

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Public Governance, Performance and Accountability Act 2013

Commonwealth Grants Rules and Principles 2024

Purpose

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) set out a framework for regulating resource management by Commonwealth entities and companies.

The purpose of the *Commonwealth Grants Rules and Principles 2024* (CGRPs) is to establish the mandatory requirements and key principles that apply to all Commonwealth grants and promote the proper use and management of public resources. The CGRPs also repeal and replace the *Commonwealth Grants Rules and Guidelines 2017* (CGRGs) (F2017L01097).

The CGRPs apply to ministers, accountable authorities and officials of non-corporate Commonwealth entities when performing duties in relation to grants administration, as well as third parties administering grants on behalf of the Commonwealth. The CGRPs do not apply to corporate Commonwealth entities, unless they are administering grants on behalf of the Commonwealth.

Background

The CGRPs continue to promote the proper use and management of public resources through two parts. Part 1 contains the mandatory requirements of the instrument and sets out the legislative, policy and reporting requirements for grants administration. Part 2 of the instrument outlines the key principles of grants administration to which entities must have regard.

While the CGRPs replicate much of the content of the CGRGs, they also seek to give effect to a number of recommendations from the Joint Committee of Public Accounts and Audit (JCPAA) Report 484: *The Administration of Government Grants: Inquiry into Auditor-General's Reports 5, 12 and 23 (2019-20)*, tabled in December 2020, the JCPAA Report 495: *Inquiry into Commonwealth Grants Administration*, tabled in June 2023, as well as recommendations from Auditor-General Report No. 1 (2022-23): *Award of Funding under the Building Better Regions Fund*.

Changes between the CGRGs and the CGRPs are as follows:

- The retitling of the instrument from the '*Commonwealth Grants Rules and Guidelines*' to the '*Commonwealth Grants Rules and Principles*' to better reflect that this legislative instrument contains mandatory requirements and key principles, and to distinguish this from supporting information, resources and other guidance material that is developed by the Department of Finance. This is consistent with JCPAA recommendations to include additional key principles governing the administration of Commonwealth grants.
- Section 1 of the CGRPs explains the purpose, structure and intention of the policy framework and is largely unchanged from the CGRGs. Footnote 1 now references Division 6A of the *Public Governance Performance and Accountability Rule 2014* which came into effect on 1 December 2020 and provides that where a minister is the decision-maker for a corporate Commonwealth entity grant, the same advising, decision-making and reporting requirements apply to the grant as if the CGRPs applied.

- Section 2 sets out the objective of grants administration, and the scope of the CGRPs, including the definition of a grant and those financial arrangements taken not to be grants for the purposes of the framework, as well as to whom and what types of activities the CGRPs will apply. Changes in this section from the CGRGs include:
 - explicit reference that the CGRPs apply to election commitments to remove any confusion as to whether such commitments are captured (paragraph 2.4) (this gives effect to recommendation 2 from JCPAA report 495 *Inquiry into Commonwealth Grants Administration*),
 - clarifying the description of one-off ad hoc grants in paragraph 2.4c, and
 - changes to paragraphs 2.9 to 2.11 to clarify when third parties are considered to be undertaking grants administration on behalf of the Commonwealth and to clarify who may be considered a third party. This gives effect to recommendation 3 from the Auditor-General report on the *Award of Funding under the Building Better Region Fund*.

- Section 3 sets out the overarching requirements of the Commonwealth Resource Management Framework, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule), of which grants administrators must be particularly mindful when involved in grants administration. Changes in this section from the CGRGs include:
 - amending the reference to section 10 of the PGPA Rule to include both fraud and corruption (paragraphs 3.6 and 3.7), consistent with changes made to the PGPA Rule in December 2023,
 - explicitly referencing the requirements that accountable authorities and officials must disclose material personal interests in relation to grants administration, and that officials and ministerial staff have responsibilities under other frameworks such as the *Public Service Act 1999* and Ministerial Code of Conduct to disclose and take reasonable steps to avoid conflicts of interest (paragraph 3.12),
 - explicitly referencing requirements under the PGPA Act and the *Archives Act 1983* that officials must retain appropriate records (paragraph 3.15). This gives effect to recommendation 4 from the JCPAA Report 484 *The Administration of Government Grants*.

- Section 4 contains the grants specific processes and requirements that apply to accountable authorities and officials, and ministers where they are the approver of a grant. The changes in this section from the CGRGs (which give effect to elements of recommendations 2 and 5 from the Auditor-General report on the *Award of Funding under the Building Better Regions Fund*; recommendation 4 from the JCPAA Report 484 *The Administration of Government Grants*; and recommendation 3 from the JCPAA Report 494 *Inquiry into Commonwealth Grants Administration*) include:
 - when briefing ministers on the merits of a specific grant or group of grants under the CGRPs, as required by paragraph 4.6d:
 - officials must apply the three categories: which applications fully meet the selection criteria; which applications partially meet the selection criteria; and which applications do not meet any of the selection criteria; which the CGRGs encouraged, but did not require, officials to use (paragraph 4.7a),
 - officials must indicate which applications can be supported within the available funding (paragraph 4.7b),
 - officials must recommend that applications that do not meet any of the selection criteria be rejected (paragraph 4.7c), and
 - officials are encouraged to make specific recommendations regarding the grant applications (paragraph 4.7d),

- where a minister is the approver of a grant:
 - extending the requirement in the CGRGs to record the basis for the approval relative to the grant opportunity guidelines and the key principle of achieving value with relevant money, and the requirement to record the basis for approving any grant or group of grant applications where officials have recommended they be rejected, to decisions by ministerial panels (paragraph 4.10).
 - introducing a new requirement that ministers must record in writing, the basis for not approving any grant or group of grants which officials have recommended be approved (paragraph 4.10c);
 - clarifying that ministers must record, in writing, the basis for approving any grant or group of grants that officials have recommended be rejected (paragraph 4.10d), and
 - introducing a new requirement that ministers must record, in writing, and declare as appropriate, any conflicts of interest relating to a decision to approve a grant (paragraph 4.10e). This gives effect to Recommendation 4 of the JCPAA Report 484 *The Administration of Government Grants*.
- improving transparency and accountability by:
 - increasing the frequency of reports by ministers to the Minister for Finance on all instances where they have decided to approve a particular grant which the relevant official has recommended be rejected, from an annual report to ‘as soon as practicable’ (paragraph 4.12). A supporting footnote advises that when a decision is made in December, the reporting should occur before 31 January of the subsequent year (paragraph 4.12); and
 - requiring the Minister for Finance to table in each House of Parliament, a copy of reports received under paragraphs 4.11a (approval of grants in own electorate) and 4.12a (approval of grants that officials recommended be rejected), as soon as practicable after the end of each quarter (a quarter means a period of three months starting on 1 January, 1 April, 1 July or 1 October each year). Also requiring any decisions by ministers under paragraphs 4.11a or 4.12a to be recorded on GrantConnect with a summary basis of the approval (paragraph 4.13).
- Section 5 deals with public reporting. Changes in this section from the CGRGs are aimed at improving transparency and the provision of reliable and timely information. These include:
 - clarifying that GrantConnect is the authoritative source for grant opportunities, and entities cannot publish more information on their own websites (paragraph 5.2),
 - encouraging officials to develop a forecast of grant opportunities, and a requirement that, if developed, these are published on GrantConnect (paragraph 5.3),
 - extending requirements for reporting information on individual grants to any subsequent variations to the grants, including the 21-calendar day reporting timeframe (paragraph 5.4), with footnote 51 clarifying the types of variations which must be reported.
 - requiring information on grants awarded to be linked to the published grant opportunity guidelines on GrantConnect (paragraph 5.4),
 - requiring officials to record on GrantConnect information, as required by new paragraph 4.13, as soon as practicable, (paragraph 5.5), to provide greater transparency and to give effect to the Government’s commitment on grants in the [Australia’s Third Open Government Partnership National Action Plan 2024-2025](#),
 - clarifying when a minister may seek an exemption from the Minister for Finance from publishing on GrantConnect (paragraph 5.8).

- Part 2 of the CGRPs sets out the key principles of grants administration, which are largely maintained from the guidance provided in Part 2 of the CGRGs. Key changes from the CGRGs include:
 - the introduction of two new key principles for better grants administration:
 - ‘merit-based processes’ (section 11), to encourage officials, particularly at the design phase of a spending activity, to consider merit-based selection processes, having particular regard to the key principles of value with relevant money, an outcomes orientation and proportionality. Noting that competitive, merit-based selection processes should be used unless specifically agreed otherwise by a minister, accountable authority or delegate (this gives effect to recommendation 3 from JCPAA report 495 *Inquiry into Commonwealth Grants Administration*), and
 - ‘consistency with grant guidelines and established processes’ (section 13), to remind grants administrators and approvers to apply the processes involved in the grants lifecycle, particularly those set out in the published grant guidelines and associated legislative and internal entity frameworks when administering a grants activity to achieve government policy outcomes (this gives effect to recommendation 5 from the JCPAA report 484 *The Administration of Government Grants* and recommendation 1 from JCPAA Report 495 *Inquiry into Commonwealth Grants Administration*).
 - changes to other key principles to promote good administration and to address recommendations from the JCPAA, including:
 - providing that timely appraisal of grant applications avoids possible inequities and waste that may arise through unnecessary delays, and that the provision of feedback to unsuccessful grant applicants promotes transparency in decision-making and improves the capacity of potential grantees to apply for future grant activities (paragraph 13.5) (this gives effect to recommendation 5 from JCPAA report 484 *The Administration of Government Grants*);
 - providing that documenting the appropriate skills and training needs of officials involved in grants administration, and facilitating suitable ongoing support, supports good governance and grants administration (paragraph 14.5) (this gives effect to recommendation 5 from JCPAA report 484 *The Administration of Government Grants*); and
 - providing additional information on managing variations to grant agreements (paragraphs 14.13 to 14.16).

The CGRPs are supported by guidance available on the Department of Finance website at <http://www.finance.gov.au/>.

Commencement

The CGRPs commence on 1 October 2024 and repeal the *Commonwealth Grants Rules and Guidelines 2017* (F2017L01097).

Authority

Section 105C of the PGPA Act provides that the Finance Minister may make legislative instruments in relation to grants. The CGRPs are issued by the Finance Minister under subsection 105C(1) of the PGPA Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The CGRPs made under section 105C of the PGPA Act are exempt from disallowance under subsection 105C(2) of the PGPA Act. Therefore, a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is not required.

The CGRPs are not subject to disallowance because grant arrangements are integral to the internal operations of government. The possibility of disallowance would undermine commercial certainty in arrangements key to the government's delivery of programmes and services.

Consultation

The CGRPs were developed in consultation with key non-corporate Commonwealth entities involved in grants administration, including via the Grants Framework Working Group. The Working Group is comprised of SES staff from non-corporate Commonwealth entities that administer grants programs, including the two Grants Hubs, and assists the Department of Finance on considering areas for continuous improvement in grants policy and administration matters.

**Senator the Hon Katy Gallagher
Minister for Finance**