Auditor-General for Australia

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Audit Office

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The Hon Anthony Albanese MP
Minister for Infrastructure and Transport
Leader of the House
Parliament House
CANBERRA ACT 2600

Dear Minister

JCPAA INQUIRY INTO AUDIT REPORT NO.21 2011–12: ADMINISTRATION OF GRANT REPORTING OBLIGATIONS

I am writing in relation to your personal explanation in the House of Representatives on Wednesday 21 March 2012 concerning the above audit, and your letter to me of 29 March 2012. The key issues you have drawn my attention to relate to the timing of your funding decision, the non-discretionary nature of the Roads to Recovery Program and public reporting in relation to the three grants in question.

Timing

We recognise that your decision under s.87 of the (then) *AusLink (National Land Transport) Act 2005* was made in February 2009, prior to the Commonwealth Grant Guidelines (CGGs) commencing on 1 July 2009. However, in December 2008 the Government had decided to require House of Representatives Ministers to report to the Finance Minister any grants that they awarded in their own electorate. This decision was made as part of the Government's response to the July 2008 report of the *Strategic Review of the Administration of Australian Government Grant Programs.* At the same time, the Government decided to give immediate effect to this and other reporting requirements through the issue of revised Finance Minister's Instructions (FMIs).

The revised FMIs took effect from 1 January 2009. Amongst other things, they required that:

> *Where a Minister (House of Representatives members only) approves a grant in respect to their own electorate, the basis of the approval must be recorded and the Minister must write to the Finance Minister or send a copy of the approval letter, to advise him of the decision.*

A similar obligation was subsequently included in the CGGs.

Nature of the Roads to Recovery Program

A key feature of the grants administration framework established with effect from January 2009, and also now reflected in the CGGs, was the introduction of a principles-based definition of the types of transactions that would be considered to be a grant and to which, therefore, the new framework (including associated reporting obligations) would apply. In particular, the January 2009 FMIs defined a grant as follows:

> A grant is an arrangement for the payment of public money, with conditions, to an external recipient for a specified purpose. Grants are provided to recipients to assist them to achieve their goals, while furthering the policy objectives of the Australian Government.[1]

[1] Since July 2009, a similar principles-based definition has been set out in FMA Regulation 3A(1).

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Following the adoption of this approach, concepts such as 'discretionary grant' were no longer relevant to determining when the requirements of the grants administration framework would apply to a particular transaction. We were informed at the time by the Department of Finance and Deregulation (Finance) that removing any distinction between discretionary and non-discretionary grants was an important part of the adoption of a principles-based approach. Accordingly, and as the January 2009 FMIs advised, a grant captured by the framework can take a variety of forms including payments made on an *ad hoc* basis, on the basis of competitive assessment, or provided specified criteria are satisfied. The latter are often referred to as demand-driven grant programs, and also include programs such as the Roads to Recovery Program where certain types of entities are allocated funding, with the amount of funding calculated by an allocation formula.

The audit was undertaken by asking agencies to identify to us all grant programs governed by the enhanced grants administration framework and, where a Minister was responsible for funding decisions, providing us a copy of the relevant agency briefing through which the Minister made his or her decision. Our audit approach in this respect was outlined at paragraphs 1.19 and 1.20 of Audit Report No.21 2011-12, which state that we requested from agencies:

> *'all agency briefs provided to relevant Ministerial decision-makers between 1 January 2009 and 30 June 2010 in which the Minister was asked to make a decision about whether or not to approve a grant.'*

The Department of Infrastructure and Transport (Infrastructure) responded to the audit survey by providing ANAO with, amongst other things, a number of briefings provided to you and other portfolio Ministers within the relevant timeframe. The briefings provided to ANAO included the departmental brief of February 2009 in which Infrastructure asked that you exercise your role as Minister under section 87(1) of the (then) *AusLink (National Land Transport) Act 2005*. Under that section of the Act, you were required to determine by legislative instrument a list (the AusLink Roads to Recovery List) for the funding period which:

(a) specified the amounts of Commonwealth funding that were to provided under the Roads to Recovery Program; and

(b) in relation to each of those amounts, either:

i. specified the name of the person or body that was to receive the amount; or

ii. stated that the amount is specified on account of a particular State, or a particular area of a State, but the persons or bodies that were to receive the amount had not yet been decided.

We recognise that the legislation provides limited discretion in that it permits the list to be varied only in certain specified circumstances. In this context, and having conducted performance audits of the administration of the Roads to Recovery Program on two separate occasions, we understand that it is non-competitive and would not have been classified as a discretionary grant program under the framework that existed prior to 1 January 2009. However, as outlined above, the enhanced grants administration framework that has been in place since 1 January 2009 does not, by design, distinguish between discretionary and non-discretionary grants.

In that context, while I appreciate your perspective, you will understand that our audit assessments must be made against the policy framework as promulgated by government and any relevant legislation. While there are viable alternative approaches that could have been adopted in respect to the assurance mechanisms applied where Ministers perform the role of approver for grants in their own electorate, the approach taken by the Government was to require any grant funding decisions made by a House of Representatives Minister in respect to

his or her own electorate to be reported to the Finance Minister as soon as practicable after the decision was made. As a result, the grants administration framework, as currently framed, does not provide for the exclusion of certain types of grant approvals by a Minister to a recipient in his or her own electorate from the coverage of the associated reporting requirements, or otherwise qualify the need for compliance with those requirements. Nevertheless, and having regard to the nature of the concerns more often raised in relation to the political distribution of grant funding, the audit report suggested (at paragraph 3.15), and Finance has agreed (at paragraph 3.16), that there is merit in the own-electorate reporting arrangements being reviewed. In this context, there may be benefit in you raising with the Finance Minister any residual concerns you have about the application of the reporting requirements to non-discretionary grant programs.

Public reporting

As your letter recognises, Audit Report No. 21 2011-12 did not publish the specific details of those grants awarded by a Minister in their own electorate that had not been reported to the Finance Minister. We also did not publish the details of those within electorate grants that had been reported by the relevant approving Minister. This reporting approach reflected that the focus for this cross-portfolio audit of grant reporting obligations was on the administration of those obligations across entities from a system-wide perspective, rather than detailing individual instances of compliance or non-compliance.

However, following a request from the Joint Committee of Public Accounts and Audit (JCPAA) during a public hearing into Audit Report No. 21, I provided the supporting information to the Committee as it related to the expenditure of public money and there were no public interest grounds on which the information should not have been provided to the Committee. As you are aware, the grants that you referred to in your correspondence to me and personal explanation were included in the information provided and which was publicly released by the Committee on Wednesday 21 March 2012.

In addition, and as was outlined in ANAO evidence to the JCPAA, compliance with the own-electorate reporting arrangements was not seen by us as the most significant issue raised by the audit. Rather, the key issue emphasised by Audit Report No. 21 was that the effectiveness of the grants reporting arrangements and their consequential impact on improving the standard of grants administration depends to a significant extent on the quality of agency administrative practices, particularly in providing comprehensive and clear briefings to Ministerial decision-makers. Clearly, Ministers also need to be well supported by their agencies in identifying all instances where grants have been awarded within the Minister's own electorate such that the necessary reporting to the Finance Minister can occur.

In light of the matters raised, I have provided a copy of this letter to Mr Mike Mrdak, Secretary of the Department of Infrastructure and Transport. In addition, given your advice that you would also be writing to the Chair of the JCPAA in relation to the matters raised, I have also provided a copy of this letter to the Chair of that Committee.

Finally, do not hesitate to get in touch with me at any stage should you wish to discuss matters that arise through the work of my Office.

Yours sincerely

Ian McPhee
Auditor-General