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Australian Government

**Department of Infrastructure, Transport,
Regional Development and Communications**

**Deputy Secretary
Dr Rachel Bacon**

EC20-000155

Senator Susan McDonald
Chair
Rural and Regional Affairs and Transport Legislation Committee
Parliament House
Canberra ACT 2600

Dear Chair

Rural and Regional Affairs and Transport Legislation Committee - Hansard of 2 March 2020

I am writing to clarify the record regarding statements made during the hearing concerning the advice provided to the Ministerial Panel for the Regional Jobs and Investment Packages on conflicts of interest.

During the hearing, the Department advised the committee on several occasions that the Ministerial Panel were informed or advised of their requirements in relation to conflicts of interest.

The Department advised Ministers of their responsibilities under the Commonwealth Grants Rules and Guidelines (CGRGs) and a copy of the advice provided to the Ministerial Panel is at Attachment A.

This advice highlights key points from both the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the CGRGs which set out detailed guidance on managing conflicts of interest. This advice did not replicate sections 13.6 to 13.8 of CGRGs which outlines officials' obligations relating to conflicts of interest.

To address this and other findings of the ANAO around handling of conflicts of interest, the Department has since improved its guidance. An example of the improved guidance for the Building Better Regions Fund was provided to the Joint Committee of Public Accounts and Audit on Friday, 6 March 2020 in response to Question on Notice 6.

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I would be grateful if you could please table this letter as appropriate in order to ensure the Department's statements on this matter are clarified.

Yours sincerely

Dr Rachel Bacon
Deputy Secretary

 March 2020

Attachment A: RJIP PGPA Act and CGRGs Obligations on Ministers

PGPA Act and CGRGs Obligations on Ministers

Requirements under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act):

Under Section 71 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) a Minister must not approve a proposed expenditure of relevant money unless the Minister is satisfied, after making reasonable inquiries that the expenditure would be a proper use of relevant money.

If a Minister approves a proposed expenditure of relevant money, the Minister must:

- a. record the terms of the approval in writing as soon as practicable after giving the approval; and
- b. comply with any other requirements prescribed by the rules in relation to approvals of proposed expenditure.

As Chair of the Ministerial Panel, the Hon Dr John McVeigh MP, Minister for Regional Development, Territories and Local Government, is the Approver of expenditure under RJIP for the purposes of Section 71 of the PGPA Act.

By following the recommendations of the Ministerial Briefing Package, the Approver will be declaring that they have made reasonable inquiries and are satisfied that approving the proposed expenditure represents a proper use of relevant money, in accordance with section 71 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). For the purposes of the PGPA Act, *proper* is defined as efficient, effective, economical and ethical.

Requirements under the *Commonwealth Grants Rules and Guidelines* (CGRGs):

The *Commonwealth Grants Rules and Guidelines* (CGRGs) apply to all grants. As RJIP is a grant funding program there are additional obligations on Ministers who exercise the role of approver.

Receiving Written Advice from Officials:

The CGRGs at section 4.10 require that where a Minister approves proposed expenditure under section 71 of the PGPA Act, in relation to a grant or group of grants, the Minister *must* not approve the grant without first receiving written advice from officials on the merits of the proposed grant or group of grants.

Officials *must* provide written advice to Ministers, where Ministers exercise the role of an approver. This advice *must*, at a minimum:

- a. explicitly state that the spending proposal being considered for approval is a 'grant';
- b. provide information on the applicable requirements of the PGPA Act and rules and the CGRGs (particularly any ministerial reporting obligations), including the legal authority for the grant;
- c. outline the application and selection process, including the selection criteria, that were used to select potential grant recipients; and
- d. include the merits of the proposed grant or grants relative to the grant guidelines and the key consideration of achieving value with relevant money.

The Ministerial Briefing Pack provided to the Ministerial Panel constitutes written advice on eligible applications and includes information sufficient to meet the requirements of Section 4.10 of the CGRGs.

Briefing on the merits of a specific grant or group of grants:

The CGRGs at section 4.7 state that while officials do not have to rank all grants when briefing ministers on the merits of a specific grant or group of grants, officials should, at a minimum, indicate: which grant applications fully meet the selection criteria; which applications partially meet the criteria; and which applications do not meet any of the criteria. Any specific recommendations regarding grant applications for approval can be in addition to this information.

For RJIP, the information provided in the summary ranking report and the individual assessment snapshots will address this requirement.

Recording the basis for the decision:

The CGRGs require at section 4.11 that where the proposed expenditure of relevant money relates to a grant, the Minister who approves it *must* also record, in writing, the basis for the approval relative to the grant guidelines and key considerations of value with relevant money.

For the purposes of RJIP, where the Ministerial Panel selects projects recommended for funding by the Department in the order of ranking provided by the Department, the documentation provided in the summary ranking report and the individual assessment snapshots will be sufficient to satisfy this requirement.

However, should the Ministerial Panel select a project for funding outside the listed ranking regardless of whether or not it is recommended for funding, the Approver will need to record the basis for the decision.

When recording the basis for the decision to fund projects in a competitive merit-based selection process the rationale should be relative to the grant guidelines and key considerations of value with relevant money against the published selection criteria both in its own right and relative to that of competing applications.

This would include recording the reasons why higher ranked projects were not funded as well as the reasons for funding the lower ranked project.

Approving grants in a Minister's own electorate:

The CGRGs at section 4.12(a) require that where a Minister (including a Parliamentary Secretary) approves a proposed grant in his/her own electorate, the Minister *must* write to the Finance Minister advising of the details.

As stated in the RJIP Guidelines, funding decisions will be made by the Ministerial Panel in consultation with the [REDACTED] Cabinet. For the purposes of the PGPA Act the Chair of the Ministerial Panel will be the Approver of the proposed expenditure. Where a project selected for funding sits within the electorate of any Ministerial Panel member, the Approver must write to the Finance Minister advising of the details of the projects approved.

The Department will provide correspondence from the Chair of the Ministerial Panel to the Finance Minister providing details of those projects approved in any of the Ministerial Panel members' electorates to satisfy this requirement.

Approving grants not recommended by the Department:

The CGRGs require at section 4.12 that

- a. Ministers (including Senators) *must* report annually to the Finance Minister on all instances where they have decided to approve a particular grant which the relevant official has recommended be rejected. The report *must* include a brief statement of reasons (i.e. the basis of the approval for each grant). The report *must* be provided to the Finance Minister by 31 March each year for the preceding calendar year, and
- b. If a decision relates to a Minister's own electorate (House of Representatives members only), the Minister *must* also include this information when writing to the Finance Minister in the context of the process outlined in paragraph 4.12.

In the annual report to the Finance Minister, the Department will include details of any projects which were not recommended but were approved for funding under RJIP. Where the project sits within any of the Ministerial Panel members' electorates, the correspondence required to satisfy 4.12(a) will be amended to reflect the requirements of 4.13(b).