



Joint Committee of Public Accounts and Audit
The Administration of Government Grants: Inquiry into Auditor-General
Reports 5, 12 & 23 (2019–20)

Submission by the Australian National Audit Office

1. The ANAO has tabled more than 50 performance audits of grants administration since the Commonwealth Grants Rules and Guidelines (CGRGs) were introduced in July 2009. The audit coverage of grants administration reflects our assessment of risk in individual entities as well as the continuing interest of the Parliament in this topic. This interest has been evident through inquiries undertaken by the Joint Committee of Public Accounts and Audit and other committees as well as in the significant number of requests from Parliamentarians for audits of individual grant programs.
2. We have observed that the introduction of the CGRGs has led to some important improvements in the standard of grants administration. For example, it is now common for program guidelines to be in place and for those guidelines to include clear eligibility and merit assessment criteria. The establishment of the CGRGs has also meant that entities have clear minimum briefing standards they must meet when advising Ministers on the award of grant funding and (through the GrantConnect website) there is a consistent standard of public reporting on the award of grant funding once a funding agreement has been signed.
3. ANAO performance audits of grants administration have nevertheless continued to identify significant shortcomings in the design and administration of grants programs. This has most particularly been the case in relation to the processes by which applications for funding have been assessed and funding decisions made. That this remains the case is significant, given the development of the CGRGs was informed by a strategic review that concluded:

Decision-making in grant programs has been a matter of strong public interest, widespread parliamentary and audit scrutiny, and significant political contention in recent times. The reasons for this lie largely in the 'discretionary' nature of many grant programs, the high levels of flexibility built into many application assessment procedures, and the consequent lack of transparency in Ministerial decision-making processes. In such circumstances, it is often difficult to demonstrate that decisions have been taken on the basis of merit, consistent with transparency and accountability principles, rather than for other reasons, including reasons of political self-interest.¹

4. Similarly, when releasing the first edition of the CGRGs, the then Finance Minister observed that the administration of grant programs had become significantly debased and expressed the desire

¹ Mr Peter Grant PSM, *Strategic Review of the Administration of Australian Government Grant Programs*, 31 July 2008.

that the new framework would improve the quality of grants administration and ensure Australian taxpayers receive the best possible outcomes from Commonwealth grants.

5. Against this background, as requested by the Committee on 28 February 2020, the ANAO has made some suggestions of areas where the Committee may wish to recommend improvements to the grants administration framework. This submission focuses on some key areas where our audit work indicates that improvements are needed.

Expanding the key principles for grants administration

6. Our audit experience has been that departing from the selection criteria and process outlined in the program guidelines is detrimental to the conduct of a transparent and equitable program. Such departures can also be detrimental to the achievement of the program objectives from which the selection criteria were derived. These departures have been one of the most common deficiencies identified in performance audits of grant programs.
7. Since they were introduced, the CGRGs have set out 'seven key principles for better practice grants administration'. As flagged in Report 23 of 2019-20 (page 13), 'potential applicants and other stakeholders have a right to expect that program funding decisions will be made in a manner and on a basis consistent with the published program guidelines'. Accordingly, the ANAO suggests that there would be benefits in the CGRGs being expanded to include an eighth key principle, as follows:

Adherence to published guidelines

8. Guidance on grants administration practices in the CGRGs to give effect to this principle could usefully include identifying approaches that would be inconsistent with the principle, including:
 - the assessment process not being undertaken by the party identified in the program guidelines, or a separate parallel assessment process being undertaken;
 - the criteria that had been set out in the published guidelines being replaced by different criteria, either in whole or in part;
 - the failure to apply one or more criteria that had been set out in the published guidelines, unless the guidelines specifically provide for criteria to be waived (and where criteria are waived there should be public transparency about why this was done and how equity was maintained);
 - vague statements being included in program guidelines indicating that other unidentified factors may be taken into account in addition to the published criteria; and
 - decision-making on the award of grants commencing before the published assessment process has been completed.
9. If it is seen as necessary to add to or amend the criteria after the program guidelines have been published, then any changes should be published for transparency reasons and applicants given adequate opportunity to amend their applications in response to the changes.

10. Non-adherence to guidelines has been a finding across a large number of audits. Significantly, this has included a number of instances² of:

- the published eligibility criteria not being applied or unpublished eligibility criteria being applied: Report 27 of 2011–12 on the Bike Paths Component of the Jobs Fund; Report 22 of 2012–13 on the Tasmanian Forests Intergovernmental Agreement Contractors Voluntary Exit Grants Program; Report 25 of 2013–14 on the Building Better Regional Cities program; Report 4 of 2016–17 on the 20 Million Trees Program;
- the published merit criteria not being applied: Report 11 of 2013–14 on Filling the Research Gap under the Carbon Farming Futures Program; Report 12 of 2016–17 on the Living Safe Together Program; and Report 23 of 2019–20 on the Community Sport Infrastructure Grants Program; and
- the assessment process departing from that outlined in the published guidelines, for example by applying unpublished weightings to criteria or not applying the published weightings, thereby impacting upon which applications were approved for funding: Report 39 of 2011–12 on the National Solar Schools Program; Report 41 of 2012–13 on the Supported Accommodation Innovation Fund; Report 35 of 2016–17 on the Indigenous Advancement Strategy; and Report 2 of 2018–19 on the Data Retention Industry Grants Program.

Interaction of the grants administration framework with the Federal Financial Relations framework

11. The CGRGs provide (paragraph 2.6) that they do not apply to a payment to a State or a Territory that is made for the purposes of the *Federal Financial Relations Act 2009*. There are no qualifications on, or limits to, this exclusion. It is significant that delivering programs through the Federal Financial Relations framework that could comfortably have been delivered as a discretionary grant program covered by the CGRGs means that the assessment and decision making processes set out in the CGRGs (such as the requirement for assessment advice to reflect merit in terms of the published program guidelines) do not apply.

12. Audit reports that have examined grant programs where payments were made under the Federal Financial Relations framework where the CGRGs did not apply are:

- Report 30 of 2009–10 on the Strategic Regional Roads Program;
- Report 7 of 2011–12 on the Infrastructure Employment Projects Stream of the Jobs Fund; and
- Report 17 of 2015–16 on the Bridges Renewal Program.

Development and publication of program guidelines

13. A key obligation under the CGRGs is for all grant programs, including those that fund election commitments, to have guidelines in place. The CGRGs state that the guidelines should clearly set out how the program will operate, including the assessment criteria and approach and decision-making arrangements. There is a related requirement that guidelines be revised where significant changes have been made to a grant opportunity (such as the amount of program funding being increased, additional rounds being conducted, amendments to the eligibility criteria, or changes being made to the assessment process and/or criteria). These elements included in the CGRGs were intended to ensure that planning and design of grant programs are sufficiently robust.

² Some of the listed audit reports exhibited more than one of these shortcomings. Where this is the case, the audit report is included as an example of the shortcoming that was most evident.

14. There is evidence of programs being implemented without their own specific guidelines in place as well as instances where significant changes to program parameters are not being reflected in amendments to the guidelines. There have also been audits that have identified shortcomings or gaps in the published criteria having regard to the stated program objectives. Some examples of audits where issues with the development and publication of program guidelines have arisen include not:
- identifying the merit criteria that applications would be assessed against: Report 3 of 2010–11 on the Strategic Projects Component of the Regional and Local Community Infrastructure Program; and Report 22 of 2018–19 on the Grant to Great Barrier Reef Foundation;
 - providing equitable access to the funding opportunity: Report 7 of 2011–12 on the Infrastructure Employment Projects Stream of the Jobs Fund; and Report 23 of 2014–15 on the Early Years Quality Fund; and
 - developing and applying criteria that promote the achievement of the program objectives: Report 41 of 2012–13 on the Supported Accommodation Innovation Fund; Report 17 of 2015–16 on the Bridges Renewal Program; and Report 10 of 2016-17 on the Mobile Black Spots Program.
15. There would be benefit in the CGRG requirements and guidance on the development and update of guidelines being enhanced. This includes greater clarity on the circumstances in which program guidelines are not required to be published on GrantConnect and removing the standing exemption (in paragraph 5.2 of the CGRGs) from publishing guidelines for grants provided on a one-off or ad hoc basis. Further, where a decision is taken that there is a policy reason not to publish the guidelines, this reason should be published consistent with the transparency and accountability principles in the CGRGs.

Use of open and competitive selection processes

16. The CGRGs express a preference for competitive, merit-based selection processes based upon clearly defined selection criteria as it is recognised that this can achieve better outcomes and value for money.
17. In May 2012, the ANAO completed an audit (Report 21 of 2011–12) that included a finding that more than one-third of the grant program guidelines examined involved a non-competitive process.
18. Our audit experience since then, and reporting on GrantConnect, indicates that it remains quite common for non-competitive selection processes to be employed. There have also been instances where programs announced as being competitive, merits-based have actually employed closed, non-competitive processes. Performance audits that have examined non-competitive grants programs include:
- programs established specifically to fund election commitments where the assessment work of the administering entity did not adequately demonstrate that project proposals met the published assessment criteria - Report 24 of 2010–11 on the Better Regions Program, Report 41 of 2014–15 on the Safer Streets Program, and Report 3 of 2018–19 on Community Development Grants Program;
 - ad hoc or one-off grants where there was inadequate consideration given to whether a competitive approach would have been beneficial - Report 7 of 2011–12 on the Infrastructure

Employment Projects Stream of the Jobs Fund, and Report 22 of 2018–19 on the Grant to Great Barrier Reef Foundation; and

- competitive grant programs being used as a funding vehicle to award grant funding outside of the competitive process that had been published - Report 30 of 2009–10 on the Strategic Regional Roads Program, and Report 32 of 2012–13 on Grants for Adelaide Desalination Plant.

19. Overall, our audit work suggests that a stronger framework is required in the CGRGs to promote greater adoption of open, competitive, merit-based selection processes. This should include requiring that, for non-competitive programs, the guidelines clearly set out why a non-competitive selection process is being employed and how, in the absence of competition, the program has been designed to obtain value for money outcomes from the provision of grant funding.

Ministerial Advisers performing a grants administration role

20. Section 71 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) provides the legislative framework governing Ministerial decisions about spending of public money. This framework applies to Ministers when they make the decisions about which grant applications will be approved for funding. These provisions are similar to those under Section 15 of the PGPA Act applying to entity accountable authorities.

21. As they are unable to undertake the statutory function of approving proposals to spend public money, section 71 of the PGPA Act does not apply to Ministerial Advisers and administering entities cannot rely upon advice or comments from advisers as representing a decision by a Minister to approve a spending proposal. Clear documentary evidence from the Minister needs to be provided.

22. It is our understanding that when Advisers play a role in the process by which funding is awarded they are subject to the CGRGs. In this respect, the CGRGs (at paragraph 2.9) explicitly apply to Ministers, accountable authorities, officials and 'third parties'. Footnote 20 in the CGRGs define third parties as follows:

Third parties, including external committees, non-government organisations and corporate Commonwealth entities, are required to adhere to applicable requirements of the CGRGs, where they undertake grants administration on behalf of the Commonwealth. Where a committee assesses applications against particular criteria, or recommends supporting particular grant activities or distributing relevant money to grantees, committee or panel members should be treated as officials for the purposes of the CGRGs.

23. Our audit work has observed that, for some programs, Ministerial Advisers have played a significant role in the design of a grant program or the award of grant funding.³ See, for example:

- Report 23 of 2014–15 on the Early Years Quality Fund, where many of the key elements of the program policy were developed by advisers in the offices of the Prime Minister and Finance Minister in negotiation with the key stakeholder representing child care workers; and
- Report 23 of 2019–20 on the Community Sport Infrastructure Grants Program, where the Minister's Office undertook a parallel assessment process applying unpublished merit criteria.

³ Our observations of the role that has been played by Advisers in some programs are consistent with broader observations made by the report of the *Independent Review of the Australian Public Service* (Thodey Review).

24. In undertaking these roles, it has not been evident that there has been a strong recognition of the requirements of the Australian Government's grants administration framework, or of how those requirements apply to Advisers.
25. There would be benefit in the CGRG guidance being expanded to make it clear that when Ministerial Advisers perform a role in the assessment and decision-making processes for the award of grant funding, beyond their normal Ministerial advisory role, then they are also subject to the requirements of the CGRGs. In other words, when they are contributing to the executive government function of spending public money the CGRGs will apply to Advisers. To make this clear, the CGRGs should explicitly identify those requirements that apply to Advisers when they are contributing to the design of grant programs as well as when they are involved in the process by which it is decided which grant applications will be awarded funding.

Recording of reasons for decisions

26. Irrespective of whether the person awarding grant funding is a Minister or official, the CGRGs require that the approver must record, in writing, the basis for the approval relative to the grant opportunity guidelines and the key principle of achieving value with relevant money.⁴ In addition, the National Archives of Australia has in place General Record Authority 28 which sets out the requirements for keeping or destroying the records relating to grant management, including records relating to decisions about the award of grants.
27. These requirements, together with other related elements of the grants administration framework, do not affect a person's (including Minister's) right to decide on the awarding of grants. Rather, they provide for a framework encouraging decision-makers to be as well informed as possible when deciding whether to approve grants, and promoting transparency around the reasons for decisions.
28. A key consideration in the award of grant funding is whether decision-makers have equitably and transparently selected for funding the applications that represent best value for public money in the context of the objectives and outcomes of the granting activity, as set out in program guidelines. This requires that decisions taken in relation to grant applications are documented in a manner that records the information on which the decision was based and the substantive reasons for the decision. It is important that an ethical approach be adopted to meet the underlying intent of the requirement to record reasons, such that the statement of reasons directly relate to the published criteria and set out the substantive reason(s) for the decision, including any affect this has on the ranking of competing applications.
29. A number of audits have found that the approach that has been adopted to recording decisions has provided little substantive insight into the basis for the decision. This has been particularly the case in circumstances where decisions are taken to approve grants that have not been recommended, and/or to not approve grants that have been recommended. Audit reports where this has been discussed include Report 9 of 2014–15 on the third and fourth funding rounds of the Regional Development Australia Fund where recorded reasons included generic references to the program's objectives and the exercising of independent judgement.
30. The CGRGs at paragraphs 4.5 and 4.10 could be amended to require that where the decision maker does not approve grants recommended from the assessment process, or approves those not

⁴ For Minister, this requirement is specified in paragraph 4.10 of the CGRGs. For officials, this requirement is specified in paragraph 4.5 of the CGRGs.

recommended, they must record the basis for the change in a substantive form similar to the requirements for advice provided under 4.6(d).

31. This approach would be assisted if the CGRGs required that:

- advice to Ministers on the award of grants ranked competing applications (requiring an amendment to paragraph 4.7); and
- decision makers (including Ministers) document any additional information and assessment work brought to bear in making decisions, including when information comes from representations made to them (this approach would also assist the management of probity and conflicts of interest).

Overturn reporting

32. The CGRGs require that Ministers report once a year (by 31 March of the following calendar year) any instances where they approved an application that the entity recommended be rejected. This addresses a limited sub-set of instances of overturn funding decisions. It does not address:

1. decisions to not approve one or more applications that had been recommended, on the basis that they met to a high standard the published assessment criteria, for funding. This was the case, for example, with Report 3 of 2012–13 on the first funding round of the Regional Development Australia Fund and Report 9 of 2019–20 on the Regional Jobs and Investment Packages; or
2. decisions to approve applications that, while not recommended, had not been explicitly recommended for rejection. In our experience, it is uncommon for entities to recommend Ministers reject applications. Rather they identify those applications they are recommending for approval, with the remaining eligible applications categorised as 'not recommended' or some variant thereof. This was the case, for example, in Report 9 of 2014–15 on the third and fourth funding rounds of the Regional Development Australia Fund, Report 17 of 2015–16 on the Bridges Renewal Program Report 30 of 2016–17 on the National Stronger Regions Fund.

33. Paragraph 4.12(a) of the CGRGs could be amended to also include these types of overturn decisions as being required to be reported to the Finance Minister. Consistent with the transparency principle, consideration could also be given to public reporting of all overturn decisions, for example as part of the reporting of individual grants on GrantConnect.

34. A further gap in this reporting framework relates to reporting of former Ministers. Where a person ceases to be a Minister before 31 March (for example as a result of a change of government) there is no requirement for reporting of any overturn decisions taken in the prior calendar year. This could be addressed by paragraph 4.12 of the CGRGs being amended to require reporting as soon as practicable after decisions are made rather than annually.

Probity, including conflicts of interest

35. 'Probity and transparency' is one of the seven key principles set out in the CGRGs. There is, however, limited guidance provided as to how to achieve probity, including effective identification and management of conflicts of interest, in grants administration. Performance audits have drawn attention to issues in areas such as:

1. use of consultants and contractors without requiring program-specific declarations to be made as to whether there are any conflicts of interest and, if so, how they are to be managed;
 2. a presumption that there are no conflicts rather than requiring a clear declaration to be made to this effect;
 3. use of external parties on consultative committees and assessment panels without adequately addressing potential conflicts of interest when making those appointments, not requiring declarations to be made and updated, or not requiring identified conflicts to be transparently managed;
 4. departmental staff or Ministerial Advisors involved in the assessment of applications not being required to identify whether they have any conflicts of interest; and
 5. decision-makers, including Ministers, not being required to transparently declare the existence of any conflicts of interest and how they were managed.
36. We also continue to identify situations where there are no records made of meetings at which important decisions are taken about the award of grant funding.
37. While some Audit Reports (such as Report 5 of 2019–20 on the Australian Research Council's Administration of the National Competitive Grants Program) have made positive findings about the management of probity including conflicts of interest, it has been more common for audit reports to find an incomplete or ineffective approach. This includes Report 2 of 2018–19 (on the Data Retention Industry Grants Program) and Report 9 of 2019–20 (on the Regional Jobs and Investment Packages).