



Express law fast track information for clients

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New Commonwealth Grant Guidelines

The Finance Minister has issued the first [Commonwealth Grant Guidelines](#) (CGGs), which establish Australian Government policy for grants administration by *Financial Management and Accountability Act 1997* (FMA Act) agencies. The CGGs took effect on 1 July 2009.

Overview

The CGGs establish the core policy framework for grants administration by FMA Act agencies.

Part 1 of the CGGs contains mandatory decision-making and reporting requirements that apply to Ministers and agency officials involved in grants administration.

Part 2 of the CGGs sets out seven key principles of good practice for the administration of Australian Government grants. There is scope for agencies to determine the most appropriate way to implement these key principles for each of their granting activities.

The CGGs were issued by the Finance Minister under the new Regulation 7A of the *Financial Management and Accountability Regulations 1997* (FMA Regulations). The CGGs do not apply to bodies subject to the *Commonwealth Authorities and Companies Act 1997* (CAC Act).

The regulations that amended the FMA Regulations contain a broad transitional and savings provision to provide sufficient opportunity for agencies to adjust their internal procedures, Chief Executive's Instructions, delegations and related materials.

Scope of the Commonwealth Grant Guidelines

In the CGGs, 'Grants administration' includes planning and design, selection and decision making, making a grant, managing funding agreements, reporting, and review and evaluation (see para 2.4 of the CGGs).

A 'grant' is defined in new FMA Regulation 3A as:

an arrangement for the provision of financial assistance by the Commonwealth:

- (a) under which public money is to be paid to a recipient other than the Commonwealth; and
- (b) which is intended to assist the recipient achieve its goals; and
- (c) which is intended to promote 1 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.

(Note, in relation to terms used in Regulation 3A, that 'Public Money' is defined in s 5 of the FMA Act. A 'recipient' means a recipient that is external to the legal entity of the Commonwealth. Notional payments and receipts by agencies within the meaning of s 6 of the FMA Act are not grants. In an accounting sense, a 'grant' is a non-exchange transaction, as government does not directly receive approximately equal economic value directly in return.)

The CGGs and new FMA Regulation 3A(2) also specify what arrangements are not 'grants': for example, procurement, loans, investments and payments to States and Territories covered by the *Federal Financial Relations Act 2009*, and certain local government and education payments.

What constitutes a 'grant' is discussed in more detail in [Finance Circular 2009/03: Grants and other common financial arrangements](#). This circular also discusses other types of financial arrangements, including sponsorship and membership arrangements. It states that the nature of a particular financial arrangement should be determined by considering the substantive purpose and the characteristics of the arrangement rather than the particular name that may have been given to the arrangement.

Amendments to the FMA Regulations relevant to grants administration

'Grants administration' occurs within the framework of the FMA Act and the FMA Regulations. The introduction of the new CGGs has been accompanied by a number of amendments to the FMA Regulations (made by the [Financial Management and Accountability Amendment Regulations 2009 \(No. 4\)](#)). The following amendments are of particular relevance to grants administration:

- New FMA Regulation 7A requires that agencies' officials *must* act in accordance with the CGGs when performing grant administration activities.
- The term 'spending proposal' is now defined in FMA Regulation 3 to mean a 'proposal that could lead to the creation of a contract, agreement or arrangement under which public money is payable or may become payable' and includes a notional payment between agencies under s 6 of the FMA Act.
- New FMA Regulation 12(2) provides that, in addition to the approver of a spending proposal recording the terms of the approval, an approver of a spending proposal that relates to a grant must also record the basis on which the approver is satisfied that giving effect to the spending proposal would comply with FMA Regulation 9, i.e. that it would be an efficient, effective and ethical use of Commonwealth resources that is not inconsistent with Australian Government policies.

An official or Minister who approves a spending proposal for a grant must also comply with FMA Regulations 7 to 13. [Finance Circular 2009/05: Commitments to spend public money \(FMA Regulations 7 to 13\)](#) discusses the requirements of FMA Regulations 7 to 13 and the processes that should be followed to comply with these requirements.

New mandatory grant administration process requirements

Ministerial requirements

The CGGs contain the following new *mandatory* grant-specific process, decision making and reporting requirements that apply to Ministers (see paras 3.18 to 3.25 of the CGGs):

- Where the Minister is the approver of a grant for the purposes of the FMA Regulations, the Minister will not approve the grant without first receiving department or agency advice on the merits of the proposed grant.

- A decision involving the award of a grant within a Minister's own electorate (House of Representative members only) will remain within the remit of the responsible Minister or other approver in the portfolio or agency concerned. But, if the Minister approves a grant in respect to their own electorate, the Minister is required to advise the Finance Minister in writing of the details of the grant as soon as is practical after the decision is made.
- A decision involving the award of a grant which the relevant agency has recommended be rejected will remain within the remit of the responsible Minister, but the Minister is required to report annually to the Finance Minister by 31 March setting out the details and basis of approval of any such grant approved by the Minister. However, if the Minister is a House of Representatives Minister and the grant relates to the Minister's own electorate, the Minister is required to notify the Finance Minister of the grant's details and the basis on which the Minister has approved the grant, as soon as is practical after that decision is made.

Agency requirements

Agency officials are responsible for advising their Ministers of the CGG requirements and must take appropriate steps to do so in a timely manner where a Minister exercises the role of a financial approver of a grant.

The CGGs reflect web-based reporting requirements that took effect on 1 January 2009. They state that each agency *must* publish on its website information about its individual grants no later than seven working days after the funding agreement for the grant takes effect (the date of effect may be the date the funding agreement is signed, or a specified commencement date or may relate to a specified event) and retain that information on its website for two financial years.

If an agency determines that public reporting of grants in accordance with the CGGs is contrary to the *Privacy Act 1988*, other statutory requirements, or the specific terms of a funding agreement, the agency:

- *must* endeavour to publish as much of the required grant information as legally possible
- *must* document the reasons for not reporting fully
- should take all possible steps to ensure that future funding agreements do not prevent the disclosure of the required information.

If an agency determines that publishing grant information in accordance with the CGGs could adversely affect the achievement of government policy outcomes, the responsible Minister should write to the Finance Minister detailing the case for exemption from these web publishing requirements.

The CGGs also state that agency officials *must* ensure that:

- guidelines for any new grant program are provided to the Expenditure Review Committee for its consideration (where the guidelines for an existing grant program are proposed to be amended, agencies should consult with the Department of Finance and Deregulation on whether the amendments require consideration by the Expenditure Review Committee)
- grant guidelines and related operational guidance are consistent with the CGGs
- grant guidelines for new grant programs are publicly available, including on the agency's website
- they behave in accordance with the law, government policy, agency rules (e.g. Chief Executive's Instructions) and the terms of applicable funding agreements

- they keep commercially sensitive information secure and never use it for personal gain or to prejudice grants administration processes
- they disclose information that the Australian Government requires to be notified
- they disclose to their agency any form of current or prospective personal interest that might create a conflict of interest in grants administration. (see para 3.15 of the CGGs)

[Finance Circular 2009/04: Grant - Reporting Requirements](#) provides further information on the Ministerial and agency reporting requirements specified in the CGGs.

Key principles for good grant administration

Part 2 of the CGGs establishes seven key principles for sound grants administration. While the requirements in Part 2 of the CGGs are generally not mandatory, agencies should have regard to these key principles, outlined below, in administering grants.

Robust planning and design

Grant processes should take account of all relevant risks in order to achieve the Australian Government's policy objectives in a transparent and accountable way.

An outcomes orientation

Agencies should focus on the results that a grant will achieve for the Australian community. They should maximise the grant's outcomes and outputs while making the most efficient and effective use of inputs.

Proportionality

Agencies should design a granting activity so that it is commensurate with the scale, nature, complexity and risks involved in that activity.

Collaboration and partnership

Without detriment to the other principles, agencies should develop and maintain constructive and cooperative relationships with grant recipients and other stakeholders.

Governance and accountability

Agencies should develop all policies, procedures and guidelines necessary for sound grant administration, including:

- defining the role of each party in the granting activity (this would include the Minister, agency officials, the grant recipient and other stakeholders) to achieve the desired policy intent
- conducting all grant selection processes in a defensible manner
- negotiating funding agreements that clearly document the expectations of both parties in the delivery of the granting activity and enable the agency and recipient to be accountable for the grant funds
- maintaining accurate records on grant-giving activities, including recording decisions made by approvers under FMA Regulation 9
- supporting grant-giving activities with appropriate financial and performance monitoring frameworks.

Probity and transparency

Agencies should:

- conduct their grant-giving activities in an honest and transparent manner
- be able and willing to provide reasons for all of their grant administration decisions
- guard against fraud
- identify and manage any conflicts of interest.

Achieving value with public money

Agencies should undertake a careful assessment of the costs, benefits, options and risks associated with a granting activity to ensure that value is achieved. A grant should add value by achieving something worthwhile that would not occur without grant assistance

What agencies need to do now

Agencies should familiarise themselves with the changes to the FMA Regulations, the CCGs (which commenced on 1 July 2009) and related Finance Circulars (2009/03, 2009/04 and 2009/05), and may also need to review:

- the design and administration of their existing and proposed granting activities and funding agreements
- financial management documentation, including their Chief Executive's Instructions
- their processes for managing and reporting grants
- their Ministerial briefing processes.

to ensure they are fully compliant with the mandatory requirements, and operate consistently with the better practice guidance, contained in the CCGs.

Please contact one of the AGS grants and funding specialists listed below if you would like AGS to assist your agency with compliance with the CCGs.

More information on the new Commonwealth Grant Guidelines

AGS will soon be running a series of Government Law Group seminars on grants. A seminar will be held in Canberra on 26 August 2009 and dates for seminars in other locations will be finalised shortly. For more information, please contact Michelle Easte (T 02 6236 7211 or michelle.easte@ags.gov.au).

AGS will soon be producing an updated Legal Briefing on grants which takes account of these new developments.

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