. The program comprised the four original grant components agreed to by the Government in September 2009, with a fifth component introduced in 2011.<sup>53</sup> The four original components provide participants with financial and non-financial support at different points across the commercialisation life-cycle. Two of these components are designed to provide applicants with access to skills, knowledge and expertise, in order to build capacity and provide assistance to commercialise—extending the focus of the program to the participant as well as the project being commercialised. A third component provides applicants with funds to establish the commercial viability of their venture as part of the proof-of-concept stage and a further component provides funding for the steps necessary to bring the venture to market as part of early stage commercialisation activities. Table 1.2 describes the four original grant funding components.

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51 Since the commencement of the CA Program, the title of the portfolio minister changed several times. Unless there is a need to specify the full title, this audit report uses 'the Minister' to refer to: the Minister for Innovation, Industry, Science and Research (from December 2007 to December 2011, and from July to September 2013); the Minister for Industry and Innovation (from December 2011 to June 2013); and the Minister for Industry (from September 2013).

52 For the purpose of this audit, Commercialisation Australia is referred to as the Commercialisation Australia (CA) Program.

53 In 2011, the Minister agreed to a new grant to provide support for pilot program activities—referred to as the CA Pilot Program. The CA Pilot Program was suspended by the department in August 2013 as a consequence of issues associated with its design and administration identified by the ANAO during this audit. The CA Pilot Program is examined separately in chapter 3 of this report. All other chapters focus on the four original grant components.

**Table 1.2: Commercialisation Australia Program grant components**

|                                | Skills and Knowledge <sup>(a)</sup>  | Experienced Executive <sup>(a)</sup>               | Proof of Concept               | Early Stage Commercialisation <sup>(a)</sup> |
|--------------------------------|--|--|--------------------------------|--|
| <b>Purpose</b>                 | Purchase of expert advice and services   | Engage a Chief Executive or other senior executive | Establish commercial viability | Activities to bring a product to market      |
| <b>Grant amount</b>            | Up to \$50 000   | Up to \$350 000                                    | \$50 000 to \$250 000          | \$50 000 to \$2 million                      |
| <b>Applicant to Contribute</b> | 20 per cent  | 50 per cent  | 50 per cent                    | 50 per cent                                  |
| <b>Resources</b>               | Case Managers and the Expert Network   |  |                                |  |
| <b>Duration</b>                | 12 months  | 24 months  | 12 months                      | 24 months                                    |
| <b>Who can apply</b>           | Australian companies with annual turnover less than:   |  |                                |  |
|                                | \$10 million   |  |                                | \$50 million                                 |
|                                | ✓  | ✓  | ✓                              | ✓  |
|                                | Entrepreneurs who will form a company if their application is successful   |  |                                |  |
|                                | ✓  | ✓  | ✓                              | ✓  |
|                                | Individuals or researchers applying via a Commercialisation Office <sup>(b)</sup> or an Eligible Partner Entity <sup>(c)</sup> |  |                                |  |
|                                | ✓  | x  | ✓                              | x  |

Source: CA Program Customer Information Guide, January 2013.

Notes (a): In October 2011, the Government agreed to changes to the CA Program components. The following changes were announced and came into effect on 7 December 2011:

- increasing the maximum grant size for Experienced Executives from \$200 000 to \$350 000;
- removing the requirement for the repayment of the Early Stage Commercialisation grants;
- increasing the annual turnover limit for Early Stage Commercialisation applications from \$20 million to \$50 million;
- setting a minimum grant size of \$50 000 for Early Stage Commercialisation grants; and
- broadening the Eligible Expenditure Guidelines to provide more generous support for pilot plants and innovative manufacturing facilities (effective 2 July 2012).

(b): A Commercialisation Office is an entity within an Australian University or a Publicly Funded Research Agency that assists researchers commercialise their research.

(c): An Eligible Partner Entity is a body corporate, or an entity within a body corporate, whose primary purpose is to assist individuals or companies commercialise their Intellectual Property. These entities apply to the CA Program to be registered as an Eligible Partner Entity.



**1.6** The grant components are intended to allow applicants to tailor assistance to meet their stage of development and immediate needs. Applicants can apply for funding under any of the four components, and for certain grant combinations, applicants can apply and receive grant funding concurrently.<sup>54</sup> Applicants are not limited to a single application for funding under the program, and can apply multiple times for funding under any one of the four components for the same project—on condition that the total grant amount and duration of activities does not exceed the component’s specified value and time limits.

**1.7** In addition to financial assistance provided through the grants, applicants have access to Case Managers (CMs), who are contracted by the Department of Industry to support applicants for the duration of their involvement with the program. CMs are selected through a tender process and are expected to possess extensive knowledge and experience in commercialisation, or a relevant area of expertise. The program currently contracts approximately 30 CMs, providing coverage across each state and territory. Applicants also have access to expert advice from business experts who comprise the program’s Expert Network.<sup>55</sup>

**1.8** Table 1.3 describes activities and eligible expenditure for each of the grant components.

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54 Concurrent applications are permitted for: Skills and Knowledge and Proof-of-Concept grants; Skills and Knowledge and Experienced Executive grants; Proof-of-Concept grants and Experienced Executive grants; and Early Stage Commercialisation and Experienced Executive grants.

55 The Expert Network became operational in November 2010. Members of the Expert Network are volunteers and are not remunerated by the Government. The department facilitates events and networking opportunities attended by the Expert Network members and may cover reasonable costs associated with members’ travel and expenses. Expert Network members are also provided with visibility of, and the opportunity to invest in, early stage, high growth companies.

**Table 1.3: Eligible activities and expenditure, by grant component**

| <b>Eligible activities and expenditure grant funds may be used for:</b>   |   |
|---|---|
| <b>Skills and Knowledge</b>   |   |
| Funding to obtain expert advice and service to assist in the commercialisation process, including:  |   |
| <ul style="list-style-type: none"> <li>• business planning activities;</li> <li>• commercialisation research and strategy;</li> <li>• capital raising activities;</li> </ul>  | <ul style="list-style-type: none"> <li>• intellectual property management; and</li> <li>• linkages – developing a partnership or collaboration agreement.</li> </ul>    |
| <b>Experienced Executive</b>  |   |
| Funding to employ an experienced chief executive officer or other executive to bring complementary skills and experience to the business and to drive it towards a successful launch of a new product, process or service in the marketplace. |   |
| <ul style="list-style-type: none"> <li>• full or part-time, but not less than three days per week.</li> </ul>   |   |
| <b>Proof of Concept</b>   |   |
| Funding for the steps necessary to establish the commercial viability of a new product.   |   |
| <ul style="list-style-type: none"> <li>• market validation and market trials;</li> <li>• regulation and standards compliance;</li> </ul>  | <ul style="list-style-type: none"> <li>• product development and prototyping; and</li> <li>• development and execution of an intellectual property strategy.</li> </ul> |
| <b>Early Stage Commercialisation</b>  |   |
| Funding is provided for the steps necessary to bring a new product, process or service to market. Projects should be geared toward selling the new product, process or service to the first customers in Australia or overseas.               |   |
| <ul style="list-style-type: none"> <li>• market validation and market trials;</li> <li>• intellectual property strategy execution;</li> </ul>   | <ul style="list-style-type: none"> <li>• product development;</li> <li>• regulation and standards compliance; and</li> <li>• scale up for manufacturing.</li> </ul>     |

Source: CA Program Customer Information Guide, January 2013.

**1.9** The Department of Industry's AusIndustry Division<sup>56</sup> has responsibility for delivery of the CA Program's four original grant components, while the Business Competitiveness and Trade Division (specifically, the Commercialisation Australia (CA) Branch), has policy responsibility for the CA Program and is responsible for overall administration of the CA Program. AusIndustry draws on its state and territory network of Customer Service Managers (CSMs) to deliver the CA Program. CSMs have responsibility for

56 AusIndustry is a specialist program delivery division within the department, delivering programs for the department and on behalf of a number of other government departments.

responding to inquiries, assessing eligibility, and negotiating funding agreements. The CSMs also work closely with the CMs to monitor and track each participant's progress for the period they are involved with the program. The Program Delegate or decision-maker, an SES Band 1 officer, is a member of AusIndustry. AusIndustry also provides secretariat support to the CA Board.

**1.10** In addition to its policy responsibilities for the program, the CA Branch manages the CMs and Expert Network, and is responsible for promotion, monitoring, data collection<sup>57</sup> and reporting on program outcomes. The CA Branch was also responsible for both the administration and delivery of the CA Pilot Program. The CA Program Guidelines make reference to the position of 'Chief Executive Officer for the CA Program'.<sup>58</sup> Since commencement of the CA Program, this role has been undertaken by the head of the CA Branch, an SES Band 1 officer.<sup>59</sup>

**1.11** The CA Board contributes to the CA Program by providing independent expert advice and assessing applications for grant funding. The CA Board was formed in February 2010 and comprises up to seven members, with relevant experience and knowledge of commercialisation.

## Application assessment process

**1.12** Before an application is considered by the CA Board, the applicant must first be assessed as an 'eligible applicant'. Recognising the different circumstances of potential applicants, the CA Program is open to:

- non-tax exempt companies incorporated under the *Corporations Act 2001*; and
- individuals (on the condition that if their application is successful, they will form a non tax-exempt company under the *Corporations Act 2001*).

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57 The CA Branch is responsible for the Program and Performance Data Collection.

58 Australian Government, *Commercialisation Australia Program Guidelines*, DIISR, Canberra, December 2011, p. 7, clause 17.

59 For the purpose of this audit, this role is referred to as the Chief Executive Officer Commercialisation Australia (CEOCA). The CEOCA is also an ex-officio member of the CA Board, by virtue of having responsibility for the CA Program.

**1.13** Commercialisation Offices and Eligible Partner Entities (EPEs) can also apply under the program, but only for the Skills and Knowledge and Proof of Concept grants.<sup>60</sup>

**1.14** If the applicant is assessed as 'eligible', the eligibility of the application is then assessed. To be considered an 'eligible application' it must be complete, contain sufficient information to undertake a merit assessment and be presented in the form required. In addition, the project to which an application relates must:

- aim to produce, establish the commercial viability of, or commercialise a new, clearly identified product, process or service; and
- involve eligible activities—the applicant must demonstrate an ability to fund (from non-government sources) the cost of eligible activities not met by the CA Program.

**1.15** Eligible applications are considered by the CA Board against the merit criteria, with the CA Board meeting approximately every six weeks to consider applications.<sup>61</sup> The applications are first assessed against the 'need for funding' criterion to ensure the funding decision targets commercialisation activity that would not otherwise take place without support. Once the need for funding is confirmed, the application is considered against the remaining merit criteria. Recommendations to approve funding are made to the CA Program Delegate in AusIndustry, who has authority to make the grant offer. Table 1.4 outlines the CA Program merit criteria.

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60 A Commercialisation Office is an entity within an Australian University or a Publicly Funded Research Agency that assists researchers commercialise their research. An EPE is an entity that assists individuals in commercialising their intellectual property. To qualify as an EPE, an organisation must apply to the department and be approved by the CEOCA.

61 The CA Board resolved to delegate responsibility for assessing and merit ranking applications for Skills and Knowledge grants to the CEOCA. The approach and merit criteria applied by the CEOCA are the same as those applied by the CA Board when assessing all other grant components. Recommendations are made to the CA Program Delegate, who has authority to offer the grant.

**Table 1.4: CA Program merit criteria**

| Merit                 | Criteria  |
|-----------------------|---|
| Need for Funding      | <ul style="list-style-type: none"> <li>the application has insufficient financing to fund the entire project; and</li> <li>it would be unreasonable to expect that the applicant should obtain financial assistance from alternative sources.</li> </ul>  |
| Market Opportunity    | <ul style="list-style-type: none"> <li>the need for the new product, process or service is clearly defined;</li> <li>the type of customer is clearly defined;</li> <li>the size of the target market; and</li> <li>the strength of the intellectual property (including novelty).</li> </ul>  |
| Value Proposition     | <ul style="list-style-type: none"> <li>a clear, concise and compelling value proposition. That is, why the customer wants the product, process or service.</li> </ul>   |
| Execution Plan        | <ul style="list-style-type: none"> <li>a sound execution plan to capture the opportunity and manage the risks, including: <ul style="list-style-type: none"> <li>a clear set of objectives;</li> <li>a clearly defined path to market;</li> <li>an understanding of the key structural or market challenges to be resolved;</li> <li>a sound IP strategy; and</li> <li>a sound manufacturing strategy (where applicable).</li> </ul> </li> </ul>  |
| Management Capability | <ul style="list-style-type: none"> <li>the applicant demonstrates an appropriate level of expertise in: <ul style="list-style-type: none"> <li>commercialisation management;</li> <li>project management;</li> <li>business management; and</li> <li>the relevant sector/technology domain.</li> </ul> </li> </ul>  |
| National Benefit      | <ul style="list-style-type: none"> <li>the project will improve Australia's participation and competitiveness in the global economy; and</li> <li>significant spill-over benefits will accrue to Australia through the conduct of the project and/or commercialisation of its results, including: <ul style="list-style-type: none"> <li>diffusion of knowledge and skills;</li> <li>diffusion of new products, processes or services; and/or</li> <li>increased collaboration between businesses and/or businesses and research institutions.</li> </ul> </li> </ul> |

Source: CA Program Customer Information Guide, January 2013.

**1.16** Following approval by the Program Delegate, a funding agreement is executed between the participant and the Commonwealth of Australia (the Commonwealth) providing funding over the life of the project. The Funding Agreement is based on the project commercialisation strategy and changes to the strategy must be agreed in writing by the Commonwealth.

## Progress to date

**1.17** Between January 2010, when the CA Program commenced, and 31 December 2013, 6 084 applications have been received, with 992 of these considered and merit ranked by the CA Board. Of these, 616 applications have been approved for funding by the Program Delegate to a value of \$207 million. A total of \$224.7 million was expended as at 31 December 2013.<sup>62</sup> Two projects were terminated during this period, with the decision to terminate mutually agreed between the CA Program and the participant. Table 1.5 shows the successful applications, by component, since the program's commencement in January 2010 to 31 December 2013.

**Table 1.5: Applications approved, by component, as at 31 December 2013**

|  | Skills and Knowledge | Experienced Executives | Proof of Concept | Early Stage Commercialisation | Totals          |
|--|----------------------|------------------------|------------------|-------------------------------|-----------------|
| Applications considered by the CA Board or the CEOCA | 274                  | 137                    | 322              | 259                           | <b>992</b>      |
| Successful applications <sup>(a)</sup>               | 196                  | 65                     | 201              | 154                           | <b>616</b>      |
| Funding approved                                     | \$9.3m               | \$12.5m                | \$41.4m          | \$143.8m                      | <b>\$207.0m</b> |

Source: Compiled by the ANAO from data provided by the Department of Industry.

Note (a): Successful applications are applications approved by the Program Delegate.

**1.18** During the period the Pilot Program was open to applications, 44 enquiries were received, of which 28 were assessed as ineligible, with a further 12 not responding following initial feedback. Four applications were considered by the CA Board; one application was not supported by the CA Board and three applications were recommended for funding and referred to the Program Delegate for approval. In total, funding of almost \$885 000 was approved for Pilot Program projects—including a grant, valued at \$500 000, which was awarded by the department to its own CA Branch to fund an

<sup>62</sup> This figure includes: grant funding provided to participants, the department's program administration costs and other program costs such as Case Manager services.

Ecosystem Mapping Strategy (EMS) Project.<sup>63</sup> Of the total funding approved for Pilot Programs, \$463 061 was expended.

**1.19** The department advised that the CA Program was suspended on 21 March 2014 pending the outcome of the 2014–15 Commonwealth Budget process. Subsequently, as part of the 2014–15 Budget, the Government announced cessation of the CA Program from 1 January 2015.<sup>64</sup>

## The Australian Government's grants administration framework

**1.20** The Australian Government's grants administration framework applies to all agencies subject to the *Financial Management and Accountability Act 1997* (the FMA Act). The framework commenced on 1 July 2009 with amendments to Regulations under the FMA Act and release by the Minister for Finance of the *Commonwealth Grant Guidelines* (CGGs).<sup>65</sup>

**1.21** The 2009 CGGs emphasised the importance of sound program guidelines and stipulated that the Expenditure Review Committee of Cabinet (ERC) would consider guidelines for new grant programs.<sup>66</sup> 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 ERC approval. 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 is to be consulted on all risk assessments.<sup>67</sup>

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63 According to documentation provided by the CA Branch in its funding application, the Ecosystem Mapping Strategy was an approach aimed at addressing two issues: Australia's capacity to attract talent and capital to build intellectual property (IP) rich businesses; and Australia's need for a holistic platform for strategic policy development and performance measurement. The EMS project included a trial to map a single industry sector, the Australian medical technology industry, to enable the department to assess the effectiveness of the mapping strategy as a policy development tool and to determine its potential scalability to other sectors.

64 The department further advised that while the CA Program is now closed to new applications, applications received prior to the program's suspension in March 2014 are being considered in accordance with the existing CA Program Guidelines and within available (albeit reduced) funding to 2016–17. The announced changes do not affect existing projects.

65 Department of Finance and Deregulation, *Commonwealth Grant Guidelines – Policies and Principles for Grants Administration*, Financial Management Guidance No.23, DOFD, Canberra, July 2009.

66 *ibid.*, paragraph 3.24.

67 ANAO Audit Report No.36 2011–12 *Development and Approval of Grant Program Guidelines*.

**1.22** On 1 June 2013, updated CGGs came into effect.<sup>68</sup> Consistent with the original framework, Part One of the 2013 CGGs outlines the legislative, policy and reporting framework for grants administration, and Part Two outlines seven key principles for better practice grants administration. The 2013 CGGs build on the original guidelines.

**1.23** The CA Program is subject to the grants framework. For the period in scope for this audit, the 2009 CGGs were in force. Where reference is made to the 2013 CGGs, these instances are clearly identified.

## **Audit approach**

### **Audit objective, criteria and scope**

**1.24** The audit objective was to assess the effectiveness of the department's administration of the CA Program.

**1.25** To form a conclusion against the audit objective, the ANAO adopted the following high-level audit criteria:

- program planning, risk assessment and governance arrangements support effective grants administration;
- selection and approval processes for awarding grant funding are well-designed, appropriately implemented and consistent with the Commonwealth Grant Guidelines; and
- management of program reporting and performance is sound.

**1.26** The audit examined the department's delivery and administration of all components of the CA Program, including the Pilot Program.

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68 Information relating to the new CGGs can be accessed from <<http://www.finance.gov.au/financial-framework/financial-management-policy-guidance/grants/index.html>> [accessed 22 October 2013].



## Audit methodology

### 1.27 The ANAO:

- reviewed departmental documents, including policy documents, ministerial correspondence, evaluation reports, guidelines, procedures, operational documents and reports;
- examined a sample of grant applications and relevant documentation for consistency with the CGGs and better practice;
- interviewed departmental staff;
- examined the systems used to support the grant process;
- examined the data collection process for capturing and analysing performance data; and
- interviewed a range of stakeholders—including applicants (both successful and unsuccessful), CMs, CSMs, the CA Board Chair and particular members, selected Australian Universities and Publicly Funded Research Agency commercialisation offices.

1.28 This audit was conducted in accordance with the ANAO auditing standards at a cost to the ANAO of \$706 789.

## Structure of the report

### 1.29 The remaining chapters in this report are:

- Chapter 2—CA Program Grant Process.
- Chapter 3—CA Pilot Program.
- Chapter 4—Risk Management and Governance.
- Chapter 5—Program Performance and Evaluation.



## 2. CA Program Grant Process

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*This chapter examines the effectiveness of the CA Program's grants process, focusing on the original four grant components.*

### Introduction

**2.1** The CA Program includes both financial and non-financial support. Financial support is provided through a competitive grant process and non-financial support is provided by Case Managers (CMs)<sup>69</sup> and the Expert Network.<sup>70</sup> Under the CA Program, applications for all grant components are accepted and assessed on an ongoing basis, with the Commercialisation Australia (CA) Board meeting approximately every six weeks to consider and rank applications.

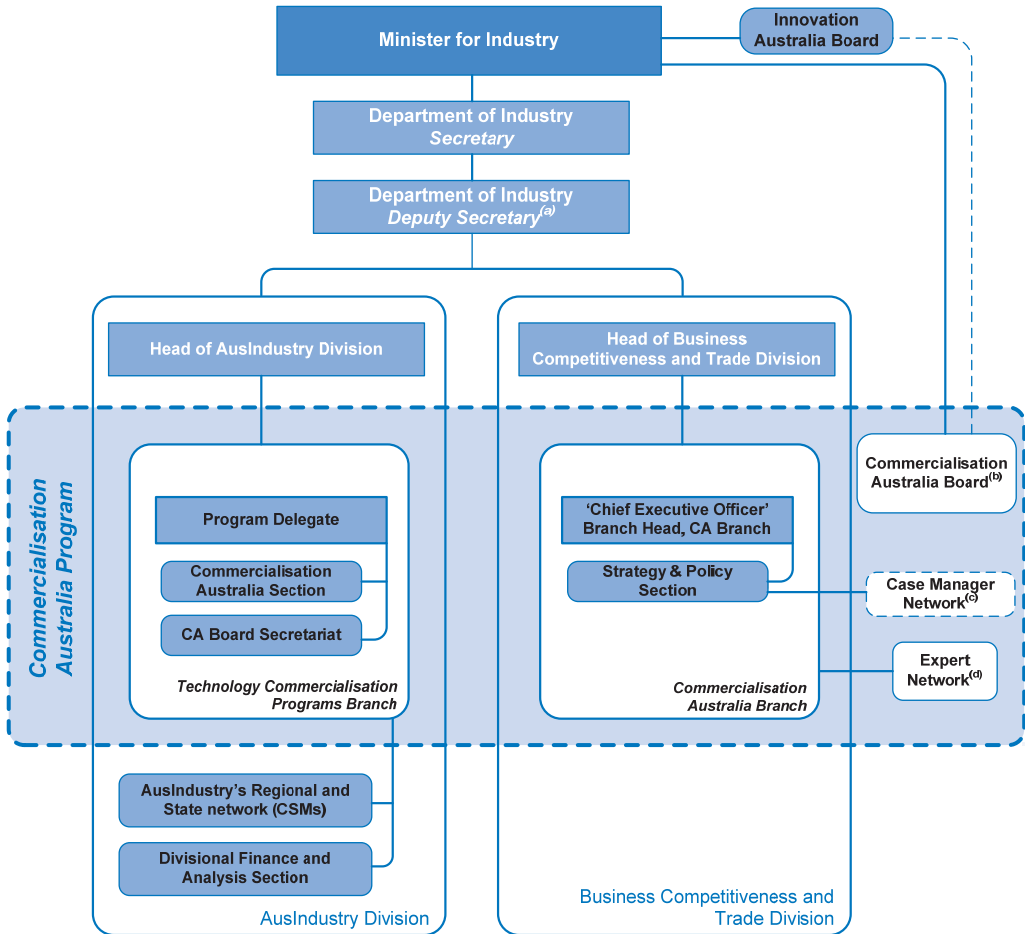
**2.2** The CA Program is delivered by the Department of Industry through the Business Competitiveness and Trade Division and the AusIndustry Division. AusIndustry has a network of offices and representatives across Australia. In each state and territory AusIndustry's Customer Service Managers (CSMs) manage the day-to-day operations of the program, including handling enquiries, general promotion, receiving applications, negotiating funding agreements, and monitoring and reporting the progress of participants. The Program Delegate, who has authority to approve CA Program grants, is an AusIndustry employee and AusIndustry also provides secretariat services for the CA Board. The CA Branch, which is part of the Business Competitiveness and International Trade Division, has policy responsibility for the CA Program, as well as responsibility for coordinating targeted promotional activities and the management of the CMs and Expert Network. Figure 2.1 shows the administrative arrangements for the CA Program.

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69 CMs mentor and assist participants while they are involved with the CA Program by providing advice and facilitating introductions and networking opportunities that may assist in commercialising the participant's ideas. CMs also perform an important support role as part of the grant assessment process by undertaking due diligence.

70 Expert Network members provide guidance and practical advice to participants, and may also: be potential investors in participant companies; provide introductions to potential investors; and/or be the first to acquire participants' products and services. In early 2014 there were approximately 270 members of the Expert Network.

Figure 2.1: CA Program administrative arrangements



Source: Developed by the ANAO.

- Notes
- (a): The AusIndustry and Business Competitiveness and Trade Divisions report to separate Deputy Secretaries, and through them to the Secretary. For illustrative purposes, these two positions are represented in this single figure.
  - (b): When the CA Board was established in February 2010, the Innovation Australia Board delegated to the CA Board those functions vested in it by the Ministerial Directions for the CA Program, including providing advice to the Minister, or responding to a request for advice from the Minister on non-financial matters relating to the CA Program, including program administration and the extent to which the program is meeting its objectives.
  - (c): Case Managers are contracted to the Department of Industry (illustrated by the broken lines of this figure). The contracts are administered by the CA Branch.
  - (d): The Expert Network is administered by the CA Branch. Participants in the Expert Network are voluntary and are not contracted to the department.

## Program guidelines and procedures

### Program Guidelines

**2.3** Under the grants policy framework, all grant programs must be administered according to a set of approved guidelines. These guidelines must also be made publicly available.<sup>71</sup> The CA Branch developed draft program guidelines in late 2009, which were considered by the Minister and endorsed by the Expenditure Review Committee of Cabinet (ERC) on 19 November 2009, as required by the 2009 CCGs.<sup>72</sup> They were approved by the Minister on 18 December 2009, and made available on the CA Program website on 21 December 2009. On 6 October 2011, the Government endorsed modifications to the CA Program. The guidelines reflecting these changes were approved by the Minister on 24 November 2011 and came into effect on 7 December 2011.<sup>73</sup>

**2.4** In accordance with the CCGs,<sup>74</sup> the CA Program Guidelines include: information on the outcomes and objectives of the program; roles and responsibilities as part of the governance arrangements; the funding and selection process; monitoring and evaluation procedures; and a description of the processes for exiting the program and complaints management.

### Program guidance material

**2.5** Potential applicants are informed of the grants process through the CA Program 'Customer Information Guide' (CIG), available on the CA Program website.<sup>75</sup> This document provides an overview of the CA Program and grant components. The document also describes each step in the application and

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71 Department of Finance and Deregulation, *Commonwealth Grant Guidelines – Policies and Principles for Grants Administration*, Financial Management Guidance No.23, DOFD, Canberra, July 2009, paragraph 3.24.

72 See the Commonwealth Grant Guidelines, paragraph 3.24.

73 In accordance with the new risk-based procedures for changes to grant program guidelines which replaced the previous blanket requirement for ERC consideration, the then Department of Innovation, Industry, Science and Research conducted a risk assessment of the changes and consulted with the Department of Finance and Deregulation. Finance confirmed that the revised program guidelines could be dealt with through the relevant Minister.

74 See the Commonwealth Grant Guidelines, p. 23.

75 Australian Government, *CA Program Customer Information Guide* [Internet], Department of Industry, Innovation, Science, Research and Tertiary Education, 2013, available from <<http://www.commercialisationaustralia.gov.au/Apply/Pages/CustomerInformationGuide.aspx>> [accessed 20 December 2013].

assessment process, including details of the complaints handling process.<sup>76</sup> The CA Program website also provides applicants with a single reference source for information about the CA Program including: the application form; a set of frequently asked questions; and associated guidance material. These documents have been updated to reflect program changes. In addition, the department has developed a 'Guide to Managing Your Grant', for successful applicants, setting out procedures and their obligations.<sup>77</sup>

**2.6** Consistent with the requirements of the CGGs, the operational guidance for administration of the program has been documented and is readily available to all staff.<sup>78</sup> The material covers all steps in the grant process, and aligns with the requirements set down in the CGGs. AusIndustry staff are provided with a procedures manual that has been regularly maintained and updated to reflect changes to the program. The CA Branch also maintains a Case Manager Manual that outlines the responsibilities and expectations of the CM. This document is updated as required to incorporate new information and changes, and its contents are consistent with the program guidance and procedural material developed by AusIndustry.

## Application and assessment phase

### Program access and promotion

**2.7** Potential applicants to the CA Program are given reasonable opportunity to apply<sup>79</sup> through the following channels:

- Commercialisation Australia Hotline;
- AusIndustry Hotline;
- Commercialisation Australia and AusIndustry websites; and
- Case Manager Network.

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76 Reflecting the recommended approach in ANAO Better Practice Guide, *Implementing Better Practice Grants Administration*, Canberra, June 2010, p. 40. The ANAO released a revised version of this guide in 2013; however for the purposes of this audit, the earlier 2010 guide (which was applicable at the time of the audit) is referenced where relevant.

77 Australian Government, *Guide to Managing Your Grant* [Internet], Department of Industry, Innovation, Science, Research and Tertiary Education, 2013, available from <[www.commercialisationaustralia.gov.au/Apply/Pages/GrantAgreement.aspx](http://www.commercialisationaustralia.gov.au/Apply/Pages/GrantAgreement.aspx)> [accessed 8 September 2013].

78 Department of Finance and Deregulation, *Commonwealth Grant Guidelines – Policies and Principles for Grants Administration*, Financial Management Guidance No.23, DOFD, Canberra, July 2009, p. 23.

79 The 2009 CGGs provide that it is sound practice to promote open, transparent and equitable access to grants through channels that provide potential applicants with reasonable opportunity to apply. See 2009 CGGs, p. 21.

**2.8** The CA Program is the focus of a large amount of promotional activity by both the CA Branch and AusIndustry.<sup>80</sup> The aim of this activity is to: raise awareness of the program and its offerings with potential applicants; promote the program across the commercialisation sector; and establish its credibility and attract potential private sector investors. The department's promotional activity is consistent with guidance in the 2009 CGGs relating to the use of appropriate promotion to increase awareness in target groups.<sup>81</sup>

## **Application process**

**2.9** The CA Program uses a two-stage application process as a means of promoting high quality applications and reducing the impost on both the department and potential applicants until it is confirmed there is merit in preparing a full application. Applicants submit electronically a Stage 1 Application to seek feedback on whether their project is suitable for the CA Program, in terms of both eligibility and likely competitiveness.<sup>82</sup> The CSM assesses the applicant's eligibility, then refers the application to a CM.

**2.10** When a Stage 1 Application is referred to a CM, the CM is required to complete a disclosure of interest (DOI) and a copy is to be kept on the customer file. Where the CM declares a conflict of interest, the application is referred to another non-conflicted CM. The ANAO observed variability in how closely the Stage 1 DOI process is followed across the AusIndustry state offices. The ANAO raised this issue in interviews with a number of CSMs, who confirmed their understanding of the process; however for a number of sampled applications examined by the ANAO, these CSMs were unable to provide evidence that the process had been followed. There would be benefit in AusIndustry emphasising to its officer network the need to consistently apply and document the DOI process to provide assurance that potential conflicts of interest are identified and managed appropriately.

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80 AusIndustry conducts awareness raising activities, such as workshops and forums at locations across Australia. The communication activities undertaken by the CA Branch are more targeted and include presentations at conferences and forums, event sponsorship, and networking opportunities.

81 See 2009 CGGs, pp. 21–22.

82 CMs have discretion to allow certain applicants to move directly to a Stage 2 application where: the applicant is known to the CM and there is a high degree of certainty the application will proceed to the CA Board for assessment; and the CM has no conflict of interest (actual or perceived) with the applicant. Commercialisation Australia, *AusIndustry Procedures Manual, August 2012*, Department of Industry, Innovation, Science, Research and Tertiary Education, p. 21.

**2.11** If it is determined that an applicant is not eligible or it is likely their application will be uncompetitive, they will be advised of the reasons and if possible, redirected to other programs that are more suitable. If the applicant is assessed as ready to proceed with the application process, the CM will provide the CA Stage 2 Application form for the applicant to complete.

**2.12** The Stage 2 Application process has two phases: the applicant provides a 'draft' application; followed by the 'final' application for submission to the CA Board. During this phase, eligibility checks are finalised and the CM commences review of the application, providing feedback on issues that may affect the competitiveness of the application. Applicants interviewed as part of the audit were generally positive about the CA Program's application process. These applicants considered that participation in this stage of the process placed them in a better position, regardless of whether they were ultimately successful in their application—both in terms of guidance they received from the CM and preparation of a business case as part of the application requirements.

**2.13** Where a 'final' Stage 2 Application is submitted, the CM commences activities to ready the application for assessment by the CA Board. This includes investigation of each application as part of the 'due diligence' process, which examines eligible applicants against the merit criteria prior to the application being submitted to the CA Board. The CM also provides a final recommendation to the CA Board based on a rating (from one to six) against the same merit criteria used by the CA Board as part of the grant assessment process.

## **The assessment process**

**2.14** Under the CA Program, board consideration of applications occurs on a regular basis, with the CA Board meeting approximately every six weeks to review and merit rank applications as they become ready for assessment.<sup>83</sup>

**2.15** While this arrangement provides applicants with the flexibility to apply for financial assistance at any time, it does have risks that need to be managed —

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83 The assessment of single component Skills and Knowledge applications (valued at up to \$50 000) has been delegated by the CA Board to the CEOCA to reduce the work load of the CA Board. The process for submission of the application, due diligence and assessment are the same as those for the other grant components. The CEOCA considers single component Skills and Knowledge applications on a continuous basis as they become ready for assessment. The CEOCA's recommendations are forwarded to the Program Delegate for review and approval and are tabled at CA Board meetings for information.



there is potential for the CA Board to assess and rank each application's merit relative only to the other applications considered at that point in time, rather than relative to the broader population of applications. To date, this risk has been managed in part through consistency of CA Board membership,<sup>84</sup> which allows for CA Board members to draw on experience acquired during their involvement with the CA Program. At a process level, the risk of inconsistency in assessment is managed through the CA Program's assessment practices, which include a due diligence process that elaborates on the information provided by the applicant,<sup>85</sup> and the preparation of detailed document packs for the CA Board's information.

**2.16** CA Board meetings also include open discussion of the strengths and weaknesses of each application, which aids in providing a common understanding of the basis for each assessment and ranking. Responsibility for assessing individual applications is shared between members of the CA Board, with each application designated a first, second and third spokesperson. Spokespersons are required to review the application and to report, at the CA Board meeting, their assessment of the application against each of the merit criteria. Where necessary CA Board members will contact the relevant CM to seek clarification and additional information—CMs also attend CA Board meetings (in person, or via teleconference) when an application they have responsibility for is being considered.

### *Conflict of interest procedures*

**2.17** The CA Program applies the same Disclosure of Interest Guidelines as the Innovation Australia Board.<sup>86</sup> The guidelines set out arrangements for disclosing interests, recording these for meetings where relevant matters are discussed and managing matters involving actual or potential conflicts of interest. The guidelines also specify the circumstance under which the CA Board may be required to seek an Independent Expert Assessment due to a material conflict of interest.<sup>87</sup>

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84 Of the CA Board's seven members, four of the current members have been members of the CA Board since it was established in early 2010.

85 Discussed in paragraph 2.13.

86 Established in 2007, the IA Board is an independent statutory board that, through its various committees, assists in the administration of Government innovation programs. The IA Board is established by the *Industry, Research and Development Act 1986* (the Act), which enables the Minister to give direction to the IA Board relating to its functions.

87 Under these circumstances, the application is assessed by an independent expert, who is external to the CA Board and has the necessary technical skills and knowledge.

**2.18** Prior to the distribution of the CA Program applications to the designated spokespersons, the CA Board secretariat undertakes a disclosure of interest process to ascertain whether any of the CA Board members, or CMs attending the meeting, has a potential conflict of interest. Where a CM or CA Board member is deemed to have a material conflict of interest, they will be asked to exit the meeting until the discussion on the conflicted application is complete. Conflict of interest arrangements are also outlined in the CIG, including a link to the CA Program website and a description of the disclosure of interest procedures. The documented process was applied for the applications examined as part of the ANAO's audit.

## Application assessment and approval

### CA Board assessment process

**2.19** Effective grants administration relies on the rigorous assessment of applications and the proper documentation of assessments for each application, including the information considered and conclusions reached in respect to the threshold criteria and each of the assessment criteria.<sup>88</sup> For the CA Program, assessment of applications begins with consideration of the application against the threshold merit criterion, 'need for funding'. If the application is unable to satisfy this criterion, it is not considered any further by the CA Board.<sup>89</sup> Applications are then considered against the remaining five merit criteria and are given a merit rating against each criterion on a scale of one to six. Each criterion is of equal importance and weighting. The rating scale is set out in Table 2.1.

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88 ANAO Better Practice Guide, *Implementing Better Practice Grants Administration*, Canberra, June 2010, p. 72.

89 This approach is consistent with the CA Program Guidelines, which state under Clause 13 that 'The Board will assess applications first against the merit criterion at clause 17(a) ('Need for Funding')'. Only applications that demonstrate a 'Need for funding' may receive a merit ranking. Australian Government, *Commercialisation Australia Program Guidelines No. 1 of 2011*, Canberra, December 2011, p. 12, clause 42.

**Table 2.1: Merit rating scale**

| Rating      | Description   | Score |
|-------------|---|-------|
| Outstanding | All factors under the merit criterion are met to a very high standard.  | 6     |
| Very good   | Most factors under the merit criterion are met to a very high standard. No areas of significant weakness can be identified. | 5     |
| Good        | Most factors under the merit criterion are met to a reasonable standard. May be some weaknesses in limited areas.           | 4     |
| Marginal    | Some factors under the merit criterion are met to a reasonable standard. One or two significant weaknesses identified.      | 3     |
| Poor        | Few factors under the merit criterion are met to a reasonable standard. Several significant weaknesses identified.          | 2     |
| Very poor   | Factors under the merit criterion inadequately dealt with in most or all areas. Major weaknesses identified.                | 1     |

Source: Commercialisation Australia, *Case Manager's Manual*, DIISTRE, May 2012, pp. 33–34.

**2.20** Once the CA Board has rated the applications they are then ranked to determine the relative merit of all the applications being considered at the meeting. During 2012, the department agreed to an arrangement with the CA Board aimed at improving the management of grant funds over the financial year and to assist in smoothing expenditure and approvals across the year. This involves an agreed overall funding threshold and funding brackets being applied at each CA Board meeting—the CA Board has discretion to recommend approval of applications above, or below the threshold, as the quality of the applications dictates. Applications are then ranked within funding brackets (from small to large). As part of this arrangement, the CA Board will remove from consideration the lowest ranked application in each funding bracket, starting with the largest funding bracket. This process is repeated across each of the brackets until the funding threshold is reached.<sup>90</sup> Minutes for each meeting record for each application: the merit rating; merit ranking; the CA Board's decision whether to support, or not; and any

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90 This process provided for the CA Board to support grants across all grant components, rather than just the larger grants applications, which although assessed against the same merit criteria, can often be rated higher as a result of the greater amount of detail and information provided for these applications.

conditions<sup>91</sup> that apply to the recommendation of support. Each recommendation is signed by the Chairperson.

**2.21** The ANAO's examination of a sample of grant applications indicated that the assessment process used for the sample aligned with the CA Program Guidelines. The Secretariat provided the CA Board with all necessary documentation, facilitating a structured assessment process consistent with the program guidelines. The assessment procedures were consistently applied, and formed the basis for rating and ranking applications according to merit, and the recommendations to the approver reflected the outcomes of the assessment process. The ANAO's analysis indicated that both the conflict of interest and assessment processes were managed by AusIndustry in accordance with the CA Program Guidelines. Record keeping associated with the assessment process was good, with documentation clearly demonstrating each step of the assessment process, information considered and final decisions, including ratings, rankings and outcomes for each application.

### **Program Delegate approval**

**2.22** The Program Delegate is the final decision-maker in determining the quantum, terms and conditions of grants provided to applicants under the program. The Program Delegate for the CA Program is the General Manager, Technology Commercialisation Programs (TCP) Branch, within AusIndustry.

**2.23** The CA Program Delegate attends CA Board meetings as an observer to gain insight into the factors considered by the CA Board in recommending a grant application for approval, as well as the basis for the overall merit ranking of applications following the rating of individual applications. The Program Delegate's other responsibilities include key operational and financial aspects of the CA Program, contributing to the Program Delegate's ability to determine whether approval of a grant would make 'proper use' of Commonwealth resources, as required under the Australian Government's financial management framework.

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91 Clause 15 of the CA Program Guidelines states: In providing the *Program Delegate* with a *technical assessment* for an application, the Board may include advice as to whether the relative merits of an application would warrant: an amount of funding less than that for which the applicant has applied; and/or that any approval be subject to particular conditions. Australian Government, *Commercialisation Australia Program Guidelines No. 1 of 2011*, Canberra, December 2011, p. 8, clause 25.

### *Compliance with financial framework requirements*

**2.24** FMA Regulation 9 provides that an approver, in this case the Program Delegate, must not approve a spending proposal unless satisfied, after making reasonable inquiries, that giving effect to the spending proposal would be a proper use of Commonwealth resources.<sup>92</sup> FMA Regulation 12 also requires the approver of a spending proposal relating to a grant to record the basis on which the approver is satisfied that the spending proposal complies with Regulation 9.

**2.25** Following the CA Board's assessment process, separate briefs are prepared for the Program Delegate detailing the 'supported' and 'not supported' applications with details of the merit score, merit ranking, conditions of support and the basis for the CA Board decision. After reviewing the recommendations of the CA Board, the Program Delegate's decisions whether to approve grants are recorded, including details of the merit rating against the merit criteria and an overall ranking of the application relative to other applications. Decisions regarding applications that have not been approved are documented in the same manner.

**2.26** The ANAO's examination of a sample of grant approvals indicated that Regulation 9 approvals were documented and informed by the outcomes of the assessment process for the sample.

**2.27** FMA Regulation 10 provides that the Finance Minister or a delegate must give written agreement to an arrangement, such as a grant, where there is insufficient appropriation for expenditure that might become payable under the arrangement. This is typically the case for multi-year arrangements, such as grants paid over a number of years.

**2.28** In order to minimise the administrative impost of obtaining frequent Regulation 10 approvals for individual projects, the department uses a 'blanket' Regulation 10 approval process, whereby a proportion of Administered funds for the CA Program in future years is defined as a threshold amount against which new applications, or variations to existing funding agreements, can be made. This approach allows the Program Delegate to approve new proposals and variations to proposals with commitments into a new financial year up to this threshold amount. Once exceeded, the Program

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<sup>92</sup> Subsection 44(3) of the FMA Act defines proper use to mean efficient, effective, economical and ethical use that is not inconsistent with the policies of the Government.

Delegate must seek an increase in the threshold amount from the official with delegation to authorise Regulation 10 requests—for the CA Program, the relevant official is the Division Head, AusIndustry.<sup>93</sup>

### *Announcement of assessment outcomes*

**2.29** After being advised that the Program Delegate has approved the application, the applicant is informed in writing, including details of the amount of the grant, and a breakdown of the amounts payable in each financial year.<sup>94</sup> A similar process is followed for unsuccessful applications. In this case, the letter lists factors contributing to the application not being approved, and suggests that the applicant can approach their Case Manager for feedback on the application.

### *Reconsiderations*

**2.30** The department's documentation sets out procedures where an unsuccessful applicant can request reconsideration of their application. The ANAO's analysis of a sample of reconsiderations indicated that these were managed in accordance with the procedures and reassessed as new applications.

## **Establishing the Funding Agreement**

**2.31** The CGGs advise that, wherever possible, an enforceable agreement should be established, such as a deed, contract, or exchange of letters.<sup>95</sup> The funding agreement sets out the terms and conditions on which a grant is provided and gives effect to the Program Delegate's approval of a spending proposal under FMA Regulation 9. The terms of the funding agreement must therefore be consistent with the terms of the approval.<sup>96</sup>

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93 The 'blanket' Regulation 10 authorisation arrangements were developed by AusIndustry in consultation with the Department of Industry's Corporate Finance Branch to streamline the process, while placing limitations through the use of a threshold amount that can be approved in the out-years.

94 This offer is subject to a written funding agreement being signed between the Commonwealth and the applicant company within 30 days from the date of the letter.

95 Department of Finance and Deregulation, *Commonwealth Grant Guidelines – Policies and Principles for Grants Administration*, Financial Management Guidance No.23, DOFD, Canberra, July 2009, p. 24.

96 This requirement is also highlighted by the CGGs, which stipulate that: 'A grant funding agreement *must* be consistent with the terms of the approval given under FMA Regulation 9, including any conditions on the approval.' Department of Finance and Deregulation, *Commonwealth Grant Guidelines – Policies and Principles for Grants Administration*, Financial Management Guidance No.23, DOFD, Canberra, July 2009, p. 17, paragraph 3.11.

**2.32** For the CA Program, the funding agreement is in the form of a legal contract between the participant and the Commonwealth<sup>97</sup> and sets out the funding rights and obligations of both the grantee<sup>98</sup> and the Commonwealth, including the agreed project description, activities funded, milestones and the reporting and payment schedule. The ANAO's examination of a sample of successful applications shows that funding agreements were entered into after Regulation 9 and Regulation 10 approvals were given, as required. In all instances in the sample examined, the Program Delegate's decision, the Regulation 9 approval and the funding agreement matched the terms of the recommendation by the CA Board. In addition, approved annual capped amounts established in the Regulation 9 approval were reflected in the funding agreements.<sup>99</sup>

### *Website reporting*

**2.33** Under the CGGs the department is required to publish details of the successful CA Program projects and their funding details on the department's website. The ANAO's analysis of a sample of CA Program funding agreements signed in 2012 showed the average timeframe for publishing details of the executed funding agreements on the department's website was 2.8 days, as compared to the seven working days prescribed in the 2009 CGGs.

## Reporting and monitoring

**2.34** The CGGs advise that a well-drafted funding agreement alone is not sufficient to ensure the objectives of a grant are met. Funding agreements need to be supported by performance and financial monitoring frameworks, including agreed milestones.<sup>100</sup> To assist participants, the department has

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97 Clause 6 of the CA Program Guidelines requires the Program Delegate to enter into a funding agreement with an applicant whose application is approved before monies are paid to the applicant.

98 Where a researcher applies through a commercialisation office or eligible partner entity, it is the commercialisation office or eligible partner entity that signs the funding agreement, with the researcher identified as key personnel. Where an individual applies through an eligible partner entity, it is the eligible partner entity that signs the funding agreement, with the individual identified as key personnel.

99 ANAO Better Practice Guide—*Implementing Better Practice Grants Administration*, June 2010, Canberra, p. 89.

100 2009 CGGs, p. 25.



developed a 'Guide to Managing Your Grant' which aims to assist participants to understand the requirements and obligations of the funding agreement.<sup>101</sup>

## Progress reports

**2.35** The CA Program makes an initial payment following execution of the funding agreement. CA Program participants are required to submit quarterly progress reports within 30 days of each quarter detailing progress of the project and eligible project expenditure for the given reporting period. The department calculates and makes payments to the participant following review of the quarterly reports. Table 2.2 outlines the CA Program participants' reporting obligations.

**Table 2.2: CA Program project reporting requirements**

| Participant Report  | When Provided  |
|---|--|
| Quarterly Progress Report – grants payments are based on these reports taking into account achievement of project milestones. | Every three months from commencement of the Funding Agreement. |
| End of Project audited financial report.  | Within ninety days after project completion.                   |
| Annual independent financial audit (Early Stage Commercialisation grants only).   | At the completion of each financial year.                      |

Source: Commercialisation Australia, *AusIndustry Procedures Manual*, August 2012, p.45.

## Project terminations

**2.36** Acknowledging the inherent risk of funded projects, and the fact that some projects may fail, the CA Program has a number of exit points. Progress reports against project milestones are assessed by the CM to ensure each project is progressing as expected and a final decision on project termination is made by the Program Delegate.<sup>102</sup>

**2.37** The AusIndustry Procedures Manual sets out the procedures to be followed in these circumstances. The department advised that, to date, there have been no unilateral funding agreement terminations. The department further advised that there have been two instances where a project has been

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101 Australian Government, *Guide to Managing Your Grant* [Internet], Department of Industry, Innovation, Science, Research and Tertiary Education, 2013, available from [www.commercialisationaustralia.gov.au/Apply/Pages/GrantAgreement.aspx](http://www.commercialisationaustralia.gov.au/Apply/Pages/GrantAgreement.aspx) [accessed 8 September 2013].

102 Commercialisation Australia, *Customer Information Guide*, 23 January 2013, Department of Industry, Innovation, Science, Research and Tertiary Education, p. 19.



terminated. The ANAO's examination of these instances confirmed that the arrangements were mutually agreed with the participants. Relevant procedures were followed and documentation and authorisations were in place.

## Grant payments

**2.38** The grant payment is calculated based on actual eligible expenditure incurred to the end of the quarter just completed, and the participant's estimate of eligible expenditure for the following quarter. The 'Guide to Managing Your Grant' and funding agreements provide that payments are made subject to: satisfactory progress on the project; the participant meeting all other obligations under the funding agreement (including submission of relevant reports); and when all matters described in the general conditions of the funding agreement have been met—progress payments are not to be made until all issues arising from a progress report are resolved.

**2.39** At the conclusion of the project, a final payment based on total eligible expenditure incurred on the project will be made. Reporting obligations on project completion include provision of a final financial report and an independent audit report, as well as an end of project report. It is better practice in grants administration to retain a portion of the grant funds until the recipient has completed and fully acquitted the project.<sup>103</sup> In line with this approach, the general conditions of each funding agreement for the CA Program specifically provide that the participant is not entitled to payment of the 'retention amount' (generally five per cent of the total grant amount approved by the Program Delegate), until the participant has completed the project component and submitted all relevant reports due under the funding agreement.

**2.40** Compliance visits by the participant's CSM may take place periodically throughout the project period, and for up to five years after completion of the project. In addition, the CSM may inspect any participant records required to be kept under the Funding Agreement, and may examine project progress for the purposes of reviewing compliance with the funding agreement.

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<sup>103</sup> ANAO Better Practice Guide—*Implementing Better Practice Grants Administration*, June 2010, Canberra, p. 93.

**2.41** The ANAO's examination of a sample of funding agreements indicated that the department's monitoring of project milestones was generally effective. There was evidence that applicants submitted the required quarterly reports and that CSMs reviewed this documentation. The CSMs prepared written reports, including recommendations for payment and assessments of the progress made by projects, which were placed on applicants' files.

### **Variations to the Funding Agreement**

**2.42** In the course of project delivery, changes in grant or project parameters may be requested by participants that are of sufficient scope to represent a new spending proposal requiring referral back to the program decision-maker.<sup>104</sup> The CA Program Procedures Manual states that a participant is required to obtain the Commonwealth's written approval for the variation of the agreed project.<sup>105</sup>

**2.43** The CA Program has detailed processes and delegations associated with variations showing who can recommend and approve the variation, and the type of documentation required to substantiate the variation. The ANAO examined a number of cases in the sampled audit population that required project variations, and found that the documented processes had been followed and financial approvals sought.

### **CA Program closure**

**2.44** The department advised that the CA Program was suspended on 21 March 2014 pending the outcome of the 2014–15 Commonwealth Budget process. Subsequently, as part of the 2014–15 Budget, the Government announced cessation of the CA Program from 1 January 2015.<sup>106</sup>

### **Conclusion**

**2.45** The Commercialisation Australia (CA) Branch has overall policy responsibility for the CA Program and manages the CM network. As the department's specialist program delivery division, AusIndustry is responsible

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<sup>104</sup> *ibid.*, p. 89.

<sup>105</sup> Commercialisation Australia, *AusIndustry Procedures Manual, August 2012*, Department of Industry, Innovation, Science, Research and Tertiary Education, p. 52.

<sup>106</sup> The department further advised that while the CA Program is now closed to new applications, applications received prior to the program's suspension in March 2014 are being considered in accordance with the existing CA Program Guidelines and within available (albeit reduced) funding to 2016–17. The announced changes do not affect existing projects.

for delivery of the four original grant components and provides secretariat support to the CA Board.

**2.46** AusIndustry has delivered the original four grant components in line with the CA Program Guidelines and in accordance with the Commonwealth Grant Guidelines (CGGs). AusIndustry's network of state and territory locations combined with phone services and websites supported promotion efforts and gave applicants access to relevant information and assistance. AusIndustry also maintained good documentation in the form of procedures manuals, customer information guides and operational guidelines. This information was regularly updated and was readily available to staff and where applicable, potential applicants.

**2.47** The department employed a two-stage application process as a means of promoting high quality applications and reducing the impost on applicants until it was confirmed that preparation of a full application was warranted. Once eligibility was established and a full application received, the CM applied a due diligence process to examine the competitiveness of the application against the selection criteria. This process informed the CA Board's merit assessment and ranking of applications. The establishment of the CA Board, with expert members drawn from outside the department, was a further strategy to mitigate the risks associated with commercialisation projects, including the risk of program failure.

**2.48** To offer potential applicants flexibility, the CA Program assessed applications on an ongoing basis; with the CA Board meeting approximately every six weeks. This approach to grants administration presents challenges in maintaining consistency of assessments and an even distribution of available funding over the financial year. The department sought to address these risks through continuity of CA Board membership, the due diligence process applied to applications, and the use of funding 'brackets' to help provide for an even spread of funding across all grant types.

**2.49** The ANAO's examination of the CA Board's assessment process indicated that it was actively supported by AusIndustry; the Board's documentation was sound; conflict of interest procedures existed and were applied; assessment decisions were based on the program guidelines; and board assessments were recorded.

**2.50** The ANAO's analysis of a sample of successful applications also indicated that the process followed by the department's Program Delegate

when considering and approving funding recommendations had appropriate regard to the requirements of the financial management framework and the CCGs. The department's procedures for negotiating funding agreements with successful applicants and monitoring their progress were also implemented in a manner consistent with the CA Program Guidelines, broader departmental requirements and the CCGs.

**2.51** However, there was variation across the AusIndustry network in the approach adopted to obtaining and recording Declarations of Interest (DOI) from CMs, prior to referring an application for due diligence assessment. There would be benefit in AusIndustry emphasising to its officer network the need to consistently apply and document the declaration of interests process to provide assurance that potential conflicts of interest are identified and managed appropriately.

**2.52** As part of the 2014–15 Budget, the Government announced cessation of the CA Program from 1 January 2015. In light of the Government's decision the department will need to take steps towards the program's orderly closure.

### 3. CA Pilot Program

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*This chapter examines the CA Pilot Program and the role of the department in administering this grant component and the issues identified by the ANAO relating to the Pilot Program's design and administration.*

#### Introduction

**3.1** In the course of the audit, a number of issues were identified by the ANAO relating to the design and administration of the CA Pilot Program (the Pilot Program). Examination of these issues led the ANAO to conclude that aspects of the Pilot Program's design and administration were not consistent with the Commonwealth Grant Guidelines (CGGs) and the Australian Government's financial management framework.<sup>107</sup> The ANAO discussed potential audit findings with senior departmental representatives during August 2013. The department sought advice from the Department of Finance regarding resolution and management of these issues and, as a result, took action to suspend the Pilot Program in August 2013 and to report on non-compliance with aspects of the financial framework in its 2012–13 Certificate of Compliance.<sup>108</sup>

#### Program guidelines

**3.2** In March 2011, the CA Program introduced a new grant component referred to as the Pilot Program. The intent of the Pilot Program was expressed at a high-level as follows:

To assess the practicality and effectiveness of new, alternative methods of support for commercialisation that will contribute to building the capacity of, and opportunities for, Australia's researchers, entrepreneurs and innovative firms to convert ideas into successful commercial ventures.<sup>109</sup>

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<sup>107</sup> The financial management framework is applicable to the Department of Industry as a prescribed agency subject to the *Financial Management and Accountability Act 1997* (the FMA Act) and the Financial Management and Accountability Regulations 1997 (FMA Regulations).

<sup>108</sup> The chief executives of all agencies subject to the FMA Act are required to provide a completed Certificate of Compliance to their portfolio minister each year, copied to the Finance Minister. The purpose of the Certificate is to improve compliance with the Australian Government's financial management framework, and to ensure that ministers are kept informed of compliance issues within their portfolios.

<sup>109</sup> Australian Government, *Commercialisation Australia Pilot Program Guidelines*, Department of Innovation, Industry, Science and Research, Canberra, December 2011, p. 2.

3.3 Under the Pilot Program Guidelines, funding of up to \$2 million in any financial year (on all pilot projects combined) was available. The CA Branch had both policy responsibility and direct responsibility for delivery of the Pilot Program.<sup>110</sup>

3.4 The CA Branch developed guidelines specifically for the Pilot Program and these were approved by the Minister in March 2011. The Pilot Program Guidelines provided the following description of the participants and the type of benefits to be delivered through a project funded as part of the Pilot Program, again in very general terms:

Pilot programs are likely to target a certain group of persons or entities within Australia's innovation system and to offer a particular benefit to those who meet certain criteria. The benefit may have a funding component, and applicants can request in their pilot program application that *Commercialisation Australia* provides the necessary funds for the funding component.<sup>111</sup>

3.5 Unusually, the Pilot Program Guidelines made provision for pilot programs to be delivered by external applicants or by the CA Program itself; that is, by the administering department. However, at odds with this provision, the eligibility criteria outlined in the Pilot Program Guidelines specified that the applicant must be incorporated under the *Corporations Act 2001* at the time of the application.

3.6 Applications deemed eligible were assessed by the CA Board against the following merit criteria:

- Criterion 1: Market Opportunity;
- Criterion 2: Plan and Potential; and
- Criterion 3: National Benefits.

3.7 During the period the Pilot Program was open to applications, 44 enquiries were received, of which 28 were assessed as ineligible, with a

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110 AusIndustry was responsible for delivery of the original four grant components. Consistent with arrangements for the four original grant components, the CA Program Delegate was responsible for approval of funding. The CA Board was also responsible for technical assessment of Pilot Program applications, however, the CA Board's recommendations in relation to pilot program applications were provided to the CEOCA rather than directly to the CA Program Delegate, as is the case for the four original grant components. The CEOCA reviewed the CA Board's recommendations before making a final recommendation to the CA Program Delegate.

111 Australian Government, *Commercialisation Australia Pilot Program Guidelines*, DIISR, Canberra, December 2011, pp. 3-4, clause 2.4.

further 12 not responding following initial feedback. Four applications were considered by the CA Board; one application was not supported by the CA Board and three applications were recommended for funding and referred to the Program Delegate for approval. In total, funding of almost \$885 000 was approved for Pilot Program projects—including a grant, valued at \$500 000, which was awarded by the department to its own CA Branch to fund an Ecosystem Mapping Strategy (EMS) Project<sup>112</sup>. Of the total funding approved for Pilot Programs, \$463 061 was expended before the Program was suspended by the department in August 2013.<sup>113</sup>

## Commercialisation Australia as an applicant

**3.8** The Pilot Program Guidelines state that:

Pilot Program proposals for the program can be submitted by a variety of applicants, including corporations, individuals and government. *Commercialisation Australia* itself, through the CEO [CEOCA], could develop a proposal to be assessed by the *Commercialisation Australia* Board.<sup>114</sup>

**3.9** Under the Australian Government's financial management framework, the term 'grant' has a specific legal meaning which does not contemplate the granting of financial assistance by one FMA Act agency to another, or to itself. Table 3.1 shows the definition of 'grant' in FMA Regulation 3A(1).

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<sup>112</sup> According to documentation provided by the CA Branch in its funding application, the Ecosystem Mapping Strategy was an approach aimed at addressing two issues: Australia's capacity to attract talent and capital to build intellectual property (IP) rich businesses; and Australia's need for a holistic platform for strategic policy development and performance measurement. The EMS project included a trial to map a single industry sector, the Australian medical technology industry, to enable the department to assess the effectiveness of the mapping strategy as a policy development tool and to determine its potential scalability to other sectors.

<sup>113</sup> These amounts comprise: funding of up to \$24,589 approved for Intomedia Pty Ltd, with \$10 120 expended; funding of up to \$360 000 approved for AusGate Pty Ltd (trading as Innovation Economics), with \$348 941 expended on this project; and funding of up to \$500 000 approved for the department's CA Branch for the EMS Project, of which \$104 000 was expended before the program was suspended. The EMS Project was closed by the department in August 2013 and the funds of \$104 000 drawn down by the department for the project were repaid by the department from Departmental funds.

<sup>114</sup> Australian Government, *Commercialisation Australia Pilot Program Guidelines*, Department of Innovation, Industry, Science and Research, Canberra, December 2011, p. 5, clause 3.1.

**Table 3.1: FMA Regulation 3A(1): Definition of a ‘grant’**

- (1) In these regulations, a **grant** is 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.

Source: Financial Management and Accountability Regulations 1997.

Note: This table includes the definition of a grant appearing in the FMA Regulations current in March 2011 at the time the Pilot Program was agreed by the Minister. The definition of a grant in the current version of the FMA Regulations includes changes to 3A(1)(c) and (d), as follows: ‘(c) which is intended to help address one or more of the Australian Government’s policy objectives; and (d) under which the recipient may be required to act in accordance with specified terms or conditions.’

**3.10** The definition of a grant as an arrangement for the provision of financial assistance by the Commonwealth to a recipient “other than the Commonwealth” precluded the Department of Industry from providing a grant of public money to its own CA Branch. Further, the Australian Government’s financial management framework provides, under section 31 of the FMA Act, that if receipts are received by an FMA Act agency, only receipts prescribed in FMA Regulation 15 may be retained by the agency. FMA Regulation 15 makes no provision for an FMA Act agency to receive or retain a Commonwealth grant as a ‘prescribed receipt’.

**3.11** The department’s decisions to grant itself public money as a form of financial assistance for an internal project, and to retain that public money, notwithstanding the provisions of FMA Regulations 3A(1) and 15(1) and (2), demonstrated a lack of understanding of the Australian Government’s financial management framework, and gave rise to breaches of the framework.<sup>115</sup>

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<sup>115</sup> See paragraphs 3.49 to 3.51.



## Conflicts of interest and role

**3.12** The Government established seven key principles for grants administration in the 2009 CCGs, including ‘robust planning and design’.<sup>116</sup> In respect to that principle, the CCGs advised that agencies should ensure appropriate procedures are in place to identify risks throughout the process of grants administration, noting that a specific risk to granting activity could include actual or perceived conflicts of interest.<sup>117</sup> The 2009 CCGs described a conflict of interest in the following terms:

A conflict of interest arises where a person makes a decision or exercises a power in a way that may be, or may be perceived to be, influenced by either material personal interests (financial or non-financial) or material personal associations. A conflict of interest could arise where decision makers or officials involved in grants administration have a direct or indirect interest in the selection of a particular project or activity for funding. Actual or perceived conflicts of interest can be potentially damaging to government, the agency, and the granting activity.<sup>118</sup>

**3.13** The 2013 edition of the CCGs, which is pertinent to the Pilot Program’s later stage of operation, also provided agencies with guidance regarding the management of conflicts of interest in relation to decision makers and agency staff:

A conflict of interest arises where a person makes a decision or exercises a power in a way that may be, or may be perceived to be, influenced by either material personal interests (financial or non-financial) or material personal associations. A conflict of interest may arise:

- where decision makers or agency staff involved in grants administration have a direct or indirect interest, which may influence the selection of a particular project or activity;
- where members of expert or advisory panels or committees have a direct or indirect interest in informing a decision about expenditure or providing advice on grants; and
- where a grant recipient has a direct or indirect interest, which may influence the selection of their particular project or activity during the

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116 Department of Finance and Deregulation, *Commonwealth Grant Guidelines*, DOFD, Canberra, July 2009, p. 14.

117 *ibid.*, p. 16.

118 *ibid.*, p. 28.

application process. Conflicts may also arise when undertaking the grant project.<sup>119</sup>

**3.14** The Department of Industry's internal guidance, titled 'Policy Statement Conflict of Interest and Insider Trading', defines a conflict of interest in the following terms:

A conflict of interest is a circumstance which places an employee in a position where their personal interests (including those of their immediate family - to the extent known) could compromise their independence. Apparent (or perceived) conflicts of interest may be as important as actual conflicts.<sup>120</sup>

**3.15** In summary, both the CCGs and internal departmental guidance emphasise the need to avoid situations where the real or perceived interests of staff might compromise the independence of their decision-making, advice or administration.

**3.16** Specific features of the Pilot Program's design and administration which could give rise to concerns over real or perceived conflicts of interest; and departmental independence, included:

- provision in the CA Pilot Program guidelines for the CA Branch, on behalf of the department, to apply for grants under the Pilot Program;
- the role of the CA Branch executive—who administer the CA Program on behalf of the department—as key decision-makers for all grants made under the Pilot Program, including responsibility for:
  - accepting and responding to all initial inquiries and grant applications relating to the Pilot Program, which provided the CA Branch and department with information and insights about potential competitors for grant funding;
  - determining both the eligibility and merit of all proposals;
  - determining whether a project was progressing successfully, and hence, whether funding would be provided to the participant at key milestones during implementation of the pilot project;

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119 Department of Finance and Deregulation, *Commonwealth Grant Guidelines*, 2<sup>nd</sup> Edition, DOFD, Canberra, June 2013, p. 58, clause 13.6.

120 Department of Industry, Innovation, Science, Research and Tertiary Education, *Policy Statement: Conflict of Interest and Insider Trading*, 7<sup>th</sup> Revision, Canberra, March 2011, p. 3.

- recommending whether a project’s Funding Agreement could be varied, either through provision of additional funds, time, or changes to the scope of the project; and
- determining whether a project would be converted into a component of Commercialisation Australia at its completion;
- identifying the CA Branch as the first point of contact for handling complaints relating to the Pilot Program, with review of complaints handling escalated to the CA Branch executive—raising issues about the impartial management of complaints processes.<sup>121</sup>

3.17 The relevant clauses from the Pilot Program Guidelines are reproduced in Table 3.2.

**Table 3.2: CA Branch responsibilities in the Pilot Program Guidelines**

| Responsibility  | Description in the Pilot Program Guidelines   |
|---|---|
| <b>First point of contact for initial enquires and all applications</b>                                 | Clause 2.8: Applicants should read the Pilot Program Guidelines and then direct initial enquiries by email to CEOofCA@innovation.gov.au. Applicants should complete the pilot program application form, and send the completed form to CEOofCA@innovation.gov.au.   |
| <b>Ultimate responsibility for determining the eligibility and merit of all pilot program proposals</b> | <p>Clause 2.1: The CEO is ultimately responsible for determining the eligibility of pilot program proposals. The CEO decides whether to recommend approval of a proposal after seeking the advice of the Board, and the Program Delegate has responsibility for all funding decisions under Commercialisation Australia. In a case where the CEO is conflicted in relation to a particular proposal the Program Delegate may decide whether to approve that proposal.</p> <p>Clause 2.8: If an application is deemed eligible it will be assessed by the <i>Commercialisation Australia</i> Board against the merit criteria. The <i>Commercialisation Australia</i> Board meets regularly to consider applications. The CEO will consider the merit assessment of the Board and decide whether or not approval of a particular application should be recommended to the Program Delegate. The CEO has the final say regarding the merits of the proposed pilot program. It should be noted that <i>Commercialisation Australia</i> is under no obligation to approve any pilot programs in a given year.</p> |
| <b>Monitoring and Reporting</b>   | <p>Clause 5.1: Whether or not a pilot program is progressing successfully is determined by the CEO, who may seek the advice of the <i>Commercialisation Australia</i> Board.</p> <p>Clause 5.1: <i>Commercialisation Australia</i> will undertake an evaluation of the pilot program after it has concluded.</p>  |

<sup>121</sup> Complaints could, for example, be received from applicants in competition with the department for funding.

| Responsibility   | Description in the Pilot Program Guidelines  |
|--|--|
| <b>Responsible for recommending variations to funding agreements to the Program Delegate</b> | Clause 2.6: The Program Delegate, after seeking the advice from the CEO of Commercialisation Australia, may agree to extend a pilot program by up to 12 months if an interim evaluation supports an extension.   |
| <b>Implementation</b>  | Clause 5.2: It is at the discretion of <i>Commercialisation Australia</i> to decide whether or not to convert a successful pilot program into a key component of Commercialisation Australia.  |
| <b>Complaints handling</b>   | Clause 5.7: Complaints can be directed to the Manager, Commercialisation Australia Strategy and Policy Branch, via the Commercialisation Australia hotline, in the first instance. Contact Commercialisation Australia by email to CEOofCA@innovation.gov.au.<br><br>If an applicant or participant is not satisfied with the complaint resolution procedure, they may escalate the complaint to the CEO of Commercialisation Australia. The CEO can be contacted by email on CEOofCA@innovation.gov.au. |

Source: ANAO analysis of Pilot Program Guidelines, December 2011.

### 3.18 Responding to the issue of shortcomings in the Pilot Program’s design, the department informed the ANAO in February 2014 that:

We accept that the design of the Pilot Program could give rise to what could be perceived to be conflicting roles for the CEO therefore creating a perception that a Commercialisation Australia application would receive more favourable treatment from the CEO than other applications. However, we don’t agree that this conflict of roles is accurately described as a *conflict of interest* in the ordinary sense in which the word is used (including as used in the Commonwealth Grant Guidelines). This is because the interest which the CEO had in the success of a Commercialisation Australian program application is not accurately described as a *material personal interest* or *association*.

For these reasons we are strongly of the view that the conflict identified in the Issues Papers would be more accurately described as a *conflict of roles giving rise to a perception of bias*. Describing the conflict in this way would avoid the incorrect impression that there was the possibility for the CEO to personally benefit from a successful Commercialisation Australia Pilot Program application.<sup>122</sup>

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<sup>122</sup> Department of Industry, Letter to the ANAO: *Performance Audit: Administration of the Commercialisation Australia Program*, 4 February 2014, pp. 2–3.

## Approval of the CA Pilot Program Guidelines

**3.19** The grant guidelines established for granting activities provide a key starting point for parties considering whether to apply for a grant. Grant guidelines also assist agencies to administer granting activities effectively and in a manner that complies with the grant policy framework. It is advisable that grant guidelines are developed early in the life of the granting activity, considering that time needs to be set aside for stakeholder engagement and for risk assessment.<sup>123</sup>

### Developing the Pilot Program

**3.20** When the CA Program was approved by the then Government, Ministers agreed to support activities relating to the original four grant components only. While the design proposal for the CA Program makes reference to the CA Program commissioning pilot programs to test new methods of assistance, the proposal did not seek government authority to conduct this activity as part of a grants program. As a consequence, in early 2010, when the then Department of Innovation, Industry, Science and Research (DIISR, now the Department of Industry) sought to establish the Pilot Program as a discrete grant program under the CA Program, it was required to consult the Department of the Prime Minister and Cabinet, the Department of Finance<sup>124</sup> (Finance), and the Department of the Treasury (the central agencies). On 30 March 2010, the CA Branch advised the CA Board on its understanding of the central agencies' preliminary opinions, as follows:

In March 2010, Central Agencies advised that pilot programs could be supported via grant funding from Commercialisation Australia, provided that the pilot program's intent is consistent with the existing Ministerial Program Guidelines. The pilot programs should support Skills and Knowledge development, Proof of Concept, and Early Stage Commercialisation activities. Applications for pilot programs should also be assessed against similar merit criteria to the other granting elements. Such an approach would be consistent with the Commonwealth Grant Guidelines and would not require seeking additional authority from government.<sup>125</sup>

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<sup>123</sup> ANAO, *Implementing Better Practice Grants Administration*, Canberra, June 2010, pp. 41–42.

<sup>124</sup> At this time the Department of Finance was named the Department of Finance and Deregulation.

<sup>125</sup> Agenda paper: *Report from the (acting) CEO, Attachment B*, from CA Board meeting, 30 March 2010.

**3.21** On 26 May 2010, in the course of further consultation, Finance advised the department that Program Guidelines for the Pilot Program would require consideration by ERC, on the basis that Finance considered the Pilot Program a discrete new program within the CA Program.<sup>126</sup>

**3.22** The CA Branch also consulted with relevant staff at Finance seeking comments and feedback on draft Pilot Program Guidelines. An initial draft was provided to Finance in early May 2010, followed by the second, more complete version later in May. Finance provided feedback on both versions, with its comments on the second version highlighting the potential for conflicts of interest, as follows:

The role of the CA [Commercialisation Australia], particularly in terms of proposing a new idea and its delivery/implementation vis a vis other applicants needs to be clearly stated. It is noted that the way it is written now, it would generate a perception that a government entity (CA being an entity established by the Government) will compete with other applicants for funding under the proposed pilot program. This would obviously give rise to a conflict of interest.<sup>127</sup>

**3.23** In September 2010, changes were made to Cabinet processes and it was decided that not all grant program guidelines would require ERC approval. Under the revised arrangements, an administering agency would undertake a risk assessment of their draft program guidelines.<sup>128</sup> Finance was to be consulted on all risk assessments, with these assessments being used to decide, on a case-by-case basis, whether a program was to be referred to the ERC.<sup>129</sup> During December 2010, DIISR contacted Finance to clarify whether, in light of the above changes, ERC consideration of the Pilot Program Guidelines would be required. Finance responded on 2 February 2011, advising that the Pilot Program Guidelines could be settled by the Minister.

**3.24** The Department of Industry subsequently advised the ANAO that it had understood that Finance was reviewing changes made to the guidelines, and when Finance advised that the Pilot Program Guidelines could be settled

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126 At that time, there was a government expectation that ERC consider all new grant program guidelines.

127 Email from the (then) Department of Finance and Deregulation to the (then) DIISR, 26 May 2010.

128 The process was set out in Estimates Memorandum 2011/19: *Process relating to the approval of new or revised program guidelines*. These processes are now outlined in the 2<sup>nd</sup> edition of the *Commonwealth Grant Guidelines* that came into effect on 1 June 2013. Refer to clauses 4.9–4.10.

129 The changes are discussed in: ANAO Audit No.36 2011–12 *Development and Approval of Grant Program Guidelines*.

by the responsible Minister, rather than ERC, this was interpreted by the department as Finance's endorsement of the contents of the guidelines. As a result, the issues raised by Finance in May 2010 relating to the potential for conflict of interest were not addressed by the department prior to the Pilot Program Guidelines being provided for endorsement to the then Minister for Innovation, Industry, Science and Research.

### **The Minister's endorsement of the Pilot Program Guidelines**

**3.25** On 24 February 2011, the department submitted advice and a copy of the draft Pilot Program Guidelines to the Minister for approval. The advice provided background information regarding the process for developing the Guidelines and outlined consultation with key stakeholders, including the central agencies and the CA Board. The Minute advised that 'Draft program guidelines for assessing pilot programs were endorsed by the CA Board on 4 May 2010 (Attachment B)'.<sup>130</sup> The Minister approved the Pilot Program Guidelines on 12 March 2011.

**3.26** As a ministerially-appointed Board with responsibilities for providing policy advice, it can reasonably be assumed that the Minister took some comfort from the department's statement that the CA Board had endorsed the guidelines. Similarly, the Minister would have noted the advice regarding central agency consultation. However, contrary to the departmental advice to the Minister of 24 February 2011, the CA Board had not endorsed the Pilot Program Guidelines at its 4 May 2010 meeting. The Minutes for the 4 May 2010 meeting included the following summary of the CA Board's discussion and decisions in relation to the Pilot Program Guidelines:

A revised version of the guidelines for funding of pilot programs to build capability in various areas of commercialisation was presented to the Board. The intention is that the final Pilot Program Guidelines will be published on the website for applicants. After discussion, the Board requested further development of the guidelines.<sup>131</sup>

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<sup>130</sup> Department of Industry, Minute to the Minister: *Commercialisation Australia (CA) - Pilot Programs*, 24 February 2011, p. 1.

<sup>131</sup> Department of Innovation, Industry, Science and Research, *Minutes of the Commercialisation Australia Board Meeting 4 May 2010*, DIISR, Canberra, May 2010.



**3.27** Minutes for the CA Board meeting on 4 May 2010 confirm that the CA Board was provided with a document titled, 'Commercialisation Australia Pilot Program Guidelines'. However, this document only included details of the proposed eligibility and merit criteria for the Pilot Program, prompting the CA Board to seek its further development. At no point was a final version of the CA Program Guidelines presented to the CA Board for further review and agreement before being provided to the Minister for endorsement.

### **Changes to the Pilot Program Guidelines**

**3.28** In its 24 February 2011 advice to the Minister, the department also sought and received a delegated authority to make future 'minor' adjustments to the Pilot Program Guidelines. The first paragraph of the advice included the following statement:

Once you approve the attached guidelines, any future minor changes would be made as required, in consultation with CA Board, and not require further approval by you.<sup>132</sup>

**3.29** Since commencement of the Pilot Program in 2011, two new versions of the CA Pilot Program Guidelines have been released: a second version in August 2011; and a third version in December 2011. The changes introduced by these versions are outlined in Table 3.3.

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<sup>132</sup> Department of Industry, Minute to the Minister: *Commercialisation Australia (CA) - Pilot Programs*, 24 February 2011, p. 1.



**Table 3.3: Changes to the CA Pilot Program Guidelines**

| Section/<br>paragraph                                    | Changes to content  |
|--|---|
| <b>From March 2011 version to August 2011 version</b>    |   |
| Paragraph 2.8: Application Procedures                    | The August 2011 version introduces the following procedure:<br>Applicants should read the Pilot Program Guidelines, and then direct initial enquiries by email to CEOofCA@innovation.gov.au. Commercialisation Australia will contact each applicant to discuss their project proposal and eligibility. If the project is identified as being suitable to progress to the next stage the applicant will be provided with a copy of the Pilot Program Application Form, a sample of which can be found on <a href="http://www.commercialisationaustralia.gov.au">www.commercialisationaustralia.gov.au</a> . |
| Section 4: Merit Criteria                                | <ul style="list-style-type: none"> <li>The order of the merit criteria changed – the ‘Market Opportunity’ criterion moved to Criterion 1 and the ‘Plan and Potential’ criterion moved to Criterion 2.</li> <li>Changes to the ‘Plan and Potential’ criterion, including additional sub-criteria and documentation requirements.</li> <li>Changes to the ‘Market Opportunity’ criterion to include additional sub-criteria and documentation requirements.</li> </ul>  |
| <b>From August 2011 version to December 2011 version</b> |   |
| Section 1: Overview                                      | <ul style="list-style-type: none"> <li>Changes were made to reflect changes to the CA Program grant components approved by the Government in October 2011.</li> </ul>   |
| Paragraph 2.1: Roles and Responsibilities                | <ul style="list-style-type: none"> <li><u>was</u>: The CEO decides whether to approve a proposal after seeking the advice of the Board.</li> <li><u>now</u>: The CEO decides whether to recommend approval of a proposal after seeking the advice of the Board, and the Program Delegate has responsibility for all funding decisions under CA.</li> </ul>  |
| Paragraph 2.6: Duration of Pilot Programs                | <ul style="list-style-type: none"> <li><u>was</u>: The CEO of <i>Commercialisation Australia</i> may agree to extend a pilot program by up to 12 months if an interim evaluation supports an extension.</li> <li><u>now</u>: The Program Delegate, after seeking advice of the CEO of <i>Commercialisation Australia</i>, may agree to extend a pilot program by up to 12 months if an interim evaluation supports an extension.</li> </ul>   |
| Paragraph 2.8: Application Procedures                    | <ul style="list-style-type: none"> <li><u>was</u>: The CEO will consider the merit assessment of the Board and decide whether a particular application should be approved or not. The decision of the CEO is final.</li> <li><u>now</u>: The CEO will consider the merit assessment of the Board and decide whether or not approval of a particular application should be recommended to the Program Delegate. The CEO has the final say regarding the merits of the proposed pilot program.</li> </ul>   |
| Paragraph 5.6: Conflict of Interest                      | In a clause that describes arrangements where the CEO puts forward a pilot program proposal, the following clause was removed:<br>(c) the decision whether or not to approve the proposal will be made by the Program Delegate, who is an employee of AusIndustry.  |

Source: ANAO analysis of changes to the CA Pilot Program Guidelines (March 2011, August 2011 and December 2011).

**3.30** The changes made to the Guidelines were, arguably, not ‘minor’ (in which case they would not require further Ministerial decision), but more substantive, suggesting that there would have been merit in considering a further briefing to the Minister. For example, there were changes to both the merit criteria and decision-making responsibilities under the program. Further, and contrary to the 24 February 2011 departmental advice to the Minister that the CA Board would be consulted on all changes to the Pilot Program Guidelines, the changes were not presented to the CA Board for consideration.<sup>133</sup>

## The department’s Ecosystem Mapping Strategy Project

**3.31** On 21 November 2012, the department’s CA Branch applied for funding of the Ecosystem Mapping Strategy (EMS) Project under the CA Pilot Program. The application was submitted to the CA Board Secretariat, part of the AusIndustry Division. Documentation submitted as part of the EMS project application described the proposed project as follows:

The Pilot Program will trial an Ecosystem Mapping Strategy approach to address two inter-related but distinct imperatives: Australia’s capacity to attract talent and capital to build intellectual property (IP) rich businesses; and Australia’s need for a holistic platform for strategic policy development and performance measurement.<sup>134</sup>

**3.32** The application sought funding of \$500 000<sup>135</sup> (\$300 000 in 2012–13 and \$200 000 in 2013–14). The proposed EMS project included a trial to map a single industry sector, the Australian medical technology industry, to enable the department to assess the effectiveness of the mapping strategy as a policy development tool and to determine its potential scalability to other sectors.

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<sup>133</sup> ANAO Audit No.36 2011–12 *Development and Approval of Grant Program Guidelines*.

<sup>134</sup> Australian Government, *Ecosystem Mapping Strategy – Commercialisation Australia Pilot Program application*, Department of Industry, Innovation, Science, Research and Tertiary Education, Canberra, November 2012, p. 5.

<sup>135</sup> The proposed breakdown of costs comprised: \$200 000 for procurement of services from the Israel Science Technology and Innovation Policy Institute (ISTIPI); \$250 000 for procurement of services to develop a database and software; and \$50 000 for costs associated with meetings of the Consortium and an Expert Reference Group.

## Assessment of the EMS application

**3.33** The application was proposed through the Deputy CEOCA, rather than the CEOCA as specified in the Pilot Program Guidelines.<sup>136</sup> The covering email for the proposal, to the CA Board Secretariat, noted that ‘This will be the first Pilot Program application submitted by the department itself.’ Noting the tight timeframe for the project, the email requested that the application be considered at the next CA Board meeting, or failing this, out of session before the end of the year.

**3.34** Checks of the department’s application by the CA Board Secretariat, prior to the submission going to the CA Board, identified issues regarding the eligibility of the application, as the department did not fulfil the requirement that the applicant ‘must be incorporated under the *Corporations Act 2001*’.<sup>137</sup> Despite the department clearly failing to meet this threshold criterion,<sup>138</sup> the CA Branch prepared advice to the CA Board explaining the basis on which the department should be eligible for a grant. The advice was forwarded to CA Board members on 17 December 2012, prior to their consideration of the EMS Project proposal on 19 December 2012. In respect to the threshold issue of eligibility and incorporation under the *Corporations Act 2001*, the department’s advice to the CA Board stated that:

Commercialisation Australia has explained to the Program Delegate that this rule is only intended to apply to external applicants; however confirmation of this clarification has been requested by the Board.

The Department intends to make amendments to the Guidelines to incorporate this clarification.<sup>139</sup>

**3.35** In making a decision to apply for a grant under the Pilot Program, and to also provide advice to the CA Board on the eligibility and handling of its application, the CA Branch did not have appropriate regard to the conflict of

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<sup>136</sup> Clause 3.1 of the Pilot Program Guidelines states that Pilot Program proposals can be submitted by Commercialisation Australia, through the CEOCA.

<sup>137</sup> Australian Government, *Commercialisation Australia Pilot Program Guidelines*, DIISR, Canberra, December 2011, p. 5, clause 3.1.

<sup>138</sup> The then Department of Industry, Innovation, Science, Research and Tertiary Education, as a Department of State, had the legal personality of the Commonwealth and was not incorporated under the *Corporations Act 2001*.

<sup>139</sup> Agenda paper: *Eligibility of Commercialisation Australia under the Pilot Program component*, from Commercialisation Australia Board meeting, 19 December 2012.

interest considerations set out in the CCGs and the Department’s internal guidance.<sup>140</sup>

**3.36** The CA Branch and AusIndustry also prepared a paper for the CA Board titled, ‘Governance of CA Pilot Programs where the department is the applicant’. The paper was provided to the CA Board prior to the 19 December 2012 meeting, at which time the EMS Project proposal was to be considered.<sup>141</sup> The paper proposed alternative governance arrangements for assessing the eligibility of the CA Branch’s grant application under the Pilot Program, whereby the CA Board rather than the CEOCA, would determine eligibility for funding. Table 3.4 summarises the proposed alternative governance arrangements at key decision points:

**Table 3.4: Pilot Program alternative governance arrangements**

| Governance activity | Governance arrangements outlined in the Pilot Program Guidelines   | Alternative governance arrangements   |
|---------------------|--|---|
| Eligibility         | 2.1 The CEO is ultimately responsible for determining the eligibility of pilot program proposals.        | Eligibility confirmed by independent expert assessor and by CA Board. (The pilot program guidelines do not preclude the independent expert assessor from providing advice on eligibility. The authority of the CA Board to provide advice on eligibility is established under section 13 of the Board delegations.) |
| Approval            | 2.1 The CEO decides whether to recommend approval of the proposal after seeking the advice of the Board. | The CEO may make a presentation to the CA Board regarding the pilot program application but would not be present for the discussion of the application.   |

Source: Extract from the document prepared by the Department of Industry titled ‘Governance of CA Pilot Programs where the department is the applicant’.

**3.37** The proposed governance changes reflected a belated recognition of the risks of conflicts of interest arising in the assessment process. However, the issues should have been considered in the program design phase and appropriate governance arrangements documented in the program guidelines, so as to avoid the situation of the CA Branch, as a project applicant, also advising on the program’s administration.

140 Discussed at paragraphs 3.12 to 3.15.

141 Agenda paper: *Governance of CA Pilot Programs where the department is the applicant*, from Commercialisation Australia Board meeting, 19 December 2012.

**3.38** The CA Board considered the CA Branch's advice on 19 December 2012 and the board minutes record that:

The CA Board agreed that the intent of the guidelines was that Commercialisation Australia should be an eligible applicant.<sup>142</sup>

**3.39** The Minutes did not document the substantive basis of the Board's decision on the threshold question of the department not being a Corporations Act entity. However, the CA Board minutes for 19 December 2012 did record the CA Board's assessment of the purpose of the EMS Project and its alignment with the program objectives, as follows:

The Board observed that government activities other than those of Commercialisation Australia were likely to be the most significant beneficiaries if the proposed pilot program is successful. This raised the question of whether CA was the most appropriate source of funding, but the Board agreed that this concern was balanced by the leadership CA had shown in developing the concept and the application.<sup>143</sup>

**3.40** The minutes also noted concerns relating to the assessment process for the department's EMS Project application, highlighting that: the assessment of the proposal had been made under unacceptably tight timeframes, for reasons unexplained; and the Independent Expert Assessment lacked the depth expected of such an analysis, and was less comprehensive than the analysis provided to the CA Board when considering previous pilot program proposals.<sup>144</sup>

**3.41** The EMS Project proposal, as then submitted, was 'not supported' by the CA Board. The Program Delegate subsequently agreed that the application should be reconsidered by the CA Board, and this decision was recorded in a letter sent to the Deputy CEOCA, as follows:

The Program Delegate has considered the Board's recommendation and in recognition of the fact that this is the first application of its type, which has highlighted some deficiencies in the process, has determined this warrants further consideration of the application by the Board.<sup>145</sup>

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<sup>142</sup> Department of Industry, Innovation, Science, Research and Tertiary Education, *Minutes of the Commercialisation Australia Board Meeting 19 December 2012*, DIISRTE, Canberra, December 2012.

<sup>143</sup> *ibid.*

<sup>144</sup> *ibid.*

<sup>145</sup> Letter from the Commercialisation Australia Board Secretariat to the Deputy CEOCA of the Commercialisation Australia Program, *Ecosystem Mapping Strategy – Trial*, dated 2 January 2013.

**3.42** The CA Branch re-submitted the EMS project proposal to the CA Board on 10 January 2013. The new proposal addressed the issues identified by the CA Board on 19 December 2012, including: insufficient information on ways in which the pilot program could significantly improve on CA components and process; lack of detail on budget and key performance indicators; and that the national benefits depended on the actions and decisions of other parties. Addressing this last point, the new proposal included a letter of support from a departmental acting Deputy Secretary (SES Band 3), whose substantive position was Division Head (SES Band 2) responsible for the CA Branch.<sup>146</sup> A new Independent Expert Assessment was also provided, addressing concerns raised by the CA Board relating to the earlier assessment.

**3.43** Following consideration of the revised application by the CA Board at an out-of-session meeting on 18 January 2013, the CA Board recommended to the Program Delegate that the department's project be granted \$500 000. It was also recommended that the project be subject to administrative arrangements that ensured: payments to contractors were in arrears; effective monitoring processes were in place; and an independent evaluation was conducted at the end of the Pilot Program grant.

## **Approvals and funding agreement**

**3.44** On 25 January 2013, the Program Delegate approved the grant recommendation to the value of \$500 000, with the conditions specified by the CA Board forming part of the approval. As a formal agreement between the Commonwealth of Australia and the department could not be entered into—on the basis that a legal entity cannot contract with itself—internal administrative arrangements were agreed specifying the conditions and obligations relating to monitoring, reporting and release of the grant funds. This document was signed by the CEOCA and the Program Delegate during March 2013.

**3.45** The need to enter into such an unusual agreement should, even at this late stage, have alerted the Department to the unconventional character of the

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<sup>146</sup> In response to ANAO inquiries about the potential conflict of interest arising in this situation, the department advised the ANAO in February 2014 that the official was a member of the departmental executive at the time and was reflecting the views of the department executive in the letter of support, rather than expressing such views as division head.

Department of Industry, *Department of Industry response to Issues Paper 1,2,3,4 and 5*, January 2014, p. 23.

‘grant’ in question, and triggered a more thorough review of the legal basis for the grant. A further opportunity had also been missed, at the FMA Regulation 9 approval stage, to assess the soundness of the underlying proposition—that a Department of State could ‘grant’ itself public money, and enter into an ‘agreement’ with itself to receive those monies.

**3.46** Further, the departmental accounts required adjustment to effect the ‘grant’, another control point at which the soundness of the proposed arrangement could have been questioned. The department advised the ANAO that it recognised the unusual nature of the transaction, however ‘erred and relied on dated legal advice relating to a similar arrangement. This advice needed to be updated to take account of subsequent changes to the [financial management] framework’.<sup>147</sup>

**3.47** The department’s experience with the Pilot program highlights the risks which can arise when agencies seek to access administered program funds for an internal project, an uncommon occurrence requiring careful assessment by agency management.

### **Financial treatment of the grant**

**3.48** The \$500 000 grant awarded to the CA Branch was treated by the department as a receipt of funds and retained in the departmental account. Following examination of this transaction by the ANAO, as part of the 2012–13 financial statement audit of the department, the following matters were raised by the ANAO in the Closing Audit Letter, presented at the department’s former Audit Committee Finance Statements meeting in September 2013:

- FMA Regulation 3A defines a grant as an arrangement for the provision of financial assistance by the Commonwealth under which public money is to be paid to a recipient other than the Commonwealth. As such the provision of the grant under the Pilot program is not consistent with the legislative framework; and
- the receipt of funds into the Departmental account cannot be retained under Section 31 of the FMA, supported by FMA Regulations 15 and 16. Under these provisions, funds from an Administered appropriation the department controls cannot be retained as a

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<sup>147</sup> *ibid.*, p. 24.



section 31 receipt – such receipts are to be receipted against Administered receipts and not retained.<sup>148</sup>

## **Certificate of Compliance issues relating to the grant**

**3.49** The issues identified by the ANAO in the course of this performance audit relating to the design and administration of the CA Pilot Program were raised with the department during August 2013. At this time, the ANAO encouraged the department to consult with the Department of Finance on these issues and the extent of non-compliance with the financial management framework. During October 2013, the department informed the ANAO that it had taken the following actions to address the issues identified by the ANAO:

- the Pilot Program had been ‘paused’ and was not accepting new applications for funding;
- all enquiries relating to the Pilot Program were being advised that the component was currently paused;
- Pilot Program material had been removed from the CA website;
- the CA Board had been advised that these actions have been taken; and
- the CA Branch had ceased activity on the EMS project.<sup>149</sup>

**3.50** The department also confirmed that it would not seek to recommence the Pilot Program; however the department stated that it aimed to find a way for the objectives of the Pilot Program to be achieved within the financial framework.

**3.51** Further, in its annual Certificate of Compliance<sup>150</sup>, the department reported two issues relating to non-compliance with section 44 of the FMA Act and FMA Regulation 7A, as described in Table 3.5:

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148 ANAO, *Attachment to the Closing Audit Letter, Financial Statements Audit 2012–13, Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education*, ANAO, Canberra, September 2013, p. 16.

149 Contracts were terminated and where necessary, termination payments were agreed. A termination payments of \$30 000 was made from Departmental funds and not from CA Administered funds.

150 The chief executives of all agencies subject to the FMA Act are required to provide a completed Certificate of Compliance to their portfolio minister each year, copied to the Finance Minister. The purpose of the Certificate is to improve compliance with the Australian Government’s financial management framework, and to ensure that ministers are kept informed of compliance issues within their portfolios.



**Table 3.5: 2012–13 Department of Industry Certificate of Compliance**

| Requirement of non-compliance | Title of relevant Section, Regulation or policy | The circumstances of non-compliance with the requirements  | Action Taken  |
|-------------------------------|---|--|---|
| Section 44                    | Promoting proper use of Commonwealth resources. | Breach associated with the Commercialisation Australia (CA) Pilot Program where the use of resources was inconsistent with a policy of the Commonwealth. | <p>The Department has consulted with the Department of Finance and Deregulation (Finance) on the extent of this non-compliance and has reported these in the Certificate of Compliance as breaches under Section 44 of the FMA Act and FMA Regulation 7A (Section 2.4 of the Commonwealth Grant Guidelines).</p> <p>The Department has paused processing applications under the Pilot Program grants component of the CA Program and is working with Finance to update the design of the component to ensure its compliance with the Financial Framework.</p> |
| Regulation 7A                 | Commonwealth Grant Guidelines                   | Breach associated with the Commercialisation Australia (CA) Pilot Program where the use of resources was inconsistent with a policy of the Commonwealth. | <p>The Department has consulted with the Department of Finance and Deregulation (Finance) on the extent of this non-compliance and has reported these in the Certificate of Compliance as breaches under Section 44 of the FMA Act and FMA Regulation 7A (Section 2.4 of the Commonwealth Grant Guidelines).</p> <p>The Department has paused processing applications under the Pilot Program grants component of the CA Program and is working with Finance to update the design of the component to ensure its compliance with the Financial Framework.</p> |

Source: ANAO analysis of information provided to the Department of Industry.

## Conclusion

**3.52** The Pilot Program's design and administration demonstrated a lack of understanding of the Australian Government's financial management framework, resulting in the department granting financial assistance of \$500 000 to itself, for a project to be delivered by external service providers.

**3.53** The definition of a ‘grant’, for the purposes of the *Commonwealth Grant Guidelines* (CGGs), as an arrangement for the provision of financial assistance by the Commonwealth to a recipient ‘other than the Commonwealth’ precluded the department from providing such a grant of public money for its own projects.

**3.54** Further, the financial management framework provides that if monies are received by an agency, only receipts prescribed by the financial regulations may be retained by the agency. In this context, the regulations make no provision for an FMA Act agency to receive or retain a Commonwealth grant.

**3.55** The department’s decisions to ‘grant’ itself public money as a form of financial assistance for an internal project, and to retain that public money, were not soundly based and gave rise to breaches of the financial framework.

**3.56** Further, the department applied for and received financial assistance under the Pilot Program notwithstanding a requirement in the program guidelines that applicants be incorporated under the *Corporations Act 2001*. As a department of state with the legal personality of the Commonwealth, the department did not satisfy this threshold criterion but nonetheless advised the CA Board on an alternative interpretation of the guidelines, which the Board accepted notwithstanding its reservations documented in the course of considering the department’s funding application.

**3.57** The department’s decision to apply for a grant while also administering and advising on the program, created a situation where departmental officials had a conflict of roles; with potential implications for the equitable treatment of external applicants. While the Pilot program Guidelines referred to the existence of formal procedures for managing potential conflicts, the potential for conflicts of interest were embedded in the Pilot Program component as a consequence of its design, making it difficult to manage such conflicts.<sup>151</sup>

**3.58** Further weaknesses related to departmental advice in a minute to the Minister that observed the CA Board had endorsed the draft Pilot Program Guidelines, after the Board had advised the department that the guidelines required ‘further development’. The department also misunderstood advice

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<sup>151</sup> Both the CGGs and internal departmental guidance emphasised the need to avoid situations where the real or perceived interests of staff might compromise the independence of their administration, advice or decision-making.

received from a central agency<sup>152</sup> relating to the draft Pilot Program Guidelines, which had included observations on the potential for conflicts of interest to arise due to the program's design.

**3.59** Examination of these issues with the department led the ANAO to conclude that elements of the Pilot Program were not consistent with the requirements of the CGGs and aspects of the department's administration were not compliant with the Australian Government's financial management framework. The ANAO discussed potential audit findings with senior departmental representatives during August 2013. The department subsequently sought advice from the Department of Finance regarding resolution and management of these issues and, as a result, took action to suspend the Pilot Program in August 2013.

**3.60** The department subsequently reported two breaches of the financial management framework, arising from its receipt of a grant under the Pilot Program, in its 2012–13 Certificate of Compliance to the responsible Minister.<sup>153</sup>

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152 The (then) Department of Finance and Deregulation, which administered and advised agencies on the application of the CGGs.

153 The breaches related to section 44 of the FMA Act and FMA Regulation 7A.

## 4. Risk Management and Governance

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*This chapter examines the risk management, governance and strategic planning arrangements for the CA Program.*

### Introduction

**4.1** In late 2009, the then Government agreed to the final design for the CA Program. In outlining its intentions for the CA Program the Government indicated that it should provide a ‘radical’ alternative to previous commercialisation initiatives by considering innovative approaches to leverage venture capital and other sources of capital to support commercialisation. At the same time, it was recognised that there were risks associated with the initiative, which was intended to provide financial and other assistance for commercialisation efforts which are themselves inherently risky, including risk of project failure.

**4.2** As discussed in Chapter 3, the design of the Pilot Program also introduced a number of risks, including the potential for conflicts of interest and role, and inconsistency with financial framework requirements.

**4.3** This chapter examines the department’s approach to risk management, and a number of the strategies intended to mitigate CA Program risks and inform its direction, including the CA Board and a program of research, analysis and data collection.

### Risk management and strategic planning

**4.4** The department has an established enterprise-level framework to provide senior management with an overall view of the risk landscape in the department<sup>154</sup>, which incorporates a limited number of high-level risks related to Commercialisation Australia.

**4.5** However, the CA Program is not supported by a program-specific risk management framework to inform the department’s treatment of program-level risks across each of its operational elements, including: program delivery, promotion, administration of the CM and Expert networks, and data collection and analysis. The department advised the ANAO that AusIndustry

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<sup>154</sup> Department of Industry, advice to the ANAO, January 2014, p. 30.

and the CA Branch manage risks associated with CA Program delivery as part of their day-to-day responsibilities.

**4.6** Sound risk management practices can support effective program administration by identifying risks and appropriate treatments, and there is scope for the department to apply a more systematic risk management process by developing a targeted risk management plan for the CA Program.

**4.7** Further, the department's administration of the CA Program is currently not supported by a strategic plan that defines: the program objectives, articulates strategies to progress work streams, establishes clear expectations of performance and describes how the aims of the program will be achieved.

**4.8** While the department has a business plan for the CA Program, developed by the CA Branch, it does not provide a basis for setting and reviewing the strategic direction of the program, or for key stakeholders, such as the CA Board, to provide input to the CA Program's strategic direction, including the prioritisation of activities. For instance, additional Board involvement in the development of the Pilot Program, a new strategic direction for the CA Program as a whole, may have provided the department with additional insight on the risks associated with the Pilot Program's design. As discussed later in this chapter, the CA Board has a broad mandate to advise the department on strategic matters relating to the CA Program and the commercialisation of ideas and research in general.<sup>155</sup>

**4.9** Had the CA Program continued beyond 1 January 2015, there would have been benefit in the department developing and maintaining a targeted risk management plan for the program. Further, the development of a CA Program strategic plan would have provided a basis for monitoring and reporting on program outcomes and achievements against the CA Program objectives.

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<sup>155</sup> See paragraph 4.15.

## Research and analysis

**4.10** In designing the CA Program, the Government asked the department to establish a program of ongoing research and analysis, in addition to an evaluation program, to provide an information base for continuous review and, where necessary, adjustment to the program design and commercialisation policy more generally. Research and analysis was also considered a risk mitigation strategy for the CA Program, providing a basis for identifying and treating program risks. These expectations are set out in the CA Program Guidelines and Ministerial Directions, and are outlined as part of the additional functions of the CA Board.<sup>156</sup> However, these ongoing research and analysis activities have not commenced and the department advised there are no immediate plans for their implementation.

**4.11** CA Branch Business Plans since commencement of the program indicate that the CA Branch activities and deliverables have largely focused on administrative and operational activities associated with the implementation and ongoing management of the CA Program.

**4.12** Further, papers prepared by the CA Branch for the annual CA Program Strategy Session held on 25 July 2013 confirm the program's continued operational focus. A document included in these papers titled, 'Commercialisation Australia: Priority activities for 2013–14', lists a number of priority activities for the CA Program during this period, including program evaluation and analysis of KPI data, but not the program of ongoing research and analysis originally contemplated.<sup>157</sup> These activities are shown in Table 4.1.

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<sup>156</sup> Australian Government, *Commercialisation Australia Program Directions*, Canberra, November 2011, p.1, clause 3(a)(ii) and (iii).

<sup>157</sup> Commonwealth of Australia, *Commercialisation Australia Strategy Session*, Canberra, July 2013.

**Table 4.1: CA Program Strategic Priorities, 2013–14**

| CA Program : Priority Activities 2013–14  |
|---|
| <ul style="list-style-type: none"> <li>• responding to recommendations of the CA Program Evaluation;</li> <li>• response to findings of the ANAO Performance Audit;</li> <li>• analysis of KPI data;</li> <li>• build the Expert Network;</li> <li>• pilot Program;</li> <li>• implementation of actions arising from the 2013 CA Forum;</li> <li>• stakeholder engagement—events, sponsorships;</li> <li>• Case Managers—recruitment and contract management;</li> <li>• internal communication—improving capability of the CM/CSM network;</li> <li>• secretariat;</li> <li>• marketing and promotions;</li> <li>• CA Website;</li> <li>• CA Extranet; and</li> <li>• grant management system migration.</li> </ul> |

Source: Agenda Paper prepared by the Department of Industry for the CA Board Strategy Session, 25 July 2013.

## The Commercialisation Australia Board

**4.13** The CA Program is delivered by the Department of Industry, drawing on advice from the CA Board—a committee of the Innovation Australia (IA) Board.<sup>158</sup> The CA Board was formed in February 2010 and has up to seven members with experience and knowledge of commercialisation.<sup>159</sup>

**4.14** Consistent with the Government’s aim to provide the CA Board with a level of independence, at the commencement of the CA Program, the IA Board delegated to the CA Board those functions vested in it for the CA Program by

<sup>158</sup> Established in 2007, the IA Board is an independent statutory board that, through its various committees, assists in the administration of Australian Government innovation programs. The IA Board is established by the *Industry, Research and Development Act 1986* (the Act), which enables the Minister to give direction to the IA Board relating to its functions.

<sup>159</sup> The CA Board is formally classified as a working committee under the IA Board, however it is referred to as a ‘board’. Section 22 of the Act provides for the Minister to appoint committees that are considered necessary to provide advice to the IA Board on matters relating to the operation of the Act. The Act specifies that committees shall consist of not more than seven members, who are appointed by the Minister.

the Minister. These functions were outlined in a Certificate of Delegation<sup>160</sup> signed by the IA Board's Chairperson on 24 February 2010.<sup>161</sup>

## Functions of the Commercialisation Australia Board

**4.15** In establishing the CA Board, the Government expected it to provide leadership to build the program as a respected component of the innovation system, and to work closely with research and industry stakeholders, and the Commonwealth, state and territory governments to provide informed comment and assistance on commercialisation. The Minister defined broad functions for the CA Board, providing scope for the board's contribution to both operational and strategic aspects of the program's administration, including merit ranking of applications, the strategic direction of the CA Program, and other activities that would inform the Government's commercialisation policy.

**4.16** The Ministerial Directions and the CA Program Guidelines state:

The CA Board will advise the Chief Executive Officer (CEO) on strategic matters in relation to the program and the commercialisation of ideas and research in general.<sup>162</sup>

**4.17** The Ministerial Directions also make provision for the CA Board to provide advice to the Minister, as follows:

27. The Board may advise the *Minister*, or the *Minister* may request advice, on non-financial administration matters relating to the Commercialisation Australia program, including program administration and the extent to which the program is meeting its objective.
28. The Board may collect and analyse data on the performance of the Commercialisation Australia program, provide advice to the *Minister* on

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160 An IA Board committee may exercise any functions or powers delegated to it by the IA Board. The delegated powers are to be outlined in a 'Certificate of Delegation of Powers under the IR&D Act' (referred to as a Certificate of Delegation) and signed by the Chairperson.

161 On 7 December 2011, the Minister issued updated Ministerial Directions for the CA Program. Again, the IA Board resolved to delegate these functions to the CA Board, outlining these in a Certificate of Delegation signed by the Chairperson on 7 December 2011. Also taking effect on 7 December 2011, were updated CA Program Guidelines, which were issued by the Minister to the department. The Program Guidelines provided the department with the framework for operation of the CA Program.

162 Clause 4 of the Commercialisation Australia Program Directions (page 2) and Clause 5 of the Commercialisation Australia Program Guidelines (page 2). Emphasis added.



such performance, and will cooperate with any independent evaluation of the program.<sup>163</sup>

**4.18** The ANAO's discussions with departmental staff indicated a widely held view that the CA Branch has wide discretion whether to seek advice from the CA Board. Reflecting this viewpoint, documents prepared by the department provide the following description of the CA Program governance arrangements and indicate an apparent narrowing of the CA Board's responsibilities:

The CEO is responsible for the overall design and functioning of the program and for ultimately determining the eligibility of applications. The Program Delegate is responsible for approving applications, funding amounts, funding agreements and grant payments. The CA Board provides technical assessment and merit ranking of applications to the Program Delegate and may, at the request of the CEO, provide advice on strategic matters in regards to the program and the commercialisation of innovation in general.<sup>164</sup>

**4.19** During interviews with the ANAO, the CA Board Chair noted differing views on the role of the CA Board. However, with the program now reaching a level of maturity, the Chair hoped there would be more opportunity to focus on the CA Board's broader functions, and considered that there is opportunity for the CA Program to make greater use of the CA Board and the experience and knowledge it offers, particularly in relation to analysis of the program's achievements, input into the strategic direction of the CA Program and promotional activities.

**4.20** In the course of this audit, the ANAO asked the department whether, in practice, the role of the CA Board has narrowed from that outlined in the Ministerial Directions—a combined strategic and technical advisory role—to one focused on the technical assessment of applications.

**4.21** The department advised that 'Overall responsibility for the program clearly rests with the CEO'.<sup>165</sup> Supporting this view, the department provided the following interpretation of the CA Program governance arrangements:

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<sup>163</sup> Australian Government, *Commercialisation Australia Program, Direction No.1 of 2011*, Canberra, 2011, p. 8, clauses 27–28.

<sup>164</sup> Commonwealth of Australia, *Commercialisation Australia Strategy Session Agenda Item 4, Attachment B*, Canberra, July 2013. Emphasis added.

<sup>165</sup> Department of Industry, advice to the ANAO, January 2014, p. 34.

The overarching responsibility for the program rests with the CEO and this is a requirement of the Program Guidelines. Administrative responsibilities rest with the Program Delegate, which again is a requirement of the Program Guidelines.

The CEO is performing the role as per the Program Guidelines. The Ministerial Directions are directions to the Board, not to the CEO. The Minister provides a (flexible) framework for the operation of the program to the CEO and the Program Delegate through the Program Guidelines.<sup>166</sup>

**4.22** The department also advised the ANAO that ‘Whilst the CEO is required to take into account the CA Board’s advice, the CEO is not obliged to follow that advice. As is the case for the Program Delegate with respect to approving grant applications.’<sup>167</sup>

## Conclusion

**4.23** Sound risk management practices can support effective program administration by identifying risks and appropriate treatments. While the department has an established enterprise-level risk management framework, the CA Program is not supported by a program-specific risk management framework to inform the department’s treatment of program-level risks. Had the CA Program continued beyond 1 January 2015, there would have been benefit in the department developing and maintaining a targeted risk management plan for the program. The design of the Pilot Program also introduced a number of risks, including the potential for conflicts of interest and role, and inconsistency with financial framework requirements. The involvement of the CA Board in the development of the Pilot Program, a new strategic direction for the CA Program as a whole, may have provided the department with additional insight on the risks associated with the Pilot Program’s design.

**4.24** As part of the original CA Program design, the then Minister decided that the department undertake a program of research and analysis, regular data collection and monitoring and reporting, to allow for timely adjustments (if needed) to the program’s operation. However, the program of research and analysis has not commenced after three years and the department advised there are no immediate plans to initiate this work.

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<sup>166</sup> *ibid.*

<sup>167</sup> *ibid.*

**4.25** The then Government also established governance arrangements intended to mitigate CA Program risks, in particular the CA Board, which was intended to support the program at both a technical and strategic level through the knowledge and expertise of CA Board members. However, the Board's contribution to the CA Program has largely focused on the technical assessment of applications, and in practice responsibility for setting strategic directions for the CA Program has been a departmental rather than a shared responsibility.

## 5. Program Performance and Evaluation

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*This chapter examines performance monitoring and reporting for the CA Program, focusing on the Portfolio Budget Statements and the evaluations of the program undertaken in 2010 and 2012–13. Collection of participant data is a key deliverable of the program, and this chapter also examines the Department of Industry's management and use of its program data.*

### Introduction

**5.1** In establishing the CA Program, the then Government considered that the program provided an opportunity to assemble information on the innovation system which could be used to develop evidence-based policy. Accordingly, provision was made for the collection of performance information to facilitate evaluation and assessment of the program's impact. The collection of performance information, and a program of evaluation, were intended to provide a basis for monitoring and reporting progress, and to inform future policy and program options.

**5.2** Clause 5(i) of the Ministerial Directions and clause 6(i) of the Program Guidelines provided that the CA Program policy objective would be achieved through:

Regularly collecting data and analysing trends to measure the short and long term impact of the Commercialisation Australia program and to inform future initiatives to support innovation and commercialisation.<sup>168, 169</sup>

**5.3** Establishing the foundation for formal evaluation of the CA Program, the CA Program Guidelines also provided that the department:

- (a) Ensure that projects under the Commercialisation Australia program are monitored to obtain relevant information for evaluation, including the collection of baseline data on participants as they enter the program;

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168 Australian Government, *Commercialisation Australia Program, Ministerial Program Direction No.1 of 2009*, Canberra, December 2009, p. 3.

169 Australian Government, *Commercialisation Australia Program Guidelines No. 1 of 2009*, Canberra, December 2009, p. 3.

- (b) Monitor participants for at least five years following their leaving the program; and
- (c) At the request of the Minister, facilitate and cooperate with independent evaluation of the Commercialisation Australia program.<sup>170</sup>

**5.4** Since the CA Program began in 2010, two evaluations of the program have been conducted: the first in late 2010 to review implementation and determine whether the funding profile remained appropriate; and a second, full evaluation during 2012–13.

## The CA Program and data collection

**5.5** At the commencement of the CA Program in 2010, the department established a process for collecting data from participants as they enter, progress through, and eventually exit the program, placing a six to seven year reporting commitment on each program participant. The data collection is referred to as the Program and Performance Data Collection (PPDC).<sup>171</sup> Table 5.1 describes the points at which data is collected from participants.

**Table 5.1: CA Program data collection points**

| Type of report         | Timing  |
|------------------------|---|
| Baseline report        | Prior to funding being provided and project commencing.   |
| Interim report         | Collected after the first 12-months of a two-year project.<br>Collected when a new component is awarded to an existing participant. |
| Completion report      | Upon project completion.  |
| Post-completion report | Every 12 months for a five-year period following project completion (commencing 12 months after the project completion date).       |

Source: Compiled by the ANAO from the Case Manager Manual.

**5.6** Data is reported electronically via an online questionnaire (referred to as a Smartform<sup>172</sup>). The questions contained in each questionnaire reflect both the applicant's grant type and the point at which data is being collected. There

<sup>170</sup> *ibid.*, p. 7.

<sup>171</sup> The department refers to the data collection, interchangeably, as the Program and Performance Data Collection (see 2012–13 CA Program Business Plan) and the KPI Data Collection. For the purpose of this audit the ANAO refers to the data collection as the Program and Performance Data Collection (PPDC).

<sup>172</sup> Smartforms are used by the Australian Government to assist in the electronic submission of data.

is broad consistency across the questionnaires to ensure collected data supports longitudinal analysis of the impact on each participant as a result of their involvement with the program. Table 5.2 describes the broad categories of information collected.

**Table 5.2: CA Program data collection categories**

| Category                 | Description   |
|--------------------------|---|
| Company details          | <ul style="list-style-type: none"> <li>• Business name, ABN, address and contact details</li> <li>• Details of Case Manager</li> <li>• Revenue and capital raising in the last 12 months</li> <li>• Estimate of investment in the CA-supported project to date</li> </ul>   |
| Human Capital            | <ul style="list-style-type: none"> <li>• Employees, by employee type (permanent, part-time, contractor)</li> <li>• Details of key personnel</li> <li>• Changes in personnel</li> </ul>  |
| Business Capabilities    | <ul style="list-style-type: none"> <li>• Previous commercialisation experience</li> <li>• Existence of a growth strategy, marketing plan, business plan, development strategy etc.</li> <li>• Involvement in new ventures</li> </ul>  |
| Innovation and IP        | <ul style="list-style-type: none"> <li>• Assessment of the novelty of their innovation</li> <li>• Details of participant's IP portfolio</li> <li>• Existence of an IP strategy/IP protection</li> <li>• Investment in research and development</li> </ul>   |
| Advice and Collaboration | <ul style="list-style-type: none"> <li>• Type of external advice sought in connection to the CA project</li> <li>• Nature of the advice</li> <li>• Member of groups, association relating to the CA project</li> <li>• Details of collaborative arrangements</li> </ul>   |
| Finance and Development  | <ul style="list-style-type: none"> <li>• Source of funding to match government grant funding</li> <li>• Capital raising intentions</li> <li>• Existence of an international strategy</li> <li>• Perceived barriers to commercialisation</li> <li>• Access to funding</li> <li>• Details of web presence</li> <li>• Assessment of capability</li> <li>• Progress against commercialisation plan</li> </ul> |
| Existing Plans           | <ul style="list-style-type: none"> <li>• Details of existing plans for the project (based on grant type)</li> </ul>   |

Source: ANAO analysis of Smartform questionnaires.

## Management of the data collection

5.7 The PPDC has collected data from participants since 2010. While the CA Branch has overall responsibility for collecting, processing and analysing this data, CMs also assist with the collection of Baseline and Interim data. When a participant completes their project, the CM sends a final email asking the participant to provide data for the Completion Report and advises participants that all future reports will be requested by the CA Branch.<sup>173</sup> Table 5.3 shows the number of forms collected for each stage of the collection process as at the 26 September 2013.

**Table 5.3: Number of CA Program data collection forms received**

| Form Type              | Number of forms collected |
|------------------------|---------------------------|
| Baseline               | 472                       |
| Interim(a)             | 146                       |
| Completion             | 182                       |
| Post-completion year 1 | 48                        |
| Post-completion year 2 | 1                         |

Source: Data provided by the Department of Industry.

Note (a): Interim reports are only used where the duration of the applicant's project is longer than 12 months.

## Data management

5.8 Data reported by participants for the PPDC is stored in a database developed specifically for the CA Program, with the CA Branch provided with additional funds for this activity.<sup>174</sup>

5.9 Table 5.4 shows forecast deliverables and risks identified in relation to the PPDC as reported in CA Program Business Plans, since the commencement of the CA Program.

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173 The June 2013 Case Manager's Manual notes that 'Once the participant has reached Completion and Post Completion reporting stages, they will not require assistance from the Case Manager and as such Case Managers are requested to not assist with these data forms without prior consent from the CA Policy unit. There are guides available on the extranet and standard word emails for baseline, interim and completion forms'.

Australian Government, *Commercialisation Australia Case Manager's Manual*, Canberra, June 2013, p. 42.

174 The database is referred to as a 'data-cube' and stores data reported by participants using the Smartforms. Data can be extracted from the data-cube in the form of a spreadsheet. This data is merged with data extracted from the CA Program grant management system to create a full dataset of participant details that can be used for analysis and to generate performance indicators.

**Table 5.4: Reference to data collection in CA Program Business Plans**

| Year    | Deliverables  | Identified risk  |
|---------|---|--|
| 2010–11 | Program and database for KPI information.   | Slippage against deadlines of IT systems support.  |
| 2011–12 | Collection and analysis of KPI data and development of regular reports.<br>The new IT system was scheduled to be delivered in the first quarter of the 2011–12 financial year.<br>The first six monthly KPI report to be completed quarter three of the 2011–12 financial year. | KPI database not delivered on time or is unable to provide the degree of analysis required for portfolio reporting or policy evaluation requirements.                                  |
| 2012–13 | Development of a report management process for the collection and analysis of KPI data, and production of regular reports.<br>The first regular KPI report to be delivered during the first quarter of the 2012–13 financial year.  | Quality of program and performance data collection and sophistication of analysis tools is insufficient for portfolio reporting, communication, and/or policy evaluation requirements. |
| 2013–14 | Development of report management procedures for the collection and analysis of KPI data.  | Quality of program and performance data collection and sophistication of analysis tools is insufficient for portfolio reporting, communication, and/or policy evaluation requirements. |

Source: Compiled by the ANAO from information provided by the Department of Industry.

**5.10** In mid-2013, the CA Branch prepared a paper for the CA Board outlining issues associated with the data collection process, data analysis and KPIs for the CA Program,<sup>175</sup> which included:

- reporting errors and participants misunderstanding questions;
- access issues for participants due to browser setting problems;
- confusion due to additional forms being provided to participants receiving more than one grant component;
- changes in participant personnel between reporting periods; and
- submission of incorrect forms due to delays in the design and delivery of forms.

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<sup>175</sup> Performance indicators generated from the Program and Performance Data Collection are referred to by the Department of Industry as Key Performance Indicators (KPIs) and are covered in more detail below (refer to paragraph 5.16 to 5.20). These are not the same as the KPIs included in the Department of Industry Portfolio Budget Statements and Annual Report which are also covered in more detail below (refer to paragraph 5.21 to 5.24).



**5.11** Issues were also raised regarding the need to extract data from different sources, which complicated analysis and reporting due to different data structures, and data quality and accessibility issues. The paper concluded that:

The development of KPI charts and statistics is a time consuming and resource intensive process. A high degree of manual data checking and manual editing is required in order to produce accurate and meaningful statistics.<sup>176</sup>

**5.12** During interviews with the ANAO, members of the CA Branch with responsibility for management of the data collection also referred to these issues and highlighted challenges associated with lack of integration between the database and the AusIndustry grant management system. They also noted issues associated with duplicate and multiple participant records where participants receive more than one grant.

**5.13** The CA Branch advised there are no plans to make enhancements or changes to the data collection systems to address these limitations and to address issues associated with merging data, system design and reporting functionality. The ANAO's analysis of program data collected to date, confirms data quality issues, including missing forms and missing data. While the data has been routinely collected, the department does not have a systematic approach to checking the quality and consistency of data as it is being reported. In particular, there are no automated processes and only limited manual processes<sup>177</sup> for identifying and resolving errors at the time data is reported by participants. A significant investment of skills and time would be required to address quality issues and bring the data to a state where it could be used to reliably and confidently inform research and analysis.

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<sup>176</sup> Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education, *Commercialisation Australia Board Strategy session document, Attachment B, Agenda item 5.2*, Canberra, July 2013, p. 2.

<sup>177</sup> The department informed the ANAO that very limited manual checking of data is being undertaken to follow up obvious outliers. However this is only done on an exceptions basis due to resourcing constraints.

**5.14** CA Branch members also advised the ANAO that the analysis of program data had been a low priority over the last three years, and there are no immediate plans to undertake any further analysis of the PPDC data.<sup>178</sup> CA Branch members stated that it is sufficient that the data is being collected and made available for analysis sometime into the future—in particular, reference was made to a further CA Program evaluation, several years hence, which may be better placed to undertake analysis of the data.

## Program measurement and reporting

### Program objectives

**5.15** The then Government identified three key objectives for the CA Program:

- to build the capacity of, and opportunities for, Australia’s researchers, entrepreneurs and innovative firms to convert ideas into successful commercial ventures;
- generating commercial returns from Australia’s significant investment in public sector research; and
- enhancing Australia’s participation and competitiveness in the global economy.

### CA Program Key Performance Indicators

**5.16** When the CA Program commenced in January 2010, the CA Board agreed to four key performance indicators (KPIs). As shown in Table 5.5, two KPIs focus on program outcomes, while two focus on program outputs:

**Table 5.5: CA Program Key Performance Indicators**

|                        |  |
|------------------------|--|
| <b>Outcome focused</b> | 1. Convert intellectual property into commercial outcomes.<br>2. Benefits to the broader community.  |
| <b>Output focused</b>  | 3. Eligible applicants with the need for support gain entry into the CA Program, and receive responsible tailored assistance.<br>4. Coordinated, tailored and efficient support. |

Source: CA Board strategy meeting 25 July 2013 - Paper for agenda item 4.

<sup>178</sup> Staff attributed the low priority given to data analysis to: other implementation activities of higher priority; and the lack of staff with the skills necessary to undertake data analysis at this level of complexity.

**5.17** While these KPIs and measures were settled at the outset of the CA Program in 2010, to date, they have not been used to report on the CA Program's achievement against government objectives. In early 2013, three years after commencement of the CA Program, metrics for these KPIs were produced by the department for the first time, from data collected as part of the PPDC. The metrics were developed to inform analysis undertaken as part of the full evaluation of the CA Program conducted in 2012–13 and were also provided to the CA Board at the board's annual strategy meeting held in July 2013. However, no analysis of the underlying data was presented to the CA Board.

**5.18** When queried by the ANAO as to why the agreed KPIs are not used in regular reporting of CA Program achievements, the department advised that compilation of meaningful KPIs is reliant upon a sufficient volume of longitudinal data being collected from program participants. This view was supported by members of the CA Board.

**5.19** This perspective focuses on measuring CA Program performance in terms of the final commercialisation of an idea or product, and does not make provision for the use of proxy measures<sup>179</sup> or intermediate outcomes at different stages of the commercialisation process, to improve stakeholders' capacity to assess performance. In establishing the CA Program, the then Government intended to provide support that would address the varying needs of participants at different stages of the commercialisation lifecycle. It was acknowledged that this support may not lead directly to commercialisation outcomes. Reflecting this, the Government identified one of the policies for the Program as 'to build capacity of, and opportunities for'<sup>180</sup> the conversion of ideas into successful ventures. This includes, for example, where a participant has acquired improved business skills, or alternatively, where a participant has, as a result of contacts made through the Expert Network, been able to leverage private sector capital. In both instances, the participant has not 'commercialised' their product, but may have progressed towards commercialisation—a type of

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179 Proxy measures are output-level performance indicators and may be useful to indirectly measure effectiveness in certain situations. See Department of Finance and Deregulation, *Performance Information and Indicators* (October 2010), Finance, Canberra, 2010, p. 3; and ANAO Audit Report No.21 2013–14, *Pilot Project to Audit Key Performance Indicators*, p.74.

180 Australian Government, *Commercialisation Australia Program, Direction No.1 of 2011*, Canberra, 2011, p. 2, clause 5.

achievement consistent with the program objectives, which is not currently recognised in the program's performance indicators.

**5.20** A graduated approach, focusing on intermediate and proxy measures in addition to the long term outcomes, would have strengthened performance measurement and reporting processes, while removing the need for the department to rely on anecdotal evidence as a basis for measuring the program's success. For instance, when asked about measures for the success of the program, a number of departmental staff referred to the CA Program's quarterly marketing magazine, 'Value Proposition', as testament to the program's success. This magazine is, however, a marketing tool for the CA Program. Its primary role is to highlight the positive attributes of the program; for example by show-casing applicants who have successfully commercialised their ideas, and the contribution of CMs.

## **Portfolio Budget Statements**

**5.21** The department's 2013–14 Portfolio Budget Statements show the CA Program contributes to Program 1.2—Innovative Industry. The objectives for Program 1.2 are to increase the productivity, sustainability and growth of industry through: increasing innovation in business; increasing business research and development; and increasing research commercialisation.<sup>181</sup> Deliverables attributable to the CA Program under Program 1.2 reflect the two methods through which the CA Program provides support: 'Provision and management of grants and contracts' and 'Provision of commercialisation advisory services'.

**5.22** Under Program 1.2, the KPI for the CA Program deliverables is 'Increased number of products and services commercialised/patented'.<sup>182</sup> The focus of the current KPI, while amenable to quantification and outcome focused, does not provide an adequate basis to assess the range of potential program benefits, which as discussed, can include a number of intermediate outcomes such as the acquisition of skills by program participants.

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<sup>181</sup> Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education, *Portfolio Budget Statement 2013-14*, DIICCSRTE, Canberra, 2013, p. 45.

<sup>182</sup> *ibid.*, p. 50.

**5.23** To demonstrate the CA Program's performance against the KPI, the department has defined three measures, which were included in the 2013–14 Portfolio Budget Statements and are outlined in Table 5.6. Reporting on these measures is compiled by AusIndustry from data provided by participants, not by the CA Branch from PPDC data.

**Table 5.6: KPIs in Portfolio Budget Statements, 2013–14**

| Measure   | Description/derivation   |
|---|--|
| Total value of investment in commercialisation of projects receiving Commercialisation Australia grants.      | This measure is the aggregate of eligible project expenditure reported by participants each quarter. Participants are required to report this expenditure as part of the payment process for receiving the grant funds. This amount includes the amount contributed by the participant as part of the co-contribution requirement. |
| Number of customers that report they are working towards successful commercialisation of supported projects.  | This measure is based on the number of active projects that are on track or ahead of schedule as reflected in the CA Program grant management system at a point in time. The status of each participant is updated based on quarterly reports provided by the participant.   |
| Number of respondents who met project milestones and who are achieving successful commercialisation outcomes. | This measure is based on the number of completed projects in the period that are identified as successful or mostly successful. This status is updated at the end of the project based on the applicant's final report and the Case Manager's advice.  |

Source: Portfolio Budget Statements 2013–14 and information provided by the Department of Industry.

**5.24** In summary, these measures are essentially 'output' and not 'outcome' focused, a limitation acknowledged by CA Branch staff interviewed by the ANAO. To improve its capacity to monitor and report on CA Program outcomes, there was scope for the department to work with the CA Board to further develop the program performance measures, including proxy measures as required, against the program's intermediate and long term outcomes, with clear links to the CA Program's policy objectives.

## CA Program evaluations

**5.25** Since commencement of the CA Program, two evaluations have been conducted by the department. Both evaluations examined the CA Program against the criteria of appropriateness, effectiveness, efficiency, integration, performance assessment, and strategic policy alignment as set out in the

Department of Finance's evaluation methodology.<sup>183</sup> The ANAO's examination of these evaluations considered whether they met the requirements outlined by the Government and whether the conduct of the evaluations reflected better practice.

**5.26** As part of its original proposal for the CA Program, the department advised that an evaluation would form part of the review and evaluation strategy for the program, with the first evaluation scheduled for 2012–13. The department indicated that the evaluations would be 'external' and 'independent' and would analyse all aspects of the CA Program including: its success in meeting policy objectives; program uptake; customer satisfaction; national benefits; additionality impacts relating to firm-level productivity and innovative capacity; program effectiveness in industry/market conditions; and possible improvements to the CA Program's administration and policy framework. The department also indicated that the evaluations would consider both short and long term impacts.

**5.27** In September 2009, when the then Government agreed to the final design for the CA Program, it also asked the department to undertake an 'interim' evaluation by the end of 2010. The Minister was asked to report back to colleagues on the outcomes of this evaluation.<sup>184</sup>

## **Interim evaluation**

**5.28** The 2010 interim evaluation commenced on 30 September 2010, with the final report provided to the Minister on 16 December 2010. The stated purpose of the interim evaluation was to review implementation of the new model and to determine whether the funding profile for the CA Program remained appropriate. The evaluation was undertaken by the CA Branch, also responsible for administration of the CA Program. It was supported by a Steering Committee comprising three representatives from the Department of Industry, including the CA Branch manager (CEOCA) and the Program Delegate, and representatives from the Department of the Prime Minister and Cabinet (PM&C), Treasury, the then Department of Finance and Deregulation, and an external expert, who was at the time, a member of the Innovation Australia Board.

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183 Department of Finance, *Expenditure Review Principles* [Internet], Finance, Canberra, updated 26 September 2013, available from <<http://www.finance.gov.au/budget/budget-process/expenditure-review-principles.html>> [accessed 29 October 2013].

184 The then Government allocated funding for the purpose of conducting these evaluations.

**5.29** It was generally acknowledged that the short duration of the program limited the evaluation activities and conclusions that could be drawn against the terms of reference. The final report noted that:

Overall, indications are that Commercialisation Australia has performed very well during the initial period of operation.

The Interim Evaluation found that stakeholders are highly satisfied with the program and early output data suggests the program is on track to achieve its objective. The type and level of assistance provided by Commercialisation Australia is considered appropriate and there is high demand for each individual program component. The program is reaching its target market of small innovative start-up companies, however uptake from the university and research sector has been slower than anticipated. Continuous monitoring is required to ensure the program remains appropriate over time.<sup>185</sup>

## Second evaluation

**5.30** The second evaluation commenced in October 2012, with the final report delivered in October 2013.<sup>186</sup> The evaluation was conducted by the department's internal evaluation unit, which operates independently of program areas. As part of the evaluation, an external consultant was engaged to undertake analysis of the efficiency and governance arrangements of the CA Program.<sup>187</sup>

**5.31** A Reference Group was established to provide oversight and direction for the evaluation. The Reference Group was chaired by the head of the department's Evaluation Unit, the Principal Industry and Innovation Advisor. A further three representatives from the Department of Industry were members of the group, including the CA Branch manager (CEOCA) and CA Program Delegate. The Reference Group also included representatives from PM&C, the Treasury and Finance, and a private sector commercialisation expert.

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185 Commonwealth of Australia, *Interim Evaluation Report – November 2010*, DIISR, Canberra, November 2010, p. 6.

186 While the report was described as the 'final' report when provided to the ANAO on 24 October 2013, it was noted that it was pending final endorsement from the Reference Group and it would then be submitted to the department's Executive Board for final endorsement.

187 The Department of Industry confirmed the total cost attributed to the CA Program evaluation was \$162 413 (GST exclusive). This figure includes administered expenses relating to the engagement of contractors and travel related expenses. This amount does not include departmental costs associated with members of the evaluation team, including salaries.



**5.32** The Terms of Reference for the evaluation are set out below:<sup>188</sup>

The evaluation strategy for Commercialisation Australia requires a full evaluation of the initiative after its first three years of operation. Accordingly, this will be a mid-term evaluation focussing on efficacy of existing processes and administrative arrangements and also drawing broader conclusions about Commercialisation Australia's effectiveness to the extent possible given the available data.<sup>189</sup>

**5.33** Overall, the evaluation concluded that 'CA assistance is being effectively and efficiently delivered in line with the program's objective'.<sup>190</sup> In respect to program efficiency and governance arrangements, which were assessed by an external consultant, the evaluation concluded that:

... on the whole, the CA program is operating efficiently, balancing the needs for transparency, accountability and risk management. It was recommended that the department should continue to monitor the funding sufficiency of the CA Program, in light of the divergence between grant demand and the value of grants approved.

The Governance structure and processes of the CA program were considered appropriate and to be operating efficiently and effectively. Roles and responsibilities have been developed and refined over the life of the program, but are now considered well defined and communicated to all relevant parties. There was no compelling business case found to support a transition to any alternative governance model.<sup>191</sup>

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188 The department advised that the scope of the evaluation was defined by the Evaluation Unit in consultation with the Reference Group—the CA Board was invited to provide feedback on the draft Terms of Reference and the scope was also agreed by the Departmental Executive Board.

189 Commonwealth of Australia, *Commercialisation Australia Evaluation Report – October 2013, Appendix A: Terms of Reference*, Industry, Canberra, October 2013, p. 115.

190 Commonwealth of Australia, *Commercialisation Australia Evaluation Report – October 2013*, Industry, Canberra, October 2013, p. 4.

191 *ibid.*, p.6.



## Conclusion

**5.34** The Ministerial Directions and CA Program Guidelines state that achievement of program objectives would be supported through the regular collection and analysis of data to: measure the short and long term impact of the program; and inform development of future innovation and commercialisation initiatives. The CA Program Guidelines also require the department to monitor projects funded by the program, by: collecting baseline data as participants enter the program; and monitoring participants' commercialisation achievements for at least five years following their departure from the program.

**5.35** In consultation with the CA Board, the department agreed to a number of performance measures (referred to as KPIs) as a basis for measuring change during and immediately after the provision of support through the CA Program. The department also established a Program and Performance Data Collection (PPDC) in 2010 to collect and store participant data.<sup>192</sup> While data has been regularly collected from participants, at a cost to participants and the department, its quality is poor and would require significant attention before it can be used with any confidence to report on program performance against its intermediate and long term objectives, or to reliably inform research and analysis.

**5.36** The department has not used the KPIs agreed with the CA Board in 2010 to report on the CA Program's progress and achievements. The failure to report against the KPIs largely stems from the department's approach that commercialisation outcomes are only measurable over the long term. This perspective focuses on measuring CA Program performance in terms of the final commercialisation of an idea or product, and does not make provision for the use of proxy measures<sup>193</sup> or intermediate outcomes at different stages of the commercialisation process, to improve stakeholders' capacity to assess performance.

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<sup>192</sup> Participant data is collected at the commencement of projects, during projects and for five years following completion of a project.

<sup>193</sup> Proxy measures are output-level performance indicators and may be useful to indirectly measure effectiveness in certain situations. See Department of Finance and Deregulation, *Performance Information and Indicators* (October 2010), Finance, Canberra, 2010, p. 3; and ANAO Audit Report No.21 2013–14, *Pilot Project to Audit Key Performance Indicators*, p. 74.

5.37 In establishing the CA Program, the then Government requested that regular and independent evaluations be conducted; and the department proposed rigorous and broad ranging parameters for such evaluations, including the examination of long and short term impacts. Two internal evaluations have been conducted: an 'interim' evaluation by the CA Branch in 2010 and a 'final' evaluation by the department's internal evaluation unit in 2012–13. Both evaluations, oversights largely by departmental officers, reported positively on the program's achievements, notwithstanding the range of issues subsequently observed in this audit report. Further, the evaluations had limited input from sources external to the government, including the CA Board, notwithstanding the Board's mandated role in monitoring and reviewing the CA Program, and advising on its strategic direction.

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Ian McPhee  
Auditor-General

Canberra ACT  
17 June 2014

# Appendices



## Appendix 1: Agency Response



Australian Government  
Department of Industry

Secretary

Dr Tom Ioannou  
Group Executive Director  
Performance Audit Services Group  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

Dear Dr Ioannou

I refer to your letter of 1 May 2014, and follow up letter dated 16 May 2014, seeking comment from the department on the proposed audit report on the Commercialisation Australia Program.

The ANAO report acknowledges the achievements of the Commercialisation Australia Program and the contribution the program has made to the creation of new, innovative businesses across the country. As noted in the report the Government has announced as part of the 2014-15 Budget, the closure of the program from 1 January 2015.

The department has noted the ANAO advice regarding the implementation of an appropriate closure strategy for the program. The Government has provided funding for the next three years to ensure an orderly transition.

Please find the department's response for inclusion in the body of the report at Attachment A. There are also some comments provided at Attachment B relating to some factual errors within the proposed report.

I thank the ANAO team for the professional approach taken during the audit process.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'G. A. Beauchamp'.

Glenys Beauchamp

29 May 2014

## ATTACHMENT A

### Summary of Department of Industry's response for inclusion in the Report Summary

It is pleasing to note the Department's, through AusIndustry, strong performance record in service delivery. The Australian National Audit Office (ANAO) report highlights that AusIndustry delivered the four original grant components in accordance with the Commonwealth Grant Guidelines and in line with the Commercialisation Australia Program Guidelines. AusIndustry also received positive feedback in providing applicants access to relevant information and assistance, and maintained comprehensive documentation in the form of procedures manuals, customer information guides and operational guidelines.

The program received over 6,000 expressions of interest to 31 December 2013. As acknowledged by the ANAO, 992 applications were considered and merit ranked by the Commercialisation Australia Board. Of these, funding totalling \$207 million has been provided for 616 separate components. The funding resulted in the creation of new high-tech, high-growth businesses in key sectors such as innovative manufacturing, agribusiness, mining technology, medical technology, ICT and advanced services.

The department acknowledges the contribution the audit made to enhance the program administration of the Commercialisation Australia Program. During the course of the audit, issues relating to some aspects of the design and administration of the Pilot Program were addressed by the department.

As part of the 2014-15 Budget, the Government announced the closure of the Commercialisation Australia Program from 1 January 2015. The Department will implement an appropriate closure strategy for the program.

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